

During divorce, the division of marital property is often problematic and a source of dispute for many couples seeking to dissolve their marriage. Working through issues relating to the distribution of marital property requires an experienced family law attorney willing to carefully scrutinize the facts of your case and make an argument relating to the classification and distribution of the marital estate.

Mississippi is an “equitable distribution” state. *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994). Under this manner of distribution, it does not matter which spouse is the title owner of a particular asset. Instead, marital property is distributed between the parties upon divorce based on the equities of their particular situation. It is important to remember that equitable distribution does not necessarily mean equal distribution— so you cannot assume that everything will be divided 50/50. Instead, courts of this state utilize several steps when making an equitable distribution of marital property. These steps include: (1) classifying assets as marital or separate; (2) valuing assets (occasionally using experts); (3) divide marital property equally based on the factors outlined in *Ferguson*; and, (4) award alimony if needed after the division of assets.

The first step is the classification of all assets as marital or non-marital property. Generally, non-marital property is an asset brought into a marriage or an asset received by gift or inheritance during the marriage. Marital property is an asset acquired or accumulated by marital efforts during the course of the marriage. Property that would otherwise be non-marital may lose its non-marital status if combined or “commingled” with marital property to the point that you can no longer identify its non-marital characteristics. Separate property may also become marital if used by the family through a concept called the “family use doctrine.” An asset can have both marital and non-marital components, and there is a presumption in favor of marital property in Mississippi.

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