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Retirement Benefits in a Divorce

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When a couple divorces and contemplates all the property to be divided, one of the biggest assets is often retirement benefits each have accrued during the marriage. Even though an account might be in the name of one individual, like anything else that is earned during the marriage, it is considered property of the marriage and is subject to division upon divorce.

But what about unvested retirement benefits? If a person is not yet vested in a retirement account (i.e. has to work an additional amount of time after the divorce in order to receive retirement benefits), are those benefits considered property of the marriage? Like all good lawyer answers go: it depends. Under Michigan law, vested retirement benefits are always considered marital property, but unvested benefits are considered only in situations where it is just and equitable. For example, if there is enough property available for each party to have an adequate amount in settlement, it might not be considered equitable or just to divide unvested benefits if those would be available only after future work of one party. If, however, there is not much property to go around and one party doesn't have the ability to earn significant amounts for retirement, then unvested benefits might be considered for division. This can be negotiated in the final settlement or is subject to division by the court.