

Equitable Distribution in a PA divorce

Couples usually enter a marriage owning a fair amount on their own. For example, a person might already own a house or have several bank accounts before marrying their spouse. In family law, we would call this “separate property.” However, during the course of the marriage, a couple will probably acquire more assets (or even debt) together. While this concept seems fairly simple for couples who stay married, it raises an important question for those who are getting a divorce: who gets to keep all the stuff?

Equitable Distribution

If the parties cannot decide how to distribute their property themselves, the court will distribute it for them. How? This answer varies depending on the state you live in. Here in Pennsylvania, our courts use a system called Equitable Distribution.

What does Equitable Distribution mean?

Equitable Distribution does NOT mean that the property will be split 50/50. Rather, it means that it will be split fairly. In accordance with the principle of fairness, marital misconduct has no bearing on the equitable distribution of property. Courts will instead consider the following list of factors:

- The length of the marriage.
- Any prior marriage of either party.
- The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- The contribution by one party to the education, training or increased earning power of the other party.
- The opportunity of each party for future acquisitions of capital assets and income.
- The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- The value of the property set apart to each party.
- The standard of living of the parties established during the marriage.
- The economic circumstances of each party at the time the division of property is to become effective.
- The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
- The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- If the party will be serving as the custodian of any dependent minor children.

What property does Equitable Distribution cover?

Marital Property

In Pennsylvania, Equitable Distribution only involves the division of “marital property,” meaning all property acquired by either party during the marriage prior to the date of separation. So, for example, any income, cars, homes, jewelry, furniture, businesses, investments, artwork, retirement accounts (401k), etc., acquired during a marriage would be marital property. It also includes gifts between spouses during the marriage, as well as any increase in the value of separate or premarital property during marriage. Marital property is distributed without regard to who owns or acquired it. For example, a spouse may be entitled to a car under equitable distribution, despite the other spouse holding title to it.

In contrast, “separate property” is the property acquired both before the marriage and after the date of final separation. For those with prenuptial agreements, the property protected by that agreement would also constitute separate property. A court will not divide the separate property of the spouses, but it may take the amount of separate property a spouse has into consideration when distributing the marital property.

But what about that big inheritance you got last year? Or that huge gift your parents gave you the year before that? Well, the answer is easy. All property acquired by one spouse as a gift, bequest, or inheritance (whether before, after, or during the marriage) is considered separate property.

Marital Debt

Equitable Distribution also involves the division of marital debt, which is any debt incurred by either spouse during the marriage prior to the date of separation. Some common examples of marital debt include credit cards, mortgages, tax obligations or loans. Similar to marital assets, the equitable distribution of marital debt does not consider who acquired it. So, if your spouse racked up a significant amount of debt while you were married, you may be responsible for paying some of it after equitable distribution.

While individual loans are generally considered marital debt, individual student loans are a different story. If a spouse takes out student loans during the marriage, it is by definition marital debt. Despite this, student loans will usually remain with the student spouse and are not divided between the parties upon divorce. If a portion of the student loans were used to pay for living expenses for both spouses, then only that portion of the debt will be subject to equitable distribution.

When do I find out what marital property is mine?

In a perfect world, the Judge would tell you at the conciliation, trial, or other court proceeding, what marital property you get to keep. However, parties must wait until the Judge issues an order. Once the court considers the various factors set forth above, it will issue an equitable distribution order that fairly divides the marital property between the two parties. Once a court issues an order both parties are bound by it, meaning that both parties must comply with

what the order says. If one of the parties does not comply with the court's order, the court can enter a judgment against that party or seize property on behalf of the other party.

You and Your Spouse Can Decide

Sometimes parties are able to distribute their marital property themselves without the help of the courts. They do this by executing a Separation Agreement, which is a contract between the divorcing parties that determines post-marriage rights and liabilities. If parties execute a Separation Agreement that distributes all of their marital property, there is no need for equitable distribution and there is no need for the court to get involved!.

Parties may also avoid equitable distribution if the division of their marital assets are set forth in a prenuptial agreement. All property that is protected in a prenuptial agreement is shielded from equitable distribution.

*(For more information on this topic or any topic in divorce, custody, mediation, child support, collaborative law, PFA matters, alimony, or other family law matters, visit www.Pittsburgh-Divorce-Lawyer.com or contact **Notaro & Associates, PC** at **412-281-1988** for a free phone consultation with an attorney. You can also schedule online by clicking [here](#).)*