An Overview of Equitable Distribution in New Jersey

New Jersey is an equitable distribution state which means that, in the event of a divorce, the marital property is not automatically split 50-50. Rather, equitable distribution is defined as the division of marital assets in a manner that is fair but not necessarily equal.

New Jersey courts have developed a three step process to distribute assets. First, the court will identify which assets are subject to distribution. Assets included in an equitable distribution may range from the marital home, a business, bank accounts and automobiles to stock options, pensions, bonuses and lottery winnings. Generally, courts have defined marital property to be property acquired by either or both spouses from the date of marriage to the filing of the divorce.

Conversely, some main categories of separate property include property acquired prior to marriage, property acquired during the marriage as gifts from third parties or by inheritance, or property acquired after the filing of the divorce complaint from post-complaint efforts. Courts have held that separate property must be kept separately and not allowed to be co-mingled to prevent it from being identified as marital property. In addition, if separate property is improved during the marriage, it may also become marital property. Courts will also consider whether any incremental value to the property was a result of a market fluctuation or a result of the contributions and efforts by one spouse towards the asset’s growth to determine if incremental value is subject to distribution.

Next, the court will value the marital property for purposes of distribution. This step may be as straightforward as looking at bank statements or it can be a more complicated process such as retaining an appraiser or accountant to value a business, or to analyze business benefits, such as deferred compensation, restricted stock or stock options.

In step three, the court is granted wide discretion to determine the most equitable way to distribute the assets. In accordance with New Jersey’s Equitable Distribution Statute, courts will consider the following factors:
a. The duration of the marriage;

b. The age, physical and emotional health of the parties;

c. The income or property brought to the marriage by each party;

d. The standard of living during the marriage;

e. Any written agreement made by the parties before or during the marriage concerning an arrangement of property division;

f. The economic circumstances of each party at the time the division of property becomes effective;

g. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;

h. The contribution by each party to the education, training or earning power of the other;

i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker;

j. The tax consequences of the proposed distribution to each party;

k. The present value of the property;

l. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects;

m. The debts and liabilities of the parties;

n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children;

o. The extent to which a party deferred achieving their career goals; and

p. Any other factor which the court may deem relevant.

This list of factors is not exhaustive. One purpose of this statute is to take into account the role of a homemaker or
stay-at-home parent or spouse in what courts have viewed as a joint enterprise. Thus, if one spouse acquired all of the marital assets through earned income while the other spouse stayed at home and took care of the children, a court would recognize that the marriage is a partnership and would presume that the marital property was acquired through the efforts of both spouses.

Several important factors to keep in mind about equitable distribution are as follows: First, one should note that generally, the time period for determining what property is acquired during the marriage is the period from the date of marriage to the filing of the divorce complaint. Under New Jersey law, the title under which the asset was acquired is not determinative of distribution. For example, if a house was purchased in the husband’s name during the marriage, it could still be considered marital property subject to equitable distribution. Finally, one should also note that courts have excluded fault as a factor in the distribution of property at the time of a divorce.

In conclusion, this is a general overview of New Jersey's equitable distribution law and is only intended to be an introduction into this area of family law. As previously indicated, this process may range from a simple and straightforward distribution to a complicated and more sophisticated process. Speak with an attorney who specializes in family law to answer your questions on equitable distribution.

Practice:

Family Law