

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## Division of Assets in a Divorce

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

In any New Jersey divorce, in addition to awarding support such as alimony and/or child support, a Court may divide marital property and debts between the parties. This process is called “equitable distribution.” Any and all property that is acquired by either party during the marriage is potentially subject to equitable distribution, regardless of whether the property is technically owned in one party’s name or in the parties’ joint names. The theory behind equitable distribution is that marriage is a partnership between the spouses and that all property acquired during marriage is the result of *both* spouse’s financial and non-financial contributions.

However, “equitable” does not necessarily mean “equal.” Marital property is not automatically split 50-50 between the parties. Rather, equitable distribution is defined as the division of marital assets and debts in a manner that is fair under all circumstances.

### Equitable Distribution in New Jersey

#### Three-Step Equitable Distribution Process

**New Jersey courts have developed a three (3) step process to distribute assets: identification, valuation, and distribution.** First, the Court must identify what assets are subject to equitable distribution. Typically, courts will deem marital property to be property acquired by the parties during the marriage (from the date of marriage through the filing of the complaint for divorce). This can include, but is not limited to, the marital residence, a business, vacation home, stock, stock options, airline miles, pensions, automobiles, and retirement accounts.

#### Court Valuation

Once all assets have been identified, the Court will value the marital property for purposes of distribution. In the context of the distribution of a marital business, this may require the retention of a forensic accountant to value the business. On the other hand, in the context of retirement accounts, valuation may be as simple and straightforward as looking at the most recent statement.

#### Distribution

In step three, the court is tasked with equitably distributing the marital assets. Under the statute N.J.S.A. 2A:34-23.1, in deciding how to equitably distribute property between divorcing spouses, the Court considers, among other things:

- The length of the marriage.
- The age and health of the respective parties.
- The income, assets, and debts that either party brought into the marriage.
- The lifestyle that the parties enjoyed during the marriage.
- Any written agreement made between the parties during marriage to divide property.
- The parties’ relative economic circumstances at the time the property division takes place.

- The earning capacity and employability of each party, including a consideration of the parties' respective educational and professional backgrounds and the time and cost that may be necessary to pursue further education or training.
- Whether, why, and for how long either party has been absent from the workforce.
- The roles of each party as a parent to any children of the relationship.
- The financial and non-financial contributions that each party has made to the acquisition, preservation, and maintenance of the marital property.
- Contributions that either party made to support the educational and/or professional development of the other party to the detriment of his or her own educational or professional pursuits.
- The tax consequences of potential property divisions.
- The present and potential value of the property is subject to equitable distribution.
- The existence and sources of marital debts.

The New Jersey Family Law attorneys at Wilentz, Goldman & Spitzer, P.A. are ready to assist you in an accounting of many of the different types of property including:

- Residence
- Vacation home
- Pension plan
- Jewelry
- Employee-sponsored retirement accounts, such as a 401-K
- Cars, trucks, boats, planes, motorcycles
- Business interests
- Investments
- Debts

The time period for determining which property is acquired during the marriage, and ultimately subject to equitable distribution, is generally the period from the date of marriage to the filing of the divorce complaint. It must be stressed that in accordance with New Jersey law, how the property is titled or held does not determine distribution. For instance, most often the marital residence may be purchased in one spouse's name only, but it still would be considered marital property and subject to equitable distribution.

**To speak with an attorney about your legal options, please call: 732-352-9871.**