

Division of Marital Property and Debt

The distribution of marital assets and allocation of marital debt between the parties in New Jersey is called "equitable distribution." The meaning of this term is generally what is considered to be fair under all of the circumstances. Equitable distribution of assets is determined by a review of many statutory factors. Although the law does not automatically require a 50/50 distribution of assets and allocation of debt, the practical application of the statute by the courts tends to be 50/50. Generally, assets acquired prior to a marriage which have remained the separate property of one spouse are considered exempt from equitable distribution, as are inheritances and gifts which remained separate property. Assets subject to equitable distribution generally include the marital home, other real property, vehicles, bank accounts, savings/investment accounts, retirement accounts and pensions, personal property (furniture, electronics, appliances, jewelry, virtually everything in a home), and businesses. Debts or liabilities subject to equitable distribution are typically mortgages, car loans, credit card debt, student loans and other personal loans. With regard to the marital home, generally there are three options available to spouses; sell it and equitably divide the proceeds between them, or one of the parties retains the home and "buys-out" the other's equitable interest either by refinancing the mortgage and taking more of a loan from the equity, or through creative offsets against other assets or liabilities. Generally, a party who retains real property which is subject to a mortgage in joint names will be required to refinance that mortgage in order to remove the other spouse's name as an obligor of it. It is important to note that marital fault (e.g., adultery, extreme cruelty, etc.) has no effect upon distribution of property or debt.