

JANUARY 2012 NEWSLETTER

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EQUITABLE DISTRIBUTION OF MARITAL PROPERTY IN A DIVORCE

Before addressing this topic, Pozzuolo Rodden, P.C. is pleased to announce the following:

PHILADELPHIA MAGAZINE 2011 FIVE STAR WEALTH MANAGER, BUSINESS PLANNING

Pozzuolo Rodden, PC is pleased to announce that Joseph R. Pozzuolo, Esquire was designated as a 2011 PHILADELPHIA FIVE STAR WEALTH MANAGER, BUSINESS PLANNING by Philadelphia Magazine. The award is featured in the November, 2011 edition of the magazine. Mr. Pozzuolo was selected after an independent survey was conducted by Philadelphia Magazine of 120,500 registered financial services professionals, high-net-worth households and subscribers of Philadelphia Magazine all of whom have an income of greater than \$190,000.

EQUITABLE DISTRIBUTION OF MARITAL PROPERTY IN A DIVORCE

In Pennsylvania “marital property” is defined as “all property acquired by either party during the marriage and the increase in value of any non-marital property.” Simply put this means that any assets a couple acquires during the period of their marriage is viewed jointly as “marital property.” However, if a spouse owned property prior to the date of marriage then some or all of the property may be deemed non-marital property.

This is an important distinction for couples going through a divorce because in Pennsylvania as part of the divorce process property is divided by equitable distribution. According to Pennsylvania’s Divorce Code, equitable distribution allows the court to “equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors.” This means that the court is free to divide the marital property of the couple in the way it deems just and fair, which does not necessarily mean the division of property will be equal between parties.

A. Factors in Equitable Distribution

While Pennsylvania allows for the distribution of marital property “without regard to marital misconduct” there is a long list of factors the court may consider during equitable distribution. In accordance with Pennsylvania’s Divorce Code the following factors are relevant during equitable distributions:

- Length of marriage
- Prior marriages of either party
- Age, health and station of parties
- Amounts and sources of income, vocational skills, employability

- Liabilities and needs of each party
- Contribution of one party to the education, training or increased earning party of the other party
- Opportunities of each parties for future assets and income
- Standard of living during the marriage
- Tax ramifications of property division
- Value of property set aside to each party
- Contribution or dissipation of marital property by each party
- Whether a party will be the custodial parent of any minor children

The Court will consider all of the above-listed factors and any other relevant factors to determine how to fairly divide the marital property during equitable distribution. Often times consideration of the factors will allow one party a larger share of the marital property based on the Court's analysis, since the purpose of equitable distribution is to provide a just and fair division which often times is not an equal division.

B. Exclusions to Marital Property

Pennsylvania's Divorce Code allows for specific property to be excluded from being labeled marital property.

1. Gifts, Inheritance and Bequests

One such example of excluded property is any and all property acquired by gift, devise or descent. This allows parents to protect their children's inheritance from being dissipated in the event of divorce. However, if one spouse receives funds as a gift or inheritance and co-mingles the funds in a joint account with their spouse, or use the funds to buy a house where the parties reside, or otherwise,

the funds may lose their exempt status and be deemed marital property.

Establishing a trust will protect such funds from becoming co-mingled and labeled as marital property. The principal of the trust will be considered exempt property and will not be subject to equitable distribution. However, if the trust increases in value during the term of the marriage, the increase in value may be considered marital property and subject to equitable distribution. For a more in depth discussion of establishing a trust to protect your child's inheritance, please view our [September 2010 Newsletter](#).

2. Real Property Owned Prior to the Marriage

Often times, a spouse will own real estate prior to the date of their marriage. The real estate itself would be considered non-marital property; however, if that real estate increases in value during the period of the marriage, then the increased value of the real estate is considered marital property. For instance, if a wife owned a house valued at \$250,000 prior to her marriage in 2006 and she is currently seeking a divorce, a court will consider the value of the respected property at the time of marriage and at the time of equitable distribution of marital property. If the current value of the house is \$315,000 then the increased value of \$65,000 would be considered marital property subject to equitable distribution.

However, often times such real estate will be sold or transferred after the marriage to purchase a marital residence with one's spouse following the marriage. If the proceeds from the sale of a prior residence are directly used to purchase a marital residence it may be possible for the spouse with prior ownership to claim a pre-marital credit for their contribution. However, if funds are co-mingled in a joint account the court may deem them marital property.

3. Property After Separation

Additionally, if a couple separates any and all property acquired after the date of separation but prior to a divorce may be exempt from marital property. However, if such property was acquired in exchange for marital property, then it will not be exempt. For example, if a couple separates and one spouse purchases a new car following the separation with non-marital property it may be exempt from being deemed marital property. However, if the car is purchased in exchange for marital property, such as an older car acquired during the marriage, it would be considered marital property subject to equitable distribution.

4. Settlements and Judgments

The timing of lawsuits will determine whether any settlement or judgment will be deemed marital property or exempt. In accordance with the Pennsylvania Divorce Code, “any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received” is considered non-marital property.

For example, if during their marriage, a wife was injured in a slip and fall accident any settlement or judgment the wife received in relation to her injuries would be considered marital property. This is true even if the wife does not receive the settlement or judgment until after the date of divorce. This is because she was injured while the couple was married and living as husband and wife, so her cause of action accrued during the marriage. In contrast, if a husband was terminated from his employment for discriminatory reasons following a couples’ final separation then any settlement or payment would be considered non-marital property. This is because his cause of action accrued once

the couple was no longer living as husband and wife and were separated.

C. Prenuptial Agreements

Another protective measure for safe shielding one's assets in the event of divorce are prenuptial agreements. These are agreements entered into prior to a marriage wherein couples agree to how their assets will be divided in the event of divorce. This allows couples to amicably agree on terms for the division of personal property prior to their separation and also allows couples to agree that specific property will be exempt from being deemed marital property. For more information on the requirements and benefits of prenuptial agreements, please view our [September 2010 Newsletter](#).

If you have any questions or concerns about how property will be divided in the event of divorce or how to better protect your assets, please contact any member of this office.

Please visit our web site: www.pozzuolo.com

Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax

Design Buy-Sell Agreements For Maximum Utility

Deferred Compensation Rewards And Retains Key Employees

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

Estate Planning

Estate Planning For Pet Owners

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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