

5. The opportunity of each party for future acquisitions of capital assets and income;
6. The sources of income of both parties, including, but not limited to, medical, retirement, insurance, or other benefits;
7. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital residence, including the contribution of a party as a homemaker;
8. The value of the property set apart to each party;
9. The standard of living of the parties established during the marriage;
10. The economic circumstances of each party, including federal, state, and local tax ramifications at the time the division of property is to become effective;
11. Whether the party will be serving as custodian of any dependent minor children.

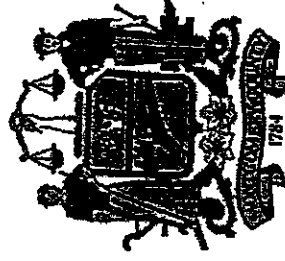
Distribution can be in-kind (a division of physical assets) or one party may be ordered to buy out the other party's share of certain assets. Also, when dealing with retirement benefits, one spouse may have to wait for the other spouse's actual retirement to begin receiving benefits.

FAULT NOT CONSIDERED

Fault, or marital misconduct, is not to be considered in making a distribution of marital property. Any other relevant factors may be considered by the court. No one factor is given more weight than another. Distributions are considered on a case-by-case basis.

A GUIDE TO EQUITABLE DISTRIBUTION

IN MONTGOMERY COUNTY



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GUIDE TO EQUITABLE DISTRIBUTION

Equitable distribution is the fair, not necessarily equal, distribution of marital assets. Before any division there must be a determination of what is a marital asset. Next, each asset must be valued at a particular point in time. Finally, various factors must be considered in deciding how to distribute the assets to each party. It is important to remember that equitable distribution does not necessarily mean equal distribution.

This brochure will briefly describe what is or is not a marital asset, how to value assets, and the relevant factors in determining an equitable distribution.

WHAT IS A MARITAL ASSET?

Marital property includes all property acquired during the marriage by either spouse, regardless of how it is titled, except:

1. Property acquired before marriage or in exchange for property acquired before marriage;
2. Property excluded by prenuptial or postnuptial agreement;
3. Property acquired by gift, except between spouses, or by bequest;
4. Property acquired after separation, unless it was in exchange for marital property;
5. Property which has been sold or disposed of in good faith prior to separation;
6. Veteran's benefits;

7. Property which has been mortgaged or encumbered in good faith prior to separation, to the extent of the encumbrance; and
8. Any settlement or award for a cause of action which accrued prior to marriage or after separation.

Common marital assets include real estate, automobiles, jewelry, retirement benefits, stocks, stock options, cash, and household furnishings.

If an asset is not marital property, an increase in the value of that asset from the date of marriage until the date of separation may be a marital asset, particularly with regard to a gift or inheritance or premarital property.

Spouse's interest in a business, including goodwill, is a marital asset.

VALUING THE ASSETS

"Value" for equitable distribution purposes refers to fair market value. This is the price at which a willing buyer and a willing seller would exchange the property at issue. In obtaining the fair market value of any property, an expert in that field should be hired to do an appraisal. For example, a real estate appraiser can render a report regarding the value of the marital residence. If each spouse agrees on one appraiser, it will be less expensive for both parties and avoids a future dispute regarding the asset's value.

The most difficult property to appraise is a business. Goodwill is often, but not always, a

consideration. The supposition of goodwill as a marital asset is dependent upon the nature of the business. If the business is dependent on the professional reputation of one person, goodwill may not be a marital asset. To value a business, an expert with a background in that particular business should be used. In addition, a business agreement (i.e., a shareholder or partnership agreement) should be reviewed to assist in determining value.

The relevant date for valuation of marital property may be either the date of separation or of distribution, depending upon the type of asset and circumstances. If an increase or decrease in an asset is due to one spouse's special skills or efforts, the date of valuation may become the date of separation.

Conversely, if the increase or decrease is due to market conditions or passive increase or decrease, the date of valuation is likely to be the date of distribution.

DISTRIBUTING THE ASSETS

Once the assets have been identified and valued, it is time to determine an equitable distribution between Husband and Wife. Relevant factors are:

1. The length of the marriage;
2. Any prior marriage of either party;
3. The age, health, station, amount, and sources of income, vocational skills, employability, estate, liabilities and needs of the parties;
4. The contribution by one party to the education, training or increased earning power of the other party;