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WYOMISSING-READING-BERKS COUNTY EQUITABLE DISTRIBUTION ATTORNEY

Attorney Jana R. Barnett regularly represents clients in equitable distribution matters relating to divorces. Equitable Distribution is the process used to divide marital assets and marital debts among parties seeking a divorce. Because Pennsylvania is an equitable distribution state – and not a community property state – Pennsylvania family courts divide marital assets and debts based upon principles of equity or fairness. As a result, assets will not necessarily be divided equally.

When a spouse files a Complaint in Divorce (the document that begins the legal process of terminating the marriage), he or she can simply seek a divorce based upon the grounds (reasons) specified in the lawsuit. Divorce complaints and counterclaims also may ask the court to equitably divide marital property. Where such requests are made, the court will divide the marital assets and liabilities.

When addressing equitable distribution claims in Pennsylvania, family courts must consider questions such as:

- What are marital assets and liabilities?
- As of what date should the value of the marital assets be determined?
- How much are the marital assets and liabilities worth?
- Which spouse deserves how much of each asset or owes what portion of each liability?

Pennsylvania has some general rules about what property is “marital,” although there are many exceptions. Some of the general rules are:

- “When” property was acquired, not “title” to the property, is most important;
- All property acquired by either party during the marriage is marital property;
- Increases in the value of certain nonmarital property are marital property; and,
- Nonmarital property can become marital property if it is combined and commingled with marital property.

However, marital property does not include:

- Property acquired in exchange for property acquired before the marriage (although the increase in value during the marriage is marital property);
- Property the parties agree will not be regarded as marital;
- Property acquired by gift from anyone but one’s spouse, inheritance, or property exchanged for such a gift or inheritance;

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- Property acquired after final separation until the date of divorce (unless it is acquired as a result of the exchange of marital property);
- Property that a spouse sold, granted, conveyed, etc. in good faith and for value prior to the date of final separation;
- Veterans' benefits exempt from attachment, levy or seizure unless the veteran waived a portion of his military retirement pay in order to receive the veteran's compensation;
- Property that has been mortgaged or otherwise encumbered in good faith for value, before the date of final separation;
- Payments received for a claim that accrued prior to marriage or after the date of final separation (this date is presumed to be the date that the Complaint in Divorce was filed).
- Professional degrees and licenses.

The court must not only decide what property is marital, it also must decide what the property is worth. Generally, assets should be valued as close as possible to the date that they are divided. There are exceptions, such as when property is consumed or disposed of after separation, but before divorce.

When deciding how to divide marital property, the court must consider all relevant factors.

Pennsylvania's equitable distribution statute, 23 Pa.C.S. § 3502, lists thirteen (13) factors Courts should consider:

- (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 each of the parties;
- (4) The contribution by one party to the education, training, or increased earning power of the other party;
- (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 property, including the contribution of a party as 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) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain;
- (12) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain; and,

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(13) Whether the party will be serving as the custodian of any dependent minor children. The list is not exhaustive. For example, a Court may consider whether a spouse lived in the marital residence rent-free after the date of separation (“fair rental value”).

The law also does not tell a Court what weight to assign to individual factors.

To read statutes and related materials, please visit www.janarbarnettesq.com

If you would like to speak with Attorney Jana R. Barnett about divorce and equitable distribution issues, and learn how she can assist you, call her at 610-478-1860, or click here to send her an e-mail, and she will reply as quickly as possible.

Attorney Jana R. Barnett’s offices are located at 525 Kenhorst Boulevard, Reading, PA 19611 and 1238 Cleveland Avenue, Wyomissing, PA 19610-2102. Attorney Jana R. Barnett practices family law, employment law, and employment discrimination law in Reading, Wyomissing and the surrounding cities and towns, as well as in Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Lehigh County, Montgomery County, Northampton County, Philadelphia County and in the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the Middle District of Pennsylvania.