

The idea of getting divorced can instill fear in many. Figuring out what your financial future will look like post-divorce can be downright frightening and way out of your comfort zone. This fear comes from the unknown, so it is best to be prepared and know your options.

In Pennsylvania, the law of dividing up marital assets and debts is known as “equitable distribution.” Any assets acquired or debts accrued during the marriage are considered marital, with some exceptions. A court will look at 11 factors set out in the statute to determine who gets what, which include (but is not limited to): the length of the marriage; the age, health and employability of each spouse; the contribution of one spouse to the education and increased earning power of the other; whether a spouse will serve as custodian to dependent, minor children; and the standard of living of the parties established during the marriage. There is no formula, but as a practical matter, oftentimes the court will end up divvying up the marital estate in percentages based on how that judge interprets the law and weighs the factors from the statute.

It is important to consider pre-marital assets, and obtaining date of marriage balances on those assets, since they are excluded from equitable distribution but the appreciation on those assets is marital. We most commonly see this with retirement accounts and pensions. For example, if you have been married for 10 years but were working 10 years prior to that, the law does not require you to share your entire retirement, only the marital portion and appreciation on the pre-marital portion. Another component in equitable distribution is the date of your separation. This date can mean that a proverbial line in the sand is drawn and no assets acquired or debts accrued after this date are subject to division.

Depending on which side you are on, this can be very meaningful, if there is an expectation of a nice asset in the



DIVIDING UP THE MARITAL PIE IN DIVORCE

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future or merely to “stop the bleeding” from a spouse who loves to spend.

Do not get too hung up on how assets and debts are titled. Even if it is in individual name it may very well be considered a marital asset (with few exceptions). The same goes for debts in that if you or your spouse accrued debts like student loans, mortgages, credit card debt and the like, it doesn't matter whose name it is in. If someone has a lot of marital debt in his or her name alone, he or she may have to keep it but the court will likely award more assets to offset it so it is equitable. Many worry that their retirements cannot be split since they are in individual name, but indeed, they can and should be done in a specific way to avoid any taxes or early withdrawal penalties.

If you own a home with your spouse, a court can also factor in what the costs of transferring ownership of the home would be regardless of whether you sell or one spouse refinances the home. The same goes for taxable accounts and retirement accounts. The court

can take into consideration any tax consequences of selling investments or the cash value of a retirement account.

When considering divorce, consider your options for what process you want to use. You may want to use the litigation process and have a judge decide, or stay out of court (and the price tag that goes with it) and choose another process like Collaborative Divorce or Mediation. Being prepared is empowering, which is key when you are going through a major life transition like divorce.

This **Industry Insight** was written by Brooke B. McMorrow.

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