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What Does Equitable Distribution Mean?

(provided by Anju D. Jessani, Family & Divorce Mediator)

The recent Connecticut case of Wendt v. Wendt raised the question of what does equitable mean? You may recall that Lorna Wendt was awarded a settlement worth approximately $20 million from a family fortune worth at least $100 million. Gary Wendt was chief executive of GE Credit Corporation; Mrs. Wendt had been a homemaker and caretaker for the family during the thirty-one year marriage.

In the United States, a few states, influenced by their French or Spanish heritage, have the continental system of community property (50-50), which essentially means that property or assets acquired by either husband or wife during the marriage, except for gifts from third parties, belong equally to the husband or wife. These states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. Had the Wendts filed for divorce in these states, Lorna Wendt should have received approximately half the estate or $50 million.

However, the majority of states base their marital law on British common law, including Connecticut, New Jersey, New York and Pennsylvania, and provide for equitable rather than equal distribution. In equitable distribution states, the Court determines a fair and reasonable distribution that may be more than or less than 50% of any asset to either party. According to the New York Times, some legal experts felt that Lorna Wendt would have gotten approximately half the assets if the family fortune were, say $5 million. That is because divorce settlements are often intended to provide non-working spouses with sufficient financial resources to live in their accustomed manner. $20 million was considered equitable based on her lifestyle and set of circumstances.

The equitable distribution law in New Jersey is similar to most equitable distribution states. New Jersey law directs the Court to consider sixteen factors in determining what is an equitable, fair and just division of assets. They are:

1. The DURATION of the marriage;

2. The age and physical and emotional HEALTH of the parties;

3. The INCOME or property brought to the marriage by each party;

4. The STANDARD OF LIVING established during the marriage;

5. Any WRITTEN AGREEMENT made by the parties before or during the marriage concerning an arrangement of property distribution;

6. The ECONOMIC CIRCUMSTANCES of each party at the time the division of property becomes effective;

7. The INCOME and EARNING CAPACITY of each party including education background, training, etc.;

8. The CONTRIBUTION by each party to the education, training or earning power of the other;

9. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or VALUE OF THE MARITAL PROPERTY, as well as the contribution of a party as a homemaker;

10. The TAX CONSEQUENCES of the proposed distribution to each party;

11. The PRESENT VALUE of the property;

12. The need of a parent who has PHYSICAL CUSTODY OF A CHILD to own or occupy the marital residence and to use or own the household effects;

13. The DEBTS and liabilities of the parties;

14. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable MEDICAL or EDUCATIONAL costs for a spouse or children;

15. The extent to which a party DEFERRED ACHIEVING their career goals; and

16. ANY OTHER factors which the court may deem relevant.

Note that it does not matter who holds title to the asset or property acquired during the marriage. Individual Retirement Accounts, Pension Plans, 401K's acquired during the marriage are considered marital assets. Property acquired "in contemplation of marriage" may also be considered martial assets. The Court may not only order equitable distribution of marital property but also of marital liabilities.

The only exceptions to martial assets are the following , if kept separate:

1. INHERITED PROPERTY;

2. Property acquired PRIOR to marriage;

3. GIFTS to you by a third person - Gifts from one spouse to another are marital assets. (An engagement ring is considered property acquired prior

to the marriage.); and

4. If an ASSET was acquired prior to the marriage, and there is an increase in value due to direct action or work by the other partner, the increase in value may be a marital asset but not the asset itself.

The question often posed by litigants is "does marital misconduct, or fault influence the way judges divide assets?" In a ruling case, Chalmers v. Chalmers, 320 A.2nd 478 (NJ 1974), the New Jersey Supreme Court decided that "fault may be merely a manifestation of a sick marriage. The concept of fault is not relevant to such distribution." While fault is not listed in the list of sixteen factors the courts look at in deciding division of assets, it could conceivably fall in that gray area of factor #16 — "Any other factors that the court may deem relevant"

So where does that leave most of us working folks? It is my experience (not a legal opinion), except for short-term marriages, most divorces result in somewhere between a 40% to 60% split of marital assets. As marriages exceed the 20-year mark, they are considered long-term marriages, and more often, result in a 50-50 split of marital assets.

What is clear is that there are no easy answer to the question "What Does Equitable Distribution Mean?" That does not mean I advocate for community property - even though it would appear easier to interpret. Community property, especially in short-term marriages, can result in windfalls that are explicitly unfair to the higher earner. So, we are left with a complicated definition of fairness that keeps lawyers and judges employed. However, I have found in mediation, that when equipped with sufficient information regarding the New Jersey factors that the courts may look at, most couples are able to develop what they consider a fair split of assets that may not make either party happy, but in the end they consider equitable.

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