

## Equitable Distribution in Divorce

### Property Division in New Jersey

#### Identifying Marital and Separate Property

The first step in property division is determining which property is marital and which is separate. Marital property includes:

- Real estate (e.g., the family home, vacation properties, investment properties).
- Bank accounts (savings, checking, and investment accounts).
- Retirement accounts (401(k), pensions, IRAs).
- Business interests or shares in a business.
- Personal property such as cars, jewelry, and furniture.

Separate property includes assets that were owned by one spouse before the marriage or received as a gift or inheritance during the marriage. These assets are not subject to division unless they were commingled (e.g., using separate funds to improve a jointly owned property).

#### Valuing the Property

Once the marital property has been identified, the next step is to determine its value. In many cases, an independent appraiser or financial expert is hired to evaluate the value of real property, business interests, and other assets that are not easily assessed.

- Real estate: A professional appraisal is often used to determine the fair market value of a home or other real property.
- Business interests: If one or both spouses own a business, a forensic accountant or business valuation expert may be needed to assess the business's worth.
- Retirement accounts: The value of retirement accounts must be determined as of the date of divorce, with consideration of the need for a Qualified Domestic Relations Order (QDRO) for 401(k)s and pensions to divide these accounts.

#### Equitable Distribution Factors

New Jersey courts consider a variety of factors when determining how to divide marital property equitably. The goal is to ensure that the division is fair, taking into account each spouse's contributions and future needs. Factors the court will consider include:

- The length of the marriage
- The age and health of both spouses
- The standard of living established during the marriage
- The economic circumstances of both spouses
- The contribution of each spouse to the acquisition of the property
- The tax implications of dividing certain assets
- The value of any separate property

#### Negotiation or Court Intervention

- Property division can often be resolved through negotiation, with both spouses reaching an agreement outside of court with the help of their attorneys or a mediator. This approach can save time, money, and emotional strain and is certainly the preferred route for clients to pursue.
- However, if the spouses cannot agree on the division of property, the case may proceed to trial. In this case, a judge will make the final decision on how the property is divided, based on the evidence presented and the factors outlined above. This is extremely time consuming and very expensive.

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### Types of Assets and Their Division

#### Real Property

The family home is often one of the largest and most emotionally charged assets in a divorce. In New Jersey, the court will typically divide the equity in the home based on the factors mentioned above. One spouse may be awarded the home, with the other receiving an offsetting share of other assets, or the home may be sold, and the proceeds divided.

If children are involved, the court may consider who will have primary custody when making decisions about the family home. In some cases, a spouse may be allowed to remain in the home for a period of time, especially if it benefits the children.

#### Retirement Accounts and Pensions

Retirement accounts, such as 401(k)s and pensions, are typically considered marital property, even if they were accrued during the marriage by only one spouse. Dividing retirement assets may require a Qualified Domestic Relations Order (QDRO), a legal document that allows for the division of the accounts without triggering early withdrawal penalties or taxes.

#### Business Interests


If one or both spouses own a business, determining the value of the business and deciding how to divide that interest can be very complicated. A forensic accountant or business valuation expert is often involved to assess the value of the business, and one spouse may be awarded the business or compensated with other assets.

#### Debt Division

In addition to dividing assets, New Jersey law requires that marital debts be divided equitably. This may include credit card debt, mortgages, car loans, student loans, and other liabilities. As with property division, the court will consider various factors to determine who is responsible for repaying these debts.

Dividing property during a divorce can be one of the most complex and contentious aspects of the process. In New Jersey, like in many other states, property division is governed by state laws, and understanding these laws can help ensure that the process is as fair and efficient as possible. New Jersey follows the principle of equitable distribution, meaning that assets and debts accumulated during the marriage are divided fairly, though not necessarily equally.

Understanding the factors that influence property division, as well as knowing what is considered marital and separate property, is crucial for anyone going through a divorce. If you are facing property division in a divorce, it is important to consult with a skilled family law attorney who can guide you through the process, help you protect your financial interests, and ensure that your rights are upheld.

**To schedule a consultation, contact us at  (908) 645-1000.**  
**For more information on equitable distribution, visit  [www.lawlawfirm.com](http://www.lawlawfirm.com).**

