WHAT IS EQUITABLE DISTRIBUTION?

This Information is intended to give you a better understanding of what Equitable Distribution (ED) is and what will happen to assets and debts if you do not go through ED in your divorce. This discussion is not complete - every financial situation has its own obligations and exposure to risk. You should consult an attorney to understand and prepare for your unique financial situation.

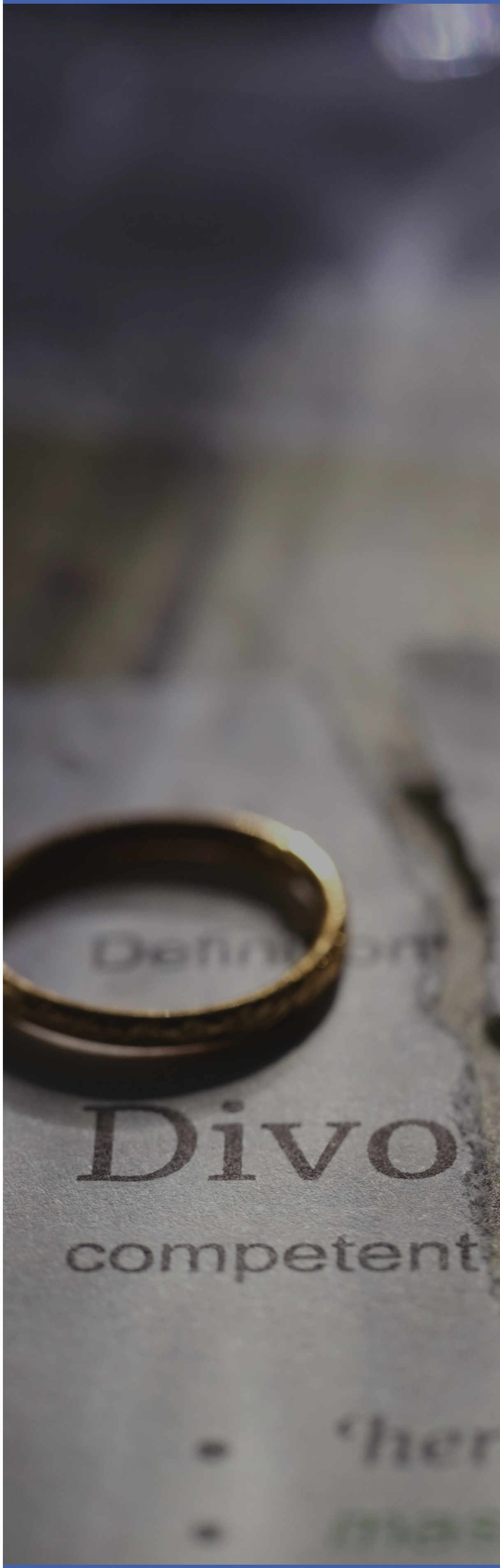
Equitable Distribution is the process of asking the court how to distribute with the parties' assets and liabilities acquired through marriage if the spouses cannot agree how to divide the property. The court will hold a hearing where both spouses will present their proposals as to how to divide the marital property. After weighing the relevant factors (found in Section 3502 of the Divorce Code), the court will decide about how to divide the property.

The factors include the length of the marriage, the age and health of the spouses, their sources of income, their respective earning capacities, and the standard of living during the marriage.

What Is Marital Property?

Generally, all debts and assets that were acquired from the date of marriage to the date of separation are considered marital property, regardless of whose name Is on the property or which spouse purchased the property.

Increase in the value of an asset, like a home purchased prior to marriage, from the date of marriage to the date of separation, is also marital property. For example: Spouse 1 purchased a house in 2010. The parties married in 2015 and separated in 2022. Any Increase In the value of the house from 2015 to 2022 will be considered marital property.



What Is NOT Marital Property?

Some things are not considered marital property. These include:

1. Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage
2. Property excluded by valid agreement (for example, a prenuptial agreement) of the parties entered into before, during or after the marriage.
3. Gifts and Inheritances to one spouse.
4. Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.
5. Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.
6. Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229), as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans' compensation.
7. Property to the extent it has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.
8. Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

What happens if both spouses are on the deed but they do not go through ED?

The property, i.e., a house, will continue to be owned by both parties but as "tenants in common" which means that upon the death of an owner that person's interest in the property goes to that person's heir(s), not to the other owner. Neither party will be able to sell the home without the consent and/or participation of the other owner, but each party can sell or transfer their own share of the property to someone else. Both parties could be liable for any debts associated with the home.

What happens if both spouses are on the mortgage but they do not go through ED?

Both spouses will continue to be liable for the mortgage. One spouse will not be able to refinance or modify a mortgage without the other's consent and participation.
That liability could prevent a former spouse from getting a new mortgage or loan, or from receiving certain public benefits if the property is considered an asset

What about cars and vehicles?

Unless the car title is transferred into one spouse's name, the other spouse may have a risk of liability for accidents or other damage.

Risk of liability for parking tickets, fines and impounds can affect your licensure and registration of cars which you own or have access to.

What about other property?

The same rules about what is marital property apply to businesses, retirement accounts, 401K, 403B, Pensions, IRAs, Roth IRAs, Annuities, and personal property (for example, jewelry, antiques, and collections. Compounding over a lifetime, these assets can have a very high value. If you don’t go through ED, you may lose your right to these assets and may also have exposure to risk via property or other assets and liabilities titled in your name

Bank Accounts: If joint bank accounts are still active, either side could drain the accounts or take out a loan on an account you share.

Inheritances are not considered marital property (unless placed in a joint account or used to purchase joint assets) but any increase in the value of an inheritance during the marriage is considered marital property.

Settlement proceeds from a lawsuit or other action are considered marital property if the action/injury occurred during the marriage

What are the potential consequences of not addressing **debts, such as credit card balances**, via ED?

There can be potential consequences if debts are not addressed through ED. If the credit card is only in one person’s name, the credit card company could sue that spouse for all of the debt even if both spouses accrued the debt. This could have a potential effect on their credit score and their ability to purchase a home or car, to rent an apartment, or to obtain credit for credit cards or loans.

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