

# FAMILY MATTERS<sup>®</sup>

## Trend of the Law: Equitable Distribution

By Phoebe P. Hall, Attorney, Mediator and Former Judge

Having to divide your property with a spouse when a marriage ends is one of the hardest things a couple is called upon to do. Each person is used to thinking of his or her own wealth as being composed of the totality of the couple's assets and income. Suddenly, that wealth is going to shrink as it is divided between two people in two different households. Moreover, records that you thought of as your own personal records become open for inspection by the other party, and information and documentation must be shared as part of the process in a process that can feel very intrusive.

Often, the parties have vastly different ideas of what is fair. The person who feels "wronged" by the other person's decision to end the marriage may feel that the wrongdoer deserves nothing; the "wrongdoer", on the other hand, may feel fully justified in leaving and may feel that the bulk of the assets were earned by him or her and that he or she should keep most of them. Each of them thinks (or hopes) that the court is going to see it their way. Each of

them is also very anxious about the idea of some third party – the judge deciding their fate.

The reality is that the court system does not work the way most people think it does, and the required process is lengthy, detailed and costly. Litigating an equitable distribution case (a case involving the division of assets and liabilities) can easily cost \$15,000-\$25,000 or more per side. This is because of the nature of the legal process and the required proofs. The fact that your estate may be small and your assets modest does not mean that you get a different process than someone



**Most states are equitable distribution states.**

with substantial assets, but it does mean that the process is harder for you to afford and that the stakes for that large expenditure are smaller. If your estate is large, that often means that you have more opportunity to benefit

from well thought out planning that can make getting an agreement easier.

Fortunately, there are ways for people to avoid the legal process called equitable distribution if they will work together to obtain a resolution outside of court. This can be through talking with each other, 4-way settlement conferences with attorneys present, mediation, or arbitration. A settlement can be made at any stage of the proceedings if the parties can reach agreement. Absent an agreement, the parties must engage in equitable distribution litigation. This, however, should be the last resort if other methods of resolving things fail. Attorneys can help you understand how the courts will look at the issues in equitable distribution, rather than the way you may see them through the colored lenses of your emotions.

*Mrs. Hall is an attorney and mediator. She formerly was a substitute judge in the Richmond Juvenile and Domestic Court.*

**Inside this issue:**

MARRIAGE MINDERS	2
SMART DIVORCE	2
HOT TIPS	2
LOOKING AT ISSUES	3
WILLS AND ESTATES	3
KIDS CORNER	3
MORE LEARNING	4

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## Important News at Hall and Hall

*Our law firm is dedicated to family law matters, and we are called upon by people from all walks of life to counsel them about courses of action they are contemplating, situations they are facing or to provide ongoing representation.*

**Our services include:**

- Wills and estates
- Separation
- Divorce
- Mediation
- Custody and visitation
- Child support
- Spousal support
- Equitable distribution

**We help with:**

- Prenuptial agreements
- Property settlement agreements
- Negotiations
- Litigation
- Uncontested matters
- Contested matters

*We seek to provide what our clients need and want.*

## Marriage Minders

It is always a pleasure to be around couples who enjoy each other, their children and grandchildren. Older couples often have developed a compassion toward each other and a serenity in their relationships that younger people have difficulty finding.



Learn from them and remember:

- \* Don't try to change each other
- \* Learn to cherish your spouse's uniqueness
- \* Don't focus on the things that make you unhappy or displease you; focus on the joys.
- \* Build on your strengths; work around your weaknesses

- \* Forgive each other
- \* Be your spouse's biggest cheerleader
- \* Respect your spouse
- \* Listen to your spouse
- \* Spend time together

Remember, the greatest and longest marriages are those where the relationship brings out the best in each person.

## Smart Divorce

Separation of a husband and wife does not always lead to a divorce. Divorce should only be the last resort when all else fails, and it must be approached the right way. Often when someone comes to see us the marriage has broken down irretrievably and the time has come to approach the situation sensibly. People want to learn their rights and how to protect themselves, their families, their assets, and discuss

the best way to proceed. Since each person is unique and has an idea of

An initial consultation may be the best expenditure you will ever make.

what the future should hold for them, we take the time to talk about options that are available, the possible

consequences of pursuing various options, and discuss the best way to proceed. We begin that process with the initial consultation and provide basic information and advice. An initial consultation may be the best expenditure you will ever make. When contemplating a separation or divorce, the first step is to sit down with one of our experienced family law attorneys and counselors-at-law.

## HOT Tips

1. Retirement accounts can be divided by QDROS (court orders to divide them), can be traded off for something else, or each party can keep their own.
2. Some retirement accounts are defined contribution plans (401K, profit sharing, etc) that have money in them right now; the spouse of the employee can roll their part over into an IRA without taxes or penalty

or can withdraw the money without penalty but with taxes.

3. Other retirement accounts are defined benefit plans (pensions, annuities) that pay out a certain amount per month at retirement.

4. Retirement can be divided according to what the parties agree to or what the court orders.

5. How your attorney draws up the settlement agreement or QDRO can have a big impact on how much you receive or keep.



## Looking At Issues By Franklin P. Hall, Esquire

Equitable distribution is the process the court uses to divide assets and debts when the parties can't do it themselves by agreement. It is a lengthy, detailed and costly process. The statutes spell out a myriad of things that must be proven. You cannot just go in and tell the judge what you want and get his or her reaction to what you say. Evidence must be presented in proper form as to the identity, title, value, and classification (whether marital, separate, or hybrid) of the assets and debts and as

to the statutory factors that affect the distribution. This can involve formal discovery as to the existence of assets, formal appraisals, and even tracing of assets where separate and marital assets have been commingled or where marital assets have been wasted or dissipated during separation. Supporting documentation is an important part of the proofs. Because the hearing is usually a year or so away from the time of the separation, property values change, assets may

have been disposed of, issues of waste and dissipation may have arisen, and how and when debts were incurred and for what purpose may be issues. Inheritances and gifts from third parties and pre-marital and post-marital acquisitions can affect the result. Dividing assets and liabilities by agreement is preferable, but the process of equitable distribution is available for people who cannot work out an agreement.

## Wills and Estates

- ✓ Have you written your will?
- ✓ Do your beneficiaries have access to your safe deposit box?



- ✓ Does your executor know you have appointed him or her to handle your affairs upon your death?

- ✓ Will your executor know how to tell what assets you own and what obligations you have and what to do about each one of them?



- ✓ Have you made a list of key addresses and telephone numbers?

- ✓ Are your records up-to-date?



- ✓ Who will be the guardian for your children?

## Kids Corner

"I'm Sam. My parents are getting a divorce. My Dad came in and took one of the pictures off the wall. Does that mean he's taking my bed too?"

"Mom says that Dad might make us move from the house. Dad says Mom is taking all his money. I never know who I can count on anymore."

### Whose child would you like to be?



"I'm Gretchen. I'm really excited about fixing up my new room at Dad's. I get to pick the paint color and get a new bedspread. Mom's going to help me pick it out -- she has great taste."

"I wish Mom & Dad weren't separating, but they each told us they would make sure we kids have what we need at both houses."

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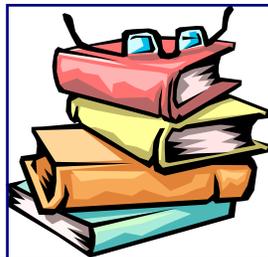
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## **More Learning** by Tracy H. Spencer, Esquire

When people come into our office, one of our first questions is "What are your assets and liabilities". We ask this question because this is what the judge primarily deals with in a divorce, other than the issues surrounding the children and support. Despite what most people think, judges do not put a lot of emphasis on who caused the breakdown of the marriage. Therefore, we try to focus our clients on the financial issues right at the beginning of the process.

Some people bring us charts and statements with a breakdown for each account. Some people do not know anything about their

financial picture. Most people fall somewhere in between. The more information the client can provide the attorney, the quicker



***You are never too old to learn***

the attorney can assess the situation. Otherwise, once the divorce suit is filed, the information can be obtained

through the discovery process where questions are asked to the opposing party and where requests for documents are made. Once we have the financial information, we meet with our client to analyze the situation and to review the client's goals. We look at what is realistic and what is not realistic. If settlement is possible, we encourage our clients to try to reach a mutually acceptable agreement.

Equitable distribution can be lengthy, costly and confusing, so if you have any questions about the process, please schedule an appointment to meet with one of our attorneys.