

EQUITABLE DISTRIBUTION IN FLORIDA DISSOLUTION PROCEEDINGS (NUTS & BOLTS)

Presented by The Honorable Judge Frank D. Ledee
and Attorney Joshua Roberts, Esq.

GENERAL PROGRAM / AGENDA

- Broadly refresh our recollection of the statute, the intent of the statute and the subject matter addressed by the statute
- Address the Practical Workings of Section 61.075, Florida Statutes (*with valuable insight from the bench per Judge Frank Ledee*)

SECTION 61.075, FLORIDA STATUTES

- Section 61.075 is the Florida Statute on Equitable Distribution.
- Generally, it is the statute through which the court distributes the marital and non-marital assets and liabilities of spouses in the context of dissolution of marriage proceedings.

CRITICAL PORTIONS OF THE STATUTE

- Defines Marital and Non-Marital Assets and Liabilities
- Establishes the Cut-Off Date for Classification of Marital vs. Non-Marital Assets
- Addresses the dates of Valuation of Marital Assets and Liabilities
- Establishes the framework for requests for Equal vs. Unequal Distributions of Marital Assets and Liabilities
- Articulates the grounds for claims re: Dissipation / Commingling / Credits and Off-Sets

MARITAL ASSETS AND LIABILITIES DEFINED

- Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by the Parties.
- The enhancement in value and appreciation of non-marital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.
- The paydown of principle of a note and mortgage secured by a piece of non-marital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution is determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.
- Interspousal gifts during the marriage.
- All vested and non-vested benefits, rights and funds accrued during the marriage and retirement, pension, profit sharing, annuity, deferred compensation and insurance plans and programs.

NON-MARITAL ASSETS AND LIABILITIES DEFINED

- Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.
- Assets acquired separately by either party by non-interspousal gift, bequest or devise and assets acquired in exchange for such assets.
- All income derived from non-marital assets during the marriage unless the income was treated, used or relied upon by the parties as a marital asset.
- Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities.

NON-MARITAL ASSETS AND LIABILITIES DEFINED

- Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.
- Assets acquired separately by either party by non-interspousal gift, bequest, divides, or dissent, and assets acquired in exchange for such assets.
- All income derived from non-marital assets during the marriage unless the income was treated, used or relied upon by the parties as a marital asset.
- Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities

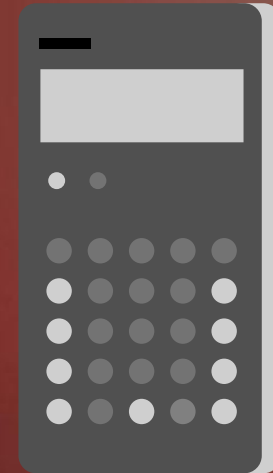
CUT-OFF DATE FOR CLASSIFICATION OF MARITAL VERSUS NON-MARITAL ASSETS

The cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is the earliest of:

1. The date the parties entered into a valid separation agreement.
2. Such other date as may be expressly established by such agreement.
3. The date of the filing of a petition for dissolution of marriage.

VALUATION DATE(S) OF MARITAL ASSETS AND LIABILITIES

- The date for determining the value of assets and the amount of liabilities identified or classified as marital is the date or dates as the trial court determines is just and equitable under the circumstances. Different assets may be valued as of different dates, as, in the court's discretion, the circumstances require.



EQUAL VS. UNEQUAL DISTRIBUTIONS OF MARITAL ASSETS AND LIABILITIES

- EQUAL DISTRIBUTIONS:

- Florida's equitable distribution statute starts with the presumption that the division of marital assets and liabilities should be equal.

- UNEQUAL DISTRIBUTIONS:

- The trial court may make an unequal distribution of assets, provided the court makes specific findings of fact to justify its award.
- Unequal distributions are very rare.
- You must have a very compelling set of facts to justify unequal distribution of marital assets.
- Section 61.075 specifies the factors that the court must consider in determining whether an unequal distribution is warranted.

ADDITIONAL PORTIONS OF §61.075, FLA. STAT.

- Dissipation
- Depletion
- Commingling
- Credits and Off-Sets



PRACTICAL ASPECTS OF EQUITABLE DISTRIBUTION LITIGATION

PRACTICAL WORKINGS OF §61.075, FLA. STAT

- Client intake.
- The expectations of the Parties.

PRACTICAL WORKINGS OF §61.075, FLA. STAT

- The Pleadings

PRACTICAL WORKINGS OF §61.075, FLA. STAT

- Collection of Evidence
&
• Presentation of Evidence

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

INTRODUCING EVIDENCE AND KNOWING
WHAT EVIDENCE IS REQUIRED

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

STIPULATIONS (BEFORE EVIDENTIARY
HEARINGS OR TRIAL)

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

MEETING YOUR BURDEN OF PROOF

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

HEARINGS ON REQUESTS FOR PARTIAL
INETERIM EQUITABLE DISTRIBUTIONS

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

REQUESTS FOR UNEQUAL DISTRIBUTIONS
OF MARITAL ASSETS

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

ARGUING DATES FOR VALUATION OF
MARITAL ASSETS

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

STRUCTURING EQUITABLE DISTRIBUTION
PROPOSALS FOR THE COURT

PRACTICAL WORKINGS OF §61.075, FLA. STAT.

FINDS BY THE COURT

THANK YOU TO BCBA

Have a great weekend!