



CHAPTER TWELVE – 7364R

Pre-Separation Dissipation of the Marital Estate

Course Summary

Pre-separation dissipation adversely impacts the marital estate but cannot be addressed until after a divorce action is commenced. Our panel will address what can be done after-the-fact to deal with pre-separation spending and dissipation and also raise awareness of the many ways in which spouses engage in pre-divorce planning.

Moderator:

Julia Swain, Esq.

Faculty:

Honorable Holly J. Ford

Mitchell Benson, CPA, MT, CFF

Mary C. Doherty, Esq.

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PHILADELPHIA BAR ASSOCIATION
BENCH BAR CONFERENCE
FAMILY LAW SECTION

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PRESENTED BY:

**THE HONORABLE HOLLY J. FORD
FIRST JUDICIAL DISTRICT, FAMILY COURT DIVISION**

**MARY C. DOHERTY, ESQUIRE
HIGH SWARTZ LLP**

**MITCHELL E. BENSON, CPA, MT, CFF
SAVRAN BENSON, LLP**

AND

**JULIA SWAIN, ESQUIRE
FOX ROTHSCHILD LLP
COURSE PLANNER**

**GREER LONGER, J.D. CANDIDATE
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL
FOX ROTHSCHILD LLP SUMMER ASSOCIATE PROGRAM
RESEARCH AND CO-AUTHOR OF MATERIALS**

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In Pennsylvania, the general rule for the division of marital assets upon divorce is equitable distribution. The Pennsylvania Divorce Code sets forth a list of factors courts must consider in assigning what percentage of the marital property and marital estate each party is will receive in settlement. 23 Pa.C.S.A. §3502(a). This assignment of marital property becomes complicated when one spouse intentionally, fraudulently, or recklessly decreases the value of the marital property and marital estate. It is relatively easier to recognize this type of deception once the parties have separated or once the complaint has been filed, but accounting for dissipation of assets before either of these events is more difficult.

Courts have the option of “adding back” dissipated assets to the marital estate to reach a fair and proper equitable distribution scheme. In both pre-separation and post-separation dissipation claims, the main issue is whether the marital property was used in a manner benefitting one spouse at the expense of the other. Recently, spouses have paid off individually-held credit cards, made unsecured loans to friends, and wired money to family in the months, sometimes even years, leading up to separation. Though Pennsylvania case law is not ripe with examples of pre-separation dissipation, the few cases on this topic, plus supporting case law from other jurisdictions, point to numerous factors courts should consider in determining the equitable distribution of assets in the face of a dissipation claim.

I. BACKGROUND

Equitable distribution or equitable division of property mandates that all marital property be justly, not necessarily evenly, divided among divorcing parties. The

Pennsylvania Divorce Code establishes a presumption that all property acquired from the date of marriage to the date of final separation is marital property, regardless of whether title is held individually or jointly. 23 Pa.C.S.A. §3501(b). The Code also provides eight types of assets that are expressly excluded from marital property, such as gifts or settlement payments. See 23 Pa.C.S.A. §3501(b). In 2005, the Pennsylvania legislature amended the section of the Divorce Code addressing equitable division, and it now states:

§ 3502. Equitable division of marital property.

(a) General rule. – Upon the request of either party in an action for divorce or annulment, the court shall equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

10) The economic circumstances of each party at the time the division of property is to become effective.

(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.

Though “dissipation” is a factor courts must account for in making equitable distribution awards, the Code does not provide a definition of “dissipation” and there is no further elaboration on the topic. Additionally, there is no explicit time frame regarding when dissipation claims may be lodged against one party; using the broad phrase “dissipation of . . . marital property” suggests that dissipation claims can be brought based on treatment of assets from the date of the marriage to the date of division of assets.

Given this somewhat flexible definition of dissipation of marital assets, the below sections analyze Pennsylvania jurisprudence dealing with the issue. As mentioned above, relevant Pennsylvania case law is limited, so there are also references to cases originating in New Jersey, New York, and Delaware. These jurisdictions also acknowledge dissipation as a factor to be considered in equitable distribution agreements, with the statutory language very similar to that of Pennsylvania.¹

¹ The New Jersey equitable distribution statute is very similar to that of Pennsylvania as it takes into account “the contribution of each party to the acquisition, dissipation, preservation, depreciation, or appreciation in the amount or value of the marital property.” N.J.S.A. 2A:34-23.1(i). New York Domestic Relations Law echoes the Pennsylvania and New Jersey statutes, stating that “in determining an equitable distribution of property, the court shall consider . . . the wasteful dissipation of assets by either spouse.” § 236(B)(5)(d)(12). Delaware also considers dissipation in language strikingly similar to that of Pennsylvania: “[relevant equitable distribution factors include] The

II. FACTORS SUPPORTING A PRE-SEPARATION DISSIPATION CLAIM

The central issue in proving pre-separation dissipation of assets is whether one spouse intentionally or carelessly decreased the marital assets available to the other spouse. While dissipation may connote secreting of funds or undisclosed spending and debts, oftentimes dissipation of assets includes expenditures of which both parties were aware. Pre-separation financial decisions such as poor investments, filing individual and not joint tax returns, loaning money to friends and family, and closing profitable businesses can be characterized as dissipation of marital assets under the right circumstances. However, for “out-in-the-open” transactions such as these, the spouse who later claims dissipation of assets must either prove that one spouse significantly misrepresented investment risk, acted in bad faith, or did not exercise reasonable financial judgment in pursuing these transactions. Additionally, even if the spouse is fully aware of the negative consequences of such investments or divestments, this spouse will retain the right to later lodge dissipation claims as long as there is evidence of the parties’ disagreement over financial decisions.

Other expenditures such as lavish spending on clothes, other material possessions, vacations, and activities such as hobbies, education or sports, are also open to dissipation claims. However, to classify these types of expenditures as dissipation, usually there is a benefit flowing only to one party or spouse. If the party begins to spend lavishly on the children, the marital home, and even the other spouse, this does not necessarily amount to dissipation. If one spouse accused of dissipation can prove that these expenditures were in line with the couple’s standard of living or if there was mutual benefit, oftentimes there is no dissipation. Claims of this nature are less numerous in pre-separation case-law as contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital

compared to claims involving poor investment decisions and the like. What follows is a case-by-case analysis of pre-separation dissipation claims, including what factors the courts looked to in determining dissipation and how the courts remedied such claims.

III. CASE SUMMARIES

A. Pennsylvania

Gruver v. Gruver, 539 A.2d 395 (Pa. Super. 1988)

Husband and wife separated on February 19, 1982 after approximately ten years of marriage. Id. at 396. Husband then filed a Complaint in Divorce on March 8, 1983. Id. Wife alleged dissipation of marital property because husband refused to file joint tax returns after 1981. Id. at 398. The trial court held that this refusal resulted in increased tax liability for both parties, and thus the husband's actions resulted in the dissipation of marital property. Id. The appellate court perceived no error in this decision and affirmed. Id.

Diament v. Diament, 816 A.2d 256 (Pa. Super. 2002)

Husband claimed abuse of discretion on behalf of the trial court when it determined that notes payable on a large loan were marital property subject to equitable distribution. The parties were married in September 1980 and separated in August 1993, at the recommendation of the wife's mental health counselors. Id. at 261, 265. During the marriage, the husband started his own business as a builder of upscale custom homes; the business was very profitable and allowed the couple to maintain a privileged lifestyle. Id. at 261. In 1993, prior to separation, the husband made a large loan of \$237,500 to his business so that the company could purchase land to develop. Id. at 271. The Special Master concluded that the loan was made with marital funds and therefore the debt of the

property, including the contribution of a party as homemaker, husband, or wife." 13 Del. C. § 1513(a)(6).

business resulting from the loan was an asset of the marriage. Id. The husband did not agree with this characterization and presented expert testimony that this type of loan under these circumstances was “a wash”; the expert testified that when a business owner invests personal funds in his own business, the value of the cash in the business goes up, but it is offset by liability. Id. at 272. The court did not find the husband’s expert testimony convincing and held that the notes payable by the business were part of the marital assets subject to equitable distribution because the loan was originally funded by marital property.

Naddeo v. Naddeo, 626 A.2d 608 (Pa. Super. 1993)

In equitable distribution proceedings, the wife alleged that husband’s actions in voluntarily dissolving law firm partnership after separation but prior to distribution amounted to dissipation of marital property. The parties were married on January 28, 1966 and separated on February 28, 1991. Id. at 609. During the marriage, the husband became a partner in a Pennsylvania law firm on January 1, 1973, and his salary in the five years prior to separation was approximately \$150,000 a year. Id. at 610. The partnership dissolved on October 21, 1991, just fourteen days before a scheduled Master’s hearing. Id. at 609. After the partnership was dissolved, the husband continued to work the same work schedule and the same amount of hours. Id. at 612.

Although the husband continued to work a similar work schedule, the trial court and the appellate court agreed that the husband could have realized a going concern value of his partnership share should he have withdrawn from, not dissolved, the partnership. Id. at 613. However, the appellate court found error in the trial court’s determination that the husband’s partnership share could not be valued after dissolution due to the provisions of the partnership agreement. Id. at 614. The appellate court held that the trial court should

have value the husband's partnership interest in the firm before the dissolution took place. Id. The court remanded for the trial court to determine the value of the partnership interest, which wife could then claim as a dissipation in marital assets. Id.

B. New Jersey

Kothari v. Kothari, 605 A.2d 750 (N.J. Super. 1992)

This seminal case from New Jersey established the four factor test used in determining whether there has been pre-separation dissipation of the marital estate. The parties involved had been married in Bangladesh in April 1981 and moved to the United States in September of the same year. Id. at 751. The parties both agreed that the marriage "was beset with strife from the beginning," with the husband having initiated three separate divorce proceedings in 1985, 1987, and 1988. Id. The wife filed a divorce complaint in August 1989, giving rise to this litigation. Id. at 752. The marital problems were mostly the result of the husband's inability to accept the cultural difference between the U.S. and Bangladesh, his native country, as well as the constant stream of money the husband sent home to his parents who continued to live in Bangladesh. Id. at 751.

The husband admitted to sending money to his parents, but denied that his intent was to dissipate the marital estate. Instead, he argued that he had a moral obligation to pay his parents, as he "was bound to return to . . . [his] parents monies advanced to him in pursuit of his education and other expenses till he landed in USA." Id. at 752. The trial court noted that the wife was aware that the husband was sending money to his parents during their marriage and that she objected to her husband's actions. Id. The trial court found that the husband had spent \$30,000 supporting his parents from 1981 to 1987, that he had spent \$19,000 on setting up a new medical practice in India, that he paid for his parents to travel with him back to the U.S., and that he had spent approximately \$58,000

supporting his parents while they lived in the U.S. for 32 months, beginning in 1987. Id. The trial court awarded the wife essentially 50% of these expenditures, as the husband had funded these expenditures with marital property. Id.

The appellate court upheld the trial court's ruling. According to the appellate court, the doctrine of dissipation is a flexible one in New Jersey as the legislature, much like the Pennsylvania legislature, has not provided a definition of dissipation. Id. The court noted that the question that must ultimately be answered in a dissipation claim is whether the assets were expended by one spouse with the intent of diminishing the other spouse's share of the marital estate. Id. at 753. In reaching this determination, the court provided a list of four factors that must be considered in a dissipation claim, including:

- 1) the proximity of the expenditure to the parties' separation,
- (2) whether the expenditure was typical of expenditures made by the parties prior to the breakdown of the marriage, (3) whether the expenditure benefitted the "joint" marital enterprise or was for the benefit of one spouse to the exclusion of the other, and (4) the need for, and amount of, the expenditure.

Id. In light of these four factors, the court found that the expenditures clearly did not benefit the marital enterprise because they served only husband's interest, that the payments were designed to deprive the wife of her equitable share of the marital assets, and that the husband was clearly "thinking about and planning" divorce as evidenced by instituting three different divorce actions in a span of three years. Id. at 754. The husband's claims of a debt owed to parents and his moral obligation were dismissed by the trial court. Id. The appellate court affirmed the ruling, also noting that even though the value of the marital estate was zero at the time of the divorce complaint, the court can look back to the value of the marital estate pre-complaint and establish cash indebtedness upon one spouse in favor of the other. Id. at 755.

Goldman v. Goldman, 646 A.2d 504 (N.J. Super. 1994)

The appellate court disagreed with wife's claim that husband's use of marital funds to support failing business and to loan money to family members amounted to dissipation of assets. The parties were married in September 1966 and separated in January 1987. Id. at 505. During the marriage, the husband had owned a successful envelope manufacturing business which he sold in 1981 for more than \$2,000,000. Id. He used the proceeds of this sale to open a foreign car dealership in 1985, putting up \$200,000 of his own money and obtaining \$3,000,000 in bank financing to start the business. Id. This business was never successful as the stock market crash of October 1987 severely diminished the demand for expensive foreign cars; thus the husband was never able to recoup the initial investment. Id.

The wife appealed the trial court's refusal to give her a credit for half of the \$200,000 in marital funds the husband used to start his business. Id. at 506. The appellate court ultimately agreed with the trial court's decisions. Id. The court highlighted the fact that the wife had stipulated that the husband had not acted in bad faith when making this investment and that the wife had been unable to show that the husband's failure to recoup his initial investment resulted from poor business judgment or mismanagement. Id. at 507. However, the court did caution: "our affirmance . . . should not be construed as permission for one spouse to use marital funds as venture capital with impunity." Id. at 506.

The husband had also loaned \$200,000 to his brother in 1985, with the terms calling for a 12% interest rate, with the principal due in five years. Id. In the month the parties separated, the husband advanced an additional \$50,000 to his brother, with a lower interest rate of 8%. Id. Shortly thereafter, in November 1987, the brother and husband agreed to a revise the terms of the loan, deferring interest payments until 1991 and making the secured loan an unsecured one. Id. By the time of the trial, the brother had not repaid

any part of the loan and as part of the equitable distribution, and the trial court credited the wife \$25,000, one-half of the husband's final post-separation loan to his brother. Id. at 508. The wife appealed this credit, claiming that she should have been credited \$125,000 as the entire amount of the \$250,000 loan amounted to dissipation of marital assets. Id.

The appellate court remanded this issue to the trial court. The court agreed with the trial court that the wife was aware of and had acquiesced to the husband loaning the initial \$200,000 in 1985, thus barring any claims of dissipation. Id. However, the trial court did not properly consider the effects of the husband's agreement to convert the loan from a secured one to an unsecured one, nor did the trial court properly consider the husband's decision to forego any collection at the time. Id. The court noted, "to the extent that the conversion of the loan from secured to unsecured and the forbearance in collection the loan did impair defendant's security, she would be entitled to a credit from the [husband]." Id. Thus, the wife's pre-separation claims regarding the loan were without merit because of her acquiescence, but the post-separation claims may have had merit.

C. New York

Davis v. Davis, 573 N.Y.S.2d 162 (N.Y. App. Div. 1991)

Husband appealed the trial court's division of marital property which awarded 60% of the marital assets to his wife. In November 1983, after seventeen years of marriage, the husband was hospitalized for three weeks to observe his possible multiple sclerosis condition. Id. at 46. After this, husband announced his intent to leave New York and relocate to Florida, which meant the family owned business would have to fold. Id. The wife objected to this plan and assumed full responsibility of running the business. Id. It was revealed at trial that during the time the wife was running the business, the husband "affirmatively sought to frustrate that effort by attempting to dissuade clients from

utilizing the services of [the family owned business].” Id. In February 1985, the wife commenced the action for divorce and equitable distribution and months later the husband left the marital residence and moved to Florida. Id. The trial court found, and the appellate court affirmed, that the husband’s actions in attempting to dissuade customers from using the services of his family-owned business amounted to dissipation of marital assets, as his actions diminished the value of the business. Id. at 48. In light of the husband’s behavior, the appellate court found that the division of marital property was just.

Willis v. Willis, 484 N.Y.S.2d 309 (N.Y. App. Div. 1985)

Appellate court submitted equitable distribution award to trial court for reconsideration. During the course of the marriage, the husband had taken up several expensive hobbies, including flying and snowmobiling. Id. at 868. When the parties were in the throes of divorce proceedings, the wife alleged that the husband’s expenditures on these activities amounted to dissipation of marital assets. Id. However, the appellate court highlighted that the record shows that the whole family, including the wife, eventually became “quite involved” with these activities and enjoyed them “immensely.” Id. The court noted: “expenditures which were agreed to and enjoyed by both parties but which, through hindsight, may seem improvident to parties who can no longer reach rational agreement should not be characterized as a waste of assets and held against one party.” Id. On this basis, the appellate court returned this issue to the trial court as a factor that should be reconsidered in determining the equitable distribution awards.

D. Delaware

Sutherland v. Sutherland, 28 A.3d 1093 (De. Fam. Ct. 2010)

Trial court awarded wife ten percentage points in overall division of assets due to husband’s admittedly irresponsible financial decisions. In this case, the parties were

married on July 6, 1996 and separated on October 30, 2007, though testimony indicated there had been “troubled times well before the separation date.” Id. at 1095. The parties had four children and lived on average means, with the wife employed as a second grade teacher and the husband rising in rank from a concrete worker to supervisor of concrete workers. Id. at 1096. In 2006, the parties devised a plan to purchase undeveloped real estate and build a custom home, with the wife’s father funding construction through his own home equity line and the husband acting as general contractor. Id. The wife’s father would provide the wife with blank checks, and the wife then would fill out the checks when payments needed to be made to subcontractors as identified by the husband. Id.

Construction was going smoothly until November 2006, when the husband disappeared for two months. Id. 1096-1097. During this two month absence, the parties had some contact and the wife continued issuing construction checks according to her husband’s instructions Id. at 1097. At this time, the husband was also starting his own concrete business as he terminated or was terminated from his “stable construction manager’s job.” Id. In hindsight and at the time of the wife and father believed that the husband used the construction funds to bankroll his new concrete company and cover his own personal extravagances. Id. However, the trial court could not find in favor of these claims since the wife and father could not produce any copies of checks that corroborated this claim. Id.

The husband continued to spend extravagantly when he returned to the marital home in February 2007. The husband used funds from his new business to “foolishly buy a big double tire truck which he did not need, a Tahoe for the family costing \$43,980.00, and a used Silverado for himself costing \$34,987.00.” Id. The court found that in addition to the husband’s poor bookkeeping skills and the recession, “the[ese] foolish purchase[s] of expensive and unnecessary items” led to the failure of the husband’s business in the fall of

2007. Id. In determining the equitable distribution division, the court found that “by his own admission, Husband likely suffered the ruination of his business at his family’s expense when . . . [he] left or was terminated from stable employment to enter into a business venture with a high school friend where they both foolishly spent sums of money eventually bringing creditors knocking at the door.” Id. at 1103. The court found that the wife had not acted similarly and had done everything in her power to maintain the financial stability of her family. Id. Therefore the trial court granted her ten percentage points in the overall division of assets.

IV. ADDITIONAL CASES FOR CONSIDERATION:

Pennsylvania

Mellon Bank, N.A. v. Holub, 583 A.2d 1157 (Pa. Super 1990) (holding that lower court properly considered husband’s conviction for soliciting another to kill wife as a dissipation of marital assets to be factored into the equitable distribution of marital assets).

Nuttall v. Nuttall, 562 A.2d 841 (Pa. Super. 1989) (in dividing marital property, trial court was within its discretion to offset husband’s contribution of money spent to preserve marital assets and reduce marital debt by his dissipation of other marital property).

Fishman v. Fishman, 805 A.2d 576 (Pa. Super. 2002) (wife failed to establish that husband waived financial interest in consulting firm when he withdrew as a partner, which would have amounted to dissipation of marital assets, and used this waiver to obtain financial consideration to bankroll purchase of another consulting firm post-separation).

New Jersey

Siegel v. Siegel, 574 A.2d 54 (N.J. Super. Ct. Ch. Div. 1990) (holding that gambling losses amounting to \$227,850 that were incurred when the marriage was “irreparably fractured” and later when the parties were separated were dissipation of marital funds chargeable solely to husband without offset or credit).

Kabir v. Kabir, 2009 WL 1097901 (N.J. Super. Ct. App. Div.) (affirming that when husband took out three separate loans secured by equity in marital residence and then used some of the proceeds of these loans to acquire property in Bangladesh held in his name only amounted to dissipation of marital funds; stating that trial court did not consider husband’s discretion to spend for purposes not inimical to the marriage while the marriage was intact, so when husband also used loans to pay for family travel and family’s credit card debt, and without proof that any expenditure or withdrawal was made for husband’s purposes alone, additional dissipation claims could not stand).

New York

Grunfeld v. Grunfeld, 688 N.Y.S.2d (N.Y. App. Div. 1999) (holding that husband did not wastefully dissipate marital assets when he engaged in securities and commodities trading during marriage because his original allocation of risk capital was reasonable, as was his increase of risk capital by amount of his trading profits, and because he had a good faith belief in the profitability of aggressive short-term trading).

Scala v. Scala, 873 NY.S.2d 787 (N.Y. App. Div. 2009) (holding that a husband’s closure of his profitable masonry business was a wasteful dissipation of assets because he failed to recoup the value of a profitable business).

Noble v. Noble, 911 N.Y.S.2d 252 (N.Y. App. Div. 2010) (affirming trial court's decision that husband's pre-complaint behavior including liquidating his 401(k), securing a \$700,000 loan to cover start-up costs and related business costs, and making unsecured loans to friends amounted to dissipation of marital assets).

V. PRACTICAL CONSIDERATIONS

While it seems cynical for spouses to be “on alert” regarding expenditures of marital assets prior to separation, parties do have options available that may tip the scales in their favor should they lodge a dissipation claim in the future. First, if a spouse knows that the other spouse is spending marital funds in a reckless, self-serving manner, the spouse must object to these expenditures and have proof of such an objection. Inaction may lead a court to find that a spouse acquiesced to the expenditures if there is no record of objection. Separating one's assets from those of the dissipating spouse – such as depositing paychecks into an individually held account – will provide evidence that the spouse did not acquiesce to the financial decisions of the other party. Also, while this may seem like common sense, it is extremely important for a spouse to know how the marital funds are spent, where they are held, and the value of the assets. If a spouse makes inquiries and is rebuffed by the other spouse, the parties refusal to share the financial information would weigh in favor of a court finding dissipation and secreting of assets.

While it might be difficult for a spouse to curb dissipation of assets if he or she is unaware of the behavior, removed from the family's financial decisions, or otherwise a passive participant in the family's finances, a spouse who is spending marital assets may take proactive steps to insulate himself or herself from dissipation claims. In defending a dissipation of marital property claim, it is important to make the other spouse aware of spending. Also, it is extremely important that the accused spouse can provide detailed

evidence as to how and for what purpose marital assets and property were used and spent. Lowry v. Lowry, 544 A.2d 972 (Pa. Super. 1988) (holding that husband's non-dissipation evidence was not convincing as he could not prove that proceeds from the sale of jointly held stock were used to satisfy joint obligations). If these expenditures benefitted the marital home or otherwise satisfied the parties' joint financial obligations, then dissipation is difficult to prove. The same reasoning applies to investments; as long as a spouse can prove reasonable business judgment and good faith investing, it is more difficult for the court to uphold a dissipation claim. Records of an investment portfolio, a catalog of sales and purchases, and records of the risk associated with such transactions supports the validity of investment decisions. Lastly, throughout these cases, courts acknowledge that dissipation is a flexible term: while one spouse spending hundreds of thousands of dollars on vacations or hobbies may seem like dissipation to a couple with limited means, if these expenditures are in line with the parties' conduct throughout the marriage, then dissipation is harder to prove.

VI. STATUTE

PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES

*THIS DOCUMENT IS CURRENT THROUGH ACT 42 AND ACTS 44 THROUGH 58 OF
THE 2012 REGULAR SESSION*

TITLE 23. DOMESTIC RELATIONS PART IV. DIVORCE CHAPTER 35. PROPERTY RIGHTS

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23 Pa.C.S.A. § 3501 (2012)

§ 3501. Definitions

(a) GENERAL RULE -- As used in this chapter, “marital property” means all property acquired by either party during the marriage and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3) as measured and determined under subsection (a.1). However, marital property does not 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 of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such property.

(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)¹, 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 to which the property 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.

(a.1) MEASURING AND DETERMINING THE INCREASE IN VALUE OF NONMARITAL PROPERTY.--The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

(b) PRESUMPTION.--All real or personal property acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a).

(c) DEFINED BENEFIT RETIREMENT PLANS.--Notwithstanding subsections (a), (a.1) and (b):

(1) In the case of the marital portion of a defined benefit retirement plan being distributed by means of a deferred distribution, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the total benefit and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

(2) In the case of the marital portion of a defined benefit retirement plan being distributed by means of an immediate offset, the defined benefit plan shall be allocated between its marital and nonmarital portions solely by use of a coverture fraction. The denominator of the coverture fraction shall be the number of months the employee spouse worked to earn the accrued benefit as of a date as close to the time of trial as reasonably possible and the numerator shall be the number of such months during which the parties were married and not finally separated. The benefit to which the coverture fraction is applied shall include all postseparation enhancements up to a date as close to the time of trial as reasonably possible except for enhancements arising from postseparation monetary contributions made by the employee spouse, including the gain or loss on such contributions.

PENNSYLVANIA STATUTES, ANNOTATED

*THIS DOCUMENT IS CURRENT THROUGH THE ACT 21 OF THE 2009 REGULAR
SESSION*

*** July 27, 2009 Annotation Service ***

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 23. DOMESTIC RELATIONS
PART IV. DIVORCE
CHAPTER 35. PROPERTY RIGHTS

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23 Pa.C.S. § 3502 (2009)

§ 3502. Equitable division of marital property

(a) GENERAL RULE.-- Upon the request of either party in an action for divorce or annulment, the court shall equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors. The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.
- (9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party at the time the division of property is to become effective.

(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.

(b) LIEN.-- The court may impose a lien or charge upon property of a party as security for the payment of alimony or any other award for the other party.

(c) FAMILY HOME.-- The court may award, during the pendency of the action or otherwise, to one or both of the parties the right to reside in the marital residence.

(d) LIFE INSURANCE.-- The court may direct the continued maintenance and beneficiary designations of existing policies insuring the life or health of either party which were originally purchased during the marriage and owned by or within the effective control of either party. Where it is necessary to protect the interests of a party, the court may also direct the purchase of, and beneficiary designations on, a policy insuring the life or health of either party.

(e) POWERS OF THE COURT.-- If, at any time, a party has failed to comply with an order of equitable distribution, as provided for in this chapter or with the terms of an agreement as entered into between the parties, after hearing, the court may, in addition to any other remedy available under this part, in order to effect compliance with its order:

(1) enter judgment;

(2) authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real and personal, tangible and intangible property of the party;

(3) award interest on unpaid installments;

(4) order and direct the transfer or sale of any property required in order to comply with the court's order;

(5) require security to insure future payments in compliance with the court's order;

(6) issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of court and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months;

(7) award counsel fees and costs;

(8) attach wages; or

(9) find the party in contempt.

(f) **PARTIAL DISTRIBUTION.**-- The court, upon the request of either party, may at any stage of the proceedings enter an order providing for an interim partial distribution or assignment of marital property.

HISTORY: Act 1990-206 (H.B. 1023), § 2, approved Dec. 19, 1990, eff. in 90 days; Act 2004-175 (S.B. 95), § 3, approved Nov. 29, 2004, eff. in 60 days.

