



Divorce in New Jersey: Division of Property for Artists and Entertainers

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Divorce is a social and legal issue that many people will come across during their lifetimes. One of the most significant concerns for those considering or involved in a divorce proceeding will be the effect of a divorce on property distribution among the spouses. For artists and entertainers, this may be a matter of increased importance, particularly as to whether or not the law considers ownership of intangibles such as copyrights or celebrity as marital property for purposes of dividing property in a divorce proceeding.

Overview of Divorce in New Jersey

In order to file for divorce in New Jersey, one of the spouses must be a resident of New Jersey for at least one year prior to the filing date. There is an exception to the one year residency requirement when the grounds for divorce are adultery. In such cases, it must be shown that one of the spouses is a resident. There is no prescribed time limit.¹

Several grounds for divorce are recognized by New Jersey state law:

- (a) adultery
- (b) willful desertion for one year or more (this may be proven by evidence that the spouses have ceased to cohabit as husband and wife)
- (c) extreme cruelty (bodily or mentally)
- (d) drug addiction or alcoholism for one year or more
- (e) institutionalization for mental illness for two years or more
- (f) imprisonment for 18 months (provided that if the complaint is filed after the spouse is released from prison, spouses have not resumed cohabitation)
- (g) deviant sexual behavior
- (h) separation - provided spouses have lived apart for at least 18 months and there is no reasonable prospect of reconciliation (also known as no-fault)²

In New Jersey, jurisdiction for hearing divorce cases falls to the Superior Court (which is the name given to the New Jersey trial courts). Generally, the correct court in which to file is the Superior Court of the county where the cause of action for divorce arose.³ It is important that when the appropriate papers are filed, they include the grounds for jurisdiction - otherwise, the defendant spouse may file a motion to dismiss.⁴

Equitable distribution - Division of Property

In absence of a mutual agreement between the spouses, the court will follow state law in dividing property subsequent to granting the divorce. New Jersey is an equitable distribution state, which means that all marital property (all property and debt acquired from the date of the marriage until the filing of a divorce complaint), is divided fairly between the spouses. “Division” for this purpose refers to a percentage of the total value of the property, as opposed to the physical division of property.⁵

A spouse who owns (holds title to) non-marital property normally retains ownership of such property. Non-marital property may include gifts, inheritances, or portions of personal injury awards received by one spouse; proceeds from a pension that vested prior to the marriage; property purchased with separate funds; and a business owned by one spouse prior to marriage (although an exception may exist where a piece of real property or a business appreciates in value during the marriage or both spouses worked at it; in such cases, the court may deem the business or real property or a portion thereof as marital property).

For purposes of dividing property between spouses, the court considers the following factors:

- (1) duration of the marriage
- (2) age and physical/emotional health of spouses
- (3) income or property brought to the marriage by each party
- (4) standard of living established during the marriage

- (5) any written agreement by spouses before or during the marriage concerning division of property
- (6) economic circumstances of each spouse at the time of property division
- (7) income and earning capacity of each spouse, including:
 - a. educational background
 - b. training
 - c. employment skills
 - d. work experience
 - e. length of absence from the work force
 - f. custodial responsibilities for children, if any
 - g. time/expense necessary for the spouse to acquire sufficient education or training so that he or she can self-support at a standard of living reasonable
- (8) contribution by each spouse to education, training, or earning power of the other
- (9) contribution by each spouse to acquisition, dissipation, preservation, depreciation or appreciation of the amount or value of marital property, as well as the contribution as homemaker
- (10) tax consequences to each spouse from the distribution of property
- (11) present value of the property
- (12) need of parent with physical custody of children to own/occupy marital residence and to use/own household effects
- (13) debts and liabilities of spouses

- (14) need for creation (now or in the future) of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or child
- (15) extent to which either spouse deferred achieving career goals
- (16) any other factors deemed relevant by the court.⁶

Under this doctrine of equitable distribution, there is a rebuttable presumption that each spouse made a substantial financial or non-financial contribution to the acquisition of income and property for the duration of the marriage.⁷

Copyrights, patents, and other intellectual property (including artistic works) are generally considered to be assets subject to equitable distribution and the determination of such assets as marital or non-marital property by taking into account the factors enumerated above.⁸

Once the determination has been made that a particular piece of intellectual property is marital property, the court must then face a more difficult issue: determining the value of such an asset. Factors taken into consideration by the court in determining valuation may include:

- (1) contributions by the spouse who does not hold the rights to the intellectual property
- (2) whether it is likely that the intellectual property will generate future income

- (3) other assets awarded to the spouse who does not receive the intellectual property rights
- (4) debts or expenses incurred to secure the rights to the intellectual property
- (5) spouses' own characterization/valuation of intellectual property
- (6) time frame for development or security of intellectual property rights
- (7) any other factors deemed relevant to the valuation of the property.⁹

In addition to what is categorized as intellectual property, division can also become an issue pertaining to an artist or entertainer's "right of publicity" or "celebrity goodwill" - i.e., the value and rights to income deriving from a spouse's fame and reputation. New Jersey courts have held that this is a distinct asset with monetary value that is subject to the equitable distribution doctrine.¹⁰ While the valuation process for this type of "property" will undoubtedly be more complicated than that of other property, the courts have nevertheless stated that this difficulty should not undermine the public policy reasons for treating right of publicity or celebrity goodwill as property in divorce proceedings, particularly since the court protects that same pecuniary interest from "unjust enrichment of another through theft."¹¹ Therefore, it would be a contradiction for the courts to then deprive a spouse the right to that same interest, especially where it may be the most valuable of the marital property.¹²

The following are some helpful online resources with general divorce information in New Jersey:

www.divorcenet.com

www.njdivorceonline.com

www.divorcesource.com

www.lsnjlaw.org

(<http://www.lsnjlaw.org/english/family/divorceNJ.cfm>)

However, due to the complicated nature of the majority of contested divorce proceedings, it is always best to consult an attorney when faced with the prospect of filing for divorce, especially where the proceeding will likely include the division of marital property such as intellectual property or the value or rights to income derived from a spouse's fame or reputation.

¹ N.J. Stat. Ann. § 2A: 34-10.

² N.J. Stat. Ann. § 2A: 34-2.

³ PRESSLER, Current N. J. COURT RULES, R. 5:7-2 (GANN)

⁴ N.J. Stat. Ann. § 2A: 34-8.

⁵ Hon. Anne Kass, *Property and Debt Division in a New Jersey Divorce*, New Jersey Divorce Law, at <http://www.njdivorceonline.com/njpages/MaritalProperty> (last visited Oct. 23, 2005).

⁶ N.J. Stat. Ann. § 2A: 34-23.1.

⁷ *Id.*

⁸ Frank J. Wozniak, Annotation, *Copyright, Patent, or Other Intellectual Property as Marital Property for Purposes of Alimony, Support, or Divorce Settlement*, 80 A.L.R. 5th 487 (2005).

⁹ *Id.* at § 5.

¹⁰ Piscopo v. Piscopo, 231 N.J. Super. 576, 581 (N.J. Super. Ct. Ch. Div. 1988).

¹¹ *Id.* at 579.

¹² *Id.* at 580.

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