### - New York Equitable Distribution FAQ's -

1. What is equitable distribution?

#### It is a method for distributing property acquired by owned by either spouse upon the dissolution of the marriage, which replaces "common law" principles of property ownership. Prior to the adoption of "equitable distribution" in New York, New York was a " common law property " state. This meant that upon the dissolution of the marriage, the property owned by either spouse was distributed according to the manner in which title was held. New York is now an "Equitable Distribution State." This means that upon dissolution of a marriage, the Court must distribute "equitably" all "marital property" regardless of the manner in which title is held, considering the following factors:

* 1. Income of each party at time of marriage;
  2. Income of each party at time of commencement of action;
  3. Property of each party at time of marriage;
  4. Property of each party at time of commencement of action;
  5. Duration of marriage;
  6. Age of both parties;
  7. Health of both parties;
  8. Need of custodial parent to occupy or own marital residence;
  9. Need of custodial parent to use or own household effects;
  10. Loss of inheritance rights upon dissolution as of date of dissolution;
  11. Loss of pension rights upon dissolution as of date of dissolution;
  12. Any award of maintenance;
  13. Equitable claims to or interest in or direct or indirect contribution to the acquisition of the marital property by the party not having title, including:

(a) Joint efforts;

(b) Expenditures;

(c) Contributions as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party;

* 1. Liquid or non-liquid character of all marital property;
  2. Probable future financial circumstances of each party;
  3. Impossibility or difficulty of evaluating any asset or interest in a business, corporation or profession;
  4. The desirability of retaining the asset, or interest in the business, corporation or profession free from any claim or interference by the other party;
  5. The tax consequences to each party;
  6. The wasteful dissipation of assets by either spouse;
  7. Any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; and
  8. Any other factor which the Court shall expressly find to be just and proper.

1. What property is subject to equitable distribution?

#### All property acquired by either or both parties during the marriage, but before execution of a separation agreement, and before commencement of a matrimonial action, regardless of the form title is held.

It does not include property provided for in a written agreement. It does not include "separate property", which is defined as property acquired before marriage; property acquired by bequest, devise, descent or gift from a party other than the spouse; compensation for personal injuries; property acquired in exchange for or the increase in value of separate property; property described as separate property pursuant to written agreement of the parties. However, the increase in value of separate property (or property acquired in exchange for separate property) is marital property to the extent that the appreciation is due in part to the direct or indirect contributions or efforts of the other spouse.

1. Is my business or professional practice subject to Equitable distribution?

#### Yes. Businesses, professional practices, and enhanced earning capacity attributable to the attainment of a career, or professional license, educational degree, profession or license is considered "property" subject to equitable distribution.

1. Does equitable distribution mean that all marital assets get evenly split?

#### No, equitable does not mean equal. Marital property must be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.