

BASICS OF EQUITABLE DISTRIBUTION

By K. Dean Kantaras and Vanessa C. Fernandez



K. Dean Kantaras, Esq.

In the dissolution of a marriage proceeding, the court will attempt to identify and set apart each spouse's non-marital assets and liabilities. In classifying assets as marital or non-marital, the trial court may consider numerous factors including title, the commingling of marital and non-marital funds, the increases in value because of marital efforts and the parties' apparent intent concerning their marital or non-marital funds and assets.

When considering the distribution of assets and liabilities, the court must begin with the presumption that the distribution should be equal. However, in some cases, if there is justification, the court may make an unequal distribution. When distributing marital assets and liabilities, a trial court need not equalize the financial position of the parties but must ensure that neither spouse passes automatically from

misfortune to prosperity or from prosperity to misfortune. There are many factors the judge can consider when distributing assets and liabilities. These factors are listed in Florida Statute 61.075(1)(a)-(j). Some of the relevant factors include the contribution to the marriage by each spouse, including contributions to the care and education of the children and service as homemaker and the intentional dissipation, waste, depletion or destruction of marital assets after the filing of the petition or within two years prior to the filing of the petition.

When the judge distributes the marital assets and marital liabilities, the judge must include specific written findings including the identification of non-marital assets and ownership interests, identification of marital assets, and identification of the marital liabilities and designation of which spouse shall be responsible for each

liability. The judge may also make any written finding necessary to advise the parties the rationale for the distribution of marital assets and allocation of liabilities.

These can become very complicated issues that will rely on the judge's understanding of the circumstances and history to resolve. ■■■

EDITOR'S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 25 years and is "AV" rated by Martindale-Hubbell. Vanessa C. Fernandez is a third-year law student at the University of Florida Levin College of Law. She is a law clerk at the Kantaras firm. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, kantaraslaw.com.