



# Assets That May Be Forgotten in Equitable Distribution

By Tami Clemenza-Wilson, CPA

When one mentions equitable distribution, certain thoughts immediately spring to mind – dividing interests in the marital home and/or investment property, bank and brokerage accounts, qualified retirement plans, automobiles and business interests. However, there are other assets that can sometimes be forgotten and may then disrupt the settlement negotiations when are thrown into the mix at the last minute. This article is meant to provide examples of some of the more commonly forgotten assets that one may forget in an equitable distribution, but it is by no means exhaustive. Hopefully, it will get you thinking of other things that may have been overlooked in the equitable distribution process.

**Receivables from cafeteria plans for un-reimbursed medical and dependent care expenses** – if one or both spouses are employed, it is possible they are having funds withdrawn from their paycheck each pay period on a pre-tax basis to pay for things such as un-reimbursed medical care (e.g., deductibles, co-payments, and other un-reimbursed medical expenses) and / or dependent care expenses. The amount that can be withheld will vary depending on the cafeteria plan that the employer offers as well as the amounts elected by the employee. However, the amount could possibly be several thousand dollars per spouse if each spouse has a plan. For this reason, it is important to review all benefit packages for each employed spouse to determine the amount that has been withheld and compare it with the amount that has been utilized.

**Unused vacations and accumulated sick leave** – Another item that may be uncovered during a thorough review of employee benefit packages is the extent to which an employee can accumulate unused vacation days and/or sick leave. Some employers

impose a maximum (e.g., one week) on the amount of such time that may be carried over from one year to the next, however; other employers allow employees to accumulate and “roll over” all unused vacation and sick leave. This accumulated time can become significant after a number of years. At some point in time the employee may be eligible for compensation based upon the unused time. For those who are permitted to accumulate all unused time, this could amount to many months or even a year’s worth of compensation subject to equitable distribution.

**Pre-paid college plans** – With many parents planning for their children’s college future from the time they are born, pre-paid college plans have become one of the most popular vehicles to save for college. Most likely the title to the account was placed under the spouse who purchased or set up the plan. The owner may be one spouse or both, despite that the beneficiary is the child. In a perfect world, one would not think twice about who gets the account in an equitable distribution situation. Yet in this imperfect world, all does not go according to plan and this asset should be considered.

The owner of the pre-paid account is not the child, but usually it is one or both parents. Therefore, it is technically a “marital account”. In addition, if only one spouse is named as the owner on the account, he or she can cash the vested value at any time until the child is of age to attend college. To ensure this does not happen it is best to have joint ownership of the account with specific wording that no one is to cash out the pre-paid plan.

**Taxes** – Another item that could be significant is federal and/or state tax refunds that have not yet been received. Additionally, there may be tax items that may be carried forward from one year to the next. This would

include things such as unused net operating losses, suspended passive activity losses, and short-term and long-term unused capital loss carryovers. These amounts can be substantial and it is important to determine which party will be able to make the best use of them in future years and consider that as part of the equitable distribution arrangement.

**Pre-paid items** – Some other items that may be forgotten include pre-paid credit cards which carry a credit balance and pre-paid business expenses such as rent, insurance, taxes and security deposits. Since there is not a debt on these accounts one may just overlook them and not realize that these are an asset and may have been used as a savings vehicle. The amounts may or may not be significant relative to the overall value of the marital estate, but they should be taken into consideration.

**Memberships, leases, etc.** – For things such as timeshares, leased vehicles and club memberships (i.e. country clubs, fitness clubs, other private clubs), a determination must be made as to which party will benefit from their continued use, which party will pay the continuing expenses and whether or not there will be any set-off for the party not receiving the future benefits. Also remember to include the amount of any bond or deposit that may have been paid upon joining the club. With respect to leased vehicles, many individuals assume they have no value because these vehicles are considered to be “rented”. However, some individuals pay considerable money as a down payment to reduce their monthly payments and therefore the leased vehicle may have a value that is higher than the residual value of the lease. Therefore, this vehicle may have a value at the time of the divorce. In addition, some individuals may also

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**Assets forgotten**  
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put down a security deposit that is refundable at the term of the lease.

**Collectibles** – Ownership of collectibles is another area that can become contentious if it is left until after all other issues have been decided. Consideration of these items is often deferred until the last moment, perhaps because the monetary value is insignificant relative to the overall value of the marital estate or perhaps because the parties think they can come to some “reasonable” agreement, however, there have been many settlement negotiations which have reached a boiling point when the parties end up fighting over the china or a vase they bought 20 years ago.

For this reason, the parties should at least consider making a list of items they might want which may hold a particular sentimental value to them, if not substantial monetary value. Other types of collectibles include items such as baseball cards, antiques, coin collections, stamp collections, art collections, and precious metals and may need to be appraised by individual appraisers.

**Frequent flyer miles** – Other things that may be overlooked include frequent flyer miles, credit card rewards points and/or miles, season tickets to sporting events, theater performances, and the like. Frequent flyer miles or rewards points accumulated during the marriage can be considerable (e.g., millions of miles or points) so it is important to take them into account during the equitable distribution process. Season tickets to

sporting events are usually easily divided unless they have an equity component and if so the contract agreement will dictate.

**Pets** – Many people consider their pets as family members, not as “assets,” but since the law does not yet go the route of pet “custody,” they are properly considered as part of equitable distribution. Putting the terminology aside, this can be a very important part of the negotiations for certain people and can in fact be a deal-breaker if not handled properly and if not considered early on in the process. It can become particularly contentious if both spouses feel strongly about the pet(s). Alternatively, it can be problematic if one spouse feels very strongly and the other really doesn’t care, but puts up a fight just because he or she knows how important the pet is to the other party. Because it is such an emotional issue for some, it may be best to at least raise the issue early in the process.

**Frozen embryos** – With the help of modern technology, many couples who were not able to have children before are now able to through many different avenues. However, this opens the door to many hot topics. For example, what if a couple decides to undergo in-vitro-fertilization? Perhaps they sign the standard authorization form stating “in case of a divorce that any remaining embryos are to be destroyed” - many options may also be available. In our case, the couple is successful and get pregnant on the first try and have 5 frozen embryos being stored for the future. In two years they get a divorce. Everyone forgets about these embryos. The following year, the now “Ex-Wife” receives a letter asking her what would she like to do with “her” embryos. Now what? This is a true story. There are so many things to consider – my point – don’t forget those frozen embryos!

I have covered some, but certainly not all, of the assets that may be forgotten in equitable distribution. But hopefully, have triggered your thinking as to what other assets may be out there that have not yet been considered.

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