

Insights

Equitable Distribution Under Florida Statute § 61.075: An Overview and Recent Statutory Changes

Article

Lowndes

06.24.2025

In proceedings for dissolution of marriage, courts are tasked with equitably distributing the assets and liabilities of the spouses. First, the court must identify the marital and nonmarital assets and liabilities, then the court must set aside the nonmarital assets and liabilities because they are not part of the marital estate. Next, the court must determine the division of the marital assets and liabilities. In Florida, courts should begin with the premise that the division of the marital assets and liabilities should be equal between the parties before determining if justification exists to divide the property in another manner under the Statute.

In 2024, the Florida Legislature made changes to Florida's equitable distribution statute (Fla. Stat. § 61.075) regarding how certain marital and nonmarital assets are defined including how the court should define the marital interest in a closely held business and designation of interspousal gifts of real property. These changes will be discussed alongside a general overview of the equitable distribution process.

Defining Marital and Nonmarital Assets

Generally, under Florida Statute § 61.075(6), marital assets and liabilities are defined as the following:

1. Assets and liabilities acquired during the marriage, individually or jointly by either spouse;
2. property held as tenants by the entireties (i.e. a form of property ownership only available to married couples where both own 100% of the property and have survivorship rights);
3. the payoff of principal of a note and mortgage during the marriage for a nonmarital real property and any passive appreciation associated with that payoff;
4. interspousal gifts (i.e. gifts exchanged between the parties during the marriage);

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5. the enhancement in value and appreciation of nonmarital assets resulting from efforts of either spouse during the marriage or the expenditure of marital funds on said nonmarital assets;
6. vested and nonvested retirement benefits accrued during the marriage; and
7. the marital interest in a closely held business.

To contrast, nonmarital assets and liabilities include the following:

1. assets and liabilities acquired separately by either party prior to the marriage, including those incurred in exchange for such assets and liabilities;
2. assets acquired separately by noninterspousal gift (i.e. a gift received by one spouse from a third party during the marriage), bequest (gift of personal property received through a will), devise or descent (gift of real property through a will), including those acquired in exchange for such assets;
3. all income derived from nonmarital assets;
4. assets and liabilities excluded from the marital property by valid written agreement (i.e. prenuptial or postnuptial agreement), including assets and liabilities incurred in exchange for such assets and liabilities;
5. any liability incurred by forgery from one spouse signing the name of the other spouse;
6. real property acquired separately by either party by noninterspousal gift, bequest, devise or descent for which title has *not* been transferred to the parties as tenants by the entireties.

Two important dates should be discussed in the context of equitable distribution. First, the cut-off date for determining assets and liabilities to be classified as marital assets is the earlier date of either a valid separation agreement entered into by the parties or the filing of a petition for dissolution of marriage. Second, the date for determining the value of the assets and liabilities to be divided is the date the judge determines is just and equitable under the circumstances of the case. So, essentially, the appropriate date to value assets is left to the discretion of the judge.

Closely Held Businesses

As stated, the first significant change to Florida Statute § 61.075 explains how courts should determine and define the marital interests of a closely held business. The first legislative change codifies the method of valuation a court must consider in determining the value of a closely held business, and in Florida, that is fair market value. Our statute defines fair market value as the price at which property would change hands between a willing and able buyer and a willing and able seller. Courts also look to the “goodwill” of a business when determining value. There are two (2) types of goodwill to consider: (1) enterprise goodwill; and (2) personal goodwill. Personal goodwill has generally been defined as any value that attaches to the entity solely as a result of one’s reputation or skill; whereas enterprise goodwill is unique and exists separate and apart from the continued presence and reputation of the owner spouse. The value associated with enterprise goodwill is now codified and defined as a marital asset. Courts must also consider whether there is evidence that a covenant not to compete would be required for the business to be sold in determining the overall value.

Interspousal Gifts

An additional change to Fla. Stat. § 61.075 deals with interspousal gifts of real property. An interspousal gift of real property may not be made in the absence of a writing signed by the transferring spouse in compliance with Florida Statute § 689.01, which governs the conveyance of real estate. This new rule applies to transfers occurring

after July 1, 2024.

The Equitable Distribution Factors

After the marital assets and liabilities are defined using the above principles, a court can then examine the distribution of those assets and liabilities. If a spouse requests that the assets and liabilities be distributed unequally, the court must examine the following factors:

- 1) the contribution to the marriage by each spouse, including care and education of children, 2) economic circumstances of the spouses, 3) the duration of the marriage, 4) interruptions of personal career or educational opportunities of either spouse, 5) the contribution of one spouse to the personal career or education of the other spouse, 6) the desirability of retaining any asset, such as a business, intact and free from a claim of the other spouse, 7) the contribution of each spouse to the acquisition, enhancement, and production of income or improvement of marital or nonmarital assets, 8) the desirability of one spouse retaining the marital residence for any minor children, 9) intentional dissipation, waste, or depletion of marital assets after filing of a petition or within 2 years of filing, 10) any other factors necessary for the court to do justice and equity between the spouses.

After reviewing all evidence and testimony regarding these factors, the court will ultimately decide if the division of assets should remain equal or if there is a justification for one spouse to receive a greater distribution of the assets than the other spouse.

Our Firm

Individuals engaged in the dissolution of marriage process should be aware of the law governing the division of their assets and liabilities. At Lowndes, our experienced family law attorneys assist clients with navigating the many financial concerns and considerations raised in divorce proceedings.