

**Chapter 9**  
**EQUITABLE DISTRIBUTION**

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A 1988 amendment to the equitable distribution statute creates a rebuttable presumption that each party made a substantial financial or nonfinancial contribution to the acquisition of income and property while the parties were married.<sup>12</sup>

***When to Request Equitable Distribution***

The application for equitable distribution by plaintiff or defendant must be made as a part of the divorce action, not afterwards, where the divorce action is brought in New Jersey and the defendant is personally subject to the jurisdiction of the court. Failure to do so will result in the waiver of equitable distribution.<sup>19</sup> However, a different rule applies where one spouse obtains an *ex parte* judgment of divorce in a foreign jurisdiction without the foreign court obtaining personal jurisdiction over the other



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e. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution.



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*Passive Asset Acquired During Marriage in One Name*



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R. 4:50-1(f). The court distinguished its holding in *Torwich* from its holding in *Schwartzman v. Schwartzman*

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competent was held not to be an abuse of discretion. The *Barrie*



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because the ring was given prior to marriage, it retains its character as separate property not subject to equitable distribution.<sup>108</sup>

The *Winer/Aronow* view rejects fault as a factor in determining ownership when an engagement is broken, in contrast to earlier decisions, most of which held that the party who unjustifiably breaks the engagement loses the ring.



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adversary.” The enhancement in value of a spouse’s premarital assets occurring after the marriage is subject to equitable distribution to the extent that the increase is attributable to the efforts of the other spouse.<sup>133</sup>

The *Scherzer* decision and others that have followed it make it necessary for the parties to determine the value of the separately owned business at the time of the

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*Third Party Gifts*





in accordance with all of the equitable distribution factors set forth in N.J.S.A. 2A:34-23.1.<sup>147</sup>

***Life Insurance***

The cash surrender value of life insurance acquired by one or both of the parties during the marriage is an asset subject to equitable distribution.

***Stock Options***

Stock options are assets subject to equitable distribution provided that they were awarded prior to the filing of the divorce complaint or as deferred compensation for past services. They should not be treated as ordinary income.<sup>148</sup> In the leading case of *Pascale v. Pascale*



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**§ 9-18. Licenses, Degrees and Enhanced Earnings.**

*Mahoney v. Mahoney*<sup>161</sup>

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but in a footnote pointed out that the New York law under which licenses and degrees are

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accepted as correct the value of \$172,000 given by him, which was based on the corporate balance sheet attached to his 1974 federal income tax return.<sup>179</sup>

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after the partner's name on a schedule appended to the partnership agreement, which schedule was revised quarterly. This would result in the presumptive value, subject to



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*Revenue Ruling 68-609*

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the marriage and thus subject to distribution upon divorce in accordance with the statute.<sup>219</sup>

***Pension Valuation***

mature during the marriage. The Appellate Division held that a pension that was earned during the marriage, but which had neither vested nor matured at the time of the divorce,

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account of funds contributed by the employer for the benefit of all participating employees. There are no individual employee accounts; therefore, an employee's retirement benefits can only be determined by a formula applied at the time of

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*Double-Dipping*



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bound by the equitable distribution or probate statutes. The parties had been married for 17 years with no children born of the marriage, and the marital estate was found to be

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