

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2020

PHILADELPHIA, TUESDAY, FEBRUARY 18, 2020

VOL 261 • NO. 32

An **ALM** Publication

## WEALTH MANAGEMENT

### Inherited Wealth in Divorce and Its Relevance in the Process

BY LAWRENCE J. "SKIP" PERSICK

*Special to the Legal*

I'll start with a confession. I am not an estate attorney; I have not drafted a will. I am not a wealth management professional; I do not advise on financial or investment planning. I practice family law; I am a divorce lawyer. I know what I don't know and trust those practitioners in the estates and wealth management areas to live by the same rule: limit yourself to what you know in areas of the law in which you feel comfortable. All that being said, I offer some of my expertise in an area where family law and estate law overlap.

The inspiration for this article is a client I have been representing for a few months. He and his wife have decided to go their separate ways and need help figuring out the economic claims ancillary to divorce. The biggest of those is the "who gets what" of a divorce, also known as equitable distribution.

About three years ago, my client inherited approximately \$300,000 in two accounts upon his mother's death. He realized things with his wife might be headed in the direction of divorce, so my client told his fam-



**LAWRENCE J. "SKIP" PERSICK**, a partner at the Norristown office of Weber Gallagher Simpson Stapleton Fires & Newby, concentrates his practice on resolv-

ing complex family law issues such as divorce, custody disputes, child support matters and adoptions. Contact him at [spersick@wglaw.com](mailto:spersick@wglaw.com).

ily's long-trusted estate attorney he wanted to make sure whatever he inherited was protected in the event of divorce. The family's estate attorney gave him some simple advice: keep the accounts titled in your name, and you will be fine.

When the gentleman came to see me, he was surprised when I told him that the answer to his question is not as simple as retaining the title in his name. While there is nothing incorrect about the advice given to my client by the estate attorney, it does not paint the full picture for a divorce where \$300,000 was inherited before separation.

I then had to be the bad guy and tell my client that what his family's long-trusted attorney had told him

“When you have a client in line for a significant inheritance, bequest or gift, talk to him about his marital situation and keep your friendly family lawyer on speed dial.”

was not 100% correct. I started the discussion with my client by saying I would rather have \$300,000 in my name going into a divorce than not. But the inherited money was still considered for equitable distribution of marital property through the divorce process.

Marital property is defined in 23 Pa. C.S.A. Section 3501 as “property acquired by either party during the marriage.” Excluded from the marital estate is property acquired before the marriage and property acquired by gift, bequest, devise or descent. However, the increase in the value of assets, either from the date of marriage for pre-marital assets or from the date of acquisition for assets acquired during the marriage, to the time of separation, is considered a marital asset.

In other words, an increase in the value of the nonmarital property is calculated from the date of marriage or the date of acquisition to the time of separation or as close to the date of a hearing on the equitable distribution as possible. Whichever date results in a lesser increase in the value of the assets. This is probably better explained by example. Going back to my client, who inherited the \$300,000 three years before separation, the market increase in those accounts between when he acquired them and when he separated is considered marital property. Thus it is subject to equitable distribution in the divorce. There is the question as to if there should be an additional increase after separation and before the divorce? Technically the further growth is not marital.

The next logical question is, how is a decrease in the value of a nonmarital asset handled? In my example, my client received two accounts totaling \$300,000. If one account experienced an increase and one a decrease, the decrease in the one account would offset the increase in the other. If both accounts decreased in value, the marital asset discussion as to those two accounts ends; there is no offset against another marital asset that may be in my client's name alone, like a 401(k) or other retirement accounts.

A second way inherited wealth is relevant to equitable distribution is found in 23 Pa. C.S.A. Section 3502(a) (3), the separate assets of each party. In simple terms, the treatment of two people dividing a \$1 million marital estate where neither has any significant nonmarital accounts is going to be different from two people dividing up the same estate where one has

\$300,000 in inherited wealth, and the other does not. The inherited \$300,000 may not be on the table for equitable distribution, but it is relevant in terms of who ultimately gets what.

This is true not only for the initial \$300,000 inherited but any market increase as well. While there is not going to be a dollar-for-dollar adjustment to the equitable distribution scheme, the party with the inherited wealth is going to get a few percentage points less in the equitable distribution than the party without because of that party's separate estate. The actual percentage adjustment is tied to the size of the marital estate; in a \$1 million estate, the modification may very well be in the 5% range, while in a \$10 million estate, the adjustment should be closer to 1%, if anything at all.

I always tell clients their inherited wealth may not be subject to equitable distribution but is still relevant to the ultimate resolution. Back to my client with the inherited \$300,000 and the representation from his family's estate attorney, there was technically nothing wrong with the advice he was given; but just keeping the accounts in his name is not the whole story.

So, in closing, is there anything the trusts and estate attorney or the wealth management professional can suggest to better protect his client's inheritance in the event of a divorce? In my example, the amount of inherited wealth and the amount of time between receipt and separation is just three years, so the increase in value is relatively minimal. What if the inherited figure is over \$1 million? That would make a significant impact on equitable distribution. Similarly, an increase in value over a more extended

period could create a substantial increase in the marital component in the inherited accounts.

I am confident estate attorneys and wealth management professionals know to suggest a prenuptial agreement where their client, or the child of their client, is about to enter a marriage where there is a significant disparity of assets between the marrying couple. The Pennsylvania Divorce Code, in 23 Pa. C.S.A. Section 3501(a) (2), allows parties to exclude items from equitable distribution by valid agreement of the parties entered into before, during, or after the marriage, like a prenuptial agreement.

Over the years, I have drafted several, what I refer to as "mid-nuptial agreements," an agreement entered into after marriage and before separation or the death a spouse, for clients. These agreements specifically exclude an asset or classification of assets from equitable distribution. Here is where the well-informed estate attorney or wealth management professional can make a big difference. If presented to the other party appropriately, and some form of consideration is given for the exclusion of the inherited property, as well as an increase in the inherited property's value, a mid-nuptial agreement goes much farther to protect your client's interest in the event of a future divorce. Bottom line, when you have a client in line for a significant inheritance, bequest or gift, talk to him about his marital situation and keep your friendly family lawyer on speed dial. ●