

**PENDING LEGISLATION - ELIMINATION OF EQUITABLE
DISTRIBUTION IN THE STATE OF NEW JERSEY**
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State Senator Gerald Cardinal of Bergen County introduced Senate Bill #2157 on February 26, 2001 establishing community property and eliminating equitable distribution upon the entry of a final judgment of divorce, effectively repealing Section 4 of the existing statute.

Presently, New Jersey employs a system known as equitable distribution. Pursuant to this system, property is divided by the court on the basis of equity and fairness. Frequently, the application of equitable distribution does not result in the equal division of marital property. By contrast, under the community property system, property or assets acquired by either spouse during the marriage belong equally to both spouses and are split 50-50 upon divorce, in the absence of a pre-nuptial agreement to the contrary.

Consistent with existing legislation, the Bill provides that community property does not include property owned by the person before a marriage, property acquired by the person after the marriage by gift, bequest, devise or decent, or rent and profits of such property. Under the Bill, married couples may convert community property to separate property subject to all laws governing fraudulent transfers. The Bill also provides that married couples are jointly obligated to pay joint debts. However, if a married person's earnings are kept separate and apart from his or her spouse's monies, in a separate bank account to which the spouse has no right to withdraw, these earnings are not applied to community debts.

One of the primary rationales offered by the sponsor concerns the treatment of assets potentially subject to capital gains taxes. In equitable distribution jurisdictions like New Jersey, if one spouse dies and the primary residence home has increased in value during the marriage, the surviving spouse who wishes to sell the house will owe capital gains taxes computed on the entire increase in the value of the house since it was purchased. However, the IRS computes capital gains in community property as if the home had been owned completely by the deceased spouse and then inherited by the surviving spouse. The IRS uses a special adjusted basis rule in these states, which treats the surviving spouse as if he or she had paid the current fair market value for the house as of the date of the spouse's death. This can result in the surviving spouse not owing any capital gains tax at all.

The Bill is presently under consideration in the 209th Legislature. Copies of the bill are available through Legislative Services at 1-800-792-8630.