

distribution, the court also has broad discretion to consider the case's most salient facts. The Supreme Court of the Virgin Islands further refined the court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean "equal," only "equitable." 33 V.I.C. § 2305(d).

**2. Property § 15.05--Homestead--Generally** A homestead is defined as the abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges. Although the Virgin Islands Code does not expressly define a marital homestead, both the United States Court of Appeals for the Third Circuit and the Appellate Division of the United States District Court for the Virgin Islands have interpreted the applicable statute to hold that a "marital homestead" is any homestead in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses. 33 V.I.C. § 2305(a), (c).

**3. Property § 15.30--Homestead--Divorce** When the divorcing parties had lived in the marital homestead for 7 years of their 21-year marriage, the husband's mother occupied an apartment on the property, the wife had the means to secure alternative housing and had not shown the need or desire to remain there, and the husband had acquired the **[\*\*14]** property from his mother, the husband was awarded possession, minus an award to the wife for her interest and contributions. 33 V.I.C. § 2305.

**4. Divorce § 11.50--Division of Property--Power of Court** The court may distribute personal property in accordance with the statute governing final orders in divorce cases. However, the statute does not define marital property. Whether an asset is marital property or separate property for purposes of distribution of the marital estate is a matter reserved to the sound discretion of the trial court. Once these distinctions have been made, the trial judge has broad equitable powers in disposing of marital property. 16 V.I.C. § 109.

**5. Divorce § 11.70--Division of Property--Types of Property Interests** Although not specifically defined, marital property has been construed to encompass any property which the couple acquired during the marriage and which is subject to equitable distribution upon divorce.

**6. Divorce § 11.45--Division of Property--Pensions** Considering the tremendous statutory examples and case law from other jurisdictions holding pension funds as marital property, the Virgin Islands has determined that a pension fund is marital personal property, subject to claim by the other spouse upon divorce. To the extent earned during the marriage, the pension benefits represent compensation for marital effort and are substitutes for current earnings which would have increased the marital standard of living or would have been converted into other assets divisible at dissolution. Subjecting the benefits to division is just, because in most cases the retirement benefits constitute the most valuable asset the couple has acquired and they both have relied upon their pension payments for security in their older years.

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