

## My Adult Child is Getting Divorced, So Why Am I Being Asked About My Assets?

By Marisa W. Higgins, Esq.

When their child is getting divorced, most parents are appalled to learn that the state of Massachusetts, unlike other states, allows the court to consider the future inheritance of a divorcing spouse when determining how to divide the marital estate. Although a future expectancy of an inheritance is not divisible in a divorce, “the opportunity of each for future acquisition of capital assets and income” is one factor, among many, that the court weighs in the process of equitable distribution. G.L. c. 208, sec. 34.

In order to determine a party’s opportunity to acquire assets and income in the future, it is common for parents (and even grandparents or aunts/uncles) to be asked to provide information regarding their estate plan and their net worth in the context of their child’s divorce. Often, when the parents learn they must produce this information, they are outraged; their child may not even know what their estate plan provides or what they’re worth, and now they need to turn this information over to their soon-to-be ex-daughter-in-law or ex-son-in-law. What about their right to privacy? After all, this isn’t their divorce; it’s their child’s divorce.

To balance one spouse’s right to know about his or her spouse’s opportunity to acquire future capital assets and income against the parents’ right to keep their estate plan and their financial and personal documents confidential, the Supreme Judicial Court has created a compromise in the form of a Vaughan Affidavit.<sup>1</sup> Rather than subjecting the parents to document production and a deposition during which they are questioned

<sup>1</sup>The Vaughan Affidavit was first recognized in the case of *Vaughan v. Vaughan*, SJC Single Justice, No. 91-485 (1991) (unpublished).

at length about their estate plan, their assets and their liabilities, the parents may prepare a Vaughan Affidavit containing the following information:

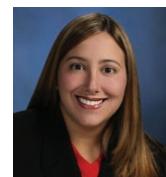
1. their approximate total net worth;
2. a general description of their current estate plans and wills; and
3. the date, if any, when their estate plans and wills were last amended.

A Vaughan Affidavit can be an important tool in determining how assets currently owned by the parties should be equitably divided between the parties in a divorce action. The attorneys at Fletcher Tilton PC have confronted this issue many times in our representation of divorce clients and estate planning clients. If you are thinking about divorce, are in the process of divorce or are the parents of a divorcing child, the Domestic Relations Practice Group at Fletcher Tilton PC has the experience and expertise to navigate you through this difficult time.

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