

STOCK OPTION COMPENSATION

By Allen F. Harris
Peterson & Harris
www.petersonharris.com
404-239-0026
October 6, 2008

Employee stock options may constitute a significant marital asset. The options may be considered vested or unvested. The issues for determination is whether the options are marital property and what is the value. In some instances, the transfer from the employee spouse to the non-employee spouse may be restricted. Of course if they are marital, one alternative is simply to exchange them for an equal value in some other marital asset.

In *Salstrom v. Salstrom*, 404 N.W.2d 848 (1987), the Minnesota court recognized that unvested stock options were similar to pension plans and concluded they were marital assets. The Minnesota court noted that "non marital property was property acquired by either spouse before, during or after the existence of their marriage. In *Salstrom*, the one stock option was scheduled to vest a year after the marriage dissolved and another was scheduled to vest two years after the marriage dissolution. The court concluded that because a portion of these assets was acquired after entry of the divorce decree, the assets were both marital and non-marital. Likewise, in *DeJesus v. DeJesus*, 90 N.Y.2d 643 (1997), the New York Court of Appeals determined that stock options were marital property when the options are granted during the marriage but vest after dissolution if the options are compensation for work done during the marriage. Courts in other states have held that stock options unvested at the end of the marriage are not marital property. *See, e.g. Hann v. Hann*, 655 N.E.2d 566 (Ind. App. 1995); *Ettinger v. Ettinger*, 637 P.2d 63 (Okla. 1981); *Hall v. Hall*, 363 S.E.2d 189 (N.C. 1987).

In Georgia, unvested retirement benefits acquired during the marriage are marital property. *Taylor v. Taylor*, 283 Ga. 63 (2008). In *Andrews v. Whitaker*, 265 Ga. 76, 453 S.E.2d 735 (1995), the court in finding that the retirement benefits were marital property noted that marital property is property acquired from the labor and investments of the parties during the course of the marriage. Since the retirement benefits constitute deferred compensation for services rendered during the term of the employment and during the course of the marriage, such benefits are subject to equitable division. *Andrew*, 265 Ga. at 77. Presumably, the Georgia courts would consider unvested stock options acquired during the marriage to be marital property in the same manner as retirement benefits.