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## Massachusetts' Unique Treatment of Future Inheritances in Divorce Cases

***Massachusetts stands alone in forcing parents and family members of divorcing spouses to disclose their estate plans.***

Massachusetts follows the principle of equitable distribution in divorce cases, meaning that [marital property is divided](#) fairly but not necessarily equally. Under [Massachusetts General Laws Chapter 208, Section 34](#), judges are required to consider multiple factors, including the length of the marriage, the conduct of the parties, etc. One unique aspect of Massachusetts law is its consideration of a spouse's "opportunity for future acquisition of capital assets and income." This forward-looking approach influences the division of marital assets by considering a spouse's potential future financial prospects, including potential future inheritance.



Massachusetts courts have long interpreted this provision of Section 34 to allow consideration of a spouse's potential future inheritance as part of the broader assessment of future financial opportunities. This does not mean Massachusetts judges have the authority to directly assign a portion of a future inheritance to a former spouse. As discussed in Attorney Nicole Levy's blog, [Courts generally do not divide "expectancy interests,"](#) such as a spouse's potential inheritance of family wealth, because these interests are too uncertain and difficult to quantify. An inheritance under a will is considered an expectancy interest because the person making the will can change or revoke it at any time while an individual remains alive, or their financial situation may change before they pass away. As a result, any claim to assets under a living person's will is speculative and not subject to division in a divorce. Notably, while future inheritances are classified as "expectancy interests" and thus not subject to direct

division, they influence the allocation of marital assets. For instance, a spouse [likely to receive a significant inheritance](#) may be awarded a smaller percentage of the marital estate.

### **Discovering Future Inheritances in Massachusetts: Vaughan Affidavits**

As result of this provision, evidence relating to a potential future inheritance of a spouse is considerable discoverable, meaning that the parents or relatives (or other third parties) of a divorcing spouse may be subject to a subpoena or deposition to determine whether the third party has named the spouse in their estate plan. To navigate the complexities of assessing potential future inheritances, Massachusetts courts have developed the “[Vaughan Affidavit](#)” as a discovery tool.

The Vaughn affidavit emerged from the 1990 divorce case of Allan and Elizabeth Vaughan, where the court balanced the need for information about a spouse's prospective inheritance against the privacy rights of third parties, such as the spouse's parents. See [Vaughan v. Vaughan \(1990\)](#).

Instead of producing detailed financials, the Court allowed the Vaughan parents to submit an affidavit stating:

1. An approximate statement of the affiant's current total net worth
2. A general description of their current estate plan and wills.
3. The date of the most recent amendment to their estate plan or wills.

Vaughan affidavits are now the standard in Massachusetts. A Vaughan Affidavit is a substitute for a deposition or subpoena response from a third party, typically a relative of a divorcing spouse. The affidavit is designed to provide relevant information regarding the potential future inheritance without the need for formal in-person testimony. This approach seeks to provide the information required for equitable asset division while respecting the privacy rights of non-parties' financial affairs.

### **Massachusetts is the Only State that Allows Discovery for Spouses' Potential Future Inheritances**

Like other states, Massachusetts treats future inheritances as “[expectancy interests](#)” that are not subject to division. However, Massachusetts may consider the [possibility of a future inheritance](#) (e.g. the likelihood that one spouse will later receive a significant inheritance) as a [factor](#) in determining the equitable division of marital assets. Other equitable distribution states generally do not consider potential future inheritances in divorce proceedings. The prevailing view is that an expected inheritance constitutes a mere expectancy, lacking the certainty required to be included in asset division. Massachusetts is unique in permitting this level of discovery.

Most states do not specifically utilize discovery of future inheritances like Massachusetts does with Vaughn affidavits. Vaughn affidavits are relatively unique to Massachusetts family law and are used in divorce cases to disclose potential future inheritances that may impact alimony or property division.

In other states, rules on disclosing future inheritances vary:

- Some states consider future inheritances too speculative to require disclosure, as they are contingent on uncertain events (like the death of a relative).
- Other states may require disclosure if the inheritance is more certain, such as when a person is a [vested beneficiary of a trust](#).

For example:

- **Connecticut** treats future inheritances as non-marital property and not subject to discovery unless there is clear evidence that the inheritance has already been received. Connecticut courts have occasionally included provisions in final divorce orders stating that if a litigant later acquires an inheritance or receives a gift, this newly acquired property could justify modifying an alimony order if it is appropriate to consider the new financial resources. See [CT Gen. Stat. sec. 46b-81](#).
- In **New York**, discovery into potential future inheritances is generally not permitted. Courts have consistently held that future inheritances are mere expectancies and not relevant to the equitable distribution of marital assets ([Fields v. Fields, 15 N.Y.3d 158 \(2010\)](#)).
- Similarly, [Florida](#) courts do not allow discovery of potential future inheritances.

Concerning discovery, most states refrain from allowing inquiries into third parties' estate plans during divorce proceedings. The Vaughan Affidavit is relatively unique to Massachusetts, reflecting the state's distinctive legal framework that mandates consideration of a spouse's opportunity for future acquisition of assets. In other jurisdictions, such discovery is deemed intrusive and irrelevant, given that potential inheritances are not factored into the division of marital property.

The uniqueness of Massachusetts' approach raises practical considerations, mainly when dealing with out-of-state parties. If a divorcing spouse in Massachusetts seeks to depose a relative of the other spouse who resides in another state, the enforceability of such discovery requests becomes complex. The out-of-state relative may challenge the subpoena, arguing that their state's laws do not recognize the relevance of potential future inheritances in divorce proceedings. Consequently, Massachusetts courts may lack jurisdiction to compel compliance, and the requesting party might need assistance

from courts in the relative's home state, where the discovery request could face legal obstacles.

When a Massachusetts spouse seeks to depose a relative residing in another state, issues of jurisdiction and enforceability arise. Generally, Massachusetts courts rely on the Uniform Interstate Depositions and Discovery Act (UIDDA), which facilitates out-of-state depositions. However, the willingness of courts in other states to enforce subpoenas related to future inheritance discovery may vary, especially in jurisdictions where such discovery is not customary.

### **Every Other State Protects the Estate Plans of Parents and Family Members in Divorce Cases**

In summary, Massachusetts' consideration of potential future inheritances and the use of Vaughan Affidavits in divorce proceedings are distinctive features not commonly found in other equitable distribution states. Most states refrain from allowing inquiries into third parties' estate plans during divorce proceedings. The Vaughan Affidavit is relatively unique to Massachusetts, reflecting the state's distinctive legal framework that mandates consideration of a spouse's opportunity for future acquisition of assets. In other jurisdictions, such discovery would typically be deemed intrusive and irrelevant, given that potential inheritances are not factored into the division of marital property. This approach underscores the state's commitment to a comprehensive assessment of each party's financial prospects to achieve an equitable asset division.

Although Massachusetts treats future inheritances as "expectancy interests," which are not subject to division in a divorce, Massachusetts may consider the likelihood of a future inheritance (e.g., the probability that one spouse will later receive a substantial inheritance) as a [factor](#) in determining the equitable division of marital assets. In contrast, other equitable distribution states generally do not consider potential future inheritances during divorce proceedings. The prevailing view is that an expected inheritance constitutes a mere expectancy, lacking the certainty needed to be factored into asset division. Massachusetts, however, stands out by permitting this level of discovery.

Regarding discovery, most states do not utilize future inheritance disclosure in the same way as Massachusetts. The Vaughan Affidavit, unique to Massachusetts family law, is used in divorce cases to disclose potential future inheritances that could impact alimony or property division. This approach is not common in other states, where rules for disclosing future inheritances vary:

- **Some states** consider future inheritances too speculative to require disclosure, as they are contingent on uncertain events, such as a relative's death.

- **Other states** may require disclosure if the inheritance is more certain, such as when a person is a vested beneficiary of a trust.

For example:

- **Connecticut** treats future inheritances as non-marital property and generally does not require discovery unless there is clear evidence the inheritance has already been received. However, Connecticut courts may include provisions in final divorce orders stating that if a litigant acquires an inheritance or receives a gift later, the newly acquired property could justify modifying an alimony order. See [CT Gen. Stat. sec. 46b-81](#).
- **New York** typically does not allow discovery of potential future inheritances. Courts have consistently held that future inheritances are mere expectancies and irrelevant to the equitable distribution of marital assets ([Fields v. Fields, 15 N.Y.3d 158 \(2010\)](#)).
- **Florida** courts also do not allow discovery of potential future inheritances. See [Florida Bar Journal “Protecting An Inheritance In the Event of Divorce”](#).

Regarding [discovery practices](#), most states do not allow inquiries into third parties' estate plans during divorce proceedings. The Vaughan Affidavit is a distinctive feature of Massachusetts, reflecting the state's unique legal framework that considers a spouse's potential for future acquisition of assets. In other jurisdictions, such discovery would typically be deemed intrusive and irrelevant, given that potential inheritances are not factored into marital property division.

### **Will Other States Enforce a Massachusetts Subpoena for Inheritance Records?**

Massachusetts' unique approach raises practical concerns, especially when dealing with out-of-state parties. If a divorcing spouse in Massachusetts seeks to depose a relative of the other spouse who resides in another state, the enforceability of such discovery requests can be complicated. The out-of-state relative may challenge the subpoena, arguing that their state does not recognize the relevance of potential future inheritances in divorce proceedings. As a result, Massachusetts courts may lack jurisdiction to compel compliance, and the requesting party may need assistance from courts in the relative's home state, where the discovery request could face legal challenges. Typically, Massachusetts courts rely on the [Uniform Interstate Depositions and Discovery Act \(UIDDA\)](#) to facilitate out-of-state depositions. However, the willingness of courts in other states to enforce subpoenas related to future inheritance discovery may vary, especially in jurisdictions where such discovery is not standard practice.

In summary, Massachusetts' consideration of potential future inheritances and the use of Vaughan Affidavits in divorce proceedings are distinctive features that set the state apart from other equitable distribution states. Most states refrain from allowing inquiries into third parties' estate plans during divorce proceedings, and the Vaughan Affidavit reflects Massachusetts' distinctive legal framework that considers a spouse's opportunity for future asset acquisition. In other jurisdictions, such discovery is often viewed as intrusive and irrelevant, as potential inheritances are not factored into the division of marital property. This approach highlights Massachusetts' commitment to ensuring a comprehensive evaluation of each party's financial prospects for achieving an equitable division of assets.

**About the Author:** [Moriah J. King](#) is a Massachusetts divorce lawyer and family law attorney for Lynch & Owens, located in Hingham, Massachusetts and East Sandwich, Massachusetts.

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