NAVIGATING RESTRICTED STOCK UNITS (RSUs)

Key Insights For Divorce Attorneys – February 13, 2026

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Restricted Stock Units (RSUs) Agenda

1. The fundamentals of RSUs and how they differ from shares of stock
2. Key documents to request and review when dealing with RSUs
3. *DeJesus v. DeJesus* Court of Appeals Case and its application to determine the marital and non-marital portions of RSUs
4. The valuation, taxation and division of RSUs
5. Tracing issues concerning RSUs from date of commencement through current date/date of trial
6. Q&A

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What are Restricted Stock Units (RSUs)?

"**Restricted Stock Units** are nothing other than a promise to give an employee a set number of shares of the company stock ***at some point in the future.*** When given, these have zero value because an employee might leave before the shares vest." - Forbes

- **Employee recipient of RSUs must remain in the employ of the Company and earn them over time**
- **Generally, RSUs are not transferrable at all (including to spouses, children or trusts)**

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Restricted Stock Units – Definitions

Grant/Grant Date – Grant refers to the Company awarding RSU's to an employee. Grant Date refers to the date that RSUs are awarded to the employee subject to terms and conditions of the company's stock plan and generally have a vesting schedule. Employee has no rights to the shares at grant date.

Stock Plan – Company document that reflects its intentions with regard to granting of stock-based awards and other equity awards to its employees.

Vesting – Moment in time when the RSUs restrictions are lifted and the employee actually receives shares of the Company's stock with all of its rights and privileges like any other shareholder (restrictions, such as holding periods, may apply).

Vesting Schedule – Sets forth the timing of when RSUs will vest over a period of months/years. Employee must be employed by the company on each vest date in order to receive the shares.

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Example of Monthly Vesting Schedule over 12 months

RSU's Granted			1,200
Grant Date			1/1/2023
Monthly Vesting After One Year			
Vest Date		Proportion Vesting	Shares Vesting
1/1/2024		1/12	100
2/1/2024		1/12	100
3/1/2024		1/12	100
4/1/2024		1/12	100
5/1/2024		1/12	100
6/1/2024		1/12	100
7/1/2024		1/12	100
8/1/2024		1/12	100
9/1/2024		1/12	100
10/1/2024		1/12	100
11/1/2024		1/12	100
12/1/2024		1/12	100
Total			1200

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Example of Annual Vesting Schedule over 4 Years

RSU's Granted			1,200
Grant Date			1/1/2023
Annual Vesting After One Year Over 4 Years			
Vest Date		Proportion Vesting	Shares Vesting
1/1/2024		1/4	300
1/1/2025		1/4	300
1/1/2026		1/4	300
1/1/2027		1/4	300
Total			**1200**

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Sample of Companies that Commonly Issue RSUs

* Amazon
* Uber
* Verizon
* Microsoft
* IBM
* LinkedIn
* Google
* Apple
* Bank of America
* Starbucks
* Facebook
* Airbnb

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RSU Documents to Request

1. RSU Grant/Award Letter/Notice/Agreement issued by Company to Employee

   - Document should reflect (1) Employee name; (2) Grant Date; (3) Number of RSUs granted; (4) Vesting schedule

2. RSU Company Agreement
3. Company Stock Plan
4. Statements reflecting vesting of all vested RSUs and current statements reflecting status of all RSU grants (vested and unvested).
5. Brokerage account statements reflecting receipt of vested shares from first vest date to current date

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DeJesus v. DeJesus (NY Court of Appeals - 1997)

"The issue of this appeal is whether and to what extent an interest in restricted stock and stock option benefit plans provided by a spouse's employer constitutes marital property for the purposes of equitable distribution, where the plans come into being during the marriage but are contingent on the spouse's continued employment with the company after the divorce."

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DeJesus v. DeJesus (NY Court of Appeals)

FACTS

1. Husband was an employee with Astoria Financial Corporation
2. Date of Marriage – 10/14/1979; Date of Commencement – 7/30/1994
3. About 8+ months before DOC, on November 18, 1993 (Grant Date) Astoria grants to the husband 3,053 Incentive Stock Options (ISOP) and 2,036 Restricted Stock Units under its Recognition and Retention Plan (RRP)
4. Vesting Dates of the 3,053 ISOPs and 2036 RSUs – three equal annual installments on January 10, 1997, 1998 and 1999

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DeJesus v. DeJesus (NY Court of Appeals)

FACTS

Both the ISOPs and RSUs "were contingent on the husband's continued employment with Astoria and both were described as "incentive" for corporate officers"

Footnote 1 in the decision – "The ISOP has as its stated purpose "to advance the interests of the Company by providing incentives to key employees of the Company and its Affiliates . . . in the form of opportunities for stock ownership in the Company[.]" The RRP has as its stated purpose "to provide officers of the Association and its affiliates an incentive to achieve the long-term objectives of the Association by providing such key personnel with a proprietary interest in Astoria Financial Corporation".

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DeJesus v. DeJesus (NY Court of Appeals)

Trial Court's Decision

"while the husband's rights to the stock plans do not mature immediately and may never mature, depending on whether defendant continues in employment, they are tangible benefits which were bestowed on defendant during the marriage"

"Consequently, the trial court deemed all of the stock plans marital property, to be divided equally, with the husband to serve as constructive trustee of the wife's shares as they vest.'

Basis for Husband's Appeal

"The husband appealed, arguing that, since his interest in the stock plans would not vest until several years after the commencement of the matrimonial action, it was error for the trial court to determine that the whole of both plans was marital property. Rather, he argued, the marital portion of the stock plans should have been determined using a time rule, similar conceptually to that enunciated by this Court in the context of pension rights in *Majauskas v Majauskas (61 NY2d 481)*"

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DeJesus v. DeJesus (NY Court of Appeals)

Court of Appeals Analysis

"In deciding upon and applying a rule for the equitable distribution of these stock plans, we must be guided by the **statutory presumption that all property, unless clearly separate, is deemed marital property and must further recognize the titled spouse's burden to rebut that presumption."**

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DeJesus v. DeJesus (NY Court of Appeals)

Process to Determine Marital and Non-Marital Components

First determine "based on competent evidence", whether and to what extent the stock plans were granted either:

(1) as compensation for past services

OR

(2) as incentive for future services

Relevant factors to determine if grant was for past or future services include:

(1) whether the stock plans are offered as a bonus or as an alternative to fixed salary

(2) whether the value or quantity of the employees' shares is tied to future performance

(3) whether the plan is being used to attract key personnel from other companies.

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DeJesus v. DeJesus (NY Court of Appeals)

How to determine if grants were for past or future services

- **Requires careful reading by Counsel of the Company Stock Plan, RSU Company Agreement and the RSU Grant/Award Letter/Notice/Agreement issued by Company to Employee**
- May require interviews/depositions of employee spouse and key personnel with Company who are familiar with Company Stock Plan, RSU Agreements, and RSU Grant Award Letters and reasons why RSUs were granted to the employee spouse
- Generally, companies require an employees to remain in employment and to be employed on vesting date(s) in order for RSUs to vest to the employee (general exception – death of employee, and in some instances disability and termination without cause)

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For RSUs Granted for Past Services

Coverture formula to determine marital share:

(Numerator) Time from later of beginning of titled spouse's employment OR the beginning of the marriage until the date of grant

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(Denominator) Time from the beginning of the titled spouse's employment until the date of the grant

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For RSUs Granted for Incentive for Future Services

Coverture formula to determine marital share:

(Numerator) Time from the date of grant until the end of the marriage (earlier of the date of the separation agreement or date of commencement)

(Denominator) Time from the date of the grant until the date the stock plan matures (vests)

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DeJesus v. DeJesus (NY Court of Appeals)

Date of Action:	4/18/2022								
				(Numerator)	(Denominator)				
Grant Date	Units Granted	Vesting Date	Vesting Units	Date of Grant to Date of Action	Date of Grant to Vesting Date	% Marital	% Non-Marital	Pre-tax Shares Marital	Pre-tax Shares Non-Marital
01/03/22	1,200.00	01/25/23	100.00	105	387	27.1%	72.9%	27.13	72.87
		02/25/23	100.00	105	418	25.1%	74.9%	25.12	74.88
		03/25/23	100.00	105	446	23.5%	76.5%	23.54	76.46
		04/25/23	100.00	105	477	22.0%	78.0%	22.01	77.99
		05/25/23	100.00	105	507	20.7%	79.3%	20.71	79.29
		06/25/23	100.00	105	538	19.5%	80.5%	19.52	80.48
		07/25/23	100.00	105	568	18.5%	81.5%	18.49	81.51
		08/25/23	100.00	105	599	17.5%	82.5%	17.53	82.47
		09/25/23	100.00	105	630	16.7%	83.3%	16.67	83.33
		10/25/23	100.00	105	660	15.9%	84.1%	15.91	84.09
		11/25/23	100.00	105	691	15.2%	84.8%	15.20	84.80
		12/25/23	100.00	105	721	14.6%	85.4%	14.56	85.44
		Total	**1,200.00**				**Total**	**236.38**	**963.62**
								19.7%	*80.3%*

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RSU Sample Calculation – Annual Vesting

Date of Action:	3/22/2023								
				(Numerator)	(Denominator)				
Grant Date	Units Granted	Vesting Date	Vesting Units	Date of Grant to Date of Action	Date of Grant to Vesting Date	% Marital	% Non-Marital	Pre-tax Shares Marital	Pre-tax Shares Non-Marital
02/08/22	**3,000.00**	02/08/23	1,000.00	407	365	100.0%	0.0%	1,000.00	-
		02/08/24	1,000.00	407	730	55.8%	44.2%	557.53	442.47
		02/08/25	1,000.00	407	1,096	37.1%	62.9%	371.35	628.65
		Total	**3,000.00**				**Total**	**1,928.88**	**1,071.12**
								64.3%	*35.7%*

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RSU Tax Treatment

- RSU's are not taxed at grant, they are taxable when they vest
- RSU's are taxed at ordinary income tax rates
- Oftentimes on vesting, employers sell shares on behalf of employee and proceeds are used to pay federal, state and local withholding taxes). Employee receives net shares

Example: 1,000 shares vest

350 shares sold for withholding taxes

650 net shares received by employee into brokerage account

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RSU Sample Calculation – Monthly Vesting (After-Tax)

Date of Action:	4/18/2022								
Grant Date	Units Granted	Vesting Date	Vesting Units	% Marital	% Non-Marital	Pre-tax Shares Marital	Pre-tax Shares Non-Marital	After-tax Shares Marital	After-tax Shares Non-Marital
01/03/22	1,200.00	01/25/23	100.00	27.1%	72.9%	27.13	72.87	17.64	47.36
		02/25/23	100.00	25.1%	74.9%	25.12	74.88	16.33	48.67
		03/25/23	100.00	23.5%	76.5%	23.54	76.46	15.30	49.70
		04/25/23	100.00	22.0%	78.0%	22.01	77.99	14.31	50.69
		05/25/23	100.00	20.7%	79.3%	20.71	79.29	13.46	51.54
		06/25/23	100.00	19.5%	80.5%	19.52	80.48	12.69	52.31
		07/25/23	100.00	18.5%	81.5%	18.49	81.51	12.02	52.98
		08/25/23	100.00	17.5%	82.5%	17.53	82.47	11.39	53.61
		09/25/23	100.00	16.7%	83.3%	16.67	83.33	10.83	54.17
		10/25/23	100.00	15.9%	84.1%	15.91	84.09	10.34	54.66
		11/25/23	100.00	15.2%	84.8%	15.20	84.80	9.88	55.12
		12/25/23	100.00	14.6%	85.4%	14.56	85.44	9.47	55.53
	Total Pre-tax Shares		**1,200.00**		**Total**	**236.38**	**963.62**	**153.65**	**626.35**
	Total After-tax Shares		**780.00**			*19.7%*	*80.3%*	*19.7%*	*80.3%*

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RSU Tracing/Equitable Distribution Issues – Vested RSUs

1. Critical to review all Employee brokerage statements that indicate the account where vested shares were received/deposited
2. Are the vested shares still intact in the account where deposited?
   - Non-titled spouse has been going along for the ride with respect to increase/decrease of vested shares from vest date to current date
   - Ultimately, what gets distributed to non-titled spouse – vested shares or equivalent value in other assets/cash?
3. Have any/all of vested shares been transferred to other accounts? Obtain statements for such accounts.
4. Have any/all of vested shares been sold? Are proceeds still in cash? Where were the proceeds deposited? Have proceeds been reinvested into other investments?

- **Question - Should a stipulation be entered into as soon as practicable after date of commencement that RSUs which vest after the date of commencement through settlement date/date of trial be held intact (i.e., not sold or reinvested)?**

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RSU Tracing/Equitable Distribution Issues – Unvested RSUs

1. Keep in mind that from Date of Commencement to Settlement/Trial Date there is a likelihood that RSUs will continue to vest

   - ***Monitor RSUs that will be vesting during pendency of the divorce with disclosure of employee RSU statements and brokerage account statements***

2. As of Settlement/Trial Date remaining marital unvested RSUs will/may need to be divided as part of Equitable Distribution – Alternatives:

   - ***Value the unvested RSUs based on share price as of Commencement Date/Settlement Date/Trial Date? Which date is proper/appropriate?***
   - ***Given speculation of stock price and possibility that unvested RSUs may never vest, generally distribution "as-if-and-when" of the unvested RSUs that will vest in the future post-Settlement/Trial Date tends to be preferred approach. Future net after-tax RSU's needs to be considered in Settlement Agreement***

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Restricted Stock Units (RSUs)

THANK YOU!

Questions?

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Because our team is highly trained and experienced, we can easily draw upon a wealth of resources and knowledge to meet the specific needs of each of our clients. Focused and reputable, the professionals of KLG are here to help you.

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