

TO DESIGNATE PROPERTY AS MARITAL OR NOT: *That is the Question*

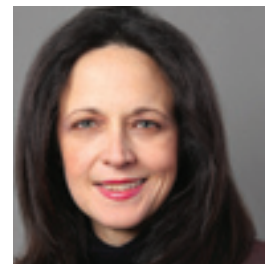


Divorce in the State of Florida involves the equitable distribution of assets between a husband and wife. This means that a spouse's property before the marriage remains his or her respective property, and those assets that have been generated or acquired during the marriage will be divided equally, correct? It depends. Marital property distribution under equitable distribution principles in the State of Florida appears simple, yet in fact, can be quite complex. Unfortunately, many couples do not consider the issues that can change the character of non-marital property to marital property until they are faced with their own marital dissolution. By that time, historical events and actions will serve to shape the treatment of the assets in the distribution of property between the spouses.

The court makes the final decision of how assets will be divided among the spouses. The court considers numerous factors, including assets brought by a spouse into the marriage, assets acquired during the marriage, the length of the marriage, gifts or inheritances received by either spouse during the marriage, and whether these assets were treated as co-mingled. In the loving spirit of "all for one and one for all," many spouses intentionally co-mingle their assets and cash accounts or assets are co-mingled by default when one spouse allows the other spouse to manage the spouses' financial matters. In these cases, spousal claims that pre-marital assets should be considered marital assets by the court will be a challenge for the opposing spouse to contest.

Another complicating factor in the court's designation of assets as non-marital or marital assets involves whether active or passive appreciation has occurred with respect to an individual asset. Simply stated, if asset appreciation for a particular asset is active, this asset will be regarded as marital by the court and will be subject to equitable distribution. Examples of active actions include the payment of expenses from marital cash accounts or the funding of capital improvements from marital cash accounts, or an individual spouse's efforts in providing clerical, accounting, legal or real estate services for a spouse's asset or business interest. Active appreciation of non co-mingled, non-marital assets may be regarded by the court as non-marital assets, yet the active appreciation generated during the marriage may be subject to equitable distribution between the parties. Passive appreciation of non co-mingled, non-marital assets is generally regarded by the court to be non-marital. The most common example of non co-mingled and passive appreciation is the receipt of interest income in a separate bank account in the respective spouse's name arising from a pre-marital bank account or an inheritance.

Property distributions are evaluated by the facts and circumstances that are specific to the particular marriage. An individual spouse should make informed choices in managing and preserving pre-marital assets or gifts so that in the event of marital dissolution, a spouse's claim of pre-marital designation will be the only and compelling choice to be made by the court. ¹



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