

Marital Property:

What's Yours is Mine and What's Mine is Mine

BY MARGARET OLIVER ESQUIRE
OF HODES, PESSIN AND KATZ, P.A.

Marital property can be a confusing concept. Whenever I hear someone say, "I paid for everything during our marriage, s/he never paid for a thing" or "this is mine, it's titled in my name," or, "I only want what is fair," I know that it is time for a crash course in marital property in Maryland.

The Marital Property Act was designed in part to protect women who often were unable to purchase property in their name alone. The Act defines marital property as all property, regardless of how it is titled, that is acquired by one or both parties during the marriage, EXCEPT for inheritance, a gift from a third party, property excluded by a valid agreement or property that is directly traceable to any of these sources. This can include real estate, cars, jewelry, collections, investment accounts, retirement accounts, bank accounts, businesses, life insurance, personal property, Ravens tickets and pets. It does not matter if the property is titled in your name alone, it may still be marital property.

"During the marriage" means from the moment you say, "I do" to the moment the court



courts were given authority to transfer title of real estate or personal property, if the lien holder consents. After determining all the assets and how the assets are titled, the court follows a three-step process to determine: 1) what assets are marital property, 2) the value of the property, and 3) what monetary award must be given to adjust the inequity in the division. Where inequities arise due to distribution by title, courts may give a monetary award to balance the inequity after considering numerous factors. Some of those factors include contributions each party made to the family and the acquisition of property; the value of each party's property interests and financial circumstances; the reason for the break-up of the marriage; length of the marriage; age and health of the parties; and alimony, if any.

clerk enters the divorce decree into the docket. If you are separated, you are continuing to acquire marital property unless you have an agreement that says otherwise.

Pursuant to a divorce, Maryland courts have authority to order the sale of property and a division of the proceeds. Recently, the courts were given authority to transfer title of real estate or personal property, if the lien holder consents. After determining all the assets and how the assets are titled, the court follows a three-step process to determine: 1) what assets are marital property, 2) the value of the property, and 3) what monetary award must be given to adjust the inequity in the division. Where inequities arise due to distribution by title, courts may give a monetary award to balance the inequity after considering numerous factors. Some of those factors include contributions each party made to the family and the acquisition of property; the value of each party's property interests and financial circumstances; the reason for the break-up of the marriage; length of the marriage; age and health of the parties; and alimony, if any.

Maryland favors the identification of property as marital, and often times most property is marital. When disputes arise, the party claiming the property is non-marital must demonstrate the basis for such a claim.

So, how does one protect property that is non-marital from becoming marital? A written prenuptial agreement to exclude property from the marital pool prevents future disputes over this property. Absent such an agreement, good record keeping is an absolute necessity. Carefully record

all gifts, inheritance, or prior acquired property and any transactions involving these assets to directly trace these assets and preserve their non-marital status. An equitable division is not necessarily a 50/50 division, although more often than not things are divided equally.

If you brought property into the marriage or your family gave you assets, those are non-marital and you should take steps to protect them from becoming marital property. Separate non-marital property from marital property. Gift items other than money may be generally identified upon divorce. However, monetary gifts and an inheritance will require a separate bank account titled only in the recipient's name, and these funds must not be co-mingled with marital funds. Once any of these assets are co-mingled with marital property they run the risk of losing their protected status. For example, if you use non-marital funds to renovate the house, your funds have lost their protected status. Whether a spouse works in that business or is a stay-at home spouse, the court may find that the spouse enabled the business owner spouse to work harder to increase the value of the business, and identify a portion of that business as marital property. A stock portfolio brought into the marriage, and kept separate and apart from any marital funds, which increased in value during the course of the marriage solely through stock splits or normal appreciation, will usually retain its non-marital status; however, if one is "managing, buying and selling within the portfolio" it may lose its protected status.

Information and knowledge about marital assets will assist you in understanding possible outcomes should you be going through separation, and enable you and your spouse to keep more of your assets, rather than spend all of your assets fighting in court.

Another exciting topic along these lines is dissipated property, extant property and marital debt, but this will have to wait for another day.



Ms. Oliver is an experienced family law attorney with the law firm of Hodes, Pessin & Katz, P.A. in Columbia, Maryland. Ms. Oliver is the current President of Howard County Collaborative Professionals, Inc. (HCCP), and regularly hosts free seminars on separation and divorce in HPK's Columbia office where she explores the legal issues of separation and divorce. You can find Ms. Oliver on the website at www.hpklegal.com, or reach her at or call her directly at 410-339-5798.

From our Columbia office in Howard County Maryland

Margaret H. Oliver, Esq.

and the Family Law Team at Hodes, Pessin & Katz, P.A. are ready to assist you with all of your domestic legal issues. From divorce to custody disputes to delinquent child support payments, HPK's attorneys have the experience to resolve the issues and to help their clients rebuild their lives and the lives of their families.

HPK
HODES, PESSIN & KATZ, P.A.
Attorneys At Law

For more information please contact:
Margaret H. Oliver, Esq.
410.339.5798 | hpklegal.com
moliver@hpklegal.com

Ask about our free Separation and Divorce Seminars

Towson/Baltimore | Columbia | Bel Air | Cambridge