



Inheriting from the In-Laws

Managing inheritance or any other nonmarital assets can be a complicated task. Unfortunate situations may be avoided with proper planning.

We often have clients that are concerned that the assets they plan to pass on to their child may be passed on to the child's spouse in a divorce. We also encounter clients getting divorced that regret decisions they have made with inherited assets during their marriage. This is an unfortunate situation that may be avoided with proper planning.

Distribution of Marital Assets

Parties to a dissolution of marriage are entitled to equitable distribution of all marital assets and debts. The court must start with the presumption that the distribution shall be equal, meaning that each spouse is entitled to 50% of the marital estate. Only under limited circumstances will the court deviate from equal distribution.

What is a Marital Asset?

To understand whether inheritance is subject to equitable distribution, we must first examine whether it is a marital asset. In general, any asset earned or acquired by either spouse during a marriage is a marital asset. However, an asset of one spouse acquired from a third party by gift, bequest, devise, or descent during the marriage is a nonmarital asset of the recipient. Therefore, if a spouse receives an inheritance, that inheritance is, in general, a nonmarital asset.

Inheritance as a Marital Asset

Although inheritance is by default a nonmarital asset, it can become a marital asset. Inheritance can become a marital asset if it becomes jointly titled. If funds are inherited and placed in a bank account titled in the names of both spouses, it will be presumed to be a marital asset. Likewise, if inherited funds are used to purchase an asset titled in the names of both spouses, it will be presumed to be a marital asset.

Inheritance can also become a marital asset if it is commingled with a marital asset. The most common example of this is inherited funds that are placed in a bank account with marital funds (eg., money earned from employment during the marriage). Once the funds are placed together in a bank account, the funds are mixed and it is impossible to determine the source of each individual dollar. Therefore, the entire account will be considered a marital asset.

Additionally, any increase in the value and appreciation of inheritance during the marriage may be a marital asset. If there is an increase in value of inheritance due to either spouse's efforts during the marriage or due to the contribution or expenditure



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of marital assets, the increase in value is a marital asset and subject to equitable distribution. This appreciation is referred to as active appreciation because it is due to some active conduct to increase the value. Marital efforts may be in the form of simply managing an asset, which includes managing a business or an investment account. Marital efforts may also be in the form of physical labor done to improve the value of a home, for instance. Likewise, the contribution of marital funds to a nonmarital asset (eg., wife's income from employment used to pay for remodel of home she inherited) makes any increase in value due to that contribution a marital asset. The principal inheritance will remain a nonmarital asset, but the increase in value due to marital efforts or contributions will be a marital asset.

The Florida Supreme Court recently ruled that passive appreciation on a nonmarital asset may also be a marital asset. Passive appreciation is the increase in value of an asset that is due to inflation or market condition rather than any efforts of the spouses. Passive appreciation of a nonmarital asset may be marital if marital funds or efforts were used to service the nonmarital asset (eg., earned income used to pay down the mortgage on an inherited home). As with active appreciation as discussed above, the principal inheritance will remain a nonmarital asset, but the increase in value will be a marital asset subject to equitable distribution.

Keeping Inheritance Nonmarital

There are a few ways to protect inheritance and maintain it as a nonmarital asset.

1. Keep it separate. Don't commingle. Inherited assets should be held in the sole name of the spouse that inherited them. No marital money should be commingled with inherited assets, used to service inherited assets or otherwise used to increase the value of the inherited assets. No marital efforts, by either spouse, should be used to increase the value of the inherited assets. Additionally, the income from the inherited asset should not be relied on by the spouses to the extent possible.

2. Pre- or Post-Nuptial Agreement. The most definite way to avoid inheritance or any increase in value thereon being considered marital is by the execution of a pre- or post-nuptial agreement. Such an agreement can be drafted to waive any and all rights to the inheritance, including any increase in value and any income received therefrom. The parties can also waive any rights to rely on the inheritance for purposes of spousal support or alimony. Without a pre- or post-nuptial agreement, nonmarital assets can be considered for alimony purposes.

Managing inheritance or any other nonmarital assets can be a complicated task. Working with a qualified marital and family law attorney to guide you through the process can alleviate some of the stress and allow you to have confidence in your management plan.

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