Reid B. Roberts, Esq.

Family Law Update

Protecting Certain Assets from Divorce

The non-marital nature of the property, however, may be unintentionally converted to "marital property" through innocent conduct. A common example is the spouse who adds the name of his or her partner to the deed of a house owned prior to marriage.

When a Husband and Wife engage in divorce litigation, one of the issues is the allocation of their accumulated assets and liabilities. Whether accomplished by agreement or by judicial decree, assets are distributed to each spouse based upon criteria listed in the Divorce Code.

The property at issue is called "marital property," which is defined as those items acquired between the date of marriage and the date of final separation. The Divorce Code not only defines what "marital property" is, but also specifically delineates what it is not. The key to protecting non-marital assets from the divorce process is understanding the distinction and knowing how to preserve the non-marital characteristic of such property.

Property owned by a spouse before marriage is generally not "marital property" because it was not acquired between marriage and separation. (Note, however, that the increase in value of a non-marital asset occurring during the marriage is marital property). The non-marital nature of the property, however, may be unintentionally converted to "marital property" through innocent conduct. A common example is the spouse who adds the name of his or her partner to the deed of a house owned prior to marriage. Often times this is done for estate planning purposes, with the intent that the survivor would inherit the residence. The problem arises when the parties become embroiled in divorce litigation. A Court may consider the joint deed as the "gifting" of the home to the marital estate, which would make it subject to distribution in the divorce. This concept applies to vehicles, stock, bank accounts and similar assets where ownership is evidenced by title. To avoid an unintended result, the owner of pre-marital property should act carefully when altering a title.

Strassburger McKenna Gutnick & Potter
A Professional Corporation
Attorneys At Law
322 Boulevard of the Allies
Suite 700
Pittsburgh, PA 15222
(412) 281-5423
(412) 281-8264 Fax

...post-separation property may ... unintentionally (be) converted to a marital asset such as when the parties continue to maintain a joint checking account after separation ... There may be legitimate reasons to maintain and fund a joint account after separation, but the ramifications should be carefully considered before doing this.

Like pre-marital property, an asset acquired by one spouse after final separation is generally not "marital property" because it too was not received between marriage and separation. (This exception does not apply if the property was acquired using marital funds). Such post-separation property may also be unintentionally converted to a marital asset such as when the parties continue to maintain a joint checking account after separation, and one or both continue to deposit their paychecks and other monies into the account. There may be legitimate reasons to maintain and fund a joint account after separation, but the ramifications should be carefully considered before doing this.

Even if an asset is acquired between the date of marriage and the date of separation, it will be considered the non-marital property of the recipient if it was given solely to that spouse by a third person. The gift may be anything from a birthday present to a bequest or inheritance. (Gifts between husband and wife are not included in this exception). In order to retain its non-marital character, the asset must remain separate from, and not mixed into the marital estate. For example, if husband's uncle dies and leaves him $10,000, it will remain his non-marital property if it remains segregated. Once it is deposited into a joint account, or used to purchase a vehicle titled in joint name, the money may be considered marital. This issue is particularly important to parents who want to make gifts to a son or daughter but are concerned about the stability of that child's marriage. Careful consideration must be given to how the gift is made and how it is received to keep it out of the martial estate.

The Divorce Code provides eight exceptions to the general definition of "marital property." These exceptions are not absolutes, and a spouse's conduct may permanently change the nature of a non-marital asset. With careful planning the non-marital assets may survive the divorce action, so seek advice before you act.

The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.

©2000 Reid B. Roberts, Esq.