

IN A TENNESSEE DIVORCE, HOW ARE MARITAL ASSETS DIVIDED? MARITAL vs SEPARATE ASSETS: WHICH IS WHICH?

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In Tennessee, the courts have wide discretion on how to divide marital assets to arrive at an equitable distribution between divorcing spouses. The first important step is to determine the “category” of assets—whether they are “marital” property or “separate” property. Tennessee draws a distinction between them because “separate” property is not subject to division in the divorce process (unless, of course, the parties agree on their own that it should be). Let’s look at how the Legislature has defined the categories:

“Separate property” is defined in Tennessee Codes Annotated, T.C.A. §36-4-121(b)(2)...(2001) as:

- (A) All real and personal property owned by a spouse before marriage;
- (B) Property acquired in exchange for property acquired before the marriage;
- (C) Income from and appreciation of property owned by a spouse before marriage except when characterized as “marital property” under the definitions listed later in this article;
- (D) Property acquired by a spouse at any time by gift, bequest, devise, or descent;
- (E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and
- (F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

On the other hand, “marital property” is defined in Tennessee Codes Annotated, T.C.A. § 36-4-121(b)...(2001) as:

(1)(A) ...all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing a complaint for divorce...

(B) ...income from, and any increase in value during the marriage of, property determined to be separate property in accordance with [definitions of separate property above] if each party substantially contributed to its preservation and appreciation, and the value of vested and unvested pension, vested and unvested stock option rights, retirement or other fringe benefits rights relating to employment that accrued during the period of the marriage;

(C)...recovery in personal injury, workers’ compensation, social security disability actions, and other similar actions for the following: wages

lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property.

A spouse cannot rest simply on these legislative definitions of property categories because the courts have recognized that "marital property" can change into "separate property" and "separate property" can change into "marital property," depending on the history of how the property was used and treated during the course of the marriage. These have become known as the doctrines of "transmutation" and "commingling."

Transmutation can occur when the spouses treat separate property in such a way that shows they intended to treat it as marital property. For example, if a spouse uses funds that were separate property (such as from an inheritance) and purchases property with those funds and puts title to the property in joint names of both spouses, those separate funds have "transmuted" into marital property. Also, if a spouse puts title into joint names of husband and wife on property that would have been considered "separate" property, the property can be considered to have "transmuted" into marital property. This "transmutation" is not foolproof. It simply creates a presumption that the spouse intended to change the character of the property, and that presumption can be overcome if there is clear evidence that it was not intended to be so under the circumstances. The court will have to decide the outcome of these issues.

Commingling involves those instances where separate property becomes marital property because the spouses have mixed the separate with the marital property to such extent that it is so entwined with each other as to lose the ability to distinguish the "separate" from the "marital." If the separate property, however, can still be identified, or if it is segregated from the marital property portion, then commingling does not occur.

These two doctrines can come into play, for example, if a wife has inherited a house from her deceased uncle and the house became titled in her name alone. During marriage, she signs a deed creating a joint title with her husband, and they take out a loan secured by the property. Both spouses work and pool their wages into a joint account and pay their bills from the account, including the loan payments on the house. Occasionally, repairs and improvements are made to the house, all paid from their joint bank account. At the time of divorce, if the parties cannot agree how to deal with the house as an asset, the court will have to decide. Although the house started as a "separate" asset of the Wife's, her turning the property title into joint names created a presumption that it became "marital" property, and the doctrine of transmutation may come into play; further, the fact that jointly held monies were used to pay for the loan and repairs and improvements to the house, brings into play the doctrine of commingling where it is difficult to distinguish the separate from the marital portions because they have become so intertwined.

The information in this article is presented for educational purposes only. It is not intended as legal advice. Always consult with a qualified, experienced attorney before making any decisions on how to characterize or allocate marital vs. separate assets in a divorce situation. There are many complications and questions that arise from the interpretation of the legislative guidelines as well as the application of the doctrines mentioned, and the outcome depends on the factual circumstances of each individual case. Family Law Attorney JACK TAPPER is experienced in these matters and can help you through your difficult times in the divorce process. Call to arrange an appointment with him for a consultation at 423-472-9512.

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