

Legal Notes . . .

In continuation of our monthly service to our existing clients, below is a short synopsis of Distribution of Property In Divorces. It is our hope that you will find this informative. Please feel free to share this with family or friends who you think would be interested in the topic.

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Distribution of Property In Divorces

When a married couple divorces, matters relating to custody of children, child support, division of assets and liabilities, spousal support and a myriad of other issues must be either agreed to by the parties or decided by the court.

With regard to distribution of property by the court when the parties cannot agree, Ohio follows an “equitable distribution” rule which holds that the “marital property” (that accumulated by the efforts of one or both of the parties during the marriage) must be distributed in an equitable way to each party after consideration of several factors set forth in Ohio Revised Code Section 3105.171. While the distribution must be equitable, it need not be exactly equal. This rule differs significantly from those states that follow a community property rule, meaning that each spouse owns an undivided one-half of everything, including half the other spouse’s earnings.

Ohio also recognizes that property owned by one party before the marriage or inherited solely by that party is not subject to equitable distribution, provided that it has been kept entirely separate from marital assets or can be traced to the satisfaction of the court. Such property must be distributed to that spouse, unless the court finds circumstances which would justify making a “distributive award” to the other spouse from that separate property because of financial misconduct or the court’s inability to make an equitable distribution of the marital assets. This could happen where one party is keeping a jointly owned house and there is no asset of approximately equal value to distribute to the other spouse.

However, when inherited or separate property such as cash has been commingled by being placed into a joint account with the other spouse or has been spent on maintenance or improvements to jointly held property such as a residence, so that it is no longer traceable, it will be treated as marital property by the court and distributed equitably to each party.

The facts and circumstances of each divorce case are unique and the categorization of property may not be easily determined. Extensive and diligent record keeping can be of great help in assisting your attorney and the court decide whether a specific type of property will be treated as separate or marital property. This brief summary is not intended to be an exhaustive discussion of these complex issues, but rather to generally familiarize you with some of the many factors involved in divorces.

Should you have specific questions you may call Sandra Davis, Paul Hensley or me at 740-654-4141 and we will be happy to discuss them with you.