

DIVIDING UP YOUR ASSETS

BY AUDREY B. SCHNEIDERMAN, ESQ.



YOU ARE GETTING DIVORCED. You're worried about property. How will it be divided?

Q. How is property divided?

A. Florida is what is known as an Equitable Distribution State. That is, there is a presumption of fifty/fifty on all marital assets. However, this is only a presumption. Other factors will be taken into consideration, i.e., contribution of each party, either in its entirety, or in its enhancement, along with the importance of the property to either party.

Q. Is the same true of my home?

A. Yes. The courts will try and equitably divide the home. But no, it's not always the case that the home gets sold and the proceeds divided. Other factors come into play: are there any children living in the home, is the home in a good school district and/or is this home necessary to the lifestyle of either party? Very often, when children are

residing in the home, the judge will postpone selling the home until a more practical time.

Q. What if I owned my house before I was married?

A. If you owned the home and it is still titled in your name, there is a likelihood that it may remain separate property, that is, it will remain your asset. However, if your Husband/Wife has contributed towards the home in any manner, he/she may have an interest in the property. By way of example, if a spouse contributed significantly to mortgage or maintenance, or if he/she physically made improvements to the home, he/she may have a claim in some way. The factors that will be considered are: contribution of each party, along with the enhancement of the property since marriage.

However, if during the marriage, you deeded the home to both you and your spouse, then the property is presumed a gift and most likely will be split.

Q. My spouse and I bought a house when we got married, but it is still titled in my name alone, what happens to the house upon divorce?

A. The house, if purchased during marriage using marital money, is deemed marital property, regardless of how it is titled. What that means is that it is subject to equitable distribution upon divorce. Once appraised, the home will either be sold and the proceeds divided amongst the parties, or one spouse will retain the home depending on the individual circumstances. Nevertheless, the home's value will be accounted for and given due consideration when dividing up all other marital assets.

Q. What happens to my jewelry?

A. Jewelry, like any other asset, bought or exchanged during the marriage is a marital asset and as such, carries a presumption of 50/50 ownership interest. However, often couples will split jewelry according to importance, rather than its individual value. I often hear, "...but, he gave me that bracelet" or "that was a birthday gift." A gift, whether it be for a birthday, Valentine's Day or any other occasion, if given during the marriage, is marital property and is subject to equitable distribution. As such, these items can be split between the parties in some fashion. Alternatively, these items could be sold at liquidation and the proceeds split between the parties. However, very often one of the parties is attached to a particular article of jewelry. In that case, rather than force a sale, if that spouse chooses to keep a piece, the article of jewelry will be accounted for and assigned a monetary value. When dividing the assets in total, the value of that piece of jewelry may be offset by the relinquishment of something else in its place. t

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