Identifying And Dividing Non-Marital Property: A Challenge in Dissolutions

By Edward L. Winer and James J. Vedder

Are you planning to marry and own a business or a professional practice or have other assets that you would want to retain in the event the marriage were to end? Or are you considering a divorce and wish to retain property that you inherited or received as a gift? The resolution of these issues depends upon whether assets are considered to be "marital property" under Minnesota's marriage laws.

If you are not yet married, the issue can usually be resolved in a prenuptial agreement. Such agreements need to be carefully planned and structured, and your spouse should be represented by separate legal counsel. If all of the legal requirements governing such instruments are not met, your prenuptial agreement may not be enforceable.

If you are already married and do not have such an agreement, your efforts to retain property you consider to be yours may present a significant challenge. Minnesota law presumes all property owned during a marriage is "marital" property and must be "equitably" divided. Usually, this requires equal or almost equal value division between the parties. But if you brought the property into the marriage as premarital property, it may qualify as "non-marital" and be exempt from sharing with your spouse. Further, how an asset is titled does not prevent it from being marital or non-marital property subject to division in a dissolution.

What is non-marital property? Property owned prior to marriage, or later acquired property received by inheritance or gift from a third party, certain components of personal injury recovery, increases in the value of non-marital property, and property excluded by valid prenuptial or postnuptial agreements may all qualify.

In some cases, however, an asset may have both marital and non-marital components. For example, if marital funds are used to pay for improvements to property brought into the marriage by one of the parties, or to pay a mortgage against the property, the property could be considered both marital and non-marital. In such a case, the marital and non-marital portions would need to be identified and valued.

Or, if a non-marital asset has increased in value due to efforts made by either spouse during the marriage, the increase in value is usually deemed to be marital. For example, a business brought to the marriage by one party and in which that party works during the marriage would likely be found to be both non-marital and marital. The value at marriage plus appreciation unrelated to a marital effort would likely be non-marital, while growth attributable to marital efforts would be classified as marital property. Accordingly, increases in the value because of marital effort of non-marital property held by one party such as investment accounts, retirement accounts, unvested stock options and pensions may be found to be marital property.

If you face these issues, prenuptial agreements, postnuptial agreements, certain estate planning tools, and other contractual solutions may be available to protect your rights. Members of Moss & Barnett's family law and other practice groups frequently assist clients in addressing these difficult issues.

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