

Is My Inheritance Marital Property?

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It depends. Isn't that a lawyer's answer to just about everything? In Maryland, property acquired by inheritance or gift from a third party or that was owned prior to the marriage is non-marital property. It will not be divided between the parties upon divorce.

However, if the inheritance is commingled, it becomes marital. Understandably, this is a very difficult concept to understand. Many lawyers and even judges have a difficult time "tracing" non-marital assets that may have become commingled. Sometimes, it helps to see some examples. Here are a few:

If the wife inherits \$200,000 from her uncle's estate during the marriage, and she then deposits all of those funds into a separate account in her sole name, and the funds remain in that account until the date of divorce, those funds and any growth on those funds have remained wife's non-marital property. That's the clearest example of non-marital funds remaining non-marital or separate property.

In real life, however, things are usually not that clear. For example, if the wife deposits the funds into a bank account in her sole name, and then uses the funds to pay expenses for the family over the years for vacations, children's schooling, etc., those funds are no longer in existence, and she will not receive credit for having used her non-marital funds for family use. Any funds that remain in the separate account would be non-marital and would continue to be her separate property.

Where this gets complicated and requires "tracing" is when some of the non-marital funds are commingled with marital funds. That can happen if funds acquired during the marriage are deposited into the wife's separate account. The normal growth of the funds, including interest earned on the non-marital funds in the separate account, remains non-marital. However, if any marital funds are deposited into the account, the account loses its non-marital designation, and the entire account may be subject to division as a marital asset.

The visual story goes as follows: if you have a swimming pool that is filled 90% with blue water, and a water truck comes in with green water and puts that into the pool, filling it to the brim, everyone knows that it is 90% blue and 10% green, but the water is now aqua, and the blue cannot be separated from the green. The same is true with cash in a bank account.

Therefore, if one receives a gift or an inheritance during the marriage or has significant funds prior to marriage and wishes to keep them as non-marital or separate property, those funds should be kept separate, and no marital funds, including income, should be deposited into that non-marital account.

Should you have any doubt as to whether or not your inheritance is marital or non-marital, your attorney will be able to help you.

