

Protecting Your New Home During Divorce: What You Need to Know

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When you are separated and going through a divorce, whether in New Jersey or almost anywhere in the United States, you need to be mindful of any assets you acquire prior to a divorce decree being signed by a judge and the entry of an accompanying Order disposing of all marital property.

In New Jersey, property acquired after separation is generally considered non-marital. However, it could be considered marital if the source of funds used to acquire the real estate were marital property (i.e., saved/acquired during the marriage). For example, if you are separated and use funds from a credit union account that accrued during the marriage for a down payment, that condominium would be considered marital property and subject to equitable distribution. This means your spouse could have a claim to the condominium, and any earnings and losses from the investment may also be considered marital and subject to equitable distribution. Using the tracing method, you can determine the origination of the down payment.

To safeguard a post-separation acquisition is not considered marital property, it is best to use only funds earned after separation. Alternatively, if you need to use funds that are part of the marital estate, consult with your counsel and obtain consent from the other party or the Court to use such funds as a credit against your share of equitable distribution before making the purchase. It is important to keep all documentation to trace and demonstrate the source of funds used for the purchase, thereby protecting your post-separation property from any claims by your spouse.

Every case is unique. The information above is generally applicable, but it is important to consult with a seasoned family law attorney in the state in which you live. By taking these precautions, you can better safeguard your post-separation acquisitions and ensure a fair distribution of marital assets during the divorce process.