

So, What About Your Personal Property - Is It Yours?

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Anything that you owned prior to your marriage, that you received through inheritance, or that was a gift to you (not to both of you) during the marriage, is not marital property. It's yours. You can keep it upon divorce, and you do not need to offset the value of those items with anything that is marital. Usually, the engagement ring, since it's given prior to the marriage, is not marital property.

However, jewelry that was purchased during the marriage, even if it was a "gift" to one party from the other, remains marital, and will be divided, or it's value will be offset upon divorce.

Although that's the law, to be frank, very few folks fight over marital property. It is expensive to do that, both financially and emotionally. Usually there is some agreement regarding furniture, home furnishings, artwork, etc.

When the parties cannot agree, there are some options for resolution. Some of the options that have worked for our clients are: flipping a coin, and the winner gets first choice, then alternating until all of the marital property on the list is divided. Another option is that one party prepares two separate lists that "equitably" divide the property, and the other party gets to choose which of the lists is his/her property. Often, the parties attempt mediation, with the understanding that if they are not able to arrive at an agreement after a certain amount of time, the mediator makes the decision, as an arbitrator, and that decision is binding on the parties.

Even when the division of the property that has value has been determined, there usually remains the issue of photographs, videos, movies of the family, etc. Fortunately, almost everything can now be reproduced, so that each of the parties can retain those very important memories. The issue of the cost of reproduction must be addressed. Because it can become very expensive, the parties often agree to share most of the items, rather than reproducing everything. Again, the options, should the parties not be able to agree, may be to resort to the flipping of the coin.

Because physical ownership often determines control, one should either consider removing items that have great sentimental value from the marital home that one would be devastated to lose, or take photos or a video of everything in the house, so that a list can later be made that will include all of the marital personal property. In some cases, a personal property appraiser is required to assess the value of the assets. This is especially true in the case of artwork and antiques. Best advice is to keep a record of all significant items, not only in case of separation and divorce, but also in case of loss due to fire or theft.