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Divorce (Part 5): How the Court Divides Jointly-Owned Property

Hello. Welcome to the Maryland Courts video series on divorce. In this nine-part series, you'll learn about the process used by the court to end a marriage.

This video covers how you and your spouse, or the court, will split up your property in a divorce. How property is defined is important when courts decide who gets what when your marriage ends. We'll go over what the court considers "marital property," "non-marital property," and commingled marital property. We'll introduce you to the Joint Statement of Parties Concerning Marital and Non-Marital Property, and you'll learn about what the courts can and cannot do with your property. Finally, we'll tell you about a special process for pensions and retirement assets.

Even if you and your spouse go to mediation or work out an agreement, you should know how the court will deal with your property in a divorce. That way, you are knowledgeable when you sit down to work out an agreement.

You will be learning a lot of new material, and some of it is quite dense. Consider using the Tip Sheet and taking notes. Let's get started with a definition of marital property.

CHAPTER HEADING FULL SCREEN TEXT: WHAT IS MARITAL PROPERTY

Marital property is property acquired during your marriage, regardless of how it is titled or who paid for it. It may include houses, cars, furniture, appliances, stocks, bonds, jewelry, bank accounts, and retirement plans. It includes property acquired from the date of your marriage until the date your divorce is final. If you or your spouse acquired property during your separation, it is still considered marital property.

Some of your property may be considered non-marital property.

CHAPTER HEADING FULL SCREEN TEXT: WHAT IS CONSIDERED NON-MARITAL PROPERTY

Property you or your spouse acquired before your marriage is non-marital, or separate, property. So are gifts or inheritances made to only you or your spouse. Property directly traceable to non-marital property, such as items purchased with money from an inheritance, is also non-marital property.

Those aren't the only two types of property in a divorce case.

CHAPTER HEADING FULL SCREEN TEXT: OTHER TYPES OF PROPERTY

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Some property may be both marital and non-marital. For instance, if you or your spouse bought a house before marriage, it is non-marital property. But, when marital funds are used to pay the mortgage, your home becomes part marital and part non-marital property.

Commingled marital property is when non-marital property is mixed with marital property. The court may determine that the property is now marital.

When deciding how to distribute property during the divorce process, identify all types of property and debt, and determine your property's value. You and your spouse can decide how to divide your property, or whether one spouse will pay the other a monetary award.

If you and your spouse agree on property distribution, you may submit your agreement to the court. If you do not agree, you must complete a Joint Statement of Parties Concerning Marital and Non-Marital Property.

CHAPTER HEADING FULL SCREEN TEXT: JOINT STATEMENT OF PARTIES CONCERNING MARITAL AND NON-MARITAL PROPERTY

The Joint Statement, or form CC-DR-033, must list all property owned by you, your spouse, and both of you. On the form, you each indicate whether you agree or disagree on what is marital and non-marital property. Submit this form if you and your spouse want to ask the court to determine how your property will be divided.

When the court determines property distribution, it has some limits on what it can do.

CHAPTER HEADING FULL SCREEN TEXT: WHAT THE COURT CAN AND CANNOT DO WITH YOUR PROPERTY

The court can order the sale of joint property such as houses or cars with an equal division of the proceeds of the sale. The court cannot transfer a title from one spouse to the other if the property is owned individually, but it can order one spouse to transfer ownership of your jointly-owned home to the other spouse. Even though the court cannot transfer title, the court can require one party to compensate the other for the value of that item if it is considered marital property. The court cannot transfer debt from one person to another. So, for example, if you took out a car loan in your name only, the court cannot make the other person make those car payments. The court also may transfer interest in a pension or ownership of personal property from one spouse to the other.

CHAPTER HEADING FULL SCREEN TEXT: A WORD ABOUT PENSIONS

Pension or retirement benefits earned during your marriage are marital property. If a portion of the benefit was earned prior to your marriage, it may be considered part marital and part non-marital. One spouse may be eligible for a share of the other's pension or retirement benefit. This is one area of divorce in which you should consult a lawyer. You will need a lawyer's help to evaluate your rights to any retirement benefits and, if eligible, to draft a special court order that will be used to distribute those benefits.

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That was a lot of information. If you and your spouse own significant property, have retirement assets, or own a business, you really should consult with a lawyer. Speak with a lawyer free of charge at the Maryland Courts Self-Help Center. Those lawyers cannot represent you in court, but they can provide brief advice and help with court forms. Call 410-260-1392. The call center is open most weekdays from 8:30 a.m. to 8 p.m. You may also consider finding a lawyer to help with one portion of your divorce case. This is called limited-scope representation.

Let's summarize.

CHAPTER HEADING FULL SCREEN TEXT: SUMMARY

How property is defined is important when courts decide who gets what when your marriage ends. Property acquired during your marriage is marital property. Gifts and inheritances are types of non-marital property. Some property may be both marital and non-marital at the same time, and others are considered commingled marital property. Don't forget to submit a completed Joint Statement of Parties Concerning Marital and Non-Marital Property if you want the court to distribute your property. There are limits to what the court can and cannot do with your property in a divorce. Finally, if you or your spouse have pension or retirement assets, consider speaking with a lawyer

Thanks for watching. On behalf of the Maryland Courts, we hope this information about distribution of property in a divorce case has been helpful.