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Non-Marital Tracing

Marital v. Non-Marital: In a divorce assets are labeled as either marital or non-marital. Before dividing assets in a divorce the parties must determine which are marital and which are non-marital. In Minnesota, whether an asset is marital or non-marital is governed by statutory definitions and whether a piece of non-marital property can be traced.

Marital property can include real estate and personal property and includes property acquired by a married couple or by either one of them at any time during the existence of the marriage prior to the valuation date in the divorce. Non-marital property can include real estate and personal property. It includes property acquired by either spouse before, during, or after the existence of the marriage which is acquired as a gift made to just one spouse, is acquired before the date of the marriage, is acquired in exchange for or is the increase in value of property that is acquired by a spouse after the divorce valuation date or is excluded by a valid antenuptial contract.

If property is marital, it must be split equitably by the parties to a divorce. If property is deemed non-marital, the entire piece of real estate or personal property is awarded to the spouse to whom it belonged prior to the marriage and is not split with the other spouse.

Non-Marital Claims: The spouse making the non-marital claim to a piece of property has the burden to prove by a preponderance of the evidence that the property is non-marital. In order to prove this, the spouse making the non-marital claim must trace the non-marital nature of the property.

Some cases are simple to trace the non-marital nature of the property, such as those where an asset is given as a gift to just one spouse or where the asset clearly existed and belonged to one spouse prior to the date of marriage.

More commonly, cases of non-marital claims are more complicated and involve a non-marital asset that has been co-mingled with marital property. Cases like these often involve a down-payment on real estate, pre-existing real estate that benefits from marital contributions, or investment or retirement funds which are rolled over to which marital funds are added. According to Minnesota case law, non-marital property that has been co-mingled with marital property must be readily traceable in order for a spouse to have a successful non-marital claim.

Unfair Results: In some cases, application of the non-marital property rules leads to unfair results. An example would be if one spouse spent non-marital assets on living expenses and cannot trace the funds to any existing asset while the other spouse spent a comparable amount of non-marital assets on an asset that currently exists and can be traced. In these cases, if the parties are willing to cooperate, the parties can discuss whether they think the applicable non-marital law is fair and agree to drop the non-marital claim or to give each spouse a comparable non-marital claim to an existing asset.

A second scenario where results could be unfair involves a premarital interest in real estate to which marital payments were made, reducing the mortgage principal during the marriage but, due to the declining real estate market, there is now only equity sufficient to cover the premarital interest. In this case, the parties could use the Minnesota Schmitz formula to reach a resolution. A second approach would be to take into consideration both the non-marital and marital contributions and allocate the non-marital and marital interests proportionate to those contributions.