PROPERTY DIVISION IN AN OREGON DIVORCE

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In evaluating how property will be divided in an Oregon divorce case it is important to determine whether the property is “marital property” or a “marital asset.” “Marital property” includes all property owned by either or both of the parties, even if the party was owned by one of the parties prior to the marriage. “Marital assets” include only that property that was acquired by either or both of the parties during the marriage. Even if the property itself was owned by one of the parties prior to the marriage, any increase in the value of that property which occurred during the marriage is a marital asset. This marital property/marital asset distinction is important because there is a presumption that both parties contributed equally to the acquisition of all marital assets (property acquired during the marriage). No such presumption exists for marital property or property of one of the parties which was not acquired during the marriage.

The presumption of equal contribution to all property acquired by either party during the marriage does not necessarily mean that the property is automatically equally divided. However, it will require strong proof that only one party contributed to the acquisition of the asset to overcome this presumption. The fact that one party earned all or most of the money is likely not sufficient to overcome this presumption. Oregon law recognizes that the contribution of a homemaker is equal to that of the one who actually earns the money in the acquisition of any assets.

Further, the fact that the property was received by one party as an inheritance or a gift by itself is not sufficient to overcome the presumption of equal contribution. A party still has to present some evidence, other than the fact that it was given to or inherited by only one of the parties, to prove that the person who gave the money had no intention to benefit both parties to the marriage.

Likewise, the fact that property was owned by one party prior to the marriage and is therefore not a marital asset does not automatically mean that the property will not be divided between the parties. The court has the power to divide any asset owned at the time of the divorce by either party. If the parties have commingled their assets or have planned their future depending on the existence of this asset, it is likely that the court will find that equity requires that it be divided between the parties even if it is not a marital asset. However, equity may require that the party who brought the property to the marriage receive a larger portion of this property.