

# DETERMINING HOW TO DIVIDE MARITAL ASSETS

By K. Dean Kantaras



K. Dean Kantaras, Esq.

**M**ARITAL ASSETS ARE REQUIRED by statute in Florida to be divided equally, unless there is justification to do otherwise. That may seem simple enough, but, unfortunately, it's not. Often dissolution of marriage cases go to trial because the parties can't agree on what the marital assets are, the value of those assets, or whether one or the other of the parties is entitled to more than the statutory fifty percent.

At trial, judges must first determine if there are any assets that are nonmarital; that is, assets which belong to one of the parties because such assets were inherited by that party alone, were gifted to that party from someone other than the spouse, or were acquired by the use of nonmarital assets. If the trial judge finds there are such assets, those assets are "set aside" to the spouse claiming them, and they are not part of the marital estate to be divided by the dissolution judgment.

Debts, as well as assets, may be categorized as nonmarital. Those, too, are reviewed, and the spouse who incurred any such nonmarital debt will be responsible for its payment. For example, school loans are frequently the subject of litigation to determine whether or not they are marital obligation. We can say, in general terms, that a debt created by a spouse prior to marriage will be classified as a nonmarital debt.

Once having determined what portion of the assets are marital, there are still questions to be answered. The reason is that one (or both) of the spouses may be claiming an entitlement to more than fifty-percent of the marital assets. The claim for a special equity or an unequal distribution of assets, because one or the other party believes they have made a greater contribution to the marriage.

There are several situations where one spouse may be entitled to more than half of the assets, one of those being that a spouse may have used separate, nonmarital money for the purchase of, for example, the home in which they have lived. Another reason is that nonmarital funds or assets have been used to improve and increase the value of marital assets. Maybe one of the spouses has contributed substantial labor and materials to the improvement of a home or other marital assets.

Whatever the basis for the claim to more than half of the assets, the legal burden is on the spouse seeking more than half of the assets to prove his or her entitlement. It is a heavy burden, especially if the asset, the home for example, is titled in the joint names of the parties. The reason is that the law presumes that nonmarital

funds used to purchase or improve real property that is jointly titled was a gift from the one who provided the money. Again, the burden is on the claiming spouse to prove no gift was intended. Mere testimony by the claiming spouse that no gift was intended will not carry the day. There must be more. Each case is different but, for example, there may be some note or other agreement signed by the other spouse, or there may have been conversations by the spouses in the presence of friends or family, which would prove there was no intent to make a gift. Assuming the spouse who provided the money to buy or improve marital property can prove no gift was intended, the court may then determine the values to which each spouse is entitled in the asset or assets.

There is case law which directs the court in its quest to establish the respective values to each spouse. The formula is somewhat complicated, but it is understandable and workable. In spite of the many possibilities, most dissolutions of marriage will conclude with the marital assets equally divided. ■■■

---

*EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of The Florida Bar and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor and 1014 U.S. Highway 19 North, Suite 110 in Holiday. He can be reached at (727) 781-0000, fax: (727) 938-3939, and emailed at [kdk@kantaras.com](mailto:kdk@kantaras.com).*