Special Equity

What Does it Mean and How is it Calculated?

By K. Dean Kantaras

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IN THE DISSOLUTION OF A marriage, the division of property is generally one of the major issues. Even though statutes and case law in Florida make it clear that the starting point for dividing assets accumulated during the marriage is fifty-fifty, there are many exceptions. If, for example, one of the spouses owned a home before marriage, but deeds the home into the joint names of the parties after the marriage, the law presumes that a gift was intended. The burden is on the original owner of the property to prove by clear evidence that this was not what was intended. There must be some actual reason in the mind of the original owner to overcome the burden, such as an owner who thought death was imminent and deeded his home into joint names to protect his wife. Here, the court held he had met the burden of proof and found no gift was intended. However, the presumption of a gift is very strong, and it is not easy to overcome. This is one of the ways an unequal division of assets can occur. Another is called "special equity." A special equity in marital property can occur when one of the spouses uses his or her separate, non-marital money or assets to purchase an asset, which is often real estate. It can be any type, from a home in which the spouses live to acreage that is bought for investment only.

Generally, it isn't until the marriage begins to fall apart that much thought is given to these financial moves. However, at that point, the spouse whose funds bought the property will usually claim a special equity, saying, "I want more than one-half of the net value of the property."

Assuming that the facts of the case convince a judge that a special equity is warranted, it must then be calculated by an algebraic formula. In simple terms, a special equity is a share of the value of a property over and above a spouse's automatic one-half interest. It is calculated as one-half the ratio of that spouse's non-marital contribution to the acquisition of the property, as compared to the entire contribution to the property. Expressed in a formula, it is: (.5) (down payment/purchase price) = special equity percentage. For example, it may look like this: (.5) ($225,000/$325,000) = 34.6%. This represents one-half of the down payment ($225,000) divided by the purchase price ($325,000). Or, you can divide $225,000 by $325,000 to equal 69.23%, which would then be divided by 2 to equal the same 34.6%.

If the husband used his funds ($225,000) to purchase the property, he would be entitled to his automatic fifty percent of the value, plus a special equity of 34.6%, or a total of 84.6% of the property, while the wife's interest would only be 15.4%.

If the mortgage on the property is $99,000, it will be paid from the proceeds of the sale, equally by both spouses. If the property were to sell for $384,000, the calculation of the wife's share would be $384,000 (sale price) times 15.4% (the wife's share after calculating the husband's special equity), which equals $59,136. After paying her one-half of the $99,000 (the mortgage) or $49,500, the wife would only net $9,636, which generally is not what the wife had in mind, but that's the way it normally works, unless there are other circumstances and considerations. The law is not always precise or predictable.

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