

Marital Property vs Non-Marital Property

All property owned¹ by you or your spouse, or in which you have any kind of interest, is either marital or non-marital "in character." In some cases, property may even be part marital and part non-marital in character² but courts and the law try to avoid looking at things as grey when they may be reduced to black and white. In Illinois non-marital property is, with a few exceptions,³ all premarital property (all you own free and clear up to the date of your marriage), all property that was received as a gift, or that was inherited. Marital property is everything else that you or your spouse (or both of you together) acquire after you say "I do." If you buy a winning lottery ticket on your way to the wedding ceremony, the prize money is your non-marital property. If you buy the lottery ticket on your way from the chapel to the reception, it is marital property. It's that simple. Likewise marital property earnings, such as rent from an apartment that itself is marital property is marital property.

An individual spouse may own marital property in his or her name alone. In many situations a spouse may, without the consent of the other spouse, dispose of his or her solely-owned, marital property without consequence. In some situations, however, what would otherwise be a legitimate and defensible transfer, may be undone by a divorce court or may bring with it (even years later) a valid claim for damages by the other spouse.⁴ If your case involved transfers of property from the marital estate (every case does) be sure to work with an intelligent, creative, and experienced attorney to examine or defend every significant transaction.

A couple may, at any time – before or after the marriage – agree as to how certain property should be divided. Pre- and post-nuptial agreements can be very flexible, very detailed, and very enforceable. The agreements must, however, follow certain formalities. A poorly crafted or executed pre- or post-nuptial agreement will face very close scrutiny and probably a strong challenge in any divorce. If you're considering a pre- or post-nuptial agreement, work with an experienced family law attorney to make certain that the agreement is effective, enforceable, and not susceptible to an attack.

In Illinois non-marital property can change forms and still retain its non-marital character – as long as the ownership of the property isn't put into some form of co-ownership with the other spouse. For example: you own a car before the marriage. That makes it non-marital property. When you sell the car, the money you receive in the sale is still your non-marital property. If you take the proceeds from the sale and buy a computer, the computer is your non-marital property. If you sell the computer and put the proceeds from that sale into a joint (marital) checking account, you've probably converted the cash into marital property.

This process of defining property as being either marital or non-marital continues until a Judgment for Dissolution is entered – that's the point in time where a judge signs off on the judgment and the case is finally concluded. Many people make the mistake of thinking that property is non-marital if it is acquired after the filing of a divorce case, or after the parties separate. That's not true. Property acquired after your case has been filed is still marital property and that continues to be true until the judge bangs the gavel and says "you're divorced." If you move out of the home and buy a condo and fill it with furniture and artwork, the condo and all its contents are still presumed to be marital property. If you buy a winning lottery ticket on your way out of court right after your case has been finalized, the winnings are yours and yours alone.

Keep in mind that all these rules and definitions result only in presumptions – not conclusions. The court **presumes** property to be either marital or non-marital; and the presumptions may be rebutted by either party with the right kind of evidence.

The court must give all non-marital property to its rightful owner – the court may not divide non-marital property. All marital property and marital property earnings must be divided between the parties equitably – though not necessarily equally. There is no presumption in Illinois that property is to be divided 50 / 50. Indeed, most cases see some property division ratio other than 50 / 50.

To assist you in determining what is marital property and what is non-marital property Illinois Divorce has created a Marital Property Balance Sheet for you to use as a starting point.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.