

Is property gifted to my wife considered marital property?

Thursday, 16 December 2010 00:00



Question:

My in-laws have deeded property to my wife that will transfer to her upon her parents' death.

Since this promise of property was acquired during our marriage, but not yet transferred, would it be considered part of our [marital property](#) ?

Answer:

While I do not practice in Texas and therefore cannot inform you as to the specific laws of your state, [Cordell & Cordell](#) has attorneys who are licensed and located in Texas who would be happy to discuss your case with you.

Generally speaking, property acquired by an individual spouse through gift, bequest, devise or descent is excluded from marital property. This would include the property deeded to your wife by her parents.

However, keep in mind two things: first, any increase in the value of non-marital property occurring during the course of your marriage would be considered marital, and you would be entitled to a portion of that increased value.

Second, if a spouse contributes non-marital property to a joint account, or conveys property into a joint title, the property is presumed to be a gift to the marriage. The legal term for this process is "transmutation." Where transmutation occurs, the asset is presumed to be marital property.

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In your case, I assume that although you say the property has been "deeded," you meant that your wife has an expectancy to receive it, but does not have an actual interest in the property currently.

So, as the title to the property has not even transferred to your wife, neither of you have any claim to it. Upon the death of her parents and the transfer of title, the property would still be considered "non-marital," as it was deeded solely to your wife.

However, should you remain married after your wife obtains her title to the property, any increase in the value of the property during your marriage would be considered marital.

Further, should your wife re-title the property in both of your names this would constitute transmutation; the property would be considered a gift to the marriage and you would share an interest in the property, in its entirety, with your wife.

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