

## NOW THAT MY SPOUSE AND I ARE SEPARATED HOW DOES THAT AFFECT MY MONEY AND OTHER ASSETS?

By: Hottell Family Law Group

After five, ten, or thirty years of marriage, you and/or your spouse have decided to part company, end the marriage, and move on with your respective lives. One spouse has taken the first step in ending the marriage by moving out of the marital home and separating from the other spouse, thus establishing the date of separation. The date of separation is significant in divorce cases for a number of reasons. This article will focus on one of the most significant issues tied to the date of separation: marital property vs. separate property.

Virginia is an equitable distribution state. This means that in a divorce action the court will divide the marital assets between the divorcing parties in a manner that is equitable (but not always equal). A 60/40 split may be an equitable division of the marital assets in a particular case, while a 70/30 split may be equitable in another case. Generally speaking though, the courts tend to look at an equitable division as a 50/50 split of the marital assets.

**How does the court decide how to split the marital assets?** First, the court must determine what assets are marital and what assets are separate. The divorce court in Virginia can only distribute or divide those assets that it classifies as “marital.” The court has no authority to touch assets that are classified as “separate.” However, there is a hybrid classification that may cause some assets to be part marital and part separate. Of these hybrid assets, the court can distribute the part that is marital.

Virginia Code Section 20-107.3(A) defines the terms “marital property,” “separate property,” and “hybrid property (or, part marital and part separate).” Generally speaking, “marital property” is property that was acquired by either party during the marriage (from the date of marriage to the date of separation), *except* if acquired by gift or inheritance from a person other than your spouse. “Separate property,” generally speaking, is defined as property that was acquired either before the marriage (and kept separate) or after the date of separation. Separate property also may include property that was acquired by gift or inheritance during the marriage from a person other than your spouse. “Hybrid property” is property that may have been separate or marital when acquired, but has since been *transmuted* into part marital and part separate. An example of hybrid property is a home that was brought into the marriage by one party (separate), but during the marriage marital assets (income earned during the marriage) were used to pay down the mortgage, thus causing the equity attributed to the contribution of marital assets to be marital property. The definitions now become a bit more complex than what I have laid out in this paragraph and each asset must be reviewed carefully by a competent attorney to determine if a particular asset is likely to be classified as marital, separate, or hybrid. As is the case with many general rules and definitions, there are exceptions and conditions that may require a classification different than what the general rule provides.

After the court determines which assets are marital and the value of the marital assets, the court must then consider the factors set forth at Va. Code § 20-107.3(E) to determine how to equitably distribute the marital assets between the parties. The key factors that usually have the biggest impact on the court’s decision include: the monetary

and non-monetary contributions made by each party to the well being of the family, the monetary and non-monetary contributions in the acquisition, care and maintenance of the marital assets, and the factors and circumstances which led to the break up of the marriage. There are other factors enumerated in the statute, but these are the three that attorneys typically rely upon to try and convince the judge that a 50/50 division is not equitable.

**Now that you are separated from your spouse, what should you do to protect your assets?** Focusing on two specific assets helps with this analysis: (1) income earned after the date of separation; and (2) tangible assets purchased after the date of separation.

Initially you should protect income that you earn after the date of separation, or any money that you receive after separation, by opening a new bank account in your sole name. Once this new account is open, you should deposit all of the money that you receive (from income, gift or inheritance) after the date of separation into this separate bank account—keeping your separate assets segregated. You should not transfer marital funds (i.e. money from a joint account maintained during the marriage with your spouse) into this separate account. If you continue to deposit money into joint accounts after the date of separation then you run the risk of having that money treated by the court as marital property subject to being distributed between you and your spouse. If you fail to segregate your separate assets post-separation, and keep them segregated, then your spouse may be entitled to receive a portion of those assets.

As for tangible assets purchased after the date of separation (cars, houses, furniture, etc.), if they were purchased with marital funds (e.g., income earned before separation or money withdrawn from a joint account) either in whole or in part then you

have probably just ensured that your spouse has an ownership interest in the newly purchased asset. If you do not want your spouse to have any claim on assets purchased after the date of separation then you should use separate assets to purchase the new assets, title them in your sole name (or a third party who is not your spouse), and keep them segregated from other marital assets (do not use marital funds to make payments on a car or house, for instance).

These are just two common examples of how a person can protect their assets received after the date of separation from claims by their spouse. Of course, any attempt to argue that a particular asset is separate as opposed to marital will require you to keep thorough records and documentation to support your argument. By keeping documents such as receipts, settlement statements, copies of checks, check registers, bills of sale, bank account statements, etc., you will make it easier for your attorney and the court to determine whether a particular asset is separate or marital.

This article is intended to discuss the topic of separate and marital assets in general terms, and is not intended as specific legal advice. Each person's case will have distinct issues that may not fit the general rule. The reader should retain the services of a competent domestic relations attorney to discuss the specific property issues in their case.