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## DEBORAH N. DEWALT NEWSLETTER

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### *Helpful Website* [www.socialsecurity.gov](http://www.socialsecurity.gov).

The Social Security website not only provides general information on social security benefits, it also projects benefits based on current data. Benefits that may be important to consider in a divorce, paternity, or third party custody situation are retirement benefits; disability benefits and corresponding dependency benefits; supplemental security income benefits for an impaired adult or child; and survivor's benefits on the death of a parent (dependency benefits) or spouse (surviving spouse and dependency benefits).



### *Books of Interest*

Separation and divorce are good times to keep your focus on your kids' needs and perhaps even improve your parenting skills. Great guides on general parenting skills are: How to Talk So Kids Will Listen and Listen So Kids Will Talk (Elaine Mazlish & Adele Faber; Pub.: Morrow, Williams & Co. 1999), Siblings Without Rivalry (Elaine Mazlish & Adele Faber; Pub.: Morrow, Williams & Co. 1998), Positive Discipline (Jane Nelsen, Pub.: Random House, Inc. 1996), Parents are Teachers Too (Claudia Jones, Pub.: Williamson Publishing 1988).

A common question at the beginning of a divorce is: "Does it make a difference that our house is only in my spouse's name?" In a divorce, the answer is, No. In some other kind of legal matter such as the probate of your spouse's will or a collection lawsuit for a debt you incurred, the answer might be different.

Minnesota divorce statutes direct the Court to look at all property either party owns individually, jointly with his/her spouse, or jointly with someone else. First, the Court determines if each item of property is marital or nonmarital. All property acquired during the marriage is presumed to be marital. Property owned prior to the marriage is nonmarital as is property acquired during the marriage in any of the following ways:

- By gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

- After the valuation date set in a divorce (usually but not always the date of the first pretrial conference in a divorce case);
- Subject to the terms of a valid antenuptial agreement;
- In exchange for or as an increase in the value of property which fits any of the above four categories of nonmarital property.

In determining whether property is marital or nonmarital, the Court may look to the named title owner as one factor. For example, suppose your spouse received a \$5,000 inheritance from an aunt which was deposited in a savings account in only your spouse's name and never put any other money in the account. Now suppose that your spouse put it in your joint savings account to which you have added and withdrawn funds over the years and the current balance is \$1,300. Very likely the Court will find that the savings account in the first example is your spouse's nonmarital property. Very likely it will find that the account is marital property in the second example, because the inheritance was commingled with marital funds so that no one can tell any more which money was used up.

The Court finds certain kinds of assets to be part marital and part non-marital. The most common type of asset that generates a mixed characterization is a house. If one party owned a house before the marriage or used a gift from a third party as a downpayment, any equity existing at the time of these occurrences will be characterized as nonmarital property of that party. And since real estate has been appreciating in recent history, any appreciation since the occurrence of those events will be allocated between nonmarital equity and any subsequently accruing marital equity. Another type of property that Courts commonly will identify as combined marital and nonmarital are retirement assets such as pensions, 401(K), and the like.

The person who claims that property is his/her nonmarital property needs to document or provide other evidence to show why it is nonmarital. If you are sure the property is your spouse's nonmarital, you can simply agree to exclude it from the property division. If you are not sure, you may want to ask to see the evidence that your spouse would use to prove his/her claim.

In general, the Court in a divorce will look beyond the title owner on property to see when and how the property was acquired. Then it will put it either in the marital pot or outside the pot (nonmarital). Marital property is subject to division. Nonmarital property is awarded to its owner except a rare case of undue hardship when up to one-half of it can be awarded to the other spouse.

Summer Office Hours  
Monday – Thursday 9:00 a.m. – 4:30 p.m.  
Friday: 9:00 a.m. – 12 p.m.  
Effective June 6 – September 1