

Mortgage pay-off given as gift affects marital property determination

Written by Australian Business

September 24, 2013 /**24-7PressRelease**/ -- Mortgage pay-off given as gift affects marital property determination

Article provided by Polidori Franklin & Monahan LLC Visit us at <http://www.pfmlaw.com>

Property division in a divorce can be a highly contested issue, particularly where one spouse feels that some asset should be considered non-marital property at the time of the split. This can be especially true with regard to a purported gift.

Generally, under Colorado law, property that is given specifically to one spouse as a gift is considered non-marital property. However, there are some circumstances where such a gift may not belong only to the intended recipient.

A recent Colorado Court of Appeals case, *In re Marriage of Krejci*, provides an example.

A gift of ... a mortgage payment

In this case, the parties had purchased their marital home jointly during the marriage. Both the husband and wife had signed the mortgage documents and were responsible for the payments. Several years into the marriage, the wife's mother paid off the mortgage in full. This payment was made by the mother using a direct transfer to the creditor.

During the divorce proceedings, the wife testified that her mother had intended to make the payment of the mortgage a gift to the wife alone. Shortly after the payoff, the mother had signed a trust instrument that did not mention the husband and described all the prior gifts to the wife as advances on her inheritance. In contrast, the husband testified that the wife and her mother had told him the payment was intended to benefit them both.

The trial court found that because the funds used to pay off the mortgage were part of the wife's inheritance, they were her separate property, and that the marital home should be classified as the wife's separate property to the extent that her mother contributed to the equity by paying off the mortgage during the marriage.

The gift increased the value of a jointly owned asset

In reviewing the decision, the Court of Appeals noted that when a spouse places separate property in joint ownership during a marriage, a presumption that the donor spouse intended a gift to the marriage arises. The gifted property is presumed marital unless there is clear and convincing evidence to the contrary.

Similarly, the court found that this presumption should have been applied to this case, since the gift by a third party--the mother--increased the value of a jointly owned asset--the couple's home.

Thus, the trial court erred by failing to apply this presumption with regard to the mortgage payment, and the allocation of the marital home to the wife could not be upheld as equitable. Accordingly, the case was sent back to the trial court for further proceedings to reconsider the marital component of the equity in the home.

The challenges of property division

During divorce proceedings, the task of determining the correct marital or separate character of property can be a significant undertaking. The high emotions that can be present while facing this life step simply adds to the tension.

A person facing a divorce should seek an attorney who has extensive experience handling complex property division issues, to receive the advice and counsel he or she needs to successfully navigate the dissolution process.