

In Georgia, only property and debts acquired by the parties **during the marriage** are subject to equitable division. Any separate property acquired by either spouse prior to the marriage is not subject to equitable division and remains the separate property of the respective spouses. In addition, separate property can also include property acquired DURING the marriage if it was received by inheritance or a gift. Georgia law regarding separate property is extremely complex and somewhat unsettled. Just proving that an asset was the separate property of one party does not necessarily preclude it from later becoming marital property. Under certain circumstances, a property that once was separate in nature can become marital by the actions of the parties. For example, merely adding the other spouse's name to a deed may cause a piece of real estate to lose its status as separate property and make it marital. Similarly, comingling separate property and marital property may have a similar effect. Several of the most common ways separate property can become marital are described in detail below.

Commingled property is property that was once one spouse's separate or pre-marital property but is now combined with marital property. For more detailed information regarding the distinction between marital and separate or pre-marital property, see our articles entitled "[Marital Property](#)" and "[Separate Property](#)."

For example, if a wife brought \$15,000 worth of separate assets into the marriage and during the course of the marriage she added those funds to the couple's joint bank account or used those assets to support an investment held jointly by the couple, that separate property is now commingled. Once separate property has been commingled with marital property, it is not likely that a judge will distinguish this property from the other marital property upon divorce. However, in certain situations, there may be a way for one spouse to claim commingled as separate funds upon divorce.

The main way one spouse may claim commingled funds as separate upon divorce is a process called "tracing." This process involves following or tracking the separate funds by referring to detailed records like deposit and withdrawal slips, bank statements, and other account information, to show how much of the money is truly marital and how much money is actually separate property. This process is highly complex and most likely will require the assistance of an accountant or other financial expert to trace the funds and testify at trial if necessary.

Because Georgia is an equitable division state, when one spouse's separate property is mixed with the property of the other spouse or the couple's marital property, that separate property becomes relatively indistinguishable. Even if tracing is conducted, there is no guarantee that a court will ultimately make an award that reflects the tracing analysis or award the spouse who commingled his or her separate property the full value of the separate property. In order to ensure that your separate property indeed remains separate in the event of divorce, the best practice would be to maintain a separate account for any separate funds or keep any separate real or personal property titled exclusively in your name. Additionally, consider speaking with your future spouse about entering into a premarital agreement. Or, if you are already married, consider entering into a post-nuptial agreement.

Georgia law recognizes that a spouses non-economic contribution to a marriage might be reflected in an equitable division of property, regardless of the actual legal ownership. See *Stokes v. Stokes*, 246 Ga. 765 (1980); See also *Rooks v. Rooks*, 252 Ga. 11 (1984). In particular, separate property may be deemed (in whole or in part) marital property by the court upon divorce if the value of the property appreciated during the marriage and that appreciation was caused by the efforts of the other spouse. *Halpern v. Halpern*, 256 Ga. 639 (1987).

The key test seems to be one of active v passive appreciation. If the value of certain assets has appreciated, at least in part, by the contributions of either spouse there may be a claim of active appreciation. One of the biggest questions in this regard is in regards to the active appreciation for a business owner. If that company grows and succeeds because of the ideas, leadership and business acumen of the owner, that increase in value is due to active appreciation.

Passive appreciation, on the other hand, is the increase in the value of certain assets due to outside market forces such as supply and demand and inflation. For example, let's say Person A bought a parcel of land 20 years ago. Upon purchase the parcel was worth \$10,000. Over the last 20 years, Person A made no improvements to the land, but the area around that parcel was successfully developed over the past 20 years. Today, due to no efforts on the part of Person A, the parcel is now worth \$100,000. This is passive appreciation.

Georgia is an equitable distribution state. Upon divorce, spouses are not guaranteed an equal split of their marital property. Equitable means fair; and, according to Georgia law, fair does not always mean equal. *Goldstein v. Goldstein*, 262 Ga. 136 (1992). *Fuller v. Fuller*, 621 S.E.2d 419 (Ga. 2005). Generally, equitable distribution does result in the division of the estate 50/50 unless there is a reason to give one spouse a greater portion of the marital property. There is no set formula or calculation used to divide marital property in Georgia. Thus, Georgia judges and juries rely on certain factors and factual determinations in order to determine how... Just because a particular marital asset is titled in one parties name does NOT mean that property item automatically goes to that spouse. Georgia is an equitable division state, not a community property state. As such, Georgia law provides that assets are to be divided equitable (or fairly), but not necessarily...