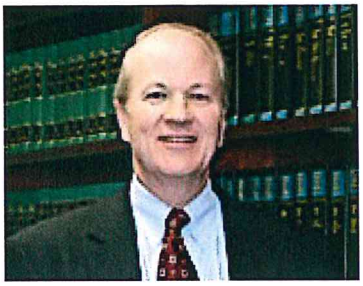
Kahan, Kerensky & Capossela, LLP

Attorney Douglas K. Manion June, 2013



Common Misunderstandings about Divorce and Family Law

We all remember the "telephone" game, where a group of people are sitting in a circle, one person whispers something into the ear of the person next to him/her, and by the time the message makes its way around the circle, the original message has changed dramatically. To a somewhat lesser degree, the same thing often happens with people's understanding of divorce and family law, because many times their understanding is based upon what others have told them. Therefore, I would like to address some of the most common questions and myths which I often find myself explaining to clients during our initial office conference.

My partner and I have been living together for 15 years, we never married, but we have a "common law" marriage.

Not true. There is no "common law" marriage in the State of Connecticut. If two people have lived together for several years, many times they own a home together, as well as an extensive amount of personal property such as household furnishings, motor vehicles and bank accounts, the accumulation of which has been the result of contributions by both parties, which may not have been well documented. When that relationship comes to end, there is no clear cut legal mechanism to address the dissolution of that relationship, and it does not fall under the jurisdiction of the Family Court. These situations create a huge quagmire, with no straight forward path for resolving them.

If the parties cannot reach an agreement, the only way to resolve co-ownership of real estate is through a lawsuit known as a partition action. Partition actions are conducted much like foreclosure actions where the property is sold at a public auction, which in most cases results in the property selling for much less than its fair market value.

The best way to avoid these situations is to address them when the cohabitating relationship begins. If the parties are purchasing real estate together, they should consult an attorney to draw up a co-ownership agreement, which would clearly spell out each party's contribution to the purchase of the real estate, as well as contributions towards on-going payments of the mortgage, taxes, insurance, and other expenses associated with the real estate. Although it may not sound very romantic, the parties should maintain separate finances and keep very good records of how they are sharing joint expenses, as well as how each party is contributing to the accumulation of any other assets.

All of the assets will be divided equally between me and my spouse, because it is all considered "community property".

Once again, not true. Contrary to popular belief, Connecticut is not a "community

property" state. There is no presumption under Connecticut law that all the assets owned by the parties at the time of the divorce will be divided equally between the parties. The division of assets is governed by Connecticut General Statutes Section 46b-81, which states the Court may assign to either the husband or wife, all or any part of the estate of the other. In doing so, the Court shall consider the length of the marriage, the causes for the divorce, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates. As one can see, the Court has a tremendous amount of latitude in determining what is fair and equitable in each case, which may or may not, be an equal division of the assets. Often times, this leads to the third most common misunderstanding.

Inheritances are not included in the assets which are subject to division in a divorce.

Maybe yes, maybe no. There is no statute which addresses inheritances in divorce cases. That being said, there are several factors that are generally considered in determining if an inheritance may be included in the assets subject to division in a divorce. Generally, a recent inheritance, which has remained segregated from all the other assets, and is just in the name of one spouse, will not be considered by the Court. Likewise, an inheritance received 15 years ago, which has been used to make improvements to the marital home, will generally be considered to be a marital asset. The older the inheritance and the greater degree of co-mingling the asset with marital assets, the less likely it is that it will be excluded from the pool of marital assets subject to division by the Court.

Upon filing for divorce, one of the parties must move out of the marital home.

Not necessarily. If both parties own the marital home, the presumption is that both parties have the right to continue to reside in the home he or she owns. That being said, many times the pendency of the divorce case creates an intolerable living situation for both spouses to continue to live together. Through a Motion for Exclusive Possession of the Home, the Court has the authority to order one party out of the home. The Court considers a number of factors in deciding whether or not to enter an Order of Exclusive Possession.

If you, a family member or friend, end up in a situation where it is time to consider whether or not to file for divorce, please contact Attorney Douglas K. Manion to discuss your situation. Attorney Manion is a partner at Kahan, Kerensky & Capossela, LLP. Attorney Manion has been practicing for over 30 years in the areas of Divorce and Family Law, Residential Real Estate, Criminal Defense, and Estate Planning. Attorney Manion serves as a Family Law Special Master for the Superior Court Tolland Judicial District. He is a graduate of the University of Notre Dame and Washburn University School of Law.

You may contact Attorney Manion at (860) 812-1762 or email him at dmanion@kkc-law.com.