Oregon's Anti-Gold Digger Device

In the 2011 legislative session, Oregon lawmakers enacted what I like to call the "Gold Digger Provision" to thwart potential spouses whose undying love is tied to the family fortune of the betrothed.

If, for example, you acquired a business or other property via inheritance during the course of the marriage, and don't have an enforceable pre-nuptial agreement at dissolution, the departing spouse won't necessarily leave with a cut of the proceeds.

The "50-50" Rule for dividing such property at dissolution doesn't apply when the property is s**eparately held** on a continuing basis from the time it is acquired.

Luckily, for people like me, the legislature supported my job security by not defining what "separately held" actually means. (I love Oregon!)

No court case has actually defined the concept either; "Separately acquired" isn't exactly the same: nor does the fact that it may not have been "co-mingled" – not lost nor indistinguishably mixed with other similar assets – seem to embrace the full meaning of the concept. It seems that the intent of the parties in handling the asset helps define separately held. I am reminded that my stingy older brother would not let me play with his plastic frogmen he got for Christmas. He put them in his private toy box and told me to keep my hands off or be pummeled. I understood his intent. But because they were so cool – add baking soda to a small compartment on the foot made them bubble under water like real frogmen– I tried everything. "Butch...I'll guard clean them for you and guard them with my army men if you let me play with them." He wasn't having it.

I don't think he still has them, but while he did, I could not make a single contribution to their maintenance, care, growth, development or use of the frogmen. I would say they were "separately held on a continuing basis from the time of receipt."

If the acquired property includes money, stock or any other potentially **fungible** property–that it can be mixed with other similar property and not be clearly distinguishable in the mix-- a separate account that is not jointly used (or sums used for joint benefit) may qualify as separately held.

A business may be considered separately held if, for example, the non-acquiring spouse does not make any contribution to it–working, planning, funding (or otherwise supporting)-- or derive any

benefits from it – financial or otherwise. The vicarious thrill of watching the frogmen bubble doesn't change the status as "separately held."

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