

You Want My Engagement Ring? It's Mine! No, It's Mine!

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Recently, I read a story on the internet about a New Jersey couple, living in New York, who had broken up. The fiancé refused to return her \$125,000 engagement ring to the ex-boyfriend. The ex-boyfriend has sued his ex-fiancé in New York for its return.

It is true, women do like diamonds and many may think that because the ring was a gift to her, that it is hers. In New Jersey, in the context of engagement and marriage, gifts may or may not have to be returned, depending on when they were given.

Gifts given during the course of the marriage, if they are from third parties such as parents, brothers or sisters or other third parties are not subject to equitable distribution, i.e. not distributed, if the parties divorce. Gifts which spouses give to each other during the marriage (watches, jewelry, art etc.) are subject to equitable distribution and will be allocated between them. The theory behind that is that marital funds were used to buy the inter-spousal gifts, so the gifts should be divided.

Wedding gifts are usually given to the couple, not just to the bride or the groom, before the marriage, and thus, they should be divided between them. Depending on how long after the wedding the divorce takes place, the gift will be returned to the spouse whose friend or relative gave the gift. This distribution only works if the parties kept a list of their gifts and gift-givers. Otherwise, they have to negotiate how the gifts will be divided just as they would have to negotiate how furniture or other personal items would be divided.

The distribution of a third party gift upon divorce becomes more complicated when the gift is money given to the couple to be used as a down payment on their first home in joint names. The third party (usually the parents) may or may not have taken back a note from the couple, but more often than not, there is no such document. Five years later, the parties are going through a divorce and the spouse

whose parents did not give the gift wants half of the equity in the home, which is comprised in part of those monies given by the other spouse's parents. Usually, parties negotiate and resolve this issue, but it is not uncommon for one side to say, "Your parents gave that money to both of us, not just you. I want half." If a judge were to try the issue of whether or not the parents would get their money back, even without a promissory note, it would be difficult to imagine that the parents would not get some, if not all of their money back if they testified that the money was given as a gift to only their child. Judges do not want parents who gave money to their child out of the good of their hearts to be taken advantage of and not made whole. Having said that, the longer the gifted money stays in the jointly-owned home without any payback to the parents or any note given, the less likely it will be that the parents will get all or a portion of their money returned.

But what about the engagement ring? In this case, this is clearly an expensive piece of jewelry and the ex- fiancé wants it returned. His ex-fiancé loves it and wants to keep it. What if the ring was his grandmother's and his ex-fiancé would not return it? That fact adds more insult to injury.

In New Jersey, an engagement ring is what the law views as a conditional gift which only becomes an irrevocable gift upon marriage. Thus, if the engagement is broken off, the fiancé must return the ring because the condition of the gift being irrevocable has not been met-the marriage has not yet taken place. However, if the parties did marry, because the ring was a gift given before the marriage, it is the property of the wife and is not subject to equitable distribution.