

PROPERTY DIVISION

General Issues in Property

1. What property are we talking about?

Kinds of property

A. Assets

Bank Accounts

Bonds

Certificates of Deposit

Tax Refunds

Life Insurance (whole life)

Business

IRA's/Keoghs

Stock Options

Furniture

Art Work

Jewelry

Stocks

Mutual Funds

Loans Outstanding to Others

Lawsuits Filed (for money)

Real Estate

Pensions

Patents/Copyrights

Automobiles

Antiques/Collectibles

Silver, Crystal, China

Tools

B. Liabilities

Mortgages

Loan from banks

Credit card debts

Loans from others (including family, spouse)

Land Contracts

Loans on insurance

Educational loans

2. Have you identified all the property?

How do you go about identifying property?

How can you be sure none is being hidden? What are the consequences if some is being hidden?

How do lawyers identify property?

3. What is the value of the property?

How do you find out?

Is it important that the value be verified by an objective source?

What if there is a disagreement as to value?

Is there a difference in value if one asset is income-producing and another is not?

4. What is to be divided?

A. Marital Property vs. Individual Property

Each is defined by state law. Marital property is subject to division in divorce; individual property is not.

B. Marital Property

How is it divided in your state (per cent, equitable distribution)?

What is divided (value vs. actual property)?

How do you adjust for marital property that stays with one spouse or the other?

C. Individual Property

What is considered individual? Inheritances? Property brought into a marriage? Pensions?

Is individual property ever considered in a property settlement in divorce?

5. If, after dividing up marital property, one spouse is owed money, what are the considerations in arranging payment?

Liquidity of property

Time (now, later, installments)

Interest on moneys owed

Size of payments

Non- cash payments

6. Tax consequences of property transfers

Should you adjust for taxes that will need to be paid on the property (Pensions, real property)

Case Example:

How would suggest the following property be divided? Does an adjustment need to be made for a difference in value gained by one spouse or the other? How would you suggest it be made?

| | | |
|-------------------|------------------|-----------------|
| 2 cars | Volvo \$8,000 | Subaru \$ 4,000 |
| Marital home | \$100,000 | |
| Vacation property | \$5,000 | |
| Stocks | \$8,000 | |
| His pension | \$70,000 | |
| Her IRA | \$5,000 | |
| TOTAL | \$200,000 | |