



Lockwood & Hartley, ALC

Excellence In Family Law

Volume I 2008

Edition II

Fall 2008

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Legal Insights

By Steven L Hartley

Going through a divorce can be one of the most difficult and stressful experiences in your life. It is difficult enough to deal with all of the emotional issues that arise in a divorce, let alone the financial issues that inevitably come into play. Throw in the current state of the economy and the stress levels increase tenfold.

However, there are many things that parties can do to better prepare for the financial changes that a divorce brings. First, parties can make "to do" lists during the divorce to keep track of the things that need to be done. This helps to maintain clarity during the difficult divorce process. It also allows for one to exercise at least some control in a situation that is often out of control.

In addition to a good "to do" list, parties facing divorce can also start researching and gathering the information they will need to ensure a smooth transition. Thanks to the internet, there are all types of information available today that wasn't available in the past. Divorcing parties can now find information regarding how to best protect or invest their post-divorce assets, how to stretch their incomes, and how to reduce their post-divorce debts.

The key is, as with most other things, getting organized and putting in the effort. I have had many, many clients who have benefited by good advanced planning. For example, if you have teenaged children and need to address post high school education issues, there is no time like the present to begin your research. As recently reported in Newsweek, there are websites available that retell student loan horror stories (www.studentloanjustice.org) and help students to project their actual student loan costs (www.projectonstudentdebt.org). When the time comes for your child to apply for college admission, websites like www.collegeboard.com and www.collegeresults.org, can help you narrow the schools to choose from based on economic realities and conditions.

The bottom line is that the more you prepare in advance, the less stressful the financial-related divorce issues will be. The more prepared you are, the smoother the transition will be. The information is out there, all you have to do is look.

This edition features an article about finances and property division. Below are some links relating to these topics. If you have any questions about the financial implications of a divorce or any other family law question, please call us at (808) 263-6900

Money Central
<http://moneycentral.msn.com/home.asp>
Franklin Debt Relief
<http://www.franklindbtrelief.com>
Experian
<http://www.experian.com>

IN A NUTSHELL: PROPERTY DIVISION IN DIVORCE

When it comes to property division in a divorce, Hawaii is an "equitable distribution" state which means that property is divided in a fair, but not necessarily equal, manner. If the parties are unable to reach an amicable settlement on their own, the Family Court will take the following approach to dividing the parties' assets and debts: 1) Identify all assets and debts in the marital estate; 2) Assign a value to each asset and debt in the marital estate; and 3) Distribute the marital assets between the two parties in an equitable fashion.

In order to divide property in a divorce, the court must first determine what property is marital property. Most property accumulated during the marriage is considered marital property. However, marital property does not include property that was specifically excluded from the marital partnership by a specific and valid contract (i.e. a premarital agreement) or property that was acquired by a spouse during the marriage by gift or inheritance, classified by the spouse as his or her separate property and maintained separately from the marital estate. After the marital property has been identified, the court must determine whether either party owned pre-marital property that was brought into the marriage or received any gifts or inheritance during the marriage. If so, the value of the premarital property, gift or inheritance is first returned to the owning or acquiring spouse before any marital division is made.

In identifying all of the parties' assets and debts in the marital estate, the court requires each party to complete an Asset and Debt Statement which lists the assets and debts of both parties to the extent they are known. The Asset and Debt Statement, which is signed by each party under penalty of perjury, should be as detailed, complete and accurate as possible. The Asset and Debt Statement is a very useful tool for identifying assets and debts from the start of the divorce but should be continually updated and evaluated as the case progresses. The Statement is broken up into various categories including credit union accounts, bank and savings accounts, securities, vehicles, real property, life insurance, retirement accounts, other major assets including furniture, household effects and collectibles, and the parties' outstanding debts.

The Court also requires that the parties provide "source documents," which are the documents that prove the existence of a particular asset or debt and its value. Typical source documents are bank statements, credit card statements, retirement account statements and copies of insurance policies and premium payments.

Whether property division is resolved through settlement by the parties or through the court, it is important for each party to be organized and well-informed about their finances. As the parties prepare for their divorce, it may be helpful for them to:

- 1) Gather and organize important information and documents on property, investments, accounts, debts, insurance, and household expenses;
- 2) Keep clear records of the children's expenses;
- 3) Develop a personal property inventory, a budget and a wish list for property division;
- 4) Decide what each of them wants and needs from the marital assets;
- 5) Consult with their accountants regarding tax ramifications of the division of marital assets and debts;
- 6) Consult with their insurance agents and/or brokers regarding the valuation and disposition of certain assets; and
- 7) Discuss financial matters rationally with each other to see if they can reach an amicable settlement agreement regarding property division.