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HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

The Great Divide: Splitting Assets in a Divorce

Whether or not you have minor children with your spouse, the common denominator of divorce is the division of marital assets and debts. When the couple's assets and debts are relatively straight-forward, they are divided between the parties based on value, who owned the property prior to the marriage, and who cares to own the property after the divorce.

However, not all assets are easily divided in a divorce due to difficulties in ascertaining value—both now and in the future. Do you have any of the following assets?

- stock options
- restricted stock,
- vested or not vested stock,
- deferred compensation,
- closely held businesses,
- partnership interests,
- antiques,
- life insurance,
- retirement plans,
- pension plans,
- assets in trust, and
- properties in another state or country

If you do, these assets make your divorce more complicated, which means you need a qualified family law attorney, a forensic accountant, and potentially a good business attorney. This team of professionals safeguard your financial future—just ask Frank and Jamie McCourt, former owners of the Dodgers, the importance of correct wording in business transactions and subsequent divorce settlements. So, let's talk about your team.

Why Would I Want a Financial Analyst?
With complex assets come complex explanations, valuations, and competing interests. There are different ways to value businesses or stock. In fact, one of the most complicated questions in a divorce is determining a spouse's *true* income, the next is the valuation of certain assets—both of which require the input of an expert witness.

What about a Forensic Accountant?
A forensic accountant can get your valuations and analysis done quicker and at less expense. These analysts and accountants typically testify about financial issues to ensure the court understands your assets and places the right value on them. Forensic accountants also are trained to analyze trends and detect problems. For example, are gross profits declining when gross revenue is increasing? (read: is someone hiding money in their business?).

Can you "TRUST" away Child Support Obligations?

If you set up the right Trust in your estate plan, you can ensure your ex-partner does not receive all of your assets when you pass away just because you share a minor child. Of course, you may wish to still provide care and support for your child, but you may want to ensure that the money is actually going to your children and not to their other parent. Not all trusts are created equal and planning for this protection takes a qualified trust attorney. We can help!

They are also trained to look for payroll padding, under-reported income, overpaying creditors, creating fake debt, and transferring assets to dummy corporations. Many times, a forensic accountant is used only for settlement negotiations, because that is all it takes. When the groundwork is done quickly and efficiently, it makes it easier to lay it all out for the other side to see they are cornered. Reducing overall legal fees and time needed to reach a property settlement.

Planning Prevents Pain

Aside from avoiding marriage and divorce altogether, the best way to avoid these financial hardships is to evaluate your financial assets and pre-plan. Getting married? Antenuptial agreement ("pre-nup"). Already married? Post-nuptial agreement coupled with solid estate planning. It is often easier to agree on the potential division and ownership of assets while your relationship is strong, rather than when you encounter a bump in the road.

"Selling it all" is Not (Always) an Option

Often, selling or dissolving an asset is not an option and should not be a source of comfort. Businesses have other owners, stock options have tax implications, and liquidating certain assets may cost you more money than the asset is actually worth. For every different type of asset, there is a different consequence or penalty for not adhering to the ownership rules and withdrawing the asset early. For example, some corporate stock may be discounted at 40% of the actual fair market value if sold in a divorce.

An Asset's "Value" and "Worth" are Not the Same

This is particularly true when it comes to residences, vehicles, businesses, or anything with a tax implication (insurance, IRA's, 401(k), etc.).

For example, you may have the option between a $600,000 bank account or a $600,000 marital home with no debt. The marital home may seem more enticing, depending on where the market is at in your area, but you need to assess how the home will impact your bottom-line including upkeep costs, property taxes, and insurance. When you opt to sell your home, you may be hit with capital gains tax bill as well that will need to be calculated in the division.

All of these considerations are manageable if you know what to expect. If an attorney claims to be able to do all of the valuations and investigation discussed briefly above, think twice about their qualifications. Complex assets need more than one professional for it to be done right.

If you want a second opinion or have complex assets that need skilled representation, give us a call today at 605-777-1772. We have divorce, business, and estate attorneys who work as a team to ensure your assets are valued appropriately to maximize your outcome and long-term financial security. Don't forget your best offense is a good defense.

**This article is only intended to give general information and not specific legal advice. Consult with an attorney on your situation before taking any legal action.*

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Rebekkah J. Mouw is a skilled advocate on our Family Law Team.

Our Passion Shows!

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