PRACTICAL ADVICE

FROM THE FAMILY LAW PRACTICE

Fox Rothschild LLP
ATTORNEYS AT LAW

Practical Tips for Dividing Personal Property

The current economic climate has made divorcing parties more vigilant than ever about the value and disposition of their marital assets. There are a number of methods and concepts that may help divorcing parties streamline the process of dividing their marital personal property—or personalty—during a divorce. Personalty can be anything from an apple corer to a designer watch. Basically, it's the "stuff" acquired during marriage.

While divorcing parties often cannot agree on anything, let alone go through their home piece by piece and divvy up personal effects, to the extent you are able to divide possessions amicably, you should. No one will have a better understanding of your assets and their value to you than you will. Plus, you should not have to pay an attorney to argue about who is keeping the living room sofa.

Get as much of a "head start" as you can on the division of personalty. "Head start" does not mean taking the assets you want and hiding them. It means familiarizing yourself with the plausible means by which you can divide your assets and the concepts that will help you do so in a streamlined fashion. The following are points you should consider when you and your spouse are dividing personalty.

- **Make Lists and Take Pictures of Your Personal Assets**

  Lists and pictures are a comprehensive way of inventorying your assets. Having an inventory allows you and your spouse to review the assets available for distribution. Inventories also serve as a way for parties to understand what items you can agree on. Pictures can be used to illustrate whether items have been moved, have gone missing or were inadvertently omitted from a list.

- **Account for Depreciation**

  It is often the case that parties utilize different "accounting methods" when reviewing the value of assets depending on which party receives the item. For instance, the party getting a five-year old car will use the blue book value while also trying to claim the five-year old sofa is worth the same amount it was the day it was purchased.

  Keep in mind the majority of your possessions have depreciated significantly, and account for that in your internal calculation of who is getting what value. While you may feel you are not receiving as much you would like from some of your items, provided your "accounting method" is consistent, you do not stand to lose as much as you might fear by accepting the purchase price is not necessarily the current value. Your property division will go more smoothly this way, and you and your spouse will not spend as much in attorneys' fees.

- **Agree on What Should Be Appraised**

  Items of significant value that cannot be agreed upon should be appraised. The main issues to address are what items you and your spouse think need to be appraised, who bears the cost of the appraisal and how an appraiser is chosen.

  Creating a "cut off" value or a rule will help you decide which items to have appraised. For instance, agree on a dollar amount and do not have items you think fall below that dollar amount appraised. Alternatively, you can use a rule, such as "if it should have been, or was, individually insured, have it appraised." Laying these ground rules should help you and your spouse prevent later squabbling over which assets should be appraised.

  With regard to who will pay the appraiser and how he or she is picked, call your attorney. While you do not want to rack up your bill arguing about these issues, your attorney will have insight on how appraisal costs should be divided and provide you with the names of appropriate appraisers.

- **Create a Valuation Methodology**

  It is imperative you bear in mind the potential difference in the replacement value of your assets and their actual resale value. While something might be insured for one amount, its "street value" may be another. When getting something appraised, find out both how much you could sell it for on the day it is appraised and how much replacing it would cost. While these numbers should be the same, many times they are not. When accounting for how much an asset is "worth" to you, remember this distinction!

  There are also two common methods to be used when there is otherwise not agreement. The first is alternate selection. In this method, the parties literally go asset by asset, taking turns choosing, until all of the assets are divided. In the second, one party makes two lists accounting for all of the property, ostensibly of equal value. The other party, however, gets to choose which list they want.

- **When You Cannot Agree, Use a Neutral Mediator or Arbitrator**

  Using a neutral third party will save you money, time and hassle. Rather than both you and your spouse paying your

attorneys to listen to you bicker about personalty, choose one party to make decisions regarding the division of assets. Make the arbitrator's or mediator's decision binding.

While you may not be happy with any or all of the mediator's or arbitrator's decisions, this process is generally more expedient and less expensive than many alternatives. Binding mediation or arbitration will often move the process along and allow you to move on to other (more important) issues. This method also has the benefit of keeping the division of personalty out of the judicial system. Court fights about property tend to be very costly and annoy the court. Also, it is common practice for family court masters and judges to enter an order for equitable distribution and give the parties 30 days to divide personalty or appeal to binding arbitration. Remember, you are better off deciding the outcome than letting someone else.

- **Know Your Motivation**

In most cases, there are two primary motivating factors affecting parties' behavior as they attempt to divide their personalty: emotion and economy. Both will play a role, but they cannot be allowed to overwhelm decision-making. Moderating, or at least staying attuned to, your motivations is essential. An overemotional or overly economic approach will cause problems and cost money.

An example of an overly emotional reaction would be one spouse attempting to claim every chair, seat and sofa from the house. While the spouse who does this may feel temporarily vindicated knowing that his or her ex-spouse will not be able to sit down comfortably until he or she buys some seats, this impractical approach ultimately fails. The spouse who was controlled by his or her emotions will most likely lack artwork, tables, a bed … you get the point.

By the same token, an overly economic motivation will also lead to failure. For instance, adamant refusal to negotiate with your spouse over an item because of its economic value without taking into account other significant factors will lead to a negotiations deadlock.

Being cognizant of your motivations, even if you cannot control them, will allow you to step back and consider whether fighting about a particular item will help or hurt you in the long run. If you can understand your spouse's motivations regarding the division of assets, you will have even greater negotiating success.

Finally, if you and your spouse are at odds about an item, ask yourself whether you will care, remember or replace it in six months or a year. If the answer is "no," then give it up and move on to something that really matters to you.

One final caveat, the children's furniture usually goes with the parent who gets custody of the children and usually without a credit or offset against other assets.

Keeping in mind the above points will allow you to make better decisions about dividing your personalty.

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