



# FAMILY LAW RIPPLES

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## PROPERTY DIVISION

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The term "property division" is something of a misnomer as used in the context of marital dissolutions. First, not every piece of property is divided into two halves. Second, debts are allocated between the parties along with assets. A better way to understand this divorce issue would be to ask the question, "What property and debt package is fair and workable for each of us?"

Marital property\* issues in a divorce depend on two basic facts: an inventory of assets and debts and determination of the asset values and debt balances. Some additional information about the assets and debts may also be helpful. Can ownership be transferred? Whose name is on the title? Can the asset be readily sold? If so, are there any costs associated with sale or any income tax consequences? Who is the responsible party on a debt? What is the expected pay off date? Is there any way to pay it in full earlier than that? When facts such as those are known, the parties can then determine which assets and debts will be assigned to each of them.

Putting a property package together is like putting a puzzle together.

Different assets may have different importance to each party. One party might be particularly concerned about liquidity, wanting a downpayment for a house or a nest egg in case of future need. Another might be more interested in investment income, retirement savings or assets of sentimental value. Yet another might want the homestead to ensure continuity of school, neighborhood and friends for the children. Yet another might want to keep the family business to secure employment.

Some assets come with tax consequences or other considerations which affect their attractiveness to a party. For example, 401K accounts and IRAs are typically valued at face value unless there is a specific plan for immediate withdrawal. Yet in the future, if the party awarded the asset decides to make a withdrawal, that party will incur early withdrawal penalties and income tax liabilities which make the net value of the asset less than its face value. Similarly, a person taking a house may incur significant closing costs if the house needs to be sold, thus reducing its net value, and a person taking stock bought at a low value will pay taxes on the capital gains if the stock now is of high value. The balancing consideration to these consequences which tend to reduce the "value" of the asset is the expected growth of the asset between the initial award of it to a party and the time when the party withdraws or sells the asset.

\* This discussion does not address the identification of an asset as nonmarital instead of marital. That topic is discussed in a former issue of Family Law Ripples (Vol. No. 1, Issue No. 3, May-June 2003, which can be viewed at [www.dewaltlaw.com/PDF/May-June-2003.pdf](http://www.dewaltlaw.com/PDF/May-June-2003.pdf))

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### Checklist For The Upcoming Two Months

- \* Send copies/obtain your own copies for end of year report, cards.
- \* Finalize/confirm summer daycare, including information on costs when child is absent for vacations. Confirm dates and times for summer holidays.
- \* Confirm dates for summer vacations —discuss itineraries, phone numbers, and transportation expenses.
- \* Send copies/obtain your own copies of calendars for children's activities, coach's names, web page, practices and games, equipment needs and costs.

Other assets may be tricky to value and a party wanting the asset may be unwilling to take it at certain values. Small businesses are among that type of asset. Some small businesses have little good will and little marketability. Others may have some good will which can only be estimated absent an actual effort to sell them. Various "experts" can be called upon to give their opinion of a business's value: (1) the business' accountant might give the value of the company on the books, (2) the company records might include a value in a buy-sell agreement, (3) an accountant hired as an expert in the divorce might do a formal business valuation according to case law and general accounting principles, and (4) a business broker might give an opinion on the marketability and selling price of the business.

Finally, some assets have budgetary implications which may be more or less desirable to a party. Typically, but not always, if the asset is subject to a security interest such as a mortgage or a collateral agreement, the person taking the asset will also take the debt. The person possessing an asset has the most incentive to make sure that the debt secured by the asset is regularly paid. Other assets may require costly maintenance or repairs in the future to maintain their value or functionality. An example of this type of asset would be a house in poor repair or a car with over 100,000 miles on it.

If neither party wants an asset, the property package can include an agreement to sell the asset and divide the sale proceeds. Or the asset can be set aside for children or given to charity (with the parties sharing the charitable gifts deduction for purposes of the next year's income tax deductions) or discarded.

Particularly problematical are assets which are subject to security agreements which have more debt against them than the asset has worth. This situation often occurs with cars, but can also occur with furniture and other assets. If neither party will continue to make the payments on the debt on such an asset the property package may need to address the parties' respective responsibilities for an anticipated deficiency judgment.

The following questions may be helpful for generating and evaluating options for a property package.

1. What do the parties own or owe, regardless whether in joint name or individual name? (Make a list of assets and debts).
  - a. What difference should a party's unacceptable intentions or conduct vis a vis property and debt prior to the start of the divorce have on the list?
  - b. Should any assets acquired or debts generated after the parties' physical separation or after the start of the divorce be included?
2. What is the value of each asset? What is the balance on the debts?
  - a. As of what date? (See Minn. Stat. Sec. 518.58, Subd. 1 regarding the valuation date).
  - b. What methods are available to value the asset? Are any of those methods more reliable than other ones?
  - c. Should the valuation take into account tax consequences, selling costs, or other factors which may tend to increase or decrease the ultimate value of the asset to the person receiving it?
  - d. What affect should changes in value which occur after the valuation date have?
3. Who wants to or should receive a particular asset? Who wants to or should be responsible for a particular debt?
  - a. What use could each party make of the asset?
  - b. What importance does each party give to the asset?
  - c. Which party can afford the debt burden or other costs of using or maintaining the asset?
  - d. Is a debt in both parties' names or the individual name of one of the parties? (Who will be sued if the debt is not paid?)
  - e. What are the costs of transferring the asset from one party's name to the other party's name?
  - f. Can the asset be divided in kind between the parties?
4. Should each party receive an equal value of assets? Should each receive an equal amount of debt?
  - a. What is "just and equitable" in the particular case? (See Minn. Stat. Sec. 518.58, Subd. 1.)

## WEBSITE REVIEW:



## Child Support Online

[www.childsupport.dhs.state.mn.us/Action/Welcome](http://www.childsupport.dhs.state.mn.us/Action/Welcome)

Minnesota Child Support Online provides you with lots of information on your account, including: a list of direct deposit issued to your account and checks issued to you within the past ninety days, a list of payments you've been credited with making within the last ninety days, a list of payments credited to the case within the last ninety days, the current monthly charges and account balances for the case, information about your arrears that have been certified for tax intercepts, enforcement remedies for the case, the name and phone number of the child support officer assigned to maintain your child support case, a list of actions the child support agency has taken on your case within the past ninety days, upcoming appointments the child support agency has scheduled for you.

## MOVIE REVIEW:

## CALENDAR GIRLS



May and June are the months in which Mother's Day and Father's Day occur; and for separated families, those holidays can be occasions to review changes in a family. The movie, "Calendar Girls", which was released on DVD last Mother's Day, offers some insights that may be helpful to such families.

The film has two main characters, both of whom are women and both of whom experience significant changes in their families as the story "blooms."

Annie's husband, John, leaves one day with a packed bag. Though Annie initially believes he is wanting a divorce, the reality is a more terrifying physical separation. He has cancer and early in the film dies. Before his death, John and Annie rise to the occasion and spend their last days doing with each other and their close friends, the things they love best.

John's response to this family change, which neither of them can prevent, is to leave his wife with a beautiful thought:

The flowers of Yorkshire are like the women of Yorkshire. Every stage of their growth is more beautiful than the last. But the last phase is always the most glorious.

John's death inspires a close friend, Chris, to suggest raising money for a new, more comfortable sofa in the waiting room of the hospital's cancer ward. All too soon the local Women's Institute, Rylestone Branch is engaged in the non-club-sanctioned business of producing a calendar with club members posing in the well-observed nude. The calendar is a tremendous success and begins to consume much of Chris' time and energy.

Chris does not seem aware that her work on marketing the calendar embarrasses her teen-age son or creates an extra work burden for her husband with the family floral shop. Her son is picked up for being in the possession of a substance officially identified as "oregano" after she shows up at the police station. Her husband reveals humiliating, private information to a friendly passer-by who publishes it in the local rag.

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*Providing attorney representation, mediation, and collaborative law services in divorces, paternity, post-decree, adoption, guardianship and other family law cases.*

***Ripples...***

***the drop of one stone...***

***a single event transforming the lake...***



*Each family law matter creates ripples in the lives of the people involved in the case and in our society. This publisher believes that individuals can choose to toss the stone in a way that promotes ripples of cooperation, connection and positive values for the benefit of themselves, and the smaller and greater communities in which they live. "Family Law Ripples" is dedicated to providing practical and legal information to that end.*

### Calendar Girls, Continued from page 3

Chris runs away from her family to join the other women who were invited to Hollywood by promoters intrigued by the calendar and its success in England. There she is confronted with the apparent conflict between her individual ambition, her values, and the impact of her ambition on her son and husband. Annie forces Chris to choose between searching for a way to reconcile the conflict or moving ahead by herself.

One of the film's insight is its highlighting the fact that there is a choice in how to deal with family change. Another is that the first choice can be changed if it is not going in the direction that seems best for the parent and the family – a different approach can be adopted that makes it easier for the family to adjust. Chris is lucky, because unbeknownst to her, her husband has given Chris the benefit of the doubt trying to help their son understand the big picture.

The film is as much about fathers as mothers in the midst of family change and is well worth the price of the DVD.



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