

Divorce: 'OK, You Get the House, But I Get the Tupperware!'

Divorce is an emotional experience that affects people in all sorts of ways. It is often difficult to set aside the emotions of divorce in exchange for a more practical state of mind. Yet, we family law attorneys ask that of our clients every day. The reason for our request is simple: the divorce orders you end up with will affect you – for better or worse – for the rest of your life. This is particularly true for financial matters.



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Child Support

In Washington, child support is calculated by using a standardized formula and economic table. The formula requires a determination of both parents' average monthly incomes. The court may sometimes "deviate" from the standard calculation, either increasing or decreasing a parent's obligation. In addition to the basic child-support obligation, parents may be required to share in other expenses, such as daycare, educational expenses, insurance premiums, and uninsured health care.

A parent may be ordered to pay for a child's post-secondary educational expenses. The court considers many factors, including the child's abilities, whether the parents attended college, the family's education plans prior to filing for divorce, the parents' financial means, and the child's ability to contribute toward expenses.

Spousal Maintenance

Spousal maintenance may be awarded to a husband or a wife. It may be ordered while the divorce is pending, and/or provided for in the final dissolution decree. It must be in an amount and for a period of time as the court deems just. When a court is asked to award maintenance, it sets out to answer the following question: "Does the requesting spouse have a need for spousal maintenance, and does the proposed paying spouse have the ability to pay?" Other factors are:

- the standard of living established during the marriage;

- age, physical and emotional condition, and financial obligations of the spouse seeking maintenance;
- duration of the marriage; and
- time necessary for the spouse seeking maintenance to acquire sufficient education to enable him or her to find suitable employment.

Property and Debt Distribution

In Washington, all property acquired during marriage is presumed to be community property. Property may be considered separate property if acquired prior to marriage, after separation, or by gift or inheritance. Each spouse has an interest in community property. Although separate property usually remains separate, both community and separate property can be subject to distribution. One party's possession of separate property may influence how the court distributes community property.

The court is required to make a "fair and equitable" distribution of property and debt. This test sometimes results in a 50/50 division, but not always.

Community debt normally includes any liability incurred during the marriage. Separate debt includes liabilities incurred before marriage and after separation. The court has jurisdiction over all debt, and must make a "fair and equitable" division.

Third-party creditors are not bound by divorce decrees with respect to distribution of debt. If a party fails to pay a court-assigned debt, the creditor may have the right to seek payment from the other party.

There are many other considerations when dividing property and liabilities. How and when assets are divided and transferred may have significant tax consequences. Documents must be drafted properly to effectuate a transfer of certain interests, such as real estate, retirement benefits, automobiles, stock, etc.

Sands McKinley is the managing partner of McKinley & Irvin, PLLC, a divorce and family law firm with offices in Seattle, Bellevue and Federal Way. For more than a decade, Mr. McKinley has focused on complex divorce and family law cases. For more information and M&I's free publication, "Family Law in Washington State," visit their Web site at www.mckinleyirvin.com, or call 425-454-2220.