

Property Issues and How to Show Them on a Spreadsheet

“A House Divided” Property Division Seminar - April 29, 2014

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1. What Judges say they want from the lawyers in a property division case.

- “I would love for the attorneys to jointly create a spreadsheet for trial, like the attached sample, that lists and compares: Husband’s value, Wife’s value, Husband’s proposed division, Wife’s proposed division and includes a blank column for the court’s value.”
- “I encourage the parties to create a joint spread sheet. However, many attorneys do not, whether because of time constraints or unable to communicate with opposing counsel. If attorneys submit separate charts, please, please, please, list the property in the same order in each chart. It is very frustrating and time consuming to compare charts when the property is not listed in the same order in each chart.”
- Use CURRENT values, and use the comparison spread sheets with proposed divisions. Too many attorneys come to court with values as of the date of the preparation of the I&A versus the trial date. Update, update, update the values. I always look to use one of the inventories or a “proposed division” as my own division. I often cross out their title and write “Court’s Division.” The more complete the inventory, the more likely I am to use it as my division. The spread sheets are great as long as they include everything.”
- It would also be helpful on separate property claims or complex tracing or characterization issues to reference on your proposed property division or request for relief the exhibits that “prove” your point.
- Make sure that all property is clearly identified so I know I am comparing apples to apples (i.e. - “cherry wood roll-top desk in upstairs guest bedroom” and not “desk”).
- Use current values in your trial inventory.
- Be accurate.
- Do not list assets that really do not exist but your client heard discussed once three-years ago.
- Try to make the spreadsheet simple, uncluttered and, if at all possible, one page.
- The long lists of personal property can be attached as separate charts but the judge wants to focus on the big picture.
- Please provide a detailed list of what items you are claiming to be separate property and what items your client wants back from the other side – I need those for my rendition.
- The residence – do not list the cost of sale if it is being awarded to one spouse.
- If the house is being sold, just suggest a percentage of the net sale proceeds each spouse would get.

- Do not list a tax liability on hypothetical withdraws from IRA's, 401k's and retirement accounts unless a withdrawal has already actually occurred and there is a real tax liability owed.
- The residence and vehicles – list the fair market value and then separately tell me what the amount owed on the loan is rather than just giving me the net value. I need to know who the loan is owed by in my rendition.
- Provide me an extra working copy of your spreadsheet and request for relief to write on in addition to the copy you admit as an exhibit.
- Please follow the local rules and docket control order and pretrial conference order.
- The old fashioned long form sworn inventory is not really all that helpful to the judge. A spreadsheet attached to your client's sworn verification is fine as an inventory.
- Do not make me divide pots and pans!

2. Why Use Excel for the Property Division Spreadsheet?

Microsoft Excel is the best program to use for creating property division spreadsheets because:

- Almost everyone has the program so it is easy to share with clients, mediators and opposing counsel.
- Excel is more flexible than using ProDoc.
- Training is easy to find and there are many books and Internet sites designed to help with Excel.

There are compatibility issues between various versions of Excel. Users of earlier versions may not be able to open a spreadsheet created using the latest version of Excel. Excel 2010 has a “compatibility mode” which helps with this problem. Also, any user of any version of Excel can open someone else's spreadsheet in Google Drive, which will convert Excel 2003, 2007 or 2010.

4. Forget the “Old School” Sworn Inventory and Appraisal Form.

The traditional Texas Family Law Practice Manual form for a sworn inventory and appraisal is a pain to prepare and does not really help the judge (see attached sample). I use an inventory cover sheet signed by the lawyer, a verification page signed by the client and I attach my property division spreadsheet, which also serves as a proposed property division that is required by most local rules (see attached sample). Now, a sworn inventory does not have to be notarized, thanks to Texas Civil Practices and Remedies Code Sec. 132.001, which provides that an unsworn declaration may be used in lieu of a verification required by statute or rule.

5. Judges Love a Chart Comparing the Husband's and Wife's Values and Proposed Divisions.

See attached sample chart that compares values and proposed divisions. These charts are extremely useful but they can only be prepared at the last minute after you have seen the opposition's latest inventory and proposed division.

3. Goals for Creating A Property Division Spreadsheet

The attorney or legal assistant creating a property division spreadsheet should follow these principles:

- Be accurate, complete and reasonable. You will lose your audience (the judge) if your spreadsheet has errors or crazy numbers you cannot justify. The spreadsheet is a vital part of the divorce attorney's advocacy. The values and proposed division should be skewed in favor of your client but the amounts must be reasonable and accurate.
- Strive for a spreadsheet that fits on one, or at most, two pages and which is graphically easy to use and understand. Avoid too many lines and empty rows and make sure your column headings repeat on all pages.
- Summarize everything on the first page or two and attach detailed lists of:
 1. Separate property
 2. Children's property
 3. Personal property that should be returned or turned over

4. Property Division Spreadsheet Tips

1. Note which spouse is in possession of the item or has his or her name on the account.
2. Line numbers make it easy to refer to a particular asset or debt during testimony or argument.
3. Secured debts (mortgages, home equity loans, car notes) need to be shown on a separate line so that you can update the amount owed and compare the number you are using to the opposition's figure. So, do not just show the net value of the house or car after subtracting the loan from the value.
4. For bank accounts, note what type of account it is ("checking") and use the last 4 digits of the account number for each account. Be careful on credit union accounts, as they all typically end in the same last few digits to show savings or checking, so use something like "****2345 S75."

5. Specific Property Division Issues

1. If the other side has not provided a balance or enough information to determine value, put "unknown" in the value column.
2. House value

Property or Debt	Value	Husband	Wife
Residence at 1202 Elm, League City	\$165,000.00		\$165,000.00
Mortgage owed Chase Financial on 1202 Elm	(\$42,300.00)		(\$42,300.00)

- A. Do NOT reduce the value by the cost of sale.
- B. List the mortgage and home equity loan as separate lines.

- C. If substantial repairs are needed to get the house in condition to sell, include a line for “Cost to repair house to sell” and list the total amount of repairs as a negative number.

Property or Debt	Value	Husband	Wife
Residence at 1202 Elm, League City	\$165,000.00		\$165,000.00
Mortgage owed Chase Financial on 1202 Elm	(\$42,300.00)		(\$42,300.00)
Repairs required to sell home	(\$23,000.00)		(\$23,000.00)

- D. If the house will be ordered sold, for value say “to be sold” and in each spouse’s column put the percent he or she will get. For the mortgage or home equity loan, put “paid on sale” in the value column.

Property or Debt	Value	Husband	Wife
Residence at 1202 Elm, League City	to be sold	50%	50%
Mortgage owed Chase Financial on 1202 Elm	paid on sale	50%	50%

If the residence is to be sold, then you can separate everything regarding the house from the rest of the property division spreadsheet, since the grand total of community property will not be effected by the house. An example of a property division spreadsheet using this format is below.

Category	Item	Value	Husband	Wife
ASSETS & SECURED DEBTS				
Residence	2912 Red Rose Lane, League City - TO BE SOLD	\$284,000.00	\$142,000.00	\$142,000.00
	Wells Fargo Mortgage	(\$102,648.00)	(\$51,324.00)	(\$51,324.00)
		Net from sale	50%	50%
Accounts	Husb - Bank of America Checking - xxx9976	\$386.00	\$386.00	
	Joint - Bank of America checking - xx9053	\$5.00		\$5.00
	Wife - Bank of America checking - xxx2943	\$750.00		\$750.00
Retirement	Husband Seaway Trade LLC 401k	\$185,198.00	\$110,198.00	\$75,000.00
	Wife - Texas Teacher's Retirement System	\$22,517.00		\$22,517.00
Vehicles	1997 Jeep Cherokee	\$1,231.00	\$1,231.00	
	2003 Honda Pilot	\$4,000.00	\$ -	\$4,000.00
Personal Property	Personal Property in Husband's Possession	\$4,000.00	\$4,000.00	
	Personal Property in Wife's Possession	\$10,000.00		\$10,000.00
UNSECURED DEBTS				
Credit Cards	Joint - Bank of America Visa	(\$100.00)	(\$100.00)	
	Wife - Disney Chase Visa	(\$4,325.00)		(\$4,325.00)
	Husband-American Express, 1007	(\$4,029.00)	(\$4,029.00)	
Legal Fees	Husband - Enos Law Firm	(\$4,000.00)	(\$4,000.00)	
		TOTALS	\$215,686.00	\$107,947.00
			50%	50%

3. Reimbursement claims owed to the community estate for something done for a spouse's separate property - list the reimbursement claim as a community asset and then place the value of the claim in the column of the spouse whose separate property benefitted. Awarding the phantom asset to the spouse whose separate property benefitted will result in more real assets going to the other spouse.

Property or Debt	Value	Husband	Wife
Reimbursement owed community by Husband's separate estate	\$56,000.00	\$56,000.00	

4. Reimbursement claims owed by the community estate to a spouse's separate estate - If the claim is not actually being paid and there are other community assets, the reimbursement claim is shown as a debt owed by the community and the negative amount is put in the column of the spouse whose separate estate is owed the reimbursement claim. This has the effect of giving that spouse more of the community assets.

Property or Debt	Value	Husband	Wife
Reimbursement owed by community estate to Husband's separate estate	(\$26,000.00)	(\$26,000.00)	

Alternatively, if the reimbursement claim is to actually be paid in cash from the sale of a property, you can use the format shown at the top of this page.

5. 401k loans - Most 401k savings plans allow participants to make loans to themselves. The loan is repaid to the participant's account with interest via paycheck deduction. If the participant leaves employment before repaying the loan, it is then considered a taxable withdrawal and a 1099 is sent to the participant. The question presented for the divorce attorney is how to show the 401k loan on the community property spreadsheet?

The statements from 401k plans often add to the confusion because the statements list an account balance and a loan balance. However, the balance of the employee's 401k plan is the amount he or she actually has in the account and does not include the amount of the loan. An actual 401k statement a client provided me recently showed:

Opening Balance:	\$109,196.76
Deposits	
Pre-Tax Accounts	\$ 1,464.68
Employer Match	\$ 1,464.68
Loan Repayments	\$ 933.30
Gains/Losses	\$ 6,041.84
Closing Balance	\$ 119,101.26
Vested Balance	\$ 119,101.26
Loan Balance	\$ 16,465.30

Thus, this employee has \$119,101.26 in his 401k account and he owes himself \$16,465.30. The amount he owes himself is an asset (a receivable) and the fact he owes the loan also make it a debt to list (a debt we know will go under his column since he is required to pay back the loan through paycheck deductions).

So, to show this on a property division spreadsheet, you need to list the 401k balance as an asset and then account for the loan. Since the loan is both an asset and debt (plus and minus) of the same amount, the actual net value of the loan is zero. However it may be helpful for the judge to know there is a 401k loan and how much is owed. Therefore, I suggest that the 401k balance and the loan be shown on the property division spreadsheet as follows:

Property or Debt	Value	Husband	Wife
CenterPoint Savings Plan 401k	\$119,101.26	\$80,000.00	\$39,101.26
CenterPoint 401k loan (\$16,465.30)	See Note	Husband pays	

*Note: The 401k loan is both an asset (receivable) and a debt of the same value, so the net value to the community is \$0.

- Waste or monies that are not accounted for - If a spouse wasted funds on a paramour or cannot account for a large amount of cash, list that as an asset (“funds wasted by husband” or “cash unaccounted for”) and then award the asset to the spouse who wasted the money or cannot account for the cash. This will have the effect of giving more real assets to the other spouse.

Property or Debt	Value	Husband	Wife
Cash taken by husband not accounted for	\$10,000.00	\$10,000.00	

- Tax effects of the sale of community assets - I cannot imagine a circumstance where this should be shown on the property division spreadsheet. Do not list the tax effects when you list the value of a 401k or IRA.
- Pensions - Do not list the value for a defined benefit plan, unless it is a hybrid cash balance pension or a government plan like Texas County and District Retirement System that actually uses the employee’s account balance to determine the monthly payment upon retirement. Do not list the current contribution balance of the retirement plans, such as Teachers Retirement System, that keep track of the employee’s contribution balance but which do not base the monthly retirement amount on that balance since the plan will be worth far more than what the contribution balance shows.

Property or Debt	Value	Husband	Wife
Husband - Acme Auto Inc. Pension	unknown	45%	55%

If the pension is already in pay status, the spreadsheet should look like this:

Property or Debt	Value	Husband	Wife
Husband - Acme Auto Inc. Pension	\$708.89 per month	45%	55%

- Lump Sum or Monthly Payment Plans to Equalize Division - total everything at the bottom of the spreadsheet as usual then add a row below the total to list the lump sum payment or the total present value of the monthly payments as a positive number for the spouse who receives the payment and as a negative number for the spouse who pays and then do a second total line. The

resulting percentages should compare the totals after the addition or subtraction of the payment to the total value of the community estate without the payments.

Asset or Debt	Value	Husband	Wife
House	\$ 175,000.00		\$ 175,000.00
Husband's 401k	\$ 125,000.00	\$ 125,000.00	
Wife's Business	\$ 150,000.00		\$ 150,000.00
Husband's Truck	\$ 22,000.00	\$ 22,000.00	
Wife's car	\$ 38,000.00		\$ 38,000.00
Wife's Mastercard	\$ (10,000.00)		\$ (10,000.00)
TOTAL \$	500,000.00	\$ 147,000.00	\$ 353,000.00
Monthly payments		\$ 103,000.00	\$ (103,000.00)
TOTAL		\$ 250,000.00	\$ 250,000.00
		50%	50%

10. Some items, such as a term life insurance or the pet dog, have no real value but you want to show on the spreadsheet who gets the item. List the item and for value put "\$1.00" or "no value" and then in the column of the spouse who gets the item put "\$1.00" or "to husband."
11. Contingent assets, such as a pending insurance claim, should be listed as an asset, but the value should either be "unknown" or an estimated amount should be used for the value.

6. What Does Not Go On a Spreadsheet

1. Do not list assets you cannot prove exist or which you know have been sold.
2. Do not list the cost of sale of the house (see below).
3. Taxes on a tax deferred retirement plan like a 401k do not go on the spreadsheet.
4. Do not include items which by law or common sense cannot be divided in a divorce, such as a Medical School Degree, breast implants or Social Security.
5. List children's property separately from community property.
6. Do not list attorneys fees incurred on the divorce unless they are a debt that is currently owed.
7. Bonuses earned after divorce are separate property, so do not list "Annual Bonus" as an asset unless it has already been paid or unless it was earned last year, for example, and is to be paid this March.