

Valuation in a Texas Divorce

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

by Greg Enos

1. Date of Valuation

The value of a community asset should generally be determined as of the date of divorce or as close to that date as possible. *Van Heerden v. Van Heerden*, 321 S.W.3d 869, 880 (Tex. App.—Houston [14th Dist. 2010, no pet.)¹; *Quijano v. Quijano*, 347 S.W.3d 345, 350 (Tex. App.—Houston [14th Dist.] 2011, no pet.). However, values from a few months prior to the divorce trial have been held acceptable, especially if no other competing evidence of a more recent value was introduced by the other side.

In *Quijano*, supra, the wife’s evidence of how much was in a particular bank account that was dated six months before the trial was held to not have prevented the trial court from making a fair and just division of community property. *Quijano* involved a default judgment with no competing evidence of value. On the other hand, the trial court erred when it based its property division on bank account balances from a date three months before a contested trial in *Mata v. Mata*, 710 S.W.2d 756, 759 (Tex. App.—Corpus Christi 1986, no writ).

Several cases say that whether an appraisal is near enough in time to the date of the divorce to be considered in determining the value of the land in question for purpose of the property division is generally left to the discretion of the trial court. See e.g., *Finch v. Finch*, 825 S.W.2d 218 (Tex. App.—Houston [1st Dist.] 1992, no writ). For example, reliance on an appraisal of a house done three months before a contested trial was held not to be an abuse of discretion in *Handley v. Handley*, 122 S.W.3d 904, 908 (Tex. App.—Corpus Christi 2003, no pet.). Use of an appraisal dated a year before trial was not error in *Finch v. Finch*, 825 S.W.2d 218, 223 (Tex. App.—Houston [1st Dist.] 1992, no writ). The court of appeals in *Phillips v. Phillips*, 75 S.W.3d 564, 574 (Tex. App.—Beaumont 2002, no pet.) did not find an abuse of discretion where the trial court accepted the wife’s value of a house based on an appraisal done eight months before trial.

However, testimony of the value of a certificate of deposit as of a date four years before trial in a default case was held insufficient in *Suarez v. Suarez*, No. 13-04-00108-CV (Tex. App.- Corpus Christi 2006)(mem. op.). Likewise, evidence of a community debt dated three and four years before a contested bench trial was held to be no evidence of the amount of debt owed at the time of trial. *Hernandez v. Hernandez*, No. 13-08-00722-CV (Tex. App.- Corpus Christi 2010)(mem. op.).

¹ *Van Heerden v. Van Heerden*, 321 S.W.3d 869 (Tex. App.—Houston [14th Dist. 2010, no pet.) is an interesting case for family attorneys and judges for two other holdings: (1) the trial court should not have excluded the Wife’s fact witnesses only because the Wife in her Request for Disclosure responses explained their connection to the case as “Petitioner’s father” and “Petitioner’s sister,” – those short labels were deemed adequate by the 14th Court of Appeals under Rule 194.2(e), 321 S.W.3d at 876, and (2) a trial court does not abuse its discretion if it determines an asset is worth an amount in between the ranges of values suggested by the parties in their evidence, 321 S.W.3d at 888 – in other words, the trial court cannot err by selecting a value somewhere in the range of values given by the parties. This holding was repeated recently in *Walsh v. Walsh*, 14-10-00639-CV (Tex. App.—Houston [14th Dist. 7/24/2012)(mem. op.).

2. Value Can Be a Jury Question

A jury finding on the value of community property is binding on the court. *Marr v. Marr*, 905 S.W.2d 331, 333 (Tex. App.—Waco 1995, no writ). A jury is instructed:

The value of an asset is its fair market value.

"Fair market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.

If an asset has no market value, its value is the value of its current ownership as determined by the evidence.

In valuing an asset to be received in the future, you are to find its present value as determined from the evidence.

Texas Pattern Jury Charge, Family (2012), PJC 203.1

The value question a jury is asked is basically the same question a judge in a bench trial must resolve:

QUESTION 1

State in dollars the value of the following item:

G.I. Joe Collection \$ _____

Texas Pattern Jury Charge, Family (2012), PJC 203.3.

3. Fair Market Value and Intrinsic Value

It was the law in Texas, before garage sales and Ebay and the Internet, that if an item of personal property did not have a fair market value (because no one would buy it), then the property could be valued based on its intrinsic value. Intrinsic value is the actual monetary value of the property to the owner, excluding any fanciful or sentimental considerations. *Crisp v. Security Nat’l Ins. Co.*, 369 S.W.2d 326, 328 (Tex. 1963).

Now, almost anything can be bought or sold in a garage sale or on the Internet, so even bed sheets and old tennis shoes should have some fair market value; “intrinsic value” will almost never be used in a divorce anymore.

4. The Owner of the Property Can Testify as to its Value

It has long been the rule in Texas that the owner of a property can testify as to the property’s value even if the homeowner cannot qualify as an expert witness. *Mata v. Mata*, 710 S.W.2d 745, 758 (Tex. App.— Corpus Christi 1986, no writ). However, some courts have held that the owner should show she has some familiarity with the market for that particular property. *Young v. Young*, 168 S.W.3d 276, 285 (Tex. App.— Dallas 2005, no pet.).

5. Admitting the NADA Guide into Evidence as a Commercial Publication (Not a Learned Treatise)

The NADA Guide to Used Car Values might be a learned treatise, but under Tex. R. Evid. 803(18), it can only be discussed with or read to an expert witness who is testifying, but cannot be introduced into evidence under that rule.

However, Tex. R. Evid. 803(19) should allow the NADA Guide or similar publication that provides values of used property into evidence:

TRE 803. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(17) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

6. Valuing Personal Property in the Residence

No judge wants to waste his or her time placing a value on couches, pots and pans or bathroom towels. Unfortunately, these items of personal property are often the subject of intense, emotional and irrational disagreement between spouses in divorces. Often the item is just a symbol of the anger and hurt feelings the spouses feel toward each other.

Attorneys should tell each client early on:

- “I cost \$350 per hour, so, unless the four year old Lazy Boy lounge has gold coins sewn into the lining, it will cost more to pay me to fight over the chair than that used chair could possibly be worth.”
- “The judge will hold it against us if we take a fight over the master bedroom furniture to court.”
- “To value what is in the house, just assume you are putting it all out on the front yard for a garage sale. The value is what a stranger would pay for that used item - not what you paid for it, not what you owe on it and not what your sentimental attachment to it is.”
- “Before you move out of the house or your spouse packs and moves out, if there is something in the house of tremendous sentimental value that cannot be replaced at a store, such as that watercolor your grandmother painted, go put it at a friend’s house. This is true of important papers, like your old bank records and 401k statements we might need later for tracing separate property. Do not hide the item, just safeguard it.”
- “Walk through the house and videotape each room from each angle so that later you can remember what there is.”
- “Let him have that old dining table, you can go get yourself a nice new one.”

Here are four useful tips for divorce attorneys with cases where the parties are arguing over the value or division of personal property:

1. While it is easy to make fun of the anal retentive engineers, who for their divorces compile detailed lists of personal property (e.g. - 122 six penny nails, \$0.50), a detailed list of items in a big house can actually add up to a surprisingly large amount and can be persuasive in court.

A portion of such a detailed list of personal property follows:

<i>Room</i>	<i>Item</i>	<i>How old? Purchase Price</i>	<i>Current Value</i>	<i>Who has possession of it?</i>	<i>Awarded to...</i>
Den	Couch	6+ years old \$600	\$90.00	Wife	Wife
	Coffee table	14+ years \$110.00	\$15.00	Wife	Husband
	Stuffed moose head	15+ years shot by husband \$200 taxidermy	\$25.00	Wife	Husband (please!)

- There are professionals who organize estate sales for a living and they would be very qualified to walk through a house and make a list of items with suggested values. Organizers of estate sales are often qualified appraisers of personal properties and are familiar with valuing all sorts of items, from pianos to painting, and can help find experts experienced with pricing any sort of property.

Roger Howard
5004 Katy Freeway, Houston, Texas 77007
713-869-5561
<http://www.rogerhowardestatesales.com/>

Sammy Foster - Estate Sales Houston
713-466-6677
<http://www.estatesaleshouston.com/index.html>

Maria Mozgova - Texas Estate Sale
14027 Memorial Dr #374, Houston, TX 77079
713-515-0945
<http://www.texasestatesale.com/>

- A lawyer can file a motion to inspect property pursuant to Tex. R. Civ. Proc. 196.7 and get a court order -usually by agreement- for the lawyer (or probably a legal assistant), the spouse who is out of the house (armed with a video camera) and maybe even an appraiser to walk through the house to make a list of what is there and get information needed to value personal property.
- The parties can put in their mediated settlement agreement or Rule 11 settlement agreement: “the parties will work together to divide personal property, but in the event they cannot agree then __ [fill in a name: e.g. - David Salinsky] is appointed arbitrator to make the final decision.” This saves money and avoids wasting a judge’s time.

7. Valuing Art and Antiques

There are several experienced appraisers of fine art, rugs and antiques in Houston. Rugs and antiques can be appraised by the people who do estate sales listed above.

Sharon Ring Rollins in Houston is an Accredited Senior Appraiser certified by the American Society of Appraisers. Her contact information is:
 Tel: 281-265-8631 Fax: 281-494-0759
 E-mail: sharon@appraisalsbyrollins.com. Web site: <http://www.appraisalsbyrollins.com/Index.htm>

Alexander Appraisal & Estate Services is another Houston art appraiser. Deborah Alexander is an Accredited Appraiser by the International Society of Appraiser. Her contact information is:
Deborah@alexanderappraisalservices.com
 Tel: 281-630-3361 Fax: 713-722-9695.
 Web site: <http://www.alexanderappraisalservices.com/>

Morton Kuehnert offers an on-line appraisal of fine art which allows you to attach photographs of the art work at <http://www.mortonkuehnert.com/valuation.html>

ValueMyStuff.com is an on-line appraisal service for antiques and at. The site charges \$6.80 for one item and \$22.50 for three items. <http://www.valuemystuff.com>

Appraisers may belong to and be certified or accredited by one of more of these organizations:

American Society of Appraisers (ASA)	http://www.appraisers.org/ASAHome.aspx The ASA website allows you to search for appraisers by area, type of property to be appraised and experience as an expert witness.
Appraisers Association of America (AAA)	http://www.appraisersassoc.org/ The AAA website also allows you to search for appraisers by area and type of appraisal needed.
International Society of Appraisers (ISA)	http://www.isa-appraisers.org/ The ISA website also allows searches of its members by location and specialty.

8. Valuing Guns

Pistols and rifles are widely sold and an experienced gun dealer would be qualified to place a value on a gun collection. Widely used references for gun values include:

The Blue Book of Gun Values, 32nd edition (2011), by S.P. Fjestad (2,384 pages of gun values!)
<https://store.bluebookinc.com/Firearms/Default.aspx> Also sold at amazon.com

The Orion blue Book on Line: <http://www.usedprice.com/items/guns-and-scopes/index.html>

9. Valuing Collectibles

Virtually every type of item humans collect, from old clothes irons to comic books to baseball cards, can be bought and sold on the Internet and there is almost always an on-line price guide. Google will help you find used prices and people who qualify as an expert in the value of virtually any collectible.

10. Valuing Real Estate

The divorce lawyer can look to four sources for the value of a house or other real estate:

1. Market Analysis by a Real Estate agent - free, quick and often good enough for mediation or settlement.
2. Central Appraisal District - historically, CAD values were always low but in the current economy the CAD is sometimes higher than the number a costly real estate appraiser will provide.
3. Look at the property owner's financial statements and loan applications to see what they indicate the property is worth. This would be an admission against interest per Tex. R. Evid. 801(e)(2). If the property is owned by a company, look at its balance sheet to see what it values the property at.
4. A formal appraisal by a licensed real estate appraiser (averages \$400 for residential properties). Real estate appraisers use three methods to value real estate:
 - Comparable sales approach - the key is to ask whether the comparable properties really are comparable and whether the comparable sales were close enough in time to be relevant. See the discussion in *Exxon Corp. v. Middleton*, 613 S.W.2d 240, 246 (Tex. 1981). A very subjective part of the comparative sales approach is the final step in which the appraiser adjusts the comparable sales numbers up or down depending on differences between the comparable properties (including the condition of the property to be sold).
 - Income approach - if the real estate produces income (e.g. - a rent house), future income is estimated and then divided by a capitalization rate (which is a very subjective determination).
 - Cost approach - if there are no comparable sales and the property does not produce income, then the appraiser can estimate the cost to replace the property.

As a practical matter, residential real estate is almost always appraised using the comparable sales approach. The lawyer who wants to cross-examine the appraiser usually focuses on: (1) the condition of the property and what it will cost to repair the house and get it in salable condition, and (2) whether the other properties used as comparables are really similar to the subject property. For example, this house is on a cul de sac unlike the Smith's home and this house was a foreclosure and this house says it has three bedrooms but wasn't one really a poorly converted garage?

Sources of Information on Home Values:

Harris County Appraisal District	http://www.hcad.org/
Galveston County Appraisal District	http://www.galvestoncad.org/Appraisal/PublicAccess/
All Texas Appraisal Districts (which are on the Internet)	http://www.hcad.org/resources/AppraisalDistricts.asp
HouseValues.com	http://www.housevalues.com/
National Real Estate Appraiser Referral Service (Texas)	http://www.appraisers.com/usa/texas/

Local Real Estate Appraisers:

<p>John Chamless & Company 4314 Stanford Houston, TX 77006 Tel: 713-524-3966 Fax: 713-522-0275</p>	<p>Paul Fruge Fruge Appraisal Group 321 Heights Blvd. Houston, TX 77007 Tel: 713-863-1333 Fax: 713-863-1390</p>
<p>Kellie Javane / Market elite P.O. Box 12151 Spring, TX 77391 Tel: 713-922-4617 Fax: 281-605-4593</p>	<p>Edward B. Schulz & Company 9225 Katy Freeway, Ste. 206 Houston, TX 77024 Tel: 713-973-0212 Fax: 713-473-2028</p>
<p>Steve Hughes Bay Area Real Property Appraisers & Consultants, Inc. 1802 Broadway, Suite 212 Galveston, Texas 77550 Tel: 409-762-8453 Fax: 409-762-9056</p>	<p>Michael Haitcoat 1201 Piney Woods Friendswood, Texas 77546 Tel: 281-513-9300 E-mail: mrhapp@att.net</p>
<p>Rick Wilkenfeld 617 8th Ave N Texas City, TX 77590 Tel: 409-945-8336 Fax: 409-945-0102</p>	<p>David Holle Holle and Associates 607 ½ Laurel Drive Friendswood, TX 77546 Tel: 281-482-3357 Fax: 281-482-5565</p>

11. Valuing Big Toys With Motors

Automobiles

NADA	http://www.nadaguides.com/	Use “clean retail” value
Kelly Blue Book	http://www.kbb.com/car-values/	Use “suggested retail” value
Edmunds	http://www.edmunds.com/used-cars/	Use “dealer retail” value
Yahoo Used Cars	http://autos.yahoo.com/	Finds used for cars of same year, model in your area

Classic or Vintage Car Appraisers

The American Society of Certified Auto Appraisers

<http://www.certifiedautoappraisers.com/index.html>

AVR Group Auto Appraisal Services
281-914-9760 Fax: 713-456-2332

P.O. Box 310596, Houston, TX 77231
<http://www.avrecovery.com/>

Houston Appraisal Service
713-882-0950 Fax: 1-800-823-0950

PO Box690448, Houston, TX 77269
<http://www.texasas.com/>

Houston Auto Appraisers
281-424-6466 Fax: 877-512-2622

104 W. Baker Road, Baytown, TX 77521
www.houstonautoappraisers.com

Motorcycles, ATV's, Jet Skis, Trailers, Utility Vehicles, Snow Mobiles

NADA

http://www.nadaguides.com/Motorcycles?gclid=CI_lg7rsl6wCFYtR7AodnxlOIQ

Kelly Bluebook

<http://www.kbb.com/othervehicles/>

Boats, Trailers, Motors

NADA

<http://www.nadaguides.com/Boats>

Yachts, Large Sailboats

Sea Lake Yachts

1500 Marina Bay Dr, Watergate Yachting Center, Pier 2, Kemah, Texas 77565

Tel: 281-334-1993

Fax: 281-334-4795

<http://www.sealakeyachts.com/>

Gulf Coast Yacht Brokers Association - lists all area yacht brokers

<http://gcyba.com/>

RV's, Campers

NADA

<http://www.nadaguides.com/RVs>

Manufactured Homes, Mobile Homes

NADA

<http://www.nadaguides.com/Manufactured-Homes>

Airplanes

Aircraft Bluebook

<http://www.aircraftbluebook.com/>

Houston Aircraft Appraisers
281-424-6466

<http://www.houstonaircraftappraisers.com/>

National Airplane Appraiser Association

<http://www.plane-values.com/>