

DIVORCE MEDIATION TOPIC LIST (NO MINOR CHILDREN OF MARRIAGE)

1. Equitable Distribution of Assets and Debts

a. General Principles

- i. Identification of all assets/debts
- ii. Classification of assets/debts as Marital or Separate
- iii. Valuation of assets/debts and determination of valuation date
- iv. Plan for dividing assets and debts equitably
 1. Individual assets/debts can be divided, or one or more assets/debts can be retained wholly by one spouse in return for the other spouse retaining other assets/debts wholly.

b. Specifics

i. Marital Residence

1. Current Title (sole or joint)
2. Options for Disposition (more than one option can be included in a plan – i.e. interim joint ownership followed by buyout/sale):

a. Remain in Joint Ownership

- i. Use and Occupancy – which spouse?
- ii. Payment of expenses related to Marital Residence
- iii. Future Plan to end joint ownership (timing and financial terms of future buyout or sale)
- iv. Survivorship issues if joint ownership after divorce

b. Buyout by one spouse

- i. Terms of buyout

1. Amount to be paid (determination of sale price and net equity to be divided and how divided to arrive at buyout price)
 2. Timing of payments
 3. Payment of deed preparation and filing/transfer taxes/mortgage recording fees – does one party pay or are these costs shared?
 - ii. Mortgage/Home Equity Loan implications
 - iii. Payment of expenses related to Marital Residence prior to buyout being finalized
- c. Sale
- i. Timing
 - ii. Use and Occupancy prior to closing on sale – which spouse/both spouses?
 - iii. Costs to Prepare for Sale
 - iv. Selection of realtor
 - v. Payment of house expenses prior to closing on sale
 - vi. Division of net equity after sale
3. Interim living arrangements and allocation of living expenses

ii. Retirement Assets

1. Defined Benefit Plans (i.e. public or private pension plans)
 - a. Valuation Considerations (may need special analysis)
 - b. Division of future pension payments at retirement
 - c. Implications on marital status on any future division

- d. Legal requirements for transfer of a portion of a Defined Benefit Retirement Plan from participant spouse to non-participant spouse
 - e. Future survivor benefits if pension being divided
 - 2. Defined Contribution Plans (i.e. 401K, 403B, 457, IRAs)
 - a. Valuation Date
 - b. Division
 - c. Implications on marital status on division being tax free
 - d. Legal requirements for transfer of a portion of a Defined Contribution Plan from participant spouse to non-participant spouse
- iii. Liquid assets – cash on hand, bank accounts, investments in stocks/bonds/mutual funds/cash surrender value of life insurance
 - 1. Valuation amount and date
 - 2. Plan for division
 - 3. Tax implications (i.e. future capital gains on stocks/mutual funds)
- iv. Vehicles
 - 1. Valuation (can obtain from Kelly Blue Book or equivalent source)
 - 2. Current Title
 - 3. Future Title
 - 4. Automobile Insurance – Future Coverage
 - 5. Loan Implications (if vehicle being retained by spouse who is not solely listed on a loan secured by the vehicle)

- v. Other Real Estate
- vi. Business Interests
- vii. Household Items
 - 1. Can spouses mutually agree on division of these items, which may include marital items that have significant value?
 - 2. If not, discuss process for negotiating division of these items
 - 3. Timing of any removal of items from their current location by the spouse retaining any items.
 - 4. Is disposal of unwanted items a topic that requires any discussion for responsibility and costs involved?
- viii. Other assets that are not as common
 - 1. Stock options
 - 2. Monies owed to either spouse by a third party
 - 3. Rental income associated with rental property owned
 - 4. Employment Benefits (i.e. unused vacation time, sick leave) that has a future cash value
- ix. Mortgage and Home Equity Debt
 - 1. Current amounts
 - 2. Current Debtors (both names or one name)
 - 3. Future Disposition
- x. Credit Card Debt (for any debt not paid off in current billing cycle)
 - 1. Current amounts
 - 2. Current Debtors (both names or one name)
 - 3. Future Disposition
- xi. Student Loans
 - 1. Marital vs. Separate
 - 2. Consideration of payments of pre-marital debt from marital funds

3. Future Disposition

xii. Other Loans

2. Financial Support

a. Spousal Needs

- i. Determination of Spousal Incomes
- ii. Review of Spousal Maintenance Guidelines under Illinois Law
- iii. Review of Budgeted Expenses for Each Spouse
- iv. Spousal discussion of specific terms of any spousal maintenance to be paid from one spouse to the other
 1. Amount
 2. Duration
 3. Events that trigger termination (death, remarriage, co-habitation (and defining "co-habitation"))
 4. Any other modifications in amounts related to cost of living, achieving self-support, retirement, etc.

b. Life Insurance

- i. Review current policies, death benefit amounts, beneficiaries
- ii. Discuss future expectations for life insurance to provide for needs of children and any remaining unpaid spousal maintenance in the event of a parent's death
 1. Amount
 2. Changes in Amount over time (and when insurance no longer required (i.e. children reaching a certain age)
 3. Beneficiary
 - a. In Trust for Children (discuss naming of Trustee)
 - b. To a Uniform Transfers to Minors 'Act Account with designated custodian
 - c. The surviving parent
 - d. Other arrangements

c. Spousal Health Insurance

- i. Discussion of Health Insurance coverage after divorce for spouse who loses insurance coverage
 1. COBRA
 2. Insurance through employer
 3. Private Insurance/Health Insurance Exchange
 4. Costs for above options – any provisions for financial assistance

d. Tax Considerations

- i. Filing Status Considerations (Married Joint vs. Married Separate vs. Single) - depends on marital status as of December 31st
- ii. Spousal Maintenance (for Agreements after 12/31/2018) will not be tax deductible to payor, will not be taxable income to recipient
- iii. Tax deductions for mortgage interest/property taxes (consult IRS Publication 504/Tax Professional)
- iv. Capital Gains Taxes
- v. Prior Tax Returns – Future Audits

3. Miscellaneous Topics

- a. Pets
- b. Provisions for Resolution of any Future Disputes
- c. Allocation of payment of mediation expenses
- d. Allocation of payment of legal expenses
 - i. Marital Settlement Agreement
 - ii. Preparation and Filing of legal documents to complete divorce (including any legal representation at “prove up”)
 - iii. Court filing fees for divorce
 - iv. Other legal fees

1. Deed preparation
 2. Court orders (may be needed to divide retirement assets)
 3. Legal Representation for consultation or document review (if needed)
- e. Any timing issues that require discussion (i.e. health insurance coverage, tax filing, expectations for filing for divorce) and review of timeline and procedures for post mediation steps to be taken by spouses