

HEADED FOR DIVORCE?

YOU CAN LEARN FROM A FORENSIC EXPERT

By Paul Nelson, Esq



Denis Retoske is a triple-threat: an attorney, a certified public accountant (CPA), and a certified valuation analyst (CVA). He often serves as a forensic accountant in divorces, analyzing documents to help family court judges decide on child and spousal support payments, as well as on how to divide community property. Denis holds memberships in the American Institute of Certified Public Accountants (AICPA), the AICPA's Forensic and Valuation Services section, and the National Association of Certified Valuators and Analysts. More than three decades as a CPA, and nearly two decades of forensic accounting experience, afford Denis particular insight into how to obtain the best outcome in a divorce.

Q: What steps do you take to determine recommendations for property division and spousal support?

A: Generally, the first issue to be addressed in divorce is to analyze the income of the parties. I review a couple's household and business activities to determine how much income—how much cash flow—is available to pay temporary spousal support and, if there are minor children, child support.

The income analysis is done to determine *temporary* support, the support needed to maintain the status quo during the pendency of the litigation, which can take several months or even years.

The income analysis is almost always required to be updated to help determine *permanent* spousal support, the goal of which is to allow the recipient spouse to become self-supporting within a reasonable time. It's thus normally lower than temporary support. Permanent support can only be modified in the case of death or remarriage of the supported spouse, death of the payor spouse, or by further order of the court. Keep in mind, the respective income of the parties is one of many financial and non-financial factors courts must consider in determining *permanent* spousal support. So, temporary support and permanent support are designed to serve different purposes.

Q: So, what is a marital balance sheet?

A: A marital balance sheet shows all the assets and liabilities of a marital estate that are to be characterized, valued, and divided, such as real estate, investment accounts, retirement accounts, business interests, jewelry, art, mortgages, and other liabilities. The net worth of the parties is also a factor the court considers in determining permanent spousal support.

When one party in a dissolution proceeding continues to pay certain community debts—for example, real estate taxes or a mortgage—with post-separation earnings—that person is likely entitled reimbursements that are also shown on the marital balance sheet. When testifying in a trial or hearing, I often testify to

the current income of one or both the parties, the net worth of the parties, and the marital standard of living. (This is often referred to as the station in life the parties achieved during marriage.)

Q: What advice would you give to an entrepreneur/business owner getting married or contemplating divorce to ensure the best possible outcome?

A: Regardless of whether there is a prenuptial agreement or subsequent transmutation (the change of separate property to community property or community property to separate property), I recommend keeping detailed records of all financial transactions, including the purchase of assets, from the start of the marriage—and better yet, *prior* to the marriage. (This helps characterize all property at the date of marriage and afterward.) I also recommend keeping them *forever*, year by year, month by month. Banks and other financial institutions generally only retain records for seven years. You can't count on them to provide the records after that period if you get divorced. Possessing detailed records going back to the start of a marriage and before can potentially save tens of thousands of dollars in legal and accounting fees.

Next, if you have received or expect to receive an inheritance or gift you wish to keep separate from your community property, put it in a separate account to avoid commingling separate and community funds. This way it is simpler to tell what property was received prior to the marriage and what was received during the marriage.

Finally, you must realize emotion often drives a divorce. This can make the case harder and pricier than it needs to be, especially in straightforward divorces. It is important to be honest and make full disclosures. If you reach an amicable agreement with your soon-to-be ex-spouse, I often recommend having a family law attorney review the agreement to ensure both parties have addressed their rights and obligations.

Ultimately, there's no substitute for good counsel in a divorce. Family can be complex, and an experienced lawyer can help navigate even the trickiest situations.

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