

ALBUQUERQUE DIVORCE LAWYER BLOG

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Division of New Mexico Community Property: Agreement on Method Can be the First Hurdle

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As a community property state, one of the primary issues in any divorce proceeding in New Mexico is valuing the assets and debt accrued by the parties during the marriage so that all of the community property and debt can be equitably divided. After the parties have fully disclosed and identified all assets and debts, and put preliminary values on those items in order to determine whether further valuation is necessary, there are several additional steps for a fair valuation and allocation of the community property and debt.

First, the parties must identify separate property and debt. This separate property and debt should be clearly identified and separated out of the community estate. Once the parties have identified and allocated the separate property and debt of each party, they must determine the value of the remaining assets and liabilities.

Valuation is the process by which the marital estate is boiled down to economic fact--it serves as a safeguard against material misstatements of value and provides the information necessary to facilitate settlement, or establishes the values that will be used at trial if parties cannot settle. The valuation itself, even under the best of circumstances, can be complex and contentious.

There are a variety of valuation methods available and many times the parties will disagree not only on values but on the methods of valuation. Parties will save themselves money and time if they can agree on values, or at least valuation method prior to settlement or trial. Often the parties can agree informally on a value, however, the more complicated the marital estate, the more likely it is that the parties will want to use more formal valuation methods.

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Here is an example: in the process of valuing a house, there is a progression through stages from the least credible to the most credible.

- Least credible: The parties' individual representations regarding what they think the house is worth.
- More credible: A market analysis, conducted by a realtor or other person who has expertise in real estate, places a value on the house. The key here is for the parties to agree on the third party realtor. Without an agreement, this simply cements the foundation or future disputes over value.
- More credible: A formal appraisal, done by someone who is trained in real estate appraisal and who has been hired by the parties. It is not uncommon for the parties to seek separate independent appraisals when headed to trial. This approach can be very expensive.
- Most credible: Sale of the house on the open market. This is the most reliable way of valuating the house, for marital estate division purposes. It is often also the most emotional.

Any party to a divorce should consult with an experienced family law attorney in order to determine what sorts of valuation methods are appropriate for their case. The higher the level of credibility the evidence is, the more likely it is that the court will accept the value presented

The process of preparing a summary of the marital estate is an important piece of the puzzle in completing a divorce. It is important to keep in mind that it is ultimately up to the parties to agree on the value. Naturally, there will be some difference of opinion. It is when this difference of opinion is not based in economic reality that the process can get highly contentious, stressful and expensive. This is typically the path you would want to avoid.

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