

Tracking Marital Assets & Liabilities *And Why It Matters*

By Rachel Gruetzner, Esq.¹



Divorce is not simply a legal process; it is also a highly emotional one. For this reason, divorce clients run the gambit from the overorganized and highly sophisticated to the haphazard and forgetful. Clients may not be the masters of their own destiny or have intricate knowledge of all of the ins-and-outs of their marital estate. Thus, it is important for legal professionals to be highly organized so that while the client may be feeling overwhelmed, the law firm is able to keep track of all of the details.

Imagine—a divorce client must assess and catalogue every single thing they own.² As such, in every divorce, the following questions must be asked:

1. What do I own? What does my spouse own? What do we own together?
2. Of all of these items I own, my spouse owns, and we own together, which of these things are marital?
3. If any of the above-mentioned items are not marital, is there a good reason that either party might want to invade any asset/thing and treat it as marital even though it is not?
4. What is the value of each?
5. Finally, who should receive each item in the divorce? Or, said another way, how should this property be distributed?

As you can imagine, for people of considerable wealth, or those married for 10, 20, 30, or 40 years, there may be a considerable amount of personal and real property. It is extremely important that the legal professionals involved have a firm grasp on all of these items and know how important they are or are not to the client.

Tracking the “Stuff”—Excel is Best

Excel is the best computer program to keep track of this “stuff.” While I am personally constantly playing with how I track assets and liabilities in a divorce, I will always use Excel. I would encourage you to become familiar with the Excel program. Basic formulas can save you a lot of time and headaches in divorce matters.

However, for those who are absolutely opposed to Excel, you can also create charts in Microsoft Word or Word Perfect, but there are no formula functions, and you cannot total numbers, divide, subtract, etc. You would need to use a calculator. If you are using a program other than Excel to create your property charts, then you will need to be very vigilant that any change in value is accounted for when totaling.

How to Set Up Your Chart

No matter how you decide to set up your asset chart, it is important that all components of a case are contained in that chart. Personally, I like to divide my chart by “type” of item, and then also include columns for the following information: Exhibit, Date of Value, Item, Value, Separate Value, Debt, Plaintiff, Defendant, Reference Documents, and Arguments/Comments.



Below is an example of an asset chart I prepared for a fictional case discussed in an ICLE conference.

General “Types” of Property

As you can see in the sample chart, I like to break out “types” of property as an initial way to categorize them. In this chart, I have included the following types of property: Real Property, Business Interests, Bank/Investments, Contribution Plans (Post-Tax), Personal Property, Debt, and Misc. However, your chart should be tailored to your client’s situation. For example, if you have a client who has an extensive antiques collection, you may want an “Antiques” section in addition to a personal property section.

Mr. Feat v. Mrs. Feat (ICLE SEMINAR) ASSET-LIABILITY CHART								Arguments/Concerns(DO NOT INCLUDE IN PRINT AREA)
VALUATION SNAPSHOT DATE:								
EXHIBIT	Date of Value	ITEM	VALUE	SEPARATE VALUE	DEBT	WIFE	HUSBAND	Reference Documents
REAL PROPERTY								
		Marital Home	310,000		(110,000)			SEV v 2; last mortgage statement
		Em St.	175,000					SEV v 2
		Wanted St.	175,000					SEV v 2
BUSINESS INTERESTS								
		Office Building (Real Prop of Business)	300,000		(100,000)			increase 1 year ago; last mortgage statement
		Mr. Feat's business	?	?				P wants to reduce by 21,500 for sale expenses. Accountant says 250,000, but P has said would not sell for less than 1,000,000
BANK / INVESTMENTS								
		Comerica	30,000					Bank statement
		LaSalle	150,000	?			?	Bank statement
		County National Bank	30,000					Bank statement
		Merill Lynch	50,000					Monthly statement
		A. G. Edwards	90,000	?	(when est?)			Monthly statement
CONTRIBUTION PLANS (POST-TAX)								
		Mr. Feat's 401(k)					0	need to calculate post-tax equivalent of \$40,000
PERSONAL PROPERTY								
		Household furnishings and furniture					0	NEED APPRAISAL
		Mr. Feat's Jewelry	50,000	DEBT			0	insurance rider - appraisal?
		Mrs. Feat's Jewelry	30,000	DEBT		0	0	insurance rider - appraisal?
		Mr. Feat's Chevy	30,000			0	30,000	
		Mrs. Feat's Buick SUV	30,000		(30,000)	0,000		
		All other items						
DEBT								
		?						
MISC								
		Prudential Whole Life on Mr. Feat	40,000				40,000	
		MassMutual term policy on Mrs. Feat						0% value? (\$550,000 face amount)
TOTAL NON-RETIREMENT ASSETS:			1,481,000		(340,000)	0,000	75,000	Conversion Formula: A=post tax equivalent, B=tax percentage, C=pre-tax amount. Formula = $A=C/(1-B)$.
Adjustment Necessary to Equalize Division of Estate:					34,500	(34,500)		
Totals Per Spouse Post Equalization Adjustment:					40,500	40,500		

Exhibit

The Exhibit column of these charts is usually blank unless and until you are preparing for trial. However, if your matter does proceed to trial, having this exhibit column is invaluable. It is an easy way for a judge to match the reference documents and exhibits entered at trial with the property.

EXHIBIT	Date of Value	ITEM	VALUE	SEPARATE VALUE	DEBT	WIFE	HUSBAND	Reference Documents	Arguments/Concerns(DO NOT INCLUDE IN PRINT AREA)
CHART FOR PRE-TAX RETIREMENT BENEFITS									
		DEFINED BENEFIT PLANS	VALUE	SEPARATE VALUE	DEBT	WIFE	HUSBAND	Reference Documents	
	10/1/98	Mr. Feat	2,000,000	0	0	0	0		
		CONTRIBUTION PLANS (PRE-TAX)							
	10/1/98	Mr. Feat	50,000	50,000	0	0	40,000		
TOTAL PRE-TAX ASSETS			?		0	0	40,000		
ADJUSTMENT DUE TO EQUALIZE					0	0	(30,000)		
TOTALS							30,000		REMEMBER TO TAX ADJUST VALUES IF COMPARING TO THE TOP CHART.

As you can see, this chart is certainly not a perfect finished product. There are several question marks and blank spots scattered throughout—and that is okay! The goal of the chart is not for it to be beautiful, but for it to be a master sheet, containing all the information needed to respond to the five questions listed above regarding the property to be distributed in this case. The chart will get updated frequently throughout the case as your client provides documents or as discovery proceeds.

Two Separate Charts—Post-Tax and Pre-Tax Assets and Liabilities

Many divorces involve the division of retirement accounts. While a retirement account is a type of asset like any other, it differs from cash because in order to access the funds in the account, the participant must pay taxes on these funds. For that reason, I like to separate pre-tax and post-tax assets. Then, if I am comparing the retirement funds to the other post-tax assets in the greater chart, I will separate them into their own section after accounting for the tax effect.

I also include the formula that needs to be used to calculate the post-tax equivalent of pre-tax assets. That is simply a reminder for me and is not a required component of a working property chart.

In addition, I know some lawyers like to catalogue documents with a Bates stamp or an indexing system. If you work for a firm that operates in this way, then certainly it would be helpful to turn this Exhibit column into an “ID Number” column or add a column that corresponds to your firm’s practices.

Date of Value

Imagine your client had \$10,000 in a savings account when they hired you, but have since spent \$5,000 for attorney fees. At what date should the account be valued for the purposes of dividing that bank account? It is the nature of assets and liabilities to fluctuate throughout a divorce matter. For that reason, it is important to identify on the chart the date on which the values are based. In the event negotiation is needed regarding the date of the value, or if opposing counsel is valuing an item on the basis of a different date, having a quick reference of the valuation date is invaluable.

Item

Although the chart included in this article is not a great example of this (as it was based on a hypothetical that lacked details), when I list items in my property charts, I like to be as descriptive in the name of the item as possible. For example,

I usually will not label a home as “marital home.” Instead, I will label it with the address of the home. For bank accounts, I will generally denote the last four digits of the account number in parenthesis, i.e., “Rachel’s Bank of America Checking Account (No. xx1234).” Also, if it has been provided to me, I will include the VIN number for automobiles. The reason for this detail in the chart is efficiency. As I am drafting final Judgments of Divorce or other pleadings that require specificity, I can simply glance at the chart for all the information I need.

Value

This is your determination of the asset’s value. It is likely this number will change during the course of the divorce or, perhaps, as better information regarding values becomes available. This is particularly true for real estate assets. You will often begin a matter by valuing real property by using two times its State Equalized Value. However, if an appraisal is prepared, the value may change.

Separate Value

Some assets are hybrid in nature, meaning they are both marital and pre-marital. A common example of this would be retirement accounts. As you can see in this example, Mr. Feat’s 401(k) has \$10,000 of separate value. This is the balance of the account he earned prior to his marriage to Mrs. Feat. The separate value must be included and subtracted from the overall value when values are being assigned. In this example, the total \$40,000 (marital portion of Mr. Feat’s 401(k)) has been assigned to him in this chart. The benefit of using Excel is that there is no need to do your own math! Make sure to use the formula function to create that \$40,000 number so if the number assigned to the value or separate value changes, you will not need to perform any arithmetic.

Debt

If an asset is encumbered by any debt, i.e., if a marital home has a balance on the mortgage, then note it in this column. Again, make sure to use the formula function to account for the debt when assigning the value of any asset.

Some people prefer to separate debts associated with assets as a separate “debt” listed under a “debt” subheading. Either approach is fine, as long as debts are not double accounted for in the total asset list.

Spouse Name Columns

As you can see in the example, in these columns you will put the total amount of the asset or liability (after accounting for any separate value or debt) and assign it to the spouse who will be receiving it in the divorce. Remember, if using Excel,

use formulas to name those values.

Sometimes parties agree not to assign values to something when they are deciding who will receive an asset. In this instance, I like to use an “X” to denote that something has been assigned to one spouse without regard to value, for example:

Sometimes in a matter, the parties will agree to sell an asset and split the profits. You can also denote that in a chart. For example, you could denote a sale of an item like this:

EXHIBIT	Date of Value	ITEM	VALUE	SEPARATE VALUE	DEBT	WIFE	HUSBAND	Reference Documents
		PERSONAL PROPERTY						
		Household furnishings and furniture						NEED APPRAISAL
		Antique Lamp	1,000				X	
		Painting hanging above fireplace	3,000			X		

To me, an S in each party’s column means the parties are selling the asset and splitting the proceeds equally. Some people simply put an X in each spouse’s column when an asset is being sold. It is merely preference. However, if you are planning to use the chart in trial or at mediation, it may be helpful to create a key reflecting what the various symbols in the chart mean.

EXHIBIT	Date of Value	ITEM	VALUE	SEPARATE VALUE	DEBT	WIFE	HUSBAND	Reference Documents
		REAL PROPERTY						
		Marital Home	310,000		(110,000)	S	S	SEV x 2, last mortgage statement
		Elm St.	175,000			S	S	SEV x 2
		Walnut St.	175,000			S	S	SEV x 2

Reference Documents

Here, list every document you used to determine the value of an item. If an item on your chart does not yet have a value, you might list “need appraisal” in this column. If the value on your chart is an estimate from your client based upon the purchase price of an item, denote that here.

Arguments/Concerns

This is the most important column of any asset chart. In this column, you should track all of the arguments or concerns about each particular asset. As you can see in the example, this column is a different color. This is to remind our office not to include this column when printing asset charts to share with opposing parties or the court. If there is a dispute with the opposing counsel about the value of any particular asset, I like to note it here.

Totals

As you can see, once all of your assets and liabilities have been identified, when using Excel, you can calculate the total net worth of items being assigned to each spouse. This will help determine whether an “equalization” payment from one spouse to another will be necessary to balance the division of the marital property.

TOTAL NON-RETIREMENT ASSETS:	1,461,000	(240,000)	6,000	75,000
Adjustment Necessary to Equalize Division of Estate:			34,500	(34,500)
Totals Per Spouse Post Equalization Adjustment:			40,500	40,500

Date Your Chart and Save Copies if Necessary!

Because your asset chart should change as you discover information about your case, it is very important to ensure your chart includes the date it was created in a footer. You may choose to save different versions of your chart depending on the date it was created or updated.



Rachel Gruetzner is an associate attorney at Levine & Levine and she is passionate about helping families through difficult life transitions that accompany a change in family structure. This passion enables her to cut through conflict quickly and efficiently to create an individualized and practical solution to a family law matter. Ms. Gruetzner understands that a break-up can cause emotional and economic upheaval. With great compassion, Ms. Gruetzner works on finding a solution that minimizes conflict and financial burdens so often associated with divorce. As the daughter of one deaf and one hearing parent, Ms. Gruetzner understands complex family dynamics involving blended families and can communicate in sign language. Her personal background lends a unique perspective to cases, especially those which require a more particularized approach to parenting time and custodial issues.

Ms. Gruetzner is trained in conflict management, educated in trial practice, and has an extensive background in legal research and writing. These specialties allow her clients the benefit of a litigator who effectively articulates complex legal concepts with the unique approach of seeing every matter first through a conflict resolution lens. Ms. Gruetzner's practice focuses on family law matters involving child custody, parenting time, child support, spousal support, division of property, adoption, and paternity, at the trial level and in the Court of Appeals.

Endnotes

1. Rachel would like to thank Cathy Zackery, CLP for her assistance in the preparation of this article, and Saraphoena Koffron and Diana Raimi for their mentorship and guidance in this subject.
2. Of course, most divorces do not require clients to inventory every pen or Q-tip in their home, although every family law attorney has a horror story about some client or opposing party who did exactly that.

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