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DIVIDING THE 'MARITAL POT' IN A DIVORCE

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In California, parties to a divorce must "lay all their cards on the table," so to speak, regarding all of their assets and debts. While parties may try, there are no secrets as to property when you file for divorce.

In fact, full and accurate disclosure of all assets and debts is a required step in every divorce action. This is because spouses are in a fiduciary relationship with each other which imposes a duty of the "highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other." Imagine a marriage is like a business. Each spouse (or business partner) has a right to know the financial status of the marriage (or business). The duty of "highest good faith and fair dealing" imposes an obligation upon each spouse to fully disclose to the other all information about "community" assets and debts for which the community may be liable.

What is the "community"? California is a community property state. This means that once you are married, assets and obligations are either community property or separate property. Community property is all property, real or personal, wherever situated, acquired by a spouse during marriage. The community property makes up the "marital pot," if you will, and is subject to equal division upon divorce. Each spouse is entitled to half of the "marital pot." Separate property is not subject to division and is assigned to the owner of said property. Separate property is property owned by a spouse before marriage, property acquired after marriage by gift or inheritance, and the rents, issues, and profits from this property.

In order to divide property between the spouses at divorce, you have to know what there is to divide, i.e. what is in the "marital pot." Each spouse must "lay all their cards on the table," and disclose all property and debts in which they have an interest.

Thus, each spouse is required by law to serve upon each other a Preliminary Declaration of Disclosure ("PDOD"), with an Income and Expense Declaration ("IED"), and a Schedule of Assets and Debts ("SAD"). Each of these are forms that must be signed under penalty of perjury. It is important to consult a knowledgeable family law attorney to complete this required step. As these forms contain personal financial information, they are not filed with the Court, but rather a Declaration stating that you served the other party with these forms must be filed.

In the PDOD, the spouse must disclose all information regarding the value of all assets and debts, and any income-producing opportunity presented since the date of separation resulting from any income-producing opportunity during the marriage, and their tax returns for the last two years. The IED requires each spouse to disclose all of their income from all sources and their monthly expenses. Paystubs for the last two months must also be provided.

Finally, the SAD requires each spouse to disclose all their property and debts, whether they believe it to be community or separate property. This includes, but is not limited to, real property, furniture, jewelry, vehicles, bank accounts, life insurance policies, stocks, investment accounts, retirement accounts, and partnerships and business interests, as well as the current value of each. This also includes all liabilities including student loans, taxes, unsecured loans, and credit cards, as well as the current balance of each. If you know about it, if it exists, it must be disclosed. In a California divorce, "what's mine is yours," when it comes to community property, so the other party has a right to know what they are entitled to, or what liabilities they may be responsible for.

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If a spouse fails to provide their disclosures, or does not provide sufficient information therein, they are subject to Court-ordered monetary sanctions. To obtain additional information, a spouse may also file discovery requests, which may include demanding the spouse produce certain documents, requiring them to respond to certain questions, or issuing a subpoena to a financial institution. But that's not all. Full and accurate disclosures must be made *again* before judgment is entered. The parties must exchange Final Declaration of Disclosures with an updated IED and SAD. This requirement may be waived as part of a settlement agreement, but even then, an updated IED is still required.

Information is key when comes to division of property in a divorce. Once the parties are satisfied with the information obtained, the "marital pot" can be divided equally between the parties and any separate property be assigned.

Divorce is hard enough. To ensure that you walk away with everything to which you are entitled, it is important to work with an experienced family law practitioner who will advocate for your best interests.

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