

PRACTICE HINTS: MANAGING PROPERTY DIVISION AND FINANCIAL RESPONSIBILITY ISSUES

1. In approaching both financial and property division issues, assess the "exchange environment" — how the parties deal with money and property. Who controls? How do they discuss topics? Remember money/property issues are only personal issues "in drag." There are few personal issues that do not have a business aspect and few business issues that do not have a significant personal dimension.
2. Make sure to conceptually distinguish financial responsibility issues from property division issues. Most parties will confuse the two. While there is overlap, dealing with each issue separately and then integrating them is important to minimize confusion. This allows the parties to "grasp" the "whole picture," while at the same time separating it into manageable parts.
3. Money and property issues are not synonymous with legal issues. Lawyers do not necessarily know better about these issues because of their professional training. Encourage the parties to read and to consult with accountants and qualified financial planners.
4. In approaching property division and financial responsibility issues, use the method scientists call the "theory of successive approximation" — obtain rough ideas about what makes sense and then refine the numbers in future reviews. Do not let the parties try to do it all at one sitting.
5. The order and approach to property division and financial responsibility issues in the course of mediation needs to be thoughtfully and strategically planned so that the parties are not overwhelmed. A suggested order is as follows:
 - A. Arrive at tentative understandings about the division of property; complete the Summary of Property Division.
 - B. Develop tentative understandings with regard to financial responsibilities; complete the Distribution of Financial Responsibility. (Generally the parties should have developed the parenting plan before beginning financial responsibility.)
 - C. With the proposal format, have the parties complete the bargaining process, considering overlaps and tradeoffs between property division and financial responsibilities.
 - D. The final level of refinement will include tax planning and ramifications and allocation of professional fees.