

## **PRACTICE HINTS: PROPERTY DIVISION**

### **ORGANIZATION AND APPROACH**

The most critical mediative skill and strategy in approaching property division and financial responsibilities issues are structure and organization. Don't let the parties "fight" before they are ready, so that the substantive conflicts, not peripheral conflicts are kept in focus. The parties need (1) to have all necessary information, (2) know the issues, (3) know the options, and (4) know the pros and cons of each option before they can effectively negotiate. There are four basic steps that should be done in order:

1. inventory of all assets (marital, nonmarital and children's)
2. understanding of the assets
3. valuation of the assets
4. division of the assets

In property division, the mediator has a responsibility to give legal and business information (not advice) and/or make sure parties have that information from attorneys or other experts (e.g., marital/non-marital property, real/personal property, whole/term life insurance, etc.). However, the standards of fairness the parties apply for the division of assets should be their own. Reframe issues from legal to equitable division standards.

### **DIFFERENTIATE BETWEEN QUANTITATIVE AND QUALITATIVE DIVISION**

Many parties (and lawyers) become preoccupied with the quantitative ("bottom line—who gets how much" division. Remember that the qualitative dimension, (who takes which asset) may be as or more important in terms of future financial security. A quantitative (value for value) division of assets is often too simplistic: "she takes the house, he takes the pension."

Before the parties begin property division asset by asset, make sure they see the whole picture; complete the Property Division Summary, (8.6.6).

### **NOTES ON FORMS:**

#### ***Financial Profile: Statement of Property***

This form was given to the parties as an initial homework assignment in the first working session.

#### ***Property Inventory and Valuation of Assets***

This exercise/form is generally done in the second session from parties' statements of property. The subtotals for each asset are entered into the Summary of Property Division. This form allows both parties to confirm the inventory of assets and values and provides a checklist of what further information/values need to be obtained (e.g., car "blue book" values, appraisals of real estate/business, etc.).

### ***Summary of Property Division***

This form will allow parties to see the whole picture of assets and possible options for distribution. Also, when finally agreed upon, it becomes the final exhibit (see Agreement form, 8.10.4, Exhibit III). Generally, the form is redone two times or more as values, options and tradeoffs are considered and refined by the parties.