

HIGH ASSET VALUE DIVORCE REPORT



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Choosing a Divorce Attorney in High Asset Value Situations

WHAT TO CONSIDER, WHERE TO LOOK, AND
WHAT YOU SHOULD EXPECT

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INTRODUCTION TO *Choosing a Divorce Attorney in High Asset Value Situations*:

What to consider, where to look, and what you should expect.

Choosing a divorce attorney for high net worth divorces isn't like ordinary divorce cases. The stakes are higher. There's more at risk. The situation is much more complex. High asset value divorces require a different, more knowledgeable approach than ordinary divorce cases.

This report was designed to ensure you are represented by an attorney prepared to handle the complex financial issues involved in these types of divorces. Inexperienced attorneys must bring in expensive financial consultants and accountants. This will negatively affect your bottom line results.

This report will get you well on your way to finding the right divorce attorney for your situation.

I hope this book is helpful to you and gives you the guidance to make the right attorney decision.

Good luck!

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CHOOSING A DIVORCE ATTORNEY:

A business background is a must

In a divorce involving business, real estate, intellectual property, stock options, or complex financial assets, the attorney must have extensive business background and experience. If he or she doesn't, your likelihood of success is limited. If the attorney has not been involved in business formation, operation, sale and financing, it is difficult for the attorney to understand the fine points necessary to establish the value of the business.

Therefore, the inexperienced attorney has no choice but to rely upon expensive experts, paid for by the client. This creates problems not only due to the costs involved, but because the attorney is now dependent upon the expert's opinion. It is rare for a divorce attorney to have an extensive business and real estate background or hands-on experience that allows the attorney to completely understand the complex financial issues involved.

Typically, divorce attorneys are so specialized in family law that they do not have the broad background in business necessary for high asset value divorces.

TAKE AWAY

If you own a business or real estate, or have intellectual property, stock options or other complex financial assets, be sure to carefully question your divorce attorney about his experience in each of these areas.

THE CRITICAL FIRST STEP:

Pre-divorce planning and document review

TAKE AWAY

Experienced attorneys should know how to be cost effective and advise you in great detail about the potential outcome of your case, and the costs involved.

Pre-divorce planning and document review is a must. You can't build a house without a proper set of plans, nor can you properly conduct a divorce without complete and accurate financial information.

The easiest and least costly way of going through the divorce process is to have complete financial information available to your attorney at the beginning of his representation. He should assist you in completing a questionnaire.

Don't be concerned if you do not have all of the information. It is usually available through your accountants, bookkeepers, or other professionals involved with your business or real estate.

The attorney should be skilled at identifying and acquiring the information necessary for asset valuation. Documents and financial information are the critical foundation for planning your divorce. The experienced attorney will be able to do the divorce more efficiently, with less expense, and with a better result, with better information produced as quickly as possible.

Additionally, in a pre-divorce planning session, the attorney should be able, after receiving a reasonable amount of financial information, to predict, within a range, the ultimate outcome of your case.

YOUR DIVORCE BALANCE SHEET:

Disclosure of assets and liabilities

Parties to a divorce are considered to be in a fiduciary relationship. This means that each party has the obligation to completely disclose to the other all of their assets and liabilities. The initial Court forms which you will complete as a part of your divorce process require disclosure of assets and liabilities. This is where the benefit of pre-divorce planning and document collection becomes clear.

There is nothing more frustrating, or loss cost effective, than facing a constant change in asset values due to changes in asset information. The experienced attorney will know where and how to obtain all information and documents necessary to complete your divorce as quickly and efficiently as possible.

TAKE AWAY

Make sure your divorce attorney has a pre-divorce planning methodology and knows the correct financial documents to have on hand in financially complex divorces.

THE SEPARATE PROPERTY RULE:

Premarital and non-marital property

Determining “separate” property is often one of the most difficult tasks involved in a high asset value divorce. It is incumbent upon the attorney to determine what is “separate” property and what is “community” property.

Absent a valid premarital agreement, the marital rights of parties are fixed in accordance with California property law. Generally, community property is divided equally.

Separate property is excluded from the community property and is awarded to the owner. “Separate property interests” include property owned before marriage, property acquired during marriage by gift or inheritance and profits of such property, or property subject to a valid premarital agreement.

Characterizing the status of property interest as “community” or “separate” is the foundational starting point for the resolution of marital property rights. The type of ownership of the assets, such as joint or individual ownership, must be determined early in the case.

Issues concerning refinancing of assets during the marriage and use of the proceeds from the refinancing must also be carefully considered. Additionally, separate property can be subject to what is called “transmutation”, which is a transaction or an agreement that results in a change in the character of the property. By this process, separate property can become, in whole or part, community property. This issue is confusing and complex, and your attorney must be experienced in sorting out all the facts and legal issues involved.

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TAKE AWAY

Without an extensive business, real estate, and financial background, the attorney is often lost and of little benefit to you in the divorce.

THE SEPARATE PROPERTY RULE:

Premarital and non-marital property

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The issue of the parties' fiduciary duties towards one another in managing marital assets may also become a problem in a complicated high asset value divorce. This is especially true in the difficult financial times that now exist with declining asset value.

Did the spouse unreasonably destroy the value of the business? Questions about whether one spouse's management of the business has been proper may be an issue.

Where property is determined to have been separate property, there is also an issue of how to allocate profits generated during the marriage from separate property.

Each of these topics involves critical analysis, and the financial and legal analysis skills of the attorney are essential to thoroughly understand the issues and classes of assets involved.

TAKE AWAY

In determining the validity and the scope of a Premarital Agreement, your attorney must have drafted many agreements and litigated the validity of the agreements. There is too much at stake for an inexperienced attorney.

PREMARITAL AGREEMENT

In high asset value divorces, a valid Premarital Agreement can drastically alter the division of assets, which would otherwise be mandated through application of California divorce statutes.

The first question is whether the Premarital Agreement is valid. The Court will often “bifurcate” or conduct a separate trial on the issue of the validity and scope of the Premarital Agreement. This makes sense, because the parties need to know what assets will be included in the divorce.

Because considerable money is often involved, the trial to determine the validity of the Premarital Agreement can be expensive. If issues of unfairness, abuse, or coercion are raised, then psychologists, medical doctors or other professionals are often called as expert witnesses.

Even if the Premarital Agreement is determined to be valid, often the agreements are ambiguous. Further, comingling of community property assets and property excluded by a valid Premarital Agreement can occur. This changes the method of distribution.

The bottom line is that if your case involves a Premarital Agreement, you must have an attorney who has extensive experience in drafting and litigating these agreements. Be sure to ask your attorney how many Premarital Agreements he has drafted and how many Premarital Agreement issues he has litigated. Also, if medical or other expert testimony is needed, ask your attorney what experts he would use and the cost.

ALIMONY

Alimony is based on the ability of one spouse to meet his or her needs through appropriate employment or investment income, and the ability of the other spouse to meet his or her own needs when paying alimony.

In high asset value cases, the ability of a spouse after the divorce to meet their needs is often determined by property that generates an income, or a business that pays a salary which was given to the spouse in the divorce.

In most cases, there is an award of temporary alimony pending the final outcome of the divorce. There may be a need for some limited duration alimony after the divorce, or even permanent alimony. Every alimony situation is unique when high asset values are involved. The basic starting point is the determination of the standard of living during the marriage, and the parties' respective budgets and incomes after the divorce, including income from investments.

If the spouse is not presently employed or is underemployed, an expert employment evaluator or consultant is often retained to evaluate the spouse's ability to rehabilitate their employment and determine what income the spouse is likely to earn after the divorce. You should question your attorney about who he or she will use for an expert, and the cost.

Finally, the attorney representing you in a high asset divorce should have financial consultants available to render expert opinions concerning the likely income to be earned from assets awarded to the spouse in the divorce.

TAKE AWAY

Without years of experience, the attorney is unlikely to properly evaluate all the complex issues concerning the amount and duration of any award of alimony.

TAKE AWAY

Before litigating most child custody matters, your attorney should refer you to a competent psychologist or similar professional who is well respected by the Court to mediate any disputes.

CUSTODY / CHILD SUPPORT

Child support is determined by a statutory formula containing many factors. In high asset value cases, there can be modifications to the basic level of child support and you should carefully discuss this with the attorney.

Child custody cases are the most difficult matters handled by the Courts. Some child custody cases must be litigated from the very beginning of the case because of allegations of physical or sexual abuse. However, in the vast majority of cases, because of the financial and emotional price paid in litigation, the parties should work to resolve their differences using competent family and marital counselors and mediate an agreement.

Your divorce attorney should recommend that you consult with highly competent professionals who are well respected by the Court to try and resolve your disputes, and should provide you with a referral. In some cases, the inexperienced or corrupt attorney will try to fan the flames, or throw gasoline on the fire and recommend that you immediately commence a custody case to increase the fees the attorney charges. Be cautious of an attorney who wants to push you into a custody case. At the very least, get a second legal opinion.

If a custody case must be litigated, sometimes it is best to have a separate attorney for the property issues, and another representing you in the custody case. This will separate the tasks of each of the attorneys, and prevent unfair tactics where child custody or visitation is used as a bargaining chip in the property division negotiations.

CONSULTANTS:

When you might need them and why

The divorce attorney in a high asset value divorce is often like a band leader. He has to select the type of musicians and direct them on how their instruments should be played. Obviously, there is a need to select expert witnesses who are competent, but it is the role of the attorney to guide and assist the experts in understanding their role in your divorce.

Having an expert render opinions on complex issues such as the value of separate property, or profits on that separate property, is useless unless the attorney gives the expert the law which needs to be examined. The attorney then needs to work with the expert to formulate the best possible presentation of the facts and the expert's opinion.

The attorney will assist the expert in obtaining the information, analyzing it, supplying the law which the expert must use, and then working with the expert to obtain the best opinion to support your claims. The attorney must also have extensive business, real estate and financial knowledge to examine any opinions from the other side's expert.

Sometimes, the parties will use a "joint" expert to act as a neutral to determine the value of an asset. Be very careful before you agree to this. With high-value assets, two appraisers will often arrive at different opinions of value. Therefore, use of a neutral appraisal should be carefully examined. Many times, it is better to have one party do their own appraisal and then have the other party retain the services of a "review appraiser" to examine the opinion of value of the first appraisal. By doing so, any errors in the original appraisal will be disclosed. The cost of the review appraiser is often well worth the cost in high asset situations. Small errors in the reports multiplied by the high value of the assets being examined can result in large dollar losses.

TAKE AWAY

If your attorney has experience in business, real estate, patent law and finance, he will be able to give experts exactly what they need to render the opinion most in your favor.

REMAINING CALM:

Understanding the court process

TAKE AWAY

In a high asset value divorce, you should expect to have access to your attorney when and where you need him.

The divorce process by its very nature is fraught with fear, suspicion, uncertainty, and financial distress. If children are involved, or custody becomes an issue, this adds to the stress.

Select an attorney who has the experience, competence, and length of practice to ensure you're getting the proper representation. The attorney must clearly explain to you the steps of the court process.

At the beginning of the case, the attorney should be able to provide you with possible likely outcomes. Then you will be able to work towards a goal. So often, the problem with an inexperienced divorce attorney is that he or she does not have the insight and training to predict the outcome. Your divorce case moves along like a sailboat without a sail, without purpose or direction.

This will cost money, and almost ensure a bad result. Ask the attorney how many trials he or she has conducted, not only in divorce cases, but also in business and real estate disputes.

You should have an understanding with your attorney about contacting him to answer any questions. You should not be left with paralegals, or junior attorneys to answer important questions.

WHEN DIPLOMACY WORKS:

Settlement negotiations

Most high asset divorce cases settle once the value of the assets have been discovered. The biggest problem with settlement negotiations is that the parties do not have adequate knowledge to determine the values of their assets. It is common in a high asset value divorce for different appraisers to offer significantly different valuations of the same asset.

Your attorney must have the sophisticated financial, real estate, and business background to evaluate the appraiser's opinions. People will settle a high asset value divorce case by "splitting the difference." Often times, this is exactly the wrong approach, but one that the inexperienced attorney forces on their client because he lacks the experience to offer competent advice to help his client get a fair share.

TAKE AWAY

Make sure your attorney is experienced in both family law and business negotiations.

THE EASY WAY:

Mediation

Mediation is a process whereby the parties' attorneys select a third attorney to act as a mediator. The mediation is often successful where settlement negotiations fail. However, the ability of the mediation to succeed is almost entirely based upon the competence of the mediator, and the ability of your attorney to easily explain and simplify complicated financial facts to that mediator.

TAKE AWAY

Your attorney must be experienced explaining complicated financial matters to a mediator who may not be fluent in business language and documentation.

THE HARD WAY:

The trial process

The divorce trial will be before a judge. You should not be afraid of the trial process. A competent attorney will have outlined in advance all of the facts and evidence which will be produced at trial to support your case. The attorney must be knowledgeable in the court process with years of courtroom experience.

There are generally no surprises at trial, but merely a disagreement among experts as to the analytical approach or the facts used in determining the value of the assets. Few divorce cases involving high asset value actually go to trial. The competent attorney handling a high-values divorce case will have pointed out, prior to trial, to the other side's attorney the errors contained in their experts' reports, and the case will settle once the true value of the asset is known.

TAKE AWAY

Without extensive legal experience, you may end up in a trial because of the attorney's inexperience about financial details.

CROSSING THE T'S:

Post divorce estate planning

TAKE AWAY

Your divorce attorney should assist you in understanding the need for post-divorce planning.

Once the divorce is over, the need for a financial plan does not end. Your divorce attorney has intimate knowledge of your assets and liabilities and net worth, and that attorney should assist you in post-divorce estate planning.

An estate plan for any newly divorced person should be prepared. If there are minor children, trusts need to be established for them. Powers of Attorney or healthcare directives to handle your medical care in the event of a terminal illness should be considered. Being single, you need to pay much more attention to your estate planning than when you were married. Your former spouse will be excluded from your will. You have no spouse to rely upon after your death to distribute your assets. In a high asset value divorce, death taxes are an important consideration. There is no sense going through the divorce process to receive your division of the marital estate, if you then give a large portion of it upon death to the government because you did not have a proper estate plan.

CONCLUSION

I hope that you have found the information and advice in this report valuable and useful. Please use it to determine your priorities when looking for an attorney to handle your high asset value divorce.

Thank you so much for reading:

*Choosing a Divorce Attorney in High Asset Value Situations —
What to consider, where to look, and what you should expect*

If you have any questions...

Don't hesitate to contact me.

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AUTHOR'S EXPERIENCE

Robert Hajek has over 30 years of Business, Real Estate, Patent Rights and Divorce experience...

Robert has a comprehensive understanding of the rights of business owners, partners and shareholders. He represents many types of businesses and handles commercial real estate sales and financing transactions. Your average divorce lawyer simply doesn't have this kind of experience.

Robert has handled litigation among shareholders, partners, and members of limited liability companies to resolve various ownership and control disputes. Negotiating the end of a marriage for High Net Worth individuals requires the same sharp business skills.

Thirty years of experience fighting legal battles...

Robert has worked closely with business and real estate appraisers. Because of this, he has an unmatched ability to understand and interpret financial records, balance sheets, and appraisals.

What's more, in his litigation practice, he consults closely with real estate and business appraisers to prepare them to testify at trials. As a result, his skills have been sharpened through 30 years of legal battles. This allows him to quickly understand the most complex real estate and business valuation issues.