

PRACTICE HINTS: ADMINISTRATIVE AND TAX CONSIDERATIONS

Administrative Issues include (a) the operation and enforcement of the agreement, (b) the professional fees (e.g., attorney, appraisers, mediator) that have been incurred in the dispute resolution process. Make sure there are review provisions and provisions for the settlement of future disputes. (See 8.10.4, Section 11.)

Tax Considerations include decisions the parties need to address in four general areas. If there are questions, encourage the parties to consult with an accountant or tax lawyer (do not encourage them to rely on their attorneys). (See 8.10.4, Section 10)

1. Filing Status

- joint return (typically most advantageous)
- married filing separate (typically least advantageous)
- single return
- head of household status

(Parties must be married on December 31st of the tax year to file a joint return, cannot prorate the year. Consider with parties the timing of the formal divorce.)

2. Deductions and Exemption Claims

- child dependency
- maintenance (alimony)
- child care

3. Property transfers (not a taxable event per se)

- house mortgage interest/taxes deduction (can be prorated)
- capital gains on sale of real estate, stocks/bonds

4. Process

- preparation of returns, signing returns, providing documentation
- future audits for a year of the marriage

As a rule, tax planning is best considered after tentative understandings about property division and financial responsibilities have been reached by the parties. The tax impact of agreements is a final level of refinement that may require some adjustment of the settlement. As part of the review of property division, attention needs to be given to whether a distributed asset is at pre-tax value (house, stock) or at post-tax value (bank account).