

INSTRUCTIONS FOR PREPARATION AND USE OF PROPERTY DIVISION CHARTS IN THE THIRD CIRCUIT, DOMESTIC DIVISION

1. Purpose and Use.

Cases where the division and distribution of marital assets and debts are at issue can often be complex and difficult. A well prepared property division chart presents the case in a format which is easy to follow. It can be an excellent tool for advocacy as well as for settlement, education of clients, opposing counsel and the court as to the specifics of the case. Recognizing this, the Family Court Memorandum of November 12, 1997, "Domestic Division Policies and Procedures" required the movant on a *Motion to Set* to provide a property division chart as part of the *Settlement Conference Statement* due no later than fourteen (14) days prior to the settlement conference. Similarly, the responding party must provide a property division chart as part of the responsive *Settlement Conference Statement* filed not later than seven (7) days prior to the settlement conference. Those requirements remain in effect, as do the requirements that both parties exchange current *Asset & Debt Statements*, current *Income & Expense Statements*, and all trial exhibits no later than twenty one (21) days prior to the settlement conference. The purpose of all of these requirements is to promote settlement by making each party's case transparent to the other, so that both the parties and the court have a realistic view of what will be presented should the case go to trial.

The original property division chart form was promulgated in a November 1997 memorandum. Over the years, case law has developed further delineating and defining the principles of marital partnership property division. In response, the Domestic Division appointed a property division committee in the spring of 2007 to review the issue and make recommendations on how to simplify, standardize, and optimize the use of property division charts. The goal was to develop a property division chart and related procedures that would display the division of the entire marital estate, reflect all Category 1 and 3 property division credits, correctly apply marital partnership principles, and cite to exhibits in the record.

Although the property division chart is required as a part of the Settlement Conference Statement in any case where property division is at issue, counsel are strongly encouraged to prepare these charts early in the divorce process and to use them as a tool for settlement. Counsel should also update their client's financial statements and the Property Division Chart immediately prior to the commencement of trial if there are significant intervening changes in values or values that were not known at the time of the Settlement Conference. A properly prepared property division chart works equally well in simple as in complex cases.

The approved property division chart is available in MSEXCEL™ format and can be downloaded from the Family Law Section webpage.¹ A blank version is also attached to this memorandum.

¹ When editing the Property Division Chart in MSEXCEL, use only the "copy and paste" functions. Do not use the "cut and paste" functions. Cutting will affect the borders and lines of the cells.

2. How to fill in page one.

Page one consists of Part A and Part B.

Part A.

Part A illustrates the enumeration, valuation and proposed distribution of the marital estate.

From the left side of the page, the first column is for the number of the particular asset or debt. Each asset or debt should be numbered in a manner corresponding to the paragraphs of the *Asset & Debt Statement*. For example, bank accounts are listed in paragraph 3 of the *Asset & Debt Statement*. The first listed bank account should be numbered 3.01, the next listed 3.02, and so forth. To avoid confusion, the party filing the responsive *Settlement Conference Statement* will use the same number as was used by the party filing the first *Settlement Conference Statement* in referring to a particular asset or debt.² Generally, the assets and debts should be listed in numerical order, except that a debt which is attached to a particular asset---a car loan, or a home mortgage---should be listed immediately after the asset which it encumbers. The assets/debts of both husband and wife must be listed.

The second column is used to briefly identify the particular asset or debt by description, such as "Bank of Hawaii Checking," or "16 Aiea Heights Drive" or "FHB Mastercard." If additional identifying information or commentary is required, this should be placed in endnotes (see below).

The third column indicates who currently has title or legal ownership of the asset, or who the legal obligor on the debt is. Indicate "H" for husband, "W" for wife, "O" for other, and "J" for joint, H/O for husband and a third party, etc. Note that this entry does not indicate who will receive the asset or debt. If there is no document from which ownership of an asset can be established, enter "n/a".³

² In some cases there may be disagreement as to the existence of assets or debts, in which case numbering becomes problematic. Where the first party believes there are five bank accounts, they would be numbered 3.01, 3.02, 3.03, 3.04, and 3.05. The second party may believe that there are five accounts, but two of them are different than listed by the first party. In that case, the second party would number the two additional accounts 3.06 and 3.07, and would explain in endnotes that his client's position is that 3.04 and 3.05 do not exist. **Once a number is used by one party, it cannot be used again by either party to designate a different asset or debt.** Thus, if the plaintiff files first and designates the First Hawaiian Bank joint account as 3.05, the number 3.05 must always be used for that account and can be used for no other asset or debt.

³ Some property may be owned by a spouse as a trustee for another. The circumstances under which a spouse holds bare legal title and the equitable interest is truly owned by a third party are beyond the scope of these instructions. However, when a party preparing this chart believes that to be the situation, the value should be included with the description of the asset, the title should indicate the trustee status ("W as TE") and the value column should be blank so as not to compute the asset in the marital partnership.

The fourth column is used to indicate whether there is a corresponding endnote for the entry. A discussion of endnotes and their use is found below. Indicate that there is an endnote by placing an X in the box, if there is no endnote, leave the box blank.

The fifth column is the value of the asset/debt. In most cases, this will be a number, but in some instances a non numeric entry may be appropriate. Examples of appropriate non numeric entries are "unknown," "defined benefit plan" for a retirement plan without a fixed dollar value and which is proposed to be divided per the *Linson* formula, "nominal" for items that must be listed but may have no real value, "operating account" for checking accounts in which the monthly deposits more or less equal monthly withdrawals, or "market value" for an asset that is intended to be sold. A negative value, such as a debt or an overdrawn bank account, should be entered with parentheses around the number.

The last two columns, labeled "Husband" and "Wife" indicate the proposed award of the asset or debt. For example, if a savings account with a value of \$10,000 is to be awarded to husband, then "\$10,000" should be entered in husband's column. If the account is to be divided equally, then "\$5,000" would be entered in both husband's and wife's column. In most cases, entries in these columns will be numerical, but in some instances a non numeric entry may also be appropriate. Examples of appropriate non numeric entries are "sell and split equally," "Linson share," "divide in kind" and so forth.

Marital Separate Property (MSP), if any, is listed on the chart with a number, description, title, indication of notes and value. However, in the husband or wife column, the letters "MSP" will be placed in the owner's column instead of a number.⁴ A party making a claim for MSP must specifically address the facts supporting this claim in the accompanying Settlement Conference Statement.

The next to last line in Part A is the total carried forward from the last line on the Continuation Sheet, if any (see discussion below). The Continuation Sheet is only used when there are more assets/debts than can be listed on the existing Part A. The last line of part A is a recap consisting of three columns. The first shows the net value of those items in the marital estate which have numerical values. The second and third show the total net value of marital partnership property awarded to husband and wife, respectively. The husband and wife columns are the sum of marital partnership property awarded to husband and wife, respectively, but do not include any MSP.⁵

⁴ Marital Separate Property is rare. It is property owned at the time of divorce which was excluded from the marital partnership by an agreement in conformity with the Uniform Premarital Agreements Act, or by some other valid contract (i.e. a marital agreement). Marital Separate Property is also property that meets all of the following three tests: (1) it was acquired by the spouse owner during the marriage by gift or inheritance, (2) it was expressly classified by the donee/heir as his or her separate property, and (3) after acquisition, it was maintained by itself and/or source other than one or both of the spouses and funded by sources other than marital partnership income or property. *Hussey v. Hussey*, 77 Hawai'i 202, 881 P.2d 1270 (App. 1994).

⁵ Where there is no MSP, the first column will be the sum of the husband and wife columns. Where there is MSP, the first column will be the sum of the husband and wife columns, plus the sum of all MSP.

Part B:

Part B is designed to illustrate the application of the partnership model without deviation to the case. Although there is a line titled "Required Equalization Payment" the form does not assume that an equalization payment will be made or that it is fair and equitable in a particular case to apply the partnership model without deviation. However, a party who is requesting deviation must explicitly address that issue in the accompanying *Settlement Conference Statement*.

Line 1 restates the division of marital partnership property from Part A. Here, the first column will always equal the sum of the husband and wife columns, even in the rare instance where there is MSP. The entries in **Line 2** are the total of capital contributions (first column) and the respective capital contributions of husband and wife. These figures are taken from Page Two, Part F. **Line 3** shows the appreciation (or depreciation),--in other words, the profit or loss---of the marital partnership. In all three columns, it is derived by subtracting the capital contributions (line 2) from the net value of partnership property awarded (line 1). One half of this figure is then entered in the two columns to the right to indicate that husband and wife each are entitled to half of the net partnership profit (or loss). **Line 4** indicates the amount to add or subtract to each party's total award of partnership property in order to ensure that each receives the amount he/she is entitled to receive if the partnership model is applied without deviation. It is the difference between Husband's line 3 and Wife's line 3, divided by two. In the example below, 300,000-296,000 =4,000. Dividing this by two results in 2,000. The entries in the husband and wife columns in line 4 will always be the same number, except that one will be a positive number and one will be a negative. In the example below, the proposed division of partnership property leaves husband 2,000 ahead of his partnership entitlement. Thus, a negative 2,000 is entered in his column, and a positive 2,000 is entered in wife's column. **Line 5** shows the equal division of partnership profits/losses. Enter line 3 plus/ minus line 4 for both the husband and wife columns. As a cross-check, note that the entries in both the husband and wife column should be equal, and should be exactly one half of the first column of line 3. **Line 6** shows the value of any MSP awarded to the owner. It is the sum of all MSP values owned by husband or wife from Part A. **Line 7** shows the total value received by each party, including each party's share of marital partnership property plus any MSP awarded. It is computed by adding line 1 and line 6, and then adding or subtracting the equalization payment shown in line 4.

PART B: CALCULATION OF THE EQUALIZATION PAYMENT			Husband	Wife
1	Proposed Division of Marital Partnership Property (from Part A)	1,438,000	940,000	498,000
2	Capital Contributions (from Part F)	(842,000)	(640,000)	202,00
3	Partnership Profits/Losses (subtract line 2 from line 1)	596,000	300,000	296,000
4	Required Equalization Payment (to equalize line 3)		(2,000)	2,000
5	Equal Division of Profits/Losses (line 3 plus/minus line 4)		298,000	298,000
6	MSP Awarded to Each Party (from Part A)		1,000,000	0
7	Total Value Received (line 1 plus line 6 plus/minus line 4)		1,938,000	500,000

3. How to fill in Page Two.

Page Two illustrates the enumeration, and valuation of each party's capital contributions. It is divided into three parts. Part C is used to indicate each party's net worth on date of marriage (Category 1 capital contributions). Parts D and E are used to indicate gifts or inheritances received during marriage (Category 3 capital contributions). If there are no capital contributions or no claim for return of capital contributions is being made, Page Two need not be prepared, and the entries on Line 2, Part B are zero in all three columns.

Part C.

This part is used to indicate assets/debts of each party on date of marriage. From the left side of the page, the first column is for the number of the particular asset or debt. Each asset or debt should be numbered. If a particular asset or debt is still in existence, use the same identifying number as in Part A. For example, if husband has a savings account at First Hawaiian Bank and it was designated 3.01 in Part A, and that same account was in existence on date of marriage, use the number 3.01 in Part C, as well. If an asset or debt was in existence on date of marriage, but is no longer in existence, use the next unused number to identify it. For example, if husband and wife currently have three bank accounts designated 3.01, 3.02 and 3.03 in Part A, and wife had another bank account on date of marriage that no longer exists, identify that bank account in Part C as 3.04. The values of the assets or debts are placed in the husband or wife column depending on who owned the asset/debt on date of marriage. The value will be the date of marriage value.⁶ The last line of this section indicates the net worth of each party on date of marriage.

Part D.

This part is used to indicate gifts by one party received during marriage and not, in turn, gifted over to the marital estate. From the left side of the page, the first column is for the number of the particular gift. Each gift should be numbered. The numbering system is the same as for Part C, above. The values of the gifts on the date of receipt are placed in the husband or wife column depending on who was the recipient of the gift.⁷ The last line of this section indicates the total value of gifts received by each party during marriage.

⁶ *Wong v. Wong*, 87 Hawai'i 475, 960 P.2d 145 (App. 1998) creates a special rule for the value of a specific item of property which has been separately owned continuously from the date of marriage (DOM) to the date of trial (DOCOEPOT). If the value on DOCOEPOT is no greater than on DOM, then its value includable in Category 1 is its NMV on DOCOEPOT. For example, assume that the parties married in 1999, and just prior to that time the husband acquired stock in Enron Corporation worth \$25,000. It is now 2007, and the parties are divorcing. Husband still owns the Enron stock, but the company went bankrupt and the stock is now worth \$500. The Category 1 NMV is \$500, *not* \$25,000, and the former is the number that will be entered in both Part A and Part C.

⁷ Similarly, *Wong v. Wong*, above, mandates that the value of Category 3 property which has been continuously owned from date of receipt through DOCOEPOT can be no greater than its current NMV.

Part E.

This part is used to indicate inheritances received by each during marriage and not, in turn, gifted over to the marital estate. From the left side of the page, the first column is for the number of the particular inheritance. Each inheritance should be numbered. The numbering system is the same as for Part C, above. The values of the inheritances on the date of receipt are placed in the husband or wife column depending on who was the recipient of the inheritance. The last line of this section indicates the total value of inheritances received by each party during marriage.⁸

Part F.

This part is used to indicate the sum total of each party's Category 1 and 3 capital contributions and is the sum of each party's values in part C, D and E. The figures entered in Part F will be entered on, Part B, Line 2 of page one of the property division chart.

4. Continuation Sheet.

The Continuation Sheet for Part A on page 3 is a supplemental attachment to the property division chart. It is not mandatory and should only be used when additional space is needed in Part A on page 1. The total from the last line on the Continuation Sheet which states "Total (Enter in Part A on page 1)" is the total assets or debts listed on the Continuation Sheet only. This total is then transferred to the line in Part A on page 1 which states "Total from Part A Continuation Sheet."

5. Footers.

In the footer located at the bottom of each page fill in (a) the case name ("Doe v. Doe"), (b) the FC-D No., (c) the preparer ("Husband" or "Wife"), and (d) the date the chart was prepared.⁹

6. Use of notes and exhibits.

The use of endnotes is mandatory. The property division chart should be accompanied with endnotes that explain what the evidence demonstrates as to the existence, ownership and value of the asset/debt, usually with reference to a particular trial exhibit or exhibits (see below). Since trial exhibits are exchanged at least seven days before the first *Settlement Conference Statement* is due, the court expects that counsel will have carefully considered both his and the other party's exhibits and is prepared to prove the information asserted in his property division chart at trial. However, a party may accept information from the other party's *Asset & Debt Statement*. Endnotes will be numbered,

⁸ The *Wong v. Wong* rule on valuation applies to inheritances as well as gifts.

⁹ To complete the footer information in MSEXcel, on the "View" menu click "Header and Footer," then "Custom Footer."

corresponding to the numbering used on the property division chart. Thus, if item 3.01 is husband's Bank of Hawaii savings account, endnote 3.01 should discuss that account, with specific reference to any trial exhibits pertinent to that account.

7. Sample Completed Property Division Chart with Endnotes.

The attached sample is from the First Circuit is provided as a guide to practitioners, together with a sample *Asset & Debt Statement* from which the sample chart was derived.

H.D. MANUAL, VII 3000
737 Bishop Street, Suite 2000
Honolulu, Hawai'i 96813
Telephone: 533-3000

Attorney for Plaintiff
Doe/AD/date/initials/draft 1

IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN DOE,) FC-D No. 07-1-0001
)
 Plaintiff,) ASSET AND DEBT STATEMENT OF
) JOHN DOE
 v.)
)
 MARY DOE,)
)
 Defendant.)
 _____)

ASSET AND DEBT STATEMENT OF

 JOHN DOE

1. CASH (currency, traveler's checks, bullion) Nominal \$ _____

2. CREDIT UNION ACCOUNTS

<u>Name</u>	<u>Title</u>	<u>Credit Balance</u>	<u>Debt Balance</u>

3. BANK AND SAVINGS ACCOUNTS

	<u>Company (Branch)</u>	<u>Type</u>	<u>Title</u>	<u>Balance</u>
3.01	Bank of Hawaii	Checking	H	10,001.
3.02	First Hawaiian Bank	Checking	W	15,000.
3.03	Central Pacific Bank	Savings	J	20,000.

4. SECURITIES, BONDS, BROKERAGE ACCOUNTS AND CERTIFICATES

	<u>Company</u>	<u>Title</u>	<u>Date of Acq.</u>	<u>Basis</u>	<u>Market Value</u>	<u>Debt Against</u>
4.01	Dean Witter	H	Since Before Marriage	100,000.	150,000.	- 0 -
4.02	Merrill Lynch	W	Since Marriage	35,000.	50,000.	- 0 -

5. VEHICLES

	<u>Year</u>	<u>Make</u>	<u>Title</u>	<u>Market Value</u>	<u>Debt Against</u>
5.01	1998	BMW 740i	W	8,000.	- 0 -
5.02	2004	Volvo	H	25,000.	- 0 -

6. REAL PROPERTY

	<u>Address</u>	<u>Title</u>	<u>Date</u> <u>Bgt.</u>	<u>Basis</u>	<u>Market</u> <u>Value</u>	<u>Debt</u> <u>Against</u>
6.01	20 Mott Smith Drive Honolulu, HI	J	Before Marriage	250,000.	650,000.	200,000.
6.02	16 Aiea Heights Drive Aiea, HI	J	After Marriage	600,000.	650,000.	300,000.
6.03	Alaska Acreage ¹	H	Before Marriage		1,000,000.	- 0 -

¹ Marital separate property pursuant to the parties' January 5, 1998 prenuptial agreement.

7. LIFE INSURANCE

	<u>Company</u>	<u>Person</u> <u>Insured</u>	<u>Face</u> <u>Amount</u>	<u>Ben'y</u>	<u>Title</u>	<u>Cash</u> <u>Value</u>	<u>Debt</u> <u>Against</u>
7.01	Transamerica	H	250,000.	W	H	50,000.	20,000.

8. RETIREMENT PLANS AND ACCOUNTS

	<u>Employer</u> <u>or Company</u>	<u>Title</u>	<u>Type</u> <u>of Plan</u>	<u>Years</u> <u>in Plan</u> Since Before Marriage	<u>Accrued</u> <u>Benefits</u>
8.01	Bank of Hawaii	H	IRA	Since Before Marriage	75,000.
8.02	Bank of Hawaii	W	IRA	Since Before Marriage	75,000.
8.03	ABC Corp.	H	401K	Since Before Marriage	250,000.
8.04	Hawaiian Airlines	W	Pension	Since Marriage	?

9. ALL OTHER MAJOR ASSETS

<u>General Description</u>	<u>Title</u>	<u>Gross Value</u>	<u>Debt Against</u>
9.01 Household Effects	H,W,J	?	- 0 -
9.02 Personal Effects	H,W	?	- 0 -

10. PROPERTY HELD IN TRUST

<u>Description</u>	<u>Trustee/s</u>	<u>Beneficiaries</u>	<u>Value</u>	<u>Debt Against</u>
--------------------	------------------	----------------------	--------------	---------------------

11. OUTSTANDING DEBTS

<u>Creditor</u>	<u>Debtor</u>	<u>Security</u>	<u>Date Incurred After Marriage</u>	<u>Balance</u>	<u>Min. Mo. Payment</u>
11.01 First Hawn Bank	J	6.02	After Marriage	250,000.	1,400.
11.02 First Hawn Bank	J	6.02	After Marriage	50,000.	2,500.
11.03 Transamerica	H	7.01	After Marriage	20,000.	300.
11.04 ABC Corp. 401K	H	8.03	After Marriage	50,000.	450.
11.05 Mastercard	H		After Marriage	10,000.	150.
11.06 Mastercard	W		After Marriage	10,000.	150.
11.07 Bank of Hawaii	J	6.01	After Marriage	200,000.	1,200.

Doe v. Doe
FC-D No. 07-1-0001 ASSET
AND DEBT STATEMENT
OF JOHN DOE

I hereby declare, under penalty of perjury, that I have examined the foregoing Asset and Debt Statement and that to the best of my knowledge and belief it is true, correct and complete as of the date which first appears above, or as otherwise expressly dated.

JOHN DOE

Date:
