

**REVIEW PRIOR TO SUBMITTING
FINANCIAL DISCLOSURE STATEMENTS AND
MARITAL SETTLEMENT AGREEMENT TO FAMILY COURT COMMISSIONER**

General Information:

Please consider hiring an attorney or a mediator. Handling your divorce without professional assistance is risky. The more you own the greater the gamble it is to proceed without an attorney.

The Court can only determine equitable distributions based upon the information provided by the parties in their Financial Disclosure Statements. It will not assess whether the assigned value of personal property or real estate is too low or inflated. It will not review bank accounts, insurance plans, pensions, securities statements, retirement investments or any other records to ensure the information provided is correct or complete.

The Court is not a substitute for an attorney or a certified public accountant. It cannot warn you of potential tax liabilities or provide insight into the pitfalls your agreement might cause. Property settlements are final as of the date of the divorce. Only in rare circumstances would a property settlement be re-opened. In short, not hiring professional help upfront, might cost you a great deal more in the future. Expertise brings clarity and fairness to this difficult process.

Necessary Documentation with or without Counsel:

Each party is required to submit a Financial Disclosure Statement (“FDS”). This document must provide a complete and accurate list of your assets and debts. Some of the information from your FDS will be incorporated into your Marital Settlement Agreement (“MSA”).

The MSA is a contract between divorcing spouses that spells out the rights and obligations of each party. This written agreement divides the marital property and debt. It also settles issues of child custody and placement as well as maintenance (spousal support). The Court will review the MSA to determine if it is fair and reasonable given the circumstances of your divorce.

We have identified a number of common mistakes that will cause your MSA and/or FDS to be rejected and returned. To help you avoid these errors, please read this document before turning in your paperwork. Here are the most frequent errors and how to avoid them:

1. **Does it matter what order we put our names on documents? Yes.** The order of litigant names on the MSA/FDS must be identical to the caption (case name) on the Petition/Joint Petition for Divorce:
 - a. Why does the order of names matter? The MSA and FDS assign assets and debts under Columns A and B. Column A is for the Petitioner or Joint Petitioner A—the person whose name is listed first in the case name. Column B is for the Respondent or Joint Petitioner B—the individual whose name is listed second in the case name. If you insert information under the incorrect column (A versus B), the wrong person will be awarded assets or assigned debts.

- b. Does the order of names ever change? No. The caption never changes, so the order of your names on every document throughout your divorce and for any motions filed afterward will remain the same.
- c. What if I insert the correct information under the wrong column? You will need to file a corrected document. Some parties have attempted to fix this error by drawing arrows reversing the column data. This is NOT a fix and will not be approved. You must file a revised document, inserting the correct information under the appropriate column. Remember, you are completing legal documents.

2. Should I leave a category blank if it doesn't apply to me? No.

- a. By leaving a category blank, the Court cannot tell if you've mistakenly overlooked it or actually had nothing to report.
- b. Enter "None" in any category that has no application to you. For example, if you don't have life insurance or own a business, then insert "None" under that heading.

3. What will happen if I provide incomplete information? Your paperwork will be returned to you. Below are common examples of improper shortcuts or errors made by parties.

- a. Failure to Insert Your Name or Case Number on MSA/FDS: Your names and case number are crucial identifying features of your case. Your name, in most cases, might be enough to distinguish your case. However, if you have a common first and last name, this may not be true. Your case number is specific to your legal matter.
- b. Failure to Check Boxes on Forms: When people rush, they often list the property/debt on the form but then fail to check either box next to it. The Court cannot award an asset or assign a particular debt to a party without this information. Make sure the appropriate box is checked for each entry on your FDS or MSA.
- c. Vague Details on Similar Items: If you have two Roth IRAs, two Chevy trucks, two Coulee Bank checking accounts, or two guitars, you must provide enough information to distinguish each item. Follow the instructions on the forms and insert ALL of the requested information. You might think—well, my spouse knows what I mean, so it doesn't matter. Don't be so sure. Clarity is important. If one Coulee Bank account has \$25,000 and the other only \$500, you can see how things can go wrong. The Court is required to determine your property division is fair and reasonable. If the Court isn't sure who is getting what, a determination cannot be made.
- d. Leaving out Details Requested on Forms: Details are not optional in legal documents. All requested data—values, dates, creditor names, debt amounts, account numbers, addresses, and more—are required. Plan on having your documents returned if you skip details. It does take longer to provide complete documents. However, you will save yourself multiple trips to the courthouse to fix mistakes if you opt for accuracy upfront. Please insert all the requested information in each category.

4. Does it matter that the creditor names and debts on the MSA and FDS aren't identical? Yes. This error is one of the most common reasons for documents to be returned.

- a. Information on Forms Must Match: The MSA and FDS each require a list of your creditors and the balances owed to them. The creditors and debt amounts listed in both forms must be IDENTICAL.
 - i. If you list a creditor/debt on the FDS but fail to insert this data on the MSA or vice versa, your documents will be returned. The same information must be provided on both documents.
 - ii. If you insert different debt amounts on the MSA and FDS, the Court will not know which sum is accurate. We all know \$300 is not the same as \$327. Despite this, we frequently receive FDS and MSA where the numbers don't match. The disparity in the amounts may be small, but when it comes to numbers precision matters. When determining whether your property division is fair and reasonable, the court needs to scrutinize the actual numbers—not a theoretical or estimated amount.
- b. Round to the Nearest Whole Dollar: As much as we like clarity, we don't need to know down to the penny what is owed or what an item is worth. Please round to the nearest dollar.

5. Is there a difference between Term Life Insurance and Whole Life Insurance? Yes.

- a. What is the difference? A whole life insurance policy has a cash value element. As you pay whole life insurance premiums, some of what you pay is available to borrow against or cash out during your lifetime. A term life policy covers a limited term and doesn't have a monetary value until the insured dies. Although there are other distinctions, for purposes of divorce, the key difference is a whole life policy is an asset whereas a term life policy is not. Please look at your policy before completing this section. If you have whole life insurance, the court will need to know the *current* cash value (not the death benefit value) of this asset for property division purposes.
- b. What does "Face Amount/Value" mean? The face value is the death benefit—what a beneficiary will be paid if the policyholder dies while the policy is active.

6. Does a Mobile Home qualify as Real Estate? No.

- a. If a mobile home isn't real estate, what is it? A mobile home is personal property, and should be listed under "Other Personal Property" on both your MSA and FDS.
- b. What if we own the lot/land where the mobile home is parked? If you own (not rent) the lot or land on which the mobile home is parked, this IS real estate and this needs to be included under "Division of Property" on the MSA and under "Real Estate" on the FDS.

- 7. Because we have minor children, the MSA requires us to exchange annual financial information. Should we do this on January 31st or earlier each year? No.**
- a. The Internal Revenue Service doesn't require employers to provide 1099s to non-employees and W-2 forms to their employees until January 31st of each year. Thus, it is important to choose a date after January 31st.
- 8. Does my FDS or MSA have to be typed? No.** A typed document is easier to read but not required. If chose to handwrite your statement, please make sure it is legible and written in BLACK ink. Your document will be scanned into an electronic court file. Ink in different colors does not scan well, and your document will be difficult to read if you use blue, red or other colored ink. Do not use pencil for the same reasons.
- 9. Is it okay for me to create my own MSA using the Wisconsin form or a prior MSA as a template? No.** If you choose to not use the standardized form, then one or both of you will need to have an attorney draft your MSA. The Wisconsin form was created for self-represented litigants. It sets forth the necessary language to ensure all central issues are addressed. A substantial amount of time, work and effort went into the creation of this legal form. The Court doesn't have the time or resources to sift through each makeshift MSA to ensure all standard language has been inserted in your document.
- 10. Should I create a Marital Balance Sheet? Yes. This is recommended for all parties. If your assets collectively total \$50,000 or more, this document is mandatory and must be submitted along with your MSA.**
- a. What is a Marital Balance sheet? This document focuses on valuing, distributing, and dividing all marital assets and debts.
 - b. How do I create this document? Online forms are available or use the below method.
 - i. Create a list of all of your assets and debts. Figure out the net value of each asset and debt. [This information should be contained in your FDS.] Assign each asset and each debt to either you or your spouse. Thus, both parties will have two columns of numbers—one for value of assets and the other for debt amounts. If you have access to Excel, this program works well for adding columns of numbers.
 - ii. Time for some addition. Add up the total value of assets awarded to each party.
 - iii. Now for some more addition. Add up the total debt amount assigned to each party.
 - c. Determine your portion of the marital estate by subtracting your total debt amount from the total value of assets you are receiving.

(Your assigned assets minus your assigned debts = your portion of the marital estate)
 - d. Does this figure seem fair to you?
 - e. Do you need to equalize or adjust the property division to make it fair?
 - f. If you agree to an uneven split, please write a letter signed by both explaining this division. Some details aren't obvious. (Ex. One spouse earned a pension, acquired a debt, or owned the home years prior to the marriage.) (5/17/21)