

Financial Disclosure and Asset Protection

A – Asset: Any resource of economic value owned by an individual or entity, including cash, real property, investments, retirement accounts, and personal belongings. Assets form the basis of financial disclosure and are subject to division or protection in marital dissolution. Example: A vacation home purchased before marriage is an asset that may be considered separate property if properly disclosed.

Accord and Satisfaction: A legal agreement that resolves a disputed claim by accepting a different performance than originally owed. In the context of asset protection, parties may use an accord and satisfaction to settle financial disputes without admitting liability, thereby limiting exposure.

Accrual Accounting: A method of accounting that records revenues and expenses when they are earned or incurred, regardless of cash flow. Accurate accrual records are essential for comprehensive financial disclosure, especially for self-employed spouses whose income may not be reflected in bank statements.

Accrual of Community Property: The process by which assets acquired during marriage become part of the marital estate. Understanding accrual helps couples determine which assets must be disclosed and how they may be protected.

Adverse Claim: A claim made by a third party asserting an interest in an asset that belongs to a spouse. Identifying adverse claims during disclosure prevents future disputes and protects the asset's title.

Affidavit of Disclosure: A sworn statement in which a party lists all known assets, liabilities, and income sources. This document is a cornerstone of truthful financial disclosure and can be used as evidence in court.

Alimony: Periodic payments made by one spouse to the other following separation or divorce. Accurate disclosure of income and assets influences alimony calculations and ensures equitable support.

Amortization: The gradual reduction of a debt through scheduled payments of principal and interest. Disclosure of amortized loans, such as mortgages, is required to present a true picture of liabilities.

Asset Allocation: The distribution of investments across various asset classes (e.g., Stocks, bonds, real estate). Proper allocation affects the valuation of a portfolio disclosed in financial statements.

Asset Protection Trust (APT): A trust engineered to shield assets from creditors, lawsuits, or divorce claims. APTs must be disclosed in prenup negotiations to avoid allegations of concealment.

Asset Segregation: The practice of separating personal assets from marital assets, often through title changes or separate accounts. Clear segregation simplifies disclosure and protects pre-marital wealth.

Attorney-Client Privilege: The confidentiality rule that protects communications between a lawyer and client. While privileged, attorneys must still ensure that required disclosures are made to the court.

Bankruptcy: A legal proceeding that determines the ability of a debtor to repay debts. Prior bankruptcy filings must be disclosed, as they affect creditworthiness and asset valuation.

Beneficiary Designation: The person or entity named to receive assets upon the owner's death, commonly used in retirement accounts and life insurance. Accurate beneficiary listings are part of comprehensive disclosure.

Blind Trust: A trust in which the settlor relinquishes control and knowledge of the trust's holdings. While offering protection, blind trusts still require disclosure of their existence in financial statements.

Business Entity: Any organization engaged in commercial activity, such as a corporation, LLC, or partnership. Ownership interests in business entities must be disclosed, including valuations and profit distributions.

Capital Gains: The profit realized from the sale of an asset held for investment. Capital gains affect taxable income and must be reported in financial disclosures.

Cash Equivalents: Short-term, highly liquid investments that can be readily converted to cash, such as Treasury bills and money market funds. These are considered assets and must be disclosed.

Certificate of Title: A legal document proving ownership of real property or a vehicle. Providing copies of titles ensures accurate disclosure of tangible assets.

Change of Control: An event that results in a shift of ownership or management of a business. Such events may trigger asset-protection clauses in a prenup and must be disclosed.

Clear Title: Ownership of property without liens, claims, or encumbrances. Demonstrating clear title supports the authenticity of disclosed assets.

Collateral: Property pledged to secure a loan. Disclosure of collateralized assets is essential for assessing net worth and debt exposure.

Community Property: A marital property regime in which assets acquired during marriage are owned equally by both spouses. Understanding community property rules guides disclosure obligations.

Community Property State: A jurisdiction that follows community property law, such as California or Texas. In these states, the scope of required disclosure may be broader.

Compensatory Damages: Monetary awards intended to compensate a party for loss. Financial disclosures may be used to calculate potential compensatory awards in divorce settlements.

Commingled Assets: Assets that have been mixed, making it difficult to distinguish ownership. Identifying commingling is crucial for accurate asset delineation and protection.

Conflict of Interest: A situation where a party's personal interests could improperly influence professional judgment. Disclosing any conflicts is an ethical requirement in financial reporting.

Consolidated Financial Statements: Financial statements that combine the assets, liabilities, and operations

of a parent company and its subsidiaries. If a spouse controls multiple entities, consolidated statements may be necessary for full disclosure.

Contingent Liability: A potential obligation that may arise depending on the outcome of a future event, such as a pending lawsuit. Contingent liabilities must be disclosed to reflect true financial risk.

Conversion: The unauthorized transfer of property from one party to another. In divorce, conversion claims may arise if assets are hidden or misrepresented.

Corporate Veil: The legal distinction between a corporation and its shareholders. Piercing the corporate veil can expose personal assets, making proper disclosure vital.

Cosigning: Agreeing to be liable for another's debt. Cosigned obligations must be disclosed because they affect a spouse's liability profile.

Creditor Claim: A demand for payment filed by a creditor against an asset. Identifying existing creditor claims is required for transparent disclosure.

Cross-Collateralization: Using the same asset as security for multiple loans. This arrangement must be disclosed to avoid hidden encumbrances.

Custodial Account: An account held by a custodian for the benefit of another, often a minor. Disclosure of custodial accounts reveals assets held for dependents.

Debt-to-Equity Ratio: A measure of financial leverage calculated by dividing total liabilities by shareholders' equity. This ratio helps assess the financial health of a spouse's business interests.

Deed: A legal instrument that conveys title to real property. Providing copies of deeds confirms ownership in disclosures.

Deferred Compensation: Earnings postponed to a future date, often through retirement plans. Deferred compensation must be disclosed as it represents future income.

Derivative Asset: Financial instruments whose value is derived from underlying assets, such as options or futures. Disclosure of derivatives is essential due to their impact on net worth.

Divorce Settlement Agreement: A legally binding contract that outlines the division of assets, alimony, child support, and other terms. Accurate pre-marital disclosure informs the fairness of the settlement.

Domestic Asset Protection Trust (DAPT): A trust created under state law to protect assets from creditors while allowing the settlor to retain some control. DAPTs must be disclosed to avoid claims of concealment.

Estate Planning: The process of arranging for the management and distribution of a person's assets after death. Prenuptial agreements often intersect with estate plans, requiring coordinated disclosure.

Fiduciary Duty: The legal obligation to act in the best interest of another party. Trustees, executors, and financial advisors owe fiduciary duties, and breaches must be disclosed.

Financial Affidavit: A sworn statement detailing income, assets, and liabilities. This form is commonly used in family court to ensure transparent financial disclosure.

Financial Disclosure Statement (FDS): A comprehensive document listing all financial information required by law or court order. The FDS serves as the primary reference for asset division.

Financial Power of Attorney: A legal document granting one person authority to manage another's financial affairs. Disclosure of such powers is necessary to avoid conflicts of interest.

Forensic Accounting: The application of accounting techniques to investigate financial fraud or misrepresentation. Forensic accountants may be engaged to verify disclosed assets.

Full Faith and Credit Clause: A provision of the U.S. Constitution that requires states to recognize the public acts, records, and judicial proceedings of other states. This clause impacts the enforceability of out-of-state prenups and asset-protection trusts.

Garnishment: A legal process by which a portion of a debtor's wages or assets is withheld to satisfy a debt. Existing garnishments must be disclosed as they affect net assets.

Gift Tax: A federal tax on the transfer of property without full consideration. Gifts made to a spouse may be subject to reporting and affect asset valuation.

Grantor Retained Annuity Trust (GRAT): An irrevocable trust that allows the grantor to receive an annuity for a set term, after which remaining assets pass to beneficiaries. GRATs are used for tax-efficient wealth transfer and must be disclosed.

Hidden Asset: An asset that is intentionally omitted from disclosure. Discovery of hidden assets can lead to sanctions, reallocation of property, and loss of credibility.

Holding Company: A corporation created to own shares of other companies. Ownership interests in holding companies must be disclosed, along with any controlling influence.

Income Tax Return (IRS Form 1040): The annual filing that reports an individual's income, deductions, and tax liability. Tax returns are a primary source for verifying disclosed income and assets.

Injunction: A court order that requires a party to do or refrain from doing specific acts. Injunctive relief may be sought to prevent the dissipation of assets during divorce proceedings.

Intangible Asset: Non-physical assets such as patents, trademarks, goodwill, and intellectual property. Valuation and disclosure of intangibles are critical for a complete financial picture.

Joint Tenancy: A form of property ownership wherein each owner has an equal share and the right of survivorship. Joint tenancy must be disclosed, and its effect on asset division explained.

Judgment Lien: A court-ordered claim against property to secure payment of a judgment. Existing judgment liens must be disclosed as they affect clear title.

Key Person Insurance: Life insurance on an essential employee whose death would cause financial loss. This policy is an asset that must be disclosed.

Legal Hold: A directive to preserve all forms of relevant information when litigation is anticipated. A legal hold may affect the accessibility of financial records for disclosure.

Letter of Intent (LOI): A document outlining the preliminary terms of a transaction. While not binding, an LOI may indicate pending asset transfers that need disclosure.

Liens: Legal claims against property for the payment of a debt. All liens, including tax liens and mechanics' liens, must be disclosed.

Limited Liability Company (LLC): A business structure that provides limited liability to its owners while allowing pass-through taxation. Ownership interests in an LLC are disclosed as part of asset reporting.

Liquidity: The ease with which an asset can be converted to cash without affecting its price. Liquidity considerations influence the valuation of disclosed assets.

Lock-Box Account: A secure account used to hold funds for specific purposes, often in escrow. Disclosure of lock-box balances ensures transparency of restricted assets.

Marital Settlement Agreement (MSA): A contract that resolves all issues related to the dissolution of marriage, including asset division. Accurate pre-marital disclosure underpins a fair MSA.

Marital Trust: A trust established for the benefit of a surviving spouse, often used in estate planning. The existence and terms of a marital trust must be disclosed.

Materiality: The threshold at which omitted or misstated information would influence a decision maker. In disclosures, material assets must be reported, while immaterial items may be omitted.

Medical Expense Reimbursement Plan (MERP): A plan that reimburses employees for medical expenses. Employer contributions to a MERP are considered assets for disclosure.

MiFID II: European regulation governing financial markets, emphasizing transparency and investor protection. While not U.S. Law, MiFID-II concepts influence global asset-valuation standards.

Mortgage: A loan secured by real property. Disclosing the outstanding balance, interest rate, and payment schedule is essential for accurate liability reporting.

Multi-Generational Trust: A trust designed to preserve wealth across several generations. Its assets and terms must be disclosed to avoid future disputes.

Negligence: Failure to exercise reasonable care, resulting in harm. In financial disclosure, negligence may arise from failing to disclose known assets.

Net Worth: The total value of assets minus liabilities. Net worth calculations are central to financial disclosure statements.

Non-Recourse Loan: A loan where the lender's only remedy is to seize the collateral, not the borrower's other assets. Disclosing non-recourse debt clarifies risk exposure.

Notice of Lis Pendens: A public notice that a lawsuit affecting property has been filed. Such notices must be disclosed as they cloud title.

Off-Balance-Sheet Financing: Funding arrangements not recorded on the primary balance sheet, such as operating leases. These obligations must be disclosed to present a true financial picture.

One-Party Prenup: A prenup drafted primarily to protect the interests of one spouse. Full financial disclosure is required to ensure fairness.

Parental Rights Waiver: An agreement relinquishing certain parental rights, sometimes included in settlement agreements. While not a financial term, it may affect asset considerations for child support.

Parol Evidence Rule: A principle that prevents the use of oral statements to contradict a written contract. In prenup disputes, the rule emphasizes the importance of written financial disclosures.

Payoff: The settlement of a debt in full. Disclosing payoff amounts helps determine the net value of assets.

Pension Plan: An employer-provided retirement benefit. The vested portion of a pension is an asset that must be disclosed.

Personal Property: Movable assets not classified as real estate, such as jewelry, art, and vehicles. These items are included in financial disclosures.

Petition for Dissolution: The legal document initiating divorce proceedings. The petition often requires attachment of a financial disclosure statement.

Post-nuptial Agreement: A contract entered into after marriage to define property rights. Accurate disclosure of assets at the time of signing is mandatory.

Power of Sale Clause: A provision in a mortgage allowing the lender to sell the property upon default. Understanding this clause helps assess risk in disclosed real-estate assets.

Pre-marital Asset: Property owned before marriage. Proper documentation and disclosure of pre-marital assets help protect them in divorce.

Pre-nuptial Agreement (Prenup): A contract executed before marriage outlining the division of assets, spousal support, and other matters. Full and truthful financial disclosure is a prerequisite for enforceability.

Professional Liability Insurance: Coverage protecting professionals against claims of negligence or malpractice. The policy's cash value is an asset that must be disclosed.

Qualified Domestic Relations Order (QDRO): A court order that divides retirement plan assets between spouses. QDROs are essential tools for asset division and must be reflected in disclosures.

Qualified Retirement Plan: Employer-sponsored plans meeting IRS requirements, such as 401(k)s and profit-sharing plans. These plans are disclosed as part of marital assets.

Rebuttable Presumption: An assumption that can be challenged with evidence. In community property states, there is often a rebuttable presumption that assets acquired during marriage are community property, prompting thorough disclosure.

Reconciliation: The process of matching accounting records to ensure accuracy. Reconciliation of bank statements supports credible financial disclosure.

Recourse Loan: A loan where the lender can pursue the borrower's other assets beyond the collateral. Disclosure of recourse obligations is critical for liability assessment.

Refinancing: Replacing an existing loan with a new one, often at different terms. Disclosure of refinancing activity clarifies changes in debt structure.

Regulatory Compliance: Adherence to laws and regulations governing financial transactions. Non-compliance may result in hidden liabilities that must be disclosed.

Remarriage Clause: A provision in a prenup that adjusts asset division if a spouse remarries. Such clauses require disclosure of projected asset values.

Retained Earnings: Accumulated profits of a corporation not distributed as dividends. For business owners, retained earnings represent a component of net worth and must be disclosed.

Revenue Recognition: The accounting principle dictating when revenue is recorded. Accurate revenue recognition affects the valuation of disclosed business assets.

Rollover IRA: An individual retirement account created by moving funds from an employer plan. The balance of a rollover IRA is an asset to be disclosed.

Safeguard Clause: A contractual provision that protects a party from unforeseen events, often used in asset-protection provisions. The clause's triggers must be disclosed.

Secured Debt: Debt backed by collateral. Disclosure of secured debt includes details of the underlying collateral.

Self-Employed Income: Earnings from a business or freelance work. Self-employment income must be documented through tax returns, profit-and-loss statements, and bank records for disclosure.

Separate Property: Property owned by one spouse individually, either before marriage or acquired by gift/inheritance. Clear documentation and disclosure prevent recharacterization as community property.

Shareholder Agreement: A contract among shareholders governing the management of a corporation. The agreement may contain asset-protection provisions that must be disclosed.

Sherman Act: U.S. Antitrust legislation; relevant when evaluating business assets for anti-competitive

concerns. Disclosure of any antitrust investigations is required.

Simple Interest: Interest calculated only on the principal amount. Disclosure of simple-interest loans clarifies the true cost of debt.

Spousal Support: Another term for alimony; financial support paid to a former spouse. Asset disclosure informs the ability to pay and the need for support.

Stamp Duty: A tax on legal documents, often on property transfers. Disclosure of stamp duty obligations is necessary when assets are transferred.

Statute of Limitations: The time period within which a legal claim must be filed. Understanding this period helps parties disclose potential future claims.

Subordination Agreement: A contract that places one lien behind another in priority. Disclosure of subordination affects the ranking of creditor claims.

Sunset Clause: A provision that terminates a contract or right after a specified date. In asset-protection trusts, sunset clauses dictate when assets become accessible.

Survivorship Rights: Rights of a surviving spouse to inherit property automatically. Disclosure of survivorship arrangements is vital in marital asset planning.

Tax Lien: A lien imposed by a government for unpaid taxes. Tax liens must be disclosed as they affect clear title.

Tax Shelter: An investment or strategy that reduces taxable income. While legal, tax shelters must be disclosed to avoid allegations of concealment.

Termination Clause: A contract provision that ends the agreement under certain conditions. In prenups, termination clauses may affect asset division and must be disclosed.

Third-Party Beneficiary: A person who, although not a signatory, has rights under a contract. Disclosure of any third-party rights is required for transparency.

Trustee: The individual or entity managing a trust. The trustee's duties and any compensation must be disclosed.

Turnkey Asset: A fully operational asset ready for immediate use. Turnkey businesses require valuation and disclosure.

Undue Influence: Improper persuasion that overcomes a person's free will. Evidence of undue influence can invalidate a prenup if financial disclosure was incomplete.

Unsecured Debt: Debt not backed by collateral. Disclosure of unsecured obligations clarifies total liability exposure.

Valuation: The process of determining the monetary worth of an asset. Accurate valuation is essential for fair disclosure and division.

Vanishing Asset: An asset that disappears or is transferred without documentation, often indicating concealment. Detection may require forensic accounting.

Vesting: The process by which an employee gains non-forfeitable rights to employer-provided benefits. Vesting schedules affect the value of disclosed retirement assets.

Waiver of Disclosure: An agreement by a party to forego the right to demand full financial disclosure. Such waivers are scrutinized for fairness.

Wealth Transfer: The movement of assets from one individual to another, often for estate planning. Disclosure of planned wealth transfers is necessary to assess future net worth.

Willful Concealment: Intentional hiding of assets or information. Courts may impose sanctions for willful concealment during disclosure.

Wire Transfer: Electronic movement of funds between accounts. Documentation of significant wire transfers supports transparency.

Zero-Coupon Bond: A bond sold at a discount and redeemed at face value. Disclosure of such bonds includes the present value and future payoff.