

Valuation in Matrimonial Dissolution Cases

by Anthony S. Graziano, MAI

Most county courts throughout the United States are filled with real estate valuation-related litigation matters. This article will focus on a common appraisal practice associated with divorce cases. *Equitable distribution* is the term typically used when a married couple is in the process of a divorce and must distribute marital assets or community property between the husband and wife. Although parties to the litigation are husband and wife, an appraiser is typically engaged by an attorney who represents one of these individuals. In some cases, particularly in matters involving minimal assets, both parties agree to the court's appointing of a single appraiser to assist in the determination of real property values. Regardless of who engages the real estate appraiser, he or she is considered to be an expert witness and a friend of the court. As a result, the appraiser is responsible for assisting the "trier of fact" (the judge) in determining the appropriate value of real property assets subject to equitable distribution.

Although the National Conference of Commissioners on Uniform State Laws and the American Bar Association have adopted recommendations known as the Uniform Marriage and Divorce Act, these standardized divorce procedures have not been adopted by every state. These recommendations have been adopted by the legislature in some jurisdictions. In other states, like New Jersey, the recommendations and procedures have basically been implemented through Supreme Court decisions. In nine states, the terminology used may be different, although some of the policies have been adopted. As is the case with any litigation, appraisers must work closely with the attorneys involved to identify the appropriate local laws, case law, regulations, governing policy, and rules for equitable distribution.

As of this writing, several states consider the "division of marital assets" (also known as *marital property*) under a "community property" concept, rather than an equitable distribution. The determination of marital property and nonmarital property (immune assets) varies from state to state. The most common terminology will be used in this case study. However, for the purposes of completing appraisal assignments and communicating with other professionals and the court, appraisers are advised to clarify the appropriate word usage within the relevant jurisdiction.

In the case of complex matrimonial matters, other valuation experts and professionals are often needed to appropriately process the net worth of marital assets subject to equitable distribution.

Other Professionals Involved

In matrimonial matters involving multiple and varied assets, the plaintiff and defendant typically compile a group of required professionals, including but not limited to the following:

- Attorneys
- Accountants
- Business valuation professionals (BV appraisers)
- Personal property/machinery and equipment (M&E) appraisers
- A mediator or court master

Understanding the positions of these various professionals is critical for the real estate appraiser as the real estate value is often only a starting point in the calculation of net monetary assets.

Attorneys

Attorneys are always advocates for their client's interests. They are, by virtue of their role, expected

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to interpret the law and case precedent(s) to their client's advantage and to conduct themselves in a manner that promotes the best possible outcome for their client at all times. Because valuation experts work directly with the respective attorneys during the development of the case, the advocacy role of the attorney is often unintentionally asserted on the experts. The experts must be mindful that their role requires independence, not advocacy, and that the expert's role is to assist the trier of fact.

However, remaining independent of advocacy does not mean disputing the advocate's legal interpretations and opinions. In almost all cases, legal issues may bear on the highest and best use, legal rights of ownership, and other matters that, if interpreted differently, may affect the value opinions. To remain independent, any interpretations or legal opinions that provide specific direction to the expert's conclusions should be documented in writing by the attorney and provided as "scope of assignment" legal instructions that could alter the value opinion(s) if determined or interpreted differently by the court.

There are innumerable examples of how legal issues and direction can affect the value opinion. The clearest way for an expert to avoid the appearance of advocacy is to accept the advocate's written position given their legal expertise and, relying on the legal instructions as valid, to express the value opinion and clearly identify that the value opinions considered the legal instruction(s) provided. Such legal instructions should be included in the report for examination and consideration by the trier of fact.

Accountants

The husband and wife often employ independent accountants or auditors in matrimonial matters, particularly in complex cases. These individuals compile information provided by the valuation experts and incorporate these estimates into the financial books and records of the parties' owned entities to determine the net value subject to equitable distribution. Accountants are governed by their standards of professional practice and ethics and also come to court as expert witnesses.

Business Valuation (BV) Appraisers

Business valuation (BV) appraisers are essentially in the same position as real estate appraisers. BV appraisers are considered friends of the court and

are often required in complex cases, particularly those that involve partial interest valuations, business valuations, holding companies, limited liability partnerships, and corporations. In many cases, real estate appraisers, personal property appraisers, and machinery and equipment (M&E) appraisers all provide market value estimates to the business appraiser. These estimates are then incorporated into the enterprise appraisals for the development of the appropriate balance sheet or as a component of the enterprise valuation process.

Personal Property and Machinery and Equipment Appraisers

Specialty valuation professionals such as personal property and M&E appraisers are often engaged by high net worth individuals. These experts are subject to their industry standards for professional practice as well as traditional court requirements for unbiased and independent value opinions.

Court-Appointed Mediators

A court-appointed mediator or master is typically an independent individual, often a retired judge or attorney, who serves as an intermediary in an attempt to resolve valuation matters without the necessity of a trial. The mediator often serves with the authority of the trial judge and has the power to subpoena documents, examine witnesses, and review reports, stipulations, and settlement agreements. The court-appointed mediator often assists valuation professionals by focusing the scope of the assignment on the most important and critical valuation issues. The mediator is an independent court-appointed expert and trier of fact. This individual deserves the same respect as the trial judge.

Engagement (Scope of Work and Definition of Problem)

When a real estate appraiser is contacted for an equitable distribution matter, it is most important to communicate clearly to the client and the attorney that any valuation opinions expressed must be developed in accordance with industry standards and ethics, as follows:

- Independent value opinions and the fee cannot be based on any contingency or performance measure.
- The assignment cannot be based on any predetermined conclusion or results.

- The report and analysis must be based on court rules and industry-accepted standards (USPAP), theories, principles, and learned treatises.

In discussions with the engaging party, the appraiser must define and identify the nature of the assignment, which is often very complex and may include

- a marital home
- a vacation home (or homes)
- business property
- real estate investments

Equitable distribution matters are often complicated with multiple dates of valuation. In most states, equitable distribution of premarital assets requires two valuation dates: value as of the date of the marriage and value as of the date of the divorce.

Matrimonial cases also call on the expertise of real estate appraisers for the valuation of property interests that may include

- fee simple
- leased fee
- leasehold
- sandwich leases

Although some appraisal professionals may have the necessary experience and qualifications, minority interests and discounts are typically handled by financial professionals and business valuation experts. Real estate appraisers must be cognizant of their own professional competency at all times.

In a very basic case in which a residential home is the only asset for distribution, the appraiser may provide only a summary report or a self-contained residential report in which primary parties to the comparable transactions confirm the data and conditions. In complex cases in which marital assets are extensive, however, the judge, attorneys, or court mediator might recommend short-form restricted or summary reports as an interim step to facilitate settlement or to assist the accountant and business valuation appraiser.

Regardless of the reporting format approved for settlement purposes, the appraiser should prepare the most appropriate reporting form needed to communicate a supportable value conclusion effectively when testimony is required. For more complex assignments, conclusions are often best reported using a self-contained format.

The caution to all appraisers is that the value conclusions expressed must be credible and supportable, regardless of the reporting format. The standard of practice for most experienced practitioners is that no value opinion is expressed with anything short of complete file documentation, including the exhibits, data, property description, operating information, and well-notated confirmation memorandum, all of which would be necessary to produce a complete self-contained report.

Regardless of the product delivered, the confirmation process for any comparative data considered in the development of the value opinion should include, at a minimum, discussions with one of the primary parties to each transaction. A best-case scenario is direct communication with two or three parties. These communications should be noted with a file memo, including the contact name, address, and phone number. When possible, sending a “thank you” e-mail or memo with confirming notation is the best practice.

Engagement as an expert witness in any litigation should (and must) be completed in a written formal agreement. It is sometimes effective for the engagement letter to provide for a two-phase assignment. Phase 1 identifies the scope of work and definition of the problem for each of the assets. Phase 2 defines deliverables and fees exclusive of meetings, conferences, or testimony.

No assignment relating to a litigation matter should be accepted without a defined hourly or per diem rate for other professional services such as testimony, conferences, supplemental data, exhibits, or similar services that lie outside the scope of the appraisal reports. It is also a good idea to include assumptions and limiting conditions as part of the proposal letter. Be mindful and review the standard assumptions and limiting conditions to ensure that they are consistent with the specific scope of the proposed assignment.

Case Study

This case study highlights the process and procedures a real estate appraiser employs to provide expert and competent valuation services for the equitable distribution of a fictional, relatively high net worth family known as Mr. and Mrs. W. R. Robinson.

The first communication on this matter was initiated by Bob Schwartz, Esq., who is representing Mrs. Robinson in a divorce matter. Schwartz explains

that approximately 10 real property assets are owned by the Robinsons. He has sent an e-mail listing the assets that require appraisals and requests appraiser Ann Suarez, MAI, to quote a fee. This listing is shown in Figure 1.

Ann reviews the list and recognizes immediately that although seven of the properties are located within her primary market area and relate to her area of expertise, three of the properties are located in distinctly different markets and two of the properties (the fishing camp and resort hotel) are of a property type that requires special competency to comply with USPAP.¹

Ann recognizes that the list of assets barely identifies the properties, does not distinguish or identify ownership, and is insufficient to appropriately develop a scope of work. The list also does not identify the interest to be appraised or establish the valuation dates.

The definition of the problem, scope of work, intended use, intended users, interest appraised, and deliverables must be identified before any fee can be quoted. At this point, Ann develops a two-phase proposal that includes the following:

1. Phase 1 services identify the scope of work for each property and define relevant elements for the preparation of each required market value estimate (a real property consulting service).

2. The Phase 2 component includes preparation and delivery of the required appraisal opinions. A fixed fee structure cannot be established until Phase 1 is completed. (Phase 2 is considered an appraisal assignment.)

As an alternative, Ann would have the option to submit an hourly rate proposal and require a fairly substantial retainer. In either case, the proposal should include the defined services for Phase 1, which are limited to a statement of the definition of the problem, scope of work, intended use, interest appraised, and intended users who will be identified on a parcel-by-parcel basis upon review and consultation with Schwartz.

Phase 2 should include a fee schedule for the appraisal reporting services plus the hourly rate for post-appraisal services. It should also include standard assumptions, limiting conditions, and special assumptions as may be appropriate. The Phase 2 proposal often provides an “opt out” provision if the fee schedule or timing are not acceptable. Shortly after Ann’s proposal is delivered, she receives the requested retainer and a signed authorization for Phase 1.

Phase 1

Upon authorization, Ann coordinates a meeting with Schwartz and Mrs. Robinson to discuss the various assets, their ownership, and the relevant dates of value associated with the assignment. The Robinsons were married on March 1, 1995, and the divorce was filed on July 30, 2011.

After accumulating the basic information, Ann proceeds with her standard due diligence regarding new appraisal assignments. In this particular instance, due diligence includes communication with appraisers in jurisdictions outside of her normal practice area, research of public and municipal records regarding the individual assets, and a drive-by inspection to take some neighborhood and property photographs. After several days of research and analysis, Ann prepares the memo shown in Figure 2 to file as a basis for developing a scope of work.

Ann contacts Schwartz and advises him that a BV appraiser and M&E appraiser may be required as part of the Captain Harry’s valuation. Schwartz advises Ann that he has already made the arrangements and

Figure 1 Initial List of Real Property Assets Requiring Appraisals

Attachment A

Real Property Assets of Mr. & Mrs. W. R. Robinson

1	13 Bluebird Ct., Washington (family home)
2	Unit 27, Bellamia Condos, Orlando (vacation condominium)
3	300 Campus Way, Madison (office building)
4	Captain Harry’s, Washington (hardscape manufacturing plant)
5	Captain Harry’s Stores (3): Jefferson, Lincoln, & Madison (hardscape retail stores)
6	25 Broad St., Washington (apartment building)
7	Keyhole Fishing Club, Key West, FL (fishing camp)
8	11 Logistics Ct., Franklin (industrial building)
9	Unit 15, Holiday Manor, Washington (residential condo—rented)
10	Tucson Marriot, Tucson, AZ (resort hotel)

1. See the Competency Rule (U-11-12) and Advisory Opinion 22 (A-73-79), in *Uniform Standards of Professional Appraisal Practice*, 2010-2011 ed. (Washington, D.C.: The Appraisal Foundation, 2010).

e-mails a list of the other experts involved. After the call with Schwartz, Ann drafts the narrative notes to her file shown in Figure 3.

Scope of Work

As one can see upon review of Ann's file memo and notes, the nature of this assignment is varied. Clearly, one of the most critical elements to identify early on is the competency requirements of the assignment. Working outside an area in which Ann has jurisdictional competency is a factor relating to the properties in Orlando and the Florida Keys. Ann immediately communicates with competent appraisers in these jurisdictions. She will obtain the necessary temporary licenses to inspect the properties and participate in report preparation to ensure that settlement negotiations, report content, and testimony are consistent with the local jurisdictional requirements.

Several of the properties, particularly the Captain Harry's business property, require a close working relationship between Ann, Alan Lee (the M&E appraiser), and Ed Carey, MBA (the BV appraiser).

The possible immunity of the Tucson Marriott could be an issue. This must be resolved by attorneys and the court. It may be useful for Schwartz to have

some proportional estimate of this asset's value to determine the extent of litigation costs warranted for exclusion of this property from the marital assets. Ann may be requested to do some limited valuation consulting. If requested, these additional services will likely require jurisdictional competency and a hospitality specialist. This phase may be a limited-scope analysis solely for the purposes of estimating a "no greater than" proportion of value. The work may be assigned out at this point to a more qualified appraiser.

Due to the diversity of properties and varied property interests, significant documentation is necessary to prepare reports. In cases of this nature a discovery order may be established, particularly because the party (Mrs. Robinson) does not have a working relationship with the business enterprise and certain premarital assets. Discovery normally requires the appraisers to sign confidentiality agreements and provide access to all documentation, financial reports, and leases.

In a court-ordered exchange of documents associated with any litigation matter, keep in mind the old expression, "Be careful what you ask for—you just might get it." In cases in which discovery

Figure 2 Memo to File, Asset Detail for Developing Scope of Work

Memo to File: Robinson v. Robinson
From: Ann Suarez, MAI
Re: Asset Distribution
Real Property Assets, Mr. & Mrs. W. R. Robinson

Mr. & Mrs. Robinson—Joint Ownership

- 1 13 Bluebird Ct., Washington (family home, fee simple, market value)
- 2 Unit 27, Bellamia Condos, Orlando (family vacation condo, fee simple, market value)
- 3 300 Campus Way, Madison (office building, 15,000 sq. ft., jointly held asset, 2 tenants, 10- & 12-year leases, market value leased fee interest)
- 4 Captain Harry's, Washington (hardscape manufacturing plant, family-owned business property, fee simple, market value and market rental value to be incorporated into business valuation, BV appraisal by others)
- 5 Captain Harry's Stores (3) Jefferson, Lincoln, Madison (hardscape retail stores, market value leasehold and market rental value to be incorporated into business valuation, BV appraisal by others)

Mr. Robinson—Personal Asset

- 6 25 Broad St., Washington (50-unit apartment building, ownership is a family partnership, market value of fee simple, value as of marriage and divorce date)
- 7 Keyhole Fishing Club, Key West (fishing camp, ownership: Four Men, LLP, market value fee simple, value as of marriage and divorce date)
- 8 11 Logistics Ct., Franklin (50,000-sq.-ft. industrial building, long-term lease, ownership: Logic, LLC, 3 partners, market value leased fee, value as of marriage and divorce date)

Mrs. Robinson—Personal Assets

- 9 Unit 15, Holiday Manor, Washington (residential condominium, rented year to year, premarital asset, market value fee simple, value as of marriage and divorce date)
 - 10 Tucson Marriott, Tucson (325-room resort hotel, ownership: Happy Days Family Trust, may be immune asset, to be determined)
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Figure 3 Memo to File, Narrative Notes on Asset Distribution

Memo to File: Robinson v. Robinson
From: Ann Suarez, MAI
Re: Asset Distribution Narrative Notes
Confirming Consultation with Bob Schwartz, Esq.

Jointly Held Properties

- The home at 13 Bluebird Court and Unit 27 at the Bellamia Condos are jointly held assets in fee, estimate market value for equitable distribution.
- 300 Campus Way is a jointly held investment property that is a leased office building. Valuation will be as of the date of the divorce. Given the long duration of the existing leases, the valuation will be a leased fee interest.
- The family-owned business known as “Captain Harry’s” manufactures hardscape (paving) products and sells these products from three regional store outlets owned by Captain Harry’s, LLC.
- “Captain Harry’s” hardscape manufacturing plant is a fee-owned industrial property that is the family business and joint asset. A fee simple market value of the plant will be required, along with a market rental value. Machinery and equipment to be valued by the M&E appraiser (Alan Lee). These estimates will be incorporated within the enterprise appraisal by the BV appraiser (Ed Carey, MBA).
- Captain Harry’s stores are three leased retail stores used in conjunction with Captain Harry’s hardscape business. These storefronts are all owned by unrelated third parties. A market value of the leasehold (if any) and market rental estimate for each of the stores will be developed. The leasehold and market rent estimates will be incorporated by Carey in the valuation process for the Captain Harry’s enterprise.

Premarital Assets of Mr. Robinson

- The 50-unit apartment building (25 Broad Street, Washington) is a Robinson family partnership between a total of 10 relatives, which existed prior to the date of marriage. Two value dates will be necessary in the jurisdiction of this equitable distribution case. This asset must be valued as of the date of marriage and as of the date of the divorce. The appraiser will provide a market value estimate that may or may not be subject to partial interest discounting by others. (A stipulation or case management order regarding minority interest discounts is often issued.)
- The Keyhole Gang Fishing Camp is held in the ownership of an LLP in which Mr. Robinson held a one-quarter interest prior to the marriage. I will estimate the market value of the fee simple interest in the real property with the help of a local Florida appraiser. The market value may be incorporated into a net equity analysis by the accountants and/or subject to a minority discount analysis by others. As ownership of this asset predates the marriage, there will be a retrospective market value estimate as of the date of marriage and a market value estimate as of the date of divorce.
- The 50,000-sq.-ft. industrial building on Logistics Court is a limited liability corporation of three partners and was owned by Mr. Robinson prior to the marriage. The valuation must recognize that the property is subject to a long-term lease commitment, and a leased fee interest will be required as of the date of divorce. Further research as of the date of marriage is necessary to identify whether the retrospective value estimate is a fee simple or leased fee assignment.

Premarital Assets of Mrs. Robinson

- The residential condo, Unit 15 at Holiday Manor, was the premarital home and asset of Mrs. Robinson. This property would require a fee simple valuation as the current lease term is only one year. Two valuation dates will be required: the retrospective date of marriage and the date of divorce.
- The Tucson Marriott was owned by a family trust of Mrs. Robinson prior to the marriage. Her attorney will review trust documents and confirm through the court whether this property is an immune asset. No appraisal work will be completed on this property until further authorization is received.

orders are established, the documentation becomes voluminous. The difficulty for appraisers who lack litigation experience is that they tend to filter documentation and provide only what they believe is relevant. This is a very dangerous situation. It is most important that all documents exchanged be reviewed in detail. Once documents become part of a discovery order, they are considered facts of the case. If issues relate to the real estate valuation, the

appraiser must give consideration to all known facts, absent any legal instructions.

In cases in which a court master or mediator is appointed, the appraiser should be part of the mediation meetings to confirm the scope of work, intended use of their valuation opinions, limitations on the use, and the nature of the reporting required. Once the appraiser is involved in a matter—be it before the court or the mediator—all research, file documentation, and

analysis must be completed before any value opinion is expressed, regardless of the reporting process.

Although the skills necessary for the valuation of the various Robinson assets are within basic competency levels of a state-certified general real estate appraiser, Ann should participate in each assignment and report as the principal appraiser.

Now that Ann has completed her due diligence, she prepares a matrix of services required for the requisite reporting of market value opinions. What originally arrived by e-mail and looked like a simple case of 10 individual appraisals has now—after completion of the Phase 1 due diligence—turned into an assignment that (after deferral of one of the reports) requires 19 different value estimates (see Table 1).

In quoting fees, Ann must pay particular attention to the fact that at least two of the properties require out-of-area appraisers to satisfy the requirement for jurisdictional competency and four of the properties require retrospective value estimates as of the date of marriage. Preparing the Phase 1 portion of the engagement agreement has given Ann the opportunity to appropriately quote the fees and define the appraisal problem and scope of work.

Based on the diversity of the assignments, Ann should expect that the market value estimates will require certain adjustments by Laura Williams,

CPA, Mrs. Robinson's accountant. Williams will be responsible for estimating net equity subject to equitable distribution and premarital immune equity that is not subject to equitable distribution. At minimum, the Captain Harry's enterprise requires a business valuation. Lee will assist Ann in determining the owned real estate and machinery and equipment assets. Both Ann and Lee will provide current market value estimates to Carey for inclusion within the enterprise appraisal. Ann will also provide market rental estimates of all real estate used by this entity and leasehold values, if any, for the rented stores. Since the entity of Captain Harry's, LLC, was started six months after the marriage, all assets and value are considered marital property subject to equitable distribution. Thomas Hawkins, JSC, is the appointed mediator and will have access to all appraisal reporting.

Recognizing these factors, Ann has drafted the following statements of intended use and intended users:

- **Intended Use:** The intended use of the reports is to establish the market value of the various real estate assets of Mr. and Mrs. W. E. Robinson as of the appropriate effective dates for the purposes of equitable distribution.

Table 1 Required Value Estimates, Matrix of Services

**Required Value Estimates
Robinson v. Robinson**

	Current Values as of 7/30/2011			Retrospective as of 3/1/1995		
	Market Value Fee Simple	Market Value Leased Fee	Market Rent	Market Value Leasehold	Market Value Fee Simple	Market Value Leased Fee
1 13 Bluebird Ct., Washington	1					
2 Unit 27, Bellamia Condos, Orlando, FL	1					
3 300 Campus Way, Madison		1				
4 Captain Harry's, Washington	1		1			
5 Captain Harry's Stores (3)			3	3		
6 25 Broad St., Washington	1				1	
7 Keyhole Fishing Club, Key West, FL	1				1	
8 11 Logistics Ct., Franklin		1				1
9 Unit 15, Holiday Manor, Washington	1				1	
10 Tucson Marriot, Tucson, AZ					To be determined upon further authorization	
Value Opinions	6	2	4	3	3	1

- **Intended Users:** The intended users of the value opinions as developed by the appraiser would include the Superior Court of the state of jurisdiction and its agents, Bob Schwartz, Esq., Mrs. Robinson, Laura Williams, CPA, Ed Carey, MBA (the BV appraiser), and Alan Lee (the M&E appraiser).

At this point, Ann prepares the proposal for Phase 2 services. She includes Attachment A, a summary of the costs associated specifically with each valuation report (see Table 2).

In addition to the notes within the schedule, Ann reinforces that the fees as quoted relate to market value appraisals as defined and include additional costs for subcontractor's fees, travel, and out-of-pocket expenses associated with the Orlando and Key West properties as well as coordination of the valuation process with the intended users. She is very careful to indicate that the quoted fees do not include

- authorized coordination with Mr. Robinson's professionals
- the review of third-party appraisals
- settlement meetings

- conferences or conference calls, or
- valuation and consulting services outside the scope of those indicated within Attachment A.

This process is recommended as it will prevent "scope creep" and allow the appraiser to concentrate on providing meaningful valuation services to the intended users and the court of jurisdiction.

Phase 2

Upon delivery of a formal Phase 2 proposal, Ann is authorized to proceed as the real estate expert in the matter of Robinson v. Robinson. Early in the process of preparing the files, Ann has been advised that Mr. Robinson has engaged a local real estate appraiser, David Steele, MAI, who is well known to Ann and belongs to the same Appraisal Institute chapter. In an effort to ensure the consistency of critical elements of valuation, it has been suggested by the mediator, Hawkins, that the real estate appraisers coordinate the document discovery and exchange of required property information. Additionally, they were asked to coordinate property inspections to ensure that all

Table 2 Real Estate Appraisal Cost Proposal

Phase 2 Real Estate Appraisal Cost Proposal Prepared for Bob Schwartz, Esq. Robinson v. Robinson						
	Market Value Fee Simple 7/30/2011	Market Value Leased Fee 7/30/2011	Market Rent 7/30/2011	Market Value Leasehold 7/30/2011	Market Value Fee Simple 3/1/1995	Market Value Leased Fee 3/1/1995
1 13 Bluebird Ct., Washington	\$1,000					
2 Unit 27, Bellamia Condos, Orlando	\$1,750					
3 300 Campus Way, Madison		\$5,250				
4 Captain Harry's, Washington	\$5,500		N/C			
5a Captain Harry's, Jefferson			\$2,250	\$1,250		
5b Captain Harry's, Lincoln			\$2,250	\$1,250		
5c Captain Harry's, Madison			\$2,250	\$1,250		
6 25 Broad St., Washington	\$5,500				\$6,500	
7 Keyhole Fishing Club, Key West	\$5,000				\$6,000	
8 11 Logistics Ct., Franklin		\$5,500				\$6,000
9 Unit 15, Holiday Manor, Washington	\$1,000				\$1,000	
10 Tucson Marriot, Tucson				To be determined		

Note 1: Fees as quoted are for market value appraisals of the interest identified. They include subcontractor fees as may be needed, out of town travel, and jurisdictional certifications for the principal appraiser.

Note 2: Fees do not include (1) authorized coordination with Mr. Robinson's professionals, (2) review of third-party appraisal reports, (3) settlement meetings, (4) conferences or calls, or (5) additional valuation or consulting services outside the scope of the schedule.

property information is consistent and minimize inconvenience to tenants. This process is very effective, particularly with operating business and leased properties; it is time-efficient for the occupants and minimizes business interruptions.

Shortly after engagement, Ann receives a call from the BV appraiser, Carey. He explains that the valuation of Captain Harry's will require a current market value and market rent for the manufacturing facility. He will also need a current leasehold and market rental value for the three stores. Carey reveals that the partnership documents relating to the Key Hole Fishing Club in Key West provide a "right of first refusal" option to purchase by surviving partners if any of the partnership interests become available. Although the overall market value of the property is important, he will also need to address a provision that indicates that a purchase by one or all of the partners can be at market value or a legitimate offer, minus traditional real estate commissions typical in the area. Ann explains to Carey that this additional research was not within the scope of the assignment and communicates with Schwartz that additional market research will be necessary to verify "typical and customary real estate brokerage commissions" in the Key West area.

The court mediator assembles a meeting of all expert witnesses and attorneys. At this meeting, it is stated that the primary responsibility of Hawkins is to resolve this matter without the need for a protracted litigation and in a cost-effective fashion. Accordingly, Hawkins has requested that the appraisers prepare summary appraisal reports in an abbreviated fashion to facilitate a settlement that will be negotiated at a series of settlement conferences.

Ann and Steele jointly prepare a valuation and data reporting format that is acceptable to all intended users, specifically for the settlement process. A stipulation is prepared confirming the report format, and it includes limitations on the use of the report in the event that court testimony is required. The stipulation should also state that the appraisers will provide a comprehensive report if they are requested to testify at trial.

At the suggestion of Hawkins, Ann and Steele jointly prepare property information and document request schedules for each of the individual properties. After a review by the appropriate council, Hawkins issues a court order for the exchange of date-stamped documents as set forth in each individual schedule.

The documents are to be distributed to all attorneys and experts in the matter of *Robinson v. Robinson*.

As approved by the attorneys and the court mediator, the real estate appraisers proceed with the joint inspection of each individual property. This process proves to be most efficient. Because each party's appraiser is present as questions are asked of the tenants, property management, and owners, the information accumulated is clear. This minimizes confusion and contradictory assumptions, which often occur in litigation practice.

Ann then proceeds to complete each of the appraisals as requested and provides the summary shown in Table 3 to her client, Attorney Schwartz.

Shortly after delivering the appraisal reports, Ann is contacted by Williams, who has completed some calculations to develop the equitable distribution net values. Williams has questions regarding a couple of the assets.

For the family home at Bluebird Court, the condominium in Orlando, and the 300 Campus Way property in Madison, the equitable distribution was prepared by simply deducting the outstanding debt from the market value estimate. Williams, however, is somewhat confused over Unit 15 in Holiday Manor and provides Ann with her worksheet (see Table 4), which indicates that the outstanding mortgage debt substantially increased between the valuation dates.

Ann explains that her assignment was merely to value the fee simple interest in the property as of two specific dates. She does confirm, however, that the outstanding debt on both the date of marriage and the debt on the date of divorce were provided in the document exchange process. Ann also questioned the large increase in debt and confirmed through Mrs. Robinson that the property was refinanced in early 2000 to provide cash to purchase the family's 40-ft. fishing boat. As demonstrated in Table 4, Mrs. Robinson will receive the full immunity benefit of her premarital equity of \$60,900, plus her equitable share of the \$14,100.

Williams also had some concern regarding 11 Logistics Court. The current market value of the property was more than three times the 1995 value, yet the mortgage debt was substantially less (see Table 5).

Ann confirmed that the 1995 appraisal was completed based on discovered information that indicated the property was subject to a short-term

Table 3 Summary of Value Conclusions

**Client Privileged and Confidential—For Informational Purposes Only—Results of Several Complete Appraisal Reports*
Summary of Value Conclusions
Robinson v. Robinson**

	Market Value Fee Simple 7/30/2011	Market Value Leased Fee 7/30/2011	Market Rent 7/30/2011	Market Value Leasehold 7/30/2011	Market Value Fee Simple 3/1/1995	Market Value Leased Fee 3/1/1995
1 13 Bluebird Ct., Washington	\$725,000					
2 Unit 27, Bellamia Condos, Orlando	\$485,000					
3 300 Campus Way, Madison		\$325,000				
4 Captain Harry's, Washington	\$4,250,000		\$318,750			
5a Captain Harry's, Jefferson			\$150,000	\$448,000		
5b Captain Harry's, Lincoln			\$150,000	\$627,000		
5c Captain Harry's, Madison			\$180,000	\$420,000		
6 25 Broad St., Washington	\$3,750,000				\$1,950,000	
7 Keyhole Fishing Club, Key West	\$1,575,000				\$900,000	
8 11 Logistics Ct., Franklin		\$3,925,000			\$1,175,000	
9 Unit 15, Holiday Manor, Washington	\$225,000				\$75,900	
10 Tucson Marriot, Tucson				To be determined		

* This summary is a court-requested, client-privileged compilation of various value conclusions from individual complete appraisal reports and is not intended for distribution of any kind.

Table 4 Condominium Worksheet

Unit 15, Holiday Manor Premarital Asset, Mrs. Robinson Two-Bedroom Townhouse Condominium		
Market value as of 7/30/2011	\$225,000	
Outstanding debt	<u>-\$150,000</u>	
Net equity		\$75,000
Market value as of 3/1/1995	\$75,900	
Outstanding debt	<u>-\$15,000</u>	
Net equity premarital (immune)		<u>\$60,900</u>
Value subject to equitable distribution		<u>\$14,100</u>

lease entered into by a local tenant. Three years ago, a new 25-year lease was negotiated with a public, triple A-rated tenant. The remaining term is 22 years as of July 2011. Market rents in the area had escalated significantly. Mr. Robinson did not refinance the building, and the outstanding debt was the initial debt that had amortized over the 16 years of ownership during the marriage. Given the short term of the 1995 lease, the value is considered a fee simple interest. The

long-term lease remaining in 2011 would indicate that a leased fee interest is appropriate.

As agreed upon with the client, Ann delivers an appraisal report to Carey with the value conclusions for the real estate associated with the Captain Harry's operation shown in Table 6. The values include a fee simple interest in the manufacturing plant, the leasehold values associated with the retail stores, and market rental values of all the real estate.

Table 5 Industrial Property Worksheet

11 Logistics Court, Franklin Premarital Asset, Mr. Robinson 50,000-sq.-ft. Industrial Property		
Market rent as of 7/30/2011	\$5.85/sq. ft.	
Lease date	6/1/2010	
Lease term	25 years	
Tenant	Public, triple A-rated	
Leased fee market value on 7/30/2011	\$3,925,000	
Outstanding debt	<u>-\$975,000</u>	
Net equity		\$2,950,000
Market rent as of 3/1/1995	\$2.25	
Lease date	6/1/1992	
Lease term	5 years	
Tenant	Local sheet metal	
Fee simple market value on 3/1/1995	\$1,175,000	
Outstanding debt	<u>-\$1,048,000</u>	
Net equity premarital		<u>\$127,000</u>
Net equity of Logic, LLC		\$2,823,000
Mr. Robinson's interest in Logic, LLC	33.33%	
Value subject to equitable distribution		\$940,906

Table 6 Valuation Conclusions for Real Estate Associated with Business Operation

Value Conclusions: Captain Harry's Hardscape					
Property	Location	Interest	Market Value	Market Rent	
Hardscape manufacturing plant	Washington	Fee simple	\$4,250,000	\$318,750	
Capt Harry's Store 1	Jefferson	Leasehold	\$448,000	\$150,000	
Capt Harry's Store 2	Lincoln	Leasehold	\$627,000	\$150,000	
Capt Harry's Store 3	Madison	Leasehold	<u>\$420,000</u>	<u>\$180,000</u>	
Sum of values			\$5,745,000	\$798,750	

Because the business enterprise was started after the marriage, retrospective values are not required.

Shortly after receiving this information, Carey calls Ann and tells her that the information was most helpful. The business valuation was very difficult because the Captain Harry's manufacturing operation essentially produces products for retail sale through its own outlets. The operation requires large capital investments in fixed assets. Carey has prepared preliminary worksheets of an asset-based analysis using an excess earnings approach. Table 7 summarizes the asset-based comparison prepared by Carey for review by Ann.

This asset-based comparison demonstrates the financial scale of the fixed assets. As indicated in Note 1 of Table 7, the book value of owned real estate (Captain Harry's plant) is replaced with Ann's fee simple market value of \$4.25 million. The accrued depreciation of this property is not deducted in the asset-based market analysis; it is implicit in Ann's market value estimate that all accrued depreciation has been deducted.

As indicated in Note 2 of Table 7, the market value of the leaseholds, which totals almost \$1.5 million, has been added to the book cost of the leasehold improvements. As the leasehold improvements are recaptured during the remaining lease term, they

Table 7 Asset-Based Comparison Worksheet

Asset-Based Comparison			
Assets	At Book Value	At Market Value	
Current Assets			
Cash and cash equivalents	\$1,255,800	\$1,255,800	
Accounts receivable	\$547,895	\$547,895	
Prepaid expenses	\$75,285	\$75,285	
Inventory	\$750,000	\$750,000	
Total current assets	\$2,628,980	\$2,628,980	
Property, Plant, and Equipment			
Fixed assets (RE)	\$1,240,000	\$4,250,000	Note 1
Leasehold improvements	\$1,212,400	\$2,707,400	Note 2
Machinery and equipment	\$925,000	\$725,000	Note 3
Total	\$3,377,400	\$7,682,400	
Less accumulated depreciation	-\$1,750,000	-\$225,555	Note 4
Net property and equipment	\$1,627,400	\$7,456,845	
Total Assets	\$4,256,380	\$10,085,825	
Liabilities and Equity			
Current portion of long-term debt	-\$65,255	-\$65,255	
Accounts payable	-\$124,788	-\$124,788	
Income taxes payable	-\$257,500	-\$257,500	
Long-term debt (net of current)	-\$1,255,000	-\$1,255,000	
Total liabilities	-\$1,702,543	-\$1,702,543	
Stockholder equity	\$2,553,837	\$8,383,282	

Note 1: Capt. Harry's plant added at market value

Note 2: Sum of leasehold MV (\$1,495M) + leasehold improvements

Note 3: Value as estimated by Alan Lee

Note 4: Depreciation only from leasehold improvements

are carried at book value less accrued depreciation (Note 4). The machinery and equipment has been added at market value based on the estimates by Lee. Again, the M&E appraisal reports the assets at the "as is" market value, so accrued depreciation is not deducted.

Recognizing that the real estate owned in fee, leaseholds, and equipment has been booked at market value, the accumulated depreciation only relates to the leasehold improvements, which are a wasting asset. Williams and Carey will carefully audit and review depreciation schedules to eliminate any redundant deduction against the value of fixed assets, which are marked to market. As indicated by the comparison, there is a significant difference between the book value of the assets and the market

value of the fixed assets (property and equipment), exclusive of cash and cash equivalent.

The "earnings multiple method" is a second method used to estimate the value of the business. An analysis was prepared based on the most recent historic earnings, considered by Carey as the best estimate of normalized earnings. This analysis required an adjustment of occupancy costs to the sum of the market rents as estimated by Ann. This demonstrates why the real estate appraiser must ensure consistency and balance between the market rents and market value estimates of both fee simple and leasehold values.

The enterprise has limited market decline. Captain Harry's stores are the best customers for the Captain Harry's plant. As a result, a relatively low earnings

multiple of two times the net earnings has been used in valuing the business. The net earnings were also adjusted for the excess owner's compensation. Because Captain Harry's is a family-owned enterprise, Mr. Robinson has consistently received a salary and bonuses that exceed the market norm (see Table 8).

As demonstrated by the earnings multiple analysis, the majority of Captain Harry's enterprise value is found in the fixed assets of real estate, leaseholds, machinery, and equipment, even though the enterprise is relatively successful. It is not the function of this case study to teach appraisers how to value a business enterprise. However, it is important to understand that real estate value conclusions serve multiple disciplines in developing the net value of assets that are subject to equitable distribution.

This case study attempts to present relevant examples of the use and intended users of real estate appraisers' value estimates that are part of an equitable distribution matter. As demonstrated by the examples, the appraisers' estimates are a critical component in the process.

Conclusions

It is not necessary to discuss or teach the methods and techniques for estimating the requisite market

values within this case study. These techniques are covered in the comprehensive texts of the Appraisal Institute. All work associated with matrimonial litigation should be completed in compliance with the code of ethics and professional standards as set forth in USPAP. In litigation matters, the need for appraisers to confirm all data used in reports through primary sources and maintain a well-documented file with memos, e-mails, and cataloged documents cannot be overemphasized.

In addition to maintaining complete files, an appraiser involved in litigation should be prepared to be engaged for an extended period of time. It is not unusual for appraisers to be asked to modify all value opinions as of a court-ordered revised date of divorce. Appraisers should work honestly, candidly, and fairly with other professionals, and constantly maintain their objectivity and independence throughout the process. The integrity of an expert witness is his or her most valuable asset.

Appraisers should also be prepared for a request to review real estate appraisals prepared for the opposing side in litigation. These services often help to establish a factual and technical basis. It is, however, a good practice for the principal appraisers (Ann and Steele in this case) to avoid the position of

Table 8 Analysis of Earnings Multiple

	Analysis by Earnings Multiple		
Gross revenue	\$7,525,000	\$7,525,000	
Cost of sales	-\$2,633,750	-\$2,633,750	
Net revenue	\$4,891,250	\$4,891,250	
Operating Expenses			
Operating	-\$1,256,500	-\$1,256,500	
Salaries	-\$1,425,000	-\$1,425,000	
Occupancy	-\$240,000	-\$798,750	Note 1
Other	-\$750,125	-\$750,125	
Total operating expenses	-\$3,671,625	-\$4,230,375	
Net earnings	\$1,219,625	\$660,875	
Excess owner's compensation	\$150,000	\$150,000	
Net earnings	\$1,369,625	\$810,875	
Earnings multiple	2	2	
Indicated value of business	\$2,739,250	\$1,621,750	
Net asset value	\$2,553,837	\$8,383,282	
Enterprise value	\$5,293,087	\$10,005,032	

Note 1: Sum of all facility rents at market rent

“rebuttal appraiser.” It would be better for another qualified appraiser to take on this role to avoid the appearance of advocacy, particularly if court testimony is required.

Although the appraiser’s contribution to an equitable distribution process in a matrimonial matter has significant financial implications, the appraiser must always be aware that the job of the attorneys and judiciary is complicated by many additional issues that outweigh monetary considerations. The typical divorce is the dissolution of a family, which often involves the custody of children, the disposition of the family home and personal property, and numerous other personal factors that impact the lives of the husband, wife, and children.

Matrimonial cases often develop into very personal causes for the husband and wife. Regardless of the engaging party or the information obtained in

the process, appraisers are encouraged to maintain an arm’s-length professional relationship with all litigants at all times.

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