

LAW REVIEW

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MARITAL SETTLEMENT AGREEMENT MUST BE IN WRITING

David Dellaria and Elizabeth Blickman-Dellaria were married on August 27, 1989. They separated in 2001, David served Elizabeth with a petition for dissolution of their marriage in 2002. Although David later denied it, apparently they had an oral agreement to divide up their marital assets because Elizabeth went on title to the family home, David got their property in Novato and kept another piece of property in Homewood, and they each retained their own retirement plans. Deeds were recorded accordingly.

I'm not sure what happened for the next five years but on December 21, 2007, the judge in their dissolution upheld their verbal division of the community property, even though it was not an equal split. In fact, the judge ruled that David "...came out ahead in this agreement."

Husband's Appeal

Even though David supposedly got the better of Elizabeth under the oral settlement agreement affirmed by the judge, he filed an appeal saying he "strongly disputes" that he came out ahead. Notwithstanding that he had deeded the family home to Elizabeth and went on title to the Novato property solely, he argued that the division of property was improper and unfair and must be set aside.

You may be asking yourself, if you are asking anything, what more could David want? They split their community property, exchanged deeds, and the judge determined David ended up with more than half. What's his problem?

Family Code Section 2550

Here's the problem. Family code 2550 says that unless the marital parties enter into a written agreement or an oral agreement in open court, the court *must* divide the community property assets of the parties equally. (Generally you keep your own separate property). Any agreement to divide the community assets other than 50-50 must be in writing or put on the record *in court*.

Marital Award Overturned

The Court of Appeal overturned the trial judge, and therefore David and Elizabeth's verbal division of their marital assets, even though it was upheld by the trial judge, notwithstanding they had deeded each other the properties and acted as if the oral agreement was binding.

I am thinking that what happened is the property that David deeded to Elizabeth must have dramatically gone up in value, so he later changed his mind claiming that the verbal division of property had to be in writing as per section 2550. But I am just guessing.

Take Home Point

The lesson here is when it comes to the division of marital property in a divorce, now of course warmly called dissolution of marriage, verbal agreements generally are not enforceable.

And as far as I know (but this is not my practice area), former spouses' verbal modifications of court ordered child support and spousal support are also unenforceable. Get it in writing with the blessing of the court.

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