



Policy Directive 2021-02-02

Title: Property Settlement - Divorce

Date: February 23, 2021

From: Erin Kelley, Senior Medical Eligibility Policy Manager

Program(s) Impacted: Elderly and Disabled Medical Assistance Programs

The purpose of this document is to notify eligibility staff of a change in policy concerning the equitable nature of a property settlement through a divorce proceeding. This change is effective with the issuance of this memo.

During a divorce proceeding, the marital assets and debts acquired during the marriage will be distributed between the couple based on a property settlement approved by the court. In brief, Kansas cases, Kansas statutes on property during the dissolution of a marriage and local domestic relations guidelines require a property settlement to be “equitable”, not “unconscionable”, and “just and reasonable”. If the settlement is not “equitable” between the spouses, an inappropriate transfer may potentially attach to the spouse who receives less than his/her fair share.

This memo provides guidance on what is considered a fair or equitable property settlement.

Generally, a property settlement agreement should be considered equitable if the court order on property division or the property settlement agreement accepted by the court divides assets equally and each spouse was represented by their own counsel during the court proceeding.

- 1. Adversarial Claim** – Divorce proceedings, as judicial matters, are usually adversarial. Each spouse is represented by an attorney. When the property settlement proceedings are not adversarial, the settlement is considered suspect and should be examined by the eligibility worker. An example of non-adversarial procedure is when one of the spouses use the same attorney. (If both spouses use the same attorney, the spouses would need to have consented to this method of legal representation since it is considered a conflict of interest for the attorney to represent parties who are adversaries of each other.) See 3 below for procedure if settlement is suspect.
- 2. Unequal Division of Marital Assets** – Whenever the value of property distributed in the settlement is not approximately equal between the spouses, the property settlement is considered suspect. See 3 below for procedure if the settlement is suspect.

3. **Settlement Suspect** – When the property settlement is suspect, eligibility staff shall require verification from the applicant/recipient that he/she was adequately represented by legal counsel in the divorce proceeding and that the property settlement was fair, equitable, and conscionable based on all the circumstances of the marriage and divorce. Normally, verification shall be provided in the form of a written statement from the spouse’s representative legal counsel attesting to the fact that the outcome was fair, equitable, and conscionable based on the circumstances of the marriage and the divorce and that the spouse received zealous representation in the matter. Absent satisfactory verification provided by the applicant/recipient, the property settlement shall potentially be considered an uncompensated transfer subject to penalty – depending on the amount of assets received.
4. **Uncompensated Transfer** – If the property settlement is not fair, equitable, or conscionable, a determination of the total value of the marital assets versus what assets the spouse received shall be made. The value of the marital assets should be stated on the property settlement document approved by the court. Each spouse should have access to this document for delivery to the agency upon request.

The value of the uncompensated transfer, if any, is the difference between the value of one-half of the total marital assets and the value of the amount awarded to the applicant/recipient spouse in the settlement agreement. If the spouse received less than one-half of the assets, an uncompensated transfer has occurred. If the value of property received by the applicant/recipient spouse equals or exceeds one-half of the total value of assets, an uncompensated transfer has not occurred.

Note: If an uncompensated transfer has occurred, for penalty purposes, the date of the transfer is the date the divorce became final. Even though the property settlement may pre-date finalization of the divorce, the assets are not legally transferred until the date the divorce is final.

For questions or concerns related to this directive, please contact one of the Medical Program Eligibility Policy staff below.

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