

THE BASICS OF PROPERTY DISTRIBUTION IN IOWA

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I. Three Main Questions

- a. What property is subject to distribution?
- b. What is the value of the property?
- c. What constitutes an equitable distribution?

II. Iowa Code Section 598.21

- a. “Upon every judgment of annulment, dissolution, or separate maintenance, the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located.” Iowa Code § 598.21(1).
- b. The dissolution of the parties’ marriage must occur contemporaneously with the distribution of property; the issues may not be bifurcated to allow for later distribution. *In re Marriage of Thatcher*, No. 13-2044, 2015 WL 3533267 (Iowa 2015).
- c. Iowa Code Section 598.10 addresses temporary orders. The statute specifically addresses “separate support and maintenance,” but does not specifically address temporary or advance property distribution.
- d. Unmarried parties must plead an alternative theory, such as contract, unjust enrichment, resulting trust, constructive trust or joint venture. *In re Marriage of Martin*, 681 N.W.2d 612, 618 (Iowa 2004).

III. Determining Which Property is Subject to Division

- a. The **general rule** in Iowa is that ALL property owned by the parties, jointly or separately, is subject to equitable division.

- i. “The court shall divide all property, except inherited property or gifts received or expected by one party, equitably between the parties...” Iowa Code § 598.21(5).
- ii. “...the statute makes no effort to include or exclude property from the divisible estate by such factors as the nature of the property of the parties, the method of acquisition, or the owner.....the circumstances and underlying nature of the included property are generally considered as factors that impact the second task of determining an equitable division, along with all other relevant factors.” *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005).
- iii. “Debts of the parties normally become debts of the marriage, for which either party may be required to assume the responsibility to pay.” *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006) (citing 24 Am.Jur.2d *Divorce and Separation* § 571, at 730).

Attorney fees are not marital debt if incurred for the dissolution proceedings. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (citing *Rodvik v. Rodvik*, 151 P.3d 338, 346 (Alaska 2006)).

- iv. Premarital property is subject to division.

“Property brought into the marriage by a party is merely a factor to consider by the court together with all other factors, in exercising its role as an architect of an equitable distribution of property at the end of the marriage.” *In re Marriage of McDermott*, 827 N.W.2d 671, 678 (Iowa 2013) (quoting *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006)).

The court “may not separate a premarital asset from the divisible estate and automatically award it to the spouse that owned the property prior to the marriage.” *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 102 (Iowa 2007) (quoting *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006)).

- v. Appreciation & Depreciation of Property during marriage

- 1. The mechanism of appreciation, whether it is fortuitously or laboriously, is not emphasized. *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 104 (Iowa 2007) (dividing appreciation of residence husband owned prior to the marriage).
- 2. Appreciation or loss in the value of property purchased with inherited or gifted assets is marital property. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

- vi. Lottery winnings may be divided. *In re Marriage of Swartz*, 512 N.W.2d 825, 826-27 (Iowa Ct. App. 1993).
- vii. Future royalties from actions taken during the marriage may be divided. *In re Marriage of White*, 537 N.W.2d 744 (Iowa 1995) (textbook written during the marriage, including next edition).
- viii. Future workers' compensation benefits are the separate property of the injured person. *In re Marriage of Schriner*, 695 N.W.2d 493, 498-99 (Iowa 2005) (may divide benefits received during the marriage, to the extent they have been retained).
- ix. Disability benefits may be divided to the extent they replace or partially supplant retirement benefits. *In re Marriage of Crosby*, 699 N.W.2d 255, 259 (Iowa 2005).
- x. Proceeds from a personal injury lawsuit received during the marriage may be subject to division. *In re Marriage of Schriner*, 695 N.W.2d 493, 497 (Iowa 2005) (citing *In re Marriage of McNerney*, 417 N.W.2d 205, 208 (Iowa 1987)).
- xi. Cash value of life insurance policies is subject to division. *In re Marriage of Goodwin*, 606 N.W.2d 315, 322 (Iowa 2000) (citing *In re Marriage of Conley*, 284 N.W.2d 220, 222 (Iowa 1979)).

b. **Exception:** Inherited or gifted property

- i. "Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage." Iowa Code § 598.21(6).

Gifts between spouses during the marriage are excluded from the marital estate. *In re Marriage of Fenton*, 789 N.W.2d 165 (Iowa Ct. App. 2010) (table).

- ii. The donor's intent and circumstances surrounding inheritance are controlling factors in determining whether such property is subject to equitable division under Section 598.21 or "whether the donor intended a party 'to be the sole recipient of the inherited property.'" *In re Marriage of McDermott*, 827 N.W.2d 671, 678-79 (Iowa 2013) (citing *In re Marriage of Liebich*, 547 N.W.2d 844, 850-51 (Iowa Ct. App. 1996)) (finding purchase of farm well below market price, equipment, buildings and unpaid labor did not constitute gifts or advance on inheritance to

husband, nor that husband was to be sole recipient based on review of real estate documents, will, and lack of gift tax returns)

The party asserting an asset was gifted or inherited has the burden of proof to establish such. *Runnels v. Anderson*, 173 N.W. 91, 94 (Iowa 1919).

- iii. In determining whether a refusal to divide the property would be inequitable, the court considers:
 1. contributions of the parties toward the property, its care, preservations or improvement;
 2. the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
 3. separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
 4. any special needs of either party;
 5. any other matter, which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of McDermott, 827 N.W.2d 671, 679 (Iowa 2013) (citing *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000)).

“Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, through not independent factors, may indirectly bear on the question for their effect on the listed factors. Still other matters might tend to negative or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception.” *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982).

The extent to which the parties have made plans to jointly use the inherited or gifted property may also be considered. *In re Marriage of Helmle*, 514 N.W.2d 461, 463 (Iowa Ct. App. 1994).

Commingling an inherited or gifted asset with other marital property is not a controlling factor. *In re Marriage of Liebich*, 547 N.W.2d 844, 851 (Iowa Ct. App. 1996).

- iv. “...where the parties have enjoyed, over a lengthy period of time, a substantial rise in their standard of living as the result of gifts or

inheritances, then any division of property should enable the parties to continue that lifestyle, even if that goal requires the division of gifted property.” *In re Marriage of Goodwin*, 606 N.W.2d 315, 320 (Iowa 2000) (citing *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)).

c. **Exception:** Property subject to a Premarital Agreement

- i. When parties enter a prenuptial agreement, in the absence of fraud, mistake, undue influence, or abandonment, the contract is binding. If the court were to award different assets, it would, in effect, be rewriting the premarital agreement. *In re Marriage of Applegate*, 567 N.W.2d 671 (Iowa Ct. App. 1997).

IV. Determining the Value of the Marital Property

- a. The **general rule** is that property is to be valued as of the date of trial. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007) (citing *In re Marriage of Hagerla*, 698 N.W.2d 329, 333 (Iowa Ct. App. 2005)).
 - i. A lengthy separation between the parties may be considered by the court in determining the value of the assets and what constitutes an equitable distribution. Assets may be valued at a date earlier than the date of trial. *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa Ct. App. 1997) (citing *In re Marriage of Tzortzoudakis*, 507 N.W.2d 183 (Iowa Ct. App. 1993)).
 - ii. However, a lack of evidence of value on a prior date and determining the time of separation may prevent the application of an alternative valuation date. *In re Marriage of Guy*, 705 N.W.2d 507, *2 (Iowa Ct. App. 2005) (Table) (citing *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001)).
- b. An owner may testify as to the market value of property. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (citing *Holcomb v. Hoffsneider*, 297 N.W.2d 210, 213 (Iowa 1980)).
- c. A party bears the burden to produce sufficient evidence to support an alleged value. *In re Marriage of Ales*, 592 N.W.2d 698, 703 (Iowa Ct. App. 1999).
- d. The present value of a defined benefit pension is more than the present value of the pensioner’s contributions and requires the application of actuarial science. *In re Marriage of Sullins*, 715 N.W.2d 242, 248-49 (Iowa 2006) (citing *In re Marriage of Scheppel*, 524 N.W.2d 678, 679 (Iowa Ct. App. 1994); *In re Marriage of Johnston*, 492 N.W.2d 206, 208 (Iowa Ct. App. 1992)).

- e. The present value of a defined-contribution pension “is the amount of accumulated contributions plus interest as of the valuation date. It follows that the value of the marital interest in defined contributions plans is the amount of contributions made during the marriage plus accumulated interest on these contributions.” *In re Marriage of Sullins*, 715 N.W.2d 242, 248 n.2 (Iowa 2006) (quoting *In re Marriage of Benson*, 545 N.W.2d 252, 256 n.1 (Iowa 1996)).

- f. Businesses, Closely-Held Corporations

- i. Trial courts are afforded much leeway in determining values for closely held corporations as the market value for such stock can “rarely” be ascertained. *In re Marriage Keener*, 728 N.W.2d 188, 194 (Iowa 2007) (quoting *In re Marriage of Moffatt*, 729 N.W.2d 15, 19 (Iowa 1979)). However, courts may not merely speculate as to such values. *Id.* at 195.
- ii. “The general rule is that stock should be valued at market value if it can reasonably be ascertained. However, market value for the stock in a close corporation can rarely be ascertained. Thus its intrinsic value should be determined. A broad range of evidence is admissible to prove any fact calculated to affect its value. This includes evidence of the assets and liabilities of the corporation.” *In re Marriage of Moffatt*, 279 N.W.2d 15, 19 (Iowa 1979).
- iii. Discounts for minority interests may be applied. *In re Marriage of Coulter*, 502 N.W.2d 168 (Iowa Ct. App. 1993).
- iv. The portion of a corporation’s value dependent on a party’s post-dissolution services should not be included for purposes of property distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa Ct. App. 1991).
- v. The goodwill of a professional practice should not be included. *In re Marriage of Bethke*, 484 N.W.2d 604, 607-08 (Iowa Ct. App. 1992).

V. Determining what Constitutes an Equitable Division

- a. There are **13 statutory factors** which may be considered in determining what constitutes an equitable division of property. Iowa Code § 598.21(5).
 - i. The length of the marriage.
 - ii. The property brought to the marriage by each party.
 - iii. The contribution of each party to the marriage, giving appropriate economic value to each party’s contribution in homemaking and child care services.
 - iv. The age and physical and emotional health of the parties.

- v. The contribution by one party to the education, training, or increased earning power of the other.
- vi. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonable comparable to that enjoyed during the marriage.
- vii. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
- viii. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.
- ix. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.
- x. The tax consequences to each party.
- xi. Any written agreement made by the parties concerning property distribution.
- xii. The provisions of an antenuptial agreement.
- xiii. Other factors the court may determine to be relevant in an individual case.

b. Equitable does not mean Equal

- i. An equal division is not required in order to do equity. *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 102 (Iowa 2007) (citing *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005)).
- ii. “Equality is, however, often most equitable; therefore, we have repeatedly insisted upon the equal or nearly equal division of marital assets.” *In re Marriage of McDermott*, 827 N.W.2d 671, 682 (Iowa 2013) (citing *In re Marriage of Kimbro*, 826 N.W.2d 696, 703 (Iowa 2013)).
- iii. “What constitutes a just and equitable award depends on the particular circumstances of each case, after consideration of all the recognized criteria.” *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996) (citing *In re Marriage of Hanson*, 475 N.W.2d 660, 662 (Iowa Ct. App. 1991)).
- iv. The Iowa Supreme Court has recently reminded courts of the need to consider *all statutory factors*. *In re Marriage of Gust*, 2015 WL 200056,

*14 No. 13-0356 (Iowa January 16, 2015) (holding based, in part, on a “desire to vindicate the statutory scheme established by the legislature”).

v. “It is important to remember marriage does not come with a ledger. *See In re Marriage of Miller*, 552 N.W.2d 460, 464 (Iowa Ct. App. 1996). Spouses agree to accept one another ‘for better or worse.’ Each person’s total contributions to the marriage cannot be reduced to a dollar amount. Many contributions are incapable of calculation, such as love, support, and companionship. ‘Financial matters...must not be emphasized over the other contributions made to the marriage in determining an equitable distribution.’” *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 103-104 (Iowa 2007) (quoting *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996)).

vi. The Iowa Court of Appeals has continued to affirm uneven distributions of property as being equitable, after consideration of all statutory factors, and setting aside premarital property in determining what is an equitable division.

In re Marriage of Dean, 847 N.W.2d 235 (Iowa Ct. App. 2014) (Table) (uneven distribution where gifted and premarital property set aside, premarital properties not included for purposes of determining equalizing payment due to duration of marriage (8 years) and spouse’s noninvolvement with the farming properties)

In re Marriage of Peiffer, 840 N.W.2d 726 (Iowa Ct. App. 2013) (uneven distribution where trial court declined to divide premarital assets due to duration of marriage (7 years) and one spouse brought substantially more assets to the marriage)

In re Marriage of Kinser, 821 N.W.2d 777 (Iowa Ct. App. 2012) (Table) (substantial disparity in distribution justified “[c]onsidering the characteristics and apparently disparate value of their premarital assets, as well as the independent role of each spouse in the marriage.”)

In re Marriage of Meyer, 807 N.W.2d 158 (Iowa Ct. App. 2011) (Table) (premarital equity in marital residence set aside and traced from sale of other premarital property) (citing *Fennelly*, 737 N.W.2d at 99-100, 102-05; *In re Marriage of Jones*, 451 N.W.2d 25, 27 (Iowa Ct. App. 1989))

vii. Recently, the Court of Appeals affirmed an uneven distribution in *In re Marriage of Lukowicz*, No. 14-0088 (Iowa Ct. App. January 14, 2015). In *Lukowicz*, the parties were married for four years, divorced and remarried each other, with the second marriage lasting twenty-four years. The husband brought the residence to the second marriage, while the wife brought nothing of value. The Court of Appeals found the district court

was “justified” in placing significant weight on the property brought to the marriage by each party. The wife contributed minimally to the marriage or to the improvements of the marital residence. The wife minimally participated in the improvements, while the husband did the majority of the work. Additionally, the wife maintained a separate account for her earnings and did not spend such money on improving the marital residence. The wife had contributed to the marriage through childcare and general homemaking, but such contributions were not given significant weight by the trial court. Additionally, the parties had differing earning capacities. Both parties were sixty-four years old. The husband was in ill health and lived on social security disability income. The wife was in good health and underemployed, working only twenty to twenty-five hours a week at a dry cleaner. The wife received a property settlement payment which represented “a just and equitable share of property accumulated through their joint efforts,” rather than a 50/50 division of the property. The ability of the husband to make periodic payments on an award was properly considered, as “[t]he ability of a party to meet the financial obligations imposed by a dissolution decree is a relevant factor to consider in determining an equitable division of property.”

c. Length of the Marriage

- i. Marriages of long duration often call for an equal division of property. *In re Marriage of Kimbro*, 826 N.W.2d 696, 704 (Iowa 2013) (marriage of 17 years “establishes sufficient commitment to award an equal division of property”).
- ii. “Where parties have been separated a long period of time, and have been keeping separate finances, an unequal distribution of property may be equitable.” *In re Marriage of Guy*, 705 N.W.2d 507 (Iowa Ct. App. 2005) (table) (citing *Tzortzoudakis*, 507 N.W.2d at 186 (approving a 35/65 division following almost thirty year separation)). See also, *In re Marriage of Dannen*, 509 N.W.2d 132, 133 (Iowa Ct. App. 1993) (setting aside real estate wife had had purchased independent of husband, prior to dividing joint marital assets, after seven year separation).

d. Property Brought to the Marriage

- i. Circumstances may call for a “full credit” of premarital property, but such disposition is not required. *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 104 (Iowa 2007) (citing *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998)).
- ii. Premarital property is often awarded to the party which brought it into the marriage in short term marriages. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995); *In re Marriage of Steenhoek*, 305 N.W.2d

448 (Iowa 1981) (five year marriage); *In re Marriage of Winegard*, 278 N.W.2d 505 (Iowa 1979).

e. Contributions of each Party

- i. A court will not examine the exact duties performed by marriage partners. *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 104 (Iowa 2007) (quoting *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa Ct. App. 1998)). However, where one party has “shirked his or her duties,” disparate treatment may be justified. *Id.*
- ii. “We have never held or even insinuated that spouses should maximize their earning potential or risk being punished in the distribution of the parties’ property. Iowa is a no-fault state.” *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 103 (Iowa 2007) (citing *In re Marriage of Williams*, 199 N.W.2d 339, 345 (Iowa 1972)).

f. Age and Health of each Party

g. Earning Capacity of each Party

- i. “The ability of a party to meet the financial obligations imposed by a dissolution decree is a relevant factor to consider in determining an equitable division of property.” *In re Marriage of Siglin*, 555 N.W.2d 846, 849-50 (Iowa Ct. App. 1996).
- ii. An advanced degree is not an asset to be divided, but may be considered in determining an equitable division in regards potentially increased future earnings. *In re Marriage of Plasencia*, 541 N.W.2d 372, 926 (Iowa Ct. App. 1995).

h. Family Home and Custody award

- i. The marital home may be awarded to the party who receives physical care of the parties’ minor children in order to provide stability for the children. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999).
- ii. A party may be awarded possession of the marital home for a specified period time, after which the house may be sold or the other party’s interest purchased. *In re Marriage of Boomgarden*, 776 N.W.2d 111 (Iowa Ct. App. 2009) (table) (husband awarded home until youngest child graduated high school, after which the house would be sold or the husband could purchase wife’s interest at then-market value).

i. Spousal Support and Property Division

- i. Courts apply many of the same factors in determining an equitable division of property and spousal support. *See Iowa Code § 598.21A* (spousal support determination).
- ii. “[F]ollowing a marriage of long duration, [Iowa courts] have affirmed awards of both alimony and substantially equal property distribution, especially where the disparity in earning capacity has been great.” *In re Marriage of Gust*, 858 N.W.2d 402, 411 (Iowa 2015) (citing *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993); *In re Marriage of Hitchcock*, 309 N.W.2d 432, 438 (Iowa 1981)).
- iii. An award of spousal support may be modified, a property division may not be. *Iowa Code § 598.21(7)*.
- iv. A party’s preference to be self-supporting and acrimonious relationship between the parties may justify an increased award of property in lieu of spousal support. *In re Marriage of Goodwin*, 606 N.W.2d 315 (Iowa 2000).

j. Other Economic Circumstances & Future Interests

- i. *In re Marriage of Rhinehart*, 704 N.W.2d 677 (Iowa 2005): the Court considered the wife’s \$550,000 future interest in a family trust fund in determining an equitable division of the parties’ property, where the wife’s father had the ability to change the beneficiaries, but “there is nothing [was] no evidence indicating he is likely to do so.”

In response, the Iowa legislature amended the statute to prevent consideration of future interests where “the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary.” *Iowa Code § 598.21(5)(l)*.

ii. Pensions:

“Pensions are divisible marital property....There are two accepted methods of dividing pension benefits: the present-value method and the percentage method...Additionally, there are two main types of pension plans: defined benefit plans and defined-contribution plans.” *In re Marriage of Sullins*, 715 N.W.2d 242, 247-48 (Iowa 2006) (internal citations omitted).

Defined benefit plans are generally divided using the percentage method, due to the difficulty in determining the present-value through

actuarial science and potential for economic difficulty for the pensioner in paying a lump-sum. *In re Marriage of Sullins*, 715 N.W.2d 242, 247-48 (Iowa 2006) (internal citations omitted).

“Under the percentage method, the non-pensioner spouse is awarded a percentage (frequently fifty percent) of a fraction of the pensioner’s benefits (based on the duration of the marriage), by a qualified domestic relations order (QDRO), which is paid if and when the benefits mature.” *In re Marriage of Sullins*, 715 N.W.2d 242, 250 (Iowa 2006) (citing *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996)).

$$\text{Non-employee Spouse's share} = \frac{\text{\# of years employee was both married \& covered by pension}}{\text{\# of years covered by Plan up to maturity (retirement)}} \times \% \text{ of award}$$

To avoid later litigation to determine intent of the court and parties, the stipulation or decree should address survivor benefits of pensions and other retirement assets. *In re Marriage of Morris*, 810 N.W.2d 880 (Iowa 2012) (stipulation provided each party with “half of theMarine Corps Retirement...” but did not address whether survivor benefits were included or not).

Cost-of-living adjustments to pension benefits accruing post-dissolution are marital property where the employee-spouse is retired at the time of trial, whereas an increase due to contributions post-dissolution are not. *In re Marriage of Duggan*, 659 N.W.2d 556, 560 (Iowa 2003) (citing *In re Marriage of Klein*, 522 N.W.2d 625, 628 (Iowa Ct. App. 1994)).

k. Tax Consequences

- i. If there is a court-ordered sale, tax consequences of such a sale may be considered by the court. *In re Marriage of McDermott*, 827 N.W.2d 671, 684 (Iowa 2013).
- ii. Tax consequences may also be considered where there is “a court-ordered, lump-sum payment of cash to the other spouse that will, in all probability, require the liquidation of capital assets.” *In re Marriage of McDermott*, 827 N.W.2d 671, 684 (Iowa 2013) (citing *In re Marriage of Hogeland*, 448 N.W.2d 678, 680-81 (Iowa Ct. App. 1989)) (consideration of tax consequences inappropriate where farm operation generated sufficient cash flow to service debt necessary to make equalization payment).

- iii. Tax consequences may not be considered for an illusory future sale. *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991) (rejecting reduction in the value of corporate stock for capital gains taxes and sale costs, as there was no evidence a sale was pending or contemplated).

1. Written Agreements & Antenuptial Agreements

- i. Reconciliation agreements are not expressly authorized or prohibited by the Iowa Code. *In re Marriage of Cooper*, 769 N.W.2d 582, 585 (Iowa 2009)
- ii. Written agreements may not be considered where “they intrude on the intimacies of the marital relationship and inject fault back into dissolution proceedings.” *In re Marriage of Cooper*, 769 N.W.2d 582, 587 (Iowa 2009) (finding reconciliation agreement void where the agreement considered husband’s infidelity as a factor in the ultimate property distribution).
- iii. Courts may reject a stipulation if determined to be unfair or contrary to law. *In re Marriage of Ask*, 551 N.W.2d 643 (Iowa 1996); *In re Marriage of Zeliadt*, 390 N.W.2d 117, 119 (Iowa 1986) (may not adversely affect the best interests of the parties’ children).

m. Other Factors

- i. Property division is achieved in terms of gender-neutrality and avoids sexual stereotypes. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002).
- ii. Domestic abuse is not to be considered in determining an equitable division of property. *In re Marriage of Goodwin*, 606 N.W.2d 315, 324 (Iowa 2000).
- iii. “[W]hen one of the parties expresses a strong interest in preserving the farm, the court should do everything possible to respect that desire.” *In re Marriage of McDermott*, 827 N.W.2d 671, 683 (Iowa 2013). Iowa precedent acknowledges the public policy in preserving family farming operations and “the reasonableness of a trial court awarding a farm to the spouse who operated it and in fixing the awards and schedule of payments to the other spouse without reaching *equality* so the farmer-spouse might retain ownership of the farm.” *Id.* (quoting *In re Marriage of Callenius*, 309 N.W.2d 510, 515 (Iowa 1981)) (emphasis original).

“However, a party’s interest in preserving the farm should not work to the detriment of the other spouse in determining an

equitable settlement.” *In re Marriage of McDermott*, 827 N.W.2d 671, 683 (Iowa 2013).

- iv. Courts may consider an oral agreement between parties regarding the division of property prior to the dissolution. *In re Marriage of Kimbro*, 826 N.W.2d 696, 700 (Iowa 2013) (finding husband failed to prove existence of oral agreement regarding division of bank account).

VI. Mechanics of an Equitable Division

- a. The Court may set aside property for the benefit of a child.
 - i. “The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education, and general welfare of the minor children.” Iowa Code § 598.21(4).
- b. Qualified Domestic Relations Orders (QDRO)
 - i. A QDRO must be used to divide pension benefits pursuant to a Decree. *In re Marriage of Brown*, 776 N.W.2d 644, 647-48 (Iowa 2009).
 - ii. A QDRO is not an un-modifiable property division, but “merely a method of effecting the property division contained in a dissolution decree and may be modified later without affecting the finality of the underlying decree. *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011) (citing *In re Marriage of Brown*, 776 N.W.2d 644, 648-49 (Iowa 2009)) (addressing modification of QDRO used to finance equalizing payment ordered in the decree).
 - iii. Payments from the division of pension benefits do not terminate on remarriage or cohabitation. *In re Marriage of Huffman*, 453 N.W.2d 246 (Iowa Ct. App. 1990).
- c. In-kind distribution
 - i. *In re Marriage of Simon*, 2014 WL 7339335 (Iowa Ct. App. December 24, 2014) (table) (finding in-kind distribution of farming assets inappropriate where history of domestic violence between parties, notwithstanding the fact that the aggressor spouse would not be operating the farm himself).
- d. Liquidation
 - i. “The easiest way for a court to divide property is to order the parties to sell the land and split the proceeds. In that instance, each party is then responsible for any tax consequences arising from the sale. However, a

forced sale is not a preferable method to divide marital assets, because such a sale tends to bring lower prices, and, ..., a party usually wants to keep the property rather than sell it.” *In re Marriage of McDermott*, 827 N.W.2d 671, 683 (Iowa 2013).

- ii. A corporation may be liquidated, reorganized or the shares divided. *In re Marriage of Siglin*, 555 N.W.2d 846, 849-50 (Iowa Ct. App. 1996).
- iii. Parties should not be ordinarily forced to continue a business relationship after a dissolution. *In re Marriage of Lundtvedt*, 484 N.W.2d 613 (Iowa Ct. App. 1992).

e. Equalizing Payment

- i. “An equalization payment is preferable when the court cannot divide an asset easily and there are not enough liquid assets in the marital estate to achieve an equitable distribution.” *In re Marriage of McDermott*, 827 N.W.2d 671, 683 (Iowa 2013) (district court provided two possible payment schedules for husband to make equalizing payment to wife in excess of \$1,000,000, both without interest accruing).
- ii. Interest is not required, but accrues at the statutory rate when utilized. *In re Marriage of Keener*, 728 N.W.2d 188, 196 (Iowa 2007).

In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979) (holding district court’s failure to award interest on \$90,000 award which was to be paid over nine years unfair because “the property division fell substantially short of the trial court’s goal of an approximately equal division of assets”).

In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975) (affirming no interest on cash award of \$50,000 over an eleven-year period because lack of interest was a factor the district court considered in determining the amount).

f. Liens

- i. Courts may create a judicial or equitable lien in order to secure a property division. *In re Marriage of Keener*, 728 N.W.2d 188, 196-97 (Iowa 2007) (citing *In re Marriage of Hettinga*, 574 N.W.2d 920, 923 (Iowa Ct. App. 1997)) (utilizing UCC lien to secure judgment where main asset was corporate stock).