

OPINION

Fair and square: helping divorcing couples divide belongings

By David A. Hoffman

The technique used by most divorcing couples for dividing furnishings and personal be-



longings is simple. The parties create a master list of items, grouped in a logical way (such as “din-

ing room chairs go with dining room table”). Each party puts a check mark next to the items he or she wants, and then the lists are compared.

If there are items neither party wants, those items are offered to a charity, friends or relatives or they are sold. Then the parties decide who gets the items that both parties want by simply doing some “horse trading” (“how about if you take items A, B and C, and I’ll get items D, E and F?”)

For most divorcing spouses, this technique is sufficient. In high-conflict cases, however, more formal mechanisms, such as those listed below, are sometimes needed.

Buy/sell. The parties flip a coin to see who goes first. That person proposes a price for the item in question, and the other person gets to decide whether to be the buyer or the seller. This is akin to the time-honored method of dividing a cake: One person cuts, the other person chooses. This method can be used for individual items, entire rooms of furniture, or the contents of the entire home.

Internal auction. The only bidders in this type of auction are the divorcing spouses. The items to be auctioned can be individual items, entire rooms of furniture, or the contents of the entire home. The parties flip a coin to see who starts the bidding. They agree in advance on the minimum increments for bidding (e.g., \$100 or \$1,000, depending on how many items are being auctioned off and their approximate value). Then they alternate bidding, and the higher bidder gets the item. The ground rules are that no party can take longer than five minutes in responding to the previous bid, so that the auction can be concluded within a reasonable time.

Alternate pick. The parties make a list of what’s in the home that is available for division, grouping things

appropriately (as noted above). Then they flip a coin to see who picks first, alternating from there. A variation on this process allows the winner of the coin-toss to pick one item, then the other party picks two items (to compensate for not getting first pick), with the parties alternating, each getting two picks when it’s their turn.

Adjusted-winner auction. This one is my favorite. All the disputed items are listed (appropriately grouped), and each party privately fills out a bidding sheet, stating what that party would be willing to pay for each item. The two sheets are then compared, and each item goes to the higher bidder, but at a price that is halfway between the two bids. For example, if Party A bids \$2,000, and Party B bids \$3,000, the dining room set goes to Party B for \$2,500. Party B feels like she got a bargain, paying less than she offered; Party A gets a bonus — more money than he thought the item was worth.

Use of referee. If the parties are working with a mediator, they can ask the mediator to “change hats” and become the arbitrator. Using this procedure, the parties exchange lists (with a copy for the arbitrator) showing which items they want, ranked in order of preference, and stating (a) what each party thinks the items are worth if they were sold on Craig’s List as is, and (b) what each party estimates it would cost to replace that item with a new (but comparable) item. The arbitrator then reviews both lists and decides who gets what, trying to (a) maximize each party’s



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Buy/sell sequencing. If the parties use the buy/sell technique for less than all of the items in a home, there are advantages to doing this sequentially, one item or room at a time, because each person’s motivation may change as he or she becomes a buyer or seller for each item or room.

Advantages of internal auction. An internal auction often works better than the buy/sell process, for two reasons. First, the buy/sell price may be set at a lower value than what the ultimate buyer would be willing to pay. In other words, there is money left on the table. Second, the person who sets the price in a buy/sell process may be viewed by the other person as trying to drive an unfair bar-

divorcing spouses generally use this method only for major items, such as real estate and closely held businesses.

Personal, gifted and inherited items. Ordinarily, each party is entitled to exclude from the division personal items (clothes, personal effects and personal electronics) and any items that were gifted or inherited from family members. Sometimes wedding gifts are divided in a similar manner, based on whose family member gifted the item. Jewelry (including engagement and wedding rings) and other expensive inter-spousal gifts are often treated separately and, if worth a considerable amount in relation to the parties’ overall assets, included in the calculation of equitable distribution. If the parties disagree about who gets such items, they could be included, along with furniture, in the list of items to be divided using the processes described above.

Photographs and videos. As the technology for reproducing these items becomes increasingly inexpensive, divorcing spouses can each have a full set of such items at a reasonable cost and, if there’s a photo duplication service nearby, without too much effort.

Asymmetrical allocation of belongings. In some cases, one party may not want or need as many items as the other. When that is the case, the parties often have strongly differing views regarding the value of the items that will be retained by the party with more “stuff.” An easy way to address this, of course, is to hire an appraiser. But what if the reason for the asymmetry is because the parties want to minimize the disruption

of furnishings in the marital home, perhaps because the parties’ children might find that jarring? In such cases (where one party remains in the marital home and the other establishes a new home elsewhere), the party who is leaving may need to buy new items and will thereby incur considerably more expense, in the aggregate, than the resale value of what he or she left behind. To be sure, that party will have new furniture items and household belongings instead of used items, but the fair market value (i.e., resale value) of those items, once they leave the store, is dramatically reduced. One way to split this difference is to consider, with the help of an appraiser if necessary, the immediate resale value of the new items. This is roughly analogous to the method used in the Kelly Blue Book valuation of used cars, where there are typically three values: (a) what a dealer would pay for the car as a trade-in, (b) what the dealer would set as the sale price for that car, and (c) a middle value known as the “private party” value (i.e., the likely sale price through Craig’s List or a similar market). Many divorcing couples use the “private party” value in determining a fair value of their cars, and this same methodology can be used — even though it may be annoyingly granular and time-consuming — with their furniture and furnishings.

Fairness matters a lot. Social psychologists have demonstrated that people often engage in emotionally-driven, self-defeating behavior when they feel that fairness norms have been violated. The amount in controversy may be small, but the emotional reaction may be enormous and long-lasting. Thus it is often worth the effort to devise fair procedures for dividing belongings.

One final note

Many divorcing spouses will find the array of process options listed above to be dauntingly complex. The intention behind presenting these options is obviously not to confuse or frustrate the parties but instead to give them methods of dividing their belongings in a manner that feels fair, principled and envy-free.

However, when faced with the complexities and formality of the techniques listed above, many divorcing spouses will often look at each other and say, “What the heck — we can figure this out on our own!” And then they do, which is always (in my opinion) the best solution.

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receiving preferred items, and (b) equalize the overall value of what each party is receiving. (If the parties cannot agree on the arbitrator, they would each designate someone to be the arbitrator, and those two pick an arbitrator, who serves as the sole arbitrator.)

Notes

Choosing a selection method. Because this list of processes contains an odd number of options, each party can strike one option from the list until only one remains. The parties can flip a coin to see who will begin with the first strike.

gain by setting an unreasonably low price — trying, in effect, to get too big a discount. So, there could be more emotional friction in a buy/sell process than the internal auction.

Advantages/disadvantages of external auction. The obvious advantage of an external auction is that by allowing third parties to bid, the divorcing spouses might get more money (to be divided equally, let’s say) than either party would be willing to pay for an item. But at what cost? Because of the costs, delays and hassle associated with an external auction,

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