

FAMILY COURT

# Employee Stock Options Can Present Complicated Issues



It has become more and more common for employee compensation packages to include a grant of stock options. Presumably, these stock options can represent a significant asset to the employee by giving them the ability to buy low and sell high to realize financial gain.

There are two ways that stock options require special considerations in Family Court proceedings: division of marital assets and determination of income. Both can require complicated legal and financial analysis.

## **Division of Marital Assets**

Whether the stock options are considered to be the employee's separate property or whether they are considered to be community property subject to division upon divorce will involve determining whether the options were earned during the marriage.

If the options are deemed to be community property subject to division between the spouses, the court has to ascertain the value of those options that have a future vesting date and determine what, of that value, each spouse is entitled to.

It is important to note that there are multiple formulas that the court can use to determine the divisible portion of the stock options and the portion that is the employee spouse's separate property. Which formula is used is entirely to the

Judge's discretion. Not only that, but the result in applying one formula over the other can result in differing outcomes, which is often determinative as to who receives the greater share of the asset.

For this reason, it is important to be sure that whomever is advocating for you knows and understands the nuances involved in these matters.

## **Determination of Income**

Income derived from stock options granted to an employee is considered as income for purposes of calculating support, just as the employee's regular earnings would be. The options will be counted as income to the employee when they are free to be exercised, not necessarily when the employee actually does exercise them.

This can quite substantially affect both child and spousal support orders and is thereby important to be aware of when stock options are at issue.

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