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# Family Law 2025

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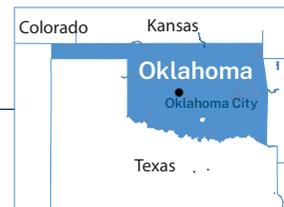
## **USA – Oklahoma: Law and Practice & Trends and Developments**

Danya Bundy and Aaron Bundy

Bundy Law



# USA – OKLAHOMA



## Law and Practice

### Contributed by:

Danya Bundy and Aaron Bundy  
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Contributed by: Danya Bundy and Aaron Bundy, **Bundy Law**

**Bundy Law** is a regional law firm covering Arkansas, Missouri and Oklahoma, with a primary focus on family law matters in trial and appellate courts. Its attorneys are adept at handling fast-paced, complex cases, ranging from jurisdictional contests to business valuation disputes. Known for their expertise and track record of success in high-value divorces and contentious

child custody cases, the attorneys excel in negotiation and advocacy work for high net worth and ultra-high net worth individuals. Bundy Law has a firm culture that promotes consistent, clear communication and responsiveness with clients and co-counsel, and it has implemented a powerful, sophisticated software infrastructure to support its high-touch service model.

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## 1. Divorce

### 1.1 Grounds, Timeline, Service and Process

Oklahoma is a divorce “fault” state. There are 12 statutory grounds for divorce:

- abandonment for one year;
- adultery;
- impotency;
- when the wife at the time of her marriage was pregnant by another than her husband;
- extreme cruelty;
- fraudulent contract;
- incompatibility;
- habitual drunkenness;
- gross neglect of duty;
- imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;
- the procurement of a final divorce decree outside the State of Oklahoma by a husband or wife, which does not in the State of Oklahoma release the other party from the obligations of the marriage;
- insanity for a period of five years – the insane person having been:
  - (a) an inmate of a state institution for the insane in the State of Oklahoma for such period; or
  - (b) an inmate of a state institution for the insane in some other state for such period; or
  - (c) an in-patient in a private sanitarium; and
  - (d) affected with a type of insanity with a poor prognosis for recovery.

The most common, least controversial ground for divorce is incompatibility. Incompatibility has been determined by Oklahoma’s appellate courts to be a “mutual” fault concept that

describes the state of relations between both spouses.

To obtain a divorce, a court proceeding must be commenced by petition, setting forth the statutory grounds and reason for the divorce. In cases where there are no minor children involved and there is a complete agreement memorialised in a divorce decree, there is no minimum separation period. The divorce may be granted promptly once the petition has been filed. In cases involving minor children, there is a waiting period of 90 days. Courts have the power to waive the 90-day waiting period in special circumstances, but such a waiver is unusual.

Divorce proceedings must be served in the same manner as other civil lawsuits. The divorce petition must be accompanied by a summons and a notice of the automatic temporary injunction and served upon the respondent by certified mail (with return receipt requested and delivery restricted to the addressee), by commercial courier, by a sheriff, or by personal service using a licensed process server who serves the papers upon the respondent or a person residing with the respondent who is over 15 years old. Service may be made by publication if the petitioner first demonstrates that, with due diligence, service could not be made by any other method. Service of process must be made within 180 days after the filing of the petition.

Generally, each person must be at least 18 years old to marry. However, courts have the authority to permit minors to marry in certain circumstances, including in the event of pregnancy or with parental consent. Oklahoma recognises common law marriage, which – broadly defined – means that both parties are competent to marry and agree to be married to one another. There is no ceremonial or licence requirement for com-

mon law marriage. Divorce is viewed as part of the authority of the state government and may be granted even when one spouse objects to a divorce on religious or moral grounds.

The residency requirement for divorce also applies to actions for annulment. There is no residency requirement for legal separation. The law applicable to legal separation is the same as in divorce; however, unlike divorce, in an action for legal separation, the marriage is not dissolved. Likewise, in the case of an annulment where the court determines that the marriage was void, the court retains the authority to make an equitable division of property jointly accumulated during the period of time that the parties lived as husband and wife, as well as to determine child custody matters.

## 1.2 Choice of Jurisdiction

To commence a divorce or annulment proceeding in Oklahoma, at least one spouse must have been “an actual resident, in good faith, of the State of Oklahoma” for the six months immediately preceding the filing of the petition. If neither spouse meets this requirement, an Oklahoma court will not have jurisdiction to grant a divorce. In cases where there is a dispute about jurisdiction, the analysis becomes extremely fact-sensitive.

Appellate law addressing the residency requirement tends to use the terms “residence” and “domicile” interchangeably, even though the words may have legally significant, independent definitions for other purposes. By itself, nationality is not a factor for determining residency; however, in the event of a robust inquiry following a jurisdictional challenge, nationality could be relevant, depending on the circumstances.

Domicile has been described by an appellate court as “the inherent element upon which the jurisdiction must rest”. As the question of jurisdiction is fundamental in every matter, jurisdiction may be challenged by either party or by the court. When a jurisdictional challenge is made while a divorce proceeding is pending in a foreign jurisdiction, a stay of Oklahoma proceedings may be requested. When a stay has been requested, the court must consider:

- whether there is an alternate forum (such as a court in a foreign jurisdiction) where the case may be tried;
- whether the alternate forum provides an adequate remedy;
- whether maintaining the case would cause a substantial injustice to the party requesting a stay;
- whether the alternate forum can exercise jurisdiction over the parties;
- whether the balance between the private interests of the parties and the public interests of the State predominates in favour of the action being brought in the alternate forum; and
- whether the stay would prevent unreasonable duplication or proliferation of litigation.

## 2. Financial Proceedings

### 2.1 Choice of Jurisdiction

Oklahoma case law says: “The question of jurisdiction is primary and fundamental in every case and cannot be conferred by the consent of the parties, waived by the parties, or overlooked by the Court.” Domicile in the state where a divorce is sought is an inherent element in and prerequisite for jurisdiction for divorce.

Oklahoma has adopted the Uniform Interstate Family Support Act, which was created with the principle that there should only be one court order for child support at a time. The definition of “support” in the Uniform Interstate Family Support Act includes orders for spousal support. In a proceeding to establish or enforce a support order, a court may exercise jurisdiction over a non-resident person if:

- the individual is personally served with summons within the state;
- the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- the individual resided with the child in this state;
- the individual resided in this state and provided prenatal expenses or support for the child;
- the child resides in this state as a result of the acts or directives of the individual;
- the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage of a child in the putative father registry maintained in this state by the Oklahoma Department of Human Services; or
- there is any other basis consistent with the constitutions of this state and the USA for the exercise of personal jurisdiction.

In the event of simultaneous proceedings in multiple jurisdictions, a contesting party may request a stay if there is a pending challenge to the exercise of jurisdiction. Factors considered for a stay request include the timeliness of the jurisdictional challenge together with the facts pertaining to jurisdiction, including which state

is the home state of the child in a child support case.

Oklahoma courts may hear financial claims after a foreign divorce; however, Oklahoma does not have the ability to modify a spousal support order issued by a foreign court so long as the foreign court has continuing, exclusive jurisdiction over the order under that jurisdiction’s laws. Oklahoma may modify foreign child support orders in certain circumstances in accordance with the Uniform Interstate Family Support Act.

## 2.2 Service and Process

Service in financial proceedings must be made in the same manner as other civil lawsuits: a petition and summons must be served by certified mail (with return receipt requested and delivery restricted to the addressee), by commercial courier, by a sheriff, or by personal service using a licensed process server. There is no statutory timeframe or waiting period for a financial proceeding, so each case must be prosecuted and defended like any civil lawsuit.

## 2.3 Division of Assets

In a divorce or annulment proceeding, the court has a statutory duty to determine what is each party’s separate, non-marital property and to make a just and reasonable division of all property acquired by the parties jointly during the marriage. The “just and reasonable” standard is also characterised as fair and equitable, and it does not necessarily mean an equal, 50/50 division. The sole exception to the just and reasonable standard is where there is a valid prenuptial agreement that provides for an alternative method of division of jointly acquired property.

Appellate case law says that trial courts should also divide any enhancement in value of otherwise separate property if the value increase

was the result of efforts, funds or skills of either spouse during the marriage. Spousal contributions are distinguished from economic factors or market forces unrelated to efforts of labour. The burden of proof is on the non-owning spouse claiming a share of an in-marriage increase in separate property value to show the value of the property at the time of the marriage, the value at the time of trial, and that the enhancement was the result of effort by either spouse as opposed to economic conditions or circumstances beyond the parties' control.

Courts have broad discretion to divide and allocate marital assets and funds. Property may be divided in kind or require payments necessary to effect a fair division. Even when property has been determined to be one spouse's separate, non-marital property, the court may invade that separate property for alimony or child support payments.

While there are some disclosure obligations early in a divorce or annulment case, the disclosure requirements generally pertain to income and debt. Each spouse is entitled to engage in the full range of discovery permitted by the rules of civil procedure, including written discovery requests to the other party, depositions of witnesses, and subpoenas. The court can enforce discovery requests and subpoenas, but it will rarely involve itself in the discovery process in the absence of a request by one of the parties.

Divorce courts recognise the concept of trusts. Oklahoma statutes provide that provisions in favour of a spouse in an express trust are revoked in the event of a divorce.

## 2.4 Spousal Maintenance

Courts have broad authority to award spousal support (alimony) in divorce proceedings. Okla-

homa does not have a fixed mathematical formula for calculating spousal support. Broadly, alimony may be awarded on a temporary or final basis when one spouse demonstrates both a financial need for support and that the other spouse has the ability to pay the needed support. Spousal support claims are highly fact-sensitive. Appellate courts have recognised the following factors:

- demonstrated need during the post-matrimonial economic readjustment period;
- the parties' station in life;
- the length of the marriage and the ages of the parties;
- the earning capacity of each spouse;
- the parties' physical condition and financial means;
- the mode of living to which each spouse has become accustomed during the marriage; and
- evidence of a spouse's own income-producing capacity and the time necessary to make the transition for self-support.

When substantial marital property is awarded, the accompanying claim for spousal support must be supported by proof of excess monetary need to cushion the economic impact of transition and readjustment to gainful employment. Oklahoma has a "fixed sum" rule, meaning that the court must determine the total amount of spousal support awarded, and there is no indefinite or permanent spousal support. Owing to the variety of factors involved in and the vague nature of both "need" and "ability to pay", spousal support awards are sometimes viewed as products of the subjective whims and philosophies of the individual trial judge.

Either spouse may apply for temporary spousal support when a legal separation or dissolution

of marriage proceeding is underway. The factors to be considered by the court may be truncated at an interlocutory hearing simply owing to the limitations of time at such a hearing and because discovery may be incomplete.

## 2.5 Prenuptial and Postnuptial Agreements

Prenuptial agreements are briefly referred to in Oklahoma's statutes as "valid antenuptial contract[s] in writing". That reference has led to a body of case law upholding prenuptial agreements in a variety of circumstances. Antenuptial agreements are characterised as "favoured by the law" by Oklahoma's appellate courts. Antenuptial agreements remain the most effective way to deviate from the subjective nature of spousal support awards and the uncertainty of the "just and equitable" property division standard.

Oklahoma law is not clear concerning the validity of postnuptial agreements, as there is a split in authority. Appellate courts have confirmed that spouses may contract with one another, transfer property to one another, and even modify a prenuptial agreement after the marriage. However, at least one appellate decision has held that there is no legal basis for a postnuptial agreement.

## 2.6 Cohabitation

Unmarried couples with assets must look to property law and contract law to determine and enforce their rights. An unmarried individual does not acquire a legal or equitable interest in the property of their romantic partner or significant other simply by virtue of cohabitation. Unmarried cohabitants do not acquire any property rights simply by virtue of length of cohabitation, shared children, or otherwise.

## 2.7 Enforcement

Compliance with a financial order for child or spousal support may be enforced through the applicable provisions of the Uniform Interstate Family Support Act. The Act specifically recognises the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Conference on Private International Law. It also provides for the registration and enforcement of foreign orders, including support orders issued by international courts.

## 2.8 Media Access and Transparency

Except for cases heard by an arbitrator, divorce proceedings are open to the public. As a result, the media may be present in the courtroom. Local newspapers routinely publish the names of parties when marriage licences are issued and when divorces are granted. The scope of media reporting may be limited for sensitive matters, including the identity of minor children, domestic violence victims, and the presentation of medical records.

There are a few ways to remove matters from the public eye. Most courts permit the use of abbreviating first names to limit public searches. Venue may be waived by agreement, so filing a proceeding in a remote venue by agreement may be a strategy. Following a settlement, the decree may incorporate a settlement agreement by reference that is not filed in the publicly accessible court file. Properly done, unfiled settlement agreements may remove most of the details of a settlement from the public record, while retaining all the enforceability and weight of a court order.

## 2.9 Alternative Dispute Resolution (ADR)

Oklahoma's civil statutes include a Dispute Resolution Act and a Uniform Arbitration Act. Parties to a dispute, including a divorce, may agree for

their matter to be heard by an arbitrator. The rules governing arbitration include the right to counsel and the right to conduct discovery. Arbitration can be a powerful tool to ensure privacy and to provide scheduling flexibility and controls to both sides and their counsel. In many cases, an arbitrator may hear and decide a contested matter months before a public judicial officer would be able to hear it. Once an arbitration decision is issued, either party may apply for a court to confirm the award and make it an enforceable order of the court. Parties to an arbitration also have the right to appeal.

Oklahoma family law statutes give family courts the ability to require parties to attend mediation. Penalties for non-compliance could range from financial sanctions, an award of attorney fees to the compliant party, or even contempt of court.

Agreements reached by parties privately, whether through mediation or simply between themselves, are enforceable. Appellate courts have developed the law and provided trial courts with guidance and an analysis for determining the propriety of enforcing a settlement agreement when one side wishes to renege after making the deal. A settlement agreement should not be approved unless it is fair, just and reasonable. In considering whether a divorce settlement agreement is fair and reasonable, the trial court must look beyond the terms of the agreement and consider the relationship between the parties at the time of trial, their ages, health, financial conditions, opportunities, and contribution of each to the joint estate.

## 3. Child Law

### 3.1 Choice of Jurisdiction

Oklahoma has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which applies to all matters involving minor children. The UCCJEA gives Oklahoma the authority to make an initial child custody determination only in specific circumstances, as follows:

- “[t]his state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state, but a parent or person acting as a parent continues to live in this state;
- [a] court of another state does not have jurisdiction under paragraph 1 of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 19 or 20 of this Act[,] and:
  - (a) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
  - (b) substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships;
- [a]ll courts having jurisdiction under paragraph 1 or 2 of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 19 or 20 of this Act; or
- no court of any other state would have jurisdiction under the criteria specified in paragraph 1, 2, or 3 of this subsection”.

As the UCCJEA has been adopted by 49 US states, the District of Columbia, Guam, Puerto Rico and the US Virgin Islands, it provides a consistent basis for courts to assess and determine whether jurisdiction over any minor is proper.

When jurisdiction over a minor child is in dispute, the concepts of domicile and residence may be relevant to a factual inquiry about what constitutes the child’s “home state” as defined by the UCCJEA and a federal law known as the Parental Kidnapping Prevention Act.

### 3.2 Living/Contact Arrangements and Child Maintenance

Each party has a right to ask the appropriate court to make decisions concerning custody and parenting time. If no prior proceeding exists, a request is made by petition; otherwise, either parent may file a motion for the court to address a child-related dispute or to modify a prior order concerning child custody. Parents in a divorce have equal rights to their minor children, pending a judicial decision, and unmarried parents may also have equal rights if the biological father has been appropriately recognised in legal documents. Courts have broad discretion to make decisions concerning the welfare of minor children – discretion and authority that continue even while an appeal of a contested decision is pending.

Child support is calculated as a percentage of the combined gross income of both parents pursuant to a formula. Although in most cases child support is determined by a statutory schedule that is presumptively the appropriate amount, courts have broad discretion in matters related to child support. The statutory child support schedule’s top income is USD15,000, which may be inadequate in cases where one or both parents are high net worth individuals. In matters

where the parents’ combined incomes exceed the amounts anticipated by the child support guidelines, the court may consider other factors – including the child’s reasonable expenses and lifestyle – in setting child support.

A child is entitled to support by both parents until the child reaches the age of 18. The law provides for additional support until the age of 20, so long as the child is enrolled in and attending high school. There is no authority for child support beyond high school and the age of 20 years unless the child has a qualifying disability that would trigger the application of other laws for support.

Parents have some ability to deviate from the child support guidelines and may sometimes agree to a deviation from the presumptive child support guidelines. However, deviations draw scrutiny, particularly when one parent proposes paying less than the formula would require. Downward departures (reductions in the payor’s monthly obligation) require specific findings by a court for approval.

### 3.3 Other Matters

Courts have broad discretion over all child-related matters and may make orders addressing the full range of issues that arise concerning their upbringing. In high-conflict cases, courts may delegate decision-making authority to a custodial parent, entrusting them with the decision-making authority necessary to raise and parent the child. Courts may also appoint other professionals, including parenting co-ordinators, to assist parents with communication and decision-making. When parents cannot agree on specific issues, such as education or medical treatment, courts may defer to the opinion of professionals involved with the child.

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Oklahoma law requires courts hearing child custody disputes to consider which parent will foster a relationship between the child and the other parent. Parental alienation findings by trial courts have been upheld as a basis for a child custody determination. Allegations of alienation are fact-sensitive inquiries concerning the behaviour of each parent, as it relates to encouraging or discouraging a relationship between a child and the other parent. Factors include interference with court orders, denial of visitation, denial of communication, and statements made or information provided by a parent to a child to influence the child's views of the other parent.

Children may give preference testimony and other information to a court. There are detailed procedures for judicial interviews of minor children set out both in a statute and in case law. Even with express procedures, judicial philosophies and attitudes towards interviewing children vary widely. Some judges will readily interview children in their office, whereas others will always require the appointment of a guardian ad litem or a counsellor for the child to relay the child preference information to the court.

### **3.4 ADR**

See 2.9 Alternative Dispute Resolution (ADR).

### **3.5 Media Access and Transparency**

See 2.8 Media Access and Transparency.

## Trends and Developments

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### In Spouse v Out Spouse: Dividing Property in Oklahoma Divorce Cases

There are two terms of art in respect of divorcing spouses: the “in spouse” and the “out spouse”. Broadly, an in spouse is a spouse possessing more knowledge of the parties’ financial picture. The in spouse is often the primary earner who takes care of the bills and has the most relationships with financial professionals used during the marriage. The in spouse may have more income, more separate property and greater access to assets titled in their name. An out spouse has significantly less knowledge of the parties’ finances, less financial education overall, and often less access to liquidity during a divorce. The out spouse is typically viewed as extremely disadvantaged during the divorce process.

#### *Two property regimes: separate and marital*

In the contexts of marriage and divorce, there are two classifications of property: separate property and marital (or jointly acquired) property. Separate property includes property owned by a spouse before the marriage, property designated as separate in an antenuptial (prenuptial) agreement, personal injury proceeds to compensate for pain and suffering, and property received by a spouse by way of gift or inherit-

ance. Jointly acquired property is property that is accumulated by the joint industry of the husband and wife during the marriage, regardless of how the property is titled.

In other words, property purchased during a marriage by a spouse using marital funds (such as that spouse’s income earned during the marriage), titled only in the acquiring spouse’s name, is still presumed to be marital. Although title alone does not determine the marital nature of property, there is a legal presumption that property titled jointly is marital in nature, regardless of the source of funds used to acquire the property. Income earned by either spouse during a marriage is considered marital property. Property that would otherwise be a spouse’s separate property may be converted to joint property by naming the other spouse as a joint tenant or by commingling (mixing) joint funds with separate funds.

These concepts – in spouse, out spouse, separate, marital, and commingling – are fundamental, well known, and fairly easily explained. Often, high net worth individuals having inherited property or a successful enterprise that was established prior to marriage make the assump-

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tion that their separate property is untouchable. Unfortunately for them, that is not the case. There are at least three ways that separate property is vulnerable to attack in dissolution of marriage cases and there is a growing trend for use of the following three strategies.

### *Claiming everything is marital until proven otherwise*

In the event of divorce, the out spouse may not readily concede the separate nature of any of the other spouse's property. Even in clear cases involving well-designed premarital family trusts, the out spouse will put the in spouse through their paces to demonstrate the separate nature of all assets and sources of income. Depending on the circumstances, including the length of the marriage and the quality of preservation of records, proving the premarital, separate nature of property can be a laborious and expensive process. Although property acquired during a marriage may be separate if it was acquired using separate funds, the out spouse will likely invoke the marital presumption to suggest that the property is marital simply because it was acquired during the marriage. It will then be incumbent upon the in spouse to produce sufficient historical transaction records to satisfy a judge that the property remained separate. Even when the separate nature of the property is unquestionable, the out spouse then turns to a second tactic.

### *Claiming separate property was enhanced by either spouse during marriage*

Divorce courts are required by state statute to divide property acquired by the parties jointly during their marriage. Case law (appellate decisions) says that courts should also divide any enhancement in the value of what is otherwise separate property if the increase in value was the result of efforts, funds, or skills of either spouse

during the marriage. An increase in value due to spousal effort is called active appreciation. Spousal contributions are distinguished from economic factors or market forces unrelated to efforts of labour (or passive appreciation). This means that separate property may have a divisible component if it increased in value owing to the effort of either spouse during the marriage.

Suppose that, prior to marriage, a spouse owned a tract of land. If the land increased during the marriage owing to inflationary or economic factors, such as a general increase in property values, that increase would not be subject to division in a divorce. However, if either spouse made improvements on the land during the marriage that increased the land's value, that increase in value during the marriage is divisible in the event of a divorce. If it is proven that either spouse increased the value, the trial court must equitably divide the enhanced value.

The non-owning spouse claiming a share of an in-marriage increase in separate property value bears the legal burden of proof to show:

- the value of the property at the time of the marriage;
- the value at the time of trial; and
- that the enhancement was the result of effort by either spouse as opposed to economic conditions or circumstances beyond the parties' control.

As the non-owning spouse is the out spouse with limited access to information, extensive, expensive discovery may be necessary to assess the viability of an enhancement claim. The in spouse, who may have already gone to great lengths to show that the property at issue is separate property, faces a compounding obligation to produce more records and information.

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Appraisers and other experts are often necessary to distinguish between increases in value due to economic factors versus enhancements resulting from efforts of either spouse. If the owning (in) spouse is successful in defending an enhancement claim against their separate property, the inquiry does not necessarily end here.

### *Seeking alimony from separate property*

The out spouse has yet another option to extract value from separate assets. When assessing spousal support (alimony) claims, state statutes permit the trial court to award financial support to one spouse from the other's estate, regardless of whether the separate property is marital, separate, liquid, illiquid, and income-generating or not. Appellate courts have confirmed that even separate, inherited property is subject to consideration for determining an alimony award.

Even after losing claims of marital ownership and marital enhancement of separate property, the out spouse may still make a request for spousal support against that property based on a number of factors, including the lifestyle they became accustomed to during the marriage. Non-marital assets that are untouched in property division may be severely diminished by a spousal support judgment.

The out spouse has multiple ways to wield their ignorance as a powerful force in the divorce litigation and discovery process. Even though the out spouse has the legal burden of proof for all the factors involved in in-marriage enhancement of separate property, by claiming little to no knowledge of financial activities, they can practically shift the burden of proof to the in spouse to prove up the separate or marital character of every asset.

In cases of extreme financial disparity, the trial court has the power to award temporary attorney's fees and suit money from one spouse to the other. Effectively, the in spouse may be required to finance most or all of the out spouse's exploration of asset characteristics. Even when those efforts fail, alimony claims are fluid and fact-sensitive, giving the out spouse a fallback claim against the in spouse's separate estate that may not be disposed of through summary judgment or other non-evidentiary procedures.

### *Protecting separate interests*

The ideal method for preserving and protecting separate property is by way of an prenuptial agreement. If no prenuptial agreement was executed prior to marriage, it is then too late, as Oklahoma does not recognise postnuptial agreements. With or without a premarital agreement, proper record-keeping and preservation are critical for tax and estate-planning purposes. When marriage is contemplated, even if there will be no prenuptial agreement, obtaining professional appraisals of all assets owned prior to the marriage can establish a baseline for future value determinations. High net worth individuals should conduct regular financial reviews with their advisers to ensure their estate plan remains aligned with their goals and that assets are properly titled and documented.

High net worth individuals with separate estates must recognise that individual, in-house assessment and determination that their property is non-marital is only the very beginning of the analysis required for a divorce. Too often, the in spouse assumes that their separate property is unreachable and they do not perform proper due diligence before or during a divorce to adequately defend their interests. While the in spouse sits idly by, the out spouse may expend enough time and energy to make a sufficient case for a

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trial court to determine that separate property became joint through a transaction during the marriage or that an increase in value of separate property was due to the efforts of one or both spouses. When a spouse owns separate property, they must take strong, proactive measures to defend their interests and push back against allegations that are not truly supported by fact.

A danger for high net worth individuals with separate interests lies in their approach to information disclosure and co-operation in discovery. Traditional fault-based grounds for divorce (adultery) are less common in the modern era. However, when determining property division and spousal support, courts may consider behaviour such as hiding assets, dissipating marital funds, or intentionally devaluing assets to deprive the other spouse. Each party to a lawsuit is legally required to preserve evidence. Concealment or destruction of evidence may lead to adverse inferences and findings that would not have been supported by the information had it been properly preserved and produced by the concealing party.

Although it may seem distasteful to disclose otherwise private, confidential, and even proprietary information about separate interests, transparency can help pre-empt and mitigate claims against the separate estate. A spouse who pleaded ignorance as a basis for claiming everything is marital may be dissuaded in negotiations by information production. When settlement talks fail, compliance with pre-trial disclosure and discovery requirements can lead to successful trial outcomes.

If a divorce is imminent or underway, an in spouse will benefit from a team of experienced, qualified professionals who can help identify records and witnesses to establish a timeline and supporting transaction history. Sophisticated legal counsel should be engaged as early in the process as possible in order to develop a comprehensive discovery plan and ensure proper preservation of evidence. The need for highly skilled, competent counsel cannot be overstated. Oklahoma's trial courts are suffering from a lack of resources – for example, there is an ongoing shortage of court reporters (stenographers). All testimony, judicial comments and decisions made in evidentiary hearings and trials should be transcribed for proper record-keeping and future reference. Seasoned counsel also understand the need to submit typewritten proposed orders with detailed terminology that will aid in future interpretation of property awards.

Taking shortcuts by not ensuring the presence of a stenographer and by relying on vague, sometimes handwritten court orders leads to ambiguities and challenges in interpretation and enforcement months and years after a divorce. Attention to detail is essential, as is incorporating those details into evidentiary presentation and subsequent court orders. Along with trial lawyers, business valuers, economists, property appraisers and forensic accountants are all critical to the defence of claims against separate property.

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