

Methods of Dividing Community Property Other Than by Judicial Decision

[*Marriage of Cream* (1993) 13 CA4th 81, 94–95]

Obtain a stipulation from the parties before using any of these methods.

1. **In-Kind Division:** Each party takes one-half of fungible assets such as bank accounts and stock in a corporation.
2. **Trade-off Division:** The parties stipulate to settle their property disputes, without regard to value, by agreeing one will take certain items of property, *e.g.*, the furniture, and the other will take other items, *e.g.*, the car.
3. **Piece-of-Cake Division:** This method gets its name from the common situation where two children have a piece of cake to be cut in half. To avoid the argument over who gets the "bigger" half, it is agreed that one will cut the cake and the other gets to choose which piece he or she will receive. In the marital property context, one party makes up two lists of the property in question that he or she believes are equal, and the other party chooses which list of items she or he will take. It is important not to break up sets, *e.g.*, a dining room set, a set of dishes, matching art works, etc. The piece-of-cake method is particularly useful for dividing furniture and furnishings that usually have a real value to the parties far in excess of their fair market value as used furniture. The method is also useful in short-term marriages for dividing wedding gifts.
4. **One Values, the Other Chooses:** In this method, one party places a value on each item of community property in dispute and the other party chooses those items he or she will take at the stated value up to one-half the total value. Alternatively, the party choosing may choose any, all, or none of the items, with any items not chosen going at the stated value to the one who set the value. An equalization payment can be required. In dividing furniture and furnishings, an alternative to piece-by-piece choice is to list furniture and furnishings room-by-room, and each party chooses by room.
5. **You Take It or I Will Take It:** In this method one party places a value on an asset at which that party is willing to let the other party be awarded the asset, or else the former will be awarded the asset at that value.
6. **Appraisal and Alternate Selection:** An appraiser is selected by stipulation to value each of the items in question. The parties then choose items alternately until all items are taken. The one to make the first choice can be designated by the flip of a coin. Another approach is to let one party go first and the other party then gets two selections, after which choices are made alternately. It is usually preferable to agree that sets not be broken up. It might be agreed that if a party takes a set it counts as that many choices, *e.g.*, a dining room table and four matching chairs counts as five choices, and the other party then makes the next five choices.
7. **Sale:** The parties agree that the items in question be sold at a public sale or to a particular buyer with the proceeds divided equally, or in whatever other proportion is necessary to accomplish a satisfactory or equal division, considering the other marital assets or obligations each is receiving. For modest furniture or furnishings, the sale may be a garage sale.

8. **Sealed Bid:** Each of the parties submits a sealed bid on each item of property in dispute, using the same list. The bids are opened simultaneously and the one bidding the highest amount for an item gets that item valued at the figure he or she bid, with an equalizing payment to be made, if necessary. This method can also be used for disposition of the family home, other real property, or a family business that both parties have operated, where each seeks to have it awarded to him or her.

9. **Interspousal Auction:** This is a straight auction between the parties, usually with an agreed minimum incremental increase over the last bid being required. The high bidder gets the asset at the amount of his or her bid with an equalizing payment being made, if necessary. To the extent a major asset is involved such as a family business or real estate, the stipulation might provide that each of the parties have an advisor present during the bidding.

10. **Arbitration:** The valuation and division of the community property in question could be determined by an arbitrator selected by the parties. The parties should understand that the arbitrator is not required to follow the law, and his or her decision, for all practical purposes, is final and not subject to appeal. Because arbitration usually takes much less time than a court trial, the parties might consider stipulating with your consent that you hear the case as an arbitrator.

11. **Mediation:** Mediation is greatly underutilized in family law cases. It can be a very effective and satisfying way for the parties to reach agreement on the value and division of their marital property.

12. **Real Property:** If both parties want community real property, one of the foregoing methods of resolution can be used. If neither wants it, it can be listed for sale with a broker stipulated to by the parties, at a listing price recommended by the broker. If one wants the property but the other feels that he or she is offering too little, the latter can list it for sale with a broker of his or her choosing. If the property does not sell within a specified period of time, the listing price will be periodically reduced until it reaches the figure where the net proceeds would be equal to what the other party offered. The property then goes to the offering party for the amount of the offer.

13. **Combination:** When more than one marital asset is in dispute, one of the foregoing methods might be used for one asset, while one or more other methods might be used for other assets.