


**Moore, Marsden, and
their Progeny**

**Presented by
Alex Spaete
Scott Lantry**



1

Speaker Introduction

Scott Lantry

- Partner with Whiting, Ross, Abel & Campbell, LLP
- Certified specialist in Family Law
- Northern California Super Lawyer's Rising Stars since 2017
- Lead Trial counsel in re Marriage of MacIlwaine (2018)




2

Speaker Introduction

Alex Spaete, CPA, ABV, CFP

- Partner with Bridge Forensic CPAs
- Testifying Expert Across bay area and greater Sacramento area in family law forensics and business valuation
- Specific expertise with healthcare payor analytics, physician compensation, and claims processing



3

Overview

- "Typical Scenario"
- Specific Examples
- Questions

4

Framing Our Discussion and "Typical" Scenario

- Pro-tanto interest in property (*Moore/Marsden*)
- Property acquired prior to marriage as separate property
- Community funds contributed to principal paydown on a separate property
- Burden of proof on information (*Ramsey & Holmes*)
- Providing Options

5

Areas of Focus

- Appreciation Considerations
- Rental Property Considerations
- Post-marital Acquisition
- Third-party owner
- Tenancy-in-common
- Transmutations
- Post-separation uses and reimbursement
- Refinances with Examples
- Improvements with Examples
- Estimations and Data Sources

6

Appreciation Not Always the Same

- “Typical” Moore/Marsden Allocation of Appreciation
- Pre-martial appreciation considered as part of denominator (*Bono v. Clark*) (*Frick*)
- Ratio of total payments by character compared to the purchase price (*Jafeman*)
- Increase in value from initial principal payment (often DOM) until date of division (*Benart*)
- Interest-Only Loans (*Broderick*)

7

Rental Property Considerations

- Argument: Property was self-supporting through rental income.
- Considerations:
 - What documentation supports this (*Higinbotham*)
 - When did the principal payments start?
 - Related issue: Interest-only mortgages (*Mohler*)
- Case Examples
 - Partially supporting rental/Owner occupied rental
 - Positive Cash Flow-Rental into comingled account (*Higinbotham*)
 - Mismatch between tax records and bank accounts

8

Post-martial Acquisitions

- Example #1 – Inherited Property and Debt
 - Value of property at inheritance as denominator (*Broderick*)
- Example #2 – Acquisition of separate home during marriage through purchase
 - Downpayment character and Family Code § 2640
 - Subsequent mortgage payments

9

Third-party Ownership/Involvement

- Parent's and one spouse own jointly
 - Pro-tanto reimbursement
 - Mortgage payment arrangement
 - Burden of Proof on support of funds
- Inherited property but debt in third party title
 - Tracing Burden on principal paydown
- Ownership with Prior Spouse
 - When does the calculation start?

10

Tenancy-in-common or Partial Interests

- Changes to the Calculation (*Rico*)
- Recall the Objective of the calculation
- Presumptions regarding principal paydown

11

Transmutations

- Distinction between applicable frameworks
 - Family Code § 2640 or *Moore/Marsden*
- Separate equity and at time of acquisition
 - *Moore/Marsden* calculation to determine the equity contributed
 - Pro-tanto is the reimbursement to be paid off
- Not a “continued *Moore/Marsden*” with all further appreciation allocated to the community.

12

Post-separation Use/ Reimbursement

- What “lane” is the property in?
 - *Watts*
 - *Epstein*
- Who was receiving the benefits? (*Mohler*)
- Reimbursement of property taxes, mortgage interest, etc. (*Nevai & Kleume*)
 - Timing Matters

13

Refinances

- Establish Details about the Loan/Title
 - Cash proceeds coming out. If so, what were the funds used for?
- How did the title of the property and debt change? (*Branco*)
- What community and separate property income/assets existed?
- What was the equity in the property at time of refinance?
- Was this a HELOC or refinance? (*Nelson*)

14

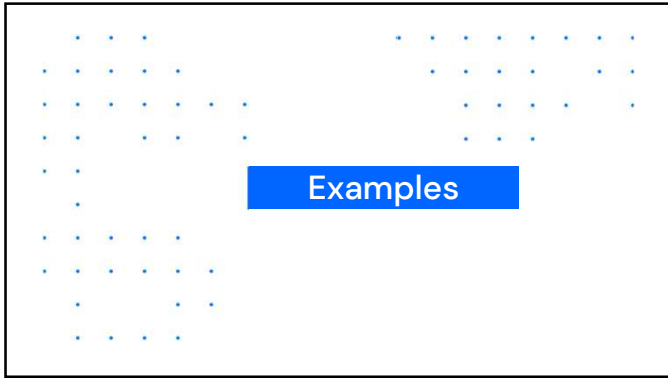
How do we handle the calculations

Moore/
Marsden

Branco

Bonvino / “Equitable”
Apportionment

15



16

Multiple Refinance

| Debt For Discussion Purposes Only | | Schedule B-Related Form | |
|---------------------------------------|------------|---------------------------------|----------------------------------|
| Marriage of Example | | Property Equity Allocation | |
| Date of Marriage: 1/1/2010 | | Date of Separation: 06/30/2023 | |
| | | 123 Anywhere Street, California | |
| Fair Market Value | | Date | Amount / Interest / Source |
| Purchase | 1/1/2010 | \$ 750,000 | Public Record |
| Mortgage | 1/1/2010 | 1,000,000 | 20,000 Amortization Table |
| Refinance - Cash out | 1/1/2015 | 1,400,000 | 400,000 Closing Statement |
| Refinance - Interest rate | 4/30/2015 | 1,700,000 | 300,000 Closing Statement |
| Payoff | 4/30/2024 | 2,500,000 | 750,000 Closing Statement |
| Total Appreciation | | | \$ 1,750,000 |
| Less: No-Interest Appreciation | | | (200,000) |
| Appreciation to Allocate | | | \$ 1,550,000 |
| Debt Summary | | Date | Balance / Payable / Add / Source |
| Purchase | 1/1/2010 | \$ 650,000 | Public Record |
| Mortgage | 1/1/2010 | 620,000 | 20,000 Amortization Table |
| Mortgage at Refinance - Cash Out | 1/1/2015 | 325,000 | 500,000 Closing Statement |
| New Refinance Balance | | 1,020,000 | 420,000 |
| Mortgage at Refinance - Interest rate | 4/30/2015 | 950,000 | 30,000 Closing Statement |
| New Refinance Balance | | 870,000 | 10,000 |
| Payoff | 12/31/2023 | 870,000 | 10,000 Statement |
| Payoff | 4/30/2024 | 870,000 | 25,000 Statement |
| Total Mortgage Principal Paydown | | | \$ 325,000 |
| Pre-marital Paydown | | | (20,000) |
| Post-separation Paydown | | | (25,000) |
| Principal Paydown during Marriage | | | \$ 280,000 |
| Current Balances | | Date | Amount / Source |
| Value of Property | 4/30/2024 | \$ 2,500,000 | Zone |
| Mortgage | 4/30/2024 | (850,000) | Statement |
| Home Equity Line of Credit | | | |
| Equity | | \$ 1,650,000 | |

17

| Debt For Discussion Purposes Only | | Schedule B-Related Form | |
|--|---------------------|---------------------------------|----------------------|
| Marriage of Example | | Property Equity Allocation | |
| Date of Marriage: 1/1/2010 | | Date of Separation: 12/31/2023 | |
| | | 123 Anywhere Street, California | |
| Allocation of Contributions to Property | | Total | Community / Separate |
| Allocation of Purchase Price Contributions | | | |
| Down payment | \$ 100,000 | \$ - | \$ 100,000 |
| Principal payments made prior to marriage | 25,000 | - | 25,000 |
| Mortgage balance at marriage | (625,000) | - | (625,000) |
| Total | 750,000 | | 750,000 |
| Contribution % | 100.00% | 0.00% | 100.00% |
| Prior to Cash Out Refinance | | | |
| Allocation from above | 750,000 | - | 750,000 |
| Principal Payments prior to cash-out refi | 750,000 | 100,000 | (100,000) |
| Total | 750,000 | 100,000 | 650,000 |
| Contribution % | 100.00% | 13.33% | 86.67% |
| From Cash-out Refinance to Present | | | |
| Allocation from above | 750,000 | 100,000 | 650,000 |
| Mortgage obligation 4/8 | 750,000 | 325,000 | (625,000) |
| Total | 750,000 | 625,000 | 125,000 |
| Contribution % | 100.00% | 83.33% | 16.67% |
| Appreciation Allocation | | Total | Community / Separate |
| Pre-marital Appreciation | 250,000 | - | 250,000 |
| Mortgage to Cash-out refinance | 400,000 | 53,333 | 346,667 |
| Refinance to present | 1,100,000 | (216,667) | 183,333 |
| Total | 1,750,000 | 970,000 | 780,000 |
| Allocation of Equity in Property | | Total | Community / Separate |
| Allocation of Contributions | \$ 750,000 | \$ 625,000 | \$ 125,000 |
| Allocated appreciation | 1,750,000 | 970,000 | 780,000 |
| Less: Mortgage current mortgage balance | (850,000) | (850,000) | 780,000 |
| Total | \$ 1,650,000 | \$ 745,000 | \$ 905,000 |

18

Community Improvements

| Deed For Discussion Purposes Only | | Schedule CP Improvements | |
|--|---------------------|---------------------------------|---------------------|
| Marriage of Example | | Property Equity Allocation | |
| Date of Marriage: 1/1/2010 | | Married Schedule Agreement | |
| Date of Separation: 12/31/2023 | | 123 Anywhere Street, California | |
| Allocation of Contributions to Property | | | |
| Allocation of Purchase Price Contribution | Total | Community | Separate |
| Down payment | \$ 350,000 | \$ - | \$ 350,000 |
| Principal payments made prior to marriage | 25,000 | - | 25,000 |
| Mortgage balance at marriage | 625,000 | - | 625,000 |
| Total | 1,000,000 | - | 1,000,000 |
| Contribution % | 100.00% | 0.00% | 100.00% |
| Contributions during marriage | | | |
| Allocation from down | 1,000,000 | - | 1,000,000 |
| Improvements | 500,000 | 500,000 | - |
| Principal payments made during marriage | - | 300,000 | 300,000 |
| Total | 1,500,000 | 800,000 | 700,000 |
| Contribution % | 100.00% | 53.33% | 46.67% |
| Appreciation Allocation | | | |
| Prescribed Appreciation | 500,000 | - | 500,000 |
| Marital and post-separation appreciation | 1,000,000 | - | 1,000,000 |
| Less: Appreciation related to improvements | (500,000) | - | (500,000) |
| Appreciation to allocate during marriage | 500,000 | 266,667 | 233,333 |
| Total | 1,000,000 | 266,667 | 733,333 |
| Allocation of Equity in Property | | | |
| Allocation of Contributions | \$ 1,500,000 | \$ 800,000 | \$ 700,000 |
| Allocated appreciation | 1,000,000 | 266,667 | 733,333 |
| Less: current mortgage balance | (315,000) | - | (315,000) |
| Total | \$ 1,185,000 | \$ 1,066,667 | \$ 1,118,333 |

22

Separate Improvements

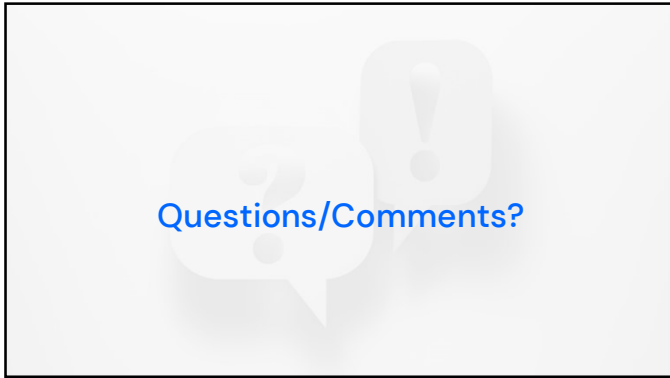
| Deed For Discussion Purposes Only | | Schedule SP Improvements | |
|---|---------------------|---------------------------------|---------------------|
| Marriage of Example | | Property Equity Allocation | |
| Date of Marriage: 1/1/2010 | | Married Schedule Agreement | |
| Date of Separation: 12/31/2023 | | 123 Anywhere Street, California | |
| Allocation of Contributions to Property | | | |
| Allocation of Purchase Price Contribution | Total | Community | Separate |
| Down payment | \$ 350,000 | \$ - | \$ 350,000 |
| Principal payments made prior to marriage | 25,000 | - | 25,000 |
| Mortgage balance at marriage | 625,000 | - | 625,000 |
| Total | 1,000,000 | - | 1,000,000 |
| Contribution % | 100.00% | 0.00% | 100.00% |
| Contributions during marriage | | | |
| Allocation from down | 1,000,000 | - | 1,000,000 |
| Principal payments made during marriage | - | 300,000 | 300,000 |
| Total | 1,000,000 | 300,000 | 700,000 |
| Contribution % | 100.00% | 30.00% | 70.00% |
| Appreciation Allocation | | | |
| Prescribed Appreciation | 500,000 | - | 500,000 |
| Marital and post-separation appreciation | 1,000,000 | - | 1,000,000 |
| Less: Appreciation related to improvements | (500,000) | - | (500,000) |
| Appreciation to allocate during marriage of separate-related appreciation | 500,000 | 150,000 | 350,000 |
| Total | 500,000 | 150,000 | 350,000 |
| Allocation of Equity in Property | | | |
| Allocation of Contributions | \$ 1,000,000 | \$ 300,000 | \$ 700,000 |
| Allocated appreciation | 1,000,000 | 150,000 | 1,350,000 |
| Less: current mortgage balance | (315,000) | - | (315,000) |
| Total | \$ 1,685,000 | \$ 450,000 | \$ 1,725,000 |

23

Estimation and Data Sources

- Values of Home
 - Zillow, Redfin, Realtor, Market Analysis, Appraiser, Home Price Index Data
- Debt Rates
- DataTree

24



25

Cases Covered

- In re Marriage of Moore (1980) 28 Cal.3d 366
- In re Marriage of Marsden (1982) 130 Cal.App.3d 426
- In re Marriage of Branco (1996) 47 Cal.App.4th 1621
- In re Marriage of Broderick (1989) 209 Cal.App.3d 489
- Bono v. Clark (2002) 103 Cal.App. 4th 1409
- In re Marriage of Wolfe (2001) 91 Cal.App.4th 962
- In re Marriage of Sherman (2005) 133 Cal.App.4th 795
- In re Marriage of Ramsey & Holmes (2021) 67 Cal.App.5th 1043
- In re Marriage of Mohler (2020) 47 Cal.App.5th 788
- In re Marriage of Nelson (2006) 139 Cal.App.4th 1546
- In re Marriage of Rico (1992) 10 Cal.App.4th 706
- In re Marriage of Jafeman (1972) 29 Cal.App.3d 244
- Nevai & Klemunes, In re Marriage of (2020) 59 Cal.App.5th 108
- In re Marriage of Higinbotham (1988) 203 Cal.App.3d 322
- In re Marriage of Frick (1986) 181 Cal.App.3d 997
- In re Marriage of Benart (1984) 160 Cal.App.3d 183

26
