



51A Middle Street, Newburyport, MA 01950

Phone: 800-588-7039

[contact@bhfe.com](mailto:contact@bhfe.com)

[www.bhfe.com](http://www.bhfe.com)

## Course Information

---

**Course Title:** *Divorce Transfers and Settlements #492423*

### **Recommended CPE credit hours for this course**

In accordance with the standards of the CFP Board, the National Registry of CPE Sponsors, the IDFA, and the IRS, CPE credits have been granted based on a 50-minute hour.

**CFP® 2** CFP Board sponsor number: 1008.

**CPA 2** (Accepted in all states)

National Registry of CPE Sponsors ID Number: 107615.

Sponsor numbers for states requiring sponsor registration:

Florida Division of Certified Public Accountancy: 4761 (Ethics #11467)

Hawaii Board of Public Accountancy: 14003

New York State Board of Accountancy (for ethics): 002146

Ohio State Board of Accountancy: M0021

Pennsylvania Board of Accountancy: PX 178025

Texas State Board of Accountancy: 009349

**EA/OTRP: 2** (All States) IRS: Qualified Sponsor number: *FWKKO*.

**CDFA®: 2** (Certified Divorce Financial Analyst) IDFA sponsor #105392.

### **Course Description**

Participants will learn how to apply, implement, and evaluate the strategic tax aspects of marital dissolutions and living together arrangements. Current perspectives on property transfers and asset divisions are examined with an emphasis on planning considerations. This mini-course reviews property settlements and other transfers incident to divorce. Basis allocation, third party transfers and purchases between spouses are also examined. Common pitfalls for the unwary such as transfers in trust, installment notes, and purchases between spouses are analyzed. Application of these tax principles is exemplified in selected asset divisions of the residence, business interests, insurance, and pension benefits.

## Course Content

Publication/Revision Date: 2/14/2023.

Author: Danny Santucci, J.D.

Final exam (online): Ten questions (multiple-choice).

**Program Delivery Method:** Self-Study (NASBA QAS Self-Study/interactive)

## Subject Codes/Field of Study

NASBA (CPA), CFP Board of Standards, Inc., IDFA (CDFA®): Taxes.

IRS (EA, OTRP): Federal Tax Law.

NAPFA: Taxes

## Course Level, Prerequisites, and Advance Preparation Requirements

Program Level: CFP Board: Intermediate; NASBA/CPA, IRS, IDFA (CDFA®): Overview.

This program is appropriate for professionals at all organizational levels.

Prerequisites: Basic familiarity with federal taxation

Advance Preparation: None

## Instructions for Taking This Course

- **Log in to your secure account at [www.bhfe.com](http://www.bhfe.com). Go to "My Account."**
- **You must complete this course within one year** of purchase (If the course is "Expired," contact us and we will add the latest edition of the course to your account (no charge).
- **To retain the course-PDF after completion (for future reference) and to enable enhanced navigation:** From "My Account," Download and save the course-PDF to your computer. This will enable the search function (Menu: Edit>Find) and bookmarks (icon on left side of document window).
- **Complete the course by** following the learning objectives listed for the course, studying the text, and, if included, studying the review questions at the end of each major section (or at the end of the course).
- **Once you have completed studying the course** and you are confident that the learning objectives have been met, answer the final exam questions (online).

## Instructions for Taking the Online Exam

- **Log in to your secure account at [www.bhfe.com](http://www.bhfe.com). Go to "My Account."**
- A passing grade of at least **70%** is required on the exam for this course.
- You will have three attempts to pass the exam (call or email us after three unsuccessful attempts for instructions).
- The exam is not timed, and it does not need to be completed in one session.
- For a printed copy of the exam questions, open the exam and press "Print Exam."
- Once you pass the exam, the results (correct/incorrect answers) and certificate of completion appear in "My Account." A confirmation email is also sent.
- CFP Board and IRS credit hours, if applicable, are reported on Tuesdays and at the end of the month.

**Have a question?** Call us at 800-588-7039 or email us at [contact@bhfe.com](mailto:contact@bhfe.com).

# Learning Assignment & Objectives

---

As a result of studying the assigned materials, you should be able to meet the objectives listed below.

## **ASSIGNMENT**

At the start of the materials, participants should identify the following topics for study:

- \* Property rights
- \* Premarital agreements
- \* Application of §1031
- \* Incident to divorce
- \* Property basis
- \* Purchases of residence between spouses
- \* Purchases of business interests between spouses
- \* Selected asset divisions of residence & business interests
- \* Real & personal property
- \* Pension benefits

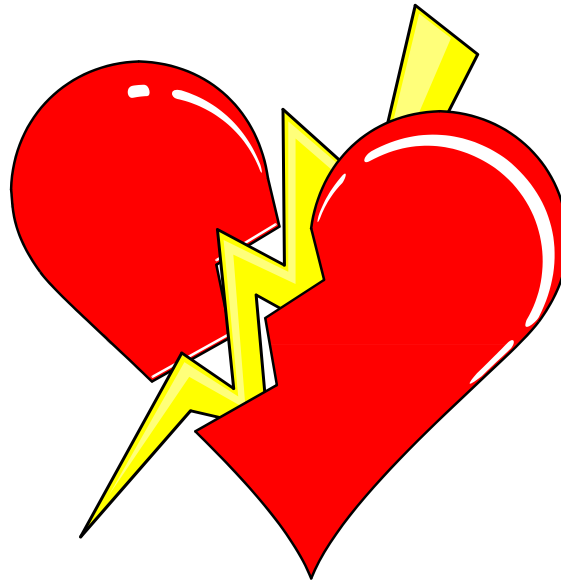
## **Learning Objectives**

After reading the materials, participants will be able to:

1. Identify the various forms of marital property and how to proceed with a tax structured property settlement stating the benefits of premarital agreements to avoid potential divorce problems.
2. Recognize property settlements under §1041 by:
  - a. identifying its application to interspousal and third party transfers,
  - b. specifying the factors that determine whether or not a property transfer is incident to divorce under §1041,
  - c. determining property basis for the transferor and transferee spouse under §1041.
3. Identify remedies for the deferred tax pitfall of §1041 by:
  - a. determining deferred tax liability of interspousal purchases,
  - b. recognizing the tax deferral of §1031 exchanges,
  - c. specifying the key elements of the home sale exclusion and stating their application;
  - d. recognizing benefit distribution problems and the tax advantages of QDROs.

## **Notice**

This course and test have been adapted from materials and information contained in the above text and any supplemental material provided. This course is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research and consult appropriate experts before relying on the information contained in this course to render professional advice.



## **Divorce Transfers & Settlements**

**By  
Danny C. Santucci**

The author is not engaged by this text, any accompanying electronic media, or lecture in the rendering of legal, tax, accounting, or similar professional services. While the legal, tax, and accounting issues discussed in this material have been reviewed with sources believed to be reliable, concepts discussed can be affected by changes in the law or in the interpretation of such laws since this text was printed. For that reason, the accuracy and completeness of this information and the author's opinions based thereon cannot be guaranteed. In addition, state or local tax laws and procedural rules may have a material impact on the general discussion. As a result, the strategies suggested may not be suitable for every individual. Before taking any action, all references and citations should be checked and updated accordingly.

*This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert advice is required, the services of a competent professional person should be sought.*

*—From a Declaration of Principles jointly adopted by a committee of the American Bar Association and a Committee of Publishers and Associations.*

**Copyright February 2023  
Danny Santucci**

# Table of Contents

Property Rights.....	1
Marital Property.....	1
Common Law Property.....	1
Community Property.....	2
Equitable Distribution.....	2
Separate Property.....	2
Premarital Agreements.....	3
Uses & Benefits.....	3
Control & Scope.....	4
Limitations.....	4
Retirement Equity Act of 1984.....	5
Enforceability Requirements.....	5
Checklist.....	6
Property Settlements.....	8
Section 1041.....	8
Application of §1041.....	8
Mandatory Scope.....	9
Property vs. Income.....	9
Savings Bonds.....	10
Receivables.....	11
Interest.....	11
Imputed Interest.....	11
Incident to Divorce.....	12
Related To Termination.....	12
Rebuttable Presumption.....	13
Divorce or Separation Instrument.....	14
Transfers in Trust.....	14
Third Party Transfers.....	14
Property Basis.....	15
Gift Variation.....	16
Passive Activity Loss Property.....	16
Property Transferred In Trust.....	17
Basis in U.S. Savings Bonds.....	17
Negotiated Property Divisions.....	17
Adjudicated Property Divisions.....	17
Caselaw.....	18
General Rule - Immediate & Specific.....	18
Liabilities.....	19
Holding Period.....	19
Notice & Recordkeeping.....	20
Purchases between Spouses.....	20
Residence.....	20
Home Mortgage Interest.....	21
Deferral & Exclusion of Gain.....	21
Business & Investment Property.....	21
Recapture.....	22

Section 1031 Exchange.....	24
Asset Separation .....	25
Related Parties .....	25
Two-Year Restriction.....	25
Foreign Property .....	26
Form 8824 .....	26
Spousal Transfers.....	26
Installment Sale of Assets .....	26
Selected Asset Divisions.....	26
Residence.....	26
Section 121 Home Sales .....	27
Two-Year Ownership & Use Requirements .....	27
Special Divorce Rules.....	28
Tacking of Prior Holding Period.....	28
Prorata Exception.....	28
Limitations on Exclusion.....	29
Installment Obligations.....	29
Business Interests.....	30
Corporate Stock.....	30
Section 302 Stock Redemption .....	31
Recapitalization .....	31
Partnerships.....	31
Section 736(a) Payments .....	31
Effect on Recipient .....	32
Section 736(b) Payments.....	32
Effect.....	32
Exclusions From §736(b) Treatment.....	32
Liabilities .....	33
Series of Payments.....	33
Section 754 Election .....	34
Insurance Policies.....	34
Real & Personal Property .....	34
Classification of Assets.....	35
Character of Gain or Loss .....	35
Pension Benefits.....	35
Qualified Domestic Relations Order.....	36
Taxation of Distributions .....	37
Deferred v. Present Division of Benefits .....	38
Deferred Division Arguments.....	38
Present Division or Alternate Property Arguments.....	39
Individual Retirement Arrangements.....	39
IRA Deduction Limit .....	40
Rollovers .....	40
Divorce Distributions.....	40
Amounts Not Rolled Over.....	40
Retirement Planning After Divorce .....	41
Social Security Benefits.....	41
Divorced Spouse Benefits .....	41
Divorced Widow(er) Benefits.....	42
Military Pensions.....	42
Divorced Spouse Benefits .....	43

Jurisdiction Requirement.....	43
Disposable Pay .....	43
Direct Payment .....	44
Divorced Widow(er) Benefits.....	44
Social Security Offset .....	45
Civil Service Pensions.....	45
Divorced Spouse Benefit.....	46
Divorced Widow(er) Benefit .....	46
Railroad Pensions.....	47
Divorced Spouse Benefit.....	48
Divorced Widow(er) Benefit .....	48
Bankruptcy.....	49

### **Learning Objectives**

After reading the materials, participants will be able to:

1. Identify the various forms of marital property and how to proceed with a tax structured property settlement noting the benefits of pre-marital agreements to avoid potential divorce problems.
2. Recognize property settlements under §1041 by:
  - a. identifying its application to interspousal and third party transfers,
  - b. specifying the factors that determine whether or not a property transfer is incident to divorce under §1041,
  - c. determining property basis for the transferor and transferee spouse under §1041.
3. Identify remedies for the deferred tax pitfall of §1041 by:
  - a. determining deferred tax liability of interspousal purchases,
  - b. recognizing the tax deferral of §1031 exchanges,
  - c. specifying the key elements of the home sale exclusion and stating their application;
  - d. recognizing benefit distribution problems and the tax advantages of QDROs.