

Ask a Family Law Attorney

Written by Keith Berkshire, Certified Family Law Specialist, Rose Law Group, pc.

Q: My friend is about to go through a divorce. And recently, I saw her husband with another woman at the jewelry store buying her a \$25,000 3-carat diamond bracelet! Should I mention this to my friend? What harm could it cause if I don't?



A: It's not just an issue that your friend's husband has a mistress, but more importantly, that he is spending money on her.

Arizona is a no-fault divorce state, where any "community property" is usually split 50/50 between husband and wife upon divorce. And community property is generally any property except for gifts or inheritances that were acquired by the parties after they were married.

In this case, if your friend's husband is using community property assets for a purpose that is not part of the community (i.e., benefitting the husband and wife), that is considered a waste of community assets. This is important because waste is a legal doctrine that allows for reimbursement of the wasted funds back to the community. This means that your friend is entitled to half the value of the bracelet during the divorce. The burden of proving that something is waste is on the party who wants to have the expenditure declared as waste, which means that in this case it is on your friend. In some situations it can be difficult to prove that something is waste, while other situations are easier. In your case expenditures on adulterous relationships are generally considered waste. Money lost in excessive gambling or spent on drugs is also frequently considered waste.

However, if one party acquiesces to other's wasteful behavior, it is less likely that the court will find waste. For example, if you knew that every weekend your spouse spent \$500 playing poker with his buddies, this is most likely not going to be found to be waste.

It is actually a common claim in divorces in that one party did not agree on expenditures during the marriage, but few of those cases end up with a successful waste claim. For example, did he buy \$10,000 season tickets to the Suns every year? Or did he and his friends play golf at the Boulders every weekend for a few hundred dollars. In those situations it is not likely waste, as each party in a marriage has the right to spend community funds how they see fit. On the other hand, did he take his mistress on a trip to Paris, buy her a red Mercedes coupe, and set her up in a Biltmore condo? That's probably waste as there is no potential benefit to the community.

The simple reality is that divorce is not the time to dispute all the expenditures made during a marriage. But if you believe there has been egregious extravagant spending by one of the parties, you have the right to your fair share of the community assets under the doctrine of waste.

In the end, you should tell your friend about what you saw. The last thing your friend needs is to have her philandering husband spend all the community assets on his new fling.

Keith Berkshire is an attorney with Rose Law Group, pc, in Scottsdale, specializing in family law. He is a Specialist in Family Law certified by the State Bar of Arizona, and can be contacted at 480-291-0736 or kberkshire@roselawgroup.com.

This article does not constitute as legal advice nor does it create an attorney-client relationship. Keith Berkshire, Certified Family Law Specialist, Rose Law Group, pc. Rose Law Group pc is a full service business and real estate law firm with 27 areas of focused practice including one of the State's leading renewable energy practice groups; an unmatched lobbying, land use and zoning practice; one of the State's few certified legal specialists in family law; a robust real estate transaction, tax and project finance department; along with estate/special needs planning, asset protection, medical marijuana, equine law, employment law and high profile and business litigation among others; Rose Law Group is consistently involved in some of the State's biggest and most important issues from representing County Sheriffs on Senate Bill 1070 litigation to revolutionizing the provision of distributed solar generation in Arizona and defending the State's rights in litigation involving medical marijuana. Learn more at RoseLawGroup.com

* Laura Bianchi is head of RLG's Estate Planning and Asset Protection Department. She focuses her practice on traditional estate, special needs, domestic partnership, and business succession planning, as well as general employment and medical marijuana law.

* Carissa Seidl practices in the areas of family law, juvenile law and criminal law at RLG.

* Keith Berkshire is one of only 70 Certified Specialist In Family Law, State Bar of Arizona and is well versed in all areas of family law, including appellate practice.