

IMPUTING INCOME FROM ASSETS

By K. Dean Kantaras and Jennifer H. Cavill

In Florida, alimony is based upon the requestor's need and the payor's ability to pay. When determining the type and amount of a support payment, the Court is required to consider a number of factors as set out in [§61.08, Florida Statutes](#), including "[a]ll sources of income available to either party, including income available to either party through investments of any asset held by that party...[a]ny other factor necessary to do equity and justice between the parties." Furthermore, Florida case law holds that "[a] court is required to impute income for earnings that can reasonably be projected based on liquid assets awarded as part of the property division." [Buoniconti v. Buoniconti](#), 36 So. 3d 154, 160-61 (Fla. 2nd DCA 2010). However, if the Court is going to consider imputing income to a party from the party's projected earnings on liquid assets, such as retirement accounts for example, the Court must also consider the other party's projected earnings on liquid assets, if any, to determine whether imputation of income is appropriate there as well. See [Winnier v. Winnier](#), 163 So.3d 1279 (Fla. 2nd DCA 2015). Failure to impute income to an alimony recipient that could reasonably be projected on a party's liquid assets may result in the alimony having a savings component which is not permitted under Florida law. See [Rosecan v. Springer](#), 985 So.2d 607, 609 (Fla. 4th DCA 2008).

While case law is abundantly clear that income may be imputed from liquid assets, the issue of imputing income from non-liquid is less common. Consider the former marital home, for example. This is a non-liquid asset that one party may receive in equitable distribution and occupy after the divorce is finalized. Courts generally will not impute income that could be generated from the rental



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of the former marital home if the home is occupied by a former spouse after divorce. But what about real estate that is not occupied after the divorce – can income be imputed for these non-liquid assets? This issue was recently discussed in the 4th District Court of Appeal in [Sherlock v. Sherlock](#), 4D15-365, 2016 WL 3745486 (Fla. 4th DCA 2016).

In [Sherlock](#), the former husband requested permanent periodic alimony during the dissolution of this 17-year marriage. The former husband's assets included, among other things, retirement and investment assets, a Deerfield Beach house, a North Carolina cabin, four lots in North Carolina, "US – 1 Lot", and the former husband's current residence. The trial court did not impute income to the former husband for his current home, but did impute income to the former husband for his other real estate and financial assets. Since there was no evidence presented as to the reasonable projected income

on the former husband's real estate and financial assets, the trial court imputed a rate of return at 3% per annum. Based upon this imputed income and the former husband's social security disability benefits income, the trial court found that the former husband did not have a need for permanent periodic alimony, and his request was denied. The 4th DCA upheld this decision on appeal, noting that the decision did not require the former husband to liquidate any tangible personal property or invade the principal of his assets. The 4th DCA went on further to indicate that the former husband could sell his real estate holdings and reinvest the assets at a reasonable rate of return without having to invade principal. ■■

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