FINANCIAL DIVORCE
GUIDE

Phillips Whisnant Gazin Gorczyca & Curtin, LLP

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Orange County Divorce Attorneys
with a Legacy of Honor, Strength & Equity

Commitment to the Highest Standards of Professionalism & Ethics

The Orange County divorce attorneys of Phillips Whisnant Gazin Gorczyca & Curtin, LLP are dedicated to upholding the highest professional standards in the practice of family law. We serve as powerful advocates for clients facing a range of family law matters, yet always conduct ourselves in an ethical and honorable manner. Our unwavering allegiance to our clients is apparent in our diligent pursuit of their best legal interests and our acute sensitivity to privacy concerns, particularly in high-net-worth divorce cases.

A Reputation for Formidable Divorce Representation

Consistently honored as a Best Law Firm by U.S. News & World Report, PWGGC is recognized for having outstanding credentials and an impressive performance history. Our esteemed reputation with both clients and the legal community reflects our ability to consistently deliver positive results to individuals facing difficult family law situations. Repeatedly selected by Super Lawyers® and Best Lawyers®, our name partners have all received the highest Martindale-Hubbell rating possible and will compassionately help you navigate the challenges of emotionally charged family law issues.

Practicing Family Law Exclusively with an Emphasis on Complex Divorce

Dividing marital estates involving business entities and professional practices requires a dedicated legal team to ensure your interests are protected. Our expertise in handling complex financial matters for parties with extraordinary income allows us to develop practical strategies for high-net-worth family law cases while guiding clients through the emotional turmoil of divorce. A full service family law firm representing clients in contested litigation, mediation, and appellate law, PWGGC is the right choice for litigants facing contentious issues related to high-net-worth estates.

Over 200 Years of Experience in Southern California Family Law

PWGGC possesses a depth of experience unmatched by any other family law firm in Southern California. Our seasoned Orange County divorce attorneys apply a team approach to resolving family law matters, calling upon financial specialists and forensic experts as needed. With more than 200 years of collective family law practice, the partners at PWGGC have represented some of the most affluent individuals in Los Angeles County, including professional athletes and celebrities. We have the wisdom and resources to handle cases involving marital dissolution, separation, cohabitation, spousal support, and property issues of varying degrees of complexity.

Dependable Family Law Counsel Focused on Achieving Positive Results

Whether your case can be settled outside of court or requires litigation, PWGGC can help you obtain the best possible outcome for your family. We understand the many factors that influence custody, support, and property decisions in complex divorce cases. Our Orange County divorce attorneys will assess your position and recommend a course of action to best preserve your interests. PWGGC is committed to providing clients throughout Southern California with optimal legal solutions in all matters of family law.

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During your divorce, organizing your financial documents, making informed cost-benefit decisions, and improving your "financial fitness" are critical to your long-term financial stability. In this special **Financial Divorce Guide**, you'll find articles and advice on key financial issues that often emerge during divorce. While working with your lawyer and financial expert, this information can help you make it through divorce with your finances intact and your future secure.

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Documenting
Your Financial Situation

Collecting financial information and creating a budget will help your divorce lawyer and financial advisor do their jobs most effectively – and let you know where you stand.

By Diana Shepherd, Divorce Financial Professional

Your divorce lawyer and your financial professional are going to ask you to gather information and documents for them, so you might as well start this process now. Here are some things you should consider and prepare for as you go through the divorce process.

1. Early Divorce Stages

If you are in the early stages of your divorce you will need to compile information regarding all the assets and debts acquired during marriage; assets acquired before the marriage, or at any time via gift or inheritance; all sources of income for you and your spouse; and a list of your weekly, monthly, and annual living expenses, which includes everything from mortgage/rent to food, clothing, car expenses, etc. Here are some tips:

- Make a list of your assets and assign values to each of them (see #2, below, for help with this);
- Ask your divorce lawyer to help you determine which ones are marital and which are separate property;
- List your debts, determining which ones are joint and which are separate;
- Determine your current and post-divorce needs;
- Start making a budget. (See #4 and 5, right, for information on how to create pre- and post-divorce budgets.)

2. List Your Assets

Creating a detailed list of all your assets, from real estate to retirement plans, can help simplify the property-division process during divorce. When you start to make your list, make sure to include all of the following items owned by you and your spouse – both individually (separate property) and together (marital property).

- **Financial accounts/investments:** including bank checking and savings accounts, certificates of deposit (CDs), mutual fund accounts, stocks, bonds, and other financial investments
- **Pension and retirement plans/benefits:** including profit-sharing plans

- **Cash-value life insurance policies and annuities**
- **Trusts:** especially trusts where you are a/the beneficiary
- **Real estate:** including the marital home, vacation homes, and investment properties
- **Vehicles:** including cars, trucks, motorcycles, motorhomes, boats, ATVs, etc.
- **Household furniture and appliances:** bear in mind that unless your furniture is a valuable antique, you'll be getting garage-sale prices for all of these – even that 60" flat-screen TV
- **Valuable jewelry and art**
- **Collections and memorabilia:** including gold and silver coins, stamps, comic books, sports memorabilia, etc.
- **Expensive power tools**
- **Country club, golf course, and other memberships:** these can be worth thousands of dollars
- **Expensive musical instruments, and hobby or sports equipment**
- **Businesses:** including any ownership interest you or your spouse has in a business. This includes professional practices (doctor, dentist, lawyer, etc.)

Here are some frequently-overlooked assets:

- **Stock options**
- **Retained earnings**
- **Deferred bonuses**
- **Vacation pay**
- **Benefits from previous employers**
- **Tax refunds** (from joint returns)
- **Capital loss carryover**
- **Property tax reimbursement**
- **Contents of safety deposit boxes**
- **Prepaid insurance premiums**
- **Frequent flyer points**
- **Credit card reward points**
- **Season tickets** (sporting events, concerts, theater)
- **Timeshares**
- **Prepaid professional dues**

Ask your financial professional if you're unsure which of these apply to your situation – and whether they are significant enough to worry about. You can download an "Asset Worksheet" to help you complete this task at:
download.divorcemag.com/divorce-magazine/pdf/asset_worksheet.pdf

3. List Your Debts

Compiling a list of all your liabilities – including all loans, mortgages, and other debts – is an important aspect of preparing for your divorce. When you start to make a list of your debts, make sure to include all of the following items owed by you and your spouse – both individually and together.

- **Loans:** including car loans, educational loans (for tuition), personal loans, business loans, promissory notes, and lines of credit
- **Leases:** for vehicles, electronics, property, etc.
- **Financing household equipment:** including appliances, electronics, furniture
- **Mortgage(s)**
- **Home equity loans or balances on home equity lines of credit**
- **Credit-card debt:** including bank, department store, and gas cards.
- **Back taxes owed**
- **Professional debts**
- **Business liabilities**

For each debt, include information about whether the liability is joint or separate (if the latter, who is responsible for it), how much is still owed, the interest rate, and repayment details (including monthly payment amount and due-date, and the term, if applicable).

4. Create a Pre-Divorce Budget

By creating a budget, you'll reduce the uncertainty and guesswork about what you can and can't afford both during and after the divorce. You need to determine what your current living expenses are and how you'll pay for these expenses; potential sources of income during divorce include your own employment income, and spousal and/or child support (if you'll be receiving these).

In addition to your regular living expenses, you need to make a budget for professional help from a divorce lawyer, mediator, financial professional, valuator, etc. If your income from all sources won't be enough to cover your living expenses and divorce-related costs, you need to take a hard look at your expenses and see where you can trim them. Ask your financial professional for help with this process. If you're still coming up short, you may need to dip into savings and/or speak to your lawyer about the possibility of increasing the amount of support you'll receive during the divorce process. If your spouse can't afford to pay more support, the two of you will have to consider liquidating and dividing some marital property so you can both pay your bills.

Use the "Expense Worksheet" on page 20 to help you complete this task, or download a copy at:
download.divorcemag.com/divorce-magazine/pdf/expense_worksheet.pdf

5. Create a Post-Divorce Budget

Once you have finalized your divorce agreement – including property division and spousal and/or child support, if applicable – you'll be equipped to create a realistic post-divorce budget for your living expenses. Use the pre-divorce budget you created as a starting point, since your post-divorce budget will include almost all of the same items (with the exception of divorce-related bills, once you have finished paying your professional team).

Diana Shepherd is the co-founder and Editorial Director of Divorce Magazine *and a Certified Divorce Financial Analyst® (CDFA®). She has been writing about divorce-related issues since 1996.*

7 Common Financial Divorce Mistakes to Avoid

These mistakes can have devastating effects on your financial well-being during and after divorce.

By Adrienne Rothstein Grace, Divorce Financial Professional

A client came to me during the very beginning stages of her divorce. She was in her mid-30s, with three children, and devastated. If she had allowed it to, the emotion of what she was about to face would have surely blinded her vision from the practical. So I gave her this list of some divorce mistakes to avoid – mistakes I had seen have devastating effects on the financial well-being of individuals after their divorce. If you find yourself in this situation, make sure to take some notes.

It's important to know what you have before you can divide it.

1 Underestimating your expenses

Let's face it, we often know exactly how much we make – but it is a lot harder to explain where all that money goes. Take some time to record all of your expenses and develop a realistic monthly budget. Don't forget holiday spending, vacations, auto repair, and bills that only come quarterly or annually. Also consider the cost of future expenses, taking inflation into account.

2 Holding on to the family home at all costs

Especially when children are involved, it can be ideal to be able to keep the family home, keep everyone comfortable, and avoid the hassles of moving. But no matter how attached you are to your home, it is crucial that you have a realistic understanding of whether or not you can afford it. Like nearly everything else, this decision is a practical one that relies on a solid understanding of your post-divorce finances – and an open mind.

3 Not taking a holistic view of your finances

If you examine each asset or source of income separately, you lose the opportunity to understand the interaction of taxes, capital gains, investment losses, inflation, and more. Fair settlements take into account a comprehensive picture of all of your finances. In doing that, you will better understand how each financial decision you make may affect other areas.

4 Dividing your assets without first creating an inventory

It's important to know what you have before you can divide it. Your inventory should include details (including a description, year acquired, price paid, and current value) of all your possessions, and whether you want to keep it, let your ex have it, or sell it and divide the proceeds. It's important to consider your property, business, investments, car(s), life insurance policies, and especially pension plans, 401(k), and other retirement accounts. Also consider your debt – dividing things up includes both assets and liabilities.

5 Failing to insure spousal and child support payments

Your ability to collect spousal and child support is only as good as your spouse's ability to pay. Consider life and disability insurance policies to ensure that these payments will continue in the event of your spouse's inability to pay. Even better – be the owner of these policies to assure that they stay current and in force and you remain the beneficiary.

6 Having unrealistic financial expectations

Divorce means splitting one household into two. Stretching your income to cover two households means that finances are going to have to tighten. Expect it and plan ahead so you don't find yourself in the hole financially.

7 Failing to consider your long-term financial security

If you simply focus on the immediate task of dividing assets and receiving spousal and child support, without understanding how things might look when that support terminates or you're near retirement, you're doing yourself a great disservice. Having a financial professional with experience in the divorce arena review your proposed settlement agreement (before you sign it) and discuss with you the long-term financial consequences can protect you and your family. ■

Adrienne Rothstein Grace (CFP®, CLTC, CDFA®) brings 30 years of financial advisory experience to clients in transition. Her holistic approach to financial transition planning guides clients through prudent preparation as well as rebuilding post-divorce. www.transitioningfinances.com

Financial Disclosure in Divorce

Divorcing spouses may not be fully aware of each other's financial situation. Financial disclosure is a mandatory step both parties must take during the divorce process.

By Donna M. Cheswick, Divorce Financial Analyst

Full disclosure on everything the couple owns (all assets) and owes (all debts), how they are titled, and the marital value of each must be determined and put on the table.

As is often the case in divorce, one spouse may not have a complete knowledge of the marital financial situation. Before productive settlement discussions can occur, both parties must be on the same page and have full financial disclosure regarding all the property and debt they acquired during the marriage.

Agreeing to a property settlement when one party has no understanding regarding assets and liabilities is extremely difficult, if not virtually impossible. Full disclosure on everything the couple owns (all assets) and owes (all debts), how they are titled, and the marital value of each must be determined and put on the table. Only then can productive discussions on how to divide everything occur.

The exchange of information and documentation is called "discovery." It allows time for one party to ask the other to produce a variety of needed financial documents in their possession. It is always easier, faster, and definitely less expensive when both spouses can cooperate with each other and informally exchange the required information between each other and/or their lawyers.

Some of the information that must be exchanged includes copies of tax returns, statements for all bank accounts, statements for all investment and retirement accounts, information on any property owned, statements for any debts owed (credit card, student loan, mortgages/HELOCs, etc.), life insurance policy information, and paystubs for both parties. If one party owns a business, complete information regarding the business interests must be obtained so that a value can be determined.

If one party hesitates, refuses to turn over documentation, or doesn't want to answer questions being asked, it can be a red flag indicating that they may have something to hide, or they are trying to manipulate some of the financial details. Whatever their ulterior motives, it can severely hamper settlement discussions. Your lawyer and/or financial professional is not going to accept the value of an asset or debt just because one party claims it is so. Conclusive proof to validate any claims must be supplied.

When a friendly exchange of documents does not occur, there are several more formal ways that can legally compel an uncooperative spouse to produce the needed information.

Request for Production of Documents

This is a legal document served upon your spouse or their lawyer. It is a written list of the items that are needed, along with a time frame given to provide the documents requested.

Interrogatories

These are nothing more than a formal list of questions which your lawyer prepares and sends to the opposing side to answer. Typically, the questions should be answered and the completed information sent back within a 30 to 45-day time frame. Frequently, responses are late or may be ignored altogether, and then you may need to make a request to the court that requires your spouse to comply.

Depositions

These give your lawyer the chance to ask your spouse a variety of questions and have them answered under oath. Actually, anyone associated with the case who has information critical to the case could be called in for a deposition. Whatever is said will be transcribed by a court reporter, and there will be a written record which can be referred back to.

Don't start the divorce process assuming the worst. If you are able to communicate and work together, it will make for a more productive settlement. However, you are only in control of your behavior. Unfortunately, you cannot control the behavior of your spouse, so in instances where the other party is not cooperating, knowing that there are measures in place that can help you obtain all the information you need will be reassuring. ■

Donna M. Cheswick is a Certified Divorce Financial Analyst® (CDFA®) and divorce mediator. She guides decision-making and problem-solving on the critical financial issues related to divorce.
www.cheswickdivorcesolutions.com

Marital Property vs. Separate Property in Divorce

During property division, all marital property will go into the marital pot to be divided between the spouses. But how do you know which is which?

By Diana Shepherd, Divorce Financial Analyst

In a divorce, all assets are designated as either separate or marital (known as "community" in some states) property in accordance to the state or provincial laws and prenuptial or marital agreements (if any). During property division, all marital property will go into the marital pot to be divided between the spouses, and each spouse gets to keep his/her own separate property (assuming it has been kept separate for the entire marriage).

You should know that "property division" does not necessarily mean a physical division of all assets: physical assets, like a house or a car, can't be split into two parts. Instead, the judge could award each spouse a percentage of the total value of the property, meaning that each spouse will receive assets (from cash to cars to real estate) and debts whose worth adds up to the percentage specified by the judge.

Exactly what constitutes separate vs. marital property can be a gray area, which you should discuss with your divorce lawyer. However, here's an explanation of how the courts typically define the two types of property.

Separate Property

Separate property consists of items like:

- Property owned by either spouse prior to marriage, *and* *kept in that spouse's separate name.*

- Inheritance received by either spouse before or during the marriage, *and kept in that spouse's separate name.*
- Gifts received by either spouse before or during the marriage by a third party.
- Payment received for pain and suffering in a personal injury judgment.

Let's look at some examples. John and Jane have been married for 20 years. On their wedding day, she made a grand romantic gesture and changed the title on the lakeside cottage she had inherited from her grandparents from her name alone to both of their names. So although she inherited the cottage (which would make it separate property), she changed the title, which made it marital.

During her marriage, Jane inherited $20,000 when her Uncle Pete passed away. She deposited it into a bank account in her own name, and didn't touch a penny of the funds. The $20,000 would be her separate property – but in some states and provinces, the interest on the original sum might be considered marital property. (Ask your divorce lawyer whether this is the case in your area.)

Some states make a distinction between "active appreciation" and "passive appreciation" when it comes time to decide whether money is separate or marital. Active appreciation is when one spouse contributes or puts in effort directly or indirectly to increase the value of his/her separate property, such as a business or other investment. Passive appreciation is when property increases in value due to inflation or other reasons (sometimes, simple bank-account interest).

Let's go back to Jane's inheritance. In this example, she withdrew $15,000 from the $20,000 inheritance to renovate the marital home. In some states, if she can trace the $15,000 back to the original inheritance, it might still be counted in separate property; in others, she changed the designation to marital by spending the money on marital property. The same would be true if she deposited the $15,000 in a joint account, co-mingling her separate property with the marital property. (Again, ask your lawyer whether this is the case in your area.)

Do you get a sense for why this can be such a gray area?!

Marital Property

Generally speaking, all assets acquired or earned during the marriage are considered marital (or community) property – regardless of whose name it is in. Marital property consists of items such as:

- Employment income
- All bank accounts (except for those that pre-dated the marriage and did not have any marital funds – e.g., a paycheck – deposited into them during the marriage)
- Businesses
- Professional practices and licenses
- Limited partnerships
- Real estate
- Vehicles and boats
- Art and antiques
- Pension and retirement plans
- Brokerage accounts, mutual funds, stocks, and bonds
- Bonuses and commissions
- Memberships
- Annuities
- Life insurance
- Tax refunds

Again, the distinction between marital property and separate property is a legal one and it varies from place to place, so you must speak to your divorce lawyer about how the local laws might affect your property division.

Community Property vs. Equitable Distribution

If you reside in a US state, and you and your spouse can't agree on how to divide jointly-owned property, then the courts will divide it for you according to "equitable distribution" or "community property" principles. (By the way, your joint debts will also be divided according to either equitable distribution or community property principles.) Although the specific details vary from state to state, the main difference between the two schemes is that in community property states, there is an absolute 50/50 split of all property acquired during the marriage, whereas in equitable distribution states, more assets might be considered marital property, but the split is not necessarily 50/50.

Community property states are Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In Alaska and Tennessee, spouses can opt in to the community property system. The remaining states are equitable distribution jurisdictions.

Property Division in Canada

Generally speaking, property division in Canada works much the same way as described above. In all provinces, the goal of property division is fairness – but each province uses different rules to achieve a fair division. For example, some provinces don't make a distinction between marital and separate property, but how the property was acquired (i.e., it was a gift or inheritance, or it was owned by one spouse prior to the marriage, etc.) may play an important role in how the property will be divided on divorce. Other provinces exclude separate property from division on divorce. Depending on the province, separate property that has been co-mingled with marital property could be treated as either separate or marital. However, as long as the assets or earnings were acquired during the marriage, the property is marital and will be divided – no matter whose name it's in. ■

Diana Shepherd is the co-founder and Editorial Director of Divorce Magazine *and a Certified Divorce Financial Analyst® (CDFA®).*

What to Do with the Family Home

3 Options to Consider

The family home can be the single largest asset in a marital estate. When considering what to do with it, try to make the decision with your head – not your heart.

By Rosemary Frank, Divorce Financial Professional

Some people think the family house is the trophy. Most likely it will prove to be the booby prize. Financially, it can become a rock around your neck. How so? Think about it: When you bought that house, your household income was double – or more – of what it will be in the future. That house was suitable for two adults and now there will be only one.

You needed to accommodate all your children, all that time, and now they may be leaving the nest, or will be there only part-time. You may say you want to keep the children in the same neighborhood and schools. Let me suggest that if things were different, and life was wonderful, and you had the opportunity to build a new home elsewhere, you would be moving those kids without hesitation and feel really good about it. I hope I have your attention and we can consider some alternatives.

1. Sell the House Now

Selling the house will give you and your spouse the cleanest break from this jointly-held asset. Notice, I don't call it an investment. A house is not an investment. It is a place to live and costs a lot of money to maintain. In addition, you pay (not earn) interest on it and pay property taxes repeatedly on the same money, some of which is yours (the equity) and some that is not yours (the mortgaged amount).

Proceeds from the sale can be divided appropriately along with other assets in the marital estate, thereby allowing you to select a home that is more in line with your needs and new financial situation. In anticipation of selling the home, no appraisal will be needed. Save a few dollars, because the market will tell you the value. It does not matter what an appraiser's opinion is if you are going to put it to the ultimate market test.

If you need to spend money for minor repairs, or to prepare the home for optimum marketability, use any open home equity line of credit for funds. This keeps the expenses of selling the home within the resources of the home. That also means one less thing to negotiate.

The choices you make about the family home could determine your future financial stability, so be smart: take the emotions out of your decision-making process.

2. One of You Keeps the House

If it makes financial sense for one of you to keep the house, be sure you both look at this from every angle. The one who is keeping it will effectively be buying the second half of the house from the other spouse. This should be treated like any other real estate purchase: get an appraisal, get a home inspection, complete a title search for any unknown liens, and negotiate any imminent major repairs. That is what any prudent buyer would do. Then do an additional title search – immediately preceding final settlement – to be sure there are no new liens (like your spouse's attorney's bills) against the property.

The surrendering spouse will want to come off the deed via a "quit claim." This, however, does not remove that spouse from any mortgage that is in both your names. Only a refinance by the spouse keeping the house, in their name only, will relieve the surrendering spouse of debt responsibility. Therefore, the spouse keeping the house needs to feel confident that they will qualify for an individual mortgage. It is highly recommended that you talk with lenders prior to agreeing to keep the house. But remember, mortgage qualifications are not your best measure of whether keeping the house makes financial sense for you. They are simply measures of how much risk the lender is willing to accept to get your business and put you in debt.

Unique to the circumstances of divorce, in such real estate transfers, is that any tax load in the house will transfer to the ex-spouse who keeps the house. This can include capital gains tax liabilities from previously owned primary residences if the current residence was purchased before May 7, 1997 under old tax rules. Or, if the house was used for a home-based business and home-use tax deductions were taken, the assuming spouse will pay recaptured taxes on those deductions when the house is ultimately sold. These are complicated issues and should be clarified for you by a financial or tax professional.

3. Sell the House Later

If you and your spouse agree that it is mutually beneficial to sell the house later – when the market is better, when more equity has been built, etc. – then there are a couple of options. Whatever you do, realize that retaining joint ownership is a business partnership and should be structured as such.

One option is to rent the house to a third party at a level that makes it a profitable business endeavor, while each of you live elsewhere more cheaply. Establish a joint business banking account for rent receipts and from which to pay landlord expenses. Agree ahead of time on what your contribution shares will be if the account falls short, and/or how proceeds will be divided when the house is eventually sold.

Another option is that one of you will remain in the house, as a "tenant," while you both function as landlords. The tenant ex-spouse pays rent at a fair market rate to the joint business account, and all landlord-type expenses are paid from that account, including the mortgage(s). Agreements need to be in place regarding minor repairs that will be the tenant spouse's responsibility and more major expenses that fall into the landlord category.

The benefits of each of these options are that both ex-spouses share the risks associated with selling the house later. These include things like: "market risk," fluctuations in the value of the house; "structural risks" that some undiscovered problem emerges, like mold, radon, or a foundation fault; or "hazard risks" that may not be completely covered by insurance, like fire, flood, tornado, etc.

The house can often be the single largest asset in a marital estate. The choices you make about it could determine your future financial stability, so be smart: take the emotions out of your decision-making process. Yes, there may have been some good memories associated with that home, but if you are divorcing, there are probably just as many that you do not want to remember. If you are going to move on with your life, then really move on, and make your best financial decisions as if starting with a clean slate. ■

Rosemary Frank (MBA, CDFA, ADFA, CFE, MAFF) has worked on dozens of divorce cases, providing litigation support, expert witness testimony, or financial neutral consultant services. www.rosemaryfrank.com

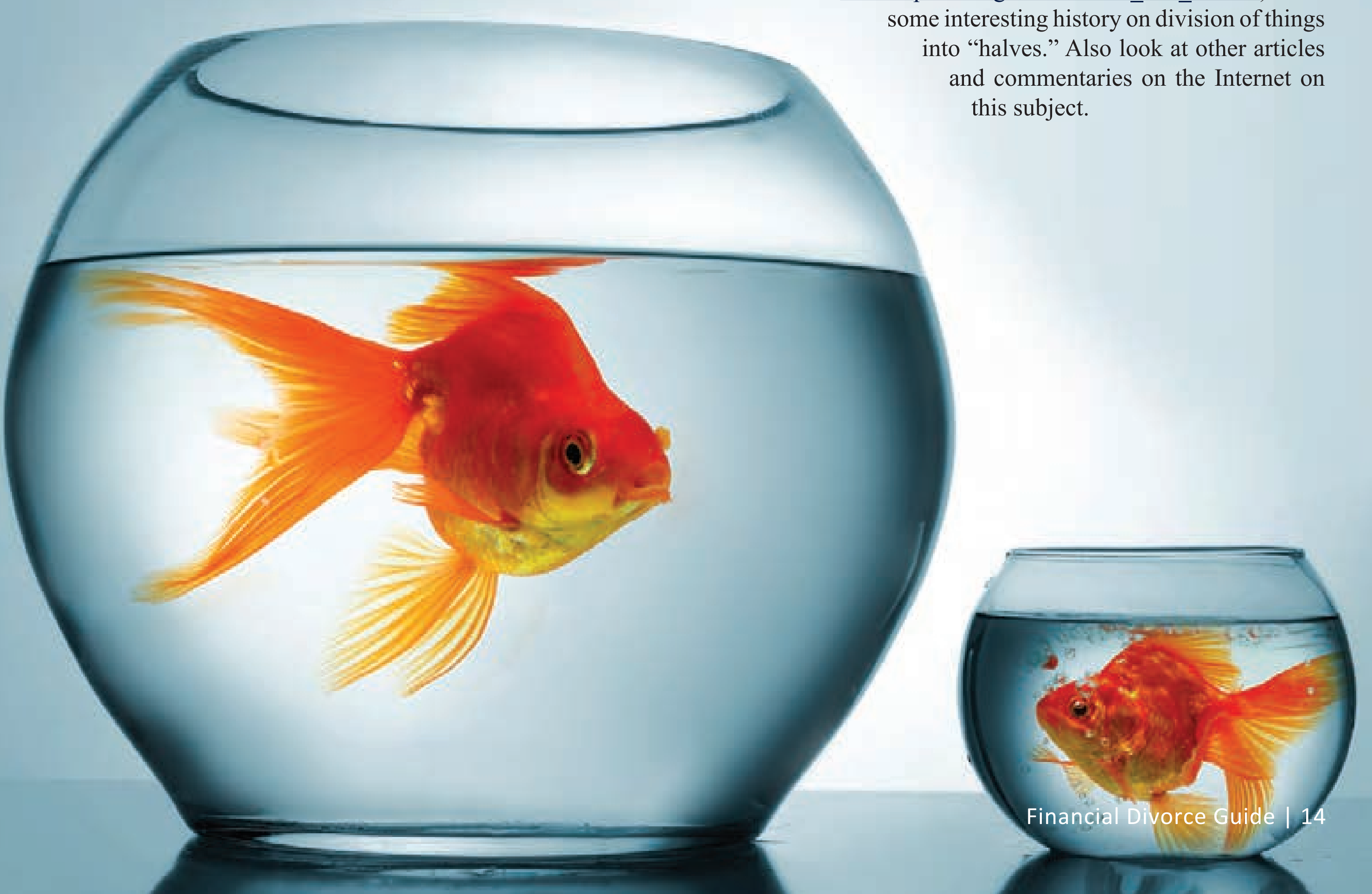
Tax Consequences
During Property Division

In divorces and dissolutions, some assets are worth more than others when it comes time to withdraw or sell them. You must consider how much each asset is worth *after* taxes – otherwise, your "half" could be worth substantially less than your spouse's "half."

By William L. Geary, Family Lawyer

As a divorce attorney or family law attorney, it is sometimes interesting to hear what people think you actually do. For instance, someone once said to me, "I don't see what's so difficult about what you guys do. All you do is divide everything in half."

Division of assets and debts may sound easy, but it is not often easy at all. I remember seeing a movie once where something (illegal) was going to be divided in half. One of the two people in the scene said, "I'll divide it in half." The other person responded, "That's fine. You divide it in half and then I'll pick which half I want." The concept of "Divide and Choose" (or "You cut, I Choose") has received a lot of attention historically. Look up "Divide and choose" in Wikipedia (https://en.wikipedia.org/wiki/Divide_and_choose) for some interesting history on division of things into "halves." Also look at other articles and commentaries on the Internet on this subject.



Hopefully, you are only dividing marital property after carefully considering the tax effects and status of each asset and debt.

So, if we are dividing a "thing" such as a piece of paper, division may not be so difficult (so long as each part of the paper is the same as all other parts of the paper.) In divorces and dissolutions, however, some assets and debts may be easily and fairly divisible (with each party receiving the same benefit or taking on the same type of obligation as the other party after division) while other assets and debts may not be the same.

The Difference Between Dividing Pre-Tax and Post-Tax Assets

In divorces and dissolutions, one must always watch for tax consequences. By way of example, let's think about a marital bank account. If a marital bank account has $100 in it from a few years ago and the taxes have been paid on all earnings from the year in which the $100 was earned, this $100 is "after-tax" money. It is cash that is available "in hand," which can be spent. Division of that bank account, with each spouse getting half – or $50 each – leads to the same result for each of the people in the divorce or dissolution since they are just being given half of what is already their property.

Good enough so far. Receiving your own property in a divorce, or half of the marital property in a divorce, does not create a taxable event. However, spending it may create a taxable event later, and not all taxable events will be equal for both former spouses.

What if a marital bank account has $100 in it and half of that would be owed to the other spouse, but the other spouse has a marital Traditional IRA which also contains $100. Couldn't we just let the one spouse keep the $100 IRA and the other keep the $100 bank account to make them equal on property distribution? The answer is, "No." This is because when the spouse who keeps the Traditional IRA finally starts taking out money, that money will be taxed. At a 30% tax rate, that $100 Traditional IRA will only be worth $70 after taxes. The $100 in the bank account will still be worth $100 even after the $100 is taken out. It is "post-tax" money. You don't get charged anything, tax-wise, to remove your own money from your own bank account. In the example above, in the end one former spouse has $100 and the other only has $70.

What Happens to Investments and Debts?

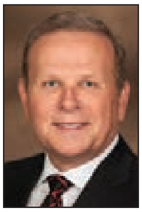
The same principle (involving the possible effect of taxation on different types of assets) will also apply to stocks and other investments. Tax on proceeds from the sale of investments may be calculated upon how long the investment has been held and also upon the actual gain on sale (gain over the original cost of the investment). So, the "market value" of 3,000 shares of one stock which has a value of $1.00 per share ($3,000) may be the same "market value" as 3,000 shares of another stock which has a value of $1.00 per share ($3,000), but the after-tax effects of selling those shares and collecting their value may be greatly affected by taxes on the gains (depending on the original costs of the shares and how long they have been held, etc.).

The same type of principles can be applied to debts of differing kinds, which might be assigned to the parties to a divorce or dissolution. A debt given to one spouse may be of "more value" to him or her than if it were given to the other spouse.

The Importance of Working with a Financial Expert

The "moral" or "warning" here is this: Hopefully, your aren't just dividing things in half. Hopefully, you are only dividing marital property after considering the tax effects and status of each asset and debt with which you are dealing.

At our firm, we bring in CPAs, business valuators, and other financial experts as needed to help advise our clients regarding the financial aspects of the proposed divorce settlement – including what effect taxes could have on the assets they wish to retain. ■



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Financial History Checklist

A helpful checklist to help you organize your files for your lawyer, financial professional, or yourself.

By Diana Shepherd, Divorce Financial Analyst

Whether you're working with a lawyer, a financial professional, or attempting a DIY divorce, you'll need to gather information about your and your spouse's finances. You (or your spouse) probably have files with this information at home or at the office. If your spouse always took care of the financial matters during your marriage, however, then you may have little or no knowledge about these items – or even where to begin looking for them. Even if your spouse paid all the bills online, chances are that statements will still appear in the mail from time to time, so keep an eye out for letters from banks, credit-card and insurance companies, brokerage houses, your real-estate agent or mortgage broker, your local utilities, and the government (municipal as well as federal) regarding taxes paid and owing.

Buy an "accordion" expanding file folder or a portable file box with tabs, and label each tab with the major categories, such as "Bank/Investment Records", "Retirement Plans", or "Tax Returns". If you have a lot of information, buy one folder for each year and use the same labels in the same order for each one. (See "Getting Organized" on page 19 for more help.)

The following checklist will help you organize your files. The bold text will be the labels for your tabs; use only the ones that apply to your situation, and add items as necessary to gain a complete picture. Check off items as you place them in your file folders, and make a note of who will be collecting which piece of missing information. Tackle the items one at a time to prevent yourself from becoming overwhelmed – and ask your financial professional for help collecting documents if necessary.

Income/Assets

Tax Returns (last three-to-five years)

- ❑ Husband
- ❑ Wife
- ❑ Joint
    - ❑ Personal Tax Returns
    - ❑ Partnership/Corporate Tax Returns
    - ❑ Any Amended Tax Returns
    - ❑ W-2s and 1099s – Last 3 Years

Partnership/Corporate Financial Statements

Last three-to-five years.

- ❑ Husband
- ❑ Wife

Payroll Stubs

The three most recent, or from January 1 of current year, whichever is longer. Collect year-to-date pay stubs showing income and deductions if available.

- ❑ Husband
- ❑ Wife

Other Income

Such as unemployment/disability insurance, welfare, pensions, rent received, dividends/interest, trust-fund, personal loans receivable, etc.

- ❑ Husband
- ❑ Wife

Employee Benefits and Incentive Programs

These could include stock-option programs, country-club initiation fees, banked vacation, and sick days. Collect all Employee Benefit and Executive Compensation Booklets and Statements for Husband and Wife, including:

- ❑ Benefits Booklets
- ❑ Most Recent Statements (three years) for:
  - ❑ Stock Options
  - ❑ ESOPs (Employee Stock Ownership Plans)
  - ❑ Profit-Sharing Plans
  - ❑ Expense Accounts
  - ❑ Automobile Allowances/Car Leases/Expenses
  - ❑ Travel Benefits (if significant):
  - ❑ Frequent Flyer Miles
  - ❑ Hotel Points
  - ❑ Car Rental Points
  - ❑ Sick Pay/Worker's Compensation
  - ❑ Annual Bonuses
  - ❑ Deferred Compensation
  - ❑ Military/VA Benefits
  - ❑ Insurance (see below)

Insurance Policies

(Both personal and through work)

- ❑ Husband
- ❑ Wife

Policies and most current statements for:

- ❑ Life Insurance
- ❑ Disability
- ❑ Critical Illness
- ❑ Long Term Care
- ❑ Health
- ❑ Children
- ❑ Motor Vehicle(s)
- ❑ Homeowner's or Renter's
- ❑ Personal Umbrella

Pension Plans

(Defined Benefit plans and Defined Contribution plans)

- ❑ Husband
- ❑ Wife
  - ❑ Summary Plan Description
  - ❑ Benefits Booklet
  - ❑ Most Recent Statements (three years)
  - ❑ Benefits Estimate:
    - At Earliest Retirement Age
    - At Normal Retirement Age
    - At Current Age (if eligible)
    - Early Retirement Option Elections

Retirement Plans

- ❑ Husband
- ❑ Wife
  - ❑ IRA, SEP-IRA, Roth IRA, Keogh, SEP, 401(k), 403B, 457 & Non-Qualified Deferred Compensation Statements;
  - ❑ Social Security Earnings Statement
  - ❑ RRSP, CPP, OAS (in Canada)

Bank/Investment Records

- ❑ Husband
- ❑ Wife

Look for individual, joint, business partnership, and corporate accounts for the following:

- ❑ Checking Accounts: cancelled checks and bank statements for previous 6-12 months.
- ❑ Savings/Passbook Account: statements for previous three years. Other Investment Accounts: Securities, Money Markets, Brokerage, CDs, Commodities, Mutual Funds, Annuities, Stocks & Bonds, Tax-Free etc. for Husband and Wife.
- ❑ "Special purpose" accounts. These are usually funded by payroll deductions and are set up to fund large and infrequent expenses such as the annual premium on your home or auto insurance, Christmas, and so on. These accounts are easy to forget.

❑ Children's Accounts

Statements for previous three years for the following:

- ❑ Savings and savings bonds
- ❑ Investment
- ❑ College Savings Plans (529 Plans, RESPs)
- ❑ Insurance

Cash

Do you keep any cash at home or in a safety-deposit box?

- ❑ Husband
- ❑ Wife

Primary Residence and Other Real Estate

- ❑ Primary Residence
  - ❑ Current Appraisal
  - ❑ Date of Purchase and Purchase Price
  - ❑ Original Mortgage Amount and Current Mortgage Amount
  - ❑ Interest Rate/Length of Mortgage
  - ❑ Monthly Payment Amount
  - ❑ Second Mortgage Info
- ❑ All of the above information for all real-estate holdings other than the Primary Residence.

Property/Assets

Listing of all individual, joint, and business non-investment assets such as:

- ❑ Cars, vans, trucks, motorcycles, and other motor vehicles
- ❑ Airplanes, boats, sea-doos/ski-doos, ATVs, RVs, campers
- ❑ Valuable/rare artwork, jewelry, collectibles (coins, medals, stamps, movie memorabilia, etc.), antiques, furs, etc.
- ❑ Royalties, patents, copyrights, franchise and license agreements
- ❑ Household furnishings: create an itemized list. **NOTE:** most furnishings will be valued at garage-sale prices, so don't waste time trying to hunt down the receipt for the coffee table you bought 20 years ago.

Miscellaneous

- ❑ Any other invoices, receipts, or documents that support the information contained in either spouse's Financial Statement/ Affidavit regarding income and net worth.

Debts and Liabilities

Information regarding all outstanding loans (either bank or private) and debts (e.g., credit and gas cards), including rate, term, monthly payments, and prepayment penalties.

- ❑ Loan Statements for Husband and Wife's Joint, Business, Partnership, and Corporate Accounts
- ❑ Credit Card Statements for Husband and Wife's Joint, Business, Partnership, and Corporate Accounts
- ❑ Any other invoices, receipts, or documents that support the information contained in either spouse's Financial Statement/Affidavit regarding debts

Living Expenses

- ❑ Husband
- ❑ Wife

Collect all bills and invoices for living expenses, including:

Household Expenses

- ❑ Rent/Mortgage
- ❑ Homeowners/Association Fees, Property Taxes
- ❑ Telephone, Cellphone, Pager
- ❑ Internet, Cable/Satellite
- ❑ Security System
- ❑ Electricity, Gas/Fuel Oil/Propane/ Wood
- ❑ Water/Sewer, Trash Removal
- ❑ Lawncare, Tree Pruning, Landscape Maintenance, Snow Removal
- ❑ Exterminator
- ❑ Home Improvements/Upgrades
- ❑ Home Repairs/Maintenance, Housecleaning, Windows/Carpet Cleaning

Food Expenses

- ❑ Groceries
- ❑ Fast Food, Restaurant Meals

Children's Expenses

- ❑ **Education:** Tuition, Private Tutoring, School Supplies and Meals, Field Trips
- ❑ Computer, Cell Phone
- ❑ Childcare: Work-Related and Non-Work-Related
- ❑ Transportation
- ❑ Clothing, Uniforms, Footwear
- ❑ Hobbies, Toys, Games
- ❑ Summer Camps, Sports Fees/ Coaching/Equipment, Art Lessons and Supplies, Music Lessons and Instrument(s)
- ❑ Medical, Dentist, Orthodontist, Optometrist/Glasses/Contacts, Prescription Drugs (not covered by insurance)
- ❑ Allowances

Medical Expenses

(After Insurance – Excludes Children)

- ❑ Physicians, Dentist/Orthodontist
- ❑ Optometrist/Glasses/Contacts
- ❑ Prescription Drugs

Insurance Expenses

- ❑ Life, Health, Dental, Critical Illness, Disability, Long Term Care
- ❑ Home, Auto, Motorcycle, Other (Boat, Umbrella, etc.)

Transportation Expenses

- ❑ Auto Expenses: Car Payment, Gas, Repair/Maintenance, Tires, Detailing, License, Parking, Tolls
- ❑ Taxis, Public Transit

Entertainment/Recreation Expenses

- ❑ Videos, CDs, DVDs, Books, Magazines, Newspapers
- ❑ Movies, Theater, Opera, Ballet
- ❑ Hobbies, Classes (Recreational)
- ❑ Vacations/Travel
- ❑ Memberships, Clubs

Clothing Expenses (Excludes Children)

- ❑ Clothing, Shoes/Boots
- ❑ Laundry/Dry Cleaning

Miscellaneous Expenses

- ❑ Pet Care: Food, Vet, Groomer, Dog Walker
- ❑ Gifts
- ❑ Toiletries, Vitamins, OTC Drugs, Personal Care Products
- ❑ Beauty: Salon (Hair, Nails), Makeup
- ❑ Home Office Supplies
- ❑ Business Expenses (Non-Reimbursed)
- ❑ Education (Non-Reimbursed)
- ❑ Bed, Bath, Kitchen, etc. Items
- ❑ Contributions/Donations, Volunteer Work

Legal Documents

Powers of Attorney (POA)

Collect Medical and Financial POA documents for:

- ❑ Husband
- ❑ Wife
- ❑ Children

Business or Partnership Agreements

- ❑ Husband
- ❑ Wife

Trusts

- ❑ Husband
- ❑ Wife
- ❑ Children

Wills

- ❑ Husband
- ❑ Wife
- ❑ Amendments or Codicils

Pre- or Post-Nuptial Agreements

- ❑ Husband
- ❑ Wife

Previous Divorce Documents

Collect divorce documents from prior marriage(s). Of particular importance: the property settlement(s), and any spousal or child support orders still in pay.

- ❑ Husband
- ❑ Wife

Diana Shepherd is the co-founder and Editorial Director of Divorce Magazine. *She is also a Certified Divorce Financial Analyst® (CDFA®).*

Related Article

Post-Divorce Financial Checklist

Here are 20 financial "must-dos" after divorce. Once you've completed this list, you can rest assured you've done everything possible to take control and make the most of your finances.
www.divorcemag.com/articles/post-divorce-financial-checklist

Getting Organized

During your divorce, you need to develop an organizational system that will work for you – and prevent you from drowning in a sea of paperwork. You'll save time, money, and reduce your stress levels if you can put your hands on a document the moment your lawyer or financial professional asks for it. An accordion folder is a good way to keep everything in one place – and it's portable so your files can travel with you to meetings. You'll want to relabel some of the tabs so they're specific to your situation. For instance:

- ❑ Documents for my Lawyer
- ❑ Documents from my Lawyer
- ❑ Documents for my Financial Professional
- ❑ Documents from my Financial Professional
- ❑ Marital Property Inventory and/or Receipts
- ❑ Separate Property Inventory and/or Receipts
- ❑ Household Inventory
- ❑ Household Bills and/or Receipts
- ❑ Bank Accounts (joint and separate)
- ❑ Credit Cards (joint and separate)
- ❑ Debts (including Mortgage, Loans, and Credit)
- ❑ Monthly Expenses (use the "Expense Worksheet" on page 20 to help complete this task)
- ❑ Income Statements
- ❑ Child or Spousal Support (paid or received)
- ❑ Insurance

Divorce To-Do Lists

Start making one or more Divorce To-Do Lists now. You can use computer software to track tasks and appointments, or you can use a diary or appointment book that you'll refer to every day. Make sure to put deadlines on everything: you don't want to keep your lawyer waiting for a document you promised last week because you forgot about it! Here are some suggestions to get you started on your Divorce To-Do list:

- ❑ Consult a divorce lawyer before taking any big steps – including moving out of the family home.
- ❑ Consult a financial expert specializing in divorce.
- ❑ Ask your lawyer whether you should close, keep, or divide your joint bank, savings and brokerage accounts. If you must keep the account(s), ask your financial institution to require both spouses to approve withdrawals over a certain dollar amount and/or frequency from the account(s).
- ❑ Open your own checking and savings accounts.
- ❑ Order a credit report on yourself, which will show joint or sole debts in your name. Pay off all marital debts.
- ❑ Apply for your own credit card, then pay off and cancel or freeze all joint credit cards.
- ❑ Take care of any medical or dental issues while you are still covered by your spouse's insurance plan.
- ❑ Revoke any power of attorney previously given to your spouse.
- ❑ Evaluate your estate planning needs with an experienced estate planning attorney.
- ❑ Inventory your safe or safe deposit box. Make videos of and photograph all items.
- ❑ Inventory your valuables, including artwork, antiques, wine and other collections, jewelry, furniture, furnishings. Make videos of and photograph all items.
- ❑ Safeguard cherished items that are your separate property. If you're moving out, take those items with you.
- ❑ If you intend to move out, save enough money to cover the cost of moving and incidentals, and speak with your lawyer about timing.
- ❑ Get a cell phone in your own name. Request a private number if your spouse is likely to harrass you.
- ❑ Create a new email account without a login/password your spouse could easily guess.
- ❑ If you don't regularly attend your children's plays, concerts, sports events, and parent-teacher conferences, start now! Make a point of meeting their teachers.
- ❑ If you name a child as a beneficiary, you may choose to select a guardian other than your soon-to-be-ex.

Expense Worksheet

❑ Pre-Divorce
❑ Post-Divorce
(check one)

	Monthly Expenses	Annual Expenses
Home Expenses		
Rent/Mortgage	$________	$________
Homeowners/Condo Fees	$________	$________
Home Equity Loan	$________	$________
Property Taxes	$________	$________
Home Phone	$________	$________
Cellphone/Pager	$________	$________
Internet	$________	$________
Security System	$________	$________
Cable/Satellite/Netflix	$________	$________
Electricity	$________	$________
Gas	$________	$________
Water/Garbage	$________	$________
Landscape Maintenance/Lawn	$________	$________
Snow Removal	$________	$________
Exterminator	$________	$________
Home Repairs/Maintenance	$________	$________
Home Renos/Upgrades	$________	$________
Housecleaning	$________	$________
Miscellaneous Household	$________	$________
Total Home Expenses	**$**________	**$**________
Food		
Groceries	$________	$________
Dining Out	$________	$________
Total Food Expenses	**$**________	**$**________
Clothing/Footware Expenses		
Clothing/Footwear Purchases	$________	$________
Laundry/Dry Cleaning	$________	$________
Total Clothing/Footware Expenses	**$**________	**$**________
Entertainment/Recreation		
Entertainment (excl. dining out)	$________	$________
CDs/DVDs	$________	$________
Hobbies	$________	$________
Movies and Theater	$________	$________
Vacations/Travel	$________	$________
Classes/Lessons	$________	$________
Total Entertainment Expenses	**$**________	**$**________
Medical (after or not covered by insurance; excludes children)		
Physicians	$________	$________
Dental/Orthodontist	$________	$________
Optometry/Glasses/Contacts	$________	$________
Prescriptions	$________	$________
Total Medical Expenses	**$**________	**$**________
Insurance		
Life Insurance	$________	$________
Health	$________	$________
Disability	$________	$________
Long-Term Care	$________	$________
Home	$________	$________
Auto	$________	$________
Other (Umbrella, Boat, etc.)	$________	$________
Total Insurance Expenses	**$**________	**$**________

	Monthly Expenses	Annual Expenses
Transportation		
Auto Payment	$________	$________
Fuel	$________	$________
Repairs/Maintenance	$________	$________
License (driver & vehicle)	$________	$________
Parking	$________	$________
Taxis & Public Transit	$________	$________
Total Transportation Expenses	**$**________	**$**________
Miscellaneous		
Postage	$________	$________
Gifts/Holiday Expenses	$________	$________
Vitamins/OTC Meds	$________	$________
Toiletries	$________	$________
Beauty Salon/Hair/Nails	$________	$________
Pet Care (food, vet, etc.)	$________	$________
Books/Newspapers/Magazines	$________	$________
Donations	$________	$________
Memberships/Clubs	$________	$________
Miscellaneous	$________	$________
Total Miscellaneous Expenses	**$**________	**$**________
Other Payments		
Quarterly Taxes	$________	$________
Child Support Payments	$________	$________
Spousal Support Payments	$________	$________
Eldercare Expenses	$________	$________
Professional Fees	$________	$________
(accounting, financial planning, legal, mediation, etc.)		
Credit Card Fees	$________	$________
Service Fees (banks, etc.)	$________	$________
Total Other Expenses	**$**________	**$**________
Total Expenses (Excl. Children)	**$**________	**$**________
Child-Related Expenses		
Education/Tuition	$________	$________
School Lunches	$________	$________
Counselor	$________	$________
Sports/Camps/Lessons	$________	$________
Hobbies, Field Trips, etc.	$________	$________
Toys/Games	$________	$________
Boy-Scout/Girl-Guide Dues	$________	$________
Clothing	$________	$________
Medical	$________	$________
Dental/Orthodontics*	$________	$________
Optometry/Glasses/Contacts*	$________	$________
Prescriptions*	$________	$________
Allowances	$________	$________
Miscellaneous/Haircuts	$________	$________
Total Child-Related Expenses	**$**________	**$**________

** Not Covered by Insurance*

Total Expenses (Incl. Children)	**$**________	**$**________

Make two copies of this Expense Worksheet: one for "Pre-Divorce" and one for "Post-Divorce" expenses.

Negotiating Your Future

When you're negotiating your divorce settlement, preparation – including a thorough understanding of the situation, as well as assistance from professionals to ensure your interests are being protected – is the key to success. Here are a few questions you need to be able to answer before sitting down to negotiate.

By Henry S. Gornbein, Family Lawyer and Dr. Fadi Baradihi, Financial Expert

During the course of your marriage, you accumulated both assets and liabilities. Although there are regional differences when it comes to who gets what, basically, everything purchased, received, or saved during your marriage must be divided when you divorce. So now you're about to sit down and negotiate a financial settlement with your ex – but are you truly ready to do so?

As with any negotiation, preparation – including a thorough understanding of the situation, as well as assistance from professionals to ensure your interests are being protected – is the key to success. Here are a few questions you need to be able to answer before sitting down to negotiate.

Do you know what your marital assets are?

You can't divide the marital assets fairly if you don't know what's there. The discovery process, which can be informal or formal, is important in every divorce. The informal way is to exchange lists of your assets and debts in an affidavit form. This method should only be used if you are sure that you know everything that exists in your estate; if you're not sure, then a more formal means of discovery should be utilized. One such method is called "interrogatories," in which each lawyer has their client list, under oath, information about assets, liabilities, and income. This process provides everyone involved with a complete economic picture before starting negotiations. In some cases where more Discovery is needed, depositions are taken. Depositions are statements under oath with a court reporter present.

What if there's a business or professional practice involved?

A business or professional practice tends to complicate a divorce. More often than not, the value of the business becomes a focal point of contention. Couples need to seriously consider getting a professional and objective valuation of the business. The costs of a professional valuation are usually steep, but you can't divide something fairly if you don't know its true worth.

Then comes the question of what to do with the business. There are a few options, such as:

- One spouse keeps the business and gives the other a reciprocal dollar value using other assets.
- Sell the business and split the proceeds.
- Keep ownership in the business at 50/50.

In a business-owner situation, the business is usually most or all of their net worth, so there aren't enough other assets to compensate the other spouse. Even if selling the business is an option (it usually isn't), finding a buyer to pay the right price within an acceptable time frame is practically impossible. Most divorcing couples don't want to maintain a relationship – not even a business relationship – after the divorce. So what do you do? The only real options are a property settlement note (one spouse buys the other's share in a series of installment payments at a market-interest rate) or a spousal-support arrangement to compensate for the difference.

What about a budget?

It is critical to determine the incomes and expenses of the parties and to try to estimate what the future expenses will be after the divorce is final. If there are children, one spouse will probably pay child support to the other, and in many marriages, one spouse will also pay spousal support ("alimony"). It is important to determine both income levels and future needs before you start negotiations. A financial professional – such as a Certified Divorce Financial Analyst® (CDFA®) – can play a critical role in determining both a budget and cash-flow needs. A financial professional can also help to plan a course of action for the future by preparing different scenarios utilizing assumptions based upon needs and projections with different income levels.

What about pensions?

In many divorces, the most valuable assets are future benefits such as pensions. These must all be determined and considered before starting to think about a settlement. In most cases, the marital portion of these benefits – in other words, the portion of the pension or other deferred benefits that have been acquired during the marriage – are subject to division as part of the divorce settlement. A good lawyer and experienced divorce financial specialist will help you consider these benefits as part of the overall settlement plan, making sure your future needs will be met.

What about personal property?

Personal property is important, but don't spend thousands of dollars fighting over property with more sentimental than real value. Items such as collectables, favorite home furnishings (from chairs to rugs to pots and pans), hobby equipment, and other personal property must not become the focus of your negotiations. A good lawyer and/or financial advisor can help you gain perspective on these items and focus on the big picture when you're getting ready to negotiate a settlement. Remember that an expensive television or computer has almost no value a few years after you made that big-ticket purchase. The courts don't look at replacement value but the actual value

Personal property is important, but don't spend thousands of dollars fighting over property with more sentimental than real value.

of the item, which, in the case of used furniture, is often garage-sale prices.

Are you emotionally attached to your home?

Over the years, we have seen people who were determined to stay in the marital home no matter what. In some cases, that can be a big mistake. First of all, it may be too expensive to maintain. In some situations, it's better to sell the home and find another one that's smaller and less expensive to pay for and maintain. As you move ahead and rebuild your life, it may be better to start fresh in another home. Aside from the financial considerations, there may be too many memories attached to the marital home to let you move forward emotionally as long as you're still living there.

Assuming that your home is not currently "underwater" (meaning you owe more on the mortgage that your home is currently worth), there are several ways to handle a marital home:

- **It can be sold immediately.**
- **One spouse can buy the other out** by refinancing the home or by trading the home for other property.
- **Both parties can hold it jointly for a number of years** – for instance, until the parent who has custody of the children remarries, or the children reach a certain age – after which the home is sold and the proceeds divided in some fashion. In many cases, the party who remains in the home pays the mortgage and taxes and gets credit for any reduction in principal on the mortgage from the date of the divorce until the date that the home is sold or one party buys the other out. Major repairs are often divided between the parties with the person who advances the money for repairs being repaid at the time of the closing on sale or buyout of the home. If the house is underwater, however, the most common strategy is for ex-spouses to retain joint ownership and continue to live in the house (often, he moves into the basement and she lives upstairs) until the market improves; in this case, the couple agrees to postpone final division of assets until after the house is sold.

How much of the "marital pie" should you realistically expect to keep?

Other common solutions include:

- **Renting the house to a third party** until the house can sell for more than the debt
- **One ex-spouse stays in the house and pays rent to the other** until the market improves
- **"Birdnesting".** The ex-spouses retain joint ownership of the home, they rent a small apartment nearby, and each one alternates living in the house with the kids and in the apartment on his/her own.
- **Agree to sell the home at a loss,** share the loss, and move on with their lives.

What do you want – and why?

You must have a game plan when you enter into settlement negotiations. Do you know what you want? Do you know what you need? Are you thinking about all options? Are you being realistic in your demands? It is standard negotiating practice to ask for more than you expect to receive – without going to extremes. Don't be a doormat, but don't be excessively greedy, either. Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs. So take the time to objectively determine your own needs – and those of your spouse – before starting to negotiate. We have found over the years that if your demands are reasonable and based more on needs than wants, then the chances for a quick, fair settlement are good. There must be give-and-take and wiggle-room in your settlement proposals; your lawyer and financial advisor can help you strategize and come up with different game plans and scenarios as you prepare for this negotiation.

The bottom line

You must be well-represented and advised in order to negotiate effectively. This includes knowing the "ingredients" of the marital pie, and also how much of that pie you can realistically expect to keep as you prepare to negotiate your settlement.

A team consisting of a lawyer and a financial professional – and perhaps a therapist if emotional issues are getting in your way – can help understand your needs, your rights, and your true "bottom line" before you sit down to negotiate with your spouse.

Divorce is one of the most difficult and stressful experiences you'll ever have. During this emotional time, it can be hard to think clearly or rationally, so make sure to enlist the help of professionals who can guide you when you've lost your way.

Remember, if both sides are somewhat unhappy with the outcome, then the negotiations went well.

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7 Ways a Single Parent Can Stay Financially Fit

Without proper planning, you're going to lose money, waste money, and have zero dollars left in savings. Follow these 7 tips to keep you – and your bank account – happy.

By Sheri Atwood

It goes without saying: being a parent is hard. Being a single parent is harder. It's a cliché by now that everything is expected of parents and especially single moms – we have to have it all and be it all. The problem is that having it all and being it all is not only stressful, it can also be absolutely financially draining. Estimates for raising a child are recorded at $245,340 from infancy to adulthood.

That number sounds just a little bit daunting, doesn't it? And then we add in the cost of a college education, and who knows what ridiculous number it ends up being. But here's a little secret I've learned as a single parent: raising a child on a budget (any budget) doesn't have to be scary. In fact, raising a child without planning on how to stay financially fit is the truly scary part.

Without proper planning, you're going to lose money, waste money, and have zero dollars left in savings. I've learned that one of the keys to being a responsible parent is being responsible with your finances. If you're a single parent, these seven tips will help keep you (and your bank account) happy – and give you plenty of time to relax and enjoy yourself.

1. Manage Child Support Properly

Whether you are receiving child support or paying it, be sure that this process is managed properly from beginning to end. If

Set up automatic transfers from your checking account to another account – a savings or retirement account, for instance – to make monthly savings even easier.

you are paying child support, make sure that you have a record of every payment. Otherwise, you could be facing late fees, or worse. If you're receiving child support, then make sure that you are also tracking payments. Many payors fall behind, and this is a source of income you are guaranteed. In short, make sure that you are tracking and monitoring any support.

2. Take Advantage of Tax-Break Incentives

If your income is under $75,000, you are eligible for a child tax credit – which you should absolutely be taking advantage of. If your children are in college and you're helping them to pay tuition, then you can also take advantage of higher-education tax credits. Let's not forget that if you are self-employed to any degree, then you should be meeting with a tax preparer to make sure you are properly tracking and recording your expenses to maximize your tax write-offs.

3. Shop Discount Sites for Regular Purchases

Now, this does not mean that you should scour discount sites for bargains on items you don't need. What I am recommending is to make a weekly list of items/groceries/etc. needed, and then use deal sites to lower the costs of the items that you need to buy. This cuts down on wasteful online shopping, but lets you pre-plan what you will need for the week – which gets you into another good habit of forward-thinking.

4. Monthly Savings

Again, another no-brainer. I know you've heard it. But this is one of the best, and easiest, ways to start being fiscally fit. The more you do it, the easier it gets. So start setting aside a weekly amount for savings. It can be $10; it can be $100. Whatever it is, start doing it the second you've finished reading this article! Set up automatic transfers from your checking account to another account – a savings or retirement account, for instance – to make monthly savings even easier.

5. Get Health Insurance

Probably an obvious one, but there are still millions of Americans without health insurance. Who knows what the future will hold, but right now, it is cheaper and more affordable than ever. However, younger parents still see not paying health premiums for themselves and their kids as a way to cut down on costs. This is true in the short run, but it almost always comes back to bite you, and you end up spending much more than if you had been paying all along. Go and sign up if you haven't already; see www.healthcare.gov for more information and important dates for enrollment under the Affordable Care Act.

6. Work Hard at Work

Whatever it is you're doing, do your best at it. In today's economy, there isn't much job security – and there hasn't been for a long time. The best way to ensure as much stability as possible is to always work your hardest. Don't slack. Keep hustling. I learned that lesson in the tech industry, and you need to learn it too.

There's no guarantee, but making yourself an invaluable employee is going to get you halfway to the goal. And be sure to keep learning new skills that are in demand in your line of work. In short: your work is never done.

7. Automate Your Bills

This one seems a little obvious, but you would be absolutely shocked at how much people waste on late payments. In total, average Americans are losing around $113 per year in fees. This is money that is completely wasted. Instead, you need to find ways to automate all your bills – car payment, credit cards, loans, child support, etc. If you automate all of them, then you will not be stuck paying unnecessary late fees.

These are some of the tips I found useful as a single parent. I recommend that on your way to financial fitness you continue to do these, but also think of your own ways to be savvier with your finances. In parenting, and in finances, a little goes a long way. ■

Sheri Atwood is the founder of SupportPay by Ittavi, an automated payment platform to help parents who live apart manage child support and share child expenses. A child of divorce and a single mother, she seeks to reduce the conflict children are exposed during and after divorce. www.supportpay.com

Divorce Settlements and Executive Compensation

An introduction to dividing stock options, restricted stock, or other executive compensation during divorce.

By Nancy Hetrick, Divorce Financial Analyst

If you or your spouse must decide how to separate stock options, restricted stock (RSU), or other executive compensation, it can be challenging at best. Several of these items provide income and can be difficult to value – or even understand! Let me walk you through a primer and try to remove some of the mystery.

Employee Stock Options

The most common type of non-wage compensation used to be stock options in shares of the employer company. Accounting rule changes have made them less common, but there are still plenty of plans out there. Occasionally, the options can even be for shares of a different, related company. There are two primary types of stock options: Incentive Stock Options (ISOs) and Non-Qualified Stock Options (NQs). Generally, you won't see ISOs anymore since recent tax changes have made them less advantageous for employers. The difference between the two is in tax treatment and transferability. Stock options give an employee the right – not the obligation – to

buy stock at a discount at some date in the future and are usually subject to some sort of vesting schedule. Where it gets tricky is if the options are partially vested at the time of divorce but can't be touched for four more years. Obviously, some of the intrinsic value belongs to the spouse, but how much? The calculations are ugly. Trust me: you need to bring in an expert to perform the calculations correctly.

Restricted Stock

Restricted stock is now the most commonly-used form of executive compensation. These are shares of company stock given to an employee as either compensation for past performance or an incentive for future performance. It's critical to get the actual grant documents to know which the case is since it makes a big difference when determining how many of the shares are marital property. They can be in two forms: either actual shares of stock (RSAs), or a right to acquire shares at vesting (RSUs). RSAs have less risk than RSUs, and they are usually worth something. Again, depending on award dates, vesting schedules, dates of marriage and separation, the marital portion can be quite complex to calculate, but it is critical that you have it done. This is a job for a financial expert familiar with executive compensation issues.

Employee Stock Purchase Plan

This is a benefit that allows the employee to buy company stock at some regular frequency, usually at a price that is discounted from the current market price. Purchased shares can be sold immediately, or they can be held for at least a year for more favorable tax treatment.

Deferred Compensation Plans

With this option, the employee can choose to defer some portion of current compensation until a future date. These deferrals may be salary, bonus, or even equity compensation. Sometimes the employer will also match these deferrals. They are totally discretionary, so any spousal maintenance should be based on total compensation before any deferrals. Any balances in the plan are likely marital property as well and should be analyzed carefully. Most plans are distributable at retirement, but some plans allow distributions during employment as well. These plans can also be either qualified, pre-tax contributions or non-qualified.

My spouse has executive compensation and has filed for divorce. Now what?

Do yourself a favor and bring in a financial expert as early as possible, preferably before the discovery phase. A Certified Divorce Financial Analyst® (CDFA™) should be able to provide you with a list of exactly what documents will be necessary to properly value the assets and determine marital property vs. separate property. This will prevent any last minute scrambling if you end up at trial. Most CDFA™ professionals are qualified to do this, but not all. Be sure to find one who is well-versed in executive compensation.

It will also help if the financial expert is available for any depositions so that he or she can be qualified as an expert early and preview for the other party the quality of financial information that you're having prepared. Sometimes, this is just what it takes to encourage a settlement!

The financial expert can also help ensure that the final Settlement Agreement is written to properly reflect the way the compensation will be handled. Executive compensation accounts are not usually eligible to be given to a non-employee spouse at the time of divorce, so the employee spouse must have very specific instructions on what must happen to specific shares, options, and grants upon vesting that takes into account the taxation responsibilities, etc.

Executive compensation can be very complicated, and if you take it on yourself, you're exposing yourself to a lot of risk. These assets are often substantial pieces of the marital pie and it is critical that they are valued correctly so that you can negotiate the best settlement.

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By Aviva Pinto
Divorce Financial Analyst

Divorcing After 50?
Make Finances Your Top Priority!

Divorce is a reality for a growing number of aging couples, a phenomenon commonly referred to as "gray divorce." According to a 2013 study at Bowling Green State University, the divorce rate among adults ages 50 and older doubled between 1990 and 2010. Now, one in four Americans getting divorced is 50 or older.

The study also found that the divorce rate is 2.5 times higher for those in remarriages compared to those in first marriages. The Baby Boomers (those born between 1946 and 1964) were the first to divorce and remarry while they were young, and may experience even more divorce as they age.

"Gray" Divorce Can Involve Significant Assets

Divorces among couples in this age group may have significant assets at stake. At the same time, it is not unusual for one spouse to have a lack of in-depth knowledge about the family's finances. In those circumstances, the non-moneyed spouse may not be aware of what a fair settlement should be.

Whether or not you handled financial decisions during marriage, it's critical to do whatever it takes to put your emotions on hold when facing divorce. You'll need to focus on your future and set financial goals, as these decisions will likely affect the rest of your life. Unfortunately, there is no "do-over" in divorce and you will need to focus on the money during this painful process.

Even those with little or no financial experience can become financially savvy by asking the right questions and seeking help from professionals such as lawyers or financial advisors who specialize in divorce. Consider working with a financial professional specializing in divorce issues; they can act as an advisor to you and your divorce lawyer, or as a financial neutral helping both you and your spouse find an equitable settlement.

Financial mistakes related to divorce settlements are often rooted in not realizing the consequences of a decision that seemed to make sense at the time. These mistakes can happen when decisions are made emotionally, not taking into account the ramifications from a financial standpoint.

As an example, you might be tempted by an offer to keep your family home. You need to keep in mind that the real value of that home after the mortgage balance could be far less than its assessed value. A home with a market value of $3 million but with a mortgage of $2 million is really only worth $1 million to you. In addition, if you keep the home, you will need to consider whether you can afford to maintain it over time, factoring in the mortgage payments, taxes, and other carrying costs.

If you have decided to find a new place to live, you need to consider whether your income and/or settlement will be enough to maintain your desired lifestyle in that new location.

3 Financial Mistakes to Avoid Before and During Divorce

In addition to the example above, the following are three financial mistakes to avoid if you are contemplating or going through a divorce.

1. **Underestimating your living expenses.** Most people know how much they are paid, but often times don't know exactly where their money goes each month. For those who are not employed and/or are not involved in financial decisions for the household, this problem is often amplified. Knowing how much you need to maintain your lifestyle will be crucial to negotiating the terms of your divorce settlement. Be sure to consider such expenses as health insurance, which you might have had through your spouse's work and may need to purchase independently post-divorce. When detailing expenses into the future, it is important to also take inflation into account. What something costs today (for example, college education) could be much more expensive in the future.
2. **Retaining illiquid assets.** In most divorces, one spouse keeps the primary residence and the other might get a corresponding amount in cash, retirement accounts, or other assets. A similar process can be used when a spouse or couple owns a business or significant investment portfolio. Although the split might be equal on paper at the time of the divorce, one spouse can be left with an asset (a house or business) that could be difficult to sell. In addition, if a divorce settlement drags on for months or years, your financial situation can suffer until you are able to get access to those assets.
3. **Failure to consider taxes.** Be careful to consider the implications of taxes on your divorce settlement. Keep in mind that you will be taxed on any alimony that you receive.You should also be aware of the taxes and penalties assessed on distributions from retirement assets. If you receive a portion of a retirement account as part of a Qualified Domestic Relations Order (QDRO), you will be subject to a 20% withholding tax if you fail to roll that retirement money directly into an IRA or other retirement account. You must also have a QDRO in place to avoid an additional 10% penalty on distributions taken before age 59 ½. A QDRO details how you and your spouse will split qualified retirement accounts, such as 401(k) or pension accounts.You will also need to consider capital gains taxes on any appreciated assets. This could include selling a home that has appreciated significantly or an investment portfolio with stocks that were purchased at a much lower dollar amount than what they are worth today. Although liquid and easy to sell, highly appreciated investment assets may have significant future tax liabilities due to capital gains and have a much lower actual after-tax worth to you.

Information Is Power

Ideally, you should gather information about your finances before you or your spouse files for divorce. It can ultimately save you time and money because obtaining information or discovering hidden assets can sometimes become difficult later, resulting in potential added legal fees and stress.

You'll want current records of your assets detailing what you and your spouse each own, together and separately. Although information on children, property, and assets is only required once a divorce case is filed, you should start collecting it in advance – especially if your spouse is likely to take his or her documents when you separate.

1. **List your assets.** Providing an inventory of your assets and other financial information is critical – not only so that you know what you have, but also to help your lawyer in negotiating items such as alimony, child support, and division of property in your settlement. Items for the inventory include real assets such as your primary home; a secondary or vacation home; timeshares; rental property; furniture; electronics; vehicles such as cars, boats, motorcycles, and recreational vehicles; art; jewelry; and anything else of tangible value. You should also inventory investments and liquid assets such as bank accounts and cash; retirement, pension, and investment accounts; and employee benefits or stock options. Your lawyer also will need a list of and details on all insurance policies – including those for life, health, home, and vehicles – and umbrella policies. Other assets that sometimes are overlooked include frequent flyer miles, vacation pay, pensions or deferred compensation from a previous job, contents of safety deposit boxes, and collectibles or valuable items related to hobbies such as coins, books, or

antiques. It is best practice to also have appraisals for valuables such as art, jewelry, and collectibles. You should also list for your lawyer any non-marital assets, or assets acquired or inherited before your marriage, that will not be included in a divorce settlement.

2. **Gather legal and tax documents.** Make sure you have all legal estate-planning documents, including wills, financial powers of lawyer, healthcare powers of lawyer, living wills, and trusts. You will also need income tax returns for the previous five years along with all payroll statements and pay stubs. If you and your spouse own a business, you will need to gather tax returns for the business, accounting statements showing profit/loss and balances, any partnership agreements, and business credit card statements and records.
3. **Identify your liabilities and expenses.** Your lawyer will need information on your liabilities and living expenses in order to document your current standard of living and help you determine what it will be after your divorce. Your liabilities include what you owe in mortgages, lines of credit, credit cards, and any tax liabilities you might have, all of which will be taken into account when negotiating your settlement.

You will also need to detail all of your expenses and cash needs, including monthly mortgage or lease payments for your current or future home; utilities; insurance premiums for life, health, auto, home, or any other policies; current or future tuition; car payments; gas; car maintenance; food; clothes; home maintenance; memberships; vacations; dining out; entertainment; and lawyer fees. Ultimately, these expenses should include anything you currently pay and anything you expect to have to pay in the future. Credit card and bank account statements are good resources to use to determine your historical recurring and occasional expenses.

Keep in mind that the income and assets that supported a single household will now be split to support the lifestyle for two households. When marriages end, living costs easily can double, as you will now need two homes plus the utilities, taxes, and maintenance attributable to each. By detailing your assets, liabilities, and expenses, and analyzing your spending habits, you and your professional advisors can craft the best possible settlement and help you set up a post-divorce financial plan to help ensure a secure future.

Determining Where to File

In most situations, you will file for a divorce in the state in which you and/or your spouse live. If you and your spouse own property in different states or you live apart, you might be able to select the state in which to file. In those situations, you and your lawyer should evaluate each state's divorce laws to determine the best choice. Among the items to consider are the length of time it will take to grant a divorce, the age of majority used in determining how long a parent is required to pay child support (for some states it is 18 and others it is 21), and filing and procedural rules, which can vary significantly.

Some states have requirements that limit options even if a couple has multiple homes or live in separate states. For example, some states require that child custody be determined by a court in the state in which the children live; other states require that decisions about property must be decided by a court in the state where the property is located. Divorce laws also vary concerning other matters such as how prenuptial agreements are handled and whether alimony is allowed.

If you do have a choice on where to file for divorce, it's important to consult your lawyer – and possibly a financial advisor – to ensure you make the best decision for your unique situation.

Identifying Your Priorities

Once you have gathered all of the information that your lawyer will need, you can start to consider the bigger picture questions. Initially, many people simply focus on the settlement itself and how much it should or could be. Instead, a lifestyle analysis is needed to identify the priorities that need to be covered.

Questions to consider as a part of this lifestyle analysis include:

- What type of post-divorce lifestyle do you want and is it realistic based on your assets and likely settlement?
- How much income will you need for the lifestyle you desire?
- Where will you live?
- If you haven't worked outside the home for many years, will you go back to work? If so, will you need to retrain first? How long will that take, and how much are you likely to earn when you re-enter the workforce? If you've never worked outside the home, it may be unrealistic to assume you'll be able to get a job – especially if retirement is just a few short years away.
- When will you want to retire or need to start tapping your savings?
- Will you want or need to leave money to your children or grandchildren? Will you want to donate to charitable or other organizations?

Your analysis should consider your current assets, both liquid and those that can't be sold until later, along with current and future expenses. Examples of future expenses could be your next home, college tuition, weddings for your children, vehicles, and healthcare. You'll also want to estimate your eventual Social Security benefits, potential inheritances, taxes, and inflation. All of this information can help you determine how much you'll need to save, how much risk you can afford to take with your investments, and how much you can spend on a monthly and annual basis.

A lifestyle analysis will consider both wants and needs, and how they fit into the life and lifestyle you desire. For example, you might choose to work and save over a longer period, or invest more aggressively, so that you might be able to afford to travel or spend on other "wants" in the long term; or you might choose to save less now, or select safer, lower-risk investments, and live a more frugal lifestyle later. These are decisions that have the potential to affect you, and possibly your children, for the rest of your life, and they require careful thought and deliberation.

By working with a financial advisor throughout divorce, you'll have a better understanding of your current and future financial status. An advisor can help you pursue your plan, make adjustments as needed, maintain financial independence, and retire comfortably.

The Right Divorce Settlement

With complete information, your lawyer should work to get an equitable settlement that meets your needs. Depending on the state, an equitable settlement does not necessarily mean equal amounts for both spouses. Your lawyer may have to negotiate aggressively to ensure your settlement fairly reflects the best opportunity for you to maintain your lifestyle.

This includes securing a settlement that can generate the income you will need. It also means being careful not to accept a settlement that might lead to additional expenses that could be a drag on your finances and your future. For example, if your settlement includes highly appreciated stocks that will cause a large tax bill upon sale, or includes a home where the carrying costs are not reasonable for your post-divorce income, this could be detrimental to your future financial well-being. If possible, try to get payments upfront.

For some, post-divorce may be the first time they have managed their own money. An advisor can help execute a post-divorce financial plan and make adjustments as new circumstances and changes in assumptions require. In some cases, you may need to cut back on discretionary spending for entertainment or vacations, or move to a smaller home. Working with a financial advisor who will help you define and set financial goals will give you the confidence you need to manage money and build a comfortable future for yourself in your new life. ■

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Securing Your Financial Life After Divorce

Here are five steps to help to secure your financial future. If you're experiencing gray divorce, pay particular attention to securing retirement assets.

1. **Do not overlook financial and estate documents.** It's critical to make sure you have updated beneficiaries on insurance policies, wills, IRAs, retirement accounts, and similar documents after a divorce settlement. Failure to make changes can result in an ex-spouse inheriting assets that you intended to go to children, a new spouse, or another designated heir. It is especially important to have a Qualified Domestic Relations Order (QDRO) in place. A QDRO will detail how you and your spouse will split qualified retirement accounts such as 401(k) or pension accounts. QDROs should be filed before the divorce is officially finalized because it will need to be approved by the retirement plan sponsor.
2. **Protect your divorce settlement with insurance.** Provisions in a divorce settlement such as child support, alimony, and college tuition are dependent on the ex-spouse's ability to continue paying. You can stipulate that your ex-spouse is required to carry disability and life insurance as part of your settlement, to guarantee payment will continue in the event your spouse dies or becomes disabled. Another option is to be designated as the beneficiary on your ex-spouse's retirement plan.
3. **Don't forget about inflation.** Inflation can have dramatic long-term effects on a settlement. For example, educational expenses have been increasing at a rate of 6% – so if you have a child who will be attending college, what costs $40,000 today will cost $47,640 in just four years. The U.S. inflation rate has fluctuated between 0% and 5.6% over the last ten years, so ask your financial advisor what rate(s) you should use for your projected expenses, and be sure to work inflation into your settlement negotiations.
4. **Remember that you could be entitled to Social Security.** If a couple was married for 10 years or longer prior to divorce, a non-working or lower-earning spouse is entitled to a portion of his or her spouse's social security benefits. These benefits do not impact the worker spouse's Social Security payments.
5. **Plan for the long term.** Planning for your divorce settlement should include a post-divorce financial plan that considers your long-term financial needs through retirement and beyond – especially when retirement is only a decade or so away. Transitioning from one household to two will add expenses, while the total income supporting divorcing spouses may remain unchanged. You will need a realistic estimate of your financial resources to determine whether they match your long-term needs and expectations. After you and your spouse are divorced, it is important for you to embrace the financial plan that helped to shape your settlement.

Even those with little or no financial experience can become financially savvy by asking the right questions and seeking help from professionals who specialize in divorce.

Financial Fraud & Divorce

There are warning signs that your spouse may have committed financial fraud in your marriage; the greater the number of red flags, the more likely that there is something fishy about the family's finances.

By Peggy L. Tracy, Certified Fraud Examiner

Divorce can create feelings of sadness, anger, and betrayal – especially if one spouse had an affair, or the divorce request came "out of the blue." Those feelings can lead to an intense mistrust of your spouse, which may make you believe that your spouse is hiding assets or engaging in other financial misbehavior. Before we start to discuss fraud and divorce, you need to know that serious fraud only occurs in a very small number of cases. So if your spouse is a salaried employee, and you've been living a normal, middle-class life for the last 20 years, it is very unlikely that there's a hidden offshore account full of cash waiting to be discovered. Now, let's talk about how and why fraud could occur in a divorce.

Hidden or missing assets and misrepresentation of family income are two common areas of money manipulation that, if left undiscovered, can lead to a disproportionate share of the assets going to one spouse. A divorcing spouse may convince otherwise honest relatives and friends to assist with concealing marital assets by telling them that their ex is racking up debts or emptying bank accounts. Concealment is the cornerstone of fraud.

During divorce, forensic (or investigative) accounting professionals can trace the paper-trail of funds through the various accounts of the marriage, determine the actual income of the family, verify claims of "co-mingling" marital and separate assets, or determine the validity of a potential claim for dissipation of marital assets (see "Dissipation Issues" for more on this topic).

A financial expert will review general records, including the couple's tax returns, bank statements, credit-card statements, business ledgers, appraisals of properties owned, and retirement accounts. The more money a divorcing person has, the more places it can be squirreled away out of sight. Employees of companies may have deferred compensation plans, stock options, bonuses, expense accounts, or other fringe benefits that they "forget" to declare. Business owners have ample opportunities to hide both income and assets from the lawyer's and spouse's eyes – unless someone has the financial skills to comb through the records and make a professional judgment about the authenticity of the books, records, and tax returns.

For families that have built up a sizable nest egg, the hiding places can become more numerous – and they also might intentionally become more complicated. Shell corporations, unfunded trusts, life insurance vehicles, unknown safe deposit boxes, and hidden brokerage/online accounts are among just a few of the hiding places that can be uncovered through good financial detective work. Schemes vary depending on perceived opportunity and motive, but the ultimate goal is to defraud the other spouse of their entitlement.

Red Flags

Evaluating changes in secrecy, lifestyle, and income can lead to important circumstantial clues that may lead one spouse to believe that fraud may be taking place. The most difficult element to prove in fraud cases – fraudulent intent – is usually proved circumstantially. It can be that "aha!" moment when faced with evidence that cannot be ignored any longer. Typical red flags include items such as:

- Change in the level of confidentiality between spouses.
- Mail being rerouted to an office or new mail being received.
- Unexplained changes in habitual behavior.
- Pattern changes due to addictions.
- Spending more time on the computer, closing the screen when the spouse walks in.
- Getting caught in lying or deceptive behavior.
- Concealing details of transactions from the spouse.
- Unusual and repeated cash withdrawals from bank accounts.
- Loaning or giving money to family and friends without spouse's knowledge or consent.

The greater the number of red flags, the more likely that there is something fishy about the family's finances. The longer a spouse has access to perpetrating a fraud, the easier it is to get away with it; the more time that passes, the more difficult it can be to access certain records or trace funds.

The Fraud Triangle

During the 1940s at Indiana University, Dr. Donald Cressey created the "Fraud Triangle" hypothesis to describe a new type of criminal: the white-collar fraudster. Similar to the idea of a three-legged stool (which cannot stand without all three legs), Dr. Cressey theorized that there are three elements that must be present for a person with no criminal history to commit fraud:

1. **Perceived Opportunity.** The person believes he/she can commit the indiscretion without being caught.
2. **Pressure.** This is the motive, usually of a social or financial nature. This is a problem the perpetrator believes he/she cannot share with anyone.
3. **Rationalization.** This takes place before the indiscretion. The rationalization is necessary so the individual can maintain his/her self-concept as an honest person caught in a bad set of circumstances.

> **Dissipation occurs when one spouse wastes property or money without the knowledge or consent of the other.**

Trusted persons can become trust violators at any point during the marriage. Some start lying and cheating soon after the wedding, others don't start until decades into the marriage, and others never go down this road. However, when someone sees him/herself as having a problem that he/she can't share, then applies a rationalization to the thought of committing a dishonest act to secretly resolve the issue, he/she is on the path to immoral or illegal behavior.

Dissipation Issues

A type of fraud specific to divorce is dissipation. Dissipation occurs when one spouse, essentially, wastes property or money without the knowledge or consent of the other spouse. There are many legal definitions of what constitutes dissipation, but they all involve minimizing marital assets by hiding, depleting, or diverting them. Some examples include:

- Money spent on extramarital relationships (hotels, trips, gifts, etc.).
- Gambling losses.
- Transferring or "loaning" cash or property to others.
- Selling expensive assets for much less than they're worth.
- Spending down business cash account.
- Excessive spending, including hobbies.
- Residence falling into foreclosure
- Ruining personal items.
- Work tools left out to rust.
- Destroying or failing to maintain marital property.

If there has been an intentional dissipation of marital assets, the innocent spouse may be entitled to a larger share of the remaining marital property; this is something to discuss with an experienced lawyer.

Other Fraud Issues

Aside from dissipation, other types of fraud can be discovered during divorce by investigating the family finances. There are cases of forgeries and questionable documents, tax fraud, loan fraud, and insurance fraud – but the majority of divorce fraud is centered within the framework of misappropriation of assets. Before launching an investigation, ask yourself whether there has been transparency and truthfulness about finances during your marriage and divorce. Did both of you take an active role in managing the money and taxes together, or did you allow your spouse to handle the finances during your marriage?

One of the easiest ways to prevent fraud in a marriage is to treat finances like businesses do: using a checks-and-balances system where both spouses see, understand, and review the finances. Holding family members accountable for missing assets eliminates the perceived opportunity and takes away the ability to commit fraud. Although this advice may come too late for you, deterrence and vigilance is the best way to stop fraud from starting in the first place.

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