

FINANCIAL DIVORCE GUIDE



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At Hemmer | Barr LLP, our attorneys are highly effective and skilled litigators and negotiators. We pride ourselves on our solid case preparation and ability to keep clients informed about what results can be expected. Our team works tirelessly to ensure your needs are represented in the best possible manner – both in and outside the courtroom. With the skills that are necessary to successfully resolve your case and protect your rights, we can help you achieve an outcome that is in your best interest.

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Camille H. Hemmer, Jill L. Barr, and Jennifer Hemmer are highly recognized attorneys who are respected by both judges and other attorneys in the Sacramento area. They have received numerous awards and recognition for their work in family law which include: AAML, Best Lawyers in America®, Martindale-Hubbell AV® rating, and Super Lawyer®.

Replace Confusion with Comfort & Strength

Our team consists of dedicated advocates who also provide the attention and care you deserve during your divorce. As you go through the legal process, you may find it to be both stressful and confusing; our goal is to help you develop a sense of strength and transition smoothly into your new life. We take a practical and caring approach to all family law cases, staying mindful of the stress you may experience due to conflict – particularly when children are involved.

Compassionate Guidance Based on Our Personal Experiences with Divorce

All of our family lawyers have been touched personally by divorce. Regardless of the issues you are facing, we make sure to walk you through the process, which includes informing you about the best course of action. Our personal experiences with divorce shape how we handle cases; providing a business-like approach coupled with an awareness of the emotions you are likely facing.



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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Top 10 Financial Considerations in Divorce

As you transition from one chapter of your life to the next, here are the key financial issues you must address.

By Sharon Klein, Family Wealth Strategist

The dissolution of marriage is one of the most stressful and difficult experiences you may face.

As you transition from one chapter of your life to the next, what follows is our pick of the top 10 financial considerations to address in divorce. For seamless and integrated advice, your financial advisory team should have the breadth and depth to provide a full spectrum of financial services and they should work collaboratively with your family law attorney and other advisors.

1 Have You Established Your Own Individual Banking Accounts for Your Everyday Financial Needs and Reviewed Your New Balance Sheet?

You likely will need to open accounts in

your individual name and develop a list of your revised assets and liabilities.

2 Do You Need Financing That Is Customized for Your Unique Situation?

Custom credit can provide you with a reliable source of funding for unforeseen expenses, real estate purchases, and business investments. You'll need an experienced professional to evaluate your options and provide lending based on your unique assets – including specialty or illiquid holdings. Solutions to consider include:

- Bridge financing to help with a significant purchase.
- Marketable securities-backed lines of credit, including restricted and

concentrated stock.

- Specialized asset-backed loans secured by partnership interests, fine art, yachts, and aircraft.
- Residential and investment real estate financing, including lines of credit.

3 Have You Projected How Your Divorce Settlement Will Sustain Your Lifestyle?

An experienced financial advisory team should offer a comprehensive financial plan analyzing the changes in your cash flows from assets received, alimony, changes in expenses, and other cash flows expected after the dissolution of marriage. By providing a comprehensive overview of the following factors, an

advisor can help you balance your projected expenses while maintaining the lifestyle you seek:

- Cash flow planning for income and expenses.
- Alimony/child support.
- Asset sustainability study and portfolio risk analysis.
- Tax situation review and appropriate planning.

4 Have You Reviewed Your Estate Planning Documents to Make Necessary Changes?

An experienced financial advisory team can help you review all your important estate planning documents and be confident you are providing for your chosen heirs, updating your beneficiary designations, and naming new designees for your healthcare and power of attorney documents. Documents to consider include:

- Will and trusts.
- Power of attorney and healthcare directive.
- Retirement accounts and plans.
- Jointly named real estate and financial accounts.
- Authorizations to access digital accounts, including financial accounts, email accounts, social media accounts, etc.

5 Do You Have a Fiduciary You Can Trust to Oversee Your Trusts and Assets?

When trusts are utilized to protect settlement payments, it is important to select a trustee who will be your fiduciary: a trustee whose first and foremost responsibility is to protect your best interests and those of your family.

6 Is There a Business Valuation Involved in Your Settlement Agreement?

The preparation of a business valuation is a lengthy and expensive process. Valuation reports can exceed 100 pages in length and can be very difficult for even seasoned professionals to understand.

For any business that has been appraised as part of the settlement

process, make sure your financial advisor can review the appraiser's valuation report and provide insights that may answer questions such as:

- Is the appraiser a qualified professional with experience and valuation credentials?
- Is the appraiser's financial analysis of the company thorough and explained?
- Are the methods used appropriate and the reasons for their selection discussed?
- Is the value conclusion reasonable, based on the factors presented in the report?

7 Do You Have the Tools to Set Your Short- and Long-Term Investment Strategies?

If you're receiving a settlement, you want to be certain that your short- and long-term needs are met through the creation of a customized investment portfolio. It will be important to have a dedicated financial advisory team that can tailor a portfolio based on your specific parameters, including liquidity and spending needs, time horizon, risk tolerance, cost sensitivity, tax efficiency, and other factors.

8 Do You Need to Update Your Insurance Coverage?

In divorce situations, insurance review is very important to be certain you have the appropriate coverage, that you or your ex-spouse have named the correct beneficiaries, and that the premiums are being paid.

Health, life, disability, property and casualty, and long-term care insurance should all be reviewed to identify which actions might be recommended, including revising policy ownership and beneficiary designations and understanding who has responsibility for premium payments.

9 Are Your Children's College Expenses Covered?

Your advisory team can establish projections and analytics helpful to the settlement process by delineating the future costs of college based on the ages

Have You Projected How Your Divorce Settlement Will Sustain Your Lifestyle?

of the children and the potential colleges under consideration. This data can be coupled with merit-based aid scholarship strategies and other financial aid analytics. Often, trusts can be designed and created specifically (or in concert with other goals) to fund education.

10 Are You Aware of the Charitable Techniques Available to You?

Your advisor should review any existing private foundations and charitable trusts to be certain that they are still in line with your goals and wishes. Your advisor can also review potential charitable techniques that could be utilized to support philanthropy and minimize taxes in the settlement process. ■



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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 9](#) 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-doo/ski-doo, 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 pre-payment 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
- Lawn care, 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 and a Certified Divorce Financial Analyst® (CDFA®). She has been writing about divorce-related issues since 1996. www.DivorceMag.com

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 31](#) 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 harass 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. ■

Documenting Your Financial Situation

By Diana Shepherd, Divorce Financial Analyst

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.

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. www.DivorceMag.com

How to Prepare Financially for Divorce

How thoroughly you prepare can substantially impact your divorce process – and your bottom line.

By Charlotte Christian, Family Lawyer



Deciding to divorce is one of the biggest hurdles you will ever jump in your life. The next hurdle will be to compile your financial information for analysis during the divorce process itself. And preparing financially for divorce can be a hurdle of its own.

Like many people about to get divorced, just the thought of figuring out what to look for and where to start looking is probably causing you to feel anxious, overwhelmed, and scared. You may have heard horror stories about how difficult some divorces can be, taking far too long to complete and leaving the parties exhausted and financially devastated.

This doesn't have to be your fate – but much depends on the actions you take early on in your divorce.

Thorough Preparation Is Key

How thoroughly you prepare, before even hiring a lawyer, can substantially impact your divorce process, starting with dramatically minimizing your stress level. Doing your “homework” now means you won't be scrambling to locate missing information – or receiving an unpleasant surprise from your soon-to-be ex.

Think about your divorce as a mystery to solve; the more clues your lawyer has at the outset of your case, particularly about your finances, the better they'll be able to represent you and secure the best results. Some results may not appear to be money-related – child custody, for example – but most issues will affect your financial arrangement in some way.

Organizing your finances at the start will arm your lawyer to protect you. By systematically collecting the required information, you'll give your lawyer added direction about which documents and records the other side must still produce.

The good news is that financial information easily falls into broad categories, potentially making the discovery phase of your divorce much more manageable. Here are three areas to focus on as you begin your search.

1. Assets

- The marital home, including the deed.
- Other real estate interests and deeds.
- Ownership interest in vehicles, including cars, boats, planes, and farming equipment.
- Marital property inventory, with receipts, if available.

- Non-marital property, with receipts, if available.
- Household inventory.

2. Liabilities

- Debt records, including bankruptcy filings, liens, and foreclosure information.
- Credit cards (joint and separate).
- Mortgage and home equity lines of credit (HELOC).
- Any loans.
- Household bills.
- Lease payments.

3. Financial Documents

- Financial statements (joint and separate).
- Bank account statements (joint and separate).
- Stocks.
- At least 3 years of income tax returns with all schedules.
- Other investment details.
- Retirement/pensions/employee benefit plans.
- Most recent pay stubs.
- Life insurance policies, including those from employers.

Include anything else that may impact your financial picture. If you're unsure whether to include an item, offer it to your lawyer anyway. A divorce lawyer's expertise lies in their ability to think about how specific financial considerations apply to your situation, so you don't have to.

Prepare for Your Financial Divorce

Divorce is as much a process of breaking up a financial union as it is a romantic one. That means you need to protect your finances, similar to how you would protect your heart. Like other formidable challenges you have faced in your lifetime, you – and your bottom line – can recover with time and hard work. Be sure to prepare financially for divorce; you won't regret it. ■



Charlotte Christian, Esq., the founder of Alabama Family Law Group, knows what it means to have to pick up the pieces after a loss. No stranger to trauma, she is committed to helping clients overcome hardship to create a future filled with security, hope, and opportunity.

www.alabamafig.com

5 Tips for Protecting Your Credit Score From Your Ex

Your ex-spouse could affect your credit rating after divorce. Here's what you can do to protect your credit – and your financial future.

By Stacy Francis, Divorce Financial Analyst

I recently worked with Sandra, who split from her spouse several years ago. Her ex-husband agreed to pay off the couple's \$60,000 in credit-card debt, and they made the agreement part of their official divorce decree. Sandra thought that was the end of that.

Unfortunately, it wasn't.

Creditors hounded her because her ex missed payments, and on top of that, all the late payments trashed her credit. She was unable to even qualify for her own credit card since Sandra's ex was the primary credit card holder and she was only a secondary user on the credit account. Sandra never thought to ask if she would get credit for all the on-time payments she made when the two were married.

Sadly, Sandra's financial advisor forgot to mention that establishing your own credit – in your own name – is crucial. If your entire credit report is based on joint credit cards and bank accounts, your spouse's debt can follow you – even in the event of a divorce.

Luckily, Sandra decided that she no longer wanted to work with her ex-husband's advisor, and she called me. We worked together for years, and she finally established her own bank

accounts and credit cards. It was a long process, but well worth it for both Sandra's financial well-being and her overall peace of mind.

Protecting Your Credit Rating After Divorce

Here are the five key steps Sandra took to regain control of her financial future.

- 1. Contact the creditor.** We called the creditor and asked them to make a note in Sandra's file that she had split with her spouse. Next, we explained that Sandra wanted the account to be handled as agreed upon in her settlement.
- 2. Follow up.** After our telephone conversation, we followed up with a letter recapping the conversation and our instructions. We asked them to send us written confirmation that they took the actions we requested.
- 3. Make sure the bills are getting paid.** This is key. Divorce negotiations can take months to finalize, and all it takes is one late payment to hurt your credit. Sandra began making minimum payments on accounts that were her spouse's responsibility and spoke with her lawyer about getting compensation.

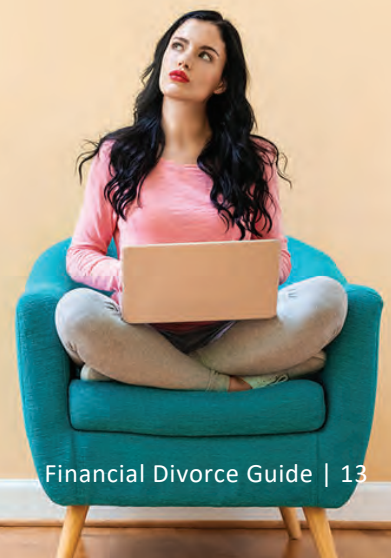
4. Request documentation. Once her spouse was making on-time payments, we asked the lender to send the loan statements and payment coupons to Sandra so that she could see if her ex was falling behind, and perhaps step in before her credit rating suffered.

5. Close the account. We also checked into having her ex close the credit card and roll over the balance to a new credit card in his name only. Sadly, this was not possible as his credit history was spotty, and he did not qualify for an unsecured credit card.

If you discover that your ex's bad financial habits are threatening your own credit score, consider taking these five steps yourself. ■



Stacy Francis (CFP®, CDFA®, CES™) has over 20 years of experience in the financial industry. She is the president and CEO of Francis Financial, Inc., a wealth management and divorce financial planning firm dedicated to providing ongoing comprehensive advice for high-achieving women and couples in transition. www.francisfinancial.com



Do You Need a Forensic CPA on Your Divorce Team?



Divorce Magazine’s co-founder, Diana Shepherd, interviews Certified Forensic CPA Rod Moe about how a forensic accountant can help the court decide how to equitably divide marital assets – particularly if there’s a business, significant retirement accounts, or stock portfolios to split.

Diana Shepherd: What is a “forensic” accountant?

Rod Moe: When the word “forensic” is attached to an expert, it means that their testimony is suitable before a court of law. A forensic expert is an advocate for the facts instead of taking a position based upon their client’s desired outcome. A forensic CPA should not be a hired gun; it is extremely important that we be credible and unbiased in the eyes of the court.

What skills does a forensic CPA have that other CPAs might not possess?

We understand the issues that a court needs to decide based upon the law. A forensic CPA has the ability to recognize what the determining facts are and how to present those facts to the court in a clear, understandable, objective manner. We’re there to help the court make a decision – not to confuse them with jargon or unnecessarily technical opinions.

When it comes to determining alimony and child support, couldn’t a lawyer just look at a tax return to discover a person’s income?

No. The question of income is really one of what cash the parties have on a monthly basis. On a tax return, there are certain deductions that don’t affect the income: for example, depletion allowance on oil well rights. And there are a number of items that are deductible expenses on the tax return that do not necessarily reduce the cash available to the parties.

If a business is one of the marital assets, why couldn't someone look at what other similar businesses are selling for to determine what the business is worth?

There isn't a one-size-fits-all business valuation method. Each business is different, and the information reported for that business on tax returns or financial statements may have no basis in the reality of income and cash flows of that business. You need a detailed review and understanding of the business in order to avoid either short-changing a client or overstating the business value causing the case not to settle.

The income a business provides to the owner is clearly shown on the business tax returns. Why can't an attorney use those figures to determine that party's business income?

For the same reason that you can't just accept a personal tax return. In the case of a business, there are many more areas for understating what the income of the business really is; paying personal expenses through the business reduces the income of the business, and if a business does not report all of its income, that also reduces its income. The attorney's job is to ensure that their client receives the needed financial information from an experienced forensic CPA.

If one spouse is hiding income to cheat the other out of spousal or child support, is a forensic CPA required to calculate the true income?

All transactions reported to the government appear on the tax return – but there are many account transactions that are not reported to the government and that would never appear on a tax return. For example, transferring money between accounts wouldn't be reported on a tax return. In the case of credit card transactions, there could be a recurring monthly payment that was not a business expense, but it was paid as a business expense. This ends up reducing the income of the business

owner, which reduces the alimony and child support they will have to pay.

Is it important for the forensic CPA to have experience in matrimonial matters, or can a CPA with experience in other areas do the job just as well?

The CPA must have experience in accounting, business valuation, tax preparation, and how to present that information to the court in a proper forensic manner. They need to be able to decide what issues need to be dealt with and what they need to do to document the facts. Our divorce-related experience allows us to apply the "sniff test" to our cases: if something does not "smell" right, we know that we need to investigate that area. Someone who lacks the proper qualifications trying to do work requiring an expert should know this: experience is what you get just after you need it.

When it comes to dividing retirement plans, isn't it pretty straightforward: you just give each party one-half of the retirement plan balances?

Not necessarily, because someone may have been contributing to their retirement plan before their marriage. Contributions made before their marriage would be considered non-marital; only the contributions after they married would be marital. Contributions made to a retirement plan after the date of filing for divorce would also be considered non-marital.

In all cases, you need to make a differentiation between the marital and the non-marital portions. The income of that retirement account would need to be allocated between the marital and non-marital portions from the date of the marriage to the date of filing.

We had a case where the husband had a significant premarital retirement account. He made significant borrowings and repayments to the plan. He contended that those loans were from his premarital portion, and any repayments were a return of the premarital money that he had borrowed. The trial

exhibit we prepared showed that the borrowings were from the premarital amount, however, all loan repayments were from marital funds, which resulted in a conversion of all nonmarital portions of the account to marital. This resulted in the wife receiving several hundred thousand dollars of additional retirement funds.

What's a key issue to watch for when dividing marital assets?

One particular issue is the value assigned to assets. For example, we had a divorce case where the wife was adamant that a small real estate lot was worth \$20,000, although she had not obtained an appraisal. Our client (the husband) said he had purchased it a number of years before for \$3,000. We suggested that the judge give the real estate lot to the wife – which significantly increased the balancing payment to our client while reducing the amount of assets that the wife obtained via equitable distribution.

What mistakes have you seen regarding commingling of assets in divorce cases?

During the marriage, the earnings of both spouses are considered to be marital assets. In many cases, one spouse has a pre-marital individual account (a non-marital asset), but then they deposit marital earnings into that account, which converts it from nonmarital to marital. Money is a "fungible" commodity: you cannot tell one dollar from another, and by commingling (mixing) the marital and the non-marital funds, the pre-marital funds lose their non-marital characteristics. ■



Rod Moe (CPA, CVA, ABV, Cr.FA, CFF) has 45 years of experience in tax and accounting and provides consulting services related to divorce

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Social Security Benefits & Divorce

If you had been married for at least 10 years before splitting up, you could be eligible to receive Social Security benefits based on your ex-spouse's work record. Here's how.

By Rob Clarfeld, Financial Advisor

Most people think that once a divorce settlement has been signed, the financial connection between spouses – other than those that are stipulated in the divorce agreement – has ended. While in many cases this is true, it's not necessarily the last time an ex will be able to derive financial benefit from a former union. Under certain circumstances, you may still be entitled to receive Social Security benefits after divorce based on your ex-spouse's work history.

This benefit is just like the one available to someone who's been widowed or is still married. In fact, it's possible that both you and your ex's current spouse – or other former spouses in the case of those with multiple marriages – could be eligible to receive spousal benefits simultaneously. The benefits due to any of the parties are unaffected by anyone else's claim.

If filed at Full Retirement Age, a divorced spouse is entitled to a benefit equal to 50% of his or her ex-spouse's full retirement amount. If your ex should die first, you might be eligible to receive the entire benefit based on the value of his/her's account at full retirement age.

Social Security won't notify your former spouse that you have applied for benefits based on their work record, and the benefits paid to you won't affect the amount your ex will receive.

Qualifying for Benefits Based on Your Ex-Spouse's Work History

In order to qualify for benefits based on your ex-spouse's work record, the marriage must have lasted for at least 10 years. You must also be at least 62 years old and currently unmarried. If you remarried after the divorce, you can still apply for benefits based on your first spouse's record, but only if your subsequent marriage ended in divorce, death, or annulment. Quite simply, you can't apply for benefits from your ex-spouse while currently married to someone else.

However, if you did remarry and that marriage also met the terms described above, you would have the choice of claiming benefits from either ex-spouse, depending on which benefit was worth more. It is important to keep in mind, though, that you can only claim spousal benefits for one marriage – no matter how many times you've been to the altar.

If your ex-spouse has remarried, the benefits you receive won't impact their new spouse's ability to receive benefits (assuming they are eligible to do so).

What If You Have Your Own Social Security Account?

Obviously, in today's economy, both marriage partners are likely to have careers and their own Social Security accounts. If that's the case and you are eligible for retirement benefits on your own as well as from your divorced spouse, the Social Security Administration will pay the retirement benefit based on your employment history first. If the benefits from your ex-spouse were bigger, your monthly check will be increased so that the combination of benefits equals what you are due in spousal benefits (50% of your ex's benefits).

Let's look at an example of how this works.

John is entitled to receive \$1,000 per month based on his work record, and his ex-wife, Sally, is entitled to receive \$3,000 per month based on her record. Assuming John is eligible to collect spousal benefits, the Social Security Administration will pay him the \$1,000

based on his own record plus half what Sally is entitled to ($\$3,000/2 = \$1,500$) for a total of \$2,500 ($\$1,000 + \$1,500 = \$2,500$). Sally will still receive the entire \$3,000 due to her.

Your Ex Doesn't Have to Be Receiving Benefits for You to Collect

Even more good news for divorced individuals is that if your ex-spouse is eligible for – but has not yet applied for – retirement benefits, you can still receive Social Security benefits based on your ex-spouse's work record if you have been divorced for at least two years.

You can only claim spousal benefits for one marriage – no matter how many times you've been to the altar.

However, if you can afford to, it may be best to reach Full Retirement Age (FRA) before making a claim. By filing before FRA, the amount of benefits you'll receive based on your ex's work record will be reduced by between 6.5% and 7.5% for each year before you hit that magic number. Furthermore, you will also be determined to have simultaneously filed for a reduced benefit on your own earnings record. Depending on how close to age 62 you file, that reduction over the course of your life could be significant.

One of the last things to keep in mind is that, although Social Security was launched at a time when the "ideal" household consisted of a working father, a stay-at-home mom, and a brood of kids, the regulations are gender-neutral. Therefore, they apply as much to ex-husbands as they do to ex-wives, and to married couples of every description. ■



Rob Clarfeld is founder of Clarfeld Financial Advisors, a leading wealth management firm with offices in Westchester, N.Y. and New York City that provides comprehensive financial and estate planning, sophisticated tax and compliance expertise, and investment management services. www.clarfeld.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®).

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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 CDFAs™ 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. ■



Nancy Hetrick (CDFA®, MAFF™, AWMA®) is the founder and CEO of Phoenix based Smarter Divorce Solutions, LLC and a financial advisor with Clarity Financial.

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What to do with the Family Home

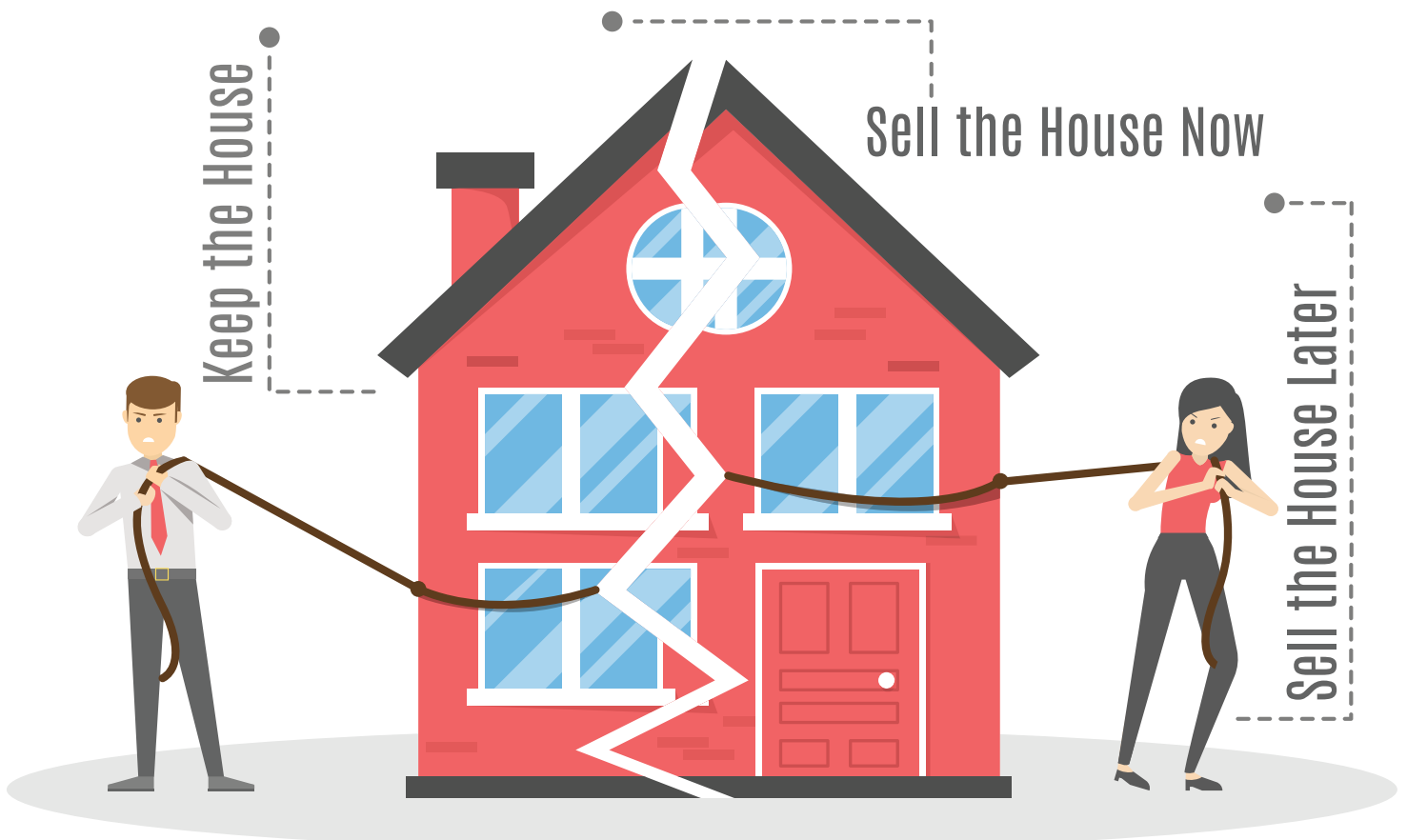
3 Options to Consider

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 which 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.

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.
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You Have Your Financial Settlement. Now What?

During and after divorce, an experienced financial planner can help to ensure that your financial settlement will work for you – now, and in the future.

By Rob Clarfeld, Financial Advisor

Arriving at a financial settlement during divorce can be incredibly stressful – even more so when you are the “non-moneyed” spouse. When you’re not accustomed to handling the family finances, even monthly budgeting and check writing may be a new experience. When the process is extended to include investments, taxes, and providing for your long-term financial security, moving forward financially can seem overwhelming.

Each family situation and divorce financial settlement is unique, so there are few clear roadmaps to guide you. Matrimonial settlements include a division of marital property and perhaps a period of maintenance (spousal support) and child support. The assets received from your settlement have



varying degrees of liquidity from cash and securities to retirement accounts, real estate, and other assets.

You probably need to address current one-off expenses as well as ongoing monthly living expenses. You will need to be responsible for income taxes, insurance matters, managing your investment portfolio, and planning for your eventual retirement. Being solely responsible for your financial destiny is more than just stressful – it can also be exhausting.

Can Investments from Your Divorce Financial Settlement Sustain You?

Following the financial settlement, your immediate concern will be providing for the ongoing cash flow you require to pay for your living expenses. Initially, you should set aside cash to cover about three months of expenses. This isn't your "emergency" fund; these are your living expenses while you set up your portfolio. When constructing a suitable asset allocation, you will need to establish a pool of liquidity, perhaps, a money market account for emergencies to balance the composition of your investment portfolio. The remainder of the assets should be invested for the longer term through risk assets of varying degrees.

You should consider working with a financial planner to assist with the construction of your asset allocation. I'll share a very common misconception: there is a temptation to invest completely in bonds as they provide the greatest immediate current yield – short-term cash flow.

A more prudent approach, after setting aside current living expenses and your emergency fund, is to begin methodically investing in a diversified portfolio of assets with an eye towards total return. A portfolio that combines a mix of equities and bonds, over time, will increase in value through a combination of interest payments, dividends,

and capital appreciation, and it will also keep up with inflation. It is important that you understand the principle of "drawdown": the amount of money you withdraw from your portfolio each year to meet expenses, and how it affects the portfolio's value over time.

Understand Your Tax Situation

Another area where you likely will benefit from professional advice is coming to terms with your tax situation. You will need to understand your after-tax income and how different types of accounts can have different tax implications. At the time of this writing, a new tax law has not been finalized, but you will likely need to make quarterly estimated tax payments.

Other Financial Considerations

As if investments and taxes weren't enough of a hassle, you will also need to address revising your estate documents, particularly your Will, along with other ancillary documents such as your Health Care Proxy and Power of Appointment. Next steps should include revisiting beneficiary designations on IRAs and life insurance policies. The list goes on; fortunately, there are many helpful online checklists.

Assuming control of your financial life can be an arduous process, which is why most people seek professional assistance, at least through the initial stages. ■



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“Consider working with a financial planner to assist with the construction of your asset allocation.”

Spousal Support (Alimony) Q&A

Wondering whether you may be entitled to receive or will be obligated to pay spousal support? While each state has its own rules governing alimony, here's a broad introduction to how it is calculated and paid.

By William L. Geary, Family Lawyer

First of all, the words “alimony,” “spousal maintenance,” and “spousal support” are interchangeable in most states (although some do make a distinction between maintenance and support). Many states changed the term from “alimony” to “spousal support” years ago, but the IRS and Federal Government continue to call these types of payments and obligations “alimony.”

Here are answers to some common questions regarding spousal support. Based upon the experience our firm has had in alimony cases, it's clear that this is a sensitive area for most people – especially someone who thinks that they may have to pay spousal support.

Bearing in mind that each state's statute will have its own unique considerations, here are frequently-asked questions and answers about how spousal support generally works in America.



There are other factors the Courts can consider, and what your Court will order may also depend upon which Judge is ruling on your case.

Are Spousal Support Payments Deductible for the Payor or the Recipient?

Under any spousal support Order issued after the Tax Cuts and Jobs Act took effect on January 1, 2019, the answer is “no.” Until then, spousal support was deductible to the payor (an incentive to be a bit more generous) and includable in the income of the recipient. Since the payor is usually in a higher tax bracket than the recipient, the amount gets taxed at a higher rate – more money goes to the IRS and less is left for each party.

Is There a Formula for Alimony?

The “formula” (which is a rule of thumb rather than written in stone at this point) for the amount and duration of alimony is something like:

1. Duration

Alimony is usually paid for one-third of the marriage, unless the marriage is “long term” – 20+ years – but the length could be longer or shorter based upon other factors, including but not limited to the health of the parties or the need for one to go back to school to complete a degree or certificate before re-entering the workforce. Some states still award permanent alimony for very long term marriages. Support is usually modifiable due to a change in circumstances to one or both parties, such as injury, disability, job loss, retirement, etc.

2. Amount

For long-term marriages, the Court may use “equalization on an after-tax basis” to set the amount. Here is a very simple example of how that could work:

- Wife makes 100k and pays 40k in taxes so nets 60k
- Husband makes 60k and pays 20k in taxes so nets 40k
- The difference between their net incomes is 20k so, in this instance, she would pay him 10k (the difference divided by 2) per year under an “equalization” situation.

However, even with the numbers above, the parties could agree that the wife will pay the husband 30k per year and that the support will be permanent (even if he remarries or cohabitates) and it is non-modifiable, etc.

So, as in anything else, there is the way the Court most probably will do things, but the Court will not prevent people from making an agreement that is nowhere near what the Court would do.

What Factors Does the Court Consider?

The Court usually considers factors such as the length of marriage as well as each party’s:

- Income.
- Tax obligations.
- Need for more education/training to get a (better-paid) job.
- Age.
- Health.
- Assets (marital and separate).
- Income from assets.

The Court will also take into account one spouse’s support of the other during the marriage while the other completed his/her education, or one spouse leaving their job to raise the children and run the household, or anything else provided in your state’s statutes regarding spousal support/alimony.

The Court will consider “gross” income, which would include non-taxable income (like money put into retirement), and it would also include income that was deducted for “depreciation purposes” in most cases. The Court takes the net income, adds back the money put into pre-tax retirement funds, and also adds back money deducted for depreciation to get the “gross” income to start dealing with – actual money in the pocket.

There are other factors the Courts can consider, and what your Court will order may also depend upon which Judge is ruling on your case.

Is There a Difference Between “Temporary” and “Final” Spousal Support Orders?

Temporary Orders are issued during the case or while the case is pending, and they last until the Court issues the Final Order. Regarding spousal support, these Temporary Orders may be much less than the Final Orders. Temporary Spousal Support Orders are usually intended to support a spouse while the case is pending to help him/her pay bills etc., but they may not resemble the Final Spousal Support Orders at all.

If you have questions concerning a spousal support issue in your state, whether they relate to an existing Order, a potential temporary Order, or a potential final Order in a case, consult with a knowledgeable family lawyer who is familiar with the judge and Court likely to be involved. ■



William Geary is a family lawyer who has been practicing since 1979. He is admitted to practice before the Supreme Court of the United States, and also is a practicing member of the Ohio bar. www.columbusfamilylawyer.com

Avoid These 10 QDRO Mistakes!

Making any one of these common mistakes can have drastic consequences on the distribution of benefits after a divorce.

By Kathryn Zeller, QDRO Specialist



In most cases, dividing a pension requires a Domestic Relations Order (DRO) or Qualified Domestic Relations Order (QDRO) that must be properly prepared, approved by the pension plan administrator, and issued as a court order. Sometimes doing this correctly is easier said than done, and any mistake in the process can have a life-altering financial impact on the divorcing parties.

In many divorces, the retirement plan is the couple's most significant marital asset, so it's important that your lawyer understand the terms and conditions of the plan. A (Q)DRO executed contemporaneously with a divorce judgment and required by the terms of the judgment becomes part of the property settlement.

Many divorcing clients defer to their lawyers, incorrectly assuming that they know all about the many federal and state laws that set the rules for dividing pensions. Pension law and QDROs are among the most complex and difficult parts of family law. Assuming your attorney is an expert in this could prove to be a mistake.

Most pensions are termed "qualified" under the Employee Retirement Income Security Act (ERISA), a federal law that establishes minimum

standards for private industry pension plans and provides for extensive rules on the federal income tax effects of transactions associated with employee benefit plans.

Unfortunately, many lawyers either don't know or don't take the time to learn all the information needed to prepare a QDRO that will be acceptable to the pension plan and fully protect the non-employee spouse's interests. They also don't fully explain to their clients all of their rights and options in collecting their share of the pension. Other lawyers don't follow up to make sure that pension plan officials receive and approve the final QDRO promptly after the divorce is final.

These QDRO missteps can have drastic consequences.

Top 10 QDRO Mistakes

According to the American Bar Association (Family Law Section), even experienced lawyers make the following common QDRO mistakes.

1 Misunderstanding the Type of Plan to Be Divided.

Pensions plans are of three basic types:

1. Defined Contribution (DC),
2. Defined Benefit (DB), and
3. Cash Balance (CB).

In a DC plan, the worker makes pre-tax contributions (or after-tax contributions in the case of Roth 401(k) plans) to an account in his/her name (such as a 401(k)), but there is no guarantee how much money will be in the account at retirement. In a DB plan (the old fashioned "company pension") there is no specific account maintained for a participant who works but an understanding that he/she will receive a monthly benefit upon retirement. CB plans are a hybrid with features from both DB and DC plans.

The language in the settlement agreement and QDRO should be applicable to the type of retirement

benefits being divided. The 401(k), 403(b), and 457 deferred compensation plans are DC Plans. The benefits under DC plans are based upon actual monetary contributions to the plan, and the investment performance of the contributions; the benefits under traditional DB plans are paid as a monthly annuity based on a formula tied to the participant's years of service, final salary, and age at retirement. The benefits paid under a traditional DB plan are not solely based on the monetary contributions made to the plan. Since DC and DB plan are different animals, the language defining them is different.

The language dividing DC plans should:

- refer to the participant's total account balance;
- express the alternate payee's interest as either a dollar amount or percentage of the account, as of a particular valuation date, which is usually the parties' separation date, date of the filing, or date of divorce;
- address whether the alternate payee's share should or should not be adjusted for interest or investment earnings;
- address whether the alternate payee's share should or should not be affected by any outstanding loan balance;
- provide for a new account to be created in the alternate payee's name;
- provide the option of an immediate distribution or rollover of alternate payee's share.

At the same time, the language dividing DB plans should

- refer to the coverture formula;
- refer to the participant's accrued benefit;
- provide for a monthly benefit;
- refer to COLAs or early retirement subsidies;

- address survivor benefits;
- delay the alternate payee's benefit commencement until the participant is eligible for retirement or actually retires.

These provisions are not interchangeable for the different types of plans. An attorney should not have a standard "boiler-plate" paragraph that is used in all cases to address the division of the retirement benefits. The language should specifically address the type of plan and the manner in which that specific plan is to be divided between the parties.

2 Attempting to Divide Non-Divisible Plans.

Retirement plans and assets that are not included under ERISA cannot be divided by a QDRO. "One of the most difficult post-divorce situations to deal with is when the parties discover, after the final judgment (in some cases, several years after the divorce), that one of the retirement assets they have agreed to divide is simply not divisible," says the ABA.

3 Failing to Use the Correct Name of the Plan.

The proper plan name can distinguish the plan type whether it is a DC plan or a DB plan. Moreover, according to the ABA, since workers often are covered by more than one plan, "it pays to find out in advance the exact names of all the plans in which the employee spouse participates."

4 Failing to Set a Clear Date of Division.

"Many settlement agreements fail to state a precise date for the division of retirement assets, which creates quite a bit of QDRO litigation." A great deal of money can be at stake. "In a defined contribution plan, if the market spikes up or down during this period, and the agreement is not specific, the parties may fight relentlessly over which date should control."

5 Failing to Address Earnings and Losses in a DC Plan.

Often there is a delay of several months between the date of division and the date that funds in a DC plan are divided. The Agreement must specify what happens to earnings and losses awarded between the date of division and actual payment.

6 Failing to Address Surviving Spouse's Issues.

Practitioners often neglect to spell out both pre- and post-retirement surviving spouse coverage in the Settlement Agreement. Surviving spouse benefits are particularly complex, especially in defined benefit plans. The Agreement should address whether the alternate payee is to be considered the surviving spouse if the worker dies before the transfer under the QDRO is finished.

7 Messing up the "Equalization" of Multiple Plans.

When spouses have several DC plans, lawyers sometimes try to save money by combining the values of all of the DC plans and transferring an equalizing amount to one account. This can work, provided that both the parties exchange statements for each account on a specific date and set forth in the agreement how the calculation is to be completed.

Experienced QDRO lawyers do not try to "equalize" DB plans. Each DB plan requires its own QDRO.

8 Ignoring Loan Balances.

Loan balances in DC plans are often overlooked because some plans make it hard to determine if the account has an existing loan balance. Most DC plans consider a loan an asset that is part of the total value of the account; however, most plans can award any portion of the loan balance by way of a QDRO.

9 Failing to Stipulate Who Is Responsible for Drafting the QDRO.

Hard as it may be to believe, some separation agreements fail to assign responsibility for drafting a QDRO.

"QDROs can easily fall through the cracks, since they are not something most clients are familiar with, and each attorney may assume the other is taking care of it and then forget about it as time passes," says the ABA. "...[T]his means the QDRO is never drafted or completed."

10 Failing to Implement the QDRO.

The diligent practitioner should never close the file on a QDRO until he or she has received certification from the plan administrator that the final QDRO has been received and accepted. This is true regardless of which attorney drafted the QDRO.

In addition to proper QDRO preparation, proper timing prevents adverse financial consequences and hardships that can otherwise happen. Ideally, the QDRO should be prepared as soon as the parties have reached a basic settlement regarding the division of the retirement asset. In a divorce, the ideal way to address the division of a qualified retirement account upon divorce is to prepare the QDRO concurrently with the settlement agreement and incorporate it by reference in the settlement agreement.

This means the QDRO is filed concurrently with the Judgment of Dissolution. Otherwise, the QDRO should be prepared as close to the time of divorce as possible. The alternate payee must be mindful of the risks he/she runs if the QDRO is not filed. The alternate payee may entirely lose his/her benefits if the participant:

- terminates employment and takes a full plan distribution under a DC plan;
- retires and begins commencement of benefits without notifying the alternate payee, including losing rights to a pre-retirement survivor annuity, losing rights to a separate interest lifetime pension, losing rights to a coverture-based pension, and losing rights to an early retirement subsidy;

- dies without a QDRO in place securing survivor benefits for the alternate payee, including losing all of his or her pension;
- takes a loan that significantly reduces the account balance available for division.

The timely incorporation of a QDRO protects against bad outcomes in the division of the popular 401(k) plans that include losing investment gains, losing entire assignment if participant quits and takes distribution, losing the entire assignment if participant dies, and losing rights to name beneficiary upon death.

Sometimes plan administrators change while parties wait to draft the QDRO. This can create significant problems if the parties do not have their own plan statements for the time period from the date of marriage to the date of separation. When the new plan administrator takes over, he or she faces a blind spot in benefits accrued prior to his or her administration. For example, if the parties separated in 2005 and the plan administrator changed in 2007, he or she may reject a QDRO with a valuation date in 2005. In this event, the parties may need to retain an actuary or accountant to perform a calculation to determine the community property interest in the benefits.

Obviously, it is extremely important that all aspects of drafting a QDRO are done correctly. Otherwise, the financial consequences can have a lasting impact on the parties. ■



Kathryn Zeller is a Pension Analyst with Pension Appraisers, Inc., which specializes in determining the present value of defined pension benefits and preparing QDROs. In 2009, Pension Appraisers launched QdroDesk.com, an online solution for family lawyers and pro se individuals. Ms. Zeller provides services and support for both companies. www.PensionAppraisalDesk.com

Expense Worksheet

Pre-Divorce
 Post-Divorce
(check one)

	Monthly Expenses	Annual Expenses		Monthly Expenses	Annual Expenses
Home Expenses			Transportation		
Rent/Mortgage	\$ _____	\$ _____	Auto Payment	\$ _____	\$ _____
Homeowners/Condo Fees	\$ _____	\$ _____	Fuel	\$ _____	\$ _____
Home Equity Loan	\$ _____	\$ _____	Repairs/Maintenance	\$ _____	\$ _____
Property Taxes	\$ _____	\$ _____	License (driver & vehicle)	\$ _____	\$ _____
Home Phone	\$ _____	\$ _____	Parking	\$ _____	\$ _____
Cellphone/Pager	\$ _____	\$ _____	Taxis & Public Transit	\$ _____	\$ _____
Internet	\$ _____	\$ _____	Total Transportation Expenses	\$ _____	\$ _____
Security System	\$ _____	\$ _____	Miscellaneous		
Cable/Satellite/Netflix	\$ _____	\$ _____	Postage	\$ _____	\$ _____
Electricity	\$ _____	\$ _____	Gifts/Holiday Expenses	\$ _____	\$ _____
Gas	\$ _____	\$ _____	Vitamins/OTC Meds	\$ _____	\$ _____
Water/Garbage	\$ _____	\$ _____	Toiletries	\$ _____	\$ _____
Landscape Maintenance/Lawn	\$ _____	\$ _____	Beauty Salon/Hair/Nails	\$ _____	\$ _____
Snow Removal	\$ _____	\$ _____	Pet Care (food, vet, etc.)	\$ _____	\$ _____
Exterminator	\$ _____	\$ _____	Books/Newspapers/Magazines	\$ _____	\$ _____
Home Repairs/Maintenance	\$ _____	\$ _____	Donations	\$ _____	\$ _____
Home Renos/Upgrades	\$ _____	\$ _____	Memberships/Clubs	\$ _____	\$ _____
Housecleaning	\$ _____	\$ _____	Miscellaneous	\$ _____	\$ _____
Miscellaneous Household	\$ _____	\$ _____	Total Miscellaneous Expenses	\$ _____	\$ _____
Total Home Expenses	\$ _____	\$ _____	Other Payments		
Food			Quarterly Taxes	\$ _____	\$ _____
Groceries	\$ _____	\$ _____	Child Support Payments	\$ _____	\$ _____
Dining Out	\$ _____	\$ _____	Spousal Support Payments	\$ _____	\$ _____
Total Food Expenses	\$ _____	\$ _____	Eldercare Expenses	\$ _____	\$ _____
Clothing/Footware Expenses			Professional Fees	\$ _____	\$ _____
Clothing/Footwear Purchases	\$ _____	\$ _____	(accounting, financial planning, legal, mediation, etc.)	\$ _____	\$ _____
Laundry/Dry Cleaning	\$ _____	\$ _____	Credit Card Fees	\$ _____	\$ _____
Total Clothing/Footware Expenses	\$ _____	\$ _____	Service Fees (banks, etc.)	\$ _____	\$ _____
Entertainment/Recreation			Total Other Expenses	\$ _____	\$ _____
Entertainment (excl. dining out)	\$ _____	\$ _____	Total Expenses (Excl. Children) \$ _____ \$ _____		
CDs/DVDs	\$ _____	\$ _____	Child-Related Expenses		
Hobbies	\$ _____	\$ _____	Education/Tuition	\$ _____	\$ _____
Movies and Theater	\$ _____	\$ _____	School Lunches	\$ _____	\$ _____
Vacations/Travel	\$ _____	\$ _____	Counselor	\$ _____	\$ _____
Classes/Lessons	\$ _____	\$ _____	Sports/Camps/Lessons	\$ _____	\$ _____
Total Entertainment Expenses	\$ _____	\$ _____	Hobbies, Field Trips, etc.	\$ _____	\$ _____
Medical (after or not covered by insurance; excludes children)			Toys/Games	\$ _____	\$ _____
Physicians	\$ _____	\$ _____	Boy-Scout/Girl-Guide Dues	\$ _____	\$ _____
Dental/Orthodontist	\$ _____	\$ _____	Clothing	\$ _____	\$ _____
Optometry/Glasses/Contacts	\$ _____	\$ _____	Medical	\$ _____	\$ _____
Prescriptions	\$ _____	\$ _____	Dental/Orthodontics*	\$ _____	\$ _____
Total Medical Expenses	\$ _____	\$ _____	Optometry/Glasses/Contacts*	\$ _____	\$ _____
Insurance			Prescriptions*	\$ _____	\$ _____
Life Insurance	\$ _____	\$ _____	Allowances	\$ _____	\$ _____
Health	\$ _____	\$ _____	Miscellaneous/Haircuts	\$ _____	\$ _____
Disability	\$ _____	\$ _____	Total Child-Related Expenses	\$ _____	\$ _____
Long-Term Care	\$ _____	\$ _____	* Not Covered by Insurance		
Home	\$ _____	\$ _____	Total Expenses (Incl. Children) \$ _____ \$ _____		
Auto	\$ _____	\$ _____			
Other (Umbrella, Boat, etc.)	\$ _____	\$ _____			
Total Insurance Expenses	\$ _____	\$ _____			

Make two copies of this Worksheet: one for pre-divorce & one for post-divorce expenses. [Download this worksheet here.](#)