The Financial Divorce

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Thank you for purchasing The Financial Divorce E-book. It was designed and created to provide you with the information you need, so you can make informed decisions that will protect your financial future.

Ultimately, the true success behind your financial divorce will be based on the vision of abundance you hold for your future life and what you believe you deserve. Consequently, your beliefs will determine your financial outcome. That said, it is important to get really clear on what beliefs you hold that have held you back from achieving wealth in your life.

Your financial divorce is very important. You are dividing one financial unit into two separate units. This is where you need to really plan and take the time to get it right. You need to do whatever it takes to become financially literate. After all, you are deciding on no less than your future. If you read all the information and consistently do the action steps each day in the right order at the right time, you will be able to create the results that you want and greatly maximize positive outcomes.

If you have any further questions or need additional assistance, please feel free to email us at bestchoicedivorce@hotmail.com or call 413-404-7557.

We are committed to helping you get to where you want to go.

To your success,

Lynne Glazer,

Founder of Best Choice Divorce

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FINANCIAL DIVORCE

"Our abundance and prosperity are largely a result of the thoughts and feelings we direct toward life. Our thoughts are like currency we spend or save towards our destiny in life. How do you "spend" your thoughts? Do you purchase with your thought presence of the things you love, or do you squander the currency of your thought on what you don't want"? Dr. Richard Bellamy

The financial piece of your divorce starts with your belief of how worthy you feel and how much abundance you feel you deserve in your life. In most cases, what we feel we deserve is hidden deep within our unconscious; and we are totally unaware of it. However, it is a driving force that overrides anything we may think consciously. That is why we can think we want to be rich, but if our outer world is not matching that thought, it is because we are being controlled by our subconscious beliefs.

A good way to figure it out is to ask your self the question, what is the most money you have ever earned in a year? That is usually the amount you will allow yourself to have. We all have a set point or glass ceiling on how much financial abundance we allow ourselves to have. Once you become aware of what your set point is, you can change it. Therefore, abundance begins with your thoughts.

I suggest that you take a good look at your marriage to determine what your money situation is. Are you financially deprived in the relationship? Are you in a lot of debt? Were you dependent on your spouse for income? Have you led a lifestyle you could not afford? Or did you live within your means and are living a comfortable life? The answers to these questions are crucial because they will affect how your financial divorce plays out. We tend to repeat our behaviors of the past. Awareness can change that.

Everyone deserves to be abundant. It is our natural birth right. If you are not financially abundant right now, there is a reason for it that you are not aware of. Now is the time to find that out so you can create a stable financial divorce that will set the foundation for a prosperous new life, enabling you to live the life you want and deserve. What you want is possible. It already exists. All you need to do is claim it. Think big! If you have been playing small, it is time to take the steps that will enable you to play full out.

That said, the financial piece of your divorce is extremely important. It is the process of dividing the marital financial unit into two separate financial units. However, keep in mind that no one ever gets all of what they want. The financial divorce includes maintenance, care, child-support and education for your children, personal property, real estate, assets, liabilities, businesses, tax issues, health insurance, life insurance, pensions, tax issues, alimony and more.

Information is your most valuable resource. Without the right information, you won't be able to make informed decisions. It is not possible to do what you do not know. It is essential to become financially literate, so you can understand the legal and financial ramifications of each financial decision that you make. These consequences can have a positive or negative impact on your future. It is important to maximize positive outcomes.

Therefore, you must educate yourself about finances by reading books, taking seminars, finding a mentor, and talking to accountants and/or financial planners who specialize in divorce. However, it does not matter how many experts you talk to. Ultimately, this is your financial future not theirs. You need to become your best advocate. It is unrealistic to expect one person to cover all the bases for you. It is important to stand up for yourself because no one else can do for you what you need to do for yourself. The person you need most to consult with is you. Trust your instincts to guide you. Listen to the whispers of your intuition. Those hunches you have just might be right. Stay aware. Most of the bad decisions that we make usually result from not really listening or being tuned in to what is going on inside us or around us. In other words, if you get advice from a professional that does not feel right to you, trust your feelings.

Lawyers do not have the time to help you figure out a financial plan that is best suited for you and your family. Also, they are not trained in financial planning or the possible tax ramifications that should be figured into your agreement. It is important to ask the right questions, so you can get the right information. In this way, new doors will open for you. You will discover viable alternatives and solutions to help you create a financial plan that will provide you with stability.

Since you are deciding on your financial future, it is important to evaluate where you are, where you are going, and have a plan to get there. Your financial plan needs to be well thought out and properly executed and should meet the needs of the entire family. To evaluate where you are, you need to do a marital financial statement identifying all assets and liabilities as well as a budget analysis of your cash flow and net worth.

Positive cash flow means that enough money is coming in to pay your monthly expenses and you have enough to invest and/or save for the future. Negative cash flow means that not enough money is coming in to pay your monthly expenses and you are sliding into debt instead of investing and/or or saving for the future. Your net worth is the difference between your assets and liabilities.

Determining positive and negative cash flow and net worth is essential in determining how your marital pie should be divided up for your agreement to be fair and equitable. Once you understand your marital financial statement, you need to figure out what your personal financial statement will look like as a divorced person. This means doing a concise budget and figuring out your monthly cash flow. If your agreement is going to give you a negative net worth and your spouse will have a positive net worth, then the agreement is not equitable. Also, equal is not always fair if the salaries and/or assets are disproportionate. In this case, a fair share would mean more than 50% for one spouse.

It is imperative that you have some idea of how your agreement will play out for you in the next ten years. If your spouse's net worth will be doubled and your net worth will be far less, it might be necessary for you to go back to the drawing board. How much will you need from the marital pie to get a jump-start on your new life? It should also be noted that non-monetary contributions such as being a homemaker entitle that spouse to a share in the marital assets.

While you are planning and working through your divorce, it is wise to create a financial vision based on projected goals you want to achieve in two, five, ten and twenty years and stay the course. If you do not know what you want, then you will not be able to achieve it. Too many divorcing people fly by the seat of their pants financially instead of getting really grounded and clear on a workable plan to follow. The goal is to continually increase your net worth. You need to plan beyond retirement not just up to retirement. Very few people can get by on what they earn today, and most are not prepared for retirement.

After you have done your financial homework, be prepared to make mistakes. No one becomes successful without making mistakes or taking some risks. Mistakes give you the wisdom and experience to create success. The only difference between a winner and loser is that the winner got up and tried again. So, keep the faith and believe in yourself.

You should give yourself a minimum of five-ten years to get on your feet, and your agreement should reflect that time frame. The longer you have been married, the longer the window of time should be. Your financial agreement should serve as a bridge to a new life and a prosperous future.

ACTION STEPS

1. Purchase an organizer to keep your paperwork in, so you will have everything you need at your fingertips. Purchase a notebook to take down important notes, write down your ideas, feelings, strategies and plans as well as to keep a record of what you have or have not agreed to.

2. What thoughts and beliefs are keeping you from becoming abundant? What are the ways you are living right now that show a lack of abundance? Write it all down. Reframe your negative thoughts and beliefs into affirmations that you can say every day especially before you go to sleep and awake in the morning so you can reprogram your subconscious mind.

3. Create a vision for the financial divorce you want to have as well as what you want your financial future to look like in the next five to ten years. Write it down in detail and get in alignment with that vision every day. Practice the law of attraction. Based on that vision, create a list of your goals that when attained will make your vision a reality.

4. Based on your vision and new financial goals, do three action steps each week or month that will move you towards achieving your goals. Repeat as needed.

PREPARING FOR DIVORCE

- Fill out the budget in this book. Determine what your living expenses will be post-divorce. Determine your marital net worth. These numbers will be a reference point for how you will divide your assets.
- Do a marital financial statement listing all assets (their values and liabilities). How much are you in debt and to whom? Maintain a budget of your income and ongoing expenses.
- Collect records and deeds of all assets and debts.
- Collect records of all finances especially income stubs and statements, W2 forms, income tax filed for the past three years, credit card statements, bank statements etc.
- Get at least two credit cards in your own name and remove your name from all joint cards.
- Check your credit rating. If it is not in good stead, start paying off your debt so you can get in good standing so you can qualify if you need to buy a car or house after the divorce.
- Open your own bank account and immediately start saving. Whatever income you earn or are given, pay yourself first!
- Put all of your important documents in a safe deposit box.
- Make a list of all your separate property.
- If your spouse squandered marital assets, document that.
- Check to make sure that all your taxes have been paid and that there are no liens against your property. If you think your spouse is being fraudulent on your tax returns, file separate taxes.
- Stock up on groceries.
- Know the family finances.
- If there are joint documents in a safety deposit box, make a list of what is in the box or make copies of them for you to keep.
- Read some books on the emotional aspects of divorce.
- Get all property appraised.
- Find someone to talk to whom you can trust or seek therapy/counseling/coaching. You can't go through this alone.
- Find out how the legal system and the divorce process works. Never enter a system you know nothing about. You can get badly hurt in the legal system.
- Start taking all the personal property that is yours if you are already out of the house and put aside sentimental items, valuable items, jewelry etc in a safe place.
- Make a list of what you want in the house.
- Take pictures or video the entire contents of the house especially if there are valuable items. Make a list and itemize the values of the household contents.
- Consider ways to bring in more of an income stream especially if you are not the breadwinner in the family.
- Consider career opportunities or even start back to school at this time. The law recognizes the status quo.

- Do not quit your job.
- If you are not employed, create a resume, or update the old one.
- Educate yourself and become cognizant of the financial and legal realities of divorce.
- Learn how you can go around the system rather than through it. Learn about Pro se divorce (do it yourself divorce).
- Take care of all your health needs as well as your children especially if you are being carried on your spouse's health insurance policy.
- Repair your car and/or buy a new one. Buy the clothes you need and take care of whatever other needs you have.
- Have necessary financial back up and see if friends or family can lend you money.
- Establish a temporary controlled separation plan with your spouse so you will know what to expect such as: who will pay what and do what, parenting plan for children etc. It will help to create structure and reduce your anxiety so you can think clearly. It will prevent your family from going into crisis.
- Don't sign anything until you absolutely know what you are signing.
- It is not necessary to run off and retain a lawyer. That is the worst thing you can do.
- Find ways to trim your budget and save more than you have been saving.
- Be especially good to yourself at this time and don't take on anything extra that will add additional stress.
- Now is not the time to stop talking to your spouse or telling him/her everything they have ever done wrong. It makes it more difficult to negotiate. Stick to business and discuss only what you need to accomplish. Unnecessary fighting at this time will just upset you more.
- Don't start dating. It will keep your spouse from cooperating with you.
- If you are already involved with someone, don't throw it in your partner's face.
- When you are not sure of whether to leave or not, try a temporary controlled separation plan first. You can work the plan even though you are still living together.
- If you have children, keep a childcare diary: Who feeds the children, transports them, spends time etc.
- When you are ready to leave, it is all right to take half of the money out of your joint account. That is why it is called a joint account. Base this action on how you think your spouse will react.
- Document your standard of living. What your spouse's business pays for such as trips, car owned by the business, etc.
- Document your spousal contribution. (What you earned and if you worked with your spouse)
- Document your non-monetary contribution to the marriage and what it would cost to hire someone to do what you have done.
- If your spouse has IRA'S, 401k's, Bonds, Stocks, Pensions, CD's, Life Insurance etc, (find out their value).
- Keep non-marital assets separate.
- Get the marital residence appraised as well as any other property.
- To learn more how the family legal system operates, go to Probate Court and witness some divorce cases.

- Don’t run up any more debt and try to pay off as much of the marital debt as you can with marital money.
- If you are planning on staying in the marital residence, get the phone and electric bill in your name.
- Get a post office box if you don’t want your spouse to know about or read your correspondence.
- Get a cell phone for the same reason.
- Don’t leave the marital home unless it is necessary. If it is necessary to leave, write a letter of intent and have the both of you sign it and date it.
- Accumulate as much cash as possible for expenses for at least 7 months. SAVE, SAVE, SAVE!
- If you have money in a joint savings account, keep records to prove your spending was only for necessities.
- Strategize a plan for your divorce and your future.

Action Steps

Circle all the preparation steps that you feel are helpful and relevant to you. Do one to two steps each day until they are all completed.

INCOME DFEFINITIONS

Income is defined as gross income from whatever source. These sources include but are not limited to the following:

1. Salaries and Wages (including overtime and tips) and income from self-employment
2. Commissions
3. Severance pay
4. Royalties
5. Bonuses
6. Interest and dividends
7. Income derived from businesses/partnerships
8. Social security
9. Veteran's benefits
10. Insurance benefits (including those received from disability and personal injury)
11. Worker's compensation
12. Pensions
13. Annuities
14. Income from trusts
15. Capital gains in real and personal property transactions to the extent that they represent a real source on income
16. Spousal support received from a prior marriage
17. Contractual agreements
18. Income from life insurance or endowment contracts
19. Income from interest in an estate (direct through a trust)
20. Lottery or gambling winnings received in a lump sum or in the form of an annuity prizes or awards
21. Net rental income
22. Funds received from earned income credit
23. Funds received from tax returns
24. Other

Action Steps

Identify and write down all sources of marital income and their respective values.

MARITAL PIE

All property accumulated during the marriage is considered marital property even if the assets and/or liabilities are in one name. You are both responsible for all expenses until you come up with a viable financial plan which should be in working order as soon as you separate in order to avoid going into crisis mode. Listed below are all the pieces of your marital pie that need to be considered and outlined in your Agreement.

Real Estate
Personal Property
Vehicles
Liabilities
All Assets
Tax Matters
Health Insurance
Bank Accounts
Life Insurance
Retirement Plans
Pensions
Legal Fees
Inheritance
Alimony
Businesses/Business Perks

CHILDREN
Custody
Child Support
Emancipation Factors
Health Insurance
Parenting Plan
Parenting Class (If required in your state)
Children's Expenses
Educational Expenses for Children

Action Steps

1. Create a temporary financial plan you will abide by until you get divorced.

2. From the marital pie, write down the ways you want to divide the assets, liabilities or expenses listed above and how you will handle such issues as: life insurance, health insurance, alimony etc. In other words, who will be responsible for what? Who will pay for what, in what amounts and for how long?

3. Try to mutually agree on as many issues as possible. Each item you agree on will save you thousands of dollars. Keep a record of all the information, so it can be incorporated into your written Agreement.

BUDGET

Fill out the budget analysis worksheet below. It will be worth your time and effort. It will help you to get really clear on the exact amount you will need to live on post-divorce, what your marital estate is worth, what your liabilities are, what you need to ask for and what steps you need to begin taking so you can get where you want to go.

BUDGET & MARITAL ANALYSIS WORKSHEET

_--------Present Expenses, entire family (number of persons)

_--------Post-separation Expenses (for-------- self or--------self and children)

All expenses are listed monthly. If any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment.

EXPENSES

A. HOUSING

1. 1st Mortgage-
2. 2nd Mortgage-
3. Rent-
4. Condominium/cooperative charge-
5. Real Estate Taxes, if paid separately from mortgage-
6. Homeowners Insurance, if paid separately from mortgage-

B. UTILITIES

1. Gas/Electric-
2. Heating/oil/gas-
3. Water/Sewer-
4. Garbage-
5. Telephone-
6. Cable TV-
7. Cell phone-
8. Other-

FIXED MONTHLY HOUSING EXPENSES A+B $__________

C. HOUSEHOLD EXPENSES

1. Repairs-
2. Replacement of furniture, linens etc-
3. Maintenance of Appliances-
4. Replacement of Appliances-
5. Painting-
6. Pest control-
7. Cleaning materials and/or service-
8. Lawn care/landscaping-
9. Snow removal-
10. Household Maintenance-
11. Small home items-
12. Home Improvements-

D. FOOD

1. Usual supermarket expenses, food, and non-food-
2. Food brought in (take out)-

E. CLOTHING

1. Self-
2. Children-
3. Outside laundry-
4. Dry cleaning-
5. Diapers-

Automobiles: list data for each automobile separately

YEAR: **MAKE:**

1. Payments-
2. Gas/oil changes/license-
3. Maintenance and Repairs-
4. Insurance-
5. Garage/Parking-
6. Excise tax-

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2. Gas/oil changes/license-
3. Maintenance and Repairs-
4. Insurance-
5. Garage/Parking-
6. Excise tax-

F. HEALTH

1. Insurance premium-
2. Uninsured medical expenses (co-pays, prescriptions etc.)-
3. Dental/Orthodontia-
4. Uninsured dental expenses-
5. Optical (eyeglasses, contact lens)-
6. Medicine/drugs/health supplies-
7. Psychotherapy-
8. Physical and/or Occupational therapy-
9. Hospital expenses (emergency room, surgery)-
10. Audiovisual Aids-
11. Other-

G. INSURANCE

1. Life-
2. Disability-
3. Umbrella-
4. Accident-
5. Other-

H. LOANS & CREDIT CARD PAYMENTS (monthly) Indicate if incurred prior to marriage.

1. Student loans-
2. Credit Cards (monthly)
   a. Master-card-
   b. Visa-
   c. Discover-
   d. American Express-
   e. Department stores-
   f. Other-
3. Home Equity loan-
4. Bank/credit union/personal loan-
5. Other-

I. CHILDREN'S EXPENSES

1. Babysitter-
2. Day care/Nursery-
3. Music, dancing or other lessons-
4. Sports and sports equipment-
5. Children's allowance-
6. School transportation-
7. School supplies and trips-
8. School lunches-
9. Gifts for friends (birthdays, etc.)-
10. Religious Instruction-
11. Clubs and scouting-
12. Toys and games-
13. Summer camp-
14. Extra-curricular activities-
15. Other-

J. EDUCATION

1. Primary, Secondary Schools-
2. College (net after scholarships, loans, etc.)-
   Tuition-
   Room and Board-
   Books-
   Transportation-
   Health insurance-
   Recreation/Entertainment-
   Fees (Computer, Health, Lab etc.)-
   Computer, Printer and computer equipment-
   Bedding-

Allowance-
Phone bill-
Clothing-
Dental-
Furniture-
Tutoring-
Other-

K. RECREATION/ENTERTAINMENT

1. Eating out-
2. Movies-
3. Theater and Concerts-
4. Vacations-
5. Sporting activities and supplies-
6. Spectator sports-
7. Hobbies-
8. Video Rentals-
9. Tapes, CDs. Etc.-
10. Health clubs/gyms-
11. Professional Associations-
12. Other-

L. PERSONAL CARE

1. Beauty parlor/Barber-
2. Cosmetic & toiletries-
3. Other-

M. MISCELLANEOUS

1. Books, magazines, newspapers-
2. Tobacco products-
3. Charitable contributions-
4. Church or Synagogue dues-
5. Union and organization dues-
6. Child support-
7. Alimony/maintenance (prior marriage)-
8. Lunches at work-
9. Gifts (holidays, weddings, birthdays, religious etc.)-
10. Pet Expenses-

TOTAL EXPENSES $___________

MONTHLY INCOME

A. Regular salary or wages (including worker's compensation, disability, tips, Social Security, unemployment, veterans' benefits, pension or other retirement income, academic stipends)-
B. Bonuses-
C. Commissions-
D. Dividends and interest-
E. Income from other sources (including trusts, alimony, maintenance, or child support from prior marriage)-
F. Royalties-
G. Other-

SUBTOTAL $__________________

MONTHLY DEDUCTIONS

1. Federal tax-
2. Social Security-
3. State tax-
4. Medicare-
5. Federal tax
6. Self-employment tax-
7. Medical insurance-
8. Retirement/Pensions/401k-
9. Union Dues-
10. Loan repayment-
11. Bonds/United Way-
12. Life insurance-
13. Other payroll deductions-
14. 401k-

SUB-TOTAL $_________ **NET INCOME $_________**

Marital Statement Analysis (Net Worth)

ASSETS

Indicate if acquired prior to marriage.

A. **BANK ACCOUNTS/PLUS INTEREST (Current Balance)**

1. Savings including CDs and money market accounts-
2. Checking-
3. Holiday club/Other-

SECURITIES (Market Value)

1. Bonds-
2. Stocks-
3. Mutual funds-
4. Other-

C. Value of interest in any business or professional license (corporation, partnership, or sole proprietorship, net worth of business, % of your interest)

D. Cash surrender of Life Insurance (carrier and policy number)

E. Vehicles (auto, motorcycle, boat, plane, truck, campers, etc and net value after deducting loan):

1.
2.
3.
4.
5.
6.

F. Real Estate/Rental Property/Land (present market value minus mortgage balance)

G. Vested interests in IRA's, pensions/retirement, Keogh, SEP, 401k, profit sharing, deferred compensation, trusts, other accounts, etc (List name and value)

H. Household Furnishings-

I. Jewelry, art, antiques, precious objects, gold and precious metals (List total market value):

J. Other assets (List money owed to you, tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other assets not listed above, at market value):

TOTAL ASSETS $____________

LIABILITIES

List the present amount owed. Indicate if incurred prior to marriage.

A. Mortgages payable on real estate

B. Car Loans (name the car, year and present amount owed)

C. Installment Amounts (credit cards, bank loans, department stores, etc

D. Back taxes owed:

E. Other liabilities including loans on life insurance policies:

Total liability Amount $_____________

FINANCIAL ANALYSIS

INCOME $-
EXPENSES$-
POSITIVE CASH FLOW-__________
NEGATIVE CASH FLOW-

ASSETS$-____
LIABILITIES$-
MARITAL NET WORTH-

To divide the marital pie in a fair and equitable way, each spouse needs to determine their individual cash flow, their individual net worth, their ability to produce an income stream, their ability to acquire additional assets and the future appreciation of any assets post divorce.

The goal is to separate one economic financial unit into two functional economic units and to prevent either spouse from plummeting into poverty. Remember, in so doing, no one ever gets all of what they want.

Action Steps

1. Subtract your expenses from your income. That will determine your negative or positive cash flow. Write it down. Based on that information, determine how much of an income stream you need to earn to make ends meet and have a positive cash flow so you can save for your future. Also, determine the amount of money you will be putting away each month towards retirement.

2. Subtract your marital liabilities from your marital assets. That will determine your marital net worth. Write it down. This is very important. It will serve as the basis for how you will divide your assets and who will pay what to whom. If your marital net worth is in the minus category, determine based on you and your spouse's individual cash flow which spouse will be responsible for which debt and future expenses. If your marital net worth is in the plus, determine an equitable distribution based on what you both earn and what your mutual expenses will be. It is possible to make payments proportionate to one another's income as well as trade assets and liabilities to create an equitable and fair agreement.

3. Determine who has the greater ability to produce a larger income stream and acquire assets that will appreciate in time. In many instances, the weaker financial earning spouse is compensated for the non-monetary contribution he or she has contributed to the marriage. Write down what you feel you should be compensated for and put a value on it. Include that in your negotiations.

40 FINANCIAL MISTAKES NOT TO MAKE IN YOUR DIVORCE

"Know the Rules of the game or the bad guys will be dividing up what used to be yours." Dr. Phil

1. Failing to ask yourself if you will be ok financially before you sign the agreement without determining how your agreement will play out for you in 5-10 years.

2. Believing that a 50-50 division of property and assets is fair when one spouse's income is extremely disproportionate from the other and that spouse has more of an opportunity to increase their income stream and acquire additional assets.

3. Failing to come up with a financial vision and plan for your divorce with achievable goals instead of flying by the seat of your pants.

4. Failing to do a value's chart so you can see the whole picture and see what each one is getting to determine whether the agreement is equitable.

5. Not receiving itemized bills from your lawyer so you know exactly how your money is being spent.

6. Paying a lawyer a huge retainer fee that will in all probability be spent on unnecessary paperwork and motions before trying mediation. If you need to work with an attorney, it is possible to hire one by the hour.

7. Failing to find out if your retainer is refundable.

8. Failing to fire any professional that is not providing you with the information you need to make informed decisions, not acting as an advocate and not calling you back.

9. Failing to learn how to navigate around the adversarial legal system rather than through it.

10. Seeking financial and tax advice from a lawyer whose only expertise is adversarial family law.

11. Accepting the marital residence in the agreement when you cannot afford it.

12. Failing to know that if you and your spouse retain joint ownership of the marital residence that the deed automatically changes in most states once you are divorced to tenancy-in-common which means that you would able to sell or will your share to a third party. The deed needs to be changed to joint tenancy which means you cannot sell or will your share to a third party. The deed needs to be filed with the court. Consequently, if one of you dies, the surviving spouse receives the marital residence outright.

13. Failing to get your name off the mortgage note when you have signed over your ownership by a quitclaim deed which means you are still liable for the mortgage if your ex-spouse does not pay it even if your ex-spouse is now the sole owner of the property. Also, as long as you are on the note, you may have difficulty obtaining another mortgage to buy property for yourself. Your spouse can refinance the loan to get you off the note.

14. Failing to know that you must be married ten years to be able to collect your spouse's social security. This is especially important if you are older and have been a stay-at-home mom and/or a homemaker and have lost years of employment and would get more if you collected on your spouse's social security.

15. Failing to get life insurance, disability insurance and an estate clause put in your agreement to cover your spouse's obligations for child-support and alimony etc. If you don't do this, you will be out of luck.

16. Failing to have the life insurance piece written up correctly. If it is not written up correctly, and your spouse fails to pay it and dies, you will receive nothing.

17. Believing that your divorce agreement must conform to what your lawyer thinks you should accept and/or what a judge would order if your case went to court.

18. Failing to include the present value of pensions among marital assets and not having the pension valued by a professional such as a CPA, actuary, etc. You must have an accurate determination of the value to get a fair share.

19. Failing to know that assets can be valued as of a specific date, and that the date can make a huge difference. Make sure you know the valuation date and why it was chosen.

20. Failing to remove your spouse's name from your credit cards. The best strategy is to pay off the joint cards and close the joint account. As long as the credit card remains open, either spouse can use it. Both parties are then responsible for the debt. It does not matter if your agreement says that one spouse shall be responsible. The lender can go after either one of you.

21. Failing to determine if you are eligible for your spouse's pension. Failing to have the proper paperwork and a Qualified Domestic Relations Order in place if you are dividing pensions. The pension administrator needs to be instructed as to what to do with the pension. Failing to file the QDRO and proper paperwork in court along with your Separation Agreement to insure receiving such benefit, because stating in your Separation Agreement that you will receive the pension is not sufficient to ensure receiving it.

22. Failing to be careful about trading one asset for another. It is common for one spouse to take the marital residence by waiving his/her right s to their spouse's pension. This

could be the biggest mistake you can make. These assets are very different. Houses have mortgages. Pensions do not. A pension valued at 400,000 and a house valued at $400,000 is not the same if the house comes with a $250,000 mortgage and additional equity loan. The projected net worth and cash flow projections can help you to determine whether trading one asset for another is in your best interest or not.

23. Failing to understand the tax ramifications of your decisions. For example, if you split a money market fund and a 401k equally, the one who took the 401k will net less due to the taxes they will have to pay on it. There are no taxes on a money market fund.

24. Failing to know all the contingencies in your Agreement that could adversely affect you including but not limited to taxes and tax exemptions, alimony, child-support, emancipation factors for your children, health insurance, assets, marital residence, liabilities etc. For example, the law in many states regarding child support states that child support is paid until age 18. It is possible to receive child support for a longer amount of time such as 23 or 24. Also, it is possible to have the child support issues clearly written up, so you will not have to keep going back to court to modify it. That can become a nightmare for divorcing couples who have a vengeful spouse.

25. Failing to include legal costs in the settlement. Don't take it for granted that the higher wage earner will pay your legal fees.

26. Failing to know that if you retain joint ownership of the marital residence only the spouse who lives there two out of the five years, can claim the $250,000 capital gains deduction. The other spouse cannot. (Get a current copy of the free IRS publication 523, tax information on selling your house.)

27. Being unrealistic about inflation, the real estate market, investment returns, etc. In other words, relying on the unpredictable as a safety net. Remember, a house is only worth what someone is willing to pay for it.

28. Failing to know about spending retirement assets before the age of 59&1/2.

29. Settling for too little because you feel guilty and/or hope to get your spouse back.

30. Dividing assets without knowing the full value of the assets. You must know the value of all assets.

31. Failing to know that debts do not need to be divided equally even if one person was more responsible for that debt and was the one who most benefited from it.

32. Not including your spouse's business perks, bonuses, & business deductions as marital property that can be divided.

33. You do not have to abide by the formula many states have for child support. In most states, you can waive your rights to those formulas and go over the guidelines or under them.

34. Failing to know that regardless of state laws regarding alimony, you can negotiate your own agreement about spousal maintenance. The spouse who pays alimony can deduct it on his taxes. The spouse who receives the support has to claim it on his/her taxes as income. It is possible to write your Agreement in such a way that a spouse can receive funds, and it is not deemed alimony. It is considered part of the property settlement.

35. Omitting enforcement and penalty provisions in the Separation Agreement in case your spouse violates his/her obligations including but not limited to child-support, alimony, tax issues, life insurance, attorney fees, fines, liens, etc.

36. Failing to protect yourself if your spouse owes money to the IRS. If your spouse owes money to the IRS, it is crucial to fill out an innocent spouse form to file with the IRS and have it written up correctly in your Agreement. Also, bankruptcy does not erase child support or alimony payments.

37. Continuing in the adversarial system without doing a cost/benefit analysis emotionally, financially, legally and health wise to determine if you should cut your losses and settle.

38. Failing to include in your child-support agreement cost of living increases and how much of a percentage you will receive if your spouse's salary goes up or down.

39. Failing to make all transfers of property and assets within a year's time which means you may have to pay taxes on it depending on which state you reside in.

40. Failing to ask the right questions and/or find the right information so you could incorporate creative solutions into your agreement, because you relied on other people, and you did not do your homework. No one can or will be a greater advocate for you but you! Do not hand your divorce over to anyone or expect them to fully protect your future and and/or cover all the bases for you. It is not possible for them to do so.

Action Steps

Make sure to negotiate what you want in your Agreement to protect your future.

WHAT YOU NEED TO KNOW ABOUT ALIMONY

Alimony sometimes called spousal maintenance or spousal support is one of the most volatile issues of divorce. Alimony was created to provide the lower income spouse a means for support over and above the money provided for child support. Alimony is still a very gray area in the legal system. There are no guidelines for lawyers and/or judges to follow. That means no one can really predict what the alimony outcome will be if left up to a judge. Often, alimony cases wind up in court, because lawyers do not know how to advise their clients about designing a settlement that would be fair and equitable for the entire family. Unfortunately, fair can have a lot of different interpretations depending on who is doing the interpreting. Husbands as well as wives can be candidates for alimony. It is solely up to the judge's discretion as to what he/she believes is fair and equitable.

The factors a judge uses to determine allocating alimony vary from state to state. In some states, fault alone can be grounds for receiving alimony. In other states, that is not the case. However, a judge might be swayed by any marital misconduct and award alimony as compensation. Misconduct may involve infidelity or squandering marital assets etc. Other considerations are the length of the marriage, the health of the parties, the ability to earn income and acquire assets, age, a prenuptial agreement, age of the children, special circumstances such as illness and disability, tax advantages, employability and employment history, education, contribution as a homemaker, and how much property each is taking from the marriage. Also, in 1993, the law added a new contingency and that is the standard of living which existed during the marriage.

What you need to know about alimony is that if you and your spouse can't decide on the issue of alimony, a judge will. If you waive your rights to alimony in your Separation Agreement, you cannot go back and ask for it unless your Agreement states otherwise. If you are not sure about waiving your rights, you have the option to reserve your right to petition the court for alimony at a later date. Also, some parents will have a clause put in their Agreement that if either parent or the primary caretaker becomes ill or disabled before the youngest child's reaches his/her eighteenth's birthday, he/she will receive alimony until the children are emancipated. In equitable distribution states, courts may award one spouse a larger share of the marital property and require the spouse with the larger earning capacity to pay health insurance as well. Alimony is taxable income.

There are generally four types of alimony: lump sum payment, permanent, temporary, or rehabilitative. Some states also have durational and, bridge-the-gap alimony. Lump sum alimony can be used as a means for support or to equalize the asset distribution. Permanent alimony is usually awarded to an older spouse who is unskilled and/or remained a homemaker and lost years in the workplace and has been married for a long time. It is usually awarded for time spent in helping your spouse with his/her business or career while not advancing your own financial career and for lost wages due to care-taking your children. Temporary alimony is used only for the time you are separated prior to the divorce until the dissolution of the marriage. Rehabilitative alimony is awarded to enable a spouse to get on their feet and develop a way to adequately support them selves. For instance, they may have to go back to school or need time to find a job. This kind of

alimony requires a plan of how you will get back on your feet. Durational alimony provides economic assistance for a set period. It does not require a plan. Bridge- the-gap alimony is short term and does not exceed two years. It is given to ease the transition from married life to single life.

The only way to work out alimony without going to court is through negotiation. First, it is important to determine if there is enough money to pay alimony. If you decide on alimony, it is important to determine how long it will be paid and if it will be modifiable or non-modifiable. Many spouses have gotten an award of alimony only to have their spouses return to court and get the order reversed based on a material change of circumstance. In order to avoid this negative outcome, many spouses get a lump sum payment, an asset or a non-modifiable amount paid out in a certain timeframe and then terminated. Also, will alimony payments be reduced if your circumstances change such as: the spouse paying it gets a raise, loses a job, or becomes ill, cost of living expenses increase, and if your spouse remarries and/or is living with someone else who is financially contributing to the household. It is important to be clear on the terms for adjusting payments in the future.

If one spouse is more prosperous than the other, the award of alimony is a strong possibility. Some courts will also overturn the alimony provision if one spouse goes on welfare and grant alimony. It is important to have a contingency written into your Agreement as to what will happen if your spouse dies. Usually. an annuity or life insurance policy to cover this loss serves as protection only if written up correctly.

Alimony is often the cause of expensive litigation, and there are no predictable outcomes. When you have been married to someone for a long time, and they are in a weaker position than you, than alimony is about doing the right thing, so you both can walk away and be all right financially. If one of you will plummet into poverty and the other will prosper financially, then the Agreement is not equitable but more than that, it is immoral. Also, in some states, if a spouse becomes a ward of the state, the wage-earning spouse can be petitioned by the court to pay that spouse a designated amount of alimony even if that spouse had previously waived it.

Action Steps

1. Decide if either of you will receive alimony. Remember if you waive alimony, you cannot go back later and ask for it. It is possible to reserve the right to petition the court at a later for alimony in order to keep that option open or to have it state that you would receive alimony only if you become ill or disabled.

2. If one of you will receive alimony, read the contingencies above that can negatively affect your alimony outcome and negotiate those issues. Once those issues are mutually agreed upon, they should be incorporated into your Agreement so that your financial futures are mutually protected. Being clear and specific on those issues will prevent any conflicts from arising post-divorce.

DIVORCE AND THE MARITAL HOME

Any assets acquired during the marriage are considered marital property.

If the house was initially separate property of one spouse but it was co-mingled and the other spouse maintained the home and invested financially in it, it is no longer considered separate property. Even if the deed is in one name, it is still marital property. Even if you refinance to remove your spouse's name from the deed, the monies received are marital property and must be divided equitably as well as any liability in the marital residence.

1. To maintain structure and alleviate undue anxiety, it is important to mutually agree upon a temporary financial agreement regarding all family & household expenses until your divorce is final. The expenses should include all expenses incurred in connection with running the family home, children's expenses, personal expenses & the marital home expenses including but not limited to mortgage, home equity loans, principal and interest, real estate taxes, repairs and maintenance, homeowner's insurance, utilities, and all other related expenses. If you cannot work this out together, see a mediator.

2. The four options you have regarding the marital residence are: Selling the house prior to divorce, Selling the house shortly following the divorce, agreeing to maintain joint ownership of the house, and selling it at a future date, and/or buying your spouse out with a lump sum or a sum to be paid out at a mutually agreed upon timeframe and transferring the title as part of the divorce judgment.

3. The benefit of keeping the children in the marital home is that the children have one less change to deal with. Home represents security, familiarity, and structure. If the children can remain in their own home, they will have a better adjustment to the divorce. Children want as little change as possible. It will also be in the benefit of the custodial parent as well.

4. The needs of the entire family should be considered when deciding if the marital home should be sold or not. If neither one of you can afford to keep the home, you might want to consider selling it before the divorce and dividing the proceeds in a fair an equitable way. It will provide you with the necessary cash that you need to find other accommodations.

5. Lawyers cannot make either one of you decide who gets the marital residence. In fact, they can become your greatest obstacles in trying to make the decision. The adversarial system baits you against one another making it virtually impossible to reach an amicable decision.

6. The only two people who can decide what happens to the marital home are you and your spouse and/or a judge. A judge does not know all the personal details of your case and his/her decision in all probability won't be to your liking.

7. If you appear before a judge, it will be very costly emotionally and financially. He/she could order that the marital home be sold even if you have children, and the proceeds splits in any % he/she deems equitable. If you inherited the house, a judge could order that your spouse remain in the marital home until the children reach emancipation and/or to off set child support. If your spouse is disabled, a judge could order he/she remain in the home. As you can see, just about any scenario can result. Going to court is like playing Russian roulette with your life.

8. All property acquired during the marriage is considered marital property. Therefore, just because the deed only has one name on it does not mean it is not marital property.

9. It is not wise to accept the marital residence as part of the property settlement if you will go into poverty maintaining it. If you do accept it, make sure that you get the house inspected by a professional housing inspector before signing your Agreement to find out what is wrong with the house, what repairs need to be done and how much it will cost. The cost of repairs could change the terms of your Agreement.

10. If you sell the house prior to divorce, you can get the $500,000 tax exemption for married couples just if you meet the residency requirements. You must live in the residence two out of the five years before it is sold. This does not have to be in sequential order.

11. The negative side of selling the house after divorce is that it ties up your funds unless one of you is planning to buy the other out.

12. If you sell the house following the divorce, you both can get a $250,000 tax exemption for singles if you meet the residency requirements. You should have lived in the residence two out of the five years before it is sold. This does not have to be in sequential order. There is no limit to the number of times you can use the home-sale exemption. However, this tax break only applies to your principal residence and not investment property.

13. Members of the military also get special home-sale consideration. Military personnel are exempt from the two-year use requirement for up to ten years. But if the residency requirements are not met, full payment of capital gains taxes apply.

14. Selling the residence under special conditions such as ill health, divorce, employment, and unforeseen conditions may make you eligible for a prorated tax-free gain.

15. If one of your transfers titles to the other, this should be completed and filed with the court on the day of your hearing. If you don't have a hearing, it should be filed with your Separation Agreement. In most cases, this is executed by quitclaim deed.

16. Transfer of the marital residence through divorce to one party from the other is a non-taxable event. If you then sell it later, that party will have to pay capital gains tax unless you write it up differently.

17. If there is a lot of equity in the marital home and one spouse is keeping the home, that value should be off set for something of equal value for the other spouse and/or that spouse could buy out the other's share by refinancing.

18. If one party buys out the other's share, will that party be paid in a lump sum or in periodic payments within a certain timeframe? If payment is deferred, will that spouse have to make additional interest payments to the other spouse?

19. Both parties need to indemnify the other from future costs they may become obligated to pay once they have relinquished their property rights.

20. It is wise to include who will pay the capital gains tax in your Separation Agreement. The party who retains ownership of the martial residence should be responsible for the capital gains tax if he/she decides to sell it and shall receive all the proceeds from that sale. If the capital gains tax will be exorbitant, you might want to look at the rest of the distribution of your property values. This should be written into the Agreement.

21. Once you decide on division of your real property, you cannot go back to court and change it. So, be clear about the decisions you are making and the possible ramifications.

22. If there is a lot of liability in the marital home, it is possible to have that liability off set for something of equal liability for the other spouse.

23. If one of you knows that it would not be possible to refinance on your own, it is possible for your spouse to convey the deed (ownership) over to you and remain on the mortgage note in order to help you refinance. If your spouse remains on the mortgage note, it is possible to write up specific contingencies as to when his/her name will be removed such as a specific timeframe, receiving a raise, getting a better job, cohabitation, or remarriage. The spouse who remains on the note should have the option to opt out if they have a substantial change in circumstance preventing them from buying real estate or getting credit. Who will pay for the refinance?

24. If you retain joint ownership of the marital residence, the deed automatically changes when you get divorced, to tenancy in common. This means that either one of you could sell or will your share to a third person. Once your divorce agreement is executed, it is wise to have the deed changed to joint tenancy. This means that neither one of you can sell or will your share to a third party. Also, if either one of you dies, the surviving party owns the property outright. Who will pay for the deed change?

25. If you decide to maintain joint ownership, it is important to clearly state in your Agreement which party will have sole use and occupancy of the house. It is also

possible for both parties to have joint use and occupancy. If the Agreement states that one spouse cannot inhabit the marital residence, that spouse will not be able to claim the tax exemption. This contingency needs to be figured into the Agreement.

26. The negative side of maintaining joint ownership is that it keeps the parties tied to one another adding additional financial stress, especially if the parties have had a bitter divorce or are very angry at one another. Also, if either party fails to pay their share of the expenses, they can destroy one another's credit rating.

27. If you retain joint ownership and rent the property, how will the rental income be divided?

28. If you retain joint ownership and one spouse cohabits or remarries, how will the Agreement provide for that contingency?

29. Who gets to claim the real estate tax exemption if the house is still jointly owned, and you are filing separate returns?

30. Will one party be reimbursed for paying joint house expenses after the divorce if the other eventually retains ownership?

31. Can the marital property be divided into parcels or lots to equalize value and/or do you have other rental property at another location? It is possible to turn a rental property into your primary residence and sell it making it eligible for the tax exemption if you meet the IRS requirements for use and ownership. You must inhabit the residence two out of the five years. It does not have to be sequential. Each sale must be two years apart.

32. If you are jointly selling the house, it is important to determine how you will go about it and who will pay what costs such as hiring an appraiser, maintenance of the home, garden and lawn maintenance, repairs, capital improvements, realtor fees, commissions, closing fees, etc. It is also important to determine when it will be sold especially if you are the one occupying the marital residence. These terms must be mutually agreed upon and stated in your Agreement. You don't want your spouse to be able to force you to sell.

33. It is wise to have at least three appraisals and then mutually agree on the fair market value of the home. How will you select the appraisers and who will pay for it? Realtors will assess your house free of charge. They do a comparative analysis based on what other houses of similar value have sold for.

34. Will the spouse who remains in the marital home for a specified period of time have the option to buy the other out?

35. If you have gains over the capital gains exemption, the maximum tax you are responsible for is 20% in addition to state taxes.

36. If the parties retain joint ownership, appreciation or depreciation of the house value should be considered and accounted for in the division of all assets and liabilities. This contingency should be written into the Agreement.

37. If you sell the home jointly, and your home is valued under 500,000 and your gain is less than $500,000, you don't have to worry about a capital gains tax as long as the both of you have owned and occupied the property for at least two of the five years and/or one of you is allowed to use the marital residence under your Separation Agreement for divorce. This is further explained by the IRS in publication 523.

38. If you can exclude all the gain on your primary residence, you will owe no taxes. You need to include what you paid for the residence, all capital improvements, and/or the roll over amount from another home and subtract that from what you get for the house minus commissions and expenses.

39. If the house is sold jointly, it is wise to deduct all expenses from the net proceeds.

40. It is wise to check out all tax ramifications with an accountant trained in divorce issues, a real estate attorney, and/or both. The IRS carefully checks the tax returns of the newly divorced.

41. If one of you receives the house in the settlement based on its current value and that value goes up or down by the time you are ready to sell it, you might want to consider this gain or loss contingency when drafting your Agreement especially if you have waived your rights to your spouse's business, pension and/or some other asset of significant value.

You never want to invest more than you can afford to lose. Remember a house is just a house. It only becomes a home when you make it one. It is the emotions and feelings we attach to our homes that give it meaning. Home is where the heart is. Wherever your heart goes, home will follow.

Action Steps

Read the Marital Home information carefully. Circle all the contingencies that are relevant to you. Negotiate those contingencies, and make sure that they are incorporated into your written Agreement.

PENSIONS & DIVORCE

A pension plan is a tax deferred savings plan. During a person's employment, contributions are made by the employee and/or by the employer to a retirement plan. The contributions and earnings accumulate over time, tax-free until retirement. Upon reaching retirement, the employee receives a lump sum or a specific monthly income for life.

Under the divorce laws of every state, a pension earned during a marriage is considered to be a joint asset or the marital property of both the husband and wife. However, it is not automatic. You must specifically ask for a share of the pension at the time of the divorce. Pension plans of either party, whether vested or not may be divided. Retirement assets include most IRAs (but not Roth or education IRAs) and qualified employer-sponsored defined contribution plans and benefit retirement plans. These include the 401k, 403b, money purchase, Keoghs, Sep-IRAs, Simple IRAs, and Sar-Sep plans etc.

There are two types of retirement plans:

Defined Contribution Plan-A defined contribution plan is one in which the value of the plan is determined in part by the amount of contributions made into the plan. There is no problem identifying the value of the account. It has cash value today. The money contributed may be invested and grow. One kind of such a plan is the 401k. A portion of the account can be transferred to an IRA for the ex-spouse without tax consequences if the check is sent directly from the plan to the IRA. If the money is sent directly to the person, they will be charged 20% withholding tax even if they roll it over into an IRA. Only a direct transfer from the plan avoids the tax penalty. Also, some companies allow the plan to be divided allowing the ex-spouse to have an account with the company.

There are three kinds of defined contribution plans:

The employee puts money in, and he/she is 100% vested. Any money there belongs to the employee and if he/she leaves, they can take the money with them.

The employer contributes money to the plan. The employee does not put anything in. The company uses a vesting schedule which determines how much money the employee can take with him/her. The amount the employee takes depends on how long they worked for the company.

For every dollar the employee puts in his plan, the employer matches it with .50 cents. If the employee leaves, he can take the money he contributed but only 30% of the amount his employer contributed.

Defined Benefit Plan-This is a plan where the employee is provided a monthly payment starting at retirement for his/her lifetime. It has no cash value today. The amount paid is based on the company's pre-determined formula.

FOUR WAYS TO WITHDRAW MONEY WITHOUT PAYING A PENALTY

There are four ways to withdraw money without paying the 10% penalty for early withdrawal if you are not fifty-nine and a half. They are section 72(t) which states that the 10% penalty will not apply to money taken out of a retirement fund in equal periodic payments which means at least one payment per year. IRA assets are eligible for Section 72(t). 401k assets are eligible as long as the employee no longer works for that employer.

Annuitizing an IRA means to purchase an annuity. With an immediate annuity, an investor gives a lump sum of money to an insurance company in exchange for a guaranteed fixed payment over a specified amount of time. This method is for IRAs but not for 401k assets. A QDRO is not needed to transfer an IRA.

Age 55 separation from service means that employees who leave their jobs at age 55 permits them to start taking distributions from their 401k without being subject to the 10% penalty for early withdrawal.

Money with drawn from a retirement account is taxable the year it is
with drawn as income. There is no way around that.

To receive a portion of your spouse's pension and/or pensions, you must ask for your share at the time of the divorce-not later when your spouse retires. You can mediate the distribution, or a court could award you a share as part of the divorce. Carol Ann Wilson states that it is important to understand your state law on the valuation of pensions. For example, at what date is the valuation to be based upon? What projections are to be made on continued salary increases? Against what number is the marital fraction to be applied? Is the retirement indexed to inflation? How is the ultimate retirement calculated? When is the earliest date the person can retire with an unreduced pension?

A court usually awards one third or one half to the non-employee spouse. However, there are exceptions to every rule. The court usually values a pension by estimating the current and future value of the pension. Then it awards the non-employee spouse a portion of the pension value in cash based on the number of years married and employed.

There are three ways to divide pension benefits which are: **Present value or cash out value**-This means what it is worth today. You receive a lump settlement or a marital asset of equal value. **Deferred Division-**This means that each spouse is awarded a share of the pension if and when they are paid. The third method is **Reserved Jurisdiction**-This means the court reserves the right to order pension distribution at some future date.

QDRO

To make sure the pension plan recognizes your right to apportion of your spouse's pension after the divorce, you need to obtain a separate court order to present to the plan administrator. This special order is called a "qualified domestic relations order" or QDRO (pronounced quadrow).

Plans that can be divided by a QDRO include defined-benefit plans, defined contribution plans, 401k's, thrift savings plans, some profit sharing and money purchase plans, and keogh plans. Tax sheltered annuities, employment stock ownership, (ESOP's), and the old payroll-based employee stock ownership plans (PAYSOPs).

When the court issues a domestic relations order awarding you a share of your spouse's pension, a copy must be sent to the pension plan administrator immediately.

The plan should contain all the necessary information so it determines, who, what, and when to pay, and should not require the plan to pay you in a form or at a time that is not permitted under the plan, for example, a lump sum, or single payment if the plan does not allow employees to draw their pensions that way.

As soon as the divorce proceedings begin, contact your spouse's plan administrator for their QDRO procedures. Each pension plan is different, and many companies have developed their own QDRO forms to make it easier for the court and the ex-spouse.

Settle all pension issues before your divorce is finalized in court. If the pension is mentioned in your separation agreement, but you do not get a QDRO at the time of your divorce, then you will have to go back to court later to obtain a QDRO, pay additional court and legal fees, and possibly run the risk of losing your share of the pension.

MANY PENSIONS DO NOT ALLOW FOR A QDRO!

And the pension plan procedure takes precedence over a court ruling! A QDRO should only be handled by an expert specializing in pensions. The plan documents must be reviewed to clarify just how that company handles the division of retirement benefits in a divorce.

PITFALLS

It is best to have all issues squared away by the time you are ready to file your Separation Agreement in court. Once the Separation Agreement is filed, going back to court to settle issues that should have been settled beforehand will only cause you more emotional duress, valuable time, and additional cost. Also, it is not a wise option to wait years to be eligible to receive a share of your spouse's pension. Many retirement plans fail due to mismanagement and/or the company goes bankrupt. You could receive nothing. It is wiser to receive an asset of equal value now.

It takes a QDRO several months to be approved. It is wise to get it pre-approved by the plan administrator before the divorce is finalized. If you file your agreement in court before the QDRO is approved, there is a good chance you will never receive it. Carol Ann Wilson states that the employee spouse could retire and select a single-life annuity and the non-employee's right to a survivor annuity would be lost. The employee spouse can die, and the non-employee spouse is no longer a spouse and there is not yet a QDRO

to protect the non-employee spouse. The employee spouse could remarry, and the non-employee spouse may have trouble obtaining a survivor annuity because it will be unclear whether the non-employee rights super cede the new spouse. In that case, there should be a backup contingency to receive another marital asset of equal value in case the QDRO is not approved.

If a court orders that a spouse receive benefits before the employee retires, the plan may not allow for the ex-spouse to receive such benefits.

If a court orders for a division of the account balance of a defined-benefit plan executed on the day of the divorce, the pension plan cannot administer the order, because most plans don't value their plans daily but on a quarterly basis.

Make sure that the non-employee spouse is aware of any early retirement bonus for the employee spouse that needs to be divided.

With some pension plans, it is possible for the non-employee spouse to be able to receive a lifetime annuity.

Establish a contingency if the non-employee spouse dies where the pension benefits will be allocated. Some plans allow the funds to go to the non-employee's family. Other plans do not. If the QDRO does not clearly spell this out, the plan will absorb the money because it will not know whom to pay.

An expert from a pension plan will answer all your questions. However, they will not give you any additional information. Therefore, it is essential that you ask all the right questions. Many attorneys don't know the right questions to ask. So, don't rely on your attorney to get your pensions properly executed. You will not be happy with the outcome. So, do your homework. Here are some questions to ask: Do you allow a QDRO? Do you require your own QDRO forms? Can the ex-spouse receive benefits before the employee reaches full retirement? Do you make payments in lump sums? Will you separate the accounts? What is the procedure for survivor benefits?

Most public employee pension plans covering teachers, firemen, policemen,
Etc, do not allow division by order of a QDRO and/or may not be able to be divided at all.

If your spouse has more than one pension-for instance a 401k plan and/or a traditional pension, your settlement must refer to each plan to get benefits from both.

Obtain as much information as you can from your spouse's company benefits office. If you have an attorney, the attorney will have to write them a letter to obtain this information. The law does consider you a beneficiary with the right to receive information. Always get a description summary of the plan. Don't rely on the QDRO forms of the employee's company as they tend to favor the employee spouse.

Notifying the pension plan administrator in writing that you are in the process of divorce may prevent the plan from paying out your share of the pension to your spouse.

A pension may be divided in many ways. However, if you want to receive a survivor's pension, you will need to ask for that specifically, since it must be separately mentioned in the QDRO & in the separation agreement. It should be written up in a way that the spouse gets it even if the employee spouse dies. Make sure the plan has options for the employee spouse's death and find out what the procedures are to guarantee payment.

If your spouse previously chose a survivor's benefit for you, you are entitled to receive it regardless of the divorce (unless it's a government pension). However, the non-employee spouse must preserve the right to receive the pension if the employee spouse should die. Once this is put in a divorce decree, this overrides the rights of a second spouse receiving it. The court order must specify the exact amount to be paid and/or a % of the amount to be paid.

One of the worst mistakes in a divorce is when retirement assets are transferred to a former spouse, but the original owner is still held liable for the taxes, including penalties for early withdrawal.

There are rules and regulations that need to be followed for each option, so the best thing to do is to meet with an accountant to find the best route that works for you. You want to avoid any pitfalls that could result from a lack of information. Do you need a lump sum or an ongoing income stream? Some of the plans could restrict such options.
Based on the information above, just because it is an option does not mean it is in your best interests to do it. However, it is important to be aware of all your possibilities before making decisions. It is always wise, if possible, to keep your assets protected from taxes as long as possible. It is important to create a comprehensive financial plan to balance immediate survival needs versus the long-term consequences of your decisions.

Beware of trade offs offered by your spouse to off set the value of the pensions. The value of your share of the pension may be higher than the value of the assets you are offered.

Action Steps

Read the information on pensions very carefully. Circle all the information that is relevant to you. If you will be receiving part of your spouse's pension, make sure you are following the pension process correctly. Many people go to a pension specialist to have a QDRO drawn up to insure getting the pension. If you do not follow the pension process correctly for that pension, you will not receive the pension even if it is stated in your Agreement that you will get it. Pension laws override court-ordered law.

DIVIDING THE FAMILY BUSINESS

Dividing the family business can be a challenging proposition. Don't let it overwhelm you. Take one step at a time, and all the pieces will come together. The whole marital pie needs to be considered as well as what both parties contributed to the marriage and what they will need to start over. It is essential to know how much the business is worth, what revenue it generates, as well as its perks and liabilities. Many courts favor giving the family business to the spouse who has been running the business and giving the other spouse assets of equal value. Businesses are usually not sold in a divorce because selling a business is difficult and leaves one or both spouses without employment.

If the business was inherited or owned before the marriage, it is likely to be a mixture of marital and separate property. However, this can get even more complicated if the other spouse is involved in the business in any way. If both partners have been working in the business, they should get a share that is proportionate to their ability to be able to acquire additional wealth and acquisitions in the future based on the whole marital pie. It is rarely a 50/50 split, and equal is not always fair. The spouse that is bought out no longer has an income stream. This needs to be taken into consideration. Nothing is a given in the courts. You can never predict what a court would decide. So, it is a good idea to decide this between yourselves. There are always ways to find strategies that will preserve the value of the property and leave much more money in both your pocketbooks. It takes patience, getting the right information, remaining civil and cooperating for one another's highest good. When people finally realize the effect on their bottom line, they are more willing to participate with less acrimony.

If you have no idea how much the business is worth, it is imperative to get it appraised. An appraisal can cost a lot, but if the business is worth over 60,000, it is worth it. I suggest hiring a certified business appraiser or a certified valuation analyst. The national number for certified valuation analysts is 800-677-2009. The cost will vary on the complexity of the business. You can't equitably divide up your marital pie if you do not know the value of one of your greatest assets. If the business is worth less than $60,000, it may not be necessary to hire an appraiser. However, it would be prudent to hire a CPA who can analyze the financial statements (tax returns/checking account records) reflecting the business's assets, liabilities, income, and expenses. Loan applications may provide valuable information as well. Information about the purchase price of similar businesses may be helpful. Gathering all this information may be sufficient enough to calculate the value of the business. It is important to understand that the fair market value of the business may not be the same as the legal value which means the formula each court uses for ascertaining the value of any business. This would only be a problem if you went to court. Also, if you plan to sell the business at a future date, it is wise to get another appraisal at that time. Don't turn valuing the business into a major battle. Take the path of least resistance that will help you to attain your goal.

When deciding to divide a business, there are four options: One spouse retains the business, both spouses keep it, the business is divided into two separate businesses, or the business is sold. If one spouse wants to keep the business, he/she has options. He/she can

buy out the other spouse's share which can be written up as part of the property settlement and paid out in a lump sum or over a specified time frame. If one spouse owns shares in the business, the other spouse could buy back those shares. You can also allow the former spouse to keep shares in the company but make them non-voting. In this way, those shares may not be sold to a third party or other family member. The active spouse runs the business while the inactive spouse keeps his/her rights intact with non-voting shares equal to the percentage specified in the settlement.

If one spouse decides to buy out shares, they must be careful about capital gains tax if there has been an increase in the value of the stock. If you buy the shares directly, it is considered a transfer of property based on divorce and is not a taxable issue. It is important to see an accountant and become aware of any tax ramifications before you finalize any transactions.

Another option would be that one spouse gives the other spouse assets of equal value. Sometimes one spouse keeps the house, and the other spouse gets the business. This may not be the best financial strategy for the one keeping the house especially if there is a mortgage on the house unless the other spouse pays if off in the Agreement. The spouse who gets the house has all his/her money tied up in the house with no income stream. Their Agreement was based on the value of the house. A house is only worth what someone would pay for it and the market could also go down. Also, it is not always easy to sell a house. The spouse who keeps the business has an ongoing income stream. This decision in the long run might be in favor of the spouse who kept the business.

The business has been the source of wealth for the family. Although dollars and cents are important, emotional issues can run very high. The spouse who has primarily worked the business will have to work through feelings of outrage at having to share the wealth. Often, the spouse thinks of the business as his own because he/she has worked so hard at it. They can't see the whole picture and may be blind to the contributions of the other spouse. That is why it is wise to mediate these issues and to get professional help. The adversarial system will only exacerbate these issues. No matter what you decide, it is essential to have a plan for conflict resolution written into your Separation Agreement that would include trying mediation and/or arbitration before going to court.

When the husband and wife have worked side by side for a long time in a business, dividing the business can bring up a lot of volatile emotional issues. They must see if dividing the business will destroy it. That will be of no use to anyone. If they decide to continue running the business together, they need to be realistic as to whether they can get along. For some couples, this would never work. For other couples, they can be good business partners. It is possible that economic realities might keep you together as business partners. Anything can be worked out with a good plan.

Whether you decide to keep running the business together or plan on selling, it is essential to have a management agreement and a buy out plan written into your Agreement. Do not fly by the seat of your pants by thinking it will all fall into place. Failing to plan is planning to fail. Go to a business consultant or some other professional

who can help you delineate specific duties in the operation of the business and to identify all the issues requiring the agreement of both spouses. This should include employment agreements to address benefits, termination, resignation, covenants not to compete etc. You should have an insurance policy that both of you hold to protect the value of the business. If the policy lapses, both parties should be notified, either party shall have the right to pay the premium and/or be reimbursed. In addition, the divorced couple should enter into a buy sell agreement to specifically address the future transfer of business interests, and the purchase rights on death and other important issues.

The spouses can agree to liquidate or be bought out if one of them gets ill/disabled, needs the cash or the business starts to fail. They can also agree to sell their stock if it reaches a certain amount. All the usual safeguards, such as continued ownership until final payment, or a security agreement regarding mortgages, equity loans, business loans, liens, IRS issues, death clause etc should be executed. You might want to consider setting up a family limited partnership or a divorce trust. What ever vehicle you use to protect one another gives you both an exit strategy (that should be filed in court) if you decide to manage the business together and it does not work out. Have it all spelled out. Don't wait until you realize it will not work. Your exit strategy should also include arrangements for how either one of you would sever employment, and what help you would receive with the replacement of benefits such as health insurance etc. It should also include what value both of you will get if the business relationship ends. What would the buyout formula be? Many questions need to be answered.

If you decide to sell, there are even more questions. It is never wise to sell in a depressed market. How would you navigate that? It should state in your Agreement how you will agree on a price and when you will place the business on the market. How will you divide the profits and liabilities? Who will pay for the realtor, appraiser, capital gains and any other expenses involved in selling? Until it sells, who will run the business? Who will do what, when and how? How will you divide the income, business perks and business accounts? How will the bills be paid? How will you handle your taxes? If you own the building the business is in and/or the land, how will that be divided fairly and equitably? Everything needs to be spelled out.

Ultimately, you will make your decisions about dividing the business based on the vision you have for your new life. The business should be divided in a fair and equitable way so the both of you can create a stable and prosperous financial future. It is important to anticipate how your Agreement could play out in five-ten years to avoid the consequences that you do not want.

Action Steps

1. Read the information on dividing the family business very carefully. Circle all the protective contingencies that are relevant to you. Make sure to negotiate those issues and have them written into your Agreement or attached separately to the Agreement. It is important to be concise and specific.

2. It is wise to confer with a professional whose expertise is business law or finances and have them review what you have mutually agreed upon to confirm that your plan is equitable and that you have covered all the bases in protecting your financial future.

VALUE’S CHART (Post Divorce)

Doing a value’s chart is essential to determine the value of what you are receiving. By looking at the value’s chart, you can quickly determine if all your assets and liabilities have been distributed fairly and equitably. Fill in the correct amount next to each item that only personally relates to you post divorce and your spouse post divorce. Put a plus or minus sign next to each item to indicate if it is an asset or a liability. Add up the assets and liabilities separately for the both of you. Then, subtract the liabilities from the assets for the both of you to determine equitability of your Agreement. Put a zero next to values that are not applicable. If the division of property is not equitable, you will need to renegotiate.

WIFE		HUSBAND
	yearly salary (net)	
	weekly salary	
	yearly bonus	
	overtime	
	savings account	
	checking account	
	fixed monthly living expenses	
	personal Expenses	
	children’s Expenses	
	children’s college expenses	
	total living expenses	
	positive monthly cash flow	
	negative monthly cash flow	
	business perks, Car, Gas	
	pension Value	
	retirement	
	value of 401K	
	commissions	
	dividends and interest	
	royalties	
	trusts	
	CD’s	
	bonds	
	stocks	
	keogh	
	SEP	
	profit sharing	
	deferred compensation	
	IRA’s	
	mutual funds	

lawn equipment
child support & alimony (previous marriage)
value of life insurance

WIFE **HUSBAND**

value of car/cars
time-shares
car loan/expenses
personal expenses
cost of replacing items in the marital residence
equity in marital residence
equity in other real estate
rental income
land value
house repairs
mortgage and equity loan on marital residence
mortgage and equity loan on other real estate
rent
credit card debt
department store debt
other loans
back taxes
inheritance
personal debt
health insurance costs
uninsured health insurance costs
cost of maintaining marital residence monthly
value of household items
antiques
art
personal education loans/costs
other assets
number of years paid into Social Security
Social Security amount to be received when eligible
lottery
business interest
business equipment
other liabilities

FINANCIAL DIVORCE CHECK LIST

"When you have the right blueprint to follow, take the action you need to take, in the right order, at the right time, you have a guaranteed formula for success." John Assaraf

1. -------You have created a vision for your financial divorce as well as for your financial future.
2. -------From that vision, you have created the appropriate goals you need to achieve to create your vision.
3. -------You are doing at minimum three weekly/monthly action steps to move you forward in achieving your financial goals.
4. -------You have identified the negative beliefs that you have about money that have held you back from achieving financial abundance. You have rewritten those beliefs and do affirmations every day to reinforce the new beliefs.
5. -------You have identified all sources of income and their respective values.
6. -------You have decided how you will handle all marital financial issues such as alimony, inheritance, health insurance, etc.
7. -------You have carefully read 40 Financial Mistakes Not to Make. You have identified the mistakes you do not want to make, written them down, and will negotiate them.
8. --------You have filled out your budget and know what you will need to live on post divorce and how much you need to get in your settlement so you can have a positive cash flow and be able to save money each month to put towards retirement.
9. --------You know your liabilities and marital net worth and have decided how you will divvy it all up, so it is equitable and fair.
10. ------- You have decided where you will live and who will pay for what regarding bills and household expenses.
11. -------You have negotiated a temporary financial separation plan and are abiding by it.
12. -------You have decided what you will do with the marital residence and have written down all the terms that need to be in your written Agreement.
13. -------You have decided who will receive alimony and what contingencies need to be put in your Agreement in order to protect yourself from losing the alimony and/or for being penalized for not being able to pay it.
14. -------You have decided how you will deal with your pensions and have seen a pension specialist and are following the pension process correctly to ensure that the designated spouse will receive the pension especially regarding a QDRO.
15. -------You have decided on how you will divide the family business and have negotiated all the important contingencies to protect your future. You have written up a business plan that will be incorporated into your Agreement.
16. -------You have filled out the values chart and have determined whether your Agreement is equitable or not. If it is not equitable, you will renegotiate.
17. -------Your check list is complete. You are ready to begin drafting your proposal or Agreement.

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