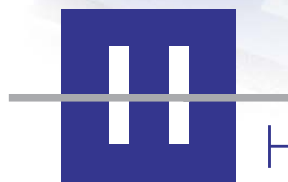


FINANCIAL DIVORCE GUIDE



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During divorce, organizing your financial documents, making informed cost-benefit decisions, and striving to keep your costs under control are critical to your long-term financial stability.

In this special **Financial Divorce Guide**, you'll find articles, book excerpts, advice and more on key financial issues that often emerge during divorce. Together with other resources and experts, use the information here to help you make it through your divorce with your finances intact, and your future secure.



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Organizing Your Finances

Thinking of getting a divorce? Start getting involved with your finances and accumulate the necessary financial information.

By Deborah Moskovitch

All lawyers agree on how important it is for their clients to be as financially aware as possible. It's the best way to learn your rights and obligations and to determine realistic expectations early in the divorce process. Once you have a handle on your financial situation, your lawyer can give you informed opinions based on fact, not on speculation. And the more you can manage and organize your information for your lawyer and establish realistic financial goals, the more you can help reduce your lawyer's billable hours.

Organizing your finances can be difficult if you were not the one responsible for them during your marriage — if you were what some lawyers call the noninformed spouse. If possible, try to become more financially aware before you separate:

Get more involved in your finances. Know the basics — pay the bills and file the statements. Learn how your daily and monthly expenses are managed.

Determine where the money is coming from and how it is applied toward your budget.

Take part in setting up investments such as retirement funds, and understand where and what the other assets are.

Many lawyers suggest that if someone is contemplating a divorce or separating, one of the first things he or she should do is accumulate the financial information.



Gather Your Financial Documents

Once the divorce process is under way, your lawyer will need ready access to all relevant financial documents. Start by locating and gathering together the following records pertaining to both you and your spouse:

- social security numbers
- income tax returns for the past three years
- retirement savings plans statements for the past three years
- bank account statements
- insurance policies (life; automobile; house; other)
- stock certificates
- credit card bills
- employment payment stubs
- brokerage statements
- pension statements
- health insurance and work-related benefits
- real estate records
- receipts and monthly statements documenting household expenses and everyday expenses (groceries, gas, heat, water, personal grooming, transportation, gifts, clothing, laundry and

cleaning supplies, entertainment, miscellaneous expenses, and so forth)

- list of all assets and liabilities
- date of separation (the date of separation, or “valuation date,” is the date that is used to determine the value of particular assets — the matrimonial home, bank statements, investments, and so forth)

Photocopy everything, and store your set in a separate folder from the original records. Don’t just keep the originals for your own personal use; the other side is entitled to these documents, too. If you do withhold these records from the other side, sooner or later you are going to be asked to provide them, which will cost you even more in legal fees.

The financially noninformed spouse is often the one who is left in the house in the first days or weeks after separation. That would be a good time to make copies of all of these records. Keep your set outside of your home — perhaps at a trusted friend’s house or in your own personal safety deposit box. Return the original documents to the family files, but build the paper trail while you have access to the documents.

What if your former partner has made off with the financial records? Before you start sending letters back and forth, try doing what you can to find them or to reassemble the information yourself. Look in a shared safety deposit box or in the family filing cabinet. Ask your banker, broker, or financial advisor to provide the missing data. Retrieve household statements from the companies that provide the services, such as the phone company. The more financial information you can pass along to your lawyer, the better.

Set Up a Financial Filing System

When my lawyer’s office asked me to fill out a financial statement, they were extremely surprised at how quickly, accurately, and efficiently I was able to do so. My secret was an extremely simple filing system that I’ve now been using for twenty-five years: an expandable file folder with thirty-one tabs on it. Each tab

Organizing your finances can be difficult if you were not the one responsible for them during your marriage.

corresponds to a different item or company that is relevant to my personal finances. I start a new one every year, and store the old ones away.

To start a filing system of your own, label the front of your file folder with a key for easy reference. Here’s an example of a system you might use:

- Year _____
1. income tax receipts
 2. property tax assessments
 3. mortgage statements
 4. home insurance statements
 5. life insurance policies
 6. bank account statements (savings and checking) retirement fund statements
 7. other investments (you could have one tab per investment)
 8. credit card statements (you could have one tab per credit card)
 9. loans or lines of credit
 10. medical expenses
 11. children’s bank or investment accounts
 12. children’s school information and expenses
 13. children’s summer program information and expenses
 14. children’s other program information and expenses
 15. children’s extraordinary expenses
 16. car costs (insurance statements, maintenance receipts, etc.)
 17. phone bills (home and cell)
 18. cable/satellite, internet, and other computer-related information and expenses
 19. home alarm system information and statements
 20. gas, water, and other utility statements (you could have one tab per utility)

21. other home expenses
22. charitable donations
23. miscellaneous receipts
24. other

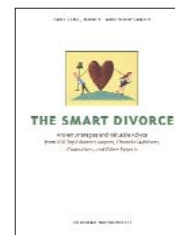
If you can pull all of this information together and organize it yourself, you’ll gain credibility when you fill out your financial statement, because you’ll have documentation to support the information you submit. You’ll also have an easy way to forecast next year’s expenses. In addition, you will be able to fill out your financial statement on your own, without the assistance of legal staff, which will again save you time and money.

You may have specific documents that you’ll want to refer to five years from now, and if you put them in your annual folder they may be forgotten. In this case, you may want to create another file folder for any documents that you don’t file away at the end of the year.

Here’s an example of the system you might use for this folder:

1. divorce decree
2. final separation agreement
3. final parenting plan
4. last will and testament
5. bank accounts
6. property deeds
7. other

You can also use computer programs such as Quicken to help you organize your financial information. ■



This article has been edited and excerpted from the book The Smart Divorce by Deborah Moskovitch, copyright © 2007, published by Chicago Review Press, Inc.

Deborah Moskovitch is the creator and facilitator of the Smart Divorce, a consulting service that provides tools and strategies for individuals contemplating or going through divorce. For more information, visit www.thesmartdivorce.com.

For more articles to help with your financial before and after your divorce, visit www.divorcemag.com/articles/Financial_Planning/.

Taking Control

Understanding your income and expenses will help you to gain control of your finances — and life — during divorce.

By Diana Shepherd, CDFA™



Here's a question for you: do you have a written, detailed, up-to-date budget detailing all your daily, weekly, monthly, and yearly expenses and income? If you're like most people, your answer to this question will be "no." The lack of a budget may have caused financial problems during your marriage, but it could be ruinous post-divorce. If you don't know what your expenses are, how will you know how much you'll need to maintain your current lifestyle — for yourself and your children? Or worse: you may already be living so far above your current income that you've taken the first steps down the road to bankruptcy without even being aware of it.

So the first step to gaining control of your finances — and life — during divorce is to prepare an accurate current budget and a post-divorce budget. You will need to gather documentation to ensure that your budget is objective and not the product of guess-work.

First, you need to identify your sources of income, which includes revenue from full- and part-time employment, investment return, and self-employment income. Add up all the income from different sources to come up with total income. If you're clueless about what your spouse earns, obtain or make copies of his/her tax returns for the last three to five years. Also, watch the mail for statements from banks or brokerage houses; if you have never opened any of these during your marriage, and you have good reason not to let your spouse know of your sudden interest in the family's finances, you can start by making a note of how many of these arrive in an ordinary month as well as the names and addresses on each envelope.

After you have an accurate picture of what's coming in, you need to create an equally accurate picture of what's going out. You should review your check register and credit-card statements — or your online banking records if that's how you usually pay your bills. Remember that not all your expenses are paid monthly; some insurance premiums or

tax bills might be payable quarterly or annually, so make sure to account for those as well.

Don't forget about cash withdrawals using ATM cards; you'll be surprised how quickly taking \$50 here and \$100 there can put you in the red if these withdrawals are not included in your budget. Also, you need to be able to account for where/how you spent the cash: was it taking taxis to work, going out to restaurants, on a new outfit, or paying the babysitter?

After you've completed a "first draft" of your budget, ask a reasonable and financially-savvy friend or family member to review it and question the expenses that seem unreasonable. (You may think a \$500 shirt and weekly spa appointments are both reasonable and necessary, but someone who sees you living beyond your means may not agree!) If you're going to ask for help with your budget, you'll have to agree to keep an open mind and not to become angry or defensive if he/she questions one of your items. This person is trying to help you, and he/she will probably be a lot easier on you than a judge would be!

Start with the pre-divorce scenario using the budget table on page 22 as a guide. Make two copies of the chart, replacing or deleting items to suit your needs, then fill in pre-divorce expenses on one and post-divorce expenses on the other. After you've created your pre-divorce budget, go to the post-divorce page and carry over each expense with an increase or decrease in its value based on your new circumstances. For example, an increase might be lawn care or snow removal if your ex used to handle that. Food expenses, on the other hand, should decrease now that you have one less mouth to feed.

If you're like most people, your number-one financial concern during divorce is maintaining positive cash flow — in other words, being able to pay the bills on a monthly basis — not only on the day after divorce, but five, ten, 15 years into the future. In order to meet cash-flow needs, there are three sources of money that may be available to you as a result of your divorce: child support, spousal

support, and marital property. Let's take a quick look at all three.

Child Support

In the US and Canada, a parent is obligated to support his or her children, regardless of the parent's marital status. All states and provinces have child support guidelines; you should review the guidelines in your area to get a rough idea of what you might be entitled to receive or have to pay. Generally speaking, child support is based on factors such as the ages of and number of minor children, the amount of time they will reside with each parent, and the income of each parent. These factors are plugged into a formula, which then supplies a recommendation for the Court. In a divorce situation, the non-custodial parent is usually ordered to pay child support to the custodial parent, from which the custodial parent pays the child's expenses.

However, the child support formula does not take into consideration your child's actual expenses. For example, extra-curricular activities, private school tuition, and college funding are not factored into the formula. These are considered "extraordinary expenses," and they are often an area of great discussion and/or argument. It may be unrealistic to keep your child in Rep Hockey, horseback riding, and Kumon math; you and your soon-to-be-ex spouse will now have to start making decisions based on what is financially feasible.

Here's an example. My neighbor Cathy, who is in the process of getting a divorce right now, has an 11-year-old daughter who is a promising figure skater. Brittney's skating expenses are \$500 per month in training, competition fees, and costumes. Cathy tells me that the costs will increase as her daughter gets older. Unfortunately, these expenses will not be taken into consideration when the court calculates child support for her, and Cathy cannot afford to cover them on her current salary.

One of the ways in which a Certified Divorce Financial Analyst™ (CDFA™) can help their clients is to determine which costs may not be addressed by the guidelines and then to help them find

alternative solutions to cover these expenses.

Since child support is such a complex area of the law — and because it can be a very contentious issue between divorcing parents — you should ask your lawyer for guidance regarding the child support amount.

Spousal Support

Another source of income (or an expense) for many divorced people will be spousal support. Spousal support is based on different factors, and it's a very gray and subjective area. However, the two most heavily weighted factors are need and ability to pay; the length of the marriage is another factor that is considered when awarding spousal support.

Unless you have prepared an accurate budget, you will not know how much spousal support you need — or, if you're on the other end of the equation, how much you can afford to pay.

Aside from determining need and ability to pay, you need to understand some other important issues with regard to spousal support. With respect to the amount and duration, this can either be a negotiated amount between spouses or it can be court ordered. (In the US, spousal support can be set up as modifiable or non-modifiable; if it's non-modifiable, this means that neither party can ask for it to be changed for any reason at any time in the future.) In most cases, each party may revisit the amount and duration each year after filing a tax return. As well, there may be the ability to revisit the amount of support if there is a substantial change in circumstances for one or both of the parties. Here's an example: John is paying Mary, who currently has a minimum wage job, \$20,000 per year in modifiable spousal support. In the second year after the divorce, Mary finds a job that pays \$55,000 per year. Due to this change in circumstances, John may be able to have the spousal support reduced.

No two divorcing couples have identical circumstances. The standard is to give support to the spouse who needs it in order to keep the family on a equal setting — however, there is an underlying

- Pre-Divorce
 Post-Divorce
(check one)

EXPENSE WORKSHEET

	Monthly Expenses	Annual Expenses		Monthly Expenses	Annual Expenses
Home Expenses			Transportation		
Rent/Mortgage	\$ _____	\$ _____	Auto Payment	\$ _____	\$ _____
Homeowners/Association Fee	\$ _____	\$ _____	Fuel	\$ _____	\$ _____
Home Equity Loan	\$ _____	\$ _____	Repair/Maintenance	\$ _____	\$ _____
Property Taxes	\$ _____	\$ _____	License	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	Taxis & Public Transit	\$ _____	\$ _____
Cellphone/Pager	\$ _____	\$ _____	Total Transportation Expenses	\$ _____	\$ _____
Internet	\$ _____	\$ _____	Miscellaneous		
Security System	\$ _____	\$ _____	Postage	\$ _____	\$ _____
Cable/Satellite	\$ _____	\$ _____	Gifts/Holiday Expenses	\$ _____	\$ _____
Electricity	\$ _____	\$ _____	Vitamins/Non-Prescription Drugs	\$ _____	\$ _____
Gas	\$ _____	\$ _____	Toiletries	\$ _____	\$ _____
Water/Garbage	\$ _____	\$ _____	Beauty Salon/Hair/Nails	\$ _____	\$ _____
Landscape Maintenance/Lawn	\$ _____	\$ _____	Pet Care (food, vet, etc.)	\$ _____	\$ _____
Snow Removal	\$ _____	\$ _____	Books/Newspapers/Magazines	\$ _____	\$ _____
Exterminator	\$ _____	\$ _____	Donations	\$ _____	\$ _____
General Home Repairs/Maintenance	\$ _____	\$ _____	Memberships/Clubs	\$ _____	\$ _____
Home Improvements/Upgrades	\$ _____	\$ _____	Miscellaneous	\$ _____	\$ _____
Housecleaning	\$ _____	\$ _____	Credit Card	\$ _____	\$ _____
Miscellaneous Household/Pool	\$ _____	\$ _____	Total Miscellaneous Expenses	\$ _____	\$ _____
Total Home Expenses	\$ _____	\$ _____	Other Payments		
Food			Quarterly Taxes & Add'l Tax Payments	\$ _____	\$ _____
Groceries	\$ _____	\$ _____	Spousal Support Payments	\$ _____	\$ _____
Dining Out	\$ _____	\$ _____	Child Support Payments	\$ _____	\$ _____
Total Food Expenses	\$ _____	\$ _____	Eldercare Expenses	\$ _____	\$ _____
Clothing Expenses			Professional Fees (Accounting, Financial Planning, Legal, etc.)	\$ _____	\$ _____
Clothing	\$ _____	\$ _____	Service Fees (Banks, Investments, etc.)	\$ _____	\$ _____
Laundry/Dry Cleaning	\$ _____	\$ _____	Total Other Payments Expenses	\$ _____	\$ _____
Total Clothing Expenses	\$ _____	\$ _____	TOTAL EXPENSES (Excluding Children) \$ _____ \$ _____		
Entertainment/Recreation			Child-Related Expenses		
Entertainment (Excludes Dining Out)	\$ _____	\$ _____	Education/Tuition	\$ _____	\$ _____
Videos/CDs/DVDs	\$ _____	\$ _____	School Lunches	\$ _____	\$ _____
Hobbies	\$ _____	\$ _____	Counselor	\$ _____	\$ _____
Movies and Theater	\$ _____	\$ _____	Sports/Camps/Lessons	\$ _____	\$ _____
Vacations/Travel	\$ _____	\$ _____	Hobbies/Field Trips/School Activities	\$ _____	\$ _____
Classes/Lessons	\$ _____	\$ _____	Toys/Games	\$ _____	\$ _____
Total Entertainment/Recreation Expenses	\$ _____	\$ _____	Boy-Scout/Girl-Guide Dues	\$ _____	\$ _____
Medical (After or not covered by insurance; excludes children)			Clothing	\$ _____	\$ _____
Physicians	\$ _____	\$ _____	Medical	\$ _____	\$ _____
Dental/Orthodontist	\$ _____	\$ _____	Dental/Orthodontics*	\$ _____	\$ _____
Optometry/Glasses/Contacts	\$ _____	\$ _____	Optometry/Glasses/Contacts*	\$ _____	\$ _____
Prescriptions	\$ _____	\$ _____	Prescriptions*	\$ _____	\$ _____
Total Medical Expenses	\$ _____	\$ _____	Allowances	\$ _____	\$ _____
Insurance			Miscellaneous/Haircuts	\$ _____	\$ _____
Life Insurance	\$ _____	\$ _____	TOTAL CHILD-RELATED EXPENSES	\$ _____	\$ _____
Health	\$ _____	\$ _____	* Not Covered by Insurance		
Disability	\$ _____	\$ _____	TOTAL EXPENSES (Including Children) \$ _____ \$ _____		
Long-Term Care	\$ _____	\$ _____			
Home	\$ _____	\$ _____			
Auto	\$ _____	\$ _____			
Other (Umbrella, Boat, Cottage, etc.)	\$ _____	\$ _____			
Total Insurance Expenses	\$ _____	\$ _____			

NOTE: Make two copies of this budget, one for "Pre-Divorce" and one for "Post-Divorce" expenses.

duty for each spouse to work towards being independent of each other.

Property

The third potential source of money in a divorce is property. Many states and provinces call for an equitable division of property. "Equitable" does not always mean "equal" — it is, however, supposed to mean "fair." If the spouses can't agree, the judge is the final arbiter of what constitutes fair. Although most divorces settle 50/50, it can make a huge difference which 50% you get; in other words, all assets are not created equal.

The first thing to know is that there are two kinds of property: Marital and Separate. Anything that is marital will go into the marital pie that's going to be equitably divided; anything that's separate property will not. The distinction between the two is a gray area and should be discussed with your lawyer, but here's a short explanation of how the courts typically define property.

Separate Property

Separate property is anything that was gifted during the marriage, inherited during the marriage, or brought into the marriage and kept in either spouse's separate name. Let's take a look at some examples. My friend Karen got married

10 years ago. She was in love, so she told her husband, "What's mine is yours and what's yours is mine". So she changed the title on her cottage from her name alone to both of their names. This is called making a presumptive gift to the marriage. The cottage will likely be part of the marital pie and up for division now that she's getting divorced.

How about the inheritance that Karen received five years ago from her Aunt Millie? She left it in a trust account in her name, which means that it's her separate property. What if Karen had taken her \$15,000 inheritance and used it to renovate the kitchen in the marital home? She could ask her lawyer to try to subtract \$15,000 from the marital portion, but the courts are likely to rule that the inheritance became marital property when she invested it in the home.

Here's another tricky part: any increase in value on the inheritance left in the trust account (or any other separate property) is considered marital, so if that \$15,000 grew to \$20,000 at the time of Karen's divorce, the \$5,000 in growth could be considered marital property.

Marital Property

Everything that's not considered separate property is considered marital. As long as it accumulated during the marriage, it's going into the pie to be divided — no matter whose name it's in. So, starting at your date of marriage, the contribution to your retirement plan that comes out of your paycheck and goes directly into the XYZ fund account in your name is marital property; ditto for your spouse's pension.

In many divorces, the biggest question is who gets the marital home. Should the wife get it, should the husband, or should they sell it and split the proceeds? What if the house is "underwater" — meaning that the householders owe more on their mortgages than their houses are worth? The answer is not always easy or clear. In a normal economy, couples typically build equity in their homes; if they decide to divorce,

they would usually divide the equity they had built by selling the house or by one partner buying out the other's share. But after the recent boom-and-bust cycle, many couples own houses that neither spouse can afford to maintain on his/her own, and that they cannot sell for what they owe.

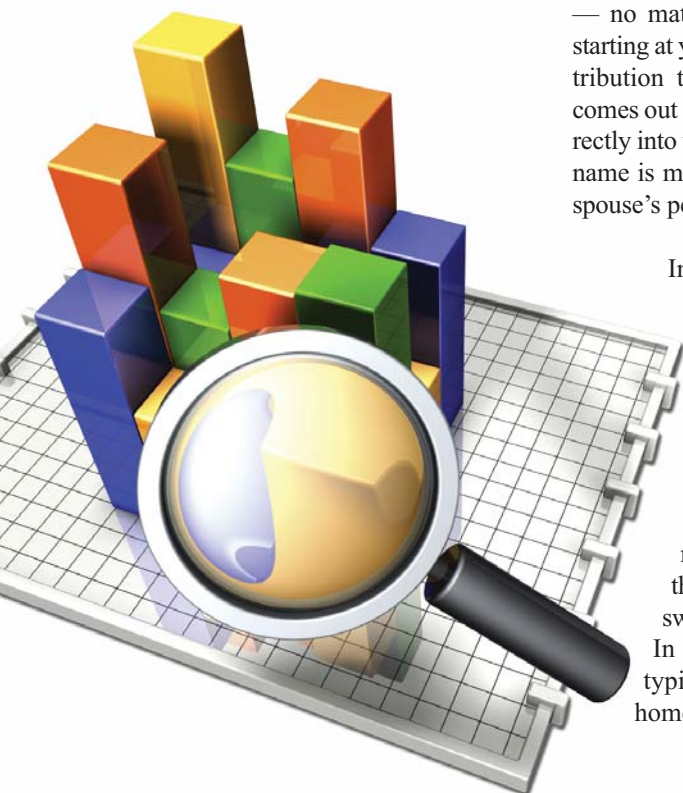
According to a recent survey of CDFAs in the US and Canada, 73% of respondents stated that the current housing market has forced them to come up with creative solutions to property-division problems when the matrimonial home fails to sell — or would sell for less than what clients still owe on the mortgage. The most common solution is for ex-spouses to retain joint ownership and continue to live in the house (often, he moves into the basement and she lives upstairs) until the market improves, agreeing to postpone final division of assets until after the house is sold.

The Last Word

You need to create an accurate budget today, and you need to understand how child support, spousal support, and property division will impact your ability to cover your cash-flow needs. This is where a C DFA™ comes in: we analyze and illustrate the short- and long-term implications of different settlement proposals by factoring in expenses, investment earnings, taxes, and inflation. Our clients are then able to make educated decisions about their financial futures. Remember, you only get one chance to negotiate your property settlement. Can you really afford to make a mistake? ■

Co-founder and former Editorial Director of Divorce Magazine, Diana Shepherd is the Director of Marketing for the Institute for Divorce Financial Analysts™. For more information about how a C DFA™ can help you with the financial aspects of your divorce, call (800) 875-1760, or visit www.InstituteDFA.com.

To download more useful worksheets, visit www.divorcemag.ca/worksheet. For more articles on divorce financial issues, visit www.divorcemarketinggroup.com/pdf/monthly_expense_worksheet.pdf.





the Negotiation Process

By Joan Coullahan, CDP, CFP, and Sue van der Linden, CFP

Some people love to negotiate and some hate it. In essence, the act of negotiation is two or more parties coming to agreement over the value of a good or service, but there's a lot more to it than that.

Negotiation as an Act of War

It is always fascinating to watch negotiations take place. Each person has a style he or she thinks will work best in that particular situation. In divorce, the approach to negotiations usually has an “us versus them” mentality. You and your attorney are “us” and your spouse and his or her attorney are “them.” The divorcing parties have forgotten that their marriage used to be an “us” situation. All that goes out the window.

Several things can happen during this scenario. You may come to the bargaining table prepared with the facts. All the assets and debts have been listed, child support calculated, and monthly expense statement completed, and you are willing to supply documents supporting all your numbers. If the opposing attorney is unprepared, he or she might go into “attack mode.” This recently happened to a client. The client and her attorney had completed the required forms and prepared the latest statements of the assets

and debts. An analysis had been done based on a proposed division of assets and debts. The client and her attorney were prepared to negotiate with the facts at their disposal. The opposing attorney came to the meeting completely unprepared and assumed he could negotiate off the cuff. When he saw the prepared documents, he immediately tried to discredit the information offered. He threatened to appeal to the court so that the client would have to pay alimony to her husband. He ended the negotiations by walking out of the room.

Your spouse and his or her attorney might withhold information. Filing “motion to compel” should be sufficient to force someone to provide the necessary information. One negotiating tactic is to ignore the motion and see whether the filing attorney applies more pressure. Sometimes when a proposed property settlement is prepared, the document lists only assets and doesn't mention the value of each asset. Since the first step in the divorce process is a statement of

financial facts, you cannot begin to negotiate until you have accurate, complete financial information.

Negotiating with an Incomplete Settlement Proposal

Negotiating with an incomplete settlement proposal is also common. A woman received a proposed settlement from her husband, who was a successful real estate attorney. The proposal was all words with no values attached to any of the assets. The client had faxed the proposal to the CDP she had arranged to meet with and asked the CDP to read it to ensure there were no financial pitfalls, such as potential capital gains taxes, that she should be aware of before signing. As the CDP read the proposal, she began to sense that something was missing. The proposal offered to let the wife keep the first \$1,000,000 from the sale of the marital home. This was a generous gesture, but since their relationship had turned combative, it seemed somewhat out of place. When the CDP met with the

woman, the first question the CDP asked was, “What does your husband do for a living?” The woman then told about her husband’s law practice. The CDP immediately understood the reason for the generous offer of the house equity. Although the law practice was started during the marriage and was definitely a marital asset, it had been purposely omitted from the assets mentioned in the proposed agreement. The CDP advised her client to hire a business valuator, who would be able to analyze the law practice and place a value on this asset. Until the entire asset values are known, the woman could not effectively evaluate her husband’s proposal.

Using Children as Emotional Hostages

The CDP’s client you just read about also had to deal with another common negotiating tactic: using the kids as emotional hostages.

Yes, unfortunately this happens. Her husband told her that if she did not agree to his terms and if she asked for more alimony or a greater share of the assets, he would tell the children it was their mother’s fault he couldn’t pay for their college education. During their marriage, she and her husband had established a high standard of living, but they could afford it. Child support had already been computed with income from the woman’s part-time job of \$2,000 per month and her husband’s income of over \$44,000. Yes, that’s \$44,000 per month. The woman’s expenses were over \$5,500 per month. So you do the math. Fortunately, the woman could do the math and realized she was being manipulated. Her attorney has since assumed negotiations with her husband.

Using the “Water On Rock” Technique

The “water on rock” technique is also used in negotiating as an act of war. Your spouse and his or her attorney might not be openly combative, but will continually go over and over the same points until your patience has been exhausted. Of course, the goal is for you to get to a point where you just give up. Also, any concerns or objections you

have may be trivialized and treated as petty or unimportant. If your emotional baggage has not been checked, this technique can be quite effective. Just the relief of not having to undergo a constant barrage of objections could be enough to force you to surrender.

If you are a victim of the “water on rock” technique, we strongly advise that you review your financial facts, especially your monthly income, expense, and debt. Giving up monthly alimony payments now could make a big difference when you have to pay your own health insurance after the divorce.

Settling Before the Trial Begins

Settling on the courthouse steps happens all too often. In fact, it is the preferred technique of some attorneys. You see, testifying in court is intimidating. Many people would rather go through a root canal without Novocain than appear before a judge. You or your attorney may have made numerous attempts to settle before the court date, but the opposing attorney refused. Imagine that in 30 minutes you are scheduled to appear in the courtroom and have a judge decide the settlement terms. If you reach an agreement now, you will know what you are getting. If the judge decides, it is anyone’s guess how things will turn out. An opposing attorney can use this pressure to his or her advantage. In fact, most cases scheduled to go to trial are decided

If this were a perfect world, there would be no wars, all people would be respected equally, chocolate would cure all ailments, and divorce negotiations would always be approached with honesty and fairness.

in the courthouse before the trial begins. The pressure is intense, so you might agree to just about anything just to have relief. Therefore, you settle.

There are two problems with this scenario. One, you probably will agree to terms that are less favorable, so you will not get the alimony or assets you might truly need. Second, you still have to pay your attorney’s fees for all the time spent preparing for trial and the time spent in court that day.

Unfortunately, the divorce process brings out the worst in some people. It might be because divorce is traditionally seen as an adversarial process in which you must fight to get what you believe should be rightfully yours. It may also just be that the people who make negotiations into a war-like process have that mental mindset about life in general. You know yourself, and hopefully you know your spouse. If you believe you will confront any of the situations just described, mental and financial preparation is essential. You may be left with no choice but to retain an attorney to assist in the negotiations.

Negotiation as an Act of Good Faith

Now that we’ve looked at the dark side, let’s look at the more positive alternative.

If this were a perfect world, there would be no wars, all people would be respected equally, chocolate would cure all ailments, and divorce negotiations would always be approached with honesty and fairness. Judging by the experiences we just described, we can safely say that our world is not perfect. But we can definitely work toward that goal.

Negotiating as an act of good faith is much simpler and has much lower emotional and financial costs than negotiating as an act of war.

Negotiating a settlement agreement should be a three-step process:

1. Both parties give complete cooperation and full disclosure. Use the “kitchen table” method of arranging

../CONTINUED ON PAGE 27

7

Important Factors to Remember when Negotiating Your Financial Divorce Settlement!

By Sharon Numerow

Divorce is often the most emotional time in a person's life. It is also when permanent, life-altering financial decisions must be made. If you are in this situation then, naturally, you may be experiencing fear of the unknown. Fortunately, education helps alleviate that fear.

Here are the 7 most important factors to remember when negotiating a divorce settlement:

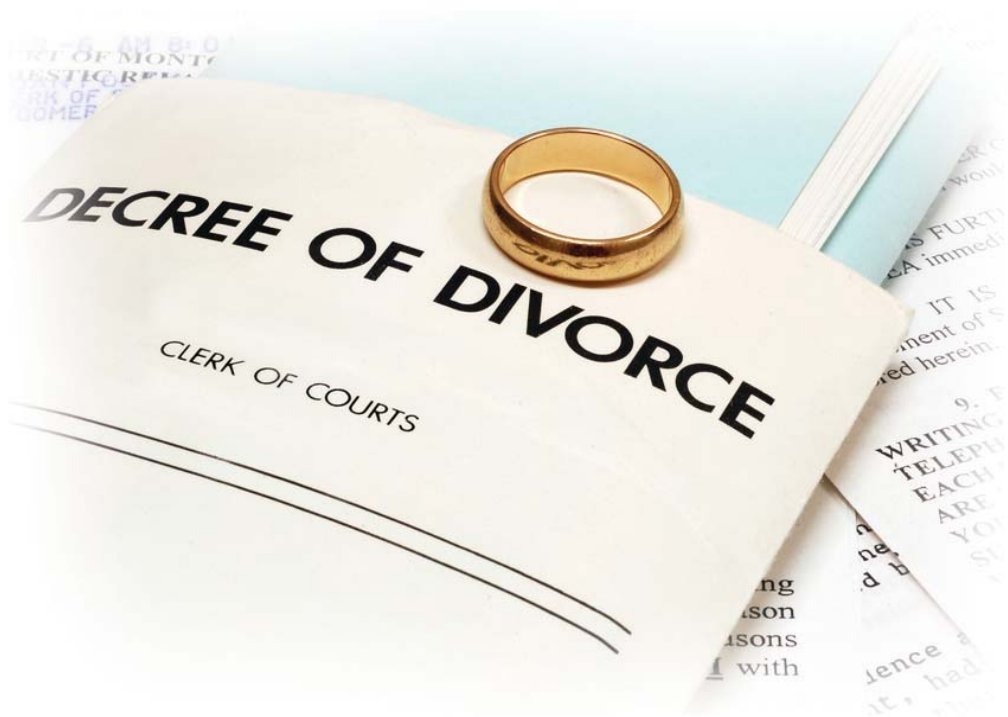
1. Money will Almost Always Become an Issue in Divorce

You are probably thinking: "Is that supposed to be a secret? I knew that already!" Yes, that may be so — but you may also be underestimating how much of an issue it will be. Even with the promise of fairness from your ex-spouse, or of a deal that sounds too good to be true, you should still do your homework. Remember not to make offers during negotiations out of feelings of guilt and "give away the farm." Seek out the appropriate professional and information, so that years from now you do not feel badly that you agreed to a settlement too quickly.

You also want to budget, budget, budget! You will be much more confident in your decisions if you prepare an estimate of a monthly budget (required in some provinces and states) to determine if you can afford to retain certain assets.

2. A 50/50 Division of Property is Not Always Equal

When I began to use this phrase, my teenage daughter reminded me that in school, when children are taught about fractions and things are divided 50/50, it is always equal! I concurred, but explained that in the division of a couples' matrimonial property, this fact is not always the case.



For example, a \$400,000 house does not always equal \$400,000 in stocks, or \$400,000 in rental or recreational property. There are tax implications affecting many decisions, which may affect many of the assets and their values very differently. Overlooking this fact may mean that you get less property than you actually should, or at the very least, you may end up with future tax hits that you were not prepared for or even aware of.

The housing market and stock market are just a couple of examples that in the future may affect the property you

choose to retain and in turn your future personal net worth.

3. "Divorce the House, Before the Spouse"

Decisions about retaining the family's largest asset should not be an emotional one. As difficult as it sounds, this decision should be made strictly by considering the responsibility and the dollars and cents involved.

You must find out before signing the legal agreement whether you can qualify

for a mortgage on your own. Many people believe that a lender will simply remove their ex-spouse's name — but that is usually not the case! Speak to a lender as soon as possible to find out if you can qualify and (if so) how much you can qualify for.

If you do qualify, make sure you ask yourself these questions:

- Can you afford the monthly cost to service this debt?
- What about the costs of maintaining the home? Things like, utilities, property taxes, and unexpected maintenance such as a new roof?
- Do you have the time and energy to maintain a home? Will you be left with 25 years of 'stuff' to deal with on your own? Are you prepared to mow the lawn, and clean your home?

4. Understand the “True” Value of Your Investments and Retirement Assets

Get advice on the market risk of your investments. Will you be satisfied if you are the partner left with all of the high risk investments, and then the market takes a turn for the worse? Will you be satisfied if you did not retain 50% of the private investment that today is worth little — but can be extremely lucrative down the road? If you are dividing a portfolio of investments, it is extremely crucial to understand the make-up of these assets, and the background on some of these stocks and funds, before making a decision.

There are hidden or unknown costs associated with many types of investments. If you decide to dispose of them, you must be aware of this fact. A surprise that you owe the 'tax man' money down the road will likely be very stressful.

You may also need to be educated on stock options and other types of employee incentive plans that you or your spouse may have. These types of plans have become more prominent in recent years, as more employers have chosen to offer them to employees instead of raises. Options that may be 'under water' today may increase significantly in value down the road as the economy slowly improves.

Remember not to make offers during negotiations out of feelings of guilt and “give away the farm.” Seek out the appropriate professional and information, so that years from now you do not feel badly that you agreed to a settlement too quickly.

5. Ensure that Pensions and Businesses are Valued Properly

Next to your home, a pension — especially for an employee that has been with his or her company long term — can often be one of the most valuable assets that a couple has.

Certain types of pensions may need to be valued by a trained actuary in order to determine its true value. Failure to do this may mean that you miss out on a great deal of money being included in your matrimonial property total. Remember that the value on the annual statement of a pension is not always the correct one to use.

It is also necessary for the spouse with the pension to look into the regulations of that pension, in order to determine the amount that the spouse is entitled to receive, and in what manner.

For self-employed spouses, the value of their business is often included in valuing a couples' matrimonial property. The valuation of a business can be very complicated, and for many it is absolutely necessary to consult with a Chartered Business Valuator.

6. Ensure that the Payor of Child and/or Spousal Support is Life Insured

In the event of a payor's untimely death, it is necessary to have life insurance in place to fulfill future support obligations. Imagine if you have young

children and are receiving child support, or if you are in your 50s or 60s and receiving spousal support (or alimony), and something happens to your ex-spouse (the payor)? In such cases, you will suddenly be without that income, which may be financially devastating.

7. Many Divorce Decisions have Significant Implications for Your Tax Return

There are many available claims on your tax return, especially with respect to children, which can save you significant tax dollars. The rules for most of these are complicated — especially as they apply to separated parents. However, when applicable, the tax savings can be significant. Do your research before signing your legal agreement, and have a professional complete at least your first tax return after legalizing your financial settlement.

These are the 7 most important factors to remember when negotiating a settlement. Treat the financial decisions as a business deal, and educate yourself on the facts so that you will be an empowered decision-maker, and in control of your financial future.

Also keep in mind that divorce is one of the few times in life when we often do not listen to our intuition, although it is the most important time to do so! ■

Sharon Numerow is a Certified Divorce Financial Analyst™ and the founder and owner of Alberta Divorce Finances. She is also the proprietor of a personal income tax return preparation business. She has worked with clients and lawyers for more than 10 years consulting on divorce finances. Visit her website at www.AlbertaDivorceFinances.com.

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Negotiating Strategies That Work

Here are several strategies for negotiating settlement agreements which have been proven to work for divorcing couples.

By Joan Coullahan, CDP, CFP,
and Sue van der Linden, CFP

Splitting the Assets and Debt

Starting with a 50-50 split can be effective, especially if working with financial professionals who can use software to show the results of various settlement options. Since this asset division is usually seen as a worst-case scenario, giving each spouse exactly half of the marital assets and debts gives a good picture of how this split will affect both parties. If one spouse earns much more than the other, usually the higher earning spouse sees his or her net worth and liquid assets growing while the lesser earning spouse barely accumulates assets or goes into debt just to meet basic living expenses. After the true picture is known, adjustments can be made that result in a much more equitable settlement. Assets and debts can be shifted from one spouse to the other, and paying or receiving alimony can be considered as an alternative.

Splitting the Difference

Splitting the difference often results in a win-win situation. Since negotiation is often seen as a game of one-upmanship, splitting the difference levels the playing field. A good example of this technique is if you want \$100,000 of the assets and your spouse offers \$75,000. The difference between the two amounts is \$25,000. Your counteroffer could be to split the difference by dividing the \$25,000 in half and giving up \$12,500. You would then accept \$82,500 instead of \$100,000. That way, you both are forfeiting an equal amount, and there is no loser.

Trying on Each Other's Shoes

A third negotiating method enables the two parties to view the property settlement from their spouse's position. The wife selects assets for the husband and vice versa. More important, each person states the reasons for his or her choices. While some might think this is an exercise in futility, it does offer each spouse insight into the motivation behind the behavior and often results in moving the negotiations toward settlement.

The alternate-selection method, “Dividing Your Assets and Debts,” is used commonly in the last stage of property settlement: dividing the personal property. Personal property such as furniture, jewelry, and artwork is part of the history of the marriage and often has sentimental value. An example is a couple who had a tense relationship, yet the wife wanted to keep jewelry the husband had given her because it represented the good times in their marriage. This method of division works well because it is fair and each person gets some of the items he or she really wants.

These negotiating methods have been tried and proved to be effective, as long as both spouses are willing to make the attempt. You might find that one method suits your situation better than others. That's fine; the important thing is to attempt to negotiate first and litigate only if all other methods fail.

Separating Want from Need

Many times, what people think they want at the beginning of the divorce process is completely different from what they know they want at final negotiations.

Take the case of Martha and Sam. They had been married for 28 years. Sam had been a military officer and Martha had moved with him from place to place during his career. After Sam retired, he accepted a well-paying job. Martha, now settled in one place, renewed her career in real estate. They had been married a long time and their marriage had been stable, but not particularly happy. Through a coincidence, Martha found that Sam had been having an affair with someone for the past 10 years. Martha saw it as a betrayal that made most of their marriage a lie. Sam and Martha both wanted to end their marriage with as little cost as possible. They retained a professional to value and list their assets and debts, analyze their cash flows, and produce the charts and spreadsheets showing several asset and debt division scenarios.

During the first meeting to begin their financial analysis, Martha stated

When negotiating the division of your assets and debts, be realistic and don't expect the negotiations to go any better than your marriage.

very strongly that she wanted Sam to pay her \$3,000 per month in alimony for the rest of her life. In fact, Martha pounded on the table when she made that statement. She also remarked that she was willing to go to court and spend whatever it took to ensure she received this amount of alimony. Many different asset and debt division scenarios were produced, and Sam and Martha carefully studied them all. After Martha had been shown the true benefit of alimony and realized she would, in fact, be able to spend only \$1,998 of the \$3,000 because of income taxes, she retreated on her initial demand.

How did Sam and Martha settle their property division? After two months of analyzing seven different asset division scenarios, Martha declared that she did not want alimony. She would rather have a higher share of the assets, which she could invest. That was fine with Sam since he never wanted to pay alimony. Sam and Martha settled their property division by using the facts and negotiating between themselves. Even with their almost hostile relationship, they would rather have talked to each other than pay attorneys to fight in court.

This story yields a great lesson: Eventually, facts triumph over emotions. It took two months of constant work, but Martha finally realized that extracting revenge by making Sam pay \$3,000 per month was not really in her best interest.

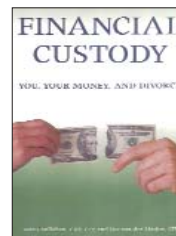
Most disagreements arise when there is a difference between want and need. The importance lies in reconciling these two issues. In divorce, there is a choice. Two spouses can negotiate based on the true needs of both parties, they can retain attorneys who can negotiate for them based on what their attorneys' experience and the law views as fair or a judge can determine the needs of both parties. By doing your homework and objectively determining your real needs,

you can help prevent the last two choices from occurring.

The bottom line is words of wisdom spoken by Lynn Brenner, a wonderful attorney with more than 20 years of experience in the practice of family law.

The Bottom Line

When negotiating the division of your assets and debts, be realistic and don't expect the negotiations to go any better than your marriage. If you fought then, the chances are very good that you will fight now. ■



This article has been edited and excerpted from the book “Financial Custody: You, Your Money, And Divorce” by Joan Coullahan, CDP, CFP, and Sue van der Linden, CFP copyright © 2002. Published by Marie Butler-Knight. Joan Coullahan is a Certified Divorce Planner and President of Divorce Financial Consultants. She is the Founder and co-director of the Divorce Resource Network, an organization that holds education seminars concerning the various aspects of the divorce process. Sue van der Linden is a Certified Financial Planner and Chartered Financial Consultant with a major New York Brokerage firm. She is also a member of the Divorce Resource Network. For more information visit www.joancoullahan.com.

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REAL ESTATE APPRAISALS

Learn the four basic methods used in appraising real estate to help ensure a proper assessment.

By G. Edmond Burrows, FCA

Real estate may be one of your assets or an asset of your spouse. It will be necessary to have this real estate properly valued for equalization purposes. This real estate may be your principal residence or a second home. It may be farm property or investment or business property. Regardless of the type of property involved, as with other assets it does not make sense for you to attempt to undervalue your real estate as this will merely prolong proceedings, delay the divorce and also increase the legal fees and other costs involved. The real estate should be appraised by a competent qualified appraiser.

There are four basic methods that are used in appraising real estate:

1. The comparison method, which is used to appraise your residence,

- industrial property, commercial property or farm property.
2. Replacement cost approach, which is used to value the same types of properties.
 3. Income approach, which is mainly used in valuing investment property.
 4. Net value method, which is used in valuing something such as land that is being held for future development.

The following is a brief explanation of each of these methods.

Comparison Method

This method involves comparing the particular property to other similar properties that have sold recently. As is often said, real estate is worth what a knowledgeable buyer will pay, and what a willing vendor will accept. In making the

comparison it is important to ensure not only that the physical and geographic attributes of the properties chosen for comparisons are similar but also that the terms of sale were not unusual (such as a low-down payment with a high mortgage taken back or vice versa).

This comparison approach can be used meaningfully only in comparing the particular property to actual recent sales of similar properties. It is rarely meaningful to compare the property to other similar properties that are merely listed for sale but have not yet sold.

After identifying recent sales of similar properties, it may be necessary to adjust the sale price of the similar properties for differences in such things as geographic area or special attributes (such as a garage or a fireplace).

Replacement Cost Approach

With this method the appraiser determines the square footage of the building and multiplies it by the current cost per square foot of constructing such a building. He then adjusts for anything unusual in the particular property and for physical depreciation that has taken place. To this calculated cost the appraiser then adds the value of the land, which is usually determined by the comparison method.

Income Approach

When valuing an investment property the appraiser will attempt to locate comparable sales and also determine the replacement cost. However, the main measure of the value of an investment or income property is the net income, which it is earning or can earn.

The first step in valuing this type of property is to ascertain the gross rental income that is being earned and the gross income that can be earned, taking into account the length of existing leases.

The next step is to determine the total expenses involved that the landlord must pay (such as municipal taxes, insurance, repairs and maintenance etc.) based on past experiences but updated to current levels. These expenses may need to be restated to allow for such things as paying for services that have in the past been rendered by the owner for no payment. It also may be necessary to adjust for interest cost on borrowed money.

The appraiser may then determine the sustainable net income for the property by deducting the calculated expenses from the obtainable gross rental income and also deducting a vacancy allowance. This net income will be multiplied by a factor, which will take into account the rate of return available on other investments and the amount of risk involved in this particular investment property, to arrive at a value.

Net Value

For an asset such as vacant land that is being held for future development the net value method may be the only way to arrive at a reasonable value. With this

The best approach to having real estate appraised fairly is for both parties to agree on whom the appraiser should be with both parties having input into the appraisal by independent discussion with the appraiser.

approach you first determine the expected sale price of the developed land. You then deduct the estimated development costs, carrying costs and selling costs and a reasonable profit for the owner based on the amount of risk involved and the amount of funds tied-up. This leaves a net value for the raw land.

For A Higher Value

If it is a house that is being appraised, make sure it is in as presentable condition as possible with all floors vacuumed or washed and waxed, everything neat and tidy, the grass cut and any minor repairs completed before the appraiser inspects the property.

Point out to the appraiser all special features that add value to your property. Provide the appraiser with details of any similar property that you know sold recently at a high price.

With an income property, make sure all income is disclosed and proven and point out any past expenses that were non-recurring, and therefore, shouldn't be considered in the calculations.

For A Lower Value

Make sure the property is unkempt and doesn't show well when the appraiser arrives.

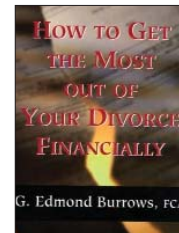
Ensure that all expenses and necessary repairs are disclosed to the appraiser. Point out any major flaws of the property.

Provide details of any recent sales of similar property where you know the price was low.

Summary

As with many other assets the valuing of real estate is a complicated matter. There is no easy rule of thumb to follow. The value must be determined by a competent real estate appraiser who has experience in appraising the particular kind of property. A one-page letter of opinion prepared by your friend the real estate agent will not suffice.

The best approach to having real estate appraised fairly is for both parties to agree on whom the appraiser should be with both parties having input into the appraisal by independent discussion with the appraiser. If this is not possible, it is then important to get a second opinion from a competent appraiser who can review any appraisal report that has been presented to you. ■



This article has been edited and excerpted from the book How to Get The Most Out Of Your Divorce Financially by G. Edmond Burrows, FCA. Copyright © 2002. Published by Dundurn Press. G. Edmond Burrows valued pensions and other intangible assets in family law cases for ten years. He is now retired. For more information, visit www.pension.ca.

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TO SELL OR NOT TO SELL: The Family Home after Divorce

Deciding to jointly sell your home or buy your spouse's share is a decision that must be approached carefully, and with a solid understanding of all financial implications.

By Sam Margulies



Whether they can afford to keep the house or whether they have to sell it is one of the most wrenching decisions for many divorcing couples. How this decision is made may often decide the tone of the entire divorce. Typically, it is the husband who wants the house sold and it is his wife who is arguing to keep the house. As it is the husband who most frequently is moving out the husband has already accepted that he can no longer live in the house. But the wife is reluctant to give it up. Once you accept that you have to move, the house becomes just a house. But if you are struggling with the transitions of divorce, giving up your home takes on an additional emotional coloring. The woman who is to continue as primary parent worries not only about her own loss of home but also about the children's ability to assimilate so much change. So she may resist and may use the welfare of the children to justify why she should stay in the house.

Cash Flow vs Capital

There are two financial aspects to the decision whether to retain or keep the marital home. The first is cash flow and the second is a matter of capital. Cash flow is a matter of deciding if your income is sufficient to pay the mortgage and taxes on the house at the same time paying rent or another mortgage in a second home. Conventional mortgage underwriting principles suggest that no more than thirty percent of gross household income should be used for rent or for mortgage, taxes and insurance. If the two of you bought the house two years ago on the assumption that you would spend thirty percent of your combined incomes on mortgage and taxes, keeping the house is going to be a major stretch. I have seen couples who buy new houses and pay forty or forty-five percent of their combined incomes for mortgage and taxes. The only way this couple can keep the house if they get divorced is for the one who moves out to accept very cheap

and generally inadequate housing. The long-term consequences of this are not good. If you want an indicator of whether you can afford to keep the house, estimate the household income of each household after alimony and child support is paid, now, take thirty-five percent of each household income as the maximum payment for housing. The cost for housing should not exceed that number.

An Example

Fred is an engineer earning \$70,000 per year. Jill is a nurse earning \$32,000 a year. They have agreed that they will have joint parenting with the children spending equal time and both households and have also agreed that Fred will pay Jill alimony and child support necessary to equalize the income in both households. Each will have total household income of \$51,000 per year or \$4,250 per month before taxes. If we take 35% of that, we get \$1,487 as the maximum amount each can spend on housing and still be able to afford all the other items in their budgets.

The couple bought their house four years ago for \$200,000, putting \$50,000 down and taking a mortgage of \$150,000. They have annual taxes of \$3,600 and a monthly mortgage payment of \$1,200 for interest and principle with a fifteen-year mortgage term. Homeowners insurance is \$75 a month for total housing cost of \$157 — slightly more than Jill's monthly maximum of \$1,487. They may be able to keep the house.

But there is a second issue as well. The husband wants to get his equity out of the house so he can make a down payment on a small house of his own or just to have some cash reserves available. How and when he gets access to his equity can become a controversial issue. Frequently, lawyers and some judges will argue that the husband's equity in the house should be left there until the last child graduates high

school and the house is sold. Although this makes it easier on the wife financially, it can be unfair to the husband if it means that he gets no access to his equity for ten or fifteen years.

Generally, continued co-ownership of the house for a long time after the divorce is not a good idea because it keeps the couple bound together when they should have separate economic lives. This breeds acute resentment on the part of the husband and makes him feel unfairly treated, something that may cause him to feel that he has no further reason to be fair in his treatment of the wife. Let's return to Fred and Jill.

Fred is willing to have Jill stay in the house if she buys him out. The house is now worth \$220,000 and the mortgage balance has been reduced to \$146,000 so the equity in the house is now \$64,000. The couple is in agreement that the assets of the marriage should be divided equally so Fred would be entitled to \$32,000 for his share of the house. If there are other assets of equal or greater value, Jill may be able to use her share of those to buy out Fred's interest. But if the only other assets are tax deferred retirement assets this may not work because it would leave Fred with no available cash or the necessity of cashing in retirement assets at a significant loss to taxes and penalty. So what are the alternatives? Jill may still be able to buy Fred out. Maybe she can pay him part in retirement assets and part in cash derived by refinancing the house. If interest has come down since they bought the house she may be able to refinance, take a thirty-year mortgage instead of a fifteen-year mortgage and still be able to do it. With a thirty-year mortgage at 6%, a \$175,000 mortgage would require about \$1,100 a month — a figure that is \$100 lower than the present mortgage payment. So Jill can afford to give Fred about \$30,000 for his interest in the house and still lower her monthly payment. In this case it turns out fine for everybody.



Generally, continued co-ownership of the house for a long time after the divorce is not a good idea because it keeps the couple bound together when they should have separate economic lives.

But of course it doesn't always happen this way. If their house was worth \$300,000 and Jill needed another \$50,000 to buy Fred's interest, she could not afford to do it. Then she would have a choice of selling the house or insisting that Fred keep most of his equity in the house. Or, if Jill was not employed and the couple had \$30,000 less income, she would also have a big problem trying to stay in the house. It is easy to see how the house issue can shape so many other issues, such as support and custody issues. Some custody fights involve men who are the non-initiators of the divorce who are holding onto the custody issue in the hope of also getting occupancy of the house. When this happens everyone in the family loses big.

Foreclosure

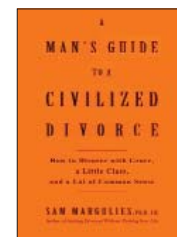
A more recent development now seen routinely is the couple whose house is "under water" meaning that the house is worth less than the mortgage amount. The couple cannot afford the monthly payments on the house yet can only sell it if they make up the loss from other assets. This is a problem that requires complete cooperation between the spouses because all the alternatives are complicated. They can consider bankruptcy or work out a deal with the bank. Barring either of those, they can just abandon the house to foreclosure and hope that the bank and other lien holders will not sue them for the deficiency. But without cooperation it turns into a sorry mess in which they lose the house and a good deal of money in addition.

Use Neutral Language

The decision about whether to sell the house and, if so, when to sell it, is complex and needs to be approached with subtlety. The decision must be viewed as an emotional process as well as a financial decision and the importance of using neutral language and problem solving cannot be overemphasized. "What are your thoughts on how we can both afford adequate housing?" will take you further than "We must sell

the house right away!" In the end, the numbers will tell. But your spouse's willingness to explore options will be shaped by how you approach the subject. If you are too anxious and push too hard and too fast it's easy for him/her to get stuck. There are many ways to approach the subject and, even if the house has to be sold, it may be possible to put it off for a while and sell it next year or in two years. Your willingness to explore all the options with your spouse will shape his/her willingness to explore them with you.

Note that the decision whether to sell the house is not necessarily connected to whether and when you will move out. If it is clear that you will move out whether your spouse moves or stays, then you should move as soon as the two of you can resolve initial issues of your access to the children and the management of finances. The timing of your move has its own logic and should occur when the family is ready for you to move. ■

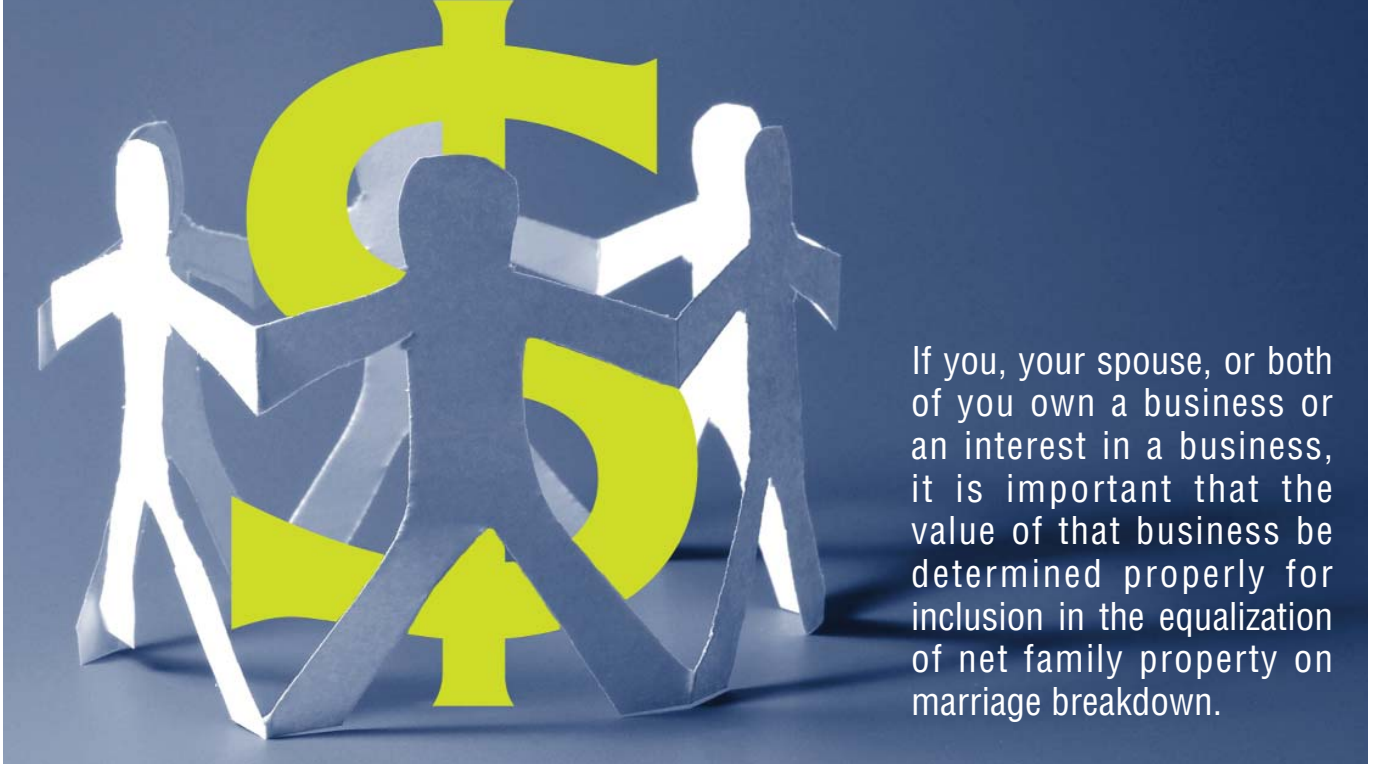


This article has been excerpted from the book "A Man's Guide to a Civilized Divorce: how to divorce with grace, a little class, and a lot of common sense"

by Sam Margulies Ph.D., J.D. copyright © 2004 published by Rodale Books. Sam Margulies is one of the early pioneers in divorce mediation and has published extensively, taught and provided mediation services for thirty years. You can review his work at www.sammargulies.com.

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If you, your spouse, or both of you own a business or an interest in a business, it is important that the value of that business be determined properly for inclusion in the equalization of net family property on marriage breakdown.

Business Valuations

By G. Edmond Burrows, FCA

Many people think that a business can be valued by reference to the net profit shown on the financial statement. An argument then ensues as to whether it should be something like six times earnings or eight times earnings and they agree to settle on seven times earnings. If this approach does arrive at a reasonably fair value for the business, it is probably just a coincidence.

There are many reasons why a simple multiple times the profit shown on the financial statement is not a fair indication of the proper value of a business for marriage breakdown purposes, or any other purposes. For example, the financial statement may have included unusual income or expenses that will not recur again or, as in many privately held businesses, the wages paid to the owner and his family may not be a fair measure of their contribution to the success of the business.

As with any valuation, it is important to have a competent experienced business valuator value the business. This may seem like an unnecessary expense

but we have seen many cases where the money was well spent.

We will consider here four possible approaches that a competent business valuator may use in valuing a business.

Comparison Approach

As has been stated so many times, the fair market value of an asset is what a knowledgeable buyer will pay to a willing vendor (but see more precise definition in our glossary). Therefore, one good way to establish the value of a business (or any other asset) is to make a comparison to recent sales of other similar privately held businesses. Unfortunately there are two major reasons why this approach is rarely used.

The first reason is because it is very difficult to find a recent sale of a business that is similar enough to the business that is being valued.

The second reason is that even if you can find the recent sale of a comparable business, the information regarding income, expenses and terms and price of

sale are usually confidential and not readily available. With real estate sales the terms and sale price of a property are normally available at the registry office where the transfer of title is registered. However, this is not true with the sale of a business. A competent business valuator will have accumulated information from his past experiences, and will subscribe to a professional service, which provides some general information regarding sales of businesses.

Liquidation Value (Asset Approach)

Another approach to valuing a business is to consider each asset separately and estimate how much would be realized from the sale or liquidation of each asset. This may require involving other appraisers besides the business valuator (for example, a real estate appraiser to value the real estate).

This approach, while being a check on value in some cases, is appropriate only for some businesses. It generally will not recognize the goodwill value of the business as a going concern.

It is impossible to over-emphasize the importance of having any business valued by a competent and experienced business valuator.

Net Income Method (Investment Approach)

The value of a business can be established based on a multiple of net income or cash flow. However, this usually will require making adjustments to the profit shown on the financial statement in order to arrive at true maintainable net income and will involve careful consideration of the multiple to be used.

The first step in determining the net income of the business is to examine the details of the gross revenue and establish what portion of it can be expected to continue into the future. Consideration must be given to such things as the possibility of the loss of a few of the largest customers and also the ease with which someone may set up a competing business and take customers away.

The next step is to review each expense that has been claimed by the business in the past and establish how these expenses can be expected to continue into the future. It will be particularly important to consider adjustments such as how much proper wages should be for the owner and his family, promotion, financing costs, etc.

The third step is to determine the maintainable pre-tax net income by deducting the adjusted expenses from the expected gross revenue in order to arrive at a net profit that can be expected from the business without making any changes in the operations. In this whole process it is important not to take into account increased revenue or reduced expenses that can be expected to happen because of changes that may be made by a new owner.

Next, adjusted historic net incomes from the past, over a period of years, must be considered to whether or not there represent future operating profit prospects, as it is the future anticipated profits which determine the value.

Redundant assets and other considerations will often need to be considered in this net income approach.

Having determined the future maintainable net income, the business valuator will then establish the proper multiple to apply to the net income based on the return that can be obtained on other investments and the amount of risk involved.

Special Cases

Having considered the above approaches to value, the experienced valuator will also be aware that there are some rough rules of thumb that are used as a guide to value some businesses. For example, the value of a general insurance agency or a public accounting practice often is determined by reference to gross income because, in both of these businesses, the owner can expect that each of their clients, or customers, will be back to do business every year.

Regardless of any rules of thumb, it is still important to remember that this is only one measure of value because it is based on gross income (or some other oversimplified calculation) and, of course, the most important consideration in the valuation of a business is the real net income that can be earned. Rules of thumb should always be viewed with caution and generally are used as a double check on the value determined by proper methods.

Adjustments

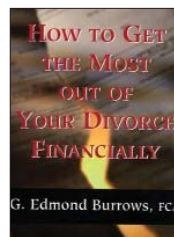
There are many potential adjustments that must be considered in arriving at the final value of the business. This would include questions such as the following:

1. Is the goodwill of the business based on personal goodwill (such as for a lawyer or a doctor)?
2. Is the goodwill really goodwill of a good location and if so, is the real estate owned or at least tied up on a long-term lease?

3. Is there a possible special buyer who would be prepared to pay more than the value determined? Synergies to such a buyer will support a higher value to him.
4. If the business is not owned 100% or at least controlled more than 50%, should there be a reduction for the minority interest?
5. Are there redundant assets (such as equipment that is no longer efficient) owned by the business for which an adjustment should be made?

Summary

It is impossible to over-emphasize the importance of having any business valued by a competent and experienced business valuator. These valutors normally charge on an hourly basis for their services. Therefore, if preparing the valuation is a simple matter, the cost will not be very high. When hiring a business valuator, you should determine their hourly rate and also obtain a written estimate of the total fee involved. You should then do everything possible to assist in order to keep their time to a minimum and thereby keep the costs down. However, even more important than concentrating on the fee involved, you should ensure that all of the information that the business valuator uses in the calculations is the proper information so that the proper value of the business will be determined. ■



This article has been edited and excerpted from the book How to Get The Most Out Of Your Divorce Financially by G. Edmond Burrows, FCA. Copyright © 2002. Published by Dundurn Press. G. Edmond Burrows valued pensions and other intangible assets in family law cases for ten years. He is now retired. For more information, visit www.pension.ca.

For more articles on divorce and finance, please visit www.divorcemag.com/articles/Financial_Planning/.

The financial issues associated with divorce can be complex. Without the proper guidance, you could find yourself in an adverse situation later on, when it is too late to do something about it. That is why your lawyer may recommend that you work with different financial experts to help you through this difficult time.

If your spouse agrees to full financial disclosure, then in most instances all you need to do is hire the appropriate expert to critique the numbers. If, on the other hand, you need to uncover financial information that is being withheld, remember that the more you ask your experts to do, the more it is actually going to cost you. Think about how much you are willing to spend and how much you may be able to uncover. Do the cost-benefit analysis, and don't fall prey to the "revenge factor." For example, are you going to spend ten thousand dollars to uncover five thousand, or will you spend thirty thousand dollars to find five hundred thousand?

Different experts have different training and expertise. Here are some things to know about each.

Accountants

An accountant is skilled at managing business records and sometimes at providing financial advice. He or she may prepare a client's tax returns. You or your spouse may have an accountant who you feel is qualified to provide you with all of the financial information that your lawyer requests.

However, many lawyers believe that if you rely on your own accountant to provide this information, you're making a mistake that will end up costing you more money in the long run. Your accountant can provide you with the basic financial facts, but he or she may not necessarily be familiar with family law rules or have the expertise to uncover all the information you're looking for. Furthermore, if you end up in court, the judge may not consider your personal accountant a "good" witness.

If you and your spouse use the same accountant, even the information that



ADVICE FROM FINANCIAL EXPERTS

When your divorce involves complex financial issues, you probably need guidance from different financial experts. Find out when to use them.

By Deborah Moskovitch

accountant provides may not be seen by your lawyer or the judge as totally independent and unbiased. In addition, conflict of interest may prevent him or her from testifying on your behalf.

Forensic Accountants

A forensic accountant, or litigation accountant, has additional training that allows him or her to investigate and analyze accounting information and prepare reports that can be used in court. There are different levels of investigation that can be pursued, with each level costing more money. These experts can help you to value things such as the interest in private companies, options, company public stock, and business assets.

Because of their expertise, forensic accountants are considered excellent

witnesses in court. In addition, the information they provide can also help the parties come to a negotiated settlement and determine how the settlement amount is going to be paid. They evaluate the family assets and determine which ones are best to liquidate, transfer, or otherwise manipulate to meet the parties' financial obligations.

Financial Planners

The financial planner can analyze settlement options, explain how those options will affect your financial standing in the long term, and help you to manage your postdivorce financial plan to achieve your goals. The financial planner can help you develop accurate predivorce and postdivorce budgets to make sure that the numbers you report make

[..CONTINUED ON PAGE 27](#)



YOUR NEW FINANCIAL IDENTITY

Learn the need to protect your credit score during divorce and how to establish yourself as a financial individual.

By Jeffrey Schwartz

Every day, we hear about the high divorce rates, and how much money it costs to divorce. However, we rarely hear of how divorce can affect your credit score, and your ability to borrow as an individual (separate from your spouse).

Most couples are tied to each other through joint credit cards, mortgages and bank accounts. But with a separation or divorce, couples need to re-establish themselves as 'financial individuals,' and the right time to do that is when they first separate. At that time, both parties most likely need to create a new financial identity in order to access some type of credit to start their new life.

Your Credit Report

First, let's ask: what is a Credit Report? Most of us have never thought to request a copy of our Credit Report. This document gives you an overview of: your personal information; employment

information; banking information; credit history; payment history; public record data; and collection data. It gives you a good picture of your financial liabilities, and how well you're doing in living up to those obligations and paying your creditors on a regular basis. Assessing your Credit Report is especially important if you're not the spouse who takes care of the household finances, or if you're not the primary owner of the debt. You may be surprised by the credit cards and loans that are in your name.

You obtain your Credit Reports from credit bureaus. In Canada, there are two major credit bureaus: TransUnion (www.transunion.ca) and Equifax (www.equifax.ca). In the US, there are three: TransUnion (www.transunion.com), Equifax (www.equifax.com) and Experian (www.experian.com). Lenders use these reports to determine if an individual is a good risk, or in simpler terms, it tells them if individuals have the financial capacity to repay their debt. Real estate companies and prospective

employers may also use the report to decide if an individual is a good risk for home ownership or employment.

Your Credit Report and Divorce

I'm sure some of your biggest fears revolve around the financial connection between you and your soon-to-be ex-spouse. As soon as you begin the separation process, consult with your legal advisor and financial advisor to determine the best way to handle your current financial situation, and to protect your rights as part of your divorce. Without the proper protection in place, your finances may be adversely affected for years. Here is some general advice:

- Pay off any joint debt, if possible. This is the most practical strategy to creating a good credit score.
- Make sure regular payments are made on all credit cards, lines of credit, the mortgage, etc.
- Close any joint bank accounts.
- Cancel any joint credit cards.

Don't wait to do this until the divorce decree is finalized — it may be too late by then, and your delay may hinder your ability to acquire any credit of your own. For example, let's say that pursuant to your divorce decree, your soon-to-be ex is required to pay off two jointly-held credit cards. A few months later, he/she neglects to make the required payments, and the creditors contact you demanding payment. Although you have sent them a copy of your separation agreement or divorce decree stating that your ex is responsible for the debt, you may still be legally responsible for paying off the joint accounts if you have the cash to cover the debt. Plus, your creditors have the right to report any and all late payments to the credit bureaus — and if so, these negative marks would become part of your credit history. Your advisors will help you to sever these financial ties to your spouse early, so that you'll be better protected and avoid a problem on your Credit Report. These are important first steps in establishing your own financial identity.

Your New Financial Story

Now, it's time for you to become educated on financial independence! By creating a budget, you'll discover if you're a saver or a spender, or if you must alter any of your current spending habits.

In order to create a new financial story, first decide how you're going to manage your finances going forward. Budgeting is a critical component in this process. It includes: determining monthly expenses (including any support payments you may have to pay), saving for your future, and your income, including any support payments you may receive. Here are the steps to follow:

- Start by recording your expenses each week for a month.
- Divide your expenses between Fixed (e.g. mortgage or rent, car payment), Flexible (e.g. utilities, groceries) and Fun (e.g. entertainment, lunches, coffee).
- Make sure you're current on all of your payments.
- Add all of the items together and

compare the total with your net income for the month to see what, if anything, is left over.

- If the amount is positive, add it to your savings; if it's negative, then to look for ways to cut back on spending or generate more income

Let's say you have a negative outcome to your budget after you complete the above exercise. You'll need to ask yourself: "What am I able to cut back on, or cut out, in order to improve this situation?" Is your monthly car payment very high? If so, perhaps you can trade your foreign model SUV for a smaller domestic car. Or are you spending too much eating out? Perhaps you can make your lunch four out of five days a week. Sometimes, it's the little things that add up and contribute to saving for your future. Prospective creditors are more willing to lend money when they see savings in the bank, and that all payments are current.

If you have a positive outcome to your budget, you can begin to plan how to invest your money.

Establishing Positive Credit

Another big step is organizing your finances. You've formally severed all ties to your spouse, and now it's time to move forward. Here are some quick tips to help you establish positive credit:

- Establish a steady source of income.
- Pay all bills promptly.
- Open a checking account and don't go into overdraft.
- Open a savings account and make regular deposits.
- Apply for a department store credit card — they are easier to obtain, and ensure that you make regular payments. (Note: you don't have to charge a lot to this credit card, since interest rate is generally quite high, but the idea is to make regular payments on time, therefore establishing a good payment pattern.)
- Apply for a small line of credit and make regular payments.

Most importantly, stick to your budget! By staying faithful to it and spending only what you can afford,

you'll be able to live debt free and financially independent.

After your budget is in place and you have been sticking to it, check your Credit Report again after one year. It is also important to ensure that all of the information is correct, and that you're no longer financially connected to your spouse. Check to make sure that all joint accounts and credit cards have been deleted. If you've moved, confirm that your new address is showing on the Credit Report. It's important that all errors are resolved on a timely basis. ■

Jeffrey Schwartz is an executive board member of the Credit Association of Greater Toronto (www.cagt.ca) and the Executive Director of Consolidated Credit Counseling Services of Canada (www.consolidatedcredit.ca). CAGT is a non-profit association with a mission to provide a dynamic forum in which members can share information and expertise. Consolidated Credit is a national non-profit credit counseling organization that teaches consumers about personal finance through web-based budget and debt analysis tools, financial literacy community outreach programs and in-person or telephone counselling.

Free Financial Education Booklets, budgeting tools and iPhone application are available at www.consolidatedcredit.ca.

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- "Divorce, Recession Style": www.divorcemag.com/articles/Financial_Planning/divorce_recession_style.html.

Although debt can be a significant issue for married couples, it becomes a much bigger problem to deal with in separation and divorce.

Debts You Don't Know About

You may already know what you owe. However, if your spouse has been secretive about your financial affairs, you may be totally unaware of how much debt is involved. Your first step is to determine then dealing with, consult a lawyer to determine if you will be responsible for a share of it.

Debts that are secured against an asset, e.g. mortgage, car loan, etc. should usually be retained by the spouse retaining the associated asset. Unsecured debt is often more difficult to deal with.

3 Options to Deal with Debts

There are really 3 options when it comes to dealing with the debts of a marriage with respect to the decisions about dividing the matrimonial property.

1. You can agree to pay off debts now.
 - If you and your spouse have cash or if you have property that you can sell for cash, paying off your debts now is simpler, cleaner and safer for both of you. If you can work together to solve the credit issues, sometimes that is the best way. There will be no uncertainty about the eventual cost of the debt, and you both know exactly what you have as you begin your new independent life.
2. You can agree that either you or your spouse will be responsible for the debts and get other assets to compensate you.
 - If you agree to be responsible for a debt, you still need to know exactly what you need to do to get the debt satisfied. You can decide now or later whether you want to liquidate property to produce cash to pay off the debt, and you can decide as you go how many adjustments you want to make in your own lifestyle to allow for repayment.
 - If you agree that your spouse will be responsible for a debt that the

Will Debt Be A Factor In Your Divorce?

By Sharon Numerow

Often people think that only low income families have debt issues, when in fact, many higher income earning couples accrue significant debt as well.

two of you share, be warned that you are vulnerable. You or your lawyer may insert some type of indemnity agreement to the effect that your spouse agrees to hold you harmless for the repayment of the debt. The problem is that the indemnity agreement is binding only between you and your spouse, not on third parties. This means that when your spouse agrees to pay off the joint VISA card debt and agrees to indemnify you for it, if your spouse later doesn't pay off the debt, the credit card company could come looking for you and make you pay the debt. Sure, the indemnity gives you a claim against your ex-spouse, but who wants to have to sue an ex-spouse for a debt? It would be best to take care of it much earlier in the process.

3. You can agree to be equally responsible for the debts.
 - If you agree to share equal responsibility for payment of a debt, this is potentially the worst option. You remain entangled and therefore vulnerable. You increase the extent to which you have to continue communicating with your ex-spouse about money after the divorce. And in addition, you still run the risk that one of you may take advantage of the other.
 - To paraphrase Nike, "just don't do it!" Instead of agreeing to share a given debt equally, divvy up the debts in some roughly equal fashion according to the matrimonial

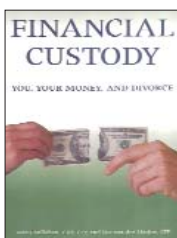
property laws. Your goal is to finish with a list of debts for which you have sole responsibility, and a separate list of debts for which your spouse has sole responsibility.

It can be very complicated. More importantly, separation and divorce will provide you with a new beginning. Whether you and your spouse accumulated debt together, whether your spouse accumulated debt behind your back or whether it was your own spending habits or lack of funds that created the debt issue, now is the time to work it all out. It may also be time to learn new habits including the art of budgeting, the ability to say I don't need that, etc. Do not berate yourself for your lack of involvement, at this most stressful time in your life. Your mental health is likely not equipped to take a self-beating. Every mistake is an opportunity to learn, seize this opportunity and put your financial future on the right track! ■

Sharon Numerow is a Certified Divorce Financial Analyst™ and the founder and owner of Alberta Divorce Finances. She is also the proprietor of a personal income tax return preparation business. She has worked with clients and lawyers for more than 10 years consulting on divorce finances. Visit her website at www.AlbertaDivorceFinances.com.

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- the statements and listing all your assets and debts.
- Both parties consider the needs of the entire family. Above all, list in detail the needs of any children. If possible, ask for their input before deciding the custody arrangements. You are much more likely to have well-adjusted children after the divorce if they have a say in how they live with and the visitation schedule of the other parent.
 - Both parties construct an agreement that truly reflects the needs of the entire family. You and your spouse know your needs better than anyone else. Use this knowledge to craft an agreement that will benefit everyone. Remember, you were a family before the divorce and you will still be a family afterward. The parent-child relationship remains, even if the parents no longer reside in the same house. ■



This article has been edited and excerpted from the book "Financial Custody: You, Your Money, And Divorce" by Joan Coullahan, and Sue van der Linden, copyright © 2002. Published by Alpha Books. Joan Coullahan is a Certified Divorce Planner and President of Divorce Financial Consultants. She is the Founder and co-director of the Divorce Resource Network, an organization that holds educational seminars concerning the various aspects of the divorce process. Sue van der Linden is a Certified Financial Planner and Chartered Financial Consultant with a major New York Brokerage firm. She is also a member of the Divorce Resource Network and a guest lecturer for the Graduate School of Business at George Washington University. For more information, visit www.joancoullahan.com.

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sense. They can also help you understand your investments and how they should be managed.

Other Finance Experts

To accurately estimate your assets and liabilities, you may also need the help of other experts with training in specific areas. To value a pension, you would use a pension valuator. To value income from property investments, you would use a real estate appraiser. Whatever the item in question is, it is important to go to the professional who can best assess its value.

There are also experts who can help with your finances once the divorce is finalized. For instance, a money manager can maintain your investment portfolio by choosing which assets to buy or sell over time.

Finances of the Settlement

There is no crystal ball that will forecast exactly what the final outcome of the divorce process will be. Until the financial settlement is signed, you don't know what it is going to look like. When people assume that their settlement is going to result in X dollars and make investments or buy a home in anticipation of that outcome, they often regret their decisions when the settlement turns out to be smaller. In addition, monies you spend now might not be considered part of the marital assets — you might be held personally responsible for the expenses. Don't make any investments or major purchases prior to signing the final agreement.

There is a lot to think about before you sign: What are the tax implications of dividing property? Are the assumptions you used to calculate investment returns realistic? What legal fees or other expenses do you need to budget for? Take the time to consider all the options.

The family home is an especially difficult consideration. In most instances, your home represents more than just a roof over your head. For many, there are emotional ties, fond memories, and

feelings of security. And the world around you assumes that in a divorce, the winner takes the home and the loser moves out. But, while the home represents so much emotionally, it may not be the best asset for your financial security. There are factors that need to be evaluated. What is the outstanding mortgage? Will your postdivorce income cover the costs to run your home? If you need to sell the home, what are the associated selling costs? Consider these factors, and discuss them with your experts when developing your postdivorce financial plan.

If you go to trial and a judge orders the equalization payment, in most cases that payment will need to be made in cash. If you are the payor spouse, you will be ordered to pay whatever the judge determines, so you need to have the cash on hand, or you will most likely have to liquidate some assets. In most instances, the payor is responsible for the taxes on this payment to the recipient.

Once all the financial agreements have been signed, you'll need to manage your postdivorce settlement to ensure that it lasts as long as you need it. You might want to consider contacting a money manager to help you sort out what to do next with your funds to help maintain your financial security. ■

This article has been edited and excerpted from the book The Smart Divorce by Deborah Moskovitch, copyright © 2007, published by Chicago Review Press, Incorporated. Deborah Moskovitch is the creator and facilitator of the Smart Divorce, a consulting service that provides tools and strategies for individuals contemplating or going through divorce. For more information, visit their web site at www.thesmartdivorce.com

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