

info sheet Divorce: steps to take during an emotional time

Courtesy of:

While not an outcome most of us want to consider when getting married, divorce is a common occurrence today. There are 1.4 million divorces in the United States each year. Nearly 50% of first marriages end in divorce, while 60% of second marriages do. And with such an emotionally charged event, you'll want to make the financial and legal processes as easy and as quick as possible.

Open communication

The best way to ensure a relatively smooth divorce is for both parties to be as open as possible about their financial affairs. The more secretive a spouse is about what they own or owe, the longer and more involved the process to uncover assets, etc. has to become. By coming to agreements about property and debt, you can avoid long drawn out battles that can add months, maybe years, to the divorce process.

Your financial adviser can help

While generally you will need to have an attorney to handle the legal issues and documents regarding a divorce, your financial adviser can play some important roles in the proceedings. An adviser can provide you with information to help you make decisions about how to divide your property, what the tax implications may

be of your options, how to determine what debts you owe, and so on. An adviser can also show you the results of different scenarios so you can make informed choices. Other roles of the adviser may be:

- strategist: helping you understand the financial implications of your divorce settlement issues
- mediator: developing an accurate picture of your financial situation
- negotiator: resolving discrepancies over property valuation based on financial research and projections
- client expectations manager: preparing you for the realities of your divorce and resultant financial situation
- trial preparation assistant: helping to optimize the outcome of any trial for you
- evidence presenter: explaining financial matters in court

Property settlement

There are three major concerns as you begin to try to divide your property in a divorce:

1. What's mine, yours, and ours?
2. How much is our property worth?
3. How are we going to divide the property?

Determining ownership

To determine what your assets are, you and your spouse should put together an overall inventory of your property. The next step is to determine who owns what. An important categorization when determining ownership is separate vs. marital property:

separate property

- items brought into the marriage
- items inherited during the marriage
- items received as gifts during the marriage

marital property

- everything (besides personal gifts and inheritance) acquired during the marriage, no matter whose name it is in
- in some states: any increase in the value of separate property is considered marital property

Property valuation

After you've determined what you each own separately, you will need to determine a value for your marital property. Sometimes you may choose to keep several pieces together in order to retain the value of an entire set, such as a furniture collection or china. Other items may have an emotional value attached to them that goes beyond their monetary worth. You and your spouse should indicate a value next to each piece of property on your inventory list. For some items, you may want to refer to outside sources in order to determine their value (see the "resources for further information" section at the end of this infosheet).

Some examples include:

- ✓ house: You can get a formal appraisal, ask a real estate agent for the price they would assign to the house, or find out what similar properties are selling for in your neighborhood.

- ✓ car: There are reference guides at your library or on the Web to help you determine the current value of a vehicle. You can also refer to the used car section of a newspaper to find out the asking prices for vehicles similar to yours or consult car dealerships to see what they would offer.
- ✓ other items: If you have the original purchase price, you can use that amount to make a decision about the items' current value. In general, you should try to avoid needless fighting over items that are not worth as much as you think they are, such as consumer electronics that tend to depreciate quickly over time.

Property distribution

The next step is probably the most difficult: determining who gets what. Different states have different laws regarding property distribution. It may be helpful to find out about your state's law (in other words what each of you would get should you have to take your divorce case before a judge) and use that information as a guide when dividing your marital assets. Refer to the table on page 4 for the laws regarding property distribution in your state. The two main methods states use are:

community property

- ✓ Each spouse's separate property is identified and not distributed by a court.
- ✓ All remaining property is equally distributed.

equitable distribution

- ✓ A couple's marital property is distributed equitably, which does not mean equally, but rather fairly. In other words, the result may not be a 50/50 split. The spouse with less savings and earning potential, for example, could be granted more than a 50% share.

- ✓ Non-property issues are considered, such as earning potential, career assets (job benefits including insurance, vacation, Social Security, stock options, and pensions), and personal investments in the marriage (the less tangible choices or sacrifices made on behalf of the couple by one spouse, such as quitting a job or postponing education to take care of the children or to allow the other spouse to complete studies or advance career).

Other options for undertaking property distribution on your own include:

- **taking turns:** Although this may sound like a childhood game of Round Robin, each of you could take a turn choosing an item off of your list until you have distributed all of the property.
- **trading:** You and your spouse could create trade agreements based on the relative values you place on your property, say the furniture and silver in return for the car and appliances.
- **setting value limits:** Determine a value for each item and what percentage of the total value of all property each spouse will receive. Then each spouse can choose items until reaching his/her share limit.
- **splitting profits:** Marital property can be sold and then the profits divided equally between the spouses.
- **enlisting a third party:** You can place your case with an arbitrator who will determine how the property should be divided after speaking with you and reviewing evidence. Or you can consult a mediator who will help you and your spouse work out how to value and divide your property.

Don't forget debt

In a divorce, debt should be treated like property. If you do not pay off all your debts before the divorce process begins, then you will have to determine who is responsible for each debt, similar to how your property was distributed:

- *individual debt:* considered separate property
- *joint debt:* considered marital property
- *debts involving an asset:* considered to be the responsibility of the owner of the asset (such as a car loan or mortgage)
- *debts concerning children:* in general, these debts are split equally between the spouses

It is important to confirm what is actually individual vs. joint debt. Just because your name does not appear on a credit card, for example, does not mean you are not responsible for the account. The best strategy may be to order a credit report to determine who “owns” which debts (see the “resources for further information” section for details on credit agencies).

The divorce process: how long does it take?

The length of the process depends on how much you and your spouse can cooperate with one another, how quickly information is provided, and whether you are able to avoid a court trial. If you do end up going to trial, the length of the divorce process is not easy to predict as you'll need to schedule hearings with the court in your state.

Summarizing the Law in the Fifty States: Property Division						
STATE	Community Property	Only Marital Divided	Statutory List of Factors	Nonmonetary Contributions	Economic Misconduct	Contribution to Education
Alabama		X		X		X
Alaska			X	X	X	X
Arizona	X		X		X	X ¹
Arkansas		X	X	X		
California	X		X	X	X	X
Colorado		X	X	X	X	
Connecticut			X	X	X	X
Delaware			X	X	X	
District of Columbia		X	X	X	X	
Florida		X	X	X	X	X
Georgia		X				
Hawaii			X	X	X	
Idaho	X		X			
Illinois		X	X	X	X	
Indiana		X	X	X	X	X
Iowa		X	X	X		
Kansas			X		X	
Kentucky		X	X	X	X	X
Louisiana	X					
Maine		X	X	X	X	
Maryland		X	X	X		
Massachusetts			X	X	X	
Michigan		X		X	X	X
Minnesota		X ²	X	X	X	
Mississippi		X		X	X	X
Missouri		X	X	X	X	X
Montana			X	X	X	
Nebraska		X		X		
Nevada	X	X		X	X	X
New Hampshire			X	X	X	X
New Jersey		X	X	X	X	X
New Mexico	X					
New York		X	X	X	X	X
North Carolina		X	X	X	X	X
North Dakota				X	X	X
Ohio		X	X	X	X	X
Oklahoma		X		X	X	
Oregon				X	X	X
Pennsylvania		X	X	X	X	X
Rhode Island		X	X	X	X	X
South Carolina		X	X	X	X	X
South Dakota				X	X	
Tennessee		X	X	X	X	X
Texas	X				X	
Utah					X	
Vermont			X	X	X	X
Virginia		X	X	X	X	
Washington	X		X			
West Virginia		X	X	X	X	X
Wisconsin	X	X	X	X	X	X
Wyoming		X	X			

¹ Contribution to education is a spousal maintenance factor. One case provides restitution if a spouse makes extraordinary unilateral efforts resulting in another's education.

² Non marital may be invaded up to 50% to prevent unfair hardship.

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Resources for further information

To find out the fair market value of your home, visit Acxiom Property Data and Services at <http://products.dataquick.com/consumer> and purchase a **Home Sales Report** or get a free **Home Sale Price Trends** report about your neighborhood.

To find out the value of your automobiles, refer to the **Kelley Blue Book** at your library or visit www.kbb.com

To purchase credit reports, contact these agencies:

Equifax: 1-800-685-1111 or www.equifax.com

Experion (formerly TRW): 1-800-392-1122 or www.experion.com

TransUnion: 1-800-916-8800 or www.tuc.com

The American Bar Association offers tables summarizing state laws on their Web site at www.abanet.org/family/familylaw

Web sites on divorce:

www.divorceinfo.com covers most aspects of divorce

www.divorcenet.com offers a state-by-state resource directory

www.divorceonline.com has articles on the financial, legal, psychological, and real estate issues concerning divorce

www.divorcesupport.com allows you to participate in message boards and review publications listings

www.divorcecentral.com gives answers to frequently asked questions and listings of related sites

For more information or a list of other MFS Heritage Planning educational materials on helping your parents, your children, or yourself, contact your financial adviser.

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