Considering Divorce? The Financial Issues

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Divorce is sometimes described as more of an emotional and financial event than a legal event, even though for a divorce to be formally recognized it must be filed and agreed by the appropriate court.

Unless you are using the collaborative approach (see www.ccflp.org for more information), forty days after being served with a petition of divorce, or jointly filing as petitioner/joint petitioner, you must complete and file with the court an Affidavit with Respect to Financial Affairs. This document is a sworn statement to the Court about your assets and income, and must be signed in the presence of a Court Clerk or Notary Public. You must also provide a signed copy to your spouse.

The financial affidavit. Preparing a financial affidavit requires you to collect all the information about your assets, such as bank accounts, savings, retirement funds, cars, real estate, and physical property. You will want to gather all of your latest statements for the financial assets and titles for your vehicles and real estate. If you have mortgages or loans against any of these assets, you will need to gather that information as well. Your other debts, such as loans and credit cards also need to be listed with up-to-date balances. You should gather statements so that you know the interest rates, payments and other terms of the loans and credit accounts. All of this information will help you, and your financial advisor if you choose to have one, decide how best to deal with your debts upon the dissolution of your marriage.

Don’t fight over the little stuff.

Sometimes people really argue about various items of personal property, such as pictures, kitchen equipment, exercise equipment, furniture, etc. There are a variety of methods that are used to help people to divide their personal property. One method is to draw up a list of all the personal property, and one party assigns their best guess of the value of each item if it were to be sold at a garage sale. The other party can then go through the list and suggest different values if appropriate. Then each party can decide what items they want, and if there is a disagreement about certain items, they can take turns selecting, draw straws, or utilize a variety of other methods to divide the “stuff”. What you do not want to do is spend more money than the stuff is worth on attorneys and advisors to fight over it.

Separate v marital property. What about items that you had before you were married, like jewelry or china? This leads us to the concept of separate and marital property. If you owed something before the marriage, then in most cases that item can be considered separate property and not included in the marital property subject to division. If you had a retirement fund or a house before your were married, then the balance or value at the time of the marriage can be considered separate, but any increase in the value of that asset, or contributions you made to a fund after the marriage, would be considered marital. If you personally received a gift, or personally inherited something during the marriage, then this could be considered separate, rather than marital. However, if you had a bank account before you were married and put your spouse’s name on the account, or co-mingled those funds with marital funds, then it might be difficult to be able to identify those pre-marital funds as separate property and it might be thus considered a gift to the marriage and thus divisible.

Equitable v Equal. Equitable does not mean 50/50. Typically people divide assets 50/50, but not always. You may receive more assets in exchange for less maintenance, or less assets because you both think it is fair.

Budget your living expenses. One of the most difficult issues that people have when filling out their financial affidavit is identifying their current living expenditure and what they think it will be after their divorce. Sometimes this requires going through past credit card and bank statements to identify just how much as been spent on groceries, clothing, child care, gas for the car, insurance, etc. While it may seem tedious, this forms the basis for working out how much maintenance (alimony) may be needed or can be paid, if any, and any adjustments to child support payments.

Do a cash flow forecast. Many people find, sometimes too late, that their living expenditure is going to exceed their income, and thus they end up in serious financial difficulties. It is often very helpful for those going through divorce to model their post tax cash flow to see if they are making appropriate decisions during the divorce process. Many people wish to retain the marital home, but in reality cannot afford to continue to make the mortgage payments and the utilities, taxes, insurance and other costs associated with owning a home. Thus, on analysis and reflection, they discover that it may be better to rent.

Health Insurance. Make sure that you discuss and agree how both parties and the children will have health insurance.

Maintenance. Sometimes it makes sense for one party to pay the other party an income for a specific period of time. Reasons for maintenance (alimony) include inability to earn sufficient income, time to obtain re-education or training, and child rearing. Maintenance payments are tax deductible by the payor and taxable as income by the recipient.

Child Support. The minimum child support payments in Colorado have been agreed by the Legislature and are based primarily on the relative incomes of the parents and the number of agreed overnights. Child support payments are neither taxable by the recipient nor tax deductible by the payor.

Life Insurance. If you are the recipient of maintenance or child support, you should try to agree to have a life insurance policy on the life of your soon to be ex spouse so that in case of his or her death, you have the proceeds of the policy to cover this income stream on which you were relying.

Retirement. Even if you have never worked and have no social security benefits in your name, you can receive half of what your working spouse will receive in social security benefits upon retirement. However, if there are marital retirement assets, you should consider foregoing keeping the house for your share of the retirement assets because this will help you to secure your longer term financial future. A tough decision, because your house has a lot of emotional investment, but this may be the best for your financial health.

Do not shoot the golden goose.
While your spouse's business may be a marital asset, be careful that you do not demand half of the value of the business plus maintenance funded from the cash flow of the business, from which you just depleted the asset base from the property division. Called double dipping, this is considered by many to be unfair as it reduces the ability of the business owning spouse to generate income.

Get expert advice. Many couples can agree amicably how to deal with their financial settlement, often because they do not see many options, nor the consequences of their decisions. In many cases, it is useful to get advice from an attorney or financial specialist to make sure that you are making the best decisions you can in your particular circumstances

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