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## Don't Let Divorce Ruin Your Finances

Strategies so you both win

**D**ivorce can be costly and financially risky in the best of circumstances. In the worst of circumstances—when couples fight over assets—expenses can be driven up astronomically. The only ones to benefit are the lawyers.

Strategies for preserving your net worth when you split up...

### KEEP A COOL HEAD

Divorcing couples often are scared and angry—which gets in the way of making sound decisions.

**Treat your marriage like a business** that you must dissolve. When you dissolve “Marriage Inc.,” you need to focus on all the “departments” of the company—children, real estate and finances.

**Avoid fixating on a specific asset.** Eight out of 10 women I counsel are determined to keep the house, even if it means refinancing and assuming more mortgage debt to buy out the husband or giving up any claim on a husband’s pension. While the value of a house may be equal to the value of a pension at the time of divorce, a house may come with high mortgage payments and repair bills that can undermine your long-term financial health.

**My solution:** If the house provides the immediate stability that you need, plan to stay there for one year, especially if that allows a child to reach college age before moving. By then, you will have more objectivity to reevaluate what’s in your best financial interests. Of course, that all becomes part of the divorce negotiations, and the settle-

ment must make clear who will cover the costs for that one year.

Dividing assets that have deep sentimental significance, rather than financial value, also can cause protracted fights. *Most commonly disputed assets:* Jewelry...china...and items bought on vacation.

A man I knew went to court rather than split the 100,000 frequent-flier miles on his credit card with his soon-to-be ex-wife. (The card was in his name, but his wife argued that they had jointly made the purchases that earned the points.) Those 100,000 miles translated into only \$800 worth of travel, but he spent \$10,000 on lawyer fees to win them.

**Reality check:** You will have to give up some things that you care about deeply. In each case, ask yourself if the item is really worth fighting over. More times than not, you could purchase a replacement for the item for significantly less than the two of you would hand over to your attorneys.

**Look for a win-win solution.** People tend to think in black-and-white terms during the divorce process.

Instead, try to find a solution that works for both of you. You may need ►

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▶▶ the help of an objective third party to do this.

**Example:** A divorcing couple was stuck over what to do with property they owned in Connecticut. She wanted to sell it and take her half of the money. He wanted to keep it but couldn't afford to buy her out all at once.

I developed a plan that let them both achieve their goals. The wife accepted a property settlement note structured so that her ex-spouse could pay her over a three-year period. In return for agreeing to stretch out the payment, she received 55% of the value of the house instead of just half.

**Avoid hot-button phrases** that cut

off negotiations. Some comments are so inflammatory that nothing productive can happen at a settlement meeting after they're uttered.

**Examples:** "It's my money, not yours"... "Unless you play this my way, you'll never get a dime"... "You never appreciated what I did for you"... "They're my kids"... "You're going to pay for what you did to me"... "I'll see you in court."

#### **DON'T PAY THE IRS EXTRA**

Some divorce attorneys have limited knowledge of tax law, even though it can have serious implications for both spouses. What to do...

**Ask a qualified accountant to analyze the after-tax results** of any proposed settlement. For example, if one spouse winds up with the house, realize that as a single person, he/she may qualify for only \$250,000 in potential residential capital gains tax breaks when it's sold in the future, rather than the \$500,000 that a married couple is entitled to take.

**Decide the best tax status.** Have an accountant evaluate whether it's best to file income tax returns jointly or to use a married filing separate (MFS) status in the tax year that you are getting divorced.

MFS filers usually get treated less favorably under tax law, but at the same time, they avoid legal responsibility for any unpaid taxes or penalties if their ex-spouses fail to report income or overstate deductions.

**Understand the tax distinction between alimony and child support.** These are commonly confused. Child-support payments are tax-free money for the former spouse who receives them and a nondeductible expense for the person who pays. In contrast, the spouse who receives alimony has taxable income, while the person who writes the check gets a deduction.

Depending on each spouse's tax situation, sometimes it makes sense to shift more payments to the alimony category from the child-support category. If you have children, you need to negotiate who gets the dependent exemptions for the kids and the child tax credit. Usually, it's the parent with

whom the children live.

#### **TRY TO AVOID A TRIAL**

It may seem like a relief to let a judge settle your case, but court trials cost three times as much as out-of-court settlements once you factor in fees for appraisals, depositions, subpoenas and more.

At least outside of court, you and your spouse still have 100% control over how things will be settled. At trial, a judge who has known you for just a few hours makes all the decisions.

**Consider mediation.** A neutral third party helps couples resolve their divorce issues, including division of property, payment of debts and child and spousal support, in a confidential setting. Unlike a judge, the mediator does not rule on elements of the dispute but referees your negotiations to help you reach a settlement agreement. Both parties are encouraged to obtain independent legal advice during the mediation process and to have their lawyers review the agreement before it's signed. If mediation fails, you still have the right to go to court. There are typically three to five mediation sessions, each lasting one to two hours. *Cost:* A total of \$3,000 to \$4,000.

**Alternative:** A "collaborative divorce," in which each spouse hires a specially trained collaborative lawyer and a mental health professional who acts as a divorce coach.

The spouses jointly hire a neutral financial expert and possibly a child specialist. The whole team tries to help the spouses achieve a negotiated settlement. If successful, the approach can save 20% to 40% in fees. If not, it can increase overall costs because the spouses then have to hire new lawyers to go to court.

#### **RESOURCES**

To find a divorce mediator in your area, go to [www.divorcenet.com/mediation](http://www.divorcenet.com/mediation), and enter your zip or area code. Or consult the Association for Conflict Resolution (202-464-9700, [www.acrnet.org/referrals](http://www.acrnet.org/referrals)).

To find a certified divorce financial analyst, contact the Institute for Divorce Financial Analysts (800-875-1760, [www.institutedfa.com](http://www.institutedfa.com)).