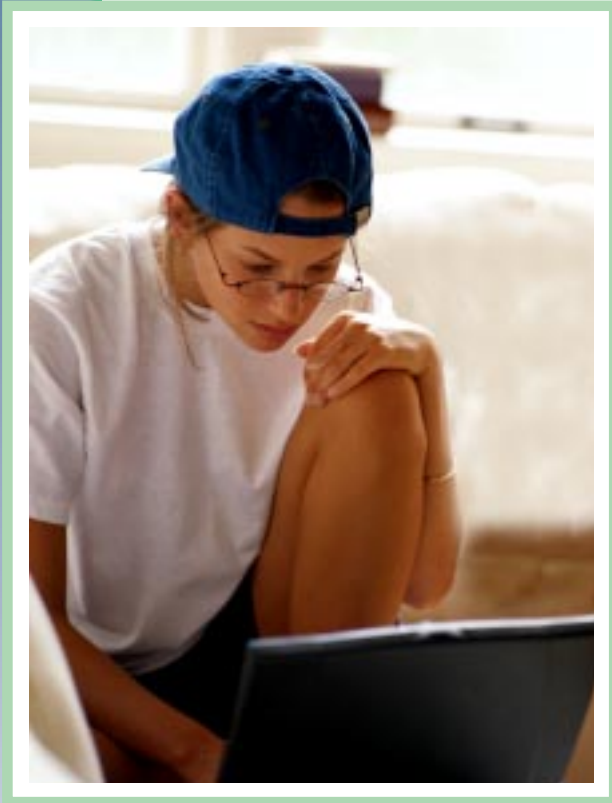


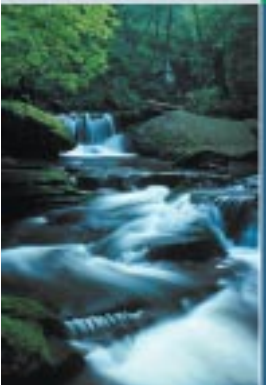
Making a Clean Financial Break at Divorce



If you're going through a divorce, you're probably exhausted by the emotional upheaval and the day-to-day details of carving out a new, separate life.

One thing that's easily overlooked — or outright ignored — in the turmoil of divorce is what your financial picture will look like down the road. Some people just want out of their marriage as quickly as possible and don't consider the financial ramifications of their actions. But you need to slow down some and look to the future. No doubt your financial life has been intertwined with your spouse's during your marriage. Perhaps financial struggles even contributed to the end of your marriage — that's not unusual. While it's not always possible to sever the financial cord with your soon-to-be-ex-spouse completely (particularly if you have children), if it is at all possible to make a clean break when dividing the property and allocating the debts, do so. If you stay connected to your ex-spouse financially, you're at risk.

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Dividing Property

At divorce, some basic rules apply in dividing marital property. First of all, you are entitled to divide your property any way you want. It really doesn't matter what the laws of your state say. They apply only if you and your spouse can't agree on the division of property and take your dispute to court for a judge to decide. Otherwise, you're free to divide your property in the way that makes sense for the two of you.

But let's say you can't agree and do fight it out in court, or you just want to know how a judge would decide things if you can't work it out. Then the judge will make a decision based on the rules of your state. Often state rules follow these guidelines:

- ▶ The property each spouse brought into the marriage is considered that spouse's separate property, and that spouse gets to take it out of the marriage. For example, if you entered your marriage owning a sport utility vehicle, you get to take it with you when you divorce.
- ▶ Similarly, the property a spouse inherited during the marriage is considered that spouse's separate property, which that spouse gets to take out of the marriage. For example, if your great uncle died last year and left you \$5,000, the \$5,000 is yours and yours alone — as long as you didn't mix it beyond recognition with money belonging to your spouse or money jointly owned. If you did, then the entire pool will be considered joint property.
- ▶ Property acquired during the marriage and the income earned during the marriage are generally considered marital, or joint, property. In the nine community property states — Arizona, California, Idaho, Louisiana, Nevada,

New Mexico, Texas, Washington and Wisconsin — this property, called community property, is usually divided 50-50. The rest of the states use a property division principle called equitable distribution in which the property is divided fairly. Often that is 50-50, but sometimes the higher wage earner is given 60 percent to 75 percent of the property.

No matter who decides how the property will be divided — you and your spouse or a judge — often, one spouse keeps more property than the other and agrees to make up the difference by making one or more cash payments. These payments are sometimes paid over time. More often, the money is paid down the road, a few months or even years, in a lump sum after the sale of a house or other valuable asset. This agreement works well in theory, but if you're the one expecting payments, make sure your divorce agreement doesn't leave you vulnerable.

For example, your ex might not make the payments — perhaps out of spite or perhaps because of the lack of money due to a layoff or illness. How will you collect? Sue your ex? Hire a collection agency? Try to re-open your divorce case?

Perhaps you had the foresight to have your ex sign a promissory note (secured by some property your ex keeps, such as the house) agreeing to pay you. If your ex doesn't pay, at least you'd get your share when your ex sells the house or refinances it. But what happens if your ex files for bankruptcy and asks that the promissory note be wiped out? You may be able to protect yourself in advance by specifying in your divorce agreement that the payments are made "in lieu of" alimony or child support, neither of which can be wiped out in bankruptcy. Or you might be able to protect yourself by including an agreement in your divorce settlement that essentially prohibits your spouse from wiping out the debt

in bankruptcy. Unfortunately for you, neither of these is foolproof, in which case you'd probably have to spend the time and money fighting the bankruptcy case in court, trying to convince a judge that the detriment to you would outweigh any benefit your ex would get by wiping out the debt. Don't count on winning.

There's only one sure way of protecting yourself — cash in hand at the time of the divorce. If your ex will pay you out of the sale proceeds of an asset, wait until the sale is final, take the money and then finalize your divorce.

Dividing Debts

Allocating debts can be just as tricky, with a similar set of rules. Again, you can allocate your debts any way you want. A judge will apply your state rules only if you can't agree on your own and ask a judge to settle the matter. The typical rules are:

- ▶ Each spouse is responsible for paying his or her separate debts brought into the marriage. If you had a student loan from before you got married, for instance, you take it with you at divorce, even if your spouse was paying it off during your marriage.
- ▶ Debts incurred after separation, but before the divorce is final, are generally the responsibility of the spouse who incurred them and must be paid by that person. But both spouses are responsible for paying for family necessities, such as food, shelter and the care of the children.
- ▶ In most states a spouse is responsible for paying only the debts that he or she incurred during a marriage — that is, you can't be forced to pay the bills your spouse runs up unless they were incurred on a joint account. Then, both

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spouses are fully liable for paying the bills. The rule is different in community property states, where both spouses are generally liable for all debts incurred during the marriage, unless the creditor was looking to only one spouse for repayment.

In community property states, a married person filling out a credit card or loan application alone is asked to indicate his or her marital status. If you check off "married" and don't assertively state something like, "but I intend that this be my separate debt and I, alone, am responsible for this account," then the creditor has the right to go after both spouses for payment — even though the account is in just one person's name. This means that all community property and both spouse's separate property might be at risk of being grabbed to pay all community debts incurred by either spouse.

Your divorce agreement doesn't change your existing obligations to your creditors. So even if your ex agrees to pay the bills as a part of your divorce settlement or was ordered to do so in a divorce decree signed by a judge, the agreement or decree is binding on you and your ex alone. If your ex gets laid off or refuses to pay, the creditors may come after you for payment. If you refuse to pay on the grounds that the debts "belong" to your ex-spouse, your credit will be damaged and the creditors may sue you. If you do pay the bills, your only remedy is to try and get your ex to reimburse you. In rare instances you might find a judge who would re-open your divorce settlement or decree to award you a greater degree of property, but even so, good luck finding your ex-spouse in order to actually get the property.

If your ex files for bankruptcy to wipe out the debts, you could raise in the bankruptcy court the kinds of objections mentioned earlier.

Again, the advice is simple: sever financial ties if you can, especially regarding debts. Don't divide them. Pay them off. Sell assets (including the house) to take care of the bills. If getting rid of the debts isn't possible, then you should agree to pay them in exchange for keeping a greater amount of the marital property. Only as a last resort should you agree to let your spouse pay the debts. You can't be sure he or she will. If this is your only choice, be sure to have your agreement reviewed by a lawyer with expertise in both family law and bankruptcy law who can make the agreement as foolproof as possible. But remember that nothing is guaranteed. Keep your fingers crossed and hope your ex makes good on the obligations.

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Divorce Checklist

- ▶ Close all joint credit card accounts as soon as you become separated or before, if you think separation is imminent and your spouse is continuing to use the card. Remember, you will almost certainly be responsible for any expenses incurred by your spouse during this time.

Just cutting up your card and tossing it in the trash will not close the account. The safest way to close a credit card account is by sending a certified letter, return receipt requested, to the customer service department of the card issuer. Ask the card issuer to close your account and to report your account to credit bureaus as "closed by consumer." You can close your account even if you haven't paid off the balance — the card issuer will close your account but still send you your monthly statements until you pay it off in full. But beware, we recently discovered that some

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creditors are raising the percentage rates to the highest rates possible on closed accounts with unpaid balances. In approximately 10 days, the card issuer should send you a letter confirming that your account is "closed by the consumer." If you don't receive the confirmation letter, follow up by calling the card issuer to make sure it closed your card and is reporting it properly to the credit bureaus. You may even want to get another copy of your credit report after a month or two to make sure it is reported correctly. To receive a consolidated credit report, be sure to visit Myvesta.org.

- ▶ Close all open but unused joint accounts as soon as possible in the method described above. Make sure that you clearly state why you are asking for the account to be closed and that it not be opened again as a joint account. If you are unsure which accounts may be open, order a consolidated copy of your credit report.
- ▶ If possible, continue to keep current on your bills while you are arranging which spouse will be responsible for which bill. Remember that any joint account your spouse agreed to pay and fails to pay will go on your credit report. You may consider agreeing to pay debts your spouse incurred on credit cards in your name or on joint accounts only to protect your credit rating.
- ▶ Don't count on the divorce decree to determine which spouse will pay joint debts. When you have a joint account with your spouse, both are responsible for all joint debts, regardless of how the decree divides the debts. Don't be misled into thinking your spouse is now

the only one responsible since he or she “promised to pay.”

- ▶ When dividing the debts with your spouse, try to avoid giving your spouse any debt that you are solely responsible for. If he or she defaults on the debt, you are the only one that will suffer.
- ▶ Try to establish credit in your own name. If you are employed and have good credit, apply for a credit card in your own name.
- ▶ If you own jointly held real estate, you should consult with a real estate attorney to find out the best way to get the real estate in your name only.
- ▶ In case of emergency, you can try to pay off debts by selling assets.
- ▶ Get a copy of your credit report and remove any accounts that were in your spouse’s name only.
- ▶ Establish a bank account before the separation in your name only. If the other spouse abuses a bank account, like bouncing checks on a joint account, this will make it difficult for you to open a new bank account under your name.

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