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Finances Before, During and After Divorce

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FROM THE EDITOR *By Kathleen A. Hogan*



Sorting Out Your Finances

The decision to end a marriage is hardly ever an easy or happy one,

and the process itself is often filled with questions and uncertainty for the clients. However, over the years, many clients have found the process of collecting and weighing financial data beneficial. Your lawyer will advise you to collect a variety of financial records and to compile detailed information about your family's monthly expenses. Although this task is time consuming, it should not be viewed as an unnecessary burden. It will be an important part of your financial planning process.

In particular, you are likely to gain far more knowledge about your monthly spending habits, financial dealings, and choices than you had before this process. The experience will be an "eye-opener," especially for those individuals who have *not* been primarily responsible for managing family finances. Even spouses who routinely *have* handled family finances are likely to finish the process with a far greater understanding of their true financial picture than before they began. Among other things, this experience may cause you to rethink spending decisions and other lifestyle priorities.

As to financial planning before a divorce, this issue is not about how to plan for divorce by diverting money, concealing assets, or engaging in other improper behaviors. However, for spouses who believe that a split may be inevitable, there are sometimes opportunities to make financial decisions prior to filing the case that can streamline the process or otherwise make financial sense without being unfair

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to either spouse.

As to financial planning during the divorce process, it is sometimes useful to think of the various financial elements of the case (the house, retirement accounts,

savings accounts, credit card debt, etc.) as interrelated pieces. There may be many ways to fit those pieces together into a resolution of your case. However, decisions regarding any one of these elements may impact the options available as to the others. In addition, certain choices may be a better fit for your particular financial future than others.

For the client who has *not* had a financial plan, the dissolution proceeding provides an opportunity to create one. For the client who has *had* a financial plan in place, but that plan depended on a breadwinner spouse and/or all the assets accumulated jointly during the marriage, that plan will have to be modified to fit the postdivorce separate needs of both parties. Even if during the marriage you or your spouse overspent or made other poor financial decisions, your postdivorce life will be yours to shape in a financially responsible way.

From the client's side of the desk, people experiencing or considering divorce are usually in uncharted territory as they deal with issues that may affect the rest of their lives. Many have preconceived notions about how to make wise choices, which may or may not be accurate. As well, many rely on financial and other advice from friends, relatives, or others who may mean well, but may not have an accurate understanding of the process, the options, or the interrelated nature of some of the financial choices to be made. When a family law proceeding is initiated, a competent and functioning adult, who has been accustomed to making decisions and directing his or her own life, is

placed in a situation in which sole control of the process, the timing, or the outcome is not possible.

No written documents can totally eliminate the emotions that go along with a life-changing transition such as a family law proceeding. Similarly, no written document can predict the exact course of each and every case. However, this client manual was created by the American Bar Association Section of Family Law to help illuminate the financial aspects of the process before, during, and after the proceeding. It is a special gift to you from your lawyer.

Assembling the pieces

The financial aspects of a domestic relations case involve multiple component parts. Most of the parts are interrelated in some fashion. A simple example is illustrative: If your car needs four new tires, you can deal with that in a number of ways, some sensible, some not, but all impacting other elements of your finances. You could use your savings to buy four new tires. Your car will be safe and reliable to drive, and you will not have to make any monthly payments. You also will no longer have savings for unexpected emergencies.

You could charge the tires on a credit card, preserving your savings for emergencies. But this option means you will have a new monthly payment and, depending on how long you take to pay off the credit card, the real cost of the tires will increase to include the finance charges on your credit card. You could replace only two tires, preserving some savings and avoiding debt, but your car will be less dependable because it will still have two bad tires. You also could spend your savings on lottery tickets in hopes of winning the big jackpot, or make countless other choices.

Just as the car owner in the example above will need to make financial plans and decisions, you will be faced with opportunities to make financial plans and decisions in your domestic relations case. The process is not like a surgical procedure in which the doctor performs the surgery and awakens the patient when it is over. In a domestic relations proceeding, the client and lawyer often need to work together to plan for and get through the various financial aspects of the legal process. The client needs to be awake and actively engaged in decisions. That active participation can best come about when

the client understands not only the goals of the process but also the interrelated aspects of the financial components.

The editors of *Family Advocate* have tried to identify and describe the many common financial aspects of a domestic relations case. Experienced and knowledgeable authors have provided information to help you undertake your own financial planning before, during, and after the case.

Please keep in mind that this manual is not intended as a substitute for good legal representation. However, experienced lawyers know that clients are often provided with an overwhelming amount of information relating to the legal process and procedures. Clients are trying to absorb that information at the same time they are trying to process the emotional turmoil that accompanies a domestic relations proceeding. As a result, details are often missed or misunderstood. Even the most intelligent clients often need “refresher” explanations as the case proceeds. That is

where this manual comes in handy. It provides those basic explanations and helps the client maximize the effectiveness of the lawyer-client relationship. It can also help the client formulate and focus specific questions for his or her lawyer, thus allowing lawyer and client to spend more time on case-specific discussions and less time on general descriptions of the financial aspects of the case.

As you review the articles in this manual, keep in mind the following points:

Procedures and terminologies vary somewhat from state to state. It is impossible in a publication of this size to identify and describe all those variations. Your lawyer can fill you in on state-specific variations that will affect your case.

Please read this manual carefully and refer back to it often as your case progresses. It is sure to answer many of your questions and trigger important conversations between you and your lawyer. **FA**



Dear Divorce Client:

The American Bar Association Section of Family Law has created this handbook. It is a special gift to you from your lawyer. As you read the articles, consider the advice of our experts. We understand that financial issues are complicated and sometimes mind-numbing. You may have to read some articles more than once. If you still don't understand something or have additional questions, please talk with your lawyer about it.

Our goal is to help you acquire a basic understanding of your finances, think through your options, and make the best possible financial decisions in your divorce case and beyond. We hope that by reading this handbook you will become more comfortable, confident, and capable in managing your finances and creating a happy and healthy postdivorce life.

Best wishes.

Kathleen A. Hogan, Editor in Chief



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A Snapshot of the Financial Considerations in a Divorce

By JAMIE L. WRIGHT

THE SHEER THOUGHT OF GOING THROUGH A DIVORCE MAY CAUSE FEELINGS OF ANXIETY, FEAR, AND CONFUSION. Swirling questions concerning how the process will impact your children, yourself, and your future can become all consuming. If you have children, your priority will most certainly be to protect them and their best interests as best you can during the divorce process. However, second only to protecting your children is protecting your assets, your financial stability, and your financial future.

Financial issues in divorce are a common source of discord and, consequently, litigation between partners. Even prior to the filing of the divorce, it can be important to have some understanding of the financial issues that may come up, what to expect, what you may be required to disclose, and what/how property may be divided during the course of and following the divorce.

Marital versus separate

A good starting point in thinking about the division of property is understanding how the law distinguishes between marital and separate property and why such a distinction is critical. (Remember, debts are essentially “negative” property and allocated by law the same way property is allocated.) Though you may have preconceived notions of what is yours, your partner’s, and shared property, the divorce law in your state may not be in line with your views.

Generally, the court will only have jurisdiction to divide marital property between the parties, with the division being equitable, or equal, depending on the state. However, in most states, the court also will have jurisdiction to set aside separate property to the rightful owner. In many states, marital property is property acquired during the marriage, without regard to whether the property is titled in one party’s individual name. If acquired during the marriage, it also may be important to consider how the



Your intent is an important consideration when you contribute separate property to, or for, the purchase of joint assets



property was acquired. If the property was acquired through a gift, bequest, inheritance, or the like, the asset may be your separate property and not subject to division by the court, even though it was acquired during the marriage.

Additionally, be aware that even property acquired before you were married may have increased in value during your marriage. In some states, the court may find that increase in value to be marital property and subject to division. For example, if you owned a retirement asset prior to your marriage, you may need to provide documentary proof of the value of the account immediately preceding the date of your marriage to demonstrate your separate property claim.

Although you may claim that your partner “knows” some of your retirement assets are separate or premarital, in the absence of documentary proof of value, in a contested case, the court may classify the entire amount as marital. In this vein, it is important to understand the differences between public and private retirement assets. For example, the division of public retirement benefits often calls into question the length of the marriage, years of service, and vesting schedule, along with very specific rules surrounding division of the account incident to divorce, while private plan rules are not necessarily so stringent.

In many states, the waters become further muddled in the event that you have mixed, or commingled, separate property with marital property. This is called “transmutation of property,” meaning that nonmarital property may be transformed into marital property. In some states, this situation arises if the money or other premarital assets have been commingled and cannot be traced, they have been placed in joint ownership, or the parties have used the funds in support of their marriage. In some instances, it may be important to

explain why you contributed your separate property to joint property. What was your intent? Was there an understanding that you would get your contribution back, *i.e.*, be paid back, or did you intend to give your separate property to your marriage? Your intent is an important consideration when you contribute separate property to, or for, the purchase of joint assets, *i.e.*, assets titled in both parties’ names, during your marriage.

Bear in mind that you remain married after the divorce case is legally filed, and before the decree or final orders are issued. It will be important to understand when the accumulation of marital assets is cut off. A common expectation is that property or debt accumulated after physical separation is separate property. Although that is true in some states, in others it is the formal filing of the divorce action that establishes the cut-off date. In a third category of states, the accumulation of marital assets and liabilities is not cut off until the divorce is granted. Transfers made on a mistaken belief that no more marital property is being created may result in the court’s construing your action as a gift to the marriage, thereby causing the property to be classified as marital property.

In determining whether money or other assets might be categorized as separate property in the event of a divorce, the paper trail can be important. For example, if money was inherited, account statements showing where it went can be crucial. If assets owned prior to the marriage are used to acquire different assets during the marriage, a portion of the asset acquired may still be considered marital property. For example, one spouse uses an inheritance acquired during the marriage to purchase a family cottage, although the cottage may be separate property, there may be a marital component if it increased in value during the marriage, or if marital funds were used to pay down any mortgage, make improvements, etc.

In many cases, it may be necessary

to hire a forensic accounting expert to trace and report as to the value of the separate assets mixed with marital assets. Forensic accounting experts generally have special education, training, and experience in tracing assets, analyzing their findings, and testifying before the court within the legal definition and valuation framework. Understand that the tracing process, with the assistance of a forensic accounting expert, can be very time consuming and an added expense.

Even before you think about dividing marital property and setting aside separate property, the following question must be answered: for purposes of a divorce, what is property? Property is not just furniture, cars, homes, or money in the bank. Property can be intangible as well. Consider certain trust interests, businesses, and stock options, to name a few examples. You will likely be required to disclose, or provide to your partner, documentary evidence of the existence of not only tangible assets and their values, but intangible assets, as well.

Often the value of assets becomes a disputed issue. For example, the value of commingled separate assets is a common source of litigation, as is the valuation method employed to determine the value of intangible assets, such as trust and business interests. Ask your lawyer about the different valuation methods applied in your state at the start of your case, especially if you own intangible assets. The valuation method employed and the experts chosen to value particular assets are usually part of an overall strategy

to protect your interests as best you can through the divorce proceedings.

Once your divorce case is filed, your actions concerning spending and/or transferring/moving funds, may be scrutinized.

In some situations, your actions may even be viewed as a violation of a court order. For example, a spouse who deliberately dissipates or wastes

property to deprive the other

spouse of any portion of a particular asset could be subject to penalties, such as fines, having to pay the other party's attorney's fees, or having the court value the asset dissipated as if it still existed and was held by the spouse who disposed of it.

Some states have statutory orders to prevent the dissipation of assets, which automatically go into effect upon the filing of a divorce case and service of the summons. In

Colorado, for example, unless spouses consent to another arrangement or exception, an automatic temporary injunction prohibits either spouse from transferring, encumbering, concealing, or in any way disposing of marital property, except for the necessities of life and in the usual course of business. Statutory restraining orders offer legal protection against dissipation or wasting of assets. Another layer of "protection" against dissipation of assets in some no-fault divorce states is the court's consideration of "economic fault" or deliberate wasting of marital assets during, or in contemplation of, divorce. The bottom line is that you need to be very careful about how you conduct your financial affairs once the divorce case is filed. If you begin spending or hiding money in a dramatically different way than you did before the divorce was filed, there may be serious financial consequences.

Where the court has jurisdiction to allocate marital property equitably, both financial and nonfinancial contributions may be considered in the court's allocation of marital property. An example of a nonfinancial contribution would include a spouse's contribution as a homemaker. In equitable division states, the court may allocate property in percentages different than 50/50 if there is good cause to do so. Understand, however, that simply because you were the one who earned, or paid for an asset from your earnings, does not necessarily mean that you will get a greater portion of that asset or the marital estate. Contribution is but one factor to be considered.

Another financial consideration is your economic circumstances at the time the divorce is filed. Do you have a high earnings potential? What are your projected future Social Security benefits? Do you have substantial separate assets? All of these economic circumstances are additional factors to be considered in an equitable, or uneven, division of marital property.

What is "income"?

Another financial piece of the puzzle is the issue of support. To have a meaningful understanding of what you may expect to receive, or pay, for child or spousal support, you must fully understand what your income is. Certain funds constitute income for purposes of determining child support, and other amounts do not.

In many states, for purposes of determining child support and spousal support, income is defined by statute. Income is not necessarily limited to employment earnings. Rather, income can include and come from a variety of sources such as commissions, regular bonuses, rents received, interest received, capital gains, unemployment/disability benefits, including Social Security, spousal maintenance/alimony, monetary gifts and prizes, and the list goes on. Often military benefits such as BAH (Basic Allowance for Housing)/BAS (Basic Allowance for Subsistence) are includable as income. What income is





depends on how your state has defined it. Examples of monies specifically excluded from income include child support payments received and public assistance benefits.

If you are not working full time, or up to your capacity, the court may impute appropriate income to you for purposes of determining support, unless an exception applies. That means the threat of

quitting a job to avoid paying support is often meaningless and can backfire. Parties are sometimes treated as earning a certain amount of income each month or year, even if not earning that amount because of unemployment or underemployment (working part time when able to work full time or working in a job not commensurate with qualifications and capacity). Exceptions to imputation of income may sometimes include enrollment in an educational program, the care of a young or disabled child; and/or employment limitations, *i.e.*, incapacity or disability.

This is another area where experts are relied on. Vocational experts are often hired to determine an unemployed party's employability and earnings capacity. Word of advice: it is a bad idea, once the divorce is filed or in anticipation of filing for divorce, to quit your job, deliberately decrease your work load, or take a lower paying job as you will likely be imputed income anyway.

Many other factors, in addition to income, go into a determination of child support and spousal support. Addressing those other factors in detail is best saved for another discussion. However, given that, having an expectation of what your financial support may be, or what you may expect to receive during and at the conclusion of the divorce, is of extreme importance in future planning. The other factors may include, very briefly, with respect to child support: the number of children; the parenting-time overnight schedule; the cost of insurance (health, dental, vision) for the children; the cost of childcare; and any other extraordinary expenses for the children (*i.e.*, monthly medical needs, private education, extracurricular activities, etc.). With respect to spousal maintenance, other factors may include: length of the marriage; the ability of the lower-wage-earning spouse to be self-supporting; the presence of marital income-producing assets; the ability of the higher-wage-

earning spouse to pay support; and the age and health of the spouses involved.

Be prepared to seek professional tax advice concerning the amount of spousal support. Generally, spousal support is deductible to the payor spouse for income tax purposes and taxable to the receiving spouse. There also are recapture issues to consider.

Attorney's fees


One last preliminary financial consideration is the issue of attorney's fees and costs, including expert fees. You may agree, or be ordered, to contribute to or pay for all your spouse's attorney's and/or experts' fees. Generally, this depends on the parties' financial resources and the disparity in earnings. Regardless of which side you are on, the public policy is such that the court does not want one party to be disadvantaged during the divorce proceedings and, optimally, both parties should be on an equal financial footing throughout the legal process. This means that both should have equal access to representation and experts. The amount of fees that one party may have to pay, or that one party may expect to receive, depends on the facts and circumstances of each case and the reasonableness and necessity of the amounts requested.

Certainly, a range of financial considerations may surface in your divorce case. Each issue should be addressed in detail at the beginning and throughout your case. Begin organizing your financial paperwork, whether in hard copy or online. Understand your household budget and how much you will need to sustain a separate household, in comparison to how much you earn. Keep in mind that the budget needs to be realistic—not a “wish list.”

If the marriage is stressed because of overspending, the reality is probably that everyone will need to cut back. Compile a list of property and think about whether the property is separate, marital, or potentially both. What is the value of the property? Will you need an appraisal? Organization is key to being prepared to make full disclosure of documents and have a reasonable expectation of how the divorce will affect you financially. Prioritize your wants, versus your needs, and understand that your postdivorce life will, in all likelihood, look much different than your married life, but possibly in a way that you are satisfied with and feel is fair. **FA**



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What Your *Financial Disclosure Form* Tells the Court About You

By MICHELLE CHEN

When litigating the issues of child support, spousal support, and, in certain jurisdictions, attorney's fees and costs, the most important document is the form setting forth a party's income and expenses. Although each state may title this document differently, the information sought is generally the same across the nation. Your attorney will determine what specific information is necessary to complete your financial declarations.

As you begin your case and follow your attorney's instructions, remember: the financial declaration is not "just another form." The financial declaration must be submitted to the court under penalty of perjury, and must therefore be completed as accurately and comprehensively as possible. So long as you provide all pertinent information, your attorney can finalize the financial declaration for you.

CHILD Support

A driving concept behind child support is to ensure that the supported parent has the ability to support the minor children in a manner consistent with policies of the state. While the factors considered may vary from jurisdiction to jurisdiction, what remains the same is the need to be truthful and accurate in your disclosures to ensure that the proper level of support is ordered.

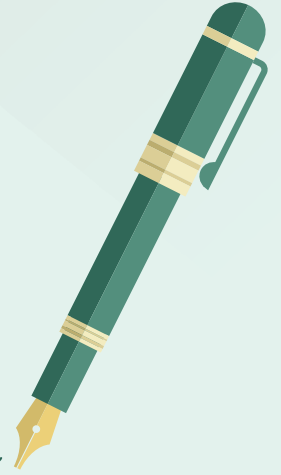
Each state has its own guidelines in calculating child support. Child support is often based on a mathematical formula, which may, depending on the jurisdiction, take into consideration, among other factors, the parties' respective incomes and the division of parenting time. In some states, the more custodial time the supported parent has with the children, the higher the child support; conversely, the more custodial time the supporting parent has with the children, the less child support is paid. In other states, the court may order child support based simply on a percentage of the noncustodial parent's income. A common goal in the various jurisdictions is to allow children to have a comparable standard of living in the households of both parents, so as to minimize the financial impact of their parents' separation on their lives as much as possible.

SPOUSAL Support

The purpose of spousal support is to provide the supported party with sufficient financial resources for a period of time so that he or she can work toward becoming self-supporting. What constitutes "self-supporting" varies from state to state. The purpose of the financial declaration is to provide the court with a glimpse into the parties' marital lifestyle based on their household income and expenses. The financial declaration reflects whether during the marriage the parties were average earners and spenders, whether they saved their funds or led extravagant lifestyles, or whether they lived beyond their means, incurring debt to fund their lifestyle. Other factors a court may consider are the parties' age and health, the duration of the marriage, and each party's earning ability. In states where "fault" is recognized in divorces, the fault may affect the amount of support ordered.

"Income" constitutes all earnings received from whatever source. The most common sources of income are salary and wages. Other sources include commissions and bonuses, Social Security payments, disability, and unemployment compensation

Income



Generally, a financial declaration likely has two components—(1) the income section and (2) the expense section. "Income" constitutes all earnings received from whatever source. The most common (and obvious) sources of income are salary and wages. Other sources of income that may be required to be reported include commissions and bonuses, Social Security payments, disability, and unemployment compensation. If one party is receiving spousal support, either from the current or a prior marriage, that spousal support income may need to be reported, too.

If there is investment income from rental properties, dividends and interest, and trust income, it too may have to be reported as well as gross receipts and expenses. Similarly, any self-employment income may need to be reported along with a profit-and-loss statement for such business. In addition, you may be required to report any other income received, even if it is not specifically asked about on the form. For example, if you received one-time income—an inheritance, lottery winnings, etc.—such income may have to be reported, depending on when the income was received. Talk with your lawyer about what is needed in your case.

In some jurisdictions, the court may also require information about tax deductions, such as union dues, mandatory retirement plan contributions, health insurance premiums, support paid in connection with other relationships, and necessary job-related expenses not reimbursed by your employer. (These expenses are typically deductible on your tax returns.) In fashioning support orders (and perhaps attorney's fee awards as well), a court may consider the respective assets of each party.

The purpose of this is to prevent a "cash poor/asset

rich party” from claiming an inability to pay when he or she holds substantial assets. Courts may consider, among other things, the value of the real and personal assets of each party, the available funds in bank accounts, and the value of each party’s respective liquid assets (stocks, bonds, and other easily liquidated assets).

A related concept to keep in mind is a party’s income available for support. The information reported on the financial declaration and the income reported on a tax return, though presumed to be accurate, does not always reflect the actual income a party has available for support. The most common scenario in which a court may not use the income reported on a tax return to calculate support is when one party owns and operates a business.

It is common for business owners to deduct from the company’s revenue personal expenses—for example, expenses associated with a party’s cellphones, health insurance, car expenses, etc. Though these personal expenses may be considered legitimate business expenses for business tax return purposes (thereby decreasing net taxable income), family courts may take into consideration the deductions for these perquisites when calculating child and spousal support. These expenses may be added back to a party’s cash flow as income available for support. The idea is that since the party is not personally paying for these expenses, the funds that would have been used for these are now available to support the children and/or the supported party.

Expenses

In addition to considering the various sources of income, courts will inquire about the day-to-day expenses of each party. This section should be as accurate as possible because it may be used to establish the marital standard of living. Keep in mind, it is not uncommon for the “out spouse” (the financially disadvantaged spouse or the spouse who did not oversee the finances during the marriage) to overestimate expenses to inflate the parties’ marital standard of living.

Expenses can be (1) *estimated* (e.g., based on what was incurred and paid during the marriage); (2) *actual* (this usually applies to nonfluctuating expenses such as rent, mortgage, property taxes, children’s school tuition, etc.); or (3) *proposed* (usually an expense that was not previously required but, due to the separation, may now be required, such as childcare). Common expenses that may require disclosure are rent or mortgage costs, utilities, Internet and cable bills, property taxes and insurance, laundry, food expenses (for both groceries and dining out), car-related expenses, charitable deductions, and education expenses.

To the extent a party has installment payments (such as a high credit card balance that is being paid off over

time, student loans, or car payments), such monthly expenses should also be disclosed on the financial declaration. Some jurisdictions also want to know whether any third parties are living with either party (parents, adult children, roommates, etc.) and, if so, whether such individuals contribute to household expenses.

ATTORNEY’S Fees & Costs

In some jurisdictions, courts may order one party to pay the other’s attorney’s fees and costs. Such an order is typically based on one party’s ability to pay and the other party’s financial need. The underlying concept is to “even the playing field” so that the party who is able to pay cannot use his or her financial advantage to force the other party into concessions. The court may require each party to disclose the amount of attorney’s fees incurred and the amounts owed to the attorney.

Credibility

In addition to establishing an accurate picture of income and expenses for the financial settlement, the financial declaration form may also be used regularly during the legal process to impeach a witness. Family court litigation is based heavily on “he said/she said.” Thus, credibility is a key factor. The financial declaration must be credible to the court. If major sources of income are omitted from your financial disclosure or you overstate your expenses, it may lead the court to question your credibility in all other aspects of the case as well.

Conclusion

The importance of an accurate and complete financial declaration cannot be overstated. The court will rely on your financial disclosures to form the basis of the child support, spousal support, and attorney’s fee order, such disclosures may inform the court as to your credibility. It is crucial that you work with your attorney to prepare your financial disclosure with care. To that end, provide your attorney with *all* relevant financial information so that he or she can complete the financial declaration as thoroughly and accurately as possible. **FA**

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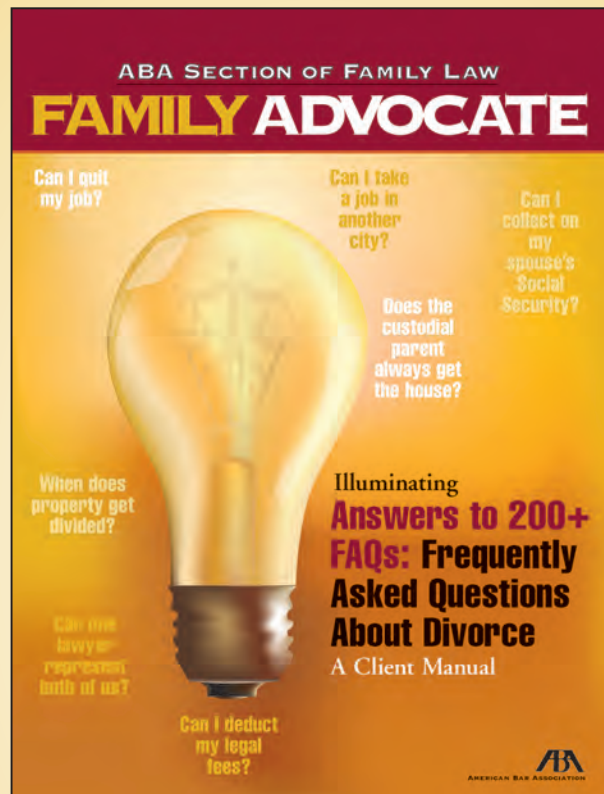
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Can friends
testify?

**Nagging questions
about divorce
can keep clients
awake at night...
and lawyers, too.**

**Illuminating Answer to
200+ Frequently Asked
Questions About Divorce:
A Client Manual will
help you and your client
sleep more soundly.**



FAQs: Frequently Asked Questions About Divorce
PC513-1100-2801

Published by the American Bar Association Section of Family Law, this client handbook is written by lawyers, accountants, and mental health professionals. It provides answers to the 200+ most commonly asked questions about the divorce process, child custody, property division, settlement, and more. Questions are organized by topic, and the clear and concise responses will answer many clients' concerns about divorce in general and help focus future conversations with their lawyer on the unique problems at issue in their divorce case.

What are common
visitation
arrangements?

What are
mediation and
arbitration?

Who decides
how much
child support
I pay?

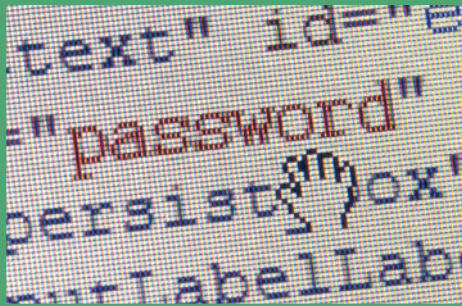
What happens
to my
insurance?

How long
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GET YOUR **DIGITAL HOUSE** IN ORDER

By MELISSA F. BROWN



In many modern marriages, spouses share everything from joint bank accounts to the passwords that safeguard these accounts. Spouses often share passwords to each other's separate accounts, including e-mails, wireless networks, banking accounts, utilities,

social media, and the like. Even when a spouse does not "know" a password, he or she typically knows enough to acquire the password via e-mail by answering standard security questions, such as a mother's maiden name or the name of a first pet.

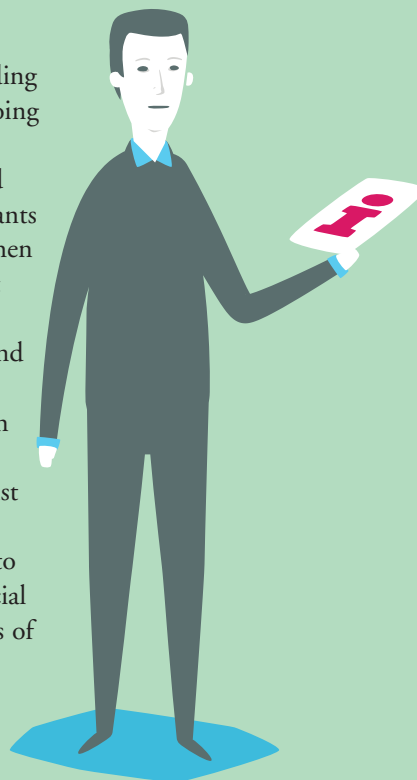
When separation and divorce appear likely, it is wise to change passwords and secure monies and other assets to protect them from being spent or encumbered without your permission. From a financial perspective, such protection begins by identifying assets, debts, income, and monthly/quarterly/annual expenses.

► **GATHER FINANCIAL DOCUMENTS**

Start this process by gathering detailed financial information, and then take steps to prevent your spouse from diverting or squandering funds to the detriment of you and your children. Family court litigants who do not proactively educate and protect themselves early in the process sometimes suffer from costly technological and legal missteps later on.

Newly separated spouses are often overwhelmed by the quantity of detailed financial information requested by their attorneys, the opposing party, and even the court. Every

state requires some form of financial disclosure, which is designed to provide the litigants and the court with a snapshot of the parties' finances, including income, expenses, ongoing obligations, assets, and debts, both marital and nonmarital. Some litigants are caught off guard when they do not realize that their failure to answer questions completely and accurately about their finances can cause them to receive less support from the court. For a list of the typical types of information necessary to prepare a proper financial declaration, see the lists of documents and records later in this article.





➡ CONSIDER HIRING AN EXPERT

When family finances are complex, a forensic accountant can assist the client and review several years of the parties' finances to paint a much more accurate picture of the couple's current financial situation. If you have maintained your financial records using widely available, free, online banking or inexpensive software programs, such as Quicken, Quickbooks, and AceMoney, the party can often quickly and inexpensively organize the household income and expenses to reflect an accurate monthly budget. On the other hand, if expenses were not tracked in an organized fashion, whether manually or by cross-checking the monthly bank statement with the family checkbook, including checks and debit card charges, the task of compiling an accurate picture of your family's overall financial health becomes daunting and expensive.

Whether or not you have done so previously, take time early in the process to gather the documents and records listed throughout this article. These records will assist you when you respond to requests

for alimony and child support or need to defend against an inflated budget by the other

spouse. Such detailed preparation also may bolster your credibility with the court as judges give more weight to testimony that is backed up by supporting evidence and documentation.

If you have not yet taken advantage of one of the "organizing a budget" programs offered by your bank, do so now. Establishing online access to your financial institution is fairly easy, and most banks will assist their customers to set up online accounts. Whether going into the branch or working online remotely, the first step is to use a secure computer and to create a new password that your spouse will not guess. Strong passwords typically include alpha and numeric characters as well as symbols such as dollar signs (\$), number signs (#), stars (*), and other keyboard characters.

In addition to password protecting online accounts, safeguard information on your other electronic devices, such as your smartphones, desktop computers, laptops, iPads or other tablets, iPods, and the like. And, do not leave these electronic devices with sensitive information in locations that are easily accessible to your spouse.

PERSONAL FINANCIAL | DOCUMENTS

1. CPA work papers for 2013–2014 (years in question) tax returns, including business general ledger and other financials provided for XXX.
2. Current financial statement of businesses (balance sheet and profit-and-loss statement, including general ledger and detailed depreciation schedule with purchase price and date for all assets). If the financial statements are not on accrual basis, bring accounts receivable and accounts payable as well.
3. January 20XX to current bank statement for every account (business and personal).
4. January 20XX to current credit card statement for all credit cards.
5. Current investment statements for every account.
6. Current retirement statements for every account.
7. List of all real estate you own with copies of any appraisals done within the last two years (tax returns for any holding companies of real estate).
8. Copy of current mortgage statements on all real estate.
9. Closing documents and other paperwork related to any purchases, sales, or refinances during the last three years.
10. Kelley Blue Book value of cars.
11. Kelley Blue Book value of boats.
12. In force statements for life insurance.
13. Credit reports for both parties.
14. List of any other outstanding debts with supporting statements (student loans, line of credit, etc.).
15. Financial statements provided to banks in the last year.
16. Copy of all IRS and other state tax agency reports/notices/liens.
17. Estimate of monthly expenses.
18. QuickBooks files (or other accounting software) for personal and business for 20XX to current.

—Dixon Hughes Goodman

BUSINESS | DOCUMENTS

The items below refer to records related to ALL ENTITIES in which Mr./Ms. Xxxxx has ANY ownership interest.

1. Complete and detailed list of every entity established or created on behalf of or in which Mr./Ms. Xxxxx has ANY direct or indirect ownership interest.
2. Tax returns for the past three years.
3. Detailed general ledgers/accounting for the past three years.
4. Compiled and/or audited financial statements for the past three years.
5. List of all owners/partners/members of each entity.
6. List of CPAs or persons who handle the accounting records for each entity and a release to contact this person(s).
7. Operating or trust agreements for each entity that Mr./Ms. Xxxxx has any ownership interest or for which Mr./Ms. Xxxxx is a beneficiary or trustee.
8. Buy-sell agreements for each entity and detailed description of any transactions pursuant to the agreement; including name, ownership percentage, and terms of payment (if any).
9. If separate bank accounts exist for each entity, then supply bank statements and cancelled checks for the past three years to the present.
10. List of all fixed assets including date purchased, purchase price, and estimate of fair market value.
11. If any interest acquired by gift, provide:
 - a. IRS Form 709 Gift Tax Return.
 - b. All documents, writings, or evidence of the donor's intent to gift the property.
12. Copy of any deferred compensation plans or any other retirement plans that benefit Mr./Ms. Xxxxx.
13. Detailed listing of jobs (work) in progress, including a listing of contract amount (price), estimated cost, cost to date, and estimated closing date. For jobs (work) that closed or was completed subsequent to the valuation date, a copy of the closing statement (HUD Form 1) or final billing and actual costs.
14. Detailed listing of real estate owned and appraised value as of the valuation date.
15. Identification of key persons, including job description and compensation arrangement.
16. Detailed listing of "barter" arrangements, including description of arrangement.
17. Detailed listing of notes and loans payable, including lender, interest rate, repayment terms, description of collateral, guarantor(s), and any financial information provided to obtain the borrowing.
18. Copy of all real and personal property tax bills and related receipts.
19. Credit card statements for the past three years, including documentation regarding travel and entertainment (individuals present, purpose, date, and location).

— Dixon Hughes Goodman



➡ COPY THE HARD DRIVE

Next, obtain a copy of the hard drive from the family computer and other shared devices. A hard drive is the component of a computer where all the information is stored. Legally obtaining a copy of the family computer's hard drive often provides a treasure trove of financial (and other important) information since many people use their personal computers for sensitive accounting information and tax preparation. Frequently, the spouse who has not had access to or paid attention to family finances is at a distinct disadvantage in a separation or divorce. Often this person ends up spending a great deal of money and time gathering information that the other party already has readily available because that spouse was solely or primarily in charge of family finances. Further, when marriages fall apart, some spouses are not entirely truthful or particularly forthcoming with financial information necessary to reach a fair resolution, so it is critical for the spouse who did not handle the family money to quickly get up to speed on the family's finances particularly before the separation takes place and important documents are misplaced or "disappear."

Given this reality, self-preservation means gathering as much information as possible even before discussing separation or divorce with your spouse. Of course, when the financially unaware party is the last one to know the marriage has failed, he or she is not only likely to be emotionally devastated but also greatly disadvantaged in the litigation beyond just the finances. Thus, both parties to a marriage should keep apprised of family finances, including information about life insurance policies, brokerage accounts, bank accounts, tax returns (with back-up information), retirement accounts, deeds, wills, stock certificates, etc. In addition, both spouses should maintain individual, secure access to the family's financial institutions and records.

For larger marital estates, the best practice for the less financially knowledgeable spouse is to hire a forensic computer expert to access hard drives from family desktops, laptops, external hard drives, and USB and other storage devices. Before locating such an expert, consult with your attorney to ensure that the expert you hire has the qualifications and knowledge to legally access these storage devices as well as the knowledge about how to preserve the “chain of custody” of the gathered information. In layman’s terms, preserving the chain of custody means that the expert knows how to recover important information so that it is not changed, tampered with, or tainted; can testify as to how the information was obtained; and can authenticate (*i.e.*, “verify”) why the information gathered should be admissible in court.

If you have any reason to believe your spouse’s electronic devices contain evidence relevant to the divorce, alert your lawyer immediately. Clearly obtaining access to a spouse’s hard drive(s), smartphone(s), iPad(s) or other storage device(s) is not always easy. The concern is that once you or the court asks the other spouse to turn over such devices, an “accident” or theft may happen to destroy the information or make it otherwise unavailable. Talk with your lawyer about how best to anticipate and prevent such a disaster from happening.

In addition, separating or divorcing spouses often utilize a process called “discovery” through which their attorneys send out requests for documents, answers to questions, and admissions to certain statements. This process is routine, but gathering the material is time consuming and often voluminous. Today, technology in the form of “cloud storage” can make this process much more manageable. Attorneys typically scan relevant information and upload it to secure cloud storage sites located around the country. Services such as DropBox, Google Drive, SkyDrive, SugarSync, Bitcasa, just to name a few, have helped to cut the cost of producing detailed financial information. Although clients do not generally have to worry about “how this works,” be sure your attorney makes use of these cost-saving technologies.

As an additional precaution, it is often wise early in your case to make use of a free online credit reporting service at www.annualcreditreport.com. A credit report can confirm that your spouse has not opened secret credit accounts in your name, and it can provide reminders of forgotten debts that should be apportioned as part of the divorce action.

PERSONAL | RECORDS

The items below refer to records related to ALL ENTITIES in which Mr./Ms. Xxxxx has ANY ownership interest.

1. Copies of all personal income tax returns since 2013.
2. Copies of all gifts, estate, and fiduciary returns prepared on behalf of Mr./Ms. Xxxxx.
3. All 1099s, K-1s, W-2s or other documents reporting income received for the last three years. These documents should include records of all earnings from any source (taxable or not).
4. Copy of most recent payroll check stub(s), payroll withholding advice, or any other document provided to you with each individual paycheck.
5. Copies of all Mr./Ms. Xxxxx’s personal checking and savings account statements with cancelled checks for the past three years FOR EVERY BANK ACCOUNT in which Mr./Ms. Xxxxx has any check-signing authority.
6. All credit card statements and/or debit statements currently in use or used in the past three years and applications for new credit cards.
7. All investment statements for each investment account for the past three years.
8. Stock certificates for any stocks held outright.
9. Most recent statements related to any retirement plans in Mr./Ms. Xxxxx’s name.
10. Records and papers related to all loans and obligations (mortgages and all other outstanding debts) in which Mr./Ms. Xxxxx has any obligation.
11. All applications for any credit of any sort and for auto or equipment leases including, but not limited to, a copy of any personal financial statements prepared for the banks or other institutions for credit.
12. In-force statements for all life insurance policies covering Mr./Ms. Xxxxx or in which he or she has an interest.
13. Identify each of the following insurance policies that you now own or that cover you, your child, or your property:
 - a. Health,
 - b. Property,
 - c. Liability,
 - d. Automobile,
 - e. Life, and
 - f. Any other policies.
14. Copy of current credit report from Equifax, Trans Union, and Experian.
15. Releases to meet and receive information from all financial advisors, CPAs, financial institutions, or other persons with knowledge relevant to the financial affairs of Mr./Ms. Xxxxx.
16. Detailed listing of all real and personal property tax notices and paid receipts for the past three years.

—Dixon Hughes Goodman



➡ **MONITOR SPOUSE'S SOCIAL MEDIA**

Pay attention to your spouse's use of social media. Is your spouse bragging about a new "just purchased" car or boat on Facebook or traveling far and wide posting pictures of "fun" that might negatively impact the marital estate? Be sure to share such information with your divorce attorney. He or she will instruct you about how to gather these postings and images so they are admissible in court. Again, it is important to bring the existence of your spouse's social media postings to your attorney's attention so there is never a question that the material was not gathered properly or illegally. Knowledge is power, so discuss with your lawyer all legal means to secure accurate, unedited information.

➡ **BE "TECHNO-SMART"**

Technology can be your best friend or your worst enemy. If you suspect your spouse of wrongdoing of any sort, before you conduct your own electronic surveillance, consult with an experienced, technologically savvy attorney. Federal and state laws protect against the illegal interception of e-mails, text messages, and other electronic communications. Likewise, information stored, created, or accessed on a computer (referred to as electronically stored information or "ESI") is critical in preparing almost every family court case today. Don't ever dismiss a spouse's destruction of ESI, because courts are increasingly willing to sanction not only the party who participates in such behavior but also the attorney who knowingly allows a litigant to destroy important ESI evidence.

Understanding what is and is not ESI is complex and sometimes confusing. We all routinely delete junk mail, spam, chain mails, and the like. However, during a divorce, or even when litigation is contemplated, these deletions can become an issue. Thus, add to your list of questions for your attorney how best to protect yourself from any violations or improper destruction of ESI.

Too often spouses spy on each other without understanding the consequences of their actions or the legal limitations on such spying. Consult a tech-savvy lawyer for advice before you snoop. This is essential to protect yourself and to ensure that any evidence you gather is later admissible in court. Better to let the professionals use the latest tools of the trade to uncover a spouse's misconduct than to taint otherwise compelling evidence by "going it alone."

➡ **WHAT NOT TO DO**

If you suspect your spouse of misconduct, financial or otherwise, resist the urge to take things into your own hands.

- **Do not install spyware on your spouse's computer.**

Spyware is software that monitors a computer user's browsing habits. This software "observes" and monitors all computer activity, such as websites a spouse or child visits, e-mails sent, instant messages, passwords, PIN numbers, etc. Various types of spyware can collect personal information and record keystrokes (*i.e.*, literally every key touched by a spouse or child). Some spyware can even take snapshots of computer screens, restarts/shutdowns, and logs off the computer, or controls the desktop and mouse. Other programs can make the computer talk.

Too often spouses spy on each other without understanding the consequences of their actions or the legal limitations on such spying. Consult a tech-savvy lawyer for advice before you snoop

Spyware works in many ways from downloading collected data onto an attached flash drive to sending collected data to the installer's computer via e-mail in the form of detailed "activity sheets." Spyware often is inexpensive and difficult to detect without special anti-spyware detection software. Spyware is also easily loaded on to a computer and some programs can be remotely downloaded from an e-mail in which the reader innocently believes he or she is downloading software, music, online videos, e-mails, IMs, text messages, or other programs.

Although spyware does have legitimate legal uses—such as a parent's monitoring of a child's computer use and an employer's monitoring of an employee's corporate computer use (as long as employees are aware they are being monitored)—using spyware without the other person's knowledge or consent generally runs afoul of the law. Spyware that tracks a spouse's computer activity (such as websites visited, e-mails sent and received, instant messages sent and received, passwords/PINs, etc.) is illegal in most states. Evidence gathered against a spouse in such a manner is not only prohibited by law, but the party and the attorney attempting to use such evidence may also be subject to criminal and civil sanctions.

- **Do not use keystroke trackers.** Keystroke trackers are a type of device (resembling a flash drive) that connects to a computer's keyboard and can record up

(Continued on page 18)

**If you suspect your spouse
of misconduct, financial or
otherwise, resist the urge to
take things into your own hands**

REAL PROPERTY | DOCUMENTS & RECORDS

For each and every real property for which Mr./Ms. Xxxxx has an interest or claim as an owner or lender or lien holder either directly or indirectly, please provide:

1. At original purchase of the property and for each subsequent acquisition of any interest in the property include the following:
 - a. Accepted offer to acquire the property.
 - b. Loan application (including all pages and attachments) to all lenders for the purpose of acquiring the property whether or not those loans were secured by the property acquired.
 - c. Grant deed, quitclaim, deed of trust, and all other documents transferring ownership or title, whether document was actually filed.
 - d. Closing escrow statement, including all pages and attachments.
 - e. All checks to acquire property. Includes downpayments, earnest money, and all other payments required to acquire the property.
 - f. Mortgage note of other loan documents for money borrowed directly or indirectly to acquire property.
 - g. Appraisals of value of property.
 - h. If acquired by gift provide:
 - i. IRS Form 709 Gift Tax Return, which reported the gift.
 - ii. All documents, writings, or evidence of the donor's intent to gift the property.
2. Most recent assessor's billing statement for property taxes.
3. All appraisals of the property created or received during the marriage not requested above.
4. Lender's loan statements for the earliest date of separation and each month thereafter to the current date.
5. Provide all other documents, records, or writings, which establish any of the following:
 - a. A separate interest in the property.
 - b. The value of the property at any time beginning one year before marriage to the present.
 - c. Any document that evidences an impediment to the title of the property.
 - d. All documents relating to circumstances, which do or could potentially relate to the current condition of the property, such as termite reports, estimates of repairs, etc.
 - e. Any liens or secured creditor's claim.
6. If the property has ever been rented to others, please provide the following documents, records, or writings for the period beginning three years prior to the earliest alleged date of separation to the present (unless another period is requested):
 - a. All rental agreements, leases, or writings describing the terms of each and every rental agreement or lease in effect during the applicable period.
 - b. For each and every tenant deposit, last month's rent or any other tenant funds provide:
 - i. Bank statements in which such funds are on deposit.
 - ii. All notices, statements, or communications of any type, which evidence the amount of tenant's deposits or a change in the terms of the tenant deposits.
 - c. A copy of the previous three calendar years' federal and state income tax return depreciation schedules (or any other documents or writings), which contain any of the following:
 - i. Original cost of building, components of building, and any and all additions or contents.
 - ii. The computation of each year's depreciation and accumulated depreciation at the end of each year.
 - d. All reports or writings, which contain or present income and or expenses.

SEPARATE | PROPERTY

1. All documents, records, or writings that establish that the property was acquired before marriage or after the date of filing.
2. All documents, records, or writings for payments made from separate property to initially acquire the property.
3. All other documents, records, or writings that establish a separate property interest in the property at acquisition.

— Dixon Hughes Goodman

to 262,000 keystrokes (approximately 160 pages). Like other spyware, use of keystroke trackers is illegal if the person being monitored is unaware of the monitoring. Any evidence garnered from such a device is likely inadmissible in court proceedings.

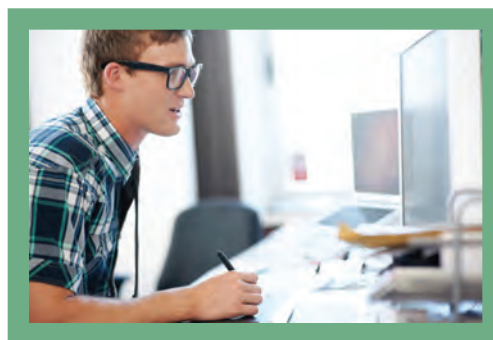
- **Avoid spoliation.** Spoliation (versus “spoil”) means the destruction of evidence. As a general rule, do not delete material on your social media sites, smartphones or e-mails except in the ordinary course of business. Otherwise, based on your state laws, you might be accused of “spoliation.” Destroying potential evidence can greatly damage your case and even result in severe punishment and financial sanctions. That said, as mentioned above, always discuss such important issues with your attorney.
- **Do not use technology to fake evidence.** Sometimes, family court litigants are so desperate to “win” their case that they use technology inappropriately and even in illegal ways. For example, SpoofCards are pre-paid phone cards that change the telephone number displayed on caller ID. This technology is accessible as an iPhone app and a Facebook application. The application promotes caller ID spoofing, voice changing, and call recording. One New Jersey divorce attorney had a client who was a victim of domestic violence. She had obtained a restraining order against her ex-husband, but he wanted the order overturned. To “prove” his case, he used spoofing technology to make it appear his ex-wife was calling him incessantly and to show that she did not really fear him. He would call himself using spoof technology so that her telephone number appeared on his caller ID. Although such use is legal in many states, some states have passed laws making spoof caller ID illegal when it is used “to mislead, defraud or deceive the recipient of a telephone call.”

On the federal level, Congress enacted the Truth in Caller ID Act of 2009, which prohibits any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

Other attorneys have had their clients’ privacy rights violated by a spouse using spoofing technology to access someone else’s cellphone voice mailbox. Many cellphone systems are automatically set up to accept calls from the account owner’s cellphone number to activate a replaying of all voicemail messages left on the cellphone. SpoofCard technology can create the illusion that it is an approved cellphone calling, and the spoofer can then listen to voicemail messages. Litigants should always password protect their cellphone voicemail and disable automatic access functions.

Technology also exists to falsify or “spoof” text messages. Although spoofing was originally created to allow users to work outside their offices and make business calls or send texts displaying work numbers rather than the actual cellphone number of the phone being used, abusers quickly learned how to take this technology and use it for illegitimate purposes. Abuses include impersonating another person, especially to harass and/or harm a competitor’s reputation or damage their lawsuit. Angry parents in a custody battle might even use this technology to pretend to be the other spouse and leave damaging messages on a guardian *ad litem*’s voicemail in an attempt to put the other parent in a bad light. An angry spouse might use spoofing to pretend to be the other spouse’s CPA and text a fax number requesting confidential information. This technology also can be used to send inappropriate text messages using the other spouse’s cellphone number.

If such abuse occurs, the victim spouse should hire a computer forensic specialist or contact the cell service provider to document that the victim did not send the inappropriate text or make the calls. Sometimes the proof is the omission of such texts from the real phone at the time the spoofed text was sent, rather than proving the sent text came from another phone. No matter how angry you are, resist the urge to fake evidence or engage in any illegal activity.



➡ MAKE A FRESH START

Do start your new “single” life with “fresh” equipment, passwords, and a robust alertness to ways your spouse might track or access your private information. First, change all passwords as discussed above. Second, if your spouse purchased your existing cellular plan, obtain new service for yourself and buy a new phone. Password-protect your new account so that no one else can access it. (If you continue to use your existing cellphone service plan, your spouse may legally have access to your records). Also, find out from your provider whether any changes were made to your account settings. For example, ask whether your spouse added any location services that could be used to track your movements. On an iPhone, if your spouse knows your iTunes passcode, he or she can use Find My Phone to track your movements.

Similarly, buy a new laptop or tablet and encrypt everything. Using your current laptop or other electronic device is risky. The “old” laptop or computing device may have malicious software (such as spyware) installed on it. If you cannot replace all equipment, the next best practice is to have a forensic computer expert inspect it, make an image of the hard-drive, and clean the “old” computing devices of any malicious software or apps. After purchasing new computing devices or inspecting, imaging, and cleaning the “old” ones, encrypt both the device and the information transmitted from the device.

Encryption creates a layer of security that protects the device and the information contained on the device from future “attacks” from malicious software or apps. Encrypting the device and its information is just a matter

Technology can save you lots of time and money, but it can also cause problems and great heartache if used improperly or unwisely

of using the right software or apps. To protect against keystroke trackers, regularly check all USB ports (including those on the back of your computer). If any foreign device is found, remove it and have a qualified forensic computer expert analyze it. Remember too: do not destroy your old equipment or delete information while your divorce is pending.

► **COMMUNICATE CONFIDENTIALLY**

Next obtain a new e-mail account for communicating with your attorney, friends, and witnesses. Ask your attorney about any preferred method of communication. E-mail often is preferred (although “texting” is quickly gaining ground). E-mail is a convenient, cost-effective, and time-sensitive tool. To protect your communications, change your passwords frequently.

Avoid using an employer-provided e-mail account. Your employer generally has access to all e-mails and attachments. Thus, communicating with your attorney on your employer’s computer or e-mail account might cause you to waive the attorney-client privilege and open the door to your e-mails becoming discoverable by the opposing spouse. Caution family and friends not to share your new e-mail address when sending or forwarding messages. Never open attachments from unknown sources, and be skeptical of requests for personal information. Always log-off or sign-out when you are finished using your computer.



► **LIMIT YOUR SOCIAL MEDIA**

In conclusion, limit your use of social media during litigation. Your spouse can easily use your “posts” on Facebook, Twitter, LinkedIn, Pinterest, YouTube, and other social media sites against you. Social media is a public or semi-public means of interacting with friends, family, colleagues, and others. Maintaining an active online presence during litigation is unwise and often detrimental to your case. A posting on any social media in the heat of the moment often has disastrous consequences, such as handing your spouse damaging evidence about you (*e.g.*, pictures of large purchases or lavish vacations, questionable behaviors, and inappropriate comments).

With this in mind, review your social media privacy settings and current content posted on your profile pages. When reviewing your privacy settings, understand that “blocking” your spouse will not prevent friends from sharing information with him or her or friends of friends from having access to your postings. Do not change your Facebook relationship status (*i.e.*, from “married” to “single”) until your divorce is final. (Remember, you are married until you are officially single.) The best advice is to go “dark” by not opening or posting to social media accounts during the course of the litigation. If, however, you already have a social media account prior to the litigation, deactivate, but do not delete, the account because deleting it equates to spoliation. Technology can save you lots of time and money, but it can also cause problems and great heartache if used improperly or unwisely so consult your attorney to make sure you are using technology to your advantage. **FA**



MELISSA F. BROWN is a fellow in the American and International Academies of Matrimonial Lawyers and is active in the ABA Family Law Section. Currently, she chairs the AAML’s Technology Committee. Jonathan W. Lounsberry, an associate with

the firm, provided research and assistance for this article. The author thanks Dixon Hughes Goodman, a nationally recognized accounting firm, for sharing their standard form financial document requests included in this article.



About Your Finances

By PAULETTE M. GRAY

Do's & Don'ts

HOW DO I HIRE A LAWYER?

Do's

- ✓ Get recommendations from friends, bar associations, and lawyer referral services. Then do your research and interview candidates.
- ✓ Determine whether you need a lawyer and, if so, what kind of lawyer. Is yours a difficult financial case? Is it a custody case? Find a good match.

Don'ts

- ✗ Don't hire a lawyer who has no family law experience.
- ✗ Don't hire a lawyer based solely on his or her reputation.
- ✗ Don't hire a lawyer who never goes to court.
- ✗ Don't stay with a lawyer who won't return your calls or keep you informed about your case.

WHAT DO I TELL MY LAWYER?

Do's

- ✓ Do your homework. If your lawyer asks for information, give it to him/her.
- ✓ Do your own legwork, copying, and organization. It is less expensive and less time consuming for you to get bank statements and make copies than for your lawyer to issue a subpoena and then make the copies.
- ✓ Answer your lawyer's questions. Tell your lawyer about your background, your education, your income, etc. Your lawyer will tell you what he/she needs to know, and you need to provide the information (income, employment, education, etc.).
- ✓ Tell your lawyer about any skeletons in your closet—do you have a girlfriend/boyfriend? DUIs? Any children out of wedlock?
- ✓ Err on the side of telling your lawyer too much. Let the lawyer decide whether to ignore it.
- ✓ Organize your documents for your lawyer.
- ✓ Rather than calling every time you have a question, keep a list of questions you want to discuss with your lawyer. Ask your lawyer how best/how often to deal with these questions. Organizing your questions and calls can help keep legal fees to a minimum.

Don'ts

- ✗ Don't lie to your lawyer.
- ✗ Don't hide things from your lawyer.
- ✗ Don't ignore calls and/or letters from your lawyer.
- ✗ Don't bombard your lawyer with calls and e-mails.
- ✗ Don't just bring a box of documents for your lawyer to dig through.
- ✗ Don't sign anything settling your case until your lawyer tells you to.

HOW TO TREAT YOUR SPOUSE DURING THE CASE

Do's

- ✓ Be civilized.
- ✓ If you continue to live together, set a healthy example for your kids.
- ✓ Engage in counseling to help manage your emotions.
- ✓ Walk away from fights.

Don'ts

- ✗ Don't date during your divorce. It will only make it more difficult on your spouse and add to the cost of litigation.
- ✗ Don't spend money on your girlfriend/boyfriend.
- ✗ Don't put anything nasty in writing. Your text messages and e-mails are evidence.
- ✗ Don't leave nasty voicemails.
- ✗ Don't threaten to quit your job.
- ✗ Don't cancel health/life insurance during the case.

CUSTODY & PARENTING TIME

Do's

- ✓ Be realistic about what is best for your children. Spending time with the other parent is usually best for your children.
- ✓ Let your children spend extra time with your spouse/ex-spouse. It's not about you, it's about them.
- ✓ Jointly parent your children. Keep your spouse/ex-spouse in the loop about things. E-mail is a beautiful thing.
- ✓ Put your animosity aside for the benefit of your children.
- ✓ Engage in family counseling.
- ✓ Engage in individual counseling.
- ✓ Let your children spend time with their extended family on the other side.
- ✓ Be flexible with parenting-time changes for special events.
- ✓ Speak positively about the other parent. You may hate the other parent, but your kids don't.

Don'ts

- ✗ Don't alienate your children from your spouse.
- ✗ Don't speak poorly about your spouse and his/her family in front of your children.
- ✗ Don't discuss your case with the kids.
- ✗ Don't ask your kids to spy on the other parent.
- ✗ Don't make your children choose between you and the other parent.
- ✗ Don't be unreasonably rigid with the schedule. What goes around, comes around.
- ✗ Don't move out if you plan to seek custody.
- ✗ Don't include your children in discussions with your lawyer. If you are making a phone call, be sure the children are not within hearing distance.

PROPERTY

Do's

- ✓ As you list your assets for your lawyer, indicate any you believe may be separate (nonmarital) property (an inheritance, separate gifts to you, items you owned before the marriage).
- ✓ Answer discovery questions completely and on time.
- ✓ Maintain your property to maximize its value (house, car, etc.).
- ✓ This is a good time to obtain a free online credit report.

Don'ts

- ✗ Don't make major life changes or major purchases until the divorce is final.
- ✗ Don't commingle property (i.e., refinance to put your spouse's name on nonmarital property).
- ✗ Don't buy real estate without first discussing it with your lawyer.
- ✗ Don't hide assets.
- ✗ Don't spend money on your girlfriend/boyfriend. Don't squander (dissipate) marital funds.
- ✗ Don't play games with discovery. If you are in possession of information that your spouse needs to respond to discovery, hand it over.
- ✗ Don't sell property without first speaking with your lawyer.
- ✗ Don't destroy property.
- ✗ Don't take money out of your retirement funds.
- ✗ Don't take money out of your kids' accounts.
- ✗ Don't argue over insignificant property (old furniture, the toaster, etc.).

Don't use social media to respond in anger, air your grievances about your spouse, or flaunt your improved new life

SOCIAL MEDIA

Do's

- ✓ Do limit or stop using social media during the divorce (Facebook, Twitter, LinkedIn, Pinterest, YouTube, etc.). What you share online can be used against you.
- ✓ Review your social media privacy settings and current posted content.
- ✓ If you come across your spouse's postings or photos that reflect poorly on him/her, alert your lawyer.

Don'ts

- ✗ Don't use social media to respond in anger, air your grievances about your spouse, or flaunt your improved new life.
- ✗ Don't change your Facebook relationship status from "married" to "single" until your divorce is final.
- ✗ Don't post pictures or statements that reflect badly on you.

DEBTS

Do's

- ✓ Maintain the status quo in terms of monthly payments unless your lawyer tells you to do otherwise.
- ✓ Pay the minimum payment due.
- ✓ Keep a paper trail.

Don'ts

- ✗ Don't run up credit card debt.
- ✗ Don't pay off your credit cards unless your lawyer tells you to do so.
- ✗ Don't charge things you don't want your spouse to know about. Those statements are subject to discovery.

SECURITY

Do's

- ✓ Do start your new single life with fresh equipment: a new computer, cellphone, etc., in your name only.
- ✓ Change e-mail and other passwords to ones your spouse won't know and cannot guess.
- ✓ Use available encryption software to protect all of your devices and your communications.
- ✓ Set up a new e-mail account that you use only for attorney-client communications.
- ✓ Make a mirror image of all shared computer hard drives, etc., for your lawyer.

Don'ts

- ✗ Don't communicate with your lawyer or discuss your case using your work computer.
- ✗ Don't install spyware on your spouse's computer.
- ✗ Don't use keystroke trackers.
- ✗ Don't destroy any potential evidence on your hard drives or online (files, social media postings, or e-mails), without talking with your lawyer first.
- ✗ Don't use technology to fake evidence.

When it comes to security that involves personal safety, always err on the side of protecting yourself and your children. If the other party is dangerous or you are fearful for yourself or your children, talk with your lawyer immediately about your options and how to devise a safety plan. **FA**

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ABA SECTION OF FAMILY LAW
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You've Got Choices: A Client Manual

The important divorce decisions you make today are the key to your future

Child custody

Family support

Health care

Pensions

Debts

Your home



You've Got Choices: A Client Manual

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from **FAMILY ADVOCATE**

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IS BANKRUPTCY AN OPTION?

By COLIN GOTHAM

A

decision to file bankruptcy must be weighed against all the other alternatives and ramifications. The purpose of a bankruptcy is to discharge or acquire forgiveness of some or all of your debt or the reorganization or new payment term for the debt. A bankruptcy discharge is a court order releasing a debtor from all dischargeable debts and ordering the creditors not to attempt to collect from the debtor. A debt that is discharged is a debt that the debtor is released from and does not have to pay.

Individual debtors can file for bankruptcy protection under chapters 7, 11, or 13 of the bankruptcy code. In a chapter 7 case, the debtor must turn over his or her nonexempt property, if any exists, to a chapter 7 trustee. What is exempt and cannot be taken from you varies widely from state to state, but usually involves some amount of household goods, your vehicle, home, and retirement accounts. The chapter 7 trustee then converts the nonexempt property to cash and pays a portion of your creditors. Chapter 7 is often the more favorable remedy because such cases usually conclude in less than six months and provide the quickest path to recovery.

In a chapter 13 case, the debtor must submit to the court a plan of reorganization or repayment of all or a portion of his or her debts. The debtor must make regular payments to the chapter 13 trustee who disburses it to creditors in the manner called for in the plan. A debtor may be required to file a chapter 13 instead of a chapter 7 because he or she earns above median income and has the ability to pay some creditors. Whether someone qualifies for a chapter 7 or 13 is a multi-layered test and beyond the scope of this article. Consult a bankruptcy specialist.

Most chapter 13 cases, however, are simple reorganizations of mortgage and vehicle debt without a payment to unsecured creditors, such as credit cards and medical bills. Chapter 13 cases also are often used to reduce interest charges and monthly payments on vehicle debts and to obtain feasible payment terms on tax obligations. Individual chapter 11 cases are relatively rare and, for the sake of brevity, will not be discussed in detail except to note that they contain many of the same principles as in a chapter 13 case.

Bankruptcy can negatively impact your credit, but mounting debts may already have severely damaged your credit scores. Bankruptcy is a powerful tool for relief from creditor collection activities. The finality provided by bankruptcy may help release individuals from a troubled past. At the same time, many debts may be negotiated without

the necessity of a bankruptcy filing. Some creditors will cooperate and release all or a portion of the debt in exchange for some amount of payment without the necessity of a bankruptcy filing. Bankruptcy does not solve all debt problems as there are some debts that cannot be eliminated with a bankruptcy filing. A full discussion about the elimination of each type of debt in bankruptcy is beyond the scope of this article, but some common examples include many student loans, recent taxes, and claims involving fraud or other intentional acts.

Debt consolidation loans and services must be viewed with suspicion. Debt consolidation loans often involve the granting of a lien to assets such as a vehicle or a home that would be exempt or not lost in a bankruptcy. Debt consolidation services are rarely successful and often are fraudulent.

A competent attorney who can, but does not always, file bankruptcy may provide insight and analysis as to the likelihood of resolving debt problems with or without a bankruptcy filing. Bankruptcy can be a very efficient way to deal with a multitude of problems. Even when it is decided that bankruptcy is the best option, which chapter of the bankruptcy code to file under requires a thoughtful and deliberate analysis. If bankruptcy is an option you are considering, consult with an attorney who regularly assists in the filing for bankruptcy protection under all forms or chapters of the bankruptcy code.

WHEN TO FILE?

The timing of a bankruptcy filing is often among your most important decisions. There are different schools of thought about when to file if a divorce proceeding is likely.

Arguably there is some reduction in costs if the husband and wife file a joint bankruptcy case before a divorce is completed. The parties will pay one filing fee and one attorney's fee as opposed to two sets. Once unsecured debt is discharged, then the parties can focus on other issues such as support and custody.

At the same time, many bankruptcy practitioners will refuse to file a joint bankruptcy

Bankruptcy can negatively impact your credit, but mounting debts may already have severely damaged your credit scores. Bankruptcy is a powerful tool for relief from creditor collection activities



THINKING OF SHORT SELLING THE HOUSE? WHAT TO EXPECT

Many individuals confronting a divorce are often faced with selling the family home. Generally there is no equity in the property. Although the house may not have equity, the property may be sold with the cooperation of the mortgage holders. The property is often “sold short” or for less than what is owed on the mortgage.

The process of short selling a home involves the cooperation of the mortgage companies. Generally, they would rather have you sell the home for fair market value than risk foreclosing on the property. Each mortgage company has its own application for a short sale. Mortgage companies want verification that the house is being sold for fair market value and may require an appraisal. You also may need to provide a settlement or closing statement, which demonstrates that all available funds are being paid on the mortgage(s).

Response times to a request for a short sale can vary widely, but usually take months. It is advisable to obtain a short sale package from the mortgage company in advance of listing the home for sale, so that you know what to expect. There are many limitations to a short sale. Generally, you must demonstrate an inability to pay the loan, and the loan must be in default for the lender to consider a short sale. Intentionally defaulting on a loan to qualify for a short sale is fraught with risk and should be considered only after a detailed analysis of your entire situation. Even if the short sale is approved, there is a cost: you are giving up potentially months of living in the property. Some state laws provide for quick foreclosures requiring debtors to vacate a property within sixty days, but many other states provide much greater latitude that could result in many more months in the property. Before pursuing a short sale, think carefully about how long you need to reside in the property.

A short sale may damage your credit, but not to the extent of a foreclosure. Your attorney should review any agreement with the lenders to verify that you are actually receiving a release and that the lender cannot pursue you at a later date. It may still be advisable to sell the home and agree to a deficiency, but your attorney or real estate professional should advise you accordingly. An experienced attorney or real estate professional may facilitate the process. Because foreclosure laws vary widely from state-to-state, obtain specific advice from someone who has actually handled numerous short sales and other options in your local area, such as voluntary foreclosures, deeds-in-lieu-of foreclosure, loan modifications, and bankruptcy. —C.G.

case because of potential conflicts of interest that may arise. It may be impossible for divorcing spouses to cooperate long enough to complete even a quick chapter 7 filing. Divorcing spouses should not consider a joint chapter 13 filing because such bankruptcies usually last three to five years. Divorcing parties cannot reach finality if they are embroiled in a bankruptcy lasting five years.

Filing bankruptcy during the divorce may allow one side additional time and will almost always delay the completion of the divorce proceeding. This delay may be used for tactical litigation strategy in the divorce, but is usually to stop a foreclosure, repossession, or other collection action.

Filing bankruptcy after the divorce may provide the best opportunity for finality in that it can be determined what debts remain. Your attorney may believe that your negotiating position may be best if there is some debt, but if the parties truly want finality and closure, filing bankruptcy after the divorce may be most advantageous.

• **My spouse files during the divorce proceeding. Now what happens?** If your spouse files for bankruptcy, the divorce proceeding will be stopped temporarily or stayed. When an individual files for bankruptcy, the automatic stay contained in the bankruptcy code stops all collection activity and the disposition of all property of the bankruptcy estate. Because the spouse's property is now subject to the jurisdiction of the bankruptcy court, it cannot be divided in the divorce. If the spouse files for chapter 13 bankruptcy, the stay may continue for years. A chapter 7 bankruptcy also may involve an extended stay if the chapter 7 trustee does not make a rapid determination of whether to abandon assets.

While there are some aspects of family court that are not stayed, such as decisions regarding custody and parenting time, the only safe and certain course of action is to file a motion for relief from the automatic stay in the bankruptcy case. Relief from the automatic stay is routinely granted so that the client can complete the divorce.

Once the bankruptcy court grants relief, jurisdiction over the property reverts back to the state court. Only with relief from the automatic stay can one achieve finality in

bankruptcy when a spouse has filed for bankruptcy. The bankruptcy trustee is not bound by any division of assets in the divorce proceeding unless the bankruptcy court grants relief from the automatic stay.

• **My ex-spouse files after the divorce. What is the impact?** The impact of your ex-spouse's filing of bankruptcy can be both devastating and helpful in terms of getting what is owed. This contradiction is lost on many divorce and bankruptcy attorneys who always see the bankruptcy filing of a client's ex-spouse as a negative. To determine if the bankruptcy filing is beneficial or harmful requires an understanding of the basics of the effects of bankruptcy on family law debts.

Child support or maintenance obligations are not dischargeable in a chapter 7 or chapter 13 filing. Many ex-spouses struggle to pay unsecured debts, such as credit cards, and also pay child support and alimony obligations. If your ex-spouse files for chapter 7 bankruptcy and has been saddled with a large amount of credit card and other debt, then the filing of bankruptcy may wipe out those debts that had been restraining his or her ability to pay child support or alimony. If your ex-spouse has been making large payments on unsecured debts, then the elimination of those debts may allow him or her to pay child support or alimony. As long as your rights to child support and/or alimony are not altered, then the elimination of some debt may help you to actually collect the court-ordered child support and alimony. Even if it appears that your ex-spouse is filing a chapter 7 for the sole purpose of discharging other nonfamily law debt, it still is advisable to seek an order from the bankruptcy court that clearly states that the family law obligations owed are not discharged.

If you are owed something other than pure child support and alimony and your ex-spouse files chapter 13, the analysis becomes much more complicated. Most divorces involve some division of property or debt, and these obligations are usually labeled as property settlement. Property-settlement-division obligations are not dischargeable in a chapter 7. Property settlement obligations, however, are dischargeable in a chapter 13. Because of this difference, the filing of a chapter 13 bankruptcy could severely damage an ex-spouse.

Many parties in a divorce promise to pay certain debts and indemnify the ex-spouse. Many debtors file bankruptcy to relieve themselves of debts for which the ex-spouse is liable. The bankruptcy court may discharge what's owed to the creditor from one ex-spouse and then pursue the other ex-spouse. The party who did not file bankruptcy is often surprised to be pursued for the debt, because the divorce decree or other similar document says clearly that the other ex-spouse is liable and must pay. However, the credit card company or any other creditor was not a party to the divorce and may pursue the remaining ex-spouse no matter what the divorce documents might provide. An ex-spouse who remains responsible often turns to a divorce attorney

and says, "You said my ex-spouse had to pay these debts! We have a court order!" The divorce attorney usually advises the client to obtain the services of a bankruptcy attorney.

The bankruptcy attorney will review divorce documents to determine if the debt is really a property settlement debt. The exact wording of the divorce decree is the starting point, but not necessarily the ending point. Even if the divorce settlement documents specifically state that certain promises or debts cannot be discharged in bankruptcy, the bankruptcy court is not necessarily bound by the parties' characterization of the debt in the divorce documents. If one spouse gives up all support rights as part of an agreement that the other spouse will pay the debt, then the bankruptcy court may look past the terms of the divorce decree and determine that the debt is really in the nature of support and not merely a property settlement debt.

The bankruptcy court will start with the divorce documents, and the inquiry could end at that point. The bankruptcy court may continue the review and determine the true nature of the debt and intent of the parties. Whether a debt is dischargeable is determined by an inquiry into the intent of the parties' marital settlement agreement, the substance of the divorce obligation, whether the purpose and effect of the obligation is to provide support to a spouse, a spouse's need for support, and what the function is intended to serve.

Most of the important work needed to address a possible bankruptcy by an ex-spouse occurs during the divorce proceeding. Avoid creating nonsupport obligations, such as requiring your ex-spouse to take on debt. You also may want to establish a need for any support and not waive support in exchange for your ex's promise to pay other debts.

The main point is that the bankruptcy court is able to disregard the labels used for family law obligations. If your ex-spouse has filed for bankruptcy, then only a competent bankruptcy attorney can review the chapter 13 plan and help enforce your claim. Generally bankruptcy deadlines are fast approaching, and your rights can be prejudiced in as little as 30 days. All creditors, including ex-spouses who are owed anything, should receive notice of the filing from the bankruptcy court. Your attorney should be notified immediately if you receive notice or information that a bankruptcy has been filed. The services of a competent bankruptcy attorney are critical when your ex-spouse has filed for bankruptcy protection. **FA**



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WHAT SHOULD HAPPEN TO *The House?*

By KATHLEEN A. HOGAN



The question of what happens to the house is often a big one when couples split up. There are a number of significant, interrelated considerations. A key question is how the present value of the house compares with the amounts owed on any mortgage, line of credit, or the like. Another significant issue is whether either of the parties can afford to retain the house. That depends on a number of interrelated considerations, only one of which is whether the person who wants to keep it can afford the monthly payments. In considering whether that is possible, it may be a good idea to look at rental rates in the area. For example, if the idea is to keep the children in the same schools if possible, knowing what it might cost to rent an apartment or house in the area can be an important piece of information for comparison purposes.

Commonly in a divorce, the equity in a home acquired during the marriage (by that I mean the present value minus the amount owed on any loans) is divided or allocated between the parties in some fashion. Sometimes that means one spouse receives the home and the other receives other assets of comparable value. If the parties don't own

sufficient other assets, it may be necessary to devise another way to buy out the person not retaining the home. In other cases, the home will need to be sold. After payment of the real estate commission, mortgage balance, and other costs of the sale, the proceeds may be used to pay down or pay off marital debts, if any, or may be split between the parties. Whether that division is equal or unequal also will depend on a number of factors and typically will be interrelated with the division of other assets. For example, the proceeds from the sale of the house may be used to make up the difference between the values of the other assets and liabilities being allocated between the parties.

Unfortunately, the present equity in the home may not necessarily represent the amount of money that has been invested in the property by way of down payment, renovation costs, and other expenses. Divorcing couples are sometimes dismayed to learn that the amount of money they have invested in the home is not any indicator of what they can expect to receive upon its sale and division of the proceeds.

If the property is not likely to generate a sale price sufficient to cover the current mortgage and/or other loans on it, a short sale may be an option. (For a discussion of short sales, see page 26.) In some situations, one or both parties may want to consider postponing any sale to see if property

values rise. Whether this makes sense will depend on real estate trends in your area as well as the affordability of the carrying costs on the property.


If the size or cost of the home or other factors leave both parties unwilling to keep it after the divorce, it may make sense to list it for sale before any divorce is finalized or even filed. Where real estate sales are slow, listing it sooner rather than later may be wise. Similarly, if the cost of the home is a major burden, it may not be possible for either party to acquire more affordable housing unless the home is sold.


Listing a home for sale without the consent of both


parties would generally be a bad idea and likely increase the level of animosity going forward. By contrast, if both agree the sale is inevitable, it may make sense to cooperate in selecting a realtor, arrange for fix-up preparations for listing, and the like. If you decide to move ahead with the sale, keep in mind two considerations: (1) it is best if partners can agree on how the proceeds will be used or safeguarded if the house sells prior to a divorce; and (2) either or both parties should be prepared to move to alternate housing in the event the home sells more quickly than expected.

SHOULD YOU *Stay or Go?*


If you are weighing the pros and cons of retaining or selling the house, several factors are worth considering:


 **If the home is to be sold**, it may not need to be appraised because the eventual sale price will determine its value. Until the sale takes place, estimates or approximations may be possible, but there will be no certainty as to which debts will be fully or partly satisfied with the proceeds of the sale or the amount either party might receive.

 **If one party wants to retain the home**, an appraisal may be necessary to determine the current market value, unless both parties can agree on a present value. Homeowners are frequently far off base in “guesstimating” the value of their own property, so a professional determination may be a good idea. Also keep in mind that in many areas of the country the assessed value of a home for property tax purposes is not a reliable measure of its current market value in a sale.


 **If the home is to be sold, both parties will typically be equally affected by the costs of the sale** and both will share the risks and benefits of a sale for less or more than expected. By contrast, if one party retains the home, he or she will typically bear the entire cost of any postdivorce sale, including paying the real estate commission. That person also would have the sole risk or

benefit relating to the ultimate selling price. As a result, keeping the house may not be a wise financial move in the long run if the plan is to sell it a year or two after the divorce.

 **Most people who own a home have some form of mortgage or other loan in place.** Commonly that loan will be in the names of both parties. Though transferring a home into the name of only one party can be done quite simply, that transfer does not change who is obligated on the mortgage or other loan. Getting one of the parties off that loan is not nearly as simple as transferring title. Typically, doing so requires that the loan be refinanced. Often refinancing involves an application and qualification process. Even though both parties were on the original loan, it isn't automatic that the party who wants to keep the house will qualify for a new loan, especially since a divorce will change his or her income and asset picture. As well, the interest rate or other terms may not be as favorable as on the existing loan.

 **Commonly there is no automatic requirement that a loan be refinanced when a divorce occurs.** However, the lingering existence of a joint loan carries lingering risks for the person who will no

longer own the home. Even if there is a formal agreement making one party solely responsible for paying the loan, that agreement has no effect on the lender's ability to pursue either party for payment. The obligation to pay the mortgage also remains on the credit report of both parties. That loan often will prevent the non-owner from obtaining a mortgage on a new home until the original joint loan is paid off or refinanced by the other party.

 **If the reason for maintaining the house has to do with allowing a child or children to remain in the home until high-school graduation or some other milestone event**, it may be reasonable to consider a plan whereby the home will be listed for sale at a specified future date or upon the occurrence of a future event. Keep in mind that it is possible as part of the divorce to set the future date for listing the house for sale. By contrast, it generally is not possible to specify the date by which the property must be sold since that will depend on how long it takes to find a buyer. For any period of continued joint ownership after divorce, it will be advisable to address a number of details including who will pay for the mortgage, taxes, insurance, homeowner association fees, repairs, etc.

A POST-DIVORCE *Purchase*

The question of whether to buy a house after the divorce presents a separate set of considerations. One is the tax benefit of having a deduction for mortgage interest and property taxes. However, in some cases, the money used for the down payment might be put to better use as an income-generating investment and/or an emergency nest egg. Likewise, living in a rented residence may provide more flexibility to move for employment opportunities, downsize as children move away, and the like. Absent very unusual circumstances, neither party will have any interest in or claim to any real estate acquired by the other after the divorce.

If one party owned the home prior to the marriage, additional considerations will come into play relating to such things as whether the home was transferred into joint names during the marriage and the source of funds used to pay for the mortgage, improvements, or other expenses during the marriage. Other factors also may be relevant, depending on the state. As a result, no generalizations can be made except to caution that merely living in a home together during a marriage does not make it subject to division on divorce if one partner owned it prior to the marriage.

People involved in or considering a divorce are often driven by emotional, rather than financial, considerations when they first weigh the question of what to do with the house. Those who are unable to see past the initial emotional response sometimes end up owning a house that is too big, too expensive, challenging, or costly to maintain. Others who end up wanting a “fresh start” in a new place may find that doing so is not a good long-term choice. In short, it is best to weigh the options, not just based on memories and history during the marriage, but with a critical eye to needs and finances as a newly single person. **FA**



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Don't Let Divorce Derail Your Retirement Plans

UNDERSTANDING YOUR OPTIONS BEFORE, DURING, AND AFTER YOUR MARRIAGE

By ARIN FIFE

Retirement is one of those moments for which one spends a lifetime preparing. Divorce will impact your journey to retirement. The more knowledgeable you are about your retirement benefits and those of your spouse, the smoother that journey will be.

Retirement accounts are meant to replace employment income when your work life ends. These types of accounts allow people to accumulate wealth with certain tax benefits during the accumulation process. There also are penalties if these accounts are needed earlier than planned. The variety and complexity of retirement plans offer unique challenges when a couple must separate their marital assets during divorce. Retirement benefits accumulated during marriage are probably subject to division.

RETIREMENT PLAN BASICS

There are two main types of retirement plans: the defined benefit plan and the defined contribution plan. When most people think of retirement plans, they are usually thinking of **defined contribution plans**. A defined contribution plan is an employer-sponsored plan with an individual “account” for each participant. The benefit is solely based on contributions made by either or both the employee and the employer into an individual account and the investment gains of those funds.

Types of defined contribution plans include Individual Retirement Accounts (IRAs), 401(k) and 403(b) accounts, and profit-sharing plans. These types of plans are normally not taxed at the time of contribution. The funds may not be withdrawn without penalty until

the investor reaches age 59½. The IRS limits the maximum amount that can be contributed to these types of accounts tax-free at the time of contribution.

Another type of defined contribution plan is a Roth IRA. This type of plan is initially funded with after-tax dollars; however, the earnings are tax-free as are the distributions. You can use your contributions to a Roth IRA account at any time, and withdrawals are tax- and penalty-free. However, any use of the earnings until retirement will likely become a taxable event (that is, the IRS will view those earnings as additional income for tax purposes). In 2014, you can contribute up to \$5,500 to a Roth IRA so long as your adjusted gross income is less than \$114,000. Roth IRAs often are used to fund college as is discussed later in this article.

A **defined benefit plan** often is referred to as a “pension plan.” These types of plans calculate benefits using a fixed formula to calculate monthly lifetime payments that typically factor in final pay and number of years of service with the employer. In a defined contribution plan, the payout is dependent on both the amount of money contributed and how well the investment performed. Retirees choose between single life annuities, which provide regular payments until the death of the pension recipient, and

joint and survivor annuities, which continue to make payments to the spouse or ex-spouse after the death of the retired worker.

A single life annuity generates a higher monthly payment, whereas a joint and survivor annuity generates a lower monthly payment due to the insurance against the risk that the retiree will die before the spouse or ex-spouse, leaving the survivor with insufficient income. Consult a financial advisor when deciding which type of annuity is appropriate for you.

Certain **hybrid plans** also exist. Hybrid plans combine the features of defined benefit and defined contribution plans. A typical hybrid design is the cash balance plan where the employee’s face value account balance grows by some defined rate of interest and annual employer contribution.

When dividing retirement accounts, many things must be examined. The accounts must be valued; contributions made prior to the marriage must be calculated; and how the accounts are going to be split or traded must be determined. To complicate things even further, the laws on how these assets are treated vary from state to state. Despite these variations, there are certain constants that will be helpful to keep in mind.





HOW YOUR ACCOUNT IS VALUED

A defined contribution plan is much easier to value and, therefore, easier to split. Defined contribution plans have a value as of a certain date, which can be divided as either a percentage or dollar amount to the other spouse. Care must be taken to divided increases or losses that occur between the valuation date and the date of distribution.

A defined benefit plan is another story altogether. It is valued as a future stream of payments based on a benefit formula. Thus, many defined benefit pension plans will not pay a lump-sum amount and will only pay a spouse on a monthly basis for a lifetime, starting around retirement age.

A younger spouse will receive a discounted sum if the former spouse begins taking payments earlier than when payments normally would begin. This may make it more desirable to consider an offset of some type. An offset would mean accepting some type of other property instead of a share of the future monthly pension payments.

If considering an offset, it is a very good idea to have a professional value the defined benefit plan to ensure that you are getting something of equal value for this asset. The value generally is determined through an actuarial analysis of the pension plan. Even when valued by a professional, a future pension value and even the right to a pension is not a sure thing.

Although figuring out how best to divide a pension benefit is very difficult, you may find some comfort in knowing that the Pension Benefit Guarantee Corporation (PBGC) ensures against a pension fund's inability to pay the promised pension.

ceeds of marital property. However, what constitutes marital property is very state specific. Consult with your attorney to learn more about the laws of your state.

Retirement accounts can be both "marital" and "nonmarital" in nature. This can complicate the division process. With a defined contribution plan, it often is possible to determine the account balance at the time of the marriage. A good piece of advice upon remarriage is to retain a copy of your last monthly statement prior to remarriage and all year-end statements thereafter.

In this way, you can determine which portion is marital and subject to division.

HOW YOUR ACCOUNT IS "DIVIDED"



When dividing assets, you will consider whether to divide retirement accounts or negotiate a trade-off of other types of assets such as a home. Be cautious when contemplating

a trade-off of this type. Remember that defined contribution retirement accounts will be taxed as income when funds are withdrawn, so they have a "pre-taxed" value,

whereas a home net value is in after-tax dollars.

A \$100,000 IRA is not equal to a home with \$100,000 of equity. A home is more likely to have ongoing and unexpected expenses, and the future value can be uncertain. The potential appreciation value of a home and the tax consequences of any asset must be considered when selecting between a division or trade-off. A house is not necessarily a tax-free asset, since it is possible to incur capital gains taxes upon the sale of the house.

Marital property consists of most property acquired during a marriage, anything purchased with money earned during the marriage, and anything acquired with the pro-

When it is not possible to ascertain the balance at the time of the marriage, a formula can be used to determine the nonmarital portion of an account. Simply multiply the average yearly contribution times the number of years worked prior to the marriage. This is, however, an imperfect method, because, for example, a premarital portion can easily be overestimated in a long marriage.

Commonly, as employees age their incomes, along with their contributions to a 401(k) or IRA, increase. Therefore, calculating the value based on an average contribution can greatly overestimate contributions made early in one's life.

Defined benefit plans also can be both "marital" and "nonmarital." The determination of the nonmarital portion is a bit more complicated when valuing this type of asset. Many states base the portion to be divided on the percentage of time that the employee spouse participated in a plan during the marriage. This provides a percentage of the future benefit that is marital. When valuing and dividing a pension plan, it is important not to forget benefits that exist outside of the obvious "value." These benefits can include things such as cost-of-living adjustments (COLAs), surviving spouse benefits, and early retirement buyouts.



New from the ABA Section of Family Law

Help for Blended Families

How to make it work:

- Communication
- Compassion
- Consistency
- Good Parenting Skills

YOUR BLENDED FAMILY

A Guide for Parents & Stepparents

This 40-page client handout, created by *Family Advocate* magazine, offers practical parenting and stepparenting advice, tips, and strategies from lawyers and mental health experts who have helped thousands of blended families and know what works and what doesn't.

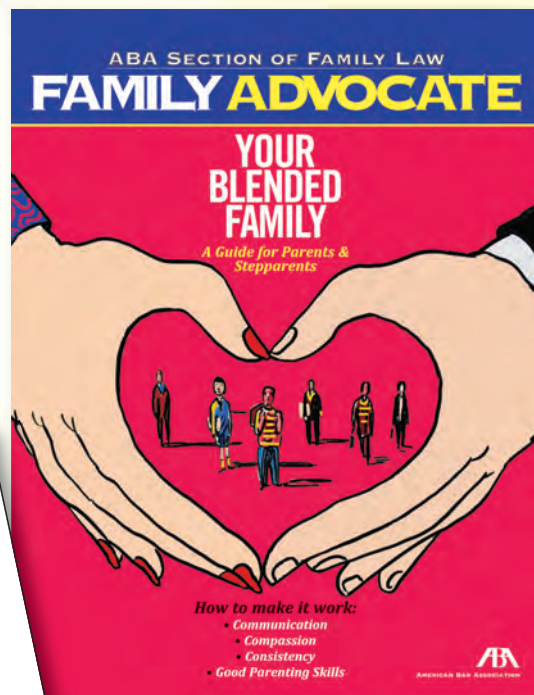
The authors offer thoughtful, sound advice on issues as diverse as:

- how children experience the blended family,
- devising shared-parenting schedules,
- raising an organized child,
- dealing with disputes and discipline,
- when to call a therapist,
- blending religious practices, and
- a personal story of one stepmom's experience: *What I Wish I Had Known*.

Ask your lawyer for a copy or see back cover for prices and ordering instructions.

20% of children younger than 18 years old reside in a stepfamily

Single copy price: \$12.95.
Quantity discounts available.



DURING DIVORCE...

- **Continue voluntary contributions.** Divorce is a process and not an instant event. During the process, it may be

beneficial for some to continue to contribute to voluntary retirement accounts, whereas others may choose to temporarily cease their retirement contributions. In some states, marital property continues to accrue after separation until the divorce decree is entered. In others, marital property stops accruing on the date of separation or date the divorce was filed or served. In states where the value of marital property increases up until the date of divorce, halting contributions may keep from growing your spouse's share at your expense. However, since many employers match contributions, you could be forgoing a substantial amount of money by ceasing contributions.

Another consideration is whether your state is a community property state where property may be divided equally. If you reside in an equitable distribution state or a community property state where property is divided equitably upon divorce, "equitable" does not necessarily mean "equal." Your spouse may receive more than 50 percent of your retirement accounts at the time of divorce.

- **Using a QDRO to divide accounts.** The actual process of dividing retirement accounts is important and complicated. Many factors must be considered. The court must adhere to federal guidelines when dividing some accounts, such as 401(k) or pensions, and state laws dictate the division of other plans such as IRAs. Your settlement agreement must be specific as to how these accounts will be split and how funds will be transferred.

The division of a 401(k) or pension account requires what is called a Qualified Domestic Relations Order (QDRO). A QDRO allows for a portion of the retirement account to be withdrawn without penalty and deposited into the other spouse's existing or newly created retirement account, but only once it has been accepted by the plan administrator.

Following up to ensure acceptance by the administrator is critical. It also is very important to make sure that both the settlement agreement and the QDRO are drafted to protect and account for gains and losses in the account. Division of a traditional IRA or a Roth IRA does not require the use of a QDRO. Avoiding the triggering of unnecessary taxes or penalties is the goal you want to achieve.

- **Paying expenses with retirement funds.** A QDRO allows a divorcing spouse under age 59½ a one-time withdrawal of money from certain accounts without incurring the standard 10 percent early-withdrawal penalty. The catch is that this withdrawal must be performed through a QDRO. This can be very useful when needing to pay unavoidable expenses such as attorney's fees incurred in the divorce. However, remember that this money will eventually be needed to live on. Only amounts absolutely necessary should be withdrawn. Also remember that the funds withdrawn will count as taxable income for the year.

Another method of withdrawing funds is to borrow no more than half of the account balance if your plan so allows. The maximum allowable withdrawal is \$50,000. These monies must be repaid in no less than equal quarterly payments over five years (15 years if borrowed to purchase a home or second home) with a reasonable interest rate being paid.

- **Funding higher education.** The other opportunity to withdraw money from a traditional or Roth IRA without a 10 percent penalty is for a distribution for higher education. If, at some point, you hope to help your children, or even grandchildren, with higher education expenses, it may be a good idea to set aside an IRA for this purpose. Rather than divide an IRA account, you may want to allocate this account for future higher education expenses, even if you are not over the age of 59½.
- **Changing beneficiaries.** Another important step during the divorce process is to change retirement account beneficiaries immediately upon entry of the divorce judgment.



SOCIAL SECURITY

You may be entitled to a portion of your spouse's Social Security benefits, including survivor benefits, as long as you have been married for ten years, your work credits do not exceed half of your spouse's, and you do not remarry. If you are in the process of divorce and are approaching your ten-year marriage date, you may wish to delay the divorce. Once you pass the ten-year mark, you are entitled to these benefits with no negative effect to your spouse. Some states consider this an offset against accumulation during marriage. Ask your lawyer for clarification in your state.

No matter what your state law is, federal law is supreme. Recent cases have made it clear that when it comes to federal retirement plans, such as pensions and even life insurance benefits, a change-of-beneficiary notice is mandatory. Put this on your “*absolutely must do*” list. The only way to be sure that a former spouse is removed as a beneficiary from an account is to formally change the beneficiary listed on the beneficiary designation form.

AFTER THE DIVORCE...

Before finalizing your divorce, make sure that all documents needed to divide the necessary accounts are in order and “pre-approved.”

Discuss this with your

attorney. If you will be using a QDRO to divide an account, a draft QDRO should be sent to the plan administrator for pre-approval. It is important to make sure that there will be no surprises after the divorce has been finalized and that all accounts can be allocated as anticipated. There may be a problem with unfunded or excess plan accounts. It is very rare that an account of this type will accept any domestic relations order for division. If an account of this type exists, your attorney will need to be creative about the allocation. Either a trade-off or division of the account once it becomes funded at a later date will be necessary. Securing the latter method is not easy.

Once the divorce is complete and a judgment has been entered, you may think you are done. This is not always the case. Make sure that you or your attorney follow through with the division of retirement accounts. The QDRO, which hopefully was pre-approved, needs to be submitted to the administrator in its final form. Do this immediately following entry of the judgment. You do not want to find years down the road that a QDRO was either never submitted or not approved and then have to deal with many potential complications.

During the divorce, it is always helpful to be able to ask informed questions to ensure that you get the best possible outcome. This discussion of retirement plan options should better prepare you to ask those questions. A knowledgeable attorney will be able to answer your questions in more detail and walk you through the process and the specific laws of your state. **FA**



ARIN FIFE practices family law with Boyle & Feinberg in Chicago, Illinois. She works on cases of high net worth clients with complex custody and business valuation issues.

One for Parents One for Their Kids

PC 51311002601



How much should we tell the kids?

Will the children have a say about where they live?

What can I do when my child refuses to visit the other parent?

If my child lives with me, don't I automatically get the tax deduction?

My child is upset about the divorce, how can I reassure him?

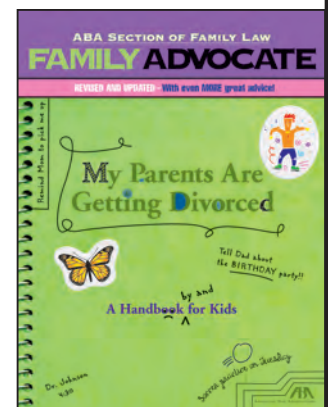
Ask your lawyer for a copy or see client manual order form on back cover.



Provide your children with a tangible resource to help answer their questions.

Family Advocate offers one handbook written for parents and another written for your children.

PC 51311002901



What is divorce?

Will my parents ever get back together?

Where will I live? Will I still see both parents?

Is the divorce my fault?

If we move, how can I see my friends?

Will I get to choose who I want to live with?



YOU'RE DIVORCED

TIME TO TIE UP LOOSE ENDS, GET ORGANIZED, AND GET ON WITH YOUR NEW SINGLE LIFE

By LEE S. ASHMORE

First, make sure you are divorced.

It actually does happen that people go through the divorce procedures, go to a hearing for divorce, hear the judge grant them a divorce, and then learn later that they are not actually divorced.

How? You are not actually divorced until a judge signs a written judgment or decree of divorce and the clerk of the court enters the signed judgment.

A divorce may not happen for a number of reasons. First, judges usually expect someone to submit a written judgment for them to sign. If no one submits a judgment, there may be no divorce. If the submitted judgment is not acceptable to the judge, the judge may not sign it. If the judge signs it, the clerk may not enter the judgment if there are outstanding fees or paperwork. Some court systems have a data sheet or information form that must be submitted at the time of the divorce. If the form has not been submitted, the clerk may not enter the judgment.

Usually, somebody notices the problem, and the judgment is entered. But sometimes nobody notices that a judgment has not

been submitted, or that an unsigned judgment is just sitting in the court file. I have had people come to me seeking a modification of a judgment of divorce after ten years, only to discover that they are still married. The result is often a mess with no clear solution. They may have to go through the divorce all over again. If they remarried, their new marriage may be bigamous and void.

So before you begin planning your new single life, make sure you have a copy of the written judgment or decree of divorce that has been entered by the clerk. Get several certified copies of the judgment. You will need them for the steps I am about to describe.

GIVE NOTICE

Once you get divorced, notify your employer. Give your employer a new, completed Form W-4 (www.irs.gov/pub/irs-pdf/fw4.pdf), Employee's Withholding Allowance Certificate, within ten days after the divorce or separation, showing your new number of exemptions. Go to www.irs.gov/Individuals/IRS-Withholding-Calculator and run the calculator to see what your withholding should be.

If you move as part of your divorce, you will need to tell everyone else about your new address. Mail a completed Form 8822 (www.irs.gov/pub/irs-pdf/f8822.pdf), Change of Address, to the Internal Revenue center for your old address.

If you changed your name as part of your divorce, notify: (a) the Social Security Administration by submitting a completed Form SS-5 (www.ssa.gov/online/ss-5.pdf), Application for a Social Security Card; (b) your employer, who may need to change company records, health or life insurance plans, or accounts regarding retirement or 401(k) retirement plans; and (c) your bank, credit card companies, and other financial institutions. You will need to change your driver's license and passport, too. If you are changing your name, change all of your records. Using different names in different records is a headache waiting to happen.

GET ORGANIZED AND IMPLEMENT THE AGREEMENT

Once you have a signed and entered judgment of divorce, carefully examine the judgment and agreement. Make a list of steps required under the judgment and who is going to take them: there will likely be things for you to do, for your spouse to do, and for your attorney to do. Go over your list with your attorney to make sure it is accurate and complete. Some attorneys figure their job is complete once the judgment is entered. Do not assume that anything is going to be done automatically. If someone else was supposed to perform one of the steps on your list, follow up to make sure it gets done.

Create a folder for each required step: one for the transfer of the house, one for the transfer of title to the car, one for transfer of the retirement accounts, etc. Once you believe your list is complete, e-mail it to your spouse

for review. Make a folder for all communications with your ex-spouse. To the extent possible, communicate with your spouse via e-mail, print each e-mail, and put it in your folder. If problems arise later and you need to take steps to enforce the judgment, your record of notifying your spouse about what was supposed to be done will be useful.

While you are at it, if it has not previously been your practice, now is a good time to organize your financial documents. Get a filing cabinet and organize the following documents into files:

1. Birth and death certificates;
2. Marriage license;
3. Divorce-related agreements and judgments;
4. Passport and other citizenship papers;
5. Deeds;
6. Car titles;
7. Mortgage agreements;
8. Inventory and photos of household property.
9. Tax returns, including documentation for prior six years;
10. Insurance policies;
11. Bank, brokerage, and mutual fund statements;
12. Employment benefit documents, including booklets on group insurance and retirement plans;
13. Employment agreements;
14. Deferred compensation agreement;
15. Stock option plans;
16. Keogh & IRA documents and current benefit statements;
17. Business documents, such as partnership agreements, tax returns, stock redemption/buy-sell agreements, and financial statements;
18. Trust documents;
19. Wills, powers of attorney, advance directives, etc.
20. Keep your children's documents in a separate file, including their birth certificates, Social Security cards, immunization records for school, names of new and old documents with address and telephone numbers.

Now that you are organized, schedule a date and time to conduct any exchange of personal property provided for in the agreement or judgment. Make a record of e-mails exchanged regarding the division of personal



ONCE YOU HAVE A SIGNED AND ENTERED JUDGMENT OF DIVORCE, CAREFULLY EXAMINE THE JUDGMENT AND AGREEMENT. MAKE A LIST OF STEPS REQUIRED UNDER THE JUDGMENT AND WHO IS GOING TO TAKE THEM

property. If your former spouse is not taking steps to remove personal property in accordance with the judgment, ask for permission to discard the items and give a deadline after which you will dispose of the property.

Make sure all property is distributed in accordance with the judgment or agreement. If there were automobiles to be transferred, take care of the title, registration, license plates, insurance, and any tax issues. If there is real estate to be transferred, take care of the deed work.

The transfer of retirement assets requires special handling. Such transfers usually require a special order, called a qualified domestic relations order (QDRO). An attorney drafts a QDRO, the court enters it, and it is sent to the administrator of the retirement plan. It directs the administrator to transfer funds or set up a special account for the receiving spouse. The QDRO must be acceptable to the plan administrator, even if the court has issued it. Each type of retirement asset and each individual plan has its own requirements for a QDRO. Funds in an IRA can usually be transferred without a QDRO by simply filling out a form provided by the plan administrator.

Contribution retirement plans, such as 401(k)s, require a QDRO instructing the plan administrator to transfer funds to another plan. Defined benefit plans, such as pensions, require a QDRO instructing them to make monthly payments to the receiving spouse, the alternate payee, at the time of retirement. If the attorney who handled your divorce does not draft QDROs, ask for a referral to a specialist attorney whose practice is largely devoted to drafting QDROs.

Larger retirement plans often offer instructions and forms for completing a QDRO. You may be tempted to follow the instructions and complete that form yourself. Be very cautious about doing so. QDROs are a technical minefield full of surprises where even many experienced family law attorneys fear to tread. Have an attorney who has the necessary expertise prepare your QDRO and get it accepted by the plan administrator.

Even if an attorney is handling the transfer of retirement assets, make sure that all necessary steps have been taken to secure your interest. If the work is not done correctly, you may receive nothing when your former spouse dies. You may be left to chase after your share of the monthly retirement benefits, rather than receiving them directly from the plan administrator. The plan administrator will usually send a letter confirming acceptance and understanding of the QDRO. The plan administrator may take six months or more to evaluate the proposed QDRO. Be sure to follow up until you get such a letter. Keep the confirmation letter in the appropriate file.

Submit the necessary paperwork to the child support enforcement office. If you are paying support through support enforcement, keep your own records of your payments. Never pay cash. Never accept cash. Keep records

of your children's medical costs, including insurance claims, co-pays, etc. Keep a record of any other expenses for the children to be divided under the judgment or agreement. Execute IRS Form 8332 to transfer dependency exemptions to the noncustodial parent if the judgment or settlement calls for it.

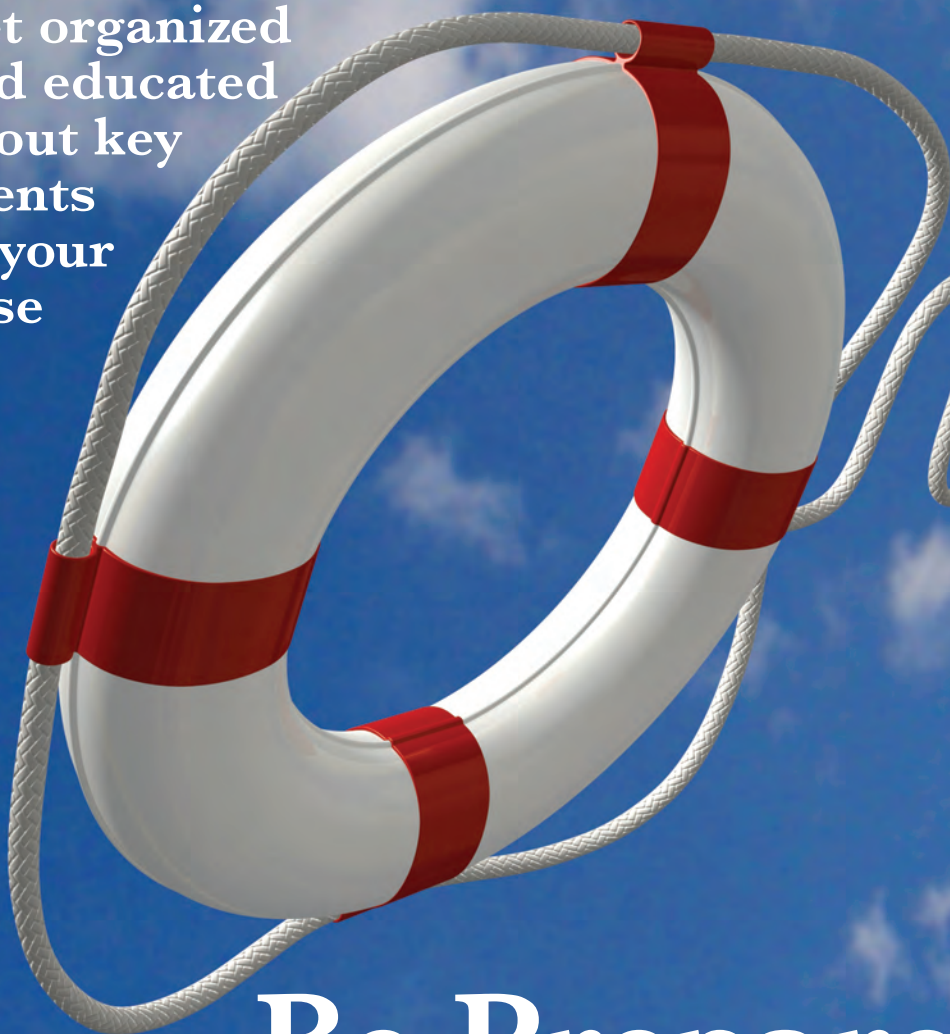
If you are paying or receiving child support or alimony and you have a substantial change in your income, seek a modification quickly. Modifications can usually be backdated only to the date of filing the motion for modification. If you are ordered to pay support in the amount of \$1,000 per month and you lose your job or become disabled, you still owe \$1,000 per month until the court changes the amount. If you wait a year before filing a motion for modification, you will owe the \$12,000. That debt can be enforced by contempt and it cannot be discharged in bankruptcy. Consult with an attorney immediately when changes occur.

CLOSE THE FINANCIAL DOOR ON YOUR MARRIAGE

In addition to the steps required by the settlement agreement or judgment of divorce, there are a number of steps to take automatically when you divorce.

- Close all joint accounts, including mortgage, line of credit, checking, savings, investments, rental agreements, and any online accounts. Make sure there are no outstanding checks or automatic withdrawals. If you leave money in a joint account, or continue using a joint account after the divorce, your former spouse can withdraw all the money in the account at any time.
- Change your online passwords. You do not want your former spouse snooping online, or an angry former spouse wreaking havoc with your online world.
- Review all insurance (health, home, auto, and life) and make any needed changes, including beneficiaries.
- Make changes to health insurance.
- Close joint safety deposit or post office boxes and open new ones if needed.
- Change all credit cards, including retail store charge accounts. Open a credit card in your name alone and begin using it (wisely, of course). This will help to establish a record of using credit. Obtain a new copy of your credit report. You can annually obtain a free credit report online from each of the three major reporting agencies. Challenge any inaccuracies.
- Change beneficiaries for any pensions or retirement accounts.
- Change all wills, advanced directives, and powers of attorney. If you gave your former spouse a power of attorney, ensure that it is revoked in writing. Destroy all copies of the prior power of attorney. Give notice of revocation to all third parties that previously relied on

Get organized
and educated
about key
events
in your
case



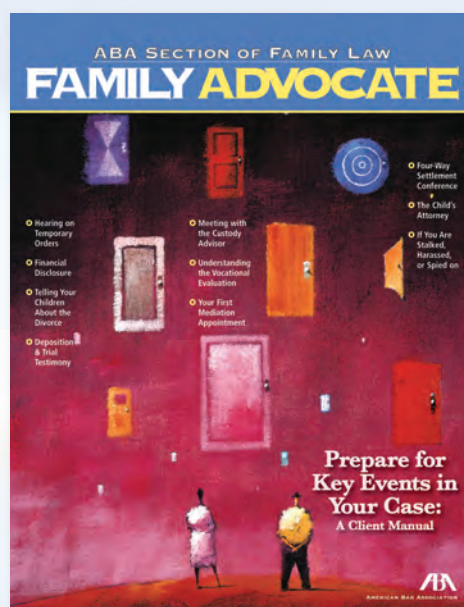
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**what will happen and
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- Hearing on Temporary Orders
- Financial Disclosure
- Deposition & Trial Testimony
- Your First Mediation Appointment
- Meeting with the Custody Advisor
- Understanding the Vocational Evaluation
- Four-Way Settlement Conference
- The Child's Attorney

➔ **SEE BACK COVER** for ordering information or ask your lawyer for a copy.



Books & More

Finances Before, During & After Divorce

Bibliography

Divorce-Related Handouts from the ABA Family Law Section

Financial, custody, and survival information for anyone going through a divorce is available as part of the *Family Advocate* series of client manuals. These 40- to 48-page booklets are created for lawyers to give to their clients on a variety of topics: You've Got Choices; The 50+ Divorce; FAQs: 200+ Frequently Asked Questions about Divorce; ADR Options; Divorce Forms: Information Gathering; Surviving Your Divorce & Beyond; What Your Children Need Now; Coparenting; My Parents Are Getting Divorced; Your Parenting Plan; and Your Blended Family. To order, see the back cover of this issue or go to www.ambar.org/clientmanual.

Financial Planning Association (FPA)

www.fpanet.org

The FPA is the largest membership organization in the country for financial planners. It can help you in locating a certified financial planner and find online information to help prepare for life events: divorce, buying a home, retirement, bankruptcy, etc.

Association of Divorce Financial Planners (ADFP)

www.divorceandfinance.org

The ADFP specializes in divorce financial planning. It can help you locate a financial planner who specializes in the area of divorce and it posts a series of articles for anyone embroiled in financial issues before, during, and after divorce.

the power of attorney. If the power of attorney was recorded as part of a public record, a properly acknowledged revocation should be recorded as well.

- Change the name on the utility bills to reflect who is now responsible.

Do not assume that your former spouse is of good character and would never take advantage of a joint credit card or a joint account. Your divorce attorney can tell you plenty of stories about otherwise upstanding people who did vengeful things to a former spouse after a divorce. If you leave your former spouse as beneficiary on a life insurance policy or retirement plan, he or she will receive that money when you die. If that is not your intent, be sure to change beneficiaries. Remember, the terms of your settlement agreement or judgment of divorce must always be followed. If the agreement or judgment calls for your former spouse to be a beneficiary of your life insurance or pension, those provisions must be followed.

MAKE A FINANCIAL PLAN FOR YOUR NEW LIFE

Divorce presents a number of financial challenges for most people. Money usually gets tight after a divorce. Two households cost more than one household, but the income stays the same. Sometimes the income actually falls because people are distracted or emotionally distraught by the divorce. Parents may have new childcare responsibilities and work fewer hours. Your tax status changes. You now have to revise your estate plan as a single person.

If you are receiving taxable alimony, make quarterly estimated installment tax payments on the alimony. If you do not, you may find yourself with an unmanageable tax obligation at the end of the year.

Even if you never established a definite budget during your marriage, tighter money after the divorce may

force you to make one and stick to it. There are always ways to manage on less money, such as spending less on luxury items, shopping at outlets, or moving to a less expensive home. Often there are ways to increase your income: renting out an extra room; selling unneeded items on eBay or at a garage sale; or starting a second, part-time job. There are always people around you getting by on less than you earn. It can be done.

A good financial planner can help you optimize your current finances and plan for retirement. The website of the Financial Planning Association, www.fpanet.org, and the Association of Divorce Financial Planners, www.divorceandfinance.org, contain a lot of useful information and can help you find a planner in your area.

If you were married for more than ten years, review your eligibility for Social Security based on your former spouse. If you are or may be eligible, you will need a copy of your marriage license as well as your judgment of divorce. When you become eligible for Social Security, you can receive either 100 percent of your own benefit entitlement, or the equivalent of 50 percent of your former spouse's entitlement, whichever is greater. You may also be able to receive benefits if your spouse dies while paying child support or alimony.

Divorce brings changes, stress, and often financial challenges for families. Taking the time to get organized and handle the changes in a systematic fashion will reduce your stress and help you get through the transition while building a solid financial base for your future. **FA**



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Why Your Firm Needs a Responsive Website

A responsive website automatically adjusts itself to display well on all devices—regardless of the size of the screen. As more consumers use tablets and smartphones to surf the Web, this new technology could bring you more clients; *not* using it could cost you business.

What is a responsive website?

Have you noticed that some websites—including your own—do not display well on a tablet or a smartphone? Perhaps the pages are cut off or they have been shrunk to fit the small screen on your mobile device, making the text illegible and the links unusable? To view these websites, you have to enlarge sections of the page and then keep scrolling from left and right, up and down. As you can imagine, that is really frustrating for visitors—many of whom will simply leave your website in irritation without booking a consultation. With up to 50 percent of visitors now viewing websites on mobile devices, you need to address this issue immediately.

A responsive website is designed to adjust automatically so that each webpage is optimized for *all* devices. In other words, they are user-friendly and (assuming the content is good) encourage mobile visitors to stay on the site. Moreover, when designed well, responsive websites allow visitors to call or e-mail you with just one touch—greatly increasing the chances of their contacting you while you are top-of-mind.

Google, which values user experience, recommends optimizing your website for mobile devices. There are two main options for optimizing your webpages for all devices:

Martha Chan is a marketing expert for family lawyers. She is co-owner and vice-president of marketing for *Family Lawyer Magazine*, *Divorce Magazine*, and Divorce Marketing Group, a marketing agency dedicated to promoting family lawyers and divorce professionals. She is co-author of *The Essential Marketing Guide for Family Lawyers*. She has served as a marketing consultant to many Fortune 500 companies and countless family law firms over the past 30 years. Martha can be reached at 866.803.6667 x 136 or marthac@divorcemarketinggroup.com. For more marketing tips, follow her at <http://www.divorcemarketinggroup.com/blog/>

1. Create customized versions of your website for specific devices (i.e., a desktop version, a tablet version, and a smartphone version)
2. Create a responsive website.

The first option offers a lot of flexibility and can be extremely user-friendly, but it is also more expensive to build and even more

expensive to maintain multiple versions of your website.

Aside from the reduced cost of building one rather than multiple versions of your website, a major advantage of the second option is that you only have *one* website to update going forward. If it is well designed, when you add or update the webpages, the new information will automatically display properly on all devices.

Key factors to consider

Some website developers are primarily visual designers who create great-looking websites—often at the expense of functionality and/or user-friendliness. In other words, form over function. A good marketing strategist/website developer will balance your business objectives with user experience when designing your site. This balance is key when creating a responsive website. When your website is displayed on a smaller screen, prioritizing the content is crucial: what do you want the visitor to see, do, or click on first, second, or last? If you want

A good marketing strategist who understands your business + a competent website designer + a responsive template = results.



him or her to contact you, for instance, you need to display prominently your e-mail address and phone number and make sending an e-mail or initiating a phone call just one touch on a smartphone. However, your contact information alone is not compelling enough to keep a visitor on your website, so you need to offer prominently displayed, enticing content.

You also need to decide whether to show every piece of information that is visible on a desktop version of your site on a mobile device. Most websites are designed for computers that have a “landscape” (wider

size for mobile viewing. Big pictures are impressive looking, but they take up a lot of space, push other content further down the tiny page, and can significantly slow the load-time for your pages.

Is your site responsive?

You can check out your website on various devices to see if your pages are simply shrunk to fit the screen, making the text small or illegible. If that is the case, you do not have a responsive website. Or try this simple test on your desktop: load your website, reduce the size of the window,

Load your website, reduce the size of the window, and watch to see if your website adjusts itself to display all the content properly in the smaller window. If any portion of the page is cut off, then you do not have a responsive website

than tall) rectangular screen, and most use a two or three-column format that devotes a column to a “submit form” used to gather prospective clients’ contact information. On a smartphone or a tablet, however, the second and third columns are likely to be cut off and only visible by scrolling left and right.

Some of the pictures and videos on your existing website will need to be adjusted in

and watch to see if your website adjusts itself to display all the content properly in the smaller window. If any portion of the page is cut off, then you do not have a responsive website.

Check out the image on page 41 that shows you how a responsive site displays differently yet legibly on different devices.

Do not settle for a generic version that strips off all design, logo, pictures, and your

law firm’s branding. If your website shows up as basically text-only on a smartphone, you do not have a responsive website: you have what I call a “lazy” smartphone version of your website. All the money you spent on designing your website is lost on the smartphone audience, and your website will be virtually indistinguishable from other “lazy” sites.

Converting vs. building new

If you love the design of your current website, you can keep the design and hire someone to make the site responsive. This can be done in a couple of weeks if you allow time to discuss your business objectives and the content priority as detailed above.

If your site is dated and it is past time to get a new one, here are two pieces of good news:

1. Creating a responsive website does not have to cost more than a “traditional” one.
2. You will be ahead of most family law firms because most do not have responsive websites—yet.

I strongly recommend responsive Wordpress templates to build your new website. As a platform for building and maintaining websites, Wordpress has proven to be a winner as well as Google-friendly. These templates have many tried-and-true features that would have cost a mint if you paid a developer to create them for you. With thousands of templates to choose from, any good website designer can customize these templates into a website you can call your own in short order. Make sure to ask for a *responsive* Wordpress template. There is no reason to go with a nonresponsive template these days.

A winning formula

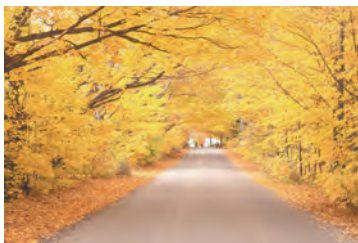
Simply purchasing a template will not get you a great responsive website that balances your business objectives with user-friendliness any more than buying Microsoft Word will turn you into a best-selling novelist. A good marketing strategist who understands your business + a competent website designer + a responsive template = results. **FA**



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Sun, Fun, and CLE too!

The ABA Section of Family Law Spring 2014 CLE Conference was May 7–10, on the beautiful island of Bermuda. Kicking off the week on May 7 was our Leadership Summit aimed at state family law bar leaders. Dr. Norman Shub, a nationally known speaker, mesmerized the attendees at this day-long workshop.

With a nod to our British Overseas Territory host country of Bermuda, the Wednesday Welcome Reception took on a new twist as “High Tea with the Authors,” complete with tea sandwiches, scones, and clotted cream. This was a time to thank and recognize our Family Law Section authors who have written section books and articles for *Family Advocate*, *Family Law Quarterly*, and the *e-Newletter*. Former chairs in attendance also were recognized for their past service to the Family Law Section.

Don't Miss Stowe in October for the Fall CLE Conference

The Section of Family Law Fall CLE Conference will be October 15–18, 2014, at the Stowe Mountain Lodge in Stowe, Vermont. CLE topics will include Creative Solutions to Help Settle Your Divorce Case, the Legal Ethics of Social Media, Cross-Examination for the Family Lawyer, Trends in Alimony Modifications, Strategies to Help Your Parentage Establishment Withstand Attack in the Courts, and much, much more. More information will be available soon on the section website.

On Thursday evening, BNY Mellon Wealth Management hosted a lovely evening reception poolside at the Fairmont. On Friday afternoon, a small group of attendees (numbers limited by the size of

the courtroom) witnessed a session of the Bermuda divorce court. An informal Q&A period with the judge and barristers followed the session, as they answered questions from their American counterparts.

Friday night's spectacular social event took place at the beach where guests enjoyed the beautiful setting along with grilled delicacies and entertainment by the famous Bermuda Gombey Dancers. The evening also included dancing to live music.

The attorney general of Bermuda, the Hon. Mark Pettingill, JP, MP, addressed CLE attendees on May 8. The CLE was abundant, with 18 different offerings. Topics included (1) Emerging Issues in Relocation Cases, (2) Freezing Your Bullets: The “ART” of (Love and) War, (3) Parallel Parenting, (4) Determining Parentage in Modern Families, (5) Cloud Computing, (6) How Black Letter Law Intersects with ART Parentage Proceedings, (7) Estate Planning Aspects

of Divorce, (8) Identifying Reliable and Affordable Health Insurance Options for ART, (9) Bankruptcy and Divorce, (10) Recognition & Enforcement of International Family Law Orders, (11) Solutions in High-Conflict Custody Cases, (12) How U.S. Citizenship in International Surrogacy Affects Foreign Tax and Immigration Issues, (13) Using U.S. Tax Reporting Requirements as a Discovery Tool for Locating Foreign Assets, (14) Effecting Legislative Change in ART, (15) Dividing Property in the Digital Age, (16) The Real Value of a Life Insurance Policy, (17) Uncovering Nontraditional and Hidden Income for Support Calculations, and (18) Accepting Referrals from ART Agencies and Other Ethical Dilemmas in ART.

An enormous thank you goes to our sponsors and to all who attended this fine conference. **FA**

2014 Annual Meeting in Boston

The ABA Section of Family Law will meet in Boston, MA, August 7–9, 2014, in conjunction with the ABA Annual Meeting. The FLS headquarters hotel is the Hilton Boston Back Bay, 40 Dalton Street. For more information about hotel reservations and registration for the annual meeting, visit www.ambar.org/FamLawAnnual.



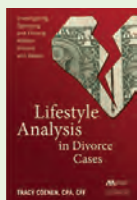
Friday morning, August 8, from 8:30 a.m. to 10:00 a.m. is the Sharon Corbitt Award Breakfast, which will be at the law firm of Greenberg Traurig, I International Place, Boston. The event is co-sponsored by the ABA Commission on Domestic and Sexual Violence. Please come and honor this year's recipient of the Sharon Corbitt Award.

Family Law Section CLE programming on Friday, August 8, will include Electronic Evidence in Family Law: Perry Mason Goes Digital, which is co-sponsored with the ABA Law Practice Division, and Finding the Balance: Ethical Dilemmas in Family and Business Mediation.

The section's business meeting will be Saturday morning, August 9, at 8:45 a.m., at which time the election of slated officers and council members for 2014–15 will be conducted. For candidate bios, see *Family Advocate* Spring 2014, pages 54–56. The council meeting will follow the business meeting.

Two New Books from the ABA Section of Family Law

To order or find out more, go to www.shopaba.org.



Lifestyle Analysis in Divorce

Analyzing spending and finding

hidden income and assets

By Tracy Coenen

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This book explores lifestyle analysis, including defining and calculating income; how to prepare for the process; conducting discovery and gathering documents; analyzing historical spending; locating hidden assets; analyzing the business lifestyle; and reporting and testifying.

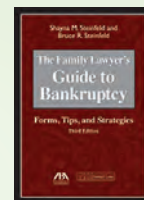
The Family Lawyer's Guide to Bankruptcy, 3rd Ed.

Forms, tips, and strategies

By Shayna Michele Steinfeld & Bruce Randy Steinfeld

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This is an essential practical resource to bankruptcy for the divorce practitioner. The new edition examines changes in bankruptcy practice in light of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act as well as relevant case law.



CHAIR'S COLUMN

continued from page i

several years ago. Sharon was a champion against domestic violence and a former chair of the Family Law Section. If you are attending the annual meeting, I hope you will register and sign up for the breakfast.

The Trial Advocacy Institute has sold out again this year in Boulder, Colorado. It



Family Law Trial Advocacy Institute

continues to be the top family law trial advocacy program in the country, and each year it seems to get better and better. I am excited to be visiting with the students and faculty this year during the third week of

July. If you have an interest in either attending or having someone else in your office attend, jump at the chance for next year as soon as you can.

We in the Section of Family Law have had a terrific year. Our membership has increased, our meeting attendance has been through the roof, and we have developed some new ideas and programs. All of this could not have been accomplished without the help of so many leaders within our section. I cannot name all of them in this column, but they know who they are and I want them to know I appreciate all of their assistance and guidance. I have tried to "shake things up a little bit" and I hope it worked and that we will continue to improve each year as a section.

I have been able to travel around the country visiting and speaking with many family law bar associations and groups. So many of you are doing wonderful things for our profession, but I must highlight one in particular: The Kanawha County Bench-Bar Committee out of Charleston, West Virginia. This committee is comprised of six attorneys and one judge. This small group has accomplished the following:

1. Mediation for pro se parties twice per year. The cases are hand picked by the judges as "difficult to settle."
2. They produce one monthly free CLE during the lunch hour for attorneys.
3. They organize a family law spring CLE, and lawyers from around the state attend. The money generated from this event is used to pay for a huge holiday

luncheon for the court staff, litigants, and judges.

4. They have raised extra funds and purchased equipment for each of the five judges' courtrooms, including a television monitor and equipment so that documents can be displayed during hearings instead of copied. They have also purchased for the court, a television for the waiting room and toys for children to play with while waiting for their parents.
5. They work with seniors from all county high schools and their civics teachers to present mock trials. The students participate as attorneys, witnesses, and judges in a family law case.
6. They have a newsletter that incorporates substantive family law issues and court and legislative updates.
7. During the summer to build camaraderie, they sponsor an outing at the baseball park with judges and attorneys and their families.
8. They have drafted and revised rules of practice and procedure for the family court in Kanawha County.

Great work everybody! You should be proud and you serve as a model for all of us!

Finally I want to thank my family, friends, partners, associates, my office staff, and ABA staff for being so supportive during these last several years of my bar association work. They have been with me every step of the way. They have made me a better lawyer and a better person. Cheers. **FA**

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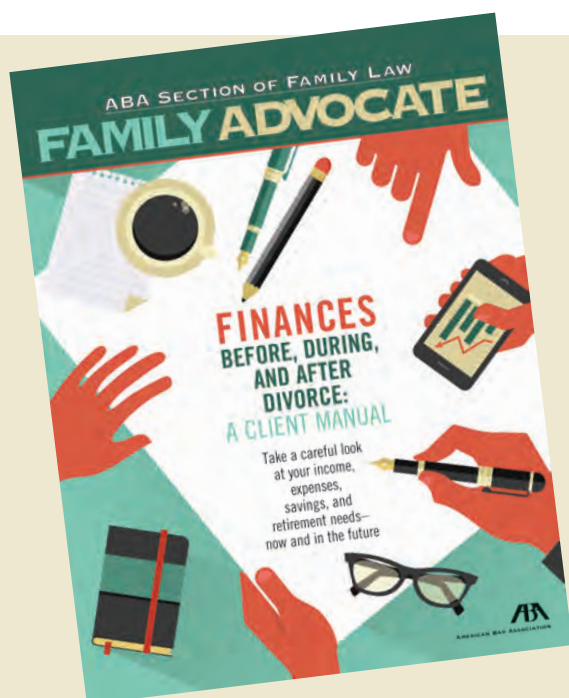
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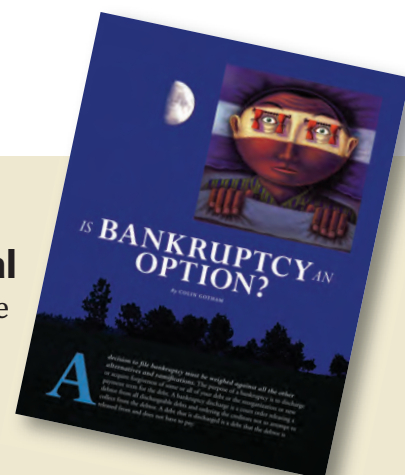
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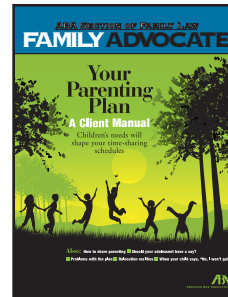
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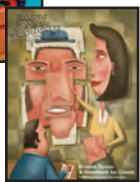
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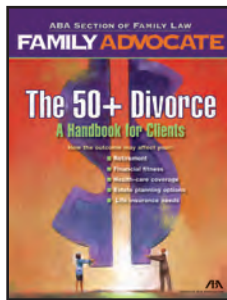


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