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White Paper

Planning Concerns of Divorcing Couples

www.selectportfolio.com • Toll Free 800.445.9822 • Tel 949.975.7900 • Fax 949.900.8181

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Planning Concerns of Divorcing Couples

Why is it important for you to understand the basics of divorce law?

While divorce is certainly a time of emotional turmoil, it's a time of financial upheaval as well. The financial change brought about by divorce can be particularly devastating to families with children and to older couples who have assigned the career duties to one spouse and the homemaking duties to the other.

When seeking a divorce, you should become familiar with the major topics: legal fees, marital property versus separate property, alimony, debt, retirement plans, property settlement, taxation, budgeting, and, if you have children, child custody and child support. You should also consider risk management, and, if you're older, Social Security.

By becoming knowledgeable about these areas, you can provide your attorney (if any) with a complete and accurate outline of your wishes regarding the divorce settlement, and you will be able to make an informed decision before signing your divorce agreement.

What do you need to know about legal fees?

When seeking a divorce, you'll want to consider whether a simple, amicable arrangement is likely or whether attorneys should be hired. If you wish to hire an attorney, you should note that divorce attorneys typically charge hourly rates and require you to submit retainers (lump sums) up front. It's not unusual, for example, for an attorney to charge as much as \$150 to \$200 per hour, and require an initial retainer of up to \$2,500 to \$5,000. These fees can be less expensive or more expensive, depending on the complexity of the case, the reputation and experience of the divorce attorney, and the geographic location.

If you're a financially dependent spouse (such as a homemaker), it's possible for a court to award sufficient legal fees and costs to enable you to retain competent counsel. Upon your submission of an appropriate motion to the court, a judge could order your spouse to subsidize your legal fees for the divorce.

You should also consider the deductibility of divorce expenses. In general, most legal fees and court costs for obtaining a divorce are considered personal expenses and aren't deductible for income tax purposes. However, you may deduct as a miscellaneous deduction on IRS Schedule A, subject to the 2 percent floor, any money paid for advice related to the tax consequences of your divorce or securing income. Specifically, deductible items include fees for advice on securing and collecting alimony and the tax consequences of property and payments received. On your legal bill, your attorney should make a reasonable allocation of the legal expenses between tax-related (deductible) and non-tax-related (nondeductible) advice.

How is property classified for divorce purposes?

Assets are divided in accordance with state law, so it makes a difference whether you live in a community property state (presently Alaska (which has an optional system), Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin) or Puerto Rico, or an equitable division state. Within these two categories of states, property may be classified as either separate property or marital property, but again, these definitions will vary depending on your state. Therefore, it's important for you to know how your state classifies property. For example, one state may mandate that separate property consist of gifts, inheritances, and property owned prior to the marriage, and that such items will not be divided between the spouses in the event of a divorce. Another state may proclaim that all property owned by the couple is marital property, subject to division at divorce--it doesn't matter who inherited what.

What should you know about child custody, child support, and alimony?

When parents separate and divorce, one of the most emotionally charged issues involves the decision regarding who will live with the children. Determining the extent of child support, and possibly the necessity for enforcement of child support payments, is also cause for stress.

Child custody is based on a number of factors. Most judges place primary importance on the best interests of the children. Custody may be classified as physical or legal, and can be awarded to one or both parents.

Most states have child support guidelines for determining the amount of child support to be paid. Child support orders can be modified when there's a substantial change in circumstances, and most states provide a number of methods for collecting unpaid support.

Alimony is also an important topic, particularly to spouses with custody of minor children and to older homemakers. Alimony is based on one party's need and the other's ability to pay. Deciding whether a spouse should receive alimony (and, if so, how much) is based on certain criteria, which can vary from state to state.

What should you know about property division?

Property division is a complex area, encompassing such subtopics as the marital residence, debt, and retirement plans and QDROs.

It also involves a number of other areas as well, including: classification and valuation of property, hidden assets, family businesses, and structuring property settlements.

What should you know about taxation?

If you're legally separated or divorced, it's important to become familiar with the applicable tax rules regarding filing status, dependent children, alimony, and property disposition. Indeed, understanding the tax implications of your initial preferences regarding child custody and property settlement may alter or influence your final decisions.

What should you know about budgeting and finances?

During the divorce process, both spouses must determine and disclose their monthly income and expense needs. Claims for support (based on need and an evaluation of the other party's ability to pay) are based on this financial affidavit.

It's not uncommon in a marriage for one spouse to assume primary responsibility for the family budget. For some couples, bills are paid when due, but neither party tries to stick to a budget. When two households are created incident to a divorce, cash becomes tighter and it becomes necessary to develop a budget. A number of tools can be used for this purpose.

Do you need to know about risk management and Social Security?

Risk management should certainly be considered when a divorce seems likely. The selection of beneficiaries for your life insurance policy will probably be revised, and, in some cases, your health insurance coverage may terminate. Often, for example, one spouse participates in a group health insurance plan at work that provides coverage for both spouses. When a divorce occurs, coverage for the nonemployee spouse may end. You need to know what your health insurance options are and how life, disability, and property insurance should factor into your divorce agreement.

Social Security may be an issue if you're an older individual seeking a divorce after a long-term marriage. Be aware that, if you've been married to your spouse for at least 10 years, you may (in certain cases) be able to qualify as a dependent for Social Security purposes. Thus, you might be entitled to benefits, even if you never worked.

What information should you gather before consulting with an attorney?

Before sitting down with an attorney to commence a divorce, go through the following list to make sure you provide all relevant information:

- Your name, address, telephone number
- Spouse's name, address, telephone number
- Each spouse's date of birth
- Names and birth dates of children
- Date and place of marriage and length of time in present state

- Existence of prenuptial agreement
- Information about parties' prior marriages, children, etc.
- Date of separation and grounds for divorce
- Current occupation and name and address of employer (both parties)
- Social Security number of both parties
- Income of each party
- Education, degrees, and training of each party
- Extent of employee benefits for each party
- Details of retirement plans for each party
- Joint assets of the parties, including:
 - House
 - Other real estate
 - Stocks, bonds, and securities
 - Bank accounts
 - Individual retirement accounts (IRAs), and
 - Boats and other assets
- Liabilities and debts of each party
- Life and other insurance of each party
- Separate or personal assets of each party, including trust funds and inheritances
- Financial records, including:
 - Bank statements
 - Tax returns
 - Loan applications, and
 - Investment statements
- Family business records, including:
 - Type of business
 - Shareholders
 - Percentage of ownership
 - Bank statements of business
 - Tax returns of business
 - Applications for loans
 - Income and balance sheets
 - Financial reports, and
 - Buy-sell agreements
- Collections, artwork, and antiques

Obviously, you won't have all of the above information and documentation at your fingertips. Provide whatever you can. The rest can be ascertained during the divorce discovery process. You'll need to think about a few other questions as well once you've provided your attorney with the basic checklist of information. Consider the following:

- Which assets do you really want, and which are you willing to assign to your spouse?

- How do you feel about the family home? Do you feel strongly about living there, or should it be sold or allotted to your spouse?
- With respect to the children (if any), what are your wishes regarding custody, visitation, and child support?
- Do you earn enough money to adequately support yourself, or should alimony be considered?
- Will you have sufficient liquidity to pay the debt on whatever assets you keep?
- What are the income tax consequences of your decisions regarding property disposition?
- Regarding a family business, does your state value assets at the time of separation, settlement, divorce, or some other time?

Discuss these and any other questions with your attorney.

Disclosures

This material does not constitute the rendering of investment, legal, tax or insurance advice or services. It is intended for informational use only and is not a substitute for investment, legal, tax, and insurance advice.

State, national and international laws vary, as do individual circumstances; so always consult a qualified investment advisor, attorney, CPA, or insurance agent on all investment, legal, tax, or insurance matters.

The effectiveness of any of the strategies described will depend on your individual situation and on a number of other factors. After reviewing your personal situation, we may recommend that you not use any strategy in this document but instead consider various other strategies available through our practice.

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