



## 10 FINANCIAL TIPS FOR YOUR DIVORCE OR CUSTODY CASE

Below are the ten common financial issues involving a divorce. There are many complex issues that cannot be addressed in this short tip sheet. The following is a general guide and not legal advice. It is very important to meet with a family law lawyer before you take any legal action.

### 1. Child support-

**Common questions:** How much am I going to have to pay? How much will I get? How long do I have to pay? Does it matter that I have other children that I need to support?

These are things are only some of the child support issues that that need to be considered before taking legal action.

Child support is calculated using the parties' income, number of overnight visits, contributions to health insurance, daycare and/or extraordinary medical expenses. If one party has the child less than 128 overnights, the other is deemed to have sole custody for calculation purposes. If one party purposefully quits their job or has taken a sudden pay reduction, then the Court can still use their old income due to their voluntary impoverishment.

**The most common litigation issue** is the parties disagreeing over the income used for the calculation.

**Important tip:** Keep a calendar of your overnight visits with your child. Save all the receipts for all child related purchases. Have proof of payment to daycare or childcare. Keep all your paystubs, W2's and tax returns.

### 2. Mortgages-

**Common questions:** Does it matter if my name is not on the mortgage or the deed? Does it matter that it was my house before the marriage? Do they have to pay half the mortgage even if they aren't living there?

Often after a separation, only one of the spouses is living in the home. However, minus a court order or agreement by the parties, the court cannot make one party pay even half the

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mortgage. This is one of the areas where people's credit is ruined in a divorce. If the party resides in the home with the parties' minor children, the Court may grant a use and possession order for the home and its contents for up to three years. However, financial relief is a separate issue.

**The most common litigation issue is** when a party agrees to pay a portion or all of the mortgage and then doesn't.

**Important tip:** If the home was purchased during the marriage and it is not excluded from a pre-nup or other agreement, then it is presumed marital property. (But the down payment may be non-marital). This is true even if your name is on the deed or the mortgage.

### 3. Debt-

**Common questions:** Can I get them to pay for this debt? Do I have to keep paying for their insurance? Is it marital debt or personal debt?

Debt is a hard pill to swallow. Marital debt is directly traceable to the acquisition of marital property. An equity line on the house to build an addition is marital property. While credit card debt for personal trips, restaurants, etc. usually isn't.

**The most common litigation issue is** whether credit card charges can be traceable to the acquisition of marital property. The credit card statement might just say "July, 01, 2017 -Sears-\$700.00". But can a party show that the Sears charge was for a new washer and dryer and not something else?

**Important tip:** Get all the traceable documents to prove the marital debt before you take any court action. Having a joint credit card specifically used only for these purchases will save a lot of headaches in the future.

### 4. Assets-

**Common questions:** What happens to my 401k? pension? Retirement? Do I have to give them any of it?

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Whatever's accumulated during the marriage is marital property. Unless it was an inheritance and stayed separate from all joint accounts, was a gift from someone or was excluded by a written agreement. The key to this is "what's accumulated DURING the marriage". So, if a person pays into a 401k for 20 years, but is getting divorced after a 10-yr. marriage, the other spouse can make a claim for 50% of the 401k amount accrued only during the 10-yr. marriage.

**The most common litigation issue** is when one party refuses to give the other their fair share.

**Important tips:** If you're thinking of divorce, you might want to temporarily stop contributing to a 401k or other account. You should also know the amount of assets you and the other spouse have before you take any action through the courts.

**Important tip:** Have an asset freeze letter ready. Send the letter to the plan administrator of each account before you take court action. The letter will tell the administrator that a divorce is pending and the account shall be frozen until the Court can determine its ownership.

## **5. Businesses-**

**Common questions:** Do they have a right to any portion of my business? What happens if I am not the only owner? How do we determine the worth of the business?

If the business created during the marriage, then it is marital property. If it was created before the marriage, some of it still may be considered marital. Especially if marital funds were used to expand the business or buy new equipment or land, etc.

Experts are often hired to determine the value of the business. The parties also need to agree as to the percentage each party should get out of the business. If the parties cannot reach an agreement, then it often leads to a battle of experts at trial.

Structuring any payout is also another issue that needs to be worked out in negotiations with the other party. If the case goes to trial, the Court will determine whether a party should receive a monetary award for their marital portion of the business. If they do receive an award, the Court will file a Judgment on the other side, requiring them to pay. They may have to sell the business, or explore other legal remedies.

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The most common litigation issue is when the parties disagree to the value of the business and/or the amount of money offered to settle the case.

**Important tip:** Keep all your business records in order and up to date. This will save you money in legal fees and expert fees. And talk to your lawyer and accountant before agreeing to anything.

## 6. Alimony-

**Common questions:** How much will I get? Do I really have to pay? They did ..... during the marriage. Doesn't that matter?

During a divorce trial, the Court is required to consider many factors when determine whether alimony should be paid. Clearly, the number one factor is the length of the marriage. Some of the other 19 factors include the health of the parties, standard of living during the marriage, the ability of the receiving spouse to be able to become self-sufficient, and the reason why the marriage ended. If alimony is to be paid, the Court then determines the amount and whether it is for a set amount of years, an indefinite period or permanently. Alimony also raises several tax questions.

**Most common litigation issue** is when the parties disagree as to whether the other deserves alimony and/or the monthly amount.

**Important tip:** It is very important that you keep receipts and bills for all your expenses. If a party is required to pay alimony, the child support needs to be adjusted because now the payor has a reduced income.

## 7. Inheritances-

**Common questions:** Isn't it all mine? Does it matter if I took the inheritance money and put it in this account?

Inheritances are exempt from martial property. However, it must be kept separate and apart from martial property. Inheritances that are intermingled with martial funds can be deemed martial.

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**Most common litigation issue** is when one party argues that the inheritance is now marital because it was mingled with marital funds.

**Important tip:** Keep any inheritances in separate individual accounts.

## 8. Gifts-

**Common questions:** Do I have to give it back? That gift was to the both of us. Now what?

Gifts along with inheritances are considered non-marital. But were they a gift to you or a gift to you and your spouse? Did someone intermingle the gift with marital funds?

**Most common litigation issue** is when one party argues that it wasn't a gift and they are entitled to their marital portion.

**Important tip:** Property titled tenants by the entirety, is marital property. If spouse A owns a house before the marriage, then adds spouse B during the marriage, it is deemed as a gift from the spouse.

## 9. Social Security-

**Common questions:** Does this divorce effect my social security benefits? Do I need to keep paying alimony after the party starts collecting social security?

In alimony cases, social security benefits become an issue. The monthly social security benefits are to be considered when determining the needs of the receiving spouses.

The most common litigation issue relates to the alimony amount in relation to the recipients social security benefits.

**Important tip:** Confirm that you and your spouse have qualified for their own individual social security benefits.

## 10. Written Agreements-

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**Common questions:** Is this agreement enforceable? Is this agreement still effective even though we briefly reconciled?

Everything acquired during the marriage is marital property unless it was an inheritance, gift or excluded in a written agreement. Pre-nups are written agreements created before the marriage. The purpose of the pre-nup is to exclude property and other assets from ever being considered marital property.

**The most common litigation issue** is when one party argues that the agreement or a portion thereof is invalid and/or unenforceable.

**Important tip:** Pre-nups and Separation Agreements are generally enforceable within the courts. Therefore, do not sign anything until you receive the counsel of a family law lawyer.

Child support cannot be contracted away in a Separation Agreement. The child support is for the benefit of the child. Also, be aware that child custody schedule can be modified by the courts regardless of any previous written agreements between the parties.

For a detailed analysis of your case, contact my office to schedule a free divorce assessment.

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