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# Divorce Checklist

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A married couple functions, on many levels, as a single “unit.” A divorce splits that unit apart, leaving two separate individuals with separate lives. Once the decision to divorce has been made, a number of issues need to be considered to insure a successful conclusion.

## Legal and Professional Guidance

Most professionals recommend that each party to the divorce retain an attorney to advise and guide them through the divorce process. An experienced attorney, familiar with local law, can answer many questions surrounding the legal issues involved. Other individuals, such as tax or investment professionals, may also need to be involved.

- **Pre-nuptial agreement:** A pre-nuptial agreement can have a major impact on the terms of a divorce.
- **Annulment vs. divorce:** In some cases an “annulment” (cancellation of the marriage as if it had never occurred) may be possible.
- **Who’s going to pay?** In most cases, divorce is expensive. The parties involved will need to determine how the expenses of the divorce will be paid.
- **Income tax issues:** Unless a divorce is final by the end of the calendar year, a couple is still considered to be married for federal income tax purposes.<sup>1</sup> The guidance of a CPA, IRS Enrolled Agent, or other tax professional is strongly recommended.
- **Restraining order:** If abuse or violence is present, a court restraining order may be required to insure the safety of all involved individuals.

## Children

If there are minor children involved, a number of questions must be answered:

- **Custody:** Who will the child (or children) live with? One parent may have sole custody or custody may be a joint responsibility.
- **Visitation rights:** What visitation rights does the non-custodial parent have? What about the grandparents?

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<sup>1</sup> The comments here reflect federal income tax law. State or local income tax law may differ.

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- **Children's rights:** What rights do the children have? For example, can a child choose which parent he or she wishes to live with?
- **Child support:** Is child support needed? If so, who will pay the child support, how much, and for how long? A related issue concerns providing healthcare.<sup>1</sup>
- **Income tax exemption:** Who will claim the income tax exemption for the children? By default, federal income tax law grants the exemption to the custodial parent, but this may be changed if the parties agree.<sup>2</sup>
- **College funding:** Have provisions been made for funding college?

### Division of Wealth

Dividing a couple's wealth can be one of the most contentious parts of a divorce. Separately owned assets generally remain the property of the individual owner. Jointly held assets may have to be sold and the cash proceeds divided among the spouses.

- **Earned income:** How much each spouse earns from employment outside the home can determine whether alimony might be paid, who pays it, how much, and for how long.<sup>3</sup>
- **Real estate:** Including the family residence, vacation homes, or investment real estate.
- **Checking and savings accounts:** Funds held in banks or credit unions.
- **Stocks and bonds:** Assets held in securities accounts.
- **Retirement accounts:** IRAs, corporate qualified retirement plans, and non-qualified deferred compensation arrangements.
- **Life insurance:** Some insurance policies develop cash values over time.

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<sup>1</sup> Under federal income tax law, child support is not reportable income to the recipient and may not be deducted by the payer.

<sup>2</sup> The Tax Cuts and Jobs Act of 2017 temporarily suspends the deduction for personal and dependent exemptions for 2018 – 2025.

<sup>3</sup> Under one provision of the Tax Cuts and Jobs Act of 2017, alimony and separate maintenance payments are not deductible by the payor spouse nor are they includable in income by the recipient spouse. This change is permanent and is generally effective for any divorce or separation instrument executed after December 31, 2018. Under prior law, alimony and separate maintenance payments were deductible by the payor spouse as an adjustment to gross income and were includable in income by the recipient spouse.

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- **Personal belongings:** Including clothing, furniture, and furnishings.
- **Large personal property items:** Such as autos, boats, or airplanes.
- **Hidden assets:** One spouse may attempt to hide assets from the other spouse.
- **Debts:** Dividing joint obligations are a part of the divorce process.

### Moving Forward – Establishing Separate Lives

A number of steps must be taken to establish a new, separate life. Some of these are defensive in nature, while others are a normal part of establishing a separate identity.

- **Cash flow analysis:** Consider income and expenses. If an individual is not already employed outside the home, a job may be necessary. Also, additional education may be a benefit.
- **Alimony:** One spouse may be required to make cash payments to the other.
- **Where to live?** One spouse may remain in the former family residence while the other spouse must find a new home.
- **Separate finances:** Commonly encountered issues include:
  - Closing any joint credit cards, and savings and checking accounts. Separate checking and savings accounts should be opened. Separate credit cards should be obtained. Any joint securities accounts should be closed and separate accounts opened.
  - Verify individual credit reports.
  - As needed, obtain separate life, auto, and homeowner's (or renter's) insurance.
  - Change beneficiaries of life insurance policies and retirement plans.
  - Estate planning should be re-done, including a new will and/or trust.