

40 Tips for Surviving Your Divorce

Robin Roshkind, P.A.

**Divorce & Family Law
Bank of America Center
625 North Flagler Drive Suite 509
West Palm Beach, Florida 33401
561-835-9091
www.familylawwpb.com
email: attykind@aol.com**

40 Tips for Surviving Your Divorce

Table of Contents

Preparation	Page 3
Alimony	Page 4
Child Support	Page 5
Dividing Property	Page 5
Retirement Plans	Page 6
Insurance	Page 7
Social Security	Page 8
Miscellaneous	Page 8
Alternative Ways of Settling	Page 8
Hiring Professionals	Page 9
Case Study	Page 10
About the Law Office of Robin Roshkind	Page 11

Introduction

Divorce often has a devastating impact on everyone involved. While some couples effect a civilized divorce and can remain semi-friends, many couples go through World War III, which especially if they end up in court, can have a permanently damaging result on the rest of their lives.

Can something be done to lessen the negative impact of divorce? Are equitable settlements really possible? Yes.

However, few judges and attorneys are financial experts. Financial analysis of the outcome of possible settlements is complex and requires substantial experience. When legal expertise is not matched with sophisticated financial projections, an apparently equal division of property can leave the lower- or non-earning spouse destitute within a few years.

Contrary to popular belief, arranging a settlement that benefits the lower-earning spouse does not necessarily harm the higher-earning spouse. In addition, even though a lower standard of living may be anticipated, it does not have to be dramatically lowered for either spouse.

Financial Divorce Specialists and sophisticated software methodology can be used to forecast the eventual financial outcome of specific divorce settlements. Such software allows judges, lawyers, and divorcing couples to compare the outcome of various suggested settlements. Thus, a more humane result can be accomplished.

Preparation

1. Gather Information

Many times one spouse doesn't know what the other spouse is doing – concerning income, expenses, investments, insurance, loan applications, the family business – you get the picture. Gather as much information as possible. Every piece of the puzzle helps put together the complete picture.

2. Get Copies of Everything

It's amazing how documents disappear once divorce is being discussed. If you have to get these documents later through your attorney, it can be very costly. Get them up front. Copy bank and credit card statements, loan applications, financial reports, check registers, investment reports, - in other words, everything that can have a bearing on your financial situation.

3. Accumulate Cash

Once you think a divorce is looming, start putting away bits of cash. You may need to hire an attorney and/or other experts and you will need the money to pay them.

4. Make a Detailed List of Assets and Debts

When you have your first appointment with an attorney, be prepared with detailed lists. Don't guess. That wastes your time and theirs, and costs you extra money. It is also important to list debts. Be sure to list the loans from Mom and Dad.

5. Prepare Detailed Expenses

The one area that many be argued about the most is the expenses for each spouse. (This may be one of the reasons you are getting divorced in the first place!) Show your actual expenses as you confirm them through check registers and credit card statements. This is to support why your expenses are so high in certain areas.

Alimony

6. Temporary Support

If you are the lower-earning spouse or the stay-at-home custodial parent, you may be entitled to temporary support. This is to be used to pay bills for ordinary living expenses while your case is being settled. It does not necessarily determine the amount of alimony and child support you will receive after your case is final.

7. Understand the Difference Between Modifiable and Non-Modifiable Alimony

It is common to see a final divorce order that specifies how much alimony is to be paid. It may not specify how long it is to be paid. In this case, either spouse can come back at any time and ask that the alimony be modified – either up or down. A wife may need more or continued alimony and the husband may wish to have it lowered or stopped completely.

Non-modifiable alimony means just that. The divorce decree will state how much and how long and nobody may change it later. This may create a hardship on either party in the case of a disability. It also means that the alimony has to continue even if the receiving spouse gets married before the end of the agreed upon term.

8. Tax Issues with Alimony

Remember, alimony is taxable to the person who receives it and tax-deductible by the person who pays it. Some creativity can be used to offset the higher tax bracket of the recipient to end up with more dollars in the pockets of both spouses.

9. Alimony Recapture

The IRS has specific tax rules that govern the paying of alimony. One thing they are trying to avoid is divorcing couples dividing their property by calling it alimony so that the person with the higher tax bracket can get a tax deduction.

To avoid this, the IRS says that alimony should not drop from one year to the next by more than \$15,000 within the first three years after divorce or they will not classify it as alimony. Then, the person who had been taking the deduction will have to re-capture all those tax deductions and pay them back to the IRS. This is called "Alimony recapture."

Child Support

10. Child Support is Always Modifiable

In item #7, we discussed how alimony may or may not be modifiable. Well, child support is always modifiable. The courts will not allow us to take away the rights of the children.

11. Child Support Guidelines

All states now have Child Support Guidelines. They are usually based on the incomes of both parents and the amount of time the children spend with each parent. As each state may vary widely in its calculations, consult with an expert in your state.

12. Consider Cost of Living Increases for Child Support

We all know that children seem to get more expensive as they get older. They seem to have more expensive 'toys' such as computers, skis, orthodontics, etc. Many couples discuss including a cost of living increase each year for child support.

Dividing Property

13. Property Settlement is a Done Deal

After the divorce is final, if you change your mind about how something was divided, or which property you got, it is too late to change it. The only exceptions would be if you found additional property that was not disclosed or if you feel fraud was involved.

14. Know the Difference Between Separate and Marital Property

Separate property is everything you bring into the marriage and keep in your own name. It is also what you receive during the marriage as a gift or an inheritance.

Marital property is everything acquired during the marriage – no matter whose name it is in. And in some states, but not in all, hire the experts who will help provide the best information for you to make an informed decision about your final settlement.

19. Use of Property Settlement Note

Sometimes there isn't enough cash or other assets to 'buy out' the other spouse. One example would be the family business. In that case, you could do a property settlement note or equalization payment. It is like a note at the bank – you determine the number of months, amount of payment, interest rate, etc. These payments are considered a division of property and therefore are not taxable to the person receiving them, nor deductible by the person paying them.

20. Value of Household Goods

Household goods are valued at garage sale value. That means all furniture, pots and pans, sheets, etc. The exceptions would be: antiques, art, collections, etc. They may need to be appraised if you feel there is greater value to them. Autos are typically valued by the Blue Book value.

21. Children's Accounts are Not Marital Property

You may have accounts that you have earmarked for the children's education. They must be set aside and not divided as part of the marital property. They belong to the children.

22. Don't Forget Tax Refunds.

Sometimes, assets come in later, after the divorce is final – such as tax refunds, bonuses on work done while still married, royalties, etc. Don't forget to include those in your settlement negotiations.

23. What About Stock Options?

Stock options are complicated and require a lot of investigation into the type, the ability to divide or transfer, and the way to allocate the funds when they are divided. Be sure to consult an expert on this asset.

Retirement Plans

24. Get Information About all Retirement Plans for Both Spouses

Retirement plans, even though in one name only, are marital assets and can be divided through a divorce decree. It is important to know the value of each account and to know the different rules of liquidating them.

There may be a pension from a previous job that is just sitting there waiting for retirement. Get information on that, also.

25. Get pension Appraised

We are using the word 'pension' to apply to a Defined Benefit plan which provides a future monthly payment after a person retires, based on that person's length of employment and amount earned. These plans can be complicated to value but can be worth a significant amount of money. Advice from a qualified CPA or financial divorce specialist is needed in the area.

26. Use of QDRO

This stands for Qualified Domestic Relations Order. It is the legal document that is sent to the plan administrator which tells the administrator how much money from the retirement plan to send to the ex-spouse. It is the only way for the ex-spouse to get payout from a qualified plan such as a 401k. It is typically drawn up by your attorney or a specialist who drafts QDROs.

27. Some Problems with QDROs

If your Qualified Domestic Relations Order is not properly drafted, you may be the loser.

What if your spouse dies after you start receiving your portion of the benefit?

Will your portion continue to come to you?

What if your spouse dies before the benefit starts? Will you still get the portion you were entitled to?

What if your spouse takes early retirement with a large buyout package? Does your QDRO say you are entitled to a portion of it?

What if you are to receive half your spouse's 401k but before it is divided the market goes up sharply? Are you entitled to half the increase?

These are some of the many issues that are sometimes ignored when the QDRO is drafted. Be sure to talk to your attorney about these issues.

28. Don't Pay the 10% Penalty

There is a way to escape paying the 10% penalty when you have to withdraw cash from a qualified retirement plan such as a 401k before you are age 59 ½. It has to be done before the money is transferred out of the 401k.

Insurance

29. Don't Cancel Insurance Too Soon

If all your cars are on one insurance policy and your car's insurance is cancelled because your spouse figures you will get your own, you are without insurance until you do get your own.

Suppose you are the beneficiary of your spouse's life insurance and it is cancelled. Two things may happen: (1) Your spouse may die before the divorce is final and there are no proceeds or (2) The court orders your spouse to carry insurance to cover alimony (see next paragraph) and now the spouse is older and to get new insurance will be much more costly.

30. Life Insurance to Cover Alimony

Alimony stops upon the death of the payor. So it is extremely important to protect that stream of income with life insurance on the payor's life. It is also important to consider having the beneficiary be the owner of the policy.

31. COBRA vs. Self-Insure

COBRA stands for Consolidated Omnibus Budget Reconciliation Act and is formed to allow employees to continue to get health insurance from their previous employer for up to 18 months after leaving that place of employment.

It is important, however, to consider self-insuring – getting your own health insurance. After the 36 month time period on COBRA, if you have become uninsurable in the meantime, they do not have to continue to insure you. If you have your own insurance, as long as you pay your premiums, you are covered.

Social Security

32. Social Security Benefits

If you have been married ten years or longer when you get divorced, the lower earning spouse can get half the higher earning spouse's Social Security benefit. It does not reduce the higher earning spouse's benefit.

You can get your own benefit or half your spouse's benefit – whichever is higher. You have a choice. You can only get one benefit.

Miscellaneous

33. Change Your Will

Make sure you change your will immediately. If you die after the divorce is final, the court may take that into account. However, the risk is that your ex-spouse could get your property instead of where you want it to go.

34. Fees for Tax Advice are Deductible

While your attorney's fees, for the most part, are not deductible, any tax advice is deductible. When you use a financial divorce specialist, their fees are mostly deductible.

35. Hire a CPA to do Your Taxes the First Year After Your Divorce

After divorce, the assets are sold, pensions are distributed, loss carry forwards and other tax consequences are considered. A CPA can sort out the details for you and keep the IRS happy.

Alternative Ways of Settling

36. Try Mediation

Mediation is where you can your spouse meet with a neutral third party to try and reach a settlement. The mediator may be a lawyer, a therapist or a financial professional. They should have taken mediation training. The mediator cannot give advice or tell you what to do. They are skilled, however, in helping you over 'sticking' points.

37. Consider Collaborative Divorce

Collaborative divorce is the latest, most innovative way of settling your divorce. Each spouse hires a trained collaborative lawyer. The team then brings in other experts such as a financial divorce specialist, a child custody professional, and/or a coach. They share all information and try to reach an agreement that is best for everyone. The object is to settle and not go to court.

If the couple cannot settle and determines to take their case to court for a judge to settle, their whole team has to withdraw from the case and the couple has to start over.

It has been found that collaborative divorce takes less time and less costly. In addition, it helps the family unit retain dignity and reduces the trauma on the children.

Hiring Professionals

38. Hire a Divorce Lawyer – Not...

Don't hire a lawyer based on a low fee, or because of friendship, or because they handled the sale on your house. Divorce law is a specialized legal area and unless your attorney is experienced in this area and keeps up with the specific tax laws that affect divorce, the end result may be very costly to you.

Even if both of you intend to settle and you feel you don't need a lawyer, it would be good to consult with one for at least an hour to find out your legal rights. This is protection for both of you.

39. Each of You Needs Your Own Lawyer

Ethically, a lawyer cannot represent both of you. Even if you feel you are going to settle your case and not go to court, it is not a good idea to have one lawyer advise the two of you on your settlement agreement. What if at the last minute, you cannot agree on a specific issue and it escalates to the point where you end up going to court to have a judge decide? Now, your lawyer knows both sides and can only represent one of you. Ethically, at this point he or she cannot represent either of you and you will have to hire new lawyer and start all over.

40. Hire a Financial Divorce Specialist

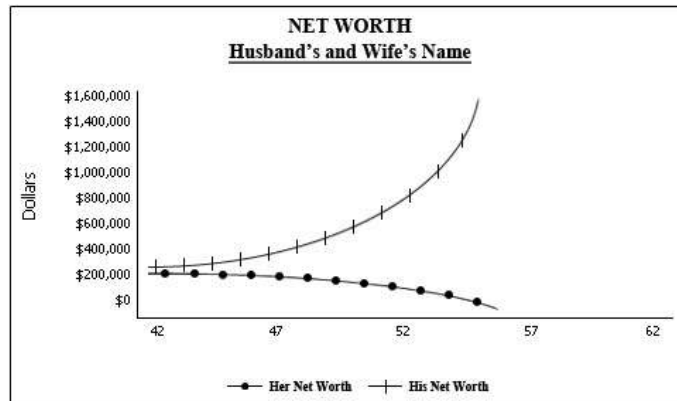
A financial divorce specialist is a financial professional who has been trained in the specific financial and tax issues in divorce. They can become part of the team with your attorney to give you good information that is needed to make an informed decision.

Typically, a financial divorce specialist can provide graphs which show how each spouse looks financially in the future based on any given settlement proposal.

Lucy and Charlie Case Study

Initial Offer: Lucy gets the house (\$132,000 equity) and \$86,000 of Charlie's retirement account. Charlie will get the remaining \$218,000 thus dividing the assets equally. Charlie will pay \$1,450/mo alimony for 5 years and \$550/mo child support. Lucy earns \$18,000/yr and Charlie earns \$92,000/yr.

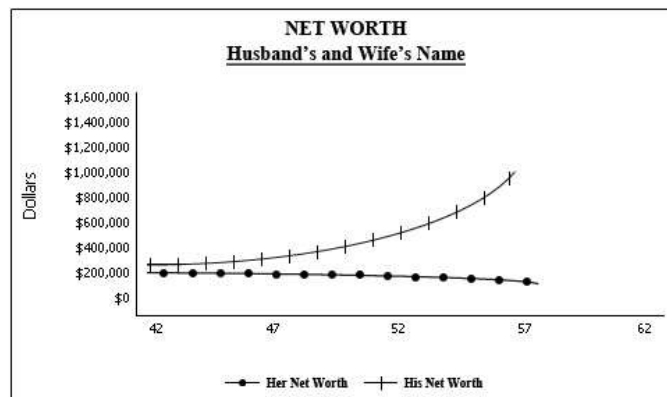
Initial Offer from Charlie



Offer from Charlie shows that within 10 years, Lucy's assets are gone (including the house) while Charlie's net worth has increased.

Using the Divorce Planning Software and the Collaborative process, a Financial Divorce Specialist will show you the result of any given proposal:

Your Response – Final Solution



The Final Solution shows how more alimony for a longer period of time helps Lucy while Charlie is still able to increase his net worth.

About the Law Office of Robin Roshkind

The Law Office of Robin Roshkind, P.A., concentrates on Divorce and Family Law issues including protection of children and assets. With an experienced staff of family law attorneys and litigation paralegals, the Firm handles cases involving child support, relocation, name changes, paternity determinations, custody battles, visitation disputes, and contempt for non-payment of support. Also, the Firm deals with property division, debt allocation, alimony, domestic violence, DUI, and enforcement of court orders. With a strong track record for settlement, the Firm handles many case in a collaborative manner. However, where litigation is necessary, the staff and attorneys stand ready to advocate and protect the interests of clients all the way to the appellate courts. Call today 561-835-9091 for more information on your specific legal matter.

Robin Roshkind, P.A.
Divorce & Family Law
Serving Palm Beach Country

625 N. Flagler Drive, Suite 507
West Palm Beach, FL 33401
561-835-9091
www.familylawwpb.com

The information in this booklet
is used with permission from

**The Financial Divorce
Association, Inc.**
Box 11276
Boulder, CO 80301
888-332-3342
www.FDAdivorce.com