



Dealing with divorce

After all the attention on rising divorce rates over the last few years, you may be surprised to learn that fewer Canadian couples are getting divorced. Even more surprising is that one-third of Canadians will still divorce, but do it later on in life.

The age factor is especially significant if you are in your mid-30s to mid-50s, since these are the years when you're building and amassing your financial worth. When divorce happens, finances are one of the biggest considerations. It's a good idea to educate yourself about your finances now, and stave off any financial surprises down the road.

PREPARE FOR FINANCIAL SECURITY

Each divorce is different. Some are amicable and an opportunity for growth and new beginnings. Others are devastating to every aspect of a spouse's life.

But divorce later on in life has its own unique financial ramifications. And it's untying those financial binds that can be the biggest hurdle.

The key to financial security is to prepare for any eventuality that can dramatically impact your life and your finances, before it happens.

FINANCES DURING MARRIAGE

Any major event, including divorce, can change your situation unexpectedly. To ensure your financial security, educate yourself to ensure that you're not caught unaware.

While married, it's critical for spouses to work together on the many financial dimensions of their household. This includes both spouses being involved in everyday financial decisions and transactions, as well as working toward a financial future together.

If you're already managing the finances in your marriage, then you probably have a good idea of what it takes to keep the household afloat.



But, if you're the marriage partner who relies on your spouse to handle the finances, understanding your finances now will put you many steps ahead of financial disaster should the unforeseen happen. The following may help:

- Make a comprehensive list of money in and money out as well as investment funds, retirement accounts, and any other financial aspects of your relationship
- Make a list of your regular expenses. These expenses should include monthly expenses for home, children, automobile, food, medical, personal, and essentials

SEPARATING THE FINANCES

If you or your spouse do decide to end the marriage, it's important to understand that separation and divorce are more than just a physical and emotional division; it's a financial one as well.

Knowing how your finances are separated, and being prepared for it, can take some of the anxiety out of an already emotional time.

When a marriage breaks down, there are two ways in which finances are generally divided:

1. division of property acquired during the marriage, and
2. support

Upon separation, it may be a wise choice to draw up a separation agreement – an agreement that outlines the

division of family assets, the payment of child or spousal support, and the care of the children, including custody and access.

This separation agreement provides the basis for the divorce settlement once the marriage is dissolved.

The separation agreement is an important step for those with an estate. In some provinces, divorce voids any estate share bequeathed in a Will to a former spouse. But if you die while separated the provisions of the Will stand – and if you had left everything to your spouse, that's how the estate will be dispersed.

Upon divorce, spouses may receive or have to make a special "equalization payment" based upon an equal division of their wealth acquired during the marriage or other "matrimonial property".¹

TAXES²

It has been said that there are three parties in a divorce: the husband, the wife and the taxman. Unfortunately, that could very well be the case if you are caught unprepared.

Listed below are some of the most common taxation issues:

EQUALIZATION PAYMENTS AND INVESTMENTS

If you earned more money than your spouse during the marriage, you may have to make an equalization





payment. As part or all of your equalization payment you can transfer non-registered investments to your spouse without tax consequences. Provided you and your spouse are living separate and apart because of a marriage breakdown, any interest and dividends earned by the investment would be taxable in the hands of your spouse.

However, if you made the transfer before the divorce was finalized, and your spouse sold the investment and triggered capital gains, then you would be taxed (unless a joint election providing otherwise has been filed with the Canada Revenue Agency “CRA”).

You can also transfer your registered investments (i.e. RRSPs, RRIFs or RPPs) to your spouse as part of the equalization payment without it being taxed in your hands, provided the transfer is made pursuant to a court order or separation agreement relating to a division of property arising out of the marriage breakdown.

EQUIVALENT TO SPOUSE CREDIT

If you were the lower-income-earning partner during marriage, your spouse, the higher-income-earner, may have claimed a spousal tax credit for you.

However, if after separation you have custody of a child, you can claim an equivalent to spouse tax credit for the child if you do not pay support, and you are the only parent claiming the equivalent to spouse credit for the child.

To claim this credit you must not claim the spousal tax credit and you must be separated.

Be careful in situations of joint or shared custody – if both parents claim the equivalent to spouse credit, both claims will be denied. Consider negotiating the right to claim the credit, for example, each parent can claim the credit in alternating years.

SPOUSAL AND CHILD SUPPORT PAYMENTS

Spousal support payments are tax- deductible to the person who pays it, and counted as taxable income for the person who receives it.

Child support, by contrast, is not tax- deductible for the person who pays it, and not taxable for the person who receives it, if paid pursuant to a court order or agreement made after April 30, 1997.

CHILD SUPPORT

The provinces have developed child support guidelines that apply during separation agreements, and federal legislation deals with child support on divorce.

The Federal Child Support Guidelines have a detailed set of rules dealing with child-care costs, additional expenses that may be ordered, and how to deal with issues such as shared or split custody. It may be difficult to get the court to order an amount different than as provided in the guidelines, although parties may still make their own agreements for different amounts.³

The guidelines are not applicable in Quebec, however, since that province has its own model to determine child support payments.



SPOUSAL SUPPORT

Spousal support is designed to provide the lower-income spouse with money for living expenses, not including child support. However, where child support is decided according to federal guidelines, unless an agreement has been reached between the parties involved, spousal support is at the discretion of the judge (also in Quebec).

Spousal support payments are usually determined by factors such as the spouse's ability to earn money, both now and in the future, their age and health, the length of the marriage, and the properties involved.

SURVIVING DIVORCE

For some, divorce can mean an opportunity to grow; for others it is like a death in the family. Many emotions rise to the surface: anger, frustration, fear, sorrow, anguish, bitterness, hatred, and regret. Divorce can destroy self-esteem, and cause depression and guilt.

Instead of trying to deny or suppress your emotions, it's usually best to accept them and understand that all of your feelings are normal.

If you have reached the point where you feel divorce is imminent, remember that you will need to push your emotions aside and look at practical issues.

The way you handle all aspects of your divorce could affect you for the rest of your life.

ASK FOR HELP

Divorce can be a tumultuous time. During the divorce process, many go to therapists or support groups to help alleviate emotional strain.

But financial uncertainty can also be a cause of great stress. Seeking out the advice of your financial advisor can give you peace of mind. You may find that, by working to ensure your financial security, you minimize emotional cost.

References

- 1 The rules governing the division of property upon a marriage breakdown vary by province.
- 2 Taxation issues are complex and should be discussed with your lawyer and financial advisor. For more information on your personal situation contact the Canada Revenue Agency.
- 3 For more information on the Federal Child Support Guidelines, contact the Department of Justice Canada.

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