

BLUEPRINT FOR A SUCCESSFUL DIVORCE

The Inside Information the
Divorce Industry Has Tried To
Keep Hidden

FROM ATTORNEY, AUTHOR, AND ENTREPRENEUR

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INTRODUCTION

The Blueprint For A Successful Divorce



I didn't write this eBook to bullshit a bunch of people into giving me their e-mail addresses (though I DO like collecting e-mail addresses). I wrote this so that EVERYONE could understand, in the quickest and easiest terms possible, exactly what they need to do to get through their divorces successfully. While it is true that there can be a lot to know, if you use what I'm giving you as your basic blueprint, it will get you closer to the finish line.

If you're representing yourself, hopefully you can use this along with the various free tools I provide to handle your divorce.

If you need a lawyer, we would of course love for you to give us a call. Now let's get started.

David Crum, Esq.

Money Matters



You essentially need three things to master your finances in your divorce case, and I've made two of them available to you for immediate use...

Your Asset & Liability Sheet

Other than your separate property or property that is not considered part of the marital estate, a court is going to try to divide your property as equally as possible. So the easiest way to address this is to put everything you and your spouse have on an asset and liability sheet. You then use this document to show what an equal division looks like. It is a must that you have accurate values on the sheet, so get your most recent statements for accounts, and get a market analysis for any real estate you own. I have created a free asset and liability tool for you to use, listed at the end of this eBook. Use it.

Your Budget

In ALL cases involving alimony (also called spousal support and maintenance), you have to have a budget to show how much you need or how much you can afford. Always focus on your net income, or the income you have after taxes and fixed monthly expenses.

This will bring everyone to reality very quickly when considering the proper range of alimony. Also, when people divorce, they always have less money than when they were together. This is because you now have the same amount of income supporting two households. So do yourself a favor and run your budget. I made the actual budget I use in my practice available at the end of this eBook. You are an adult, and adults use budgets. Take advantage of this tool.

Your Personal Property List

I hate to break it to you, but judges and attorneys hate dealing with personal property. So what normally happens is that this piece of the case gets rushed and done last, leaving everyone feeling unhappy. Take your phone and make a video of all of your personal property, then turn that into a written list. Do it early and give it to your attorney, indicating which property you would like to keep. The video also establishes proof that the property exists. Yes, some spouses will deny that they ever had the property or that you took it already. This will protect you from that.

The Wrong Or Missing Financial Values Will Kill You In Settlement and At Trial

I cannot tell you how many cases I've worked on in which the opposing party (even with a lawyer) came into settlement with either no financial information or with the wrong information. This is one of the most common reasons people get screwed in their divorce cases. So do NOT be that person. You should have a justifiable value for everything that has value in your divorce case.



Home Is Where the Heart Was

Your House Can Be Your Most Valuable Asset- Don't Blow It

The question of who is going to keep the primary family home is almost always an important factor in a divorce negotiation. Besides being an emotional touchstone, the house you shared is frequently the most valuable asset in an estate. You need two main pieces of information to be able resolve the issue of your home in your divorce detailed below.

The Value of the Home and Your Interest in the Home

The easiest way to handle this is to ask a real estate broker to give you a market analysis of your home and then get a copy of your latest mortgage statement. The difference between the likely sales price and your outstanding mortgage balance is the value of the home that needs to be divided. Unless you have a separate interest in the home, the value of the home should be equalized between the parties.



Can You Afford It and Can You Refinance It?

If you're considering keeping the home, you should have a mortgage broker on speed dial. If your spouse is on the existing mortgage, you will need to refinance the property to take his/her name off the mortgage. If you will owe equity to your spouse, you may need to do a cash out refinance to pay your spouse (unless you can equalize the equity with some other property or by taking on additional debt). When you talk to the broker, you should also ask what your new mortgage payment (along with taxes and insurance) will be to determine if you can afford to actually keep the home (this is why I told you to do a budget in Step 1).

The Inability to Refinance Sinks Most Home Agreements

As I mentioned earlier, if both parties are listed on the financing for the home, the party keeping the property will need to refinance to remove the other party's name. Unless the other party is willing to stay on the mortgage (no one will agree to that by the way, unless it is almost paid off), there is no real way around this. So before you waste a lot of time worrying about value and who is keeping the home, you should solve the refinancing problem first.

Putting Your Children First

Your Custody Case Will Rise and Fall on “The Best Interests of the Child”

The most important consideration here is what your child or children *really need*, and that comes down to understanding – and being honest about – what each parent can bring to the equation. If, for instance, the kids need a lot of help with schoolwork, or transportation to sports and other activities, a custody/visitation plan should be tailored to that.

If asked to decide, a judge will use the legal standard of “what is in the best interests” of the child to determine custody, so your arguments should always be framed with that standard in mind.

The Status Quo Before and During the Divorce

Judges and attorneys also focus on the roles each parent played in the child’s life before the case was filed and what the parents have been doing while the case has been pending. *In order to get the result you want, it is important for you to continue to be involved and cooperate with the other parent in your case to demonstrate that you are a fit and capable parent.* It is also important for you to assist your attorney in establishing your involvement in the child’s life prior to the legal proceedings. These things can include your involvement in activities, how much time you spent with the child, how involved you were in school activities, and other things. Evidence can include things like emails, school records, personal journals and your own testimony.

Can You Resolve Your Entire Case Through Mediation?

One way to get out of the normal custody process is to mediate your entire case from the very beginning using only one attorney. In this instance, you would hire a qualified mediator, preferably an experienced divorce and family law attorney, who would serve not as legal counsel, but as an impartial mediator to help you work through all legal issues including custody of your children. Under this scenario, you never go to court, you control the pace of resolution of your case, and when you have reached an agreement, your mediator can prepare your final documents, assuming he or she is an attorney.

You must have a reasonable level of communication and cooperation to make this a viable option for you, and it's certainly not for everyone. If, however, you think it may be an option for you and your spouse, it is definitely worth exploring. You would begin the process by contacting a mediator and having a joint initial consultation to see if you are a match with the mediator, and whether the mediator thinks your case can actually be mediated.



Avoid Temptation To Rewrite History

People in the thick of custody negotiations have a tendency to rewrite history. For instance, the primary breadwinner, mother or father, working 80 hours a week, now decides he or she is going to fight for a 50/50 custody arrangement. This person has never in this kid's life been the main parent, but now is going to pull out all the stops for equal time. I cannot tell you how many times I have been on the other side of this case.

The result? We fight it out until the end and the court awards the exact custody I offered at the beginning of the case, something in the best interest of the child that makes sense considering the lives and responsibilities of the parents.

Be realistic about how much time you will be able to spend with your child once the divorce dust settles. If you have a demanding career, it may be best for the child to enjoy quality weekend visits with you rather than 50/50 shared custody. It's ok. You do not have to have 50/50 custody to be a great parent.



Love Your Child, Support Your Child

Formulas and the Impact of Custody

Child support payments are monies that go directly toward paying for the needs of your children – clothes, food, shelter, education, etc. Payments are made, in most cases, until the child reaches his or her 18th birthday or graduates from high school. Every state has its own formula for calculating child support, based on the number of children, both parents' gross incomes, and primary, joint, or shared custody arrangements, among other considerations.

Find Your State's Child Support Formula

The first thing you should determine in your child support case is the formula your state uses to calculate child support. Often you will find an online calculator that allows you to plug in financial figures to determine what you will receive or be required to pay.

Understand What Counts as Income

The simple answer to this is EVERYTHING. While there are certainly exceptions to what a court will count as income for child support, almost everything you receive as income (from any source) is likely to be counted as income when calculating your support, whether you are paying or receiving support. Have an early conversation with your lawyer about what counts as income and what your child support payment will likely be.

How Custody Affects Child Support

As a general rule, the more time you spend with your children, the less child support you are required to pay, though there is usually a threshold that kicks you to a different child support. In my experience, it is always a mistake to try to get more time with your child for the sole reason of paying less support. In the end it is a losing proposition, as the judge usually sees right through the ploy, and you do not end up saving money because you have to fully support child anyway during your separate periods of responsibility.

Avoid these Pitfalls When Agreeing to Child Support

There are several possible pitfalls when it comes to child support. As touched upon above, inaccurate income information (especially for people who own businesses) can prevent your children from receiving the appropriate amount of financial care. Another common mistake is failing to secure child support with a life insurance policy. If your children happen to be very young at the time of your divorce, there is a greater chance that the paying parent may pass away over the next five, ten, or fifteen years. If your state allows it, you should try to ensure that payments continue even in the event of death by securing a life insurance policy to support these obligations.

Finally, depending on your state and your particular circumstances, you may want to obtain a wage withholding order (known in some states as a wage garnishment). This requires the non-custodial parent's employer to automatically withhold a set amount in child support for each pay period, a system that goes a long way toward ensuring these monies actually get paid.

Spousal Support

Staying Focused on Need and the Ability to Pay

Alimony payments are monthly disbursements one party pays to the other after a divorce, most often when one spouse earns a significantly higher salary than the other. Again, accurate income amounts will be key to reaching a spousal support agreement. Check to see if your state has an alimony calculator – these can provide a good place to start your negotiation, but many states do not have rules that set exact amounts for alimony.

How the Court Determines Alimony (don't believe the hype!)

Go to any law firm's website, and you will see a laundry list of factors listed as the criteria for how a judge will decide alimony, things like lifestyle, educational background etc. And it is true that these factors are typically listed in the state's alimony statute and referenced by attorneys. What is often ignored are two essential questions: (1) what is the need of the person requesting alimony, and (2) what is the ability to pay of the person being asked to pay alimony. This is why I was harping on budgets earlier. The answer to the alimony question is most often answered by budgets (if the state does not have an alimony formula), and that means creating a budget for before and after you divorce.



Say Goodbye to the Alimony Tax Deduction

In 2018, the tax law changed regarding alimony payments. Through the end of 2018, alimony could be deemed deductible to the person paying and taxable to the person receiving the alimony. This made it easier for parties to settle alimony claims because the person paying alimony could claim a deduction, which lowered the cost of providing alimony to the former spouse. In turn, while the payments were taxable to the receiving party, the receiving party was typically in a lower tax bracket so paid less taxes. It was a win-win situation. Beginning in 2019, the law changed to eliminate the deductibility of child support. For cases resolved in 2019 and later, alimony is treated like child support. Alimony payments will not be deductible by the payor, and the payee will not have to claim alimony as taxable income.



3 Rookie Mistakes in Negotiating Alimony

There are three common mistakes clients make in alimony cases:

(1) They try to take their spouses for the very highest alimony amount possible. I have often seen this end in court with high legal fees and the court very often awarding less alimony than what was requested.

(2) They try to pay far less than what is reasonable. Again, with these lowball tactics, I have most often seen the court award higher amounts of alimony, but only after the parties have spent large amounts in attorney's fees. The money spent by both sides in these cases, by the way, could have been used to reach a more reasonable settlement. One of the parties overpays (because of guilty feelings) or requests far less than what is appropriate (again because of guilty feelings or even more often because they do not realize how much money they will need after the divorce is over). There is a sweet spot that reflects a real need on the part of the person receiving and the ability of the other party to pay. A fair-minded negotiation with reasonable expectations, guided by your attorney, is unquestionably the approach you should be taking in your alimony case.

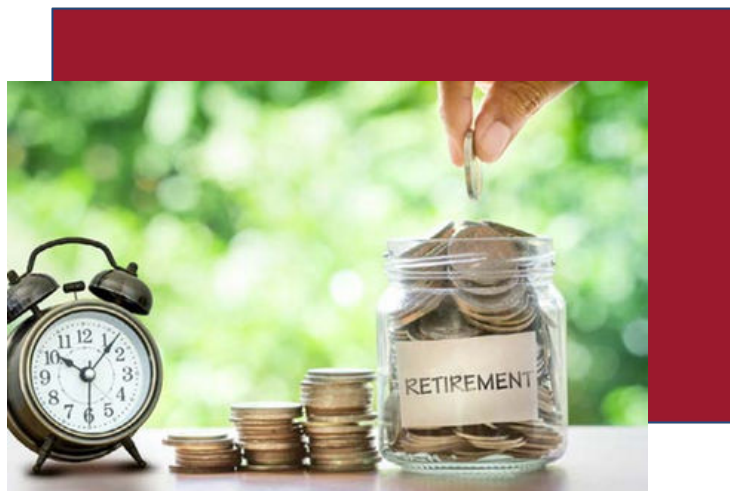
(3) They fail to secure future alimony payments. Similar to the child support issue, if you are the alimony recipient, be sure to explore securing your alimony with your ex's life insurance policy or some other asset if that is allowed under the laws of your state.

Retirement: The Future Is Now

The Down and Dirty of Retirement Accounts

If you and/or your spouse contributed to retirement accounts during your marriage, such as 401Ks or IRAs, this is yet another piece of your marital estate that needs to be divided. Also, a pension earned by either party during the marriage is considered a joint asset in community property states, and is likely subject to division in other states as well. 401Ks and IRAs are relatively easy to divide or bargain with, as they have a specific value.

A pension, however, can be trickier. There are complicated rules about how these assets can be divided and when the interest should be paid to the other spouse. Often an expert may be needed to calculate the present value of the pension if the parties are seeking to equalize the value at the time of divorce. The most important point here is to do your homework early and make sure your attorney understands the issues pertaining to the division of this asset. I cannot stress this enough, often a pension is by far the most valuable asset a couple owns. If you have any doubt about your lawyer's ability to deal with this asset you should seek a second opinion immediately.



The Extraordinary Value of Pensions

People are usually surprised when I have a financial expert calculate the actual value of their pensions. Because people today have longer and longer life spans, the present value of their pensions, and what they would have to pay their spouse to equalize this value, is quite often over a million dollars. For this reason, it is fairly rare for the person who owns the pension to pay out the value to their spouse or equalize with other assets. In most instances, the parties will prepare a court order directing the company paying the pension as to how and when such payments should be made. As you will see below, the timing of these payments is a crucial part of settling your retirement issues.

Taking a Penalty Free Distribution as Part of Your Divorce

Parties who divorce can take a one-time penalty free distribution from their 401(k) or IRA accounts as part of the divorce. While you will still be taxed on this money as regular income, you will avoid the penalty normally assessed by the government for early withdrawal. This can be a good source of cash for things like a down payment for a new house or other expenditures you will have in your new living arrangement.



What is the Payout Date of Your Pension?

Dividing up pensions can often be problematic, especially if you have retained a lawyer who is not experienced in this area. At the very least, you should know the answer to the following questions: (1) What is the law in your jurisdiction regarding payouts of pensions? (2) Specifically, do payments begin at the earliest retirement date or upon actual retirement, and is this negotiable? (3) How will the survivor benefit be handled? In other words, what will happen if the spouse with the pension dies? Will payments continue, and if so, who is responsible for bearing the cost of the survivor benefit premium while the pensioner is still alive?

Often, the lawyers are required to submit orders to the organization in charge of the pension to ensure that benefits are paid according to the divorce decree. These orders are commonly called QDROs (Qualified Domestic Relations Orders). It is not uncommon, however, that the QDRO will be rejected for various technical reasons and will need to be re-submitted by the lawyers for approval. You *must* stay on top of your lawyer until this is completely finished.



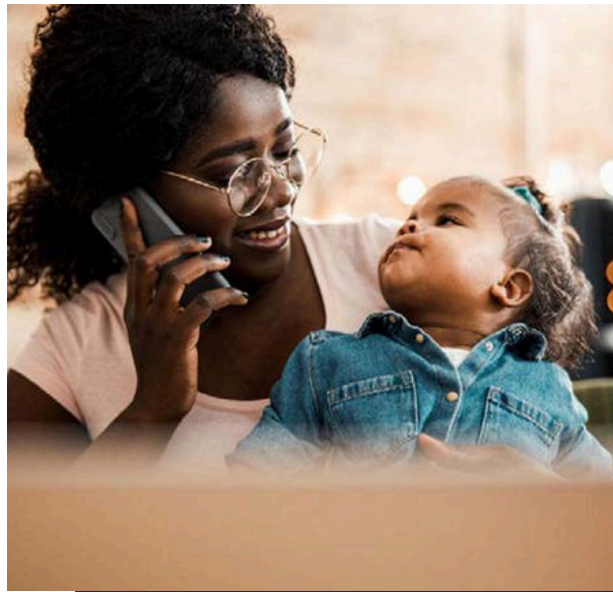
Taxes: As If Divorces Weren't Hard Enough

The Least You Need to Know About Taxes

How your divorce will affect your taxation can be divided into two categories: before your divorce and after. Before: Are there any outstanding taxes due? How will this debt be divided among you and your spouse? How will you handle your taxes for the year in which you are getting a divorce? After: Who will claim deductions for the children? Are you reporting any alimony received as taxable income? (This rule does not apply to child support received.) Does it bump you up to a higher tax bracket? If you own a business together, who will be liable for any tax issues that may surface after the divorce?

Deductions Related to Children

Many tax issues come down to who will claim certain deductions, primarily for the children. Federal law provides that the custodial parent claims the deduction, but some states allow it to be awarded to the other party or split by the parties. If you are the custodial parent, you may not want to even address this issue with the opposing party, as the child tax deduction will automatically default to you under federal law.



Changing Your Name?

If you elect to change your name, be sure to request a new social security card as soon as possible. The Social Security office and IRS must have a matching name in order to process your tax form. You should also ask your lawyer if your name can be changed as part of your final divorce decree. This is often a much easier and quicker way to restore your maiden name than the usual name change process.

Be Specific Regarding Deductions

Dealing with tax issues can be a headache – one most of us would like to avoid. *The primary pitfall here is that people tend to be vague about what deductions they will claim due to a lack of understanding or simply not wanting to deal with the issue.* There may also be past tax liabilities that are tempting to sweep under the rug during this already stressful time. Don't give in to that temptation – bringing all of this to your lawyer's attention can curtail future, bigger headaches.

Putting It All Together

Keeping Your Eyes on the Prize

Throughout your divorce, you should maintain an aerial view of your overall strategy and timeline. These things will shift and change, but if you keep your head above the minutiae, you can keep overwhelming feelings at bay.

As the co-pilot on this journey, it's your responsibility to know what you want and how to get there – and who can help. Your lawyer is your partner, but there may be others who will be crucial to achieving your best outcomes – financial experts, mediators and therapists. Look to your community and take advantage of the many resources available.

Determining Your Best and Worst Case Scenarios (duh.)

I know this sounds obvious, but most people simply fail to analyze their situations in a best case – worst case scenario. In settlement negotiations, I am sometimes faced with an offer that would exceed what the other side would receive even if they were awarded every single thing they asked the judge for. In those instances, I know the other side has not looked at their BATNA. That term, which stands for *Best Alternate To a Negotiated Agreement*, is a lawyer's fancy way of saying worst case or best-case scenario.

Nonetheless, you should understand your BATNA for *everything* – from child custody to who gets the deluxe cookware (it's actually not that difficult). Refer to the seven points above and create a document listing the *best* outcomes (according to your lawyer) that you could receive if your case proceeds to trial. Then make a list of the outcomes that may not be exactly what you want but that you could live with. This will go a long way in helping you determine a fair settlement of your case.

Conclusion



The Takeaway

The above eight issues are a rough blueprint of what you should be thinking about as you head into your divorce.

Some may apply to your specific case, while others may not – and all can be delved into more deeply. But now you have an idea of the road ahead and can conceive a winning strategy with the help of your lawyer. With light now shed on these crucial elements of divorce, I hope you feel empowered on your journey toward life on the other side.

– David

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