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## A Civil Divorce

by Mark Solheim

### That's the key to holding down the cost of a split-up.

Divorces break down into two basic types: expensive and astronomically expensive. And we're just talking about the cost of unwinding the family finances, let alone the unavoidable emotional toll. The difference – no surprise – comes down to how many hours you're billed for by lawyers. If you and your soon-to-be ex can stay civil, keep your emotions in check and work out the finances in a nonadversarial way – and then bring in the lawyers to dot the i's, cross the t's and file the court documents – you can save tens of thousands of dollars.

That's how Warren and Charlene White approached their divorce. After 18 years of marriage, the Houston couple decided they were better off apart than together. Their first priority was to make sure their son, Wayne, 15, and daughter, Welsley, 12, were well taken care of. With that in mind, they worked out a detailed budget and tackled the financial agreement. Assuming that Warren would have more earning power in the future, they decided it would be fair to split their current assets 60-40 (60% for Charlene, 40% for Warren). They also agreed to let Charlene stay in the house until the kids were grown, after which they'd sell it and split the proceeds.

When it was time to file for divorce, they each hired a lawyer to review the documents. "I spent less than \$7,000 on my lawyer, and we're talking about more than a million and three-quarters in assets," says Warren, 44, a small-business owner and former Andersen Worldwide partner, who's in the habit of quoting fellow Texan Dr. Phil. "We did all the heavy lifting ourselves," he adds.

Charlene spent less – \$5,700 – on her lawyer. One of the reasons things worked out so amicably was that Warren knew from the get-go that he would ignore Texas's stingy rules for mandatory child and spousal support. "What we had going for us was character and trust," says Charlene, a 42-year-old retail executive.

### Keeping the cost down

Stories about starter marriages that cost a few hundred dollars to dissolve are legion. But as time passes, assets grow, kids come along and the financial picture gets complicated. What's worse, expectations of how far the money will go are often unrealistic. "You're fighting over a finite amount of money, and instead of supporting one household, it's going to support two," says Marlene Browne, a New Jersey divorce lawyer and author of *Boomer's Guide to Divorce* (Alpha, \$17). "It's not like the loaves and the fishes. How do you do this?"

Browne and other lawyers are the first to admit that the lawyer's office should not be your first stop after you exchange the d word – unless you and your spouse can't sit in the same room without erupting. "People will spend \$5,000 to get an extra \$500. It's just bad math," says New York City family-law attorney Nihara Choudhri. She wrote *The Complete Guide to Divorce Law* (Citadel Press, \$16) to educate people about the process, so they don't spend \$150 to \$350 an hour getting answers to basic questions. Donald Trump might not feel the pinch, but middle-class families need to keep all the money they can to get on with their lives.

The first thing you should do is get up to speed on the rules in your state. Choudhri's book is a terrific place to start, along with the resources we've pulled together at [Kiplinger.com](http://Kiplinger.com). Next, make a list of what you own and take a crack at dividing it up, says Choudhri. "You're not going to agree at your first meeting, but you'll have a sense of what's important to the other person." You both need to fill out detailed budgets to take a realistic look at what it will cost each of you to live separately.

When it's time to bring in the pros, you have several options. Like the Whites, you could construct the financial agreement yourselves and have lawyers review each draft. Another option is mediation, in which you and your spouse meet together with a neutral mediator, who may or may not be a lawyer, to work through financial (and emotional) issues and craft an agreement. Costs vary depending on where you live and the complexity of the assets, but expect to spend between \$1,000 and \$8,000. Note that mediation may not work very well if there's an imbalance of either power or financial knowledge. Another downside of mediation, says Browne, is that it's easier for one of the partners to drag his or her feet and delay the divorce.

A relatively new option is the "collaborative" divorce. In this team approach, spouses pledge in writing not to go to court, although each one retains a lawyer and may have a mental-health professional working as a coach. A financial adviser also works with the couple. Children's needs are given priority, and a child psychologist may be involved. You can find a practice in your area at [www.collaborativepractice.com](http://www.collaborativepractice.com). This route can cost as much as 50% less than a typical adversarial divorce (one directed by the law-yers) that does not go to trial, says Mark Hill, a financial planner in San Diego who uses the collaborative team approach.

### Take the long view

If you visit a lawyer, make it a pay-as-you-go consultation, if possible, rather than leaving a hefty retainer. You can also hire a lawyer for so-called unbundled services. For example, if you want a business valued, you can purchase the attorney's time a la carte.

More than 90% of divorce cases are settled without going to trial, at least sparing that expense. The trouble is, many of those settlements are done on the back of a napkin in the courthouse coffee shop. Although the financial ramifications of such last-minute deals may look equitable, they often are not well thought out, says Hill.

In a traditional divorce, the wife often wants the house (Hill calls it the "marriage museum") because she decorated it and raised the kids there. The husband wants his pension because, after all, he worked for it. They value the assets, and each takes what looks like an equitable share.

"Five years later, when the kids go to college and the child support goes away, there's not enough money to keep her in the house," says Hill. "And now she's forced to sell and possibly pay taxes if the house has appreciated a lot." So Hill looks at how the asset split will shake out in ten to 20 years.

Most financial planners can do the same thing, and you may want to consider a certified divorce financial analyst (see the box on the next page). Following are some of the big issues on the table, plus ways around some major stumbling blocks. The goal is to come out with a fair division of property.

**The house.** Instinct may tell you to give the house to the custodial parent so the kids won't have to leave. But that move can be fraught with traps. In addition to the problem Hill points out, if one spouse transfers his or her share of the title to the other, that spouse can claim only \$250,000 of home profits tax-free – instead of the \$500,000 available to joint owners – when the house is sold. That could leave the spouse who keeps the house with a significant tax bill.

Charlene and Warren White avoided this trap by taking advantage of a special tax break for divorced couples: They will co-own the house until the kids are grown, and when they sell it, each will get up to \$250,000 of profit tax-free. One downside is that with both your names on the mortgage, the spouse who leaves may have trouble qualifying for a loan for a new house.

**Credit cards and debts.** A court can't alter the terms of a preexisting contract between you and a lender, so a deadbeat ex could leave you on the hook for debts. In consultation with your spouse, cancel joint credit-card accounts as soon as one of you files for divorce. And freeze big sources of credit, such as a home-equity line. (Get copies of your credit reports to be sure which credit cards and loans are active and belong to both of you.) Ideally, you'll each take on the debts you actually incurred. To be sure, request that your spouse pay off all jointly held debt assigned to him or her before releasing marital assets, recommends Choudhri.

**Retirement accounts.** Divorcing spouses are entitled to a share of each other's retirement accounts and pensions, although in most states the pot is limited to benefits earned during the marriage. The computations can get complex, so this is an ideal task for a financial planner. When you've settled on your fair share, your lawyer must petition for a qualified domestic relations order, or QDRO, a court order that tells the pension-plan administrator how to divide the benefits. You may choose a deferred payout of benefits, which would begin when your spouse starts collecting his or her pension, or ask for a cash-out, an immediate payment of benefits based on an estimate of their future value. The lump sum is often the better choice; you can roll the funds into an IRA tax-free or take the cash and pay taxes.

**Taxes.** Consider a few fundamental truisms as you're hammering out your divorce agreement, so that you – and not the IRS – control the tax bill. First, if the divorce is final before the end of the year, the IRS considers you single for the whole year. It might make sense to delay your divorce until January (that's what the Whites did). Also, alimony is taxable to the recipient and deductible by the spouse who's paying it. But child support is neither deductible nor taxed. This can lead to some fancy footwork in the divorce settlement, but be careful: There are rules to prevent transfers that should be classified as child support or property settlements from sneaking through as alimony. Finally, the custodial parent automatically gets the exemption for dependent children unless he or she signs a waiver pledging not to claim it.

When it comes to investments, it helps to understand tax basis – usually your initial investment in an asset, above which sales proceeds are taxed. Whoever gets the assets that have appreciated more will get stuck with a higher tax bill. One solution: Each spouse takes half the shares of each stock or fund to even out the tax bill. The key is to take future tax liability into account as you divvy up assets.

**Insurance.** If your health insurance is provided by your spouse's employer, federal COBRA rules will probably allow you to stay on the policy for up to 36 months while you search for new coverage. There will be no employer subsidy, though, so you'll pay the full cost of the policy, plus a 2% administrative fee. And speaking of insurance, strongly consider requiring your spouse to get a life-insurance policy as a safety net to cover alimony and child-support payments.

**Estate planning.** Don't forget to change the beneficiary designations on retirement accounts, life-insurance policies and annuities. And you'll need a new will, not only to reflect your new relationship with your former spouse and the terms of your divorce, but also to make sure the guardians you've chosen for your kids still make sense.

## How a financial pro can help

During the 30 years she was married, Linda Whildin raised the kids, did volunteer work and kept the household running. But Whildin never worked outside the home, and her husband handled the finances. When she and her husband decided to get a divorce four years ago, she agreed to go to mediation and to let a neutral lawyer help them hammer out a financial agreement. Her husband drew up a plan that Whildin, now 56 and living in Boulder, Colo., says "looked fair on paper." But after two meetings, she realized she had no clue whether she was getting a fair share of the assets.

Whildin's hairdresser told her about Natalie Nelson, a certified divorce financial analyst and a regional director of the Institute for Divorce Financial Analysts. Nelson sat in on the mediation sessions, serving as Whildin's advocate, educator and coach, and ultimately helped her get a bigger slice of the financial pie.

Most of the 1,700 CDFAs are financial planners or CPAs; at least two years' experience in the financial-services industry is required to become certified. They can help when one spouse needs some financial coaching, like Whildin. They are also hired to justify an alimony request or value a pension, says Fadi Baradihi, chief executive officer of the institute. Most charge between \$125 and \$160 an hour, and a typical case takes ten hours. To find a CDFA in your area, go to [www.institutedfa.com](http://www.institutedfa.com).

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