

Negotiating your Future

When you're negotiating your divorce settlement, preparation is the key to success. Are you really ready to negotiate your future?

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During the course of your marriage, you accumulated both assets and liabilities. Although there are regional differences when it comes to who gets what, basically, everything purchased, received, or saved during your marriage must be divided when you divorce. So now you're about to sit down and negotiate a financial settlement with your ex – but are you truly ready to do so?

As with any negotiation, preparation – including a thorough understanding of the situation, as well as assistance from professionals to ensure your interests are being protected – is the key to success. Here are a few questions you need to be able to answer before sitting down to negotiate.

Do you know what your marital assets are?

You can't divide the marital assets fairly if you don't know what's there. The discovery process, which can be informal or formal, is important in every divorce. The informal way is to exchange lists of your assets and debts in an affidavit form. This method should only be used if you are sure that you know everything that exists in your estate; if you're not sure, then a more formal means of discovery should be utilized. One such method is called "interrogatories," in which each lawyer has their client list, under oath, information about assets, liabilities, and income. This process provides everyone involved with a complete economic picture before starting negotiations. In some cases where more discovery is needed, depositions are taken. Depositions are

statements under oath with a court reporter present.

What if there's a business or professional practice involved?

A business or professional practice tends to complicate a divorce. More often than not, the value of the business becomes a focal point of contention. Couples need to seriously consider getting a professional and objective valuation of the business. The costs of a professional valuation are usually steep, but you can't divide something fairly if you don't know it's true worth.

Then comes the question of what to do with the business. There are a few options, such as:

- One spouse keeps the business and gives the other a reciprocal dollar value using other assets.
- Sell the business and split the proceeds.
- Keep ownership in the business at 50/50.

In a business-owner situation, the business is usually most or all of their net worth, so there aren't enough other assets to compensate the other spouse. Even if selling the business is an option (it usually isn't), finding a buyer to pay the right price within an acceptable time frame is practically impossible. Most divorcing couples don't want to maintain a relationship – not even a business relationship – after the divorce. So what do you do? The only real options are a property settlement note (one spouse buys the other's share in a series of installment payments at a market-interest rate) or a spousal-support arrangement to compensate for the difference.

What about a budget?

It is critical to determine the incomes and expenses of the parties and to try to estimate what the future expenses will be after the divorce is final. If there are children, one spouse will probably pay child support to the other, and in many marriages, one spouse will also pay spousal support ("alimony"). It is important to determine both income levels and future needs before you start negotiations. A Certified Divorce Financial Analyst™ (CDFA™) can play a critical role in determining both a budget and cash-flow needs. A CDFA™ can also help to plan a course of action for the future by preparing different scenarios utilizing assumptions based upon needs and projections with different income levels.

What about pensions?

In many divorces, the most valuable assets are future benefits such as pensions. These must all be determined and considered before starting to think about a settlement. In most cases, the marital portion of these benefits – in other words, the portion of the pension or other deferred benefits that have been acquired during the marriage – are subject to division as part of the divorce settlement. A good lawyer and CDFA™ will help you consider these benefits as part of the overall settlement plan, making sure your future needs will be met.

What about personal property?

Personal property is important, but don't spend thousands of dollars fighting over property with more sentimental than real value. Items such as collectables, favorite home furnishings (from chairs to rugs to pots and pans), hobby equipment, and other personal property must not become the focus of your negotiations. A good lawyer and/or financial advisor can help you gain perspective on these items and focus on the big picture when you're getting ready to negotiate a settlement. Remember that an expensive television or computer has almost no value a few years after you made that big-ticket purchase. The courts don't look at replacement value but the actual value of the item, which, in the case of used furniture, is often garage-sale prices.

Are you emotionally attached to your home?

Over the years, we have seen people who were determined to stay in the marital home no matter what. In some cases, that can be a big mistake. First of all, it may be too expensive to maintain. In some situations, it's better to sell the home and find another one that's smaller and less expensive to pay for and maintain. As you move ahead and rebuild your life, it may be better to start fresh in another home. Aside from the financial considerations, there may be too many memories attached to the marital home to let you move forward emotionally as long as you're still living there.

There are several ways to handle a marital home:

- It can be sold immediately.
- One spouse can buy the other out by refinancing the home or by trading the home for other property.
- Both parties can hold it jointly for a number of years – for instance, until the parent who has custody of the children remarries, or the children reach a certain age – after which the home is sold and the proceeds divided in some fashion. In many cases, the party who remains in the home pays the mortgage and taxes and gets credit for any reduction in principal on the mortgage from the date of the divorce until the date that the home is sold or one party buys the other out. Major repairs are often divided between the parties with the person who advances the money for repairs being repaid at the time of the closing on sale or buyout of the home.

What do you want – and why?

You must have a game plan when you enter into settlement negotiations. Do you know what you want? Do you know what you need? Are you thinking about all options? Are you being realistic in your demands? It is standard negotiating practice to ask for more than you expect to receive – without going to extremes. Don't be a doormat, but don't be excessively greedy, either. Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs. So take the time to objectively determine your own needs – and those of your spouse – before starting to negotiate. We have found over the years that if your demands are reasonable and based more on needs than wants, then the chances for a quick, fair settlement are good. There must be give-and-take and wiggle-room in your settlement proposals; your lawyer and financial advisor can help you strategize and come up with different game plans and scenarios as you prepare for this negotiation.

The bottom line

You must be well represented and advised in order to negotiate effectively. This includes knowing the “ingredients” of the marital pie, and also how much of that you pie can realistically expect to keep as you prepare to negotiate your settlement.

A team consisting of a lawyer and a CDFA™ – and perhaps a therapist if emotional issues are getting in your way – can help understand your needs, your rights, and your true “bottom line” before you sit down to negotiate with your spouse.

Divorce is one of the most difficult and stressful experiences you’ll ever have. During this emotional time, it can be hard to think clearly or rationally, so make sure to enlist the help of professionals who can guide you when you’ve lost your way.

Remember, if both sides are somewhat unhappy with the outcome, then the negotiations went well.

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