

**Divorce Basics:
Planning When the Unplanned Happens
By Elaine Kiernan
CERTIFIED FINANCIAL PLANNER™ (CFP®), Certified Divorce Financial Analyst
(CDFA), and Certified Divorce Specialist (CDS)**

No one likes to think about divorce. That it happens means that a very important part of one's life did not go as planned. When it does happen, however, there is absolute and immediate need for a plan — divorce financial planning. While divorce is never an easy process, effective divorce planning can mitigate some of the pain and confusion involved that may affect you for the long term. Many people make the mistake of only contacting an attorney for guidance and counsel through their divorce. That may assist you legally, but you absolutely must protect yourself financially.

Divorce proceedings and Marital Settlement Agreements (MSAs) are often complicated under the best of clear thinking and non-emotional circumstance. Now is not the time to go it alone. Drafting your MSA—the document that will identify and divide affected property and outline provisions for custody and child support—is a key step in any divorce, one that many couples execute poorly. The repercussions from doing so can affect you for the rest of your life. There are basic steps, terms, and intermediaries that can help make your divorce planning less stressful:

1. *Self-help guides*

Some financial situations render legal help unaffordable. There is plenty of literature available devoted to divorce planning. Remember though, an MSA is probably the largest financial transaction of your life—consulting someone with, experience, education and expertise is advisable. Consider this an investment in your future.

2. *Paralegals*

While they can file your divorce papers with a court, they CANNOT give legal advice.

3. *Mediators*

These are usually attorneys, judges, or other qualified professionals that work with couples seeking an out-of-court settlement. There can be considerably less drama, stress, and cost, but the decisions they help you make can be legally binding. Mediators do not go to court or handle litigated matters. Check with your local Bar Association for a list of Family Law Specialists and Mediators: a majority offers free consultations (usually lasting 30 minutes).

4. *Litigation Attorneys*

Litigation attorneys help couples that can't reach an amicable settlement by preparing their case for a hearing before a judge.

5. *Certified Family Law Specialist*

An attorney who has specialized education and expertise in family law—in many cases such specialists are best when taking your case to trial.

6. *Certified Divorce Planners*

CDPs mediate the financial aspects of an equitable divorce settlement, generally working in conjunction with a Family Law Attorney.

7. *Collaborative Law*

Involves a team approach where two attorneys (one for each party), two mental health coaches, and one financial advisor assist in determining a settlement. All members of the team sign a statement agreeing to work together in keeping proceedings out of court and preparing an MSA that is fair for all involved.

CONSIDER:

MEDIATING

- Mediated cases generally cost 10% that of litigated cases;
- Mediated divorces are settled as quickly as an agreement is established;
- In many states, divorces are final after a six month separation period.

vs.

LITIGATING

- Litigated divorces usually require a starting retainer of at least \$10,000;
- Eventual fees can drive costs up by tens of thousands of dollars;
- In-court divorce proceedings can carry on for more than two years.

Dividing assets is tricky territory as regulations vary from state to state. Some states treat income earned during a marriage as community property—regardless of who earned it. Anything purchased with community property funds is owned by the parties equally. In the event of a marriage *dissolution*, assets are divided between the parties. The division that you should seek should be the best one for both spouses—you may decide on something other than a strict 50-50 distribution if it is better for the family as a whole.

Retirement accounts can be kept by whomever's name appears on the account. If a couple prefers to divide a pension, a court order called a Qualified Domestic Relations Order (QDRO) is required to do so. Banks can transfer IRA account funds without a QDRO.

The final, most stressful divorce issue involves the determination of child support. Remember these primary considerations:

- Spousal income
- Percentage of time spent with children
- State and Federal taxes for each child
- Health insurance costs for each child

Child support is *not* tax deductible to the payer or taxable to the recipient. California has a child support guideline that can be determined by using any “certified” support calculation software program. Computer calculations do not provide a ready answer for

spousal support or alimony. Alimony is based on the needs of the supported party and the other party's ability to pay. Alimony is tax deductible to the payer and must be included as taxable income on the recipient's tax return. A combined payment known as family support is treated the same as spousal support. Obtaining a life insurance policy for both spouses (to insure continuing support should a parent die prior to completion of his or her support obligation) is also an advisable step.

Never underestimate the decisions made while planning and proceeding with your divorce—they will affect all aspects of your life for years to come. Do what you can to make those ramifications positive. There is so much to divorce than signing papers and dividing assets. If "happily ever after" is not your ending, a comprehensive understanding of your rights and obligations can at least make it "happy after the fact." Education and awareness are key to making the most out of a divorce's unfortunate circumstances.

About Elaine Kiernan:

Elaine R. Kiernan is a CERTIFIED FINANCIAL PLANNER™ (CFP®), Certified Divorce Financial Analyst (CDFA), and Certified Divorce Specialist (CDS).

She is President of Financial Resource Associates (www.FRAssociates.com), a Registered Principal/Branch Manager of Geneos Wealth Management, Inc. and holds memberships in the Financial Planning Associates (FPA), the Institute of Divorce Financial Analysts (IDFA), and the International Association of Collaborative Professionals (IACP). Her firm, Financial Resource Associates, Inc. is a Registered Investment Advisory firm and she will reach her 25th year in practice in 2007. She is licensed by the California Department of Corporations, and the NASD.

Elaine and her firm specialize in all aspects of financial planning, divorce services, small business services, same-sex issues, insurance, and retirement.

She can be reached at (831) 458-1125

or via email at elaine@FRAssociates.com.