



BUL 977

Being Financially Aware When Divorce Occurs: An Idaho Guide

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Introduction

SOLID FINANCIAL AWARENESS is crucial when making financial decisions during a divorce. This guide provides general information pertaining to divorce, Idaho law and statutes, and personal financial considerations that will aid you in avoiding the financial pitfalls you may have to deal with during and after your divorce. However, this document is not intended to take the place of attorneys, accountants, and other professionals.

General Knowledge

Emotions and Financial Decisions

During emotionally stressful times, such as divorce, it is easy to make poor financial decisions. That is why keeping your emotions in check during and after your divorce is crucial. Hold off on making any financial decisions related to your divorce when you are emotionally exhausted, mentally vulnerable, or overly stressed. Take the time to rationally think through the choices you need to make to ensure you are following the best course of action. Do not be afraid to seek professional assistance.

Examples of poor decision making amid emotional times often occur during the negotiations portion of the divorce process. In these moments, an individual may feel it is in their best interest to agree to unfavorable terms in an attempt to end the divorce process sooner and avoid additional emotional hardships. However, individuals that follow this mindset often end up conceding too many assets and/or privileges, which in turn may have adverse impacts that will last long after the decree has been signed.

Negotiations During Divorce

Negotiations are a significant factor during the divorce process. It is recommended to rely on your attorney to advocate for you. The objective of the negotiations should be fair and

equitable agreements. If the requests are not reasonable and equitable, then it may further complicate the process and prolong the court proceedings. In such cases, the costs of divorce increase as it becomes necessary to retain your attorney for a longer period of time.

Maintaining Records

Divorces can be complicated and contentious. Keeping a detailed account of correspondence and related documentation is an effective way to hold the involved parties accountable to their words and to ensure important details do not get lost or overlooked during the divorce process. In order to accomplish this, it is recommended that you correspond through email whenever possible. Emails are easy to track, save, and look up for reference should any parties attempt to negate earlier claims. Additionally, it is recommended to keep both hard and digital copies of all relevant forms and documents to protect against loss, fraud, or other incidents.

Idaho Law and Statutes

Community Property and Separate Property

One Idaho statute that has many financial implications in divorce is Idaho Statute, Title 32, Domestic Relations, Chapter 9: Husband and Wife—Separate and Community Property. Knowing the details about this statute will help you make sound financial decisions regarding the division of your property.

Community Property. Idaho is a community property state. What does this mean for you? It means everything you purchased while you were married is jointly owned 50/50 by you and your spouse (Domestic Relations, Husband and Wife—Separate and Community Property 1866). Examples are homes, cars, televisions, beds, DVDs, tools, retirement accounts, etc. Jointly owned property should be divided equally unless otherwise agreed upon in your divorce decree.

Separate Property. Separate property is any property purchased before the marriage. All personal gifts and inheritance received during the marriage are separate property along with anything purchased with the gift or inheritance (Domestic Relations,

Husband and Wife—Separate and Community Property 1866). An example of this would be rental properties or stocks purchased before the marriage. To help illustrate this, if you purchased rental property before you were married, it qualifies as separate property. After the divorce, the rental property and its increase in property value would remain in the possession of the spouse who purchased it before the marriage. This rule does not apply to rental income earned from the property during your marriage; this income is considered community property. Once the marriage is ended, the rental income will no longer be considered community property. If there are any property disputes, you may need the professional help of title companies or your local assessor's office.

Idaho Court Order Language and Divorces with Children

The wording in court orders can be easily misunderstood; make sure you understand the court order and how it will affect you. When your divorce involves children, two sections are included in most Idaho court orders: Income Withholding Language and the Child Support Payment sections. The language in these two sections is often misunderstood or ignored and can have negative financial implications.

Income Withholding Language. This is standard and found in most court orders in Idaho. The verbiage found in this section gives Child Support Services the ability to issue an Income Withholding Order (IWO) to an employer. The order requires that the employer withhold the allotted child support from the noncustodial parent's paycheck. (Mandatory Income Withholding for Child Support 1986). If there is Income Withholding Language in the court order, then Child Support Services can and will garnish your income every pay period. IWOs are issued once Child Support Services finds employment information.

Understanding how this process works will help prevent you from complicating your child support case. If payments are made directly to the Child Support Office **and** wages are already being garnished through an active IWO, then the case will end up being overpaid. Child Support Services does not accept overpayments, and in such cases, a refund

will be provided; however, refunds may take several weeks to process and can lead to financial constraints in your budget. To avoid overpayment

- Report employment information to Child Support Services
- Check for garnishments on your pay stub
- Look for mail from Child Support Services
- Ensure Child Support Services has the correct address

Child Support Payments. Idaho Child Support Receipting is the name of the office where you will send all child support payments. Most divorce decrees state that child support should be paid through this office. Keep in mind that child support is retroactive. This means that child support payments can start accruing before the divorce is finalized. Due to the length of the divorce process and the time it takes to set up a new case, it is not uncommon for child support payments to accumulate for months before coming due. The noncustodial parent should save up the required monthly payments during the time before the divorce is finalized and make a lump sum payment once the divorce decree has been entered on the child support receipting system.

Payments made directly to the custodial parent can be made before the divorce is finalized; however, these payments are not recognized by the Idaho Child Support Receipting Office. Therefore, these payments have no legal holding, and there is no guarantee they ever will. If the custodial parent chooses to, they can file paperwork with the courts to give the noncustodial parents credit for any child support payments made directly to them, but they are not required to do so.

Remember, court orders are enforced by Child Support Services. If a parent falls behind in making these payments, the service reports it as a delinquent account to credit bureaus, damaging your credit. Child Support Services can take other enforcement actions if you are behind on your payments, such as the suspension of any state-issued license (driver's, hunting, real estate, doctor's, and business). If your court order says your child support payments should be paid to Idaho Child Support Receipting, then make your payments to them to avoid any enforcement actions that could hurt your livelihood or your credit.

Personal Finance and Divorce

Know Your Finances

Consider and answer the following questions:

- Do you know what items are community property?
- Do you know what items are separate property?
- Do you own your home?
- Do you own your vehicles?
- Do you have credit card debts or other unsecured loans?
 - Joint debts
 - Individual debts
- How much money do you have in checking and savings accounts?
- Are there any retirement accounts or other investments?

Knowing and understanding your financial situation will help you make better decisions while going through the divorce process. It is hard to know if things are fair or not if you do not know your financial situation going into the divorce. Having the answers to these questions will also help you to make plans related to your financial situation when the divorce is finalized.

Income Taxes after Divorce

According to tax law, if your divorce was finalized within the tax year that you are filing for, then you will file separate tax returns for that year. For example, if you are filing taxes for the year 2020 and your divorce was finalized December 31, 2020, you will file a separate tax return. If your divorce was finalized January 1, 2021, you could file a joint tax return for your 2020 federal income taxes (Internal Revenue Service 2020). The decision is up to you. The benefit of filing a joint return is that the standard deduction is higher for married couples. In these cases, both parties must be amenable to splitting the refund or paying the tax bill.

Who gets to claim the children on their taxes? The answer to this question will depend on what is agreed upon in the divorce decree. Generally, the custodial parent will be the head of household and claim the children as dependents along with all the tax credits. If you are the noncustodial parent and the

divorce decree states that you may claim the children on your taxes, this will be taken into consideration when the child support amount is determined. If the court order states that the noncustodial parent gets to claim the children on their taxes, the custodial parent will need to fill out IRS Form 8332. This form releases the exemption for the children to be claimed by the noncustodial parent (Internal Revenue Service 2018).

Welfare Benefits

Undue confusion and stress can be avoided when all parties agree upon who should apply for and receive welfare benefits. It is recommended that you visit with the professionals at the Idaho Department of Health and Welfare to get personalized advice regarding welfare benefits. When applying for Medicaid insurance benefits for children, remember that if the children already have insurance through you or your former spouse, Medicaid will be the secondary medical insurance. You will be asked to provide a copy of the medical insurance card for the children's primary health insurance provider.

The programs you may want to consider are

- Medicaid
- Supplemental Nutritional Assistance Program (SNAP)
- Idaho Childcare Program (ICCP)
- Temporary Assistance for Needy Families (TANF)

To find out more about these programs, your eligibility for them, and how to apply, visit healthandwelfare.idaho.gov or visit your local Health and Welfare office.

Credit Report/Credit Score

Since Idaho is a community property state, all debts accrued during a marriage are the responsibility of both parties and will be divided in a divorce. During the divorce process, make sure that all payments are kept current on joint and private accounts to prevent your credit from being damaged. Once the divorce is finalized, make sure your name is removed from the debts you are no longer responsible for, as decreed in the court documents.

Maintaining your credit score during and after the divorce will allow creditors to extend credit to you when the time comes to purchase a home or car

or to apply for a credit card. A good credit score is becoming a necessity in today's world with renters, insurance companies, and employers pulling an individual's credit reports and scores when making determinations. The difference between a good and bad credit score can be a deciding factor when applying for a loan or trying to rent an apartment. Several aspects of your future financial success are tied to your credit score.

Mortgage Consideration

Homes are likely the most valuable asset a couple owns, so deciding what becomes of the house requires careful deliberation. Typically, there are two courses a divorcing couple can follow: the house is sold, and the profit or loss is split; or one spouse remains in the house and assumes responsibility for the mortgage payments. Before agreeing to the second arrangement, ensure that the spouse staying in the home can afford the mortgage payment with their income alone. Additionally, it is highly recommended that the party remaining refinance the home. In addition to the financial benefits that refinancing may bring, it also provides an opportunity to remove individuals from the loan.

If your former spouse is staying in the home, then you can request a preapproval notice from your spouse to see if they can qualify to refinance the mortgage. However, a preapproval letter is not a guarantee that your spouse can refinance the mortgage. If they are unable or unwilling to refinance the house, your name will remain on the mortgage, and you will continue to be liable for any missed payments. Payments more than thirty days past due are likely to be reported by the lender and will negatively impact your credit even if you are no longer responsible for payments.

This scenario can further complicate the divorce process because the equity that was accrued during the marriage remains in the house and with your former spouse. The equity in a home is likely to equate to a significant sum of money, so it is important to ensure it is accounted for when negotiating the division of assets. If the parties cannot agree, then any disputes need to be included in the divorce decree.

After the Divorce

- Change the beneficiary on life insurance policies.
- Freeze your credit. To do this, call or visit the web page for each of these three credit bureaus:

Online: www.equifax.com
Phone: 800-685-1111
Mail: Equifax
PO. Box 105788
Atlanta, GA 30348-5788

Online: www.experian.com
Phone: 888-397-3742
Mail: Experian
PO. Box 9554
Allen, TX 75013

Online: www.transunion.com
Phone: 888-909-8872
Mail: TransUnion LLC
PO. Box 2000
Chester, PA 19016

- Recalculate and update your W-4 with your employer.
- Remove your prior spouse from all bank accounts and credit card accounts to prevent unauthorized use.
- Make sure you have a copy of all legal documents.
 - Divorce decree
 - Marriage license (this is needed if you don't change your last name back to your maiden name to get your STAR card)
 - Birth certificates for children
 - Insurance cards for children
 - Social Security cards
 - Updated titles of the vehicles that were divided in the divorce
 - Updated personal identification if you changed back to your maiden name
- Update all insurance policies.
 - Medical
 - Vehicle
 - Homeowner's insurance
 - Life insurance
 - Make sure you have access to your children's Social Security cards
- If your child has a valid driver's license, request proof of insurance if you are not the parent who is paying their car insurance
- Make sure you have access to the children's Social Security cards and proof of insurance if they are old enough to drive and that you are not the parent paying the car insurance.

Budgeting Your New Life

Adjustments will likely be necessary as you settle into a new lifestyle, and it is essential to build an appropriate and realistic budget for that lifestyle. Keep in mind that you may be going from two incomes to one. And even if you are a custodial parent entitled to child support payments, that is not always a guaranteed source of income, even if it is court ordered. For these reasons, the fundamental recommendations of limiting expenses and saving for emergencies become even more essential in the months and years following a divorce.

Consider using the step-down method, a technique of examining your expenses, and exploring ways to replace them with less costly substitutes. Examples may include renting a smaller apartment than you currently have, subscribing to a pay-as-you-go phone line rather than an unlimited data plan, or making your own coffee at home rather than purchasing it at a coffee shop. While scaling back on your expenses is fiscally responsible, it can be trying mentally and emotionally. To combat negative feelings towards your situation and your budget, you should reward yourself. These rewards may be an occasional treat or a fun vacation. As long as the costs are reasonable, they can help to motivate you to stick to your plan without ruining your budget.

Social Security

Whether retirement is far in the future or much closer than that, social security benefits are a major source of support in retirement. For many couples, divorce can have major implications if those benefits are realized or not. In a marriage, spouses can collect social security benefits equal to one half of the other spouse's full benefits, regardless of work history. In the cases of divorce, you are still entitled to collect those benefits if you meet the following criteria:

- You were married for 10 years or more
- You are at least 62 years of age
- You are unmarried
- The social security benefits you would collect based on your own earnings history is less than half of what your former spouse would receive at full retirement. (You will receive the greater of the two retirement benefits, but not the sum of both.)
- Your former spouse has applied for retirement benefits, **or** your former spouse has not applied but qualifies for retirement benefits, and you have been divorced for at least two consecutive years (Social Security Administration 2020).

It is important to note that your spousal benefits will be reduced if you withdraw before your full retirement age. Your full retirement age is based on the year you were born and can be found along with the related early retirement penalties on the Social Security Administration's (SSA) website, <https://www.ssa.gov/planners/retire/ageincrease.html>.

You can start the application process for spousal retirement benefits online or in person. In either case, you will need to fill out the SSA-2 form. The form and the information you may need for the application process can also be found on the SSA website: <https://www.ssa.gov/forms/ssa-2.html>.

Further Reading

Domestic Relations, Husband and Wife—Separate and Community Property, Id. Stat. ch. 9, sec. 32-912. 1866.

Internal Revenue Service. 2018. Form 8332: *Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent*. <http://www.irs.gov/pub/irs-pdf/f8332.pdf>.

Internal Revenue Service. 2020. Publication 504 (2019): *Divorced or Separated Individuals*. http://www.irs.gov/publications/p504#en_US_2019_publink1000176040.

Mandatory Income Withholding for Child Support, Id. Stat. ch. 12, sec. 32-1204. 1986.

Social Security Administration. 2020. *Social Security*. "Retirement Benefits." <https://www.ssa.gov/benefits/retirement/planner/applying7.html>.

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