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## KEY POINTS

WHAT WE'LL COVER IN THIS SESSION

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- Identifying your priorities- what do you really want to keep?
- Legal guidelines for community property and equitable distribution
- How to divide your property in divorce
- The difference between marital and separate property
- Setting up a helpful worksheet
- Tax impacts for different kinds of property and investments.
- Dividing debt
- Special issues: Business interests

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## DISCLAIMER

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While great care was taken to prepare this course, it is not a substitute for legal, financial, medical or other professional advice based on your specific circumstances. Consult with an experienced Family Law Attorney, Mediator, Accountant, Certified Financial Planner® (CFP®), and Certified Divorce Financial Analyst™ (CDFA™) about your specific case. While the author of this course is a Certified Financial Planner® and a Certified Divorce Financial Analyst™, in this course, she is not dispensing financial advice based on your own situation, or legal advice either directly or indirectly. The intent of this course is to help you move through your divorce and avoid becoming a financial victim of your decisions and those of your spouse. Under no circumstances will Adrienne Rothstein Grace or any of her representatives be liable for any special or consequential damages that result from the use of, or the inability to use, the information or strategies communicated through these materials, or any services provided prior to or following the receipt of these materials, even if advised of the possibility of such damages. You alone are responsible and accountable for your decisions, actions and results in life. By your use of these materials, you agree not to attempt to hold Adrienne Rothstein Grace or her agents or employees liable for any such decisions, actions, or results, at any time, under any circumstances.

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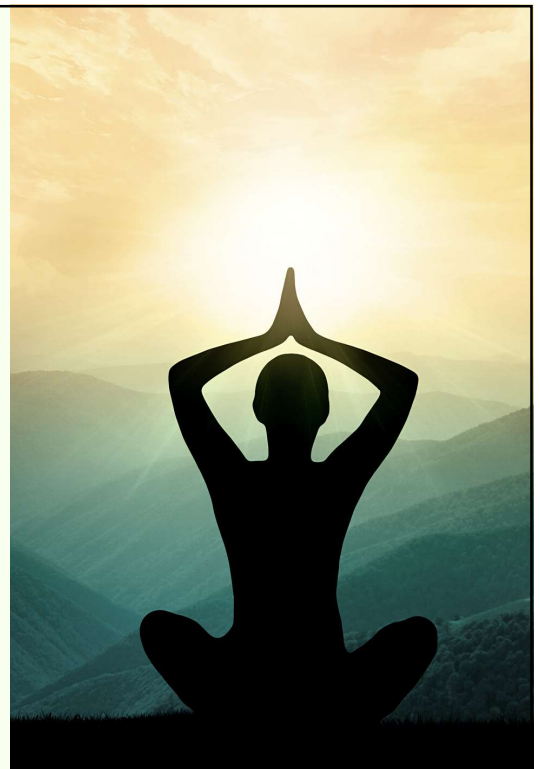
## SETTLING IN

WITH TEYA VALENTINA

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Let's get started with a grounding exercise, a brief meditation with Teya Valentina to help you center yourself to receive all this information and move on!

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## GETTING WHAT'S FAIR

- Keep clearly in mind that the focus shifts in divorce from 'We' to "Me". Amicable or not, your husband is no longer looking out for your best interest.
- You and your team are your advocates now.
- Accurate information, clear documentation, and a strong divorce team are your best defenses.
- Like it or not, Uncle Sam, the tax man, is a not-so-silent partner in the division of property and what comes next.
- Tax consequences of dividing and liquidating assets are critical to be sure that your result is fair and livable.

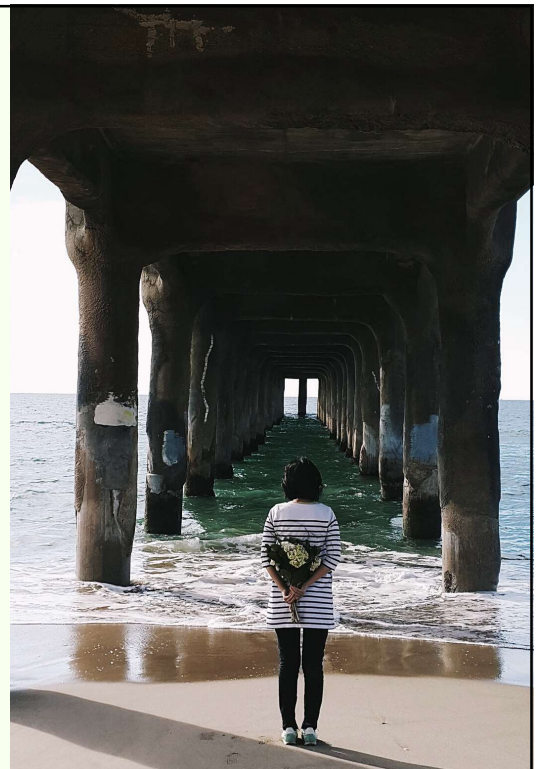
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## WHAT ARE YOUR PRIORITIES?

- If you don't know what you really want, you won't know what to ask for, what you may be willing to fight for, and what you can let go.
- Which assets do you really want?
- What has strong sentimental or practical value for you?
- What things are you willing to let your spouse keep?
- If something you want has a loan attached, will you have sufficient cash flow to pay the debt and the upkeep on it?

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## INVENTORY

- To decide how you will divide your property, you need to know what you have. One household will become two separate homes. What do you want in yours?
- Use the worksheet in your Workbook: Charting Assets
  - What is it? How much did it cost? When did you get it? What's it worth now?
  - Keep it or let it go?
  - If neither wants it, can you sell or donate?
  - Value of used items is essentially what it would sell for at a garage sale.
- Personal property is most often just divided between you
- If necessary, call in a mediator to help you work it out

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## WHAT ARE YOUR ASSETS?

HERE'S A COMPREHENSIVE LIST, TO HELP YOU REMEMBER. LIST ITEMS \$250 OR MORE

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Real Estate: Primary home, vacation homes, rental property.</li> <li>• Business owned by one or both spouses; professional practices</li> <li>• Trusts.</li> <li>• Automobiles and other vehicles; classic cars.</li> <li>• Recreational vehicles: snowmobiles, jet skis, boats, kayaks, RV's.</li> <li>• Timeshares.</li> <li>• Stocks, Bonds, Cash and Savings Accounts, Credit Union share accounts.</li> <li>• Brokerage investment accounts</li> <li>• Retirement accounts of all kinds</li> <li>• Stock options (method of determining value is complex).</li> <li>• Cash value of Life Insurance Policies.</li> <li>• Furniture and fixtures in all houses</li> </ul> | <ul style="list-style-type: none"> <li>• Antiques, collectibles, firearms,</li> <li>• Stamps, baseball cards, sports memorabilia, music boxes, Hummels, statuary.</li> <li>• Jewelry; coins, gold and other precious metals.</li> <li>• Artwork; paintings, sculpture; musical instruments, pianos.</li> <li>• Loans, mortgages, notes receivable.</li> <li>• Household goods, clothing, furs, books, music, tools.</li> <li>• Grills, outdoor furniture; lawn mowers, snow blowers, tractors.</li> <li>• Electronics (computers, video games, iPads, iPods, printers, virtual assistant, like Alexa)).</li> <li>• Items of sentimental value: photo albums, family memorabilia (even if they have no cash value).</li> </ul> |
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## MAYBE YOU HAVE SOME OF THESE TOO?

- Frequent flyer program miles; credit card loyalty program points.
- Tax Refunds: If joint tax return, tax refunds sent in both names. but may have been deposited in an individual account.
- Commissions to be paid in the future, including trails and renewals, especially with investment, insurance, real estate professionals, consultants and attorneys
- Law firm Draw Account
- Pending claims for damages, like suing a former employer for lost wages; structured and annuity settlements.
- Vacation pay, if you can cash out vacation/sick leave
- Foreign Asset Protection Trusts in remote offshore tax and financial havens
- Cryptocurrency
- Season tickets
- Patents, copyrights, royalties.
- Riparian and Mineral Rights; oil and gas leases.

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## TAX-FREE TRANSFERS BETWEEN SPOUSES

- Transfer of assets within one year of the decree are presumed to be "incident to divorce" and tax-free. (IRS Sect. 1041).
- Transfers must occur within 6 years of the end of the marriage or the transfer will no longer be considered tax-free.

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## YOURS, MINE OR OURS? MARITAL VS SEPARATE PROPERTY

- **Note:** States have different policies regarding property ownership. Check with your team.
- What's Ours? Marital Property
  - Everything you and your husband buy or acquire during your marriage, from date of marriage until the beginning of a separation/divorce action
    - except what is designated as separate property
    - and that is specifically defined.
- Regardless of whose name it's in, whose work or income generated it, who uses it more, who wears it, plays with it or drives it.

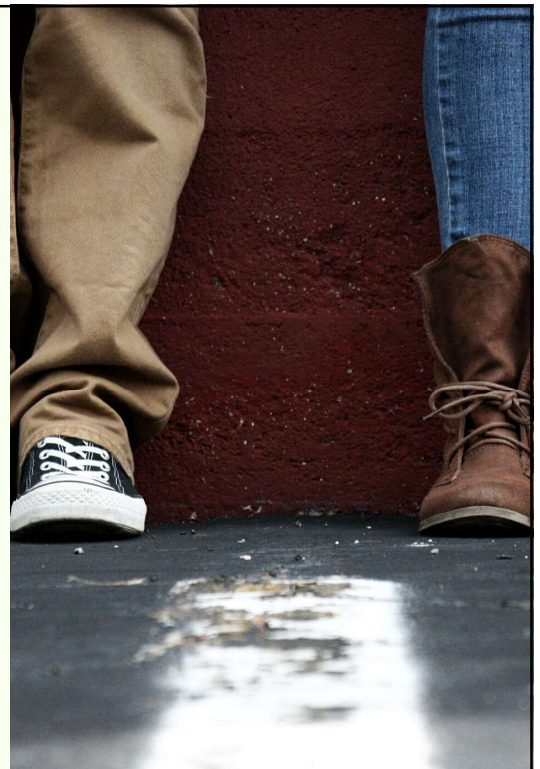
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## SEPERATE PROPERTY: YOURS OR MINE?

- Separate property, when kept separate is what each person:
  - Brings into the marriage
  - Inherits before and during the marriage
  - Receives as a gift during the marriage from someone other than a spouse
  - Receives as personal-injury settlement.
  - Has been specifically named as separate property in a written agreement, i.e. a Prenuptial or Marital Agreement.

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## SEPERATE PROPERTY: YOURS OR MINE?

- Separate property is not divided during a divorce- it just belongs to the owner, entirely.
- Increase in the value of separate property is still separate, unless due to work by your husband or the two of you during the marriage.
- If you mix your separate assets with marital assets, identifying them as separate again gets complicated.
  - Discuss this with your divorce team.

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## HOW TO DIVIDE MARITAL PROPERTY

- Greater flexibility In Mediation or Collaborative practice
- Divide your property as you wish
- As long as:
  - You have been informed about the law
  - All assets are fully disclosed
  - One of you doesn't give up so much of the property that you might end up on public assistance.

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## HOW TO DIVIDE MARITAL PROPERTY

- There are two ways that assets are divided, based on where your divorce is located:
  - Community Property
  - Equitable Distribution

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## COMMUNITY PROPERTY

- Only Nine states follow the community property system:
  - California, Arizona, Wisconsin, Idaho, Washington, Louisiana, Nevada, New Mexico, Texas and sometimes, Alaska
- All marital property is divided equally, 50/50
- Everything acquired during the marriage with "community" money considered to be owned equally,
- Note: This does not mean that you get 50% of **everything**. Each spouse gets 50% of the total assets

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## EQUITABLE DISTRIBUTION IN ALL OTHER STATES

- If you resort to the Court to settle your divorce, the Judge makes the final determination as to division of property
- Equitable means 'Fair" not 50/50
- Standard Factors are taken into consideration when dividing property in most states.

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## FACTORS IN EQUITABLE DISTRIBUTION, PT 1

IT'S A LONG LIST, BUT MAY BE IMPORTANT TO YOU

- The financial condition and earning power of each spouse.
- The length of the marriage.
- The present value of all property.
- The value of each spouse's property, including a spouse's business, business interests, retirement plans, 401(k) plans, stocks, bonds, etc.
- Future financial need, debts and liabilities of each spouse.
- Probable financial future of each spouse.
- The age and health of each spouse.
- How easily the marital property could be turned into cash flow.
- Written premarital and prenuptial agreements covering property division.
- Spousal maintenance or alimony obligations to former spouses, and children of previous relationships.
- Each spouse's income and property when they married and when they filed for divorce.

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## FACTORS IN EQUITABLE DISTRIBUTION, 2

IT'S A LONG LIST, BUT MAY BE IMPORTANT TO YOU

- Any award of maintenance to a spouse.
- The extent to which either spouse may have delayed pursuing education and career goals during the marriage.
- Any time /expense required for a spouse to acquire education or training necessary to achieve a standard of living comparable to the marital standard.
- Any present or future need for medical or educational needs for either spouse or a child.
- The need of the parent with custody to live in the family home and use or own its effects (furniture, etc.).
- The pension, health insurance, and inheritance rights either spouse will lose as a result of the divorce, valued as of the date of the divorce.

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## FACTORS IN EQUITABLE DISTRIBUTION, PT 3

IT'S A LONG LIST, BUT MAY BE IMPORTANT TO YOU

- Whether either spouse has an equitable claim to marital property not titled in their name, based on that spouse's contribution of labor, money, or efforts as a spouse, parent, wage earner, or homemaker, including contributions to the other spouse's earning potential (by, for example, working to put the other spouse through school).
- If the marital property includes a component or interest in a business, corporation, or profession, difficulty of valuing that interest, whether desirable for that interest to be retained intact, free from claims or interference by the other spouse.
- The tax consequences to each spouse.
- Whether either spouse has 'wastefully dissipated' marital assets.
- Whether either spouse has transferred or encumbered marital property in contemplation of divorce without fair consideration.
- Any other factor the court expressly finds to be a just and proper consideration. Usually, who will receive the primary responsibility of caring for their children.

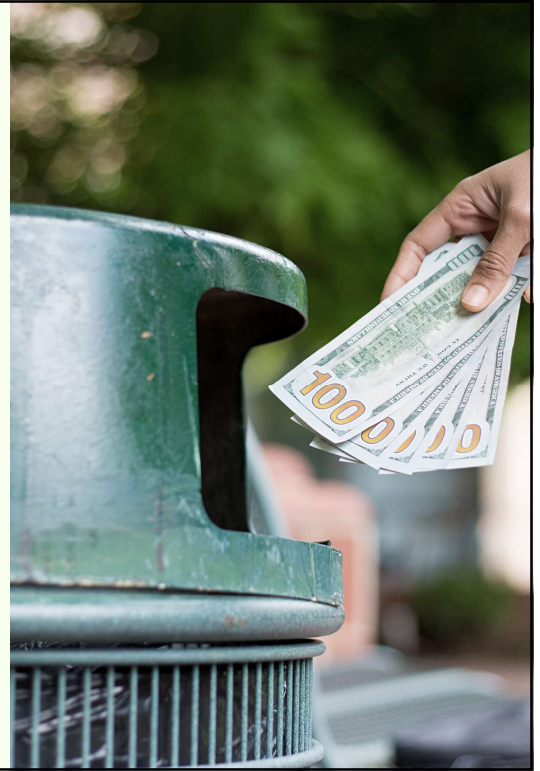
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## WASTEFUL DISSIPATION

- A factor in equitable distribution
- Wasteful dissipation is when your husband (or you):
  - Wasted money
  - Gambled
  - Spent extravagantly
  - Overused credit
  - Spent marital money on extramarital affairs
  - Got rid of marital property
- May be cause for an unequal distribution of assets to make up for 'bad behavior' with marital money

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## WHAT IS NOT ON THE LIST OF FACTORS FOR EQUITABLE DISTRIBUTION?

- 'Marital misconduct', Lying, cheating,
- Having an affair,
- Cutting off marital relations, refusing to communicate, ignoring your needs,
- Not parenting your children to your expectations-
- Annoying the daylights out of you
- Gaslighting, narcissistic behavior
- Some states will consider adultery in the ruling.
- **As always, consult your divorce team to see what rules your state follows.**

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## WHEN IS 50/50 NOT EQUAL?

- A dollar is not always worth a dollar.
- The equivalent amount of cash in a bank account is worth more than cash in a retirement account,
- Which is worth more than a home at the same value.
- Welcome to the world of taxes and cash flow

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## A WORD ABOUT TAXES AND INVESTMENTS

### EVERY ASSET HAS ITS OWN TAX LIABILITIES

- When accounts are divided, the IRS allows divorcing spouses to each keep the same cost basis and holding period for an investment they already own
  - Cost basis is the price at which an investment was originally purchased.
  - Holding period is how long you have owned it.
    - Profits from the sale of investments owned for a year or less are taxed at your ordinary income tax rate; investments held for more than one year are taxed at lower long-term capital gains rates..

Even if your investment has increased in value when you sell it, you end up with less than the sale price—because taxes are due on any gains over the cost basis.

- How much depends on your tax rate, holding period, and cost basis..
- Tax rates are different for each way to file: joint, single or head of household.
- *Confused yet? Not surprising! Most women need some help to make sense out of the choices around investments. Just contact me at [Adrienne@adriennegrace.com](mailto:Adrienne@adriennegrace.com) for a one-on-one consultation to clarify the tax issues of your investments in divorce. We're here to help!*

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## WHAT TO DO ABOUT INVESTMENTS? TWO OPTIONS

- **Option 1:** Sell investments and divvy up the proceeds
  - Also divide any tax consequences.
- **Option 2:** Split the investment holdings.
  - Ex. Joint Brokerage account holds 100 shares of stock to be divided in half. You get 50 shares into your investment account and he gets 50 shares into his.
  - You keep the same cost basis and holding period for the shares in your individual accounts as existed in the joint account
  - Each of you decides how long to hold the investment, when to sell it and takes responsibility for any gains/losses at that time.

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## INVESTMENTS: OTHER THINGS TO THINK ABOUT

- Future prospects for growth
- Future prospects for income
- Your tolerance for investment risk
- Your timeframe for investing
- Liquidity

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## CASH (FLOW) IS KING

- Assets are great, but if you can't pay your bills without selling something and paying tax and penalties, then it's not the best deal.
- Liquidity: the ability to convert an asset into cash to spend.
  - Ex: Liquid assets: Bank accounts, many investment accounts
- Illiquid assets are not a source of ready cash.
  - Ex: Your house, a business, a classic car.
- Make sure that you have enough cash flow to handle the bills, now and later as well. Or- you may have to sell your house, downsize, or reduce expenses in unpleasant ways to make ends meet.

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## DEBT IN DIVORCE

- Your marriage 'estate' includes all the assets- **and most debts**- accumulated during your marriage.
- In community property states, you get half of all debt as well as half of all assets.
- In equitable distribution states, a judge can assign assets and debt "equitably".

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## CREDIT ISSUES

- Order your credit report, and if you can, get a copy of your spouse's credit report, too.
- Do a 'wallet search'- go through your wallet (or the bottom of your lingerie drawer) to identify all credit cards.
- Fill in the Liability Chart in your Workbook, with all credit cards and all the loans you know about.
- Check that list against what shows in your credit report.

Any surprises?

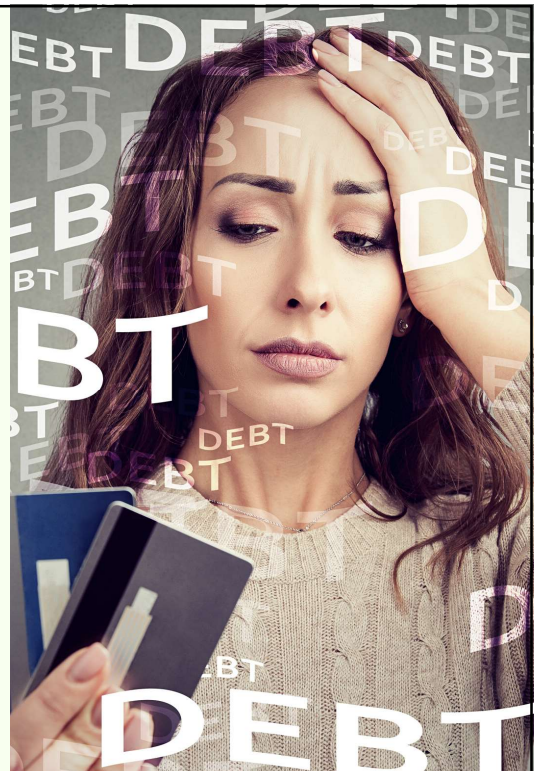
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## PAYING OFF DEBT

- Try to pay off debt prior to your divorce using joint funds
- Make a clean break if you can. No marital debts with your ex, post- divorce
- Focus on rebuilding your finances
- If you don't have a credit card in your own name, apply for one while you are still married and can use joint income
- Don't close your existing accounts until you have a new one in hand, just in case of emergency

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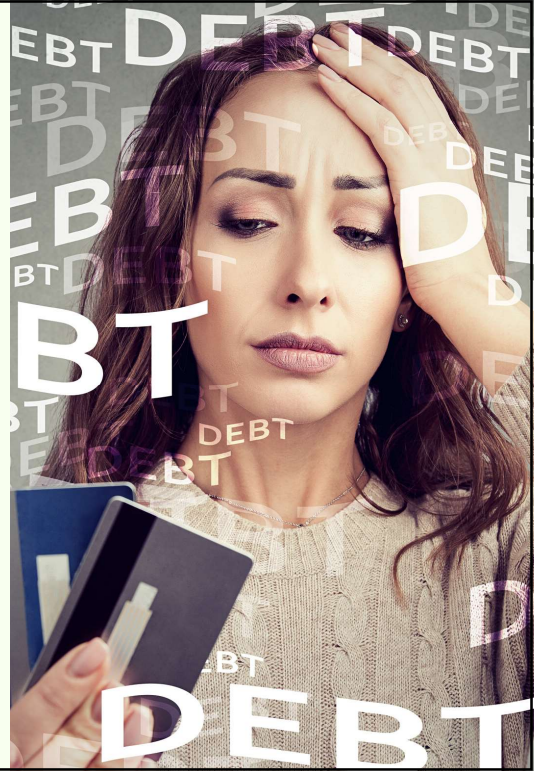
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## PAYING OFF DEBT

- Consider selling some things you don't need
  - Satisfy a loan attached to them
  - Raise some funds to pay off other debt.
- If you donate, keep track of the values. You may be able to take the total as a tax deduction
- If there are balances outstanding in joint accounts and you have sufficient credit available, transfer the balances to your individual accounts

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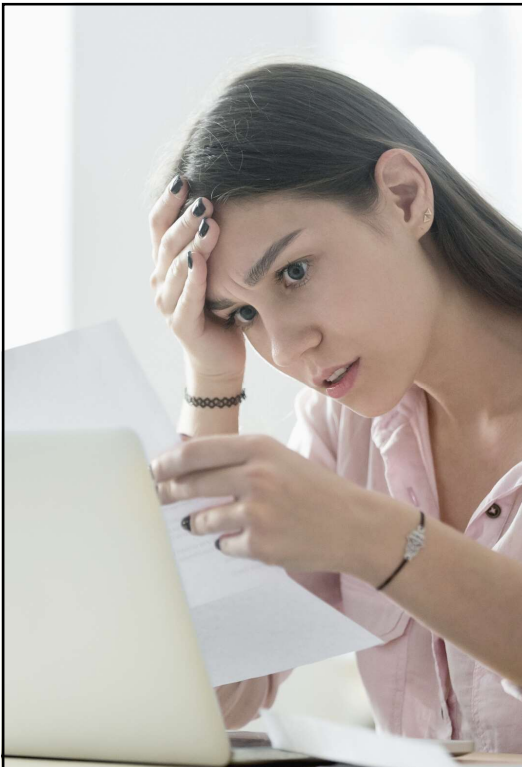


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## JOINT CREDIT ACCOUNTS

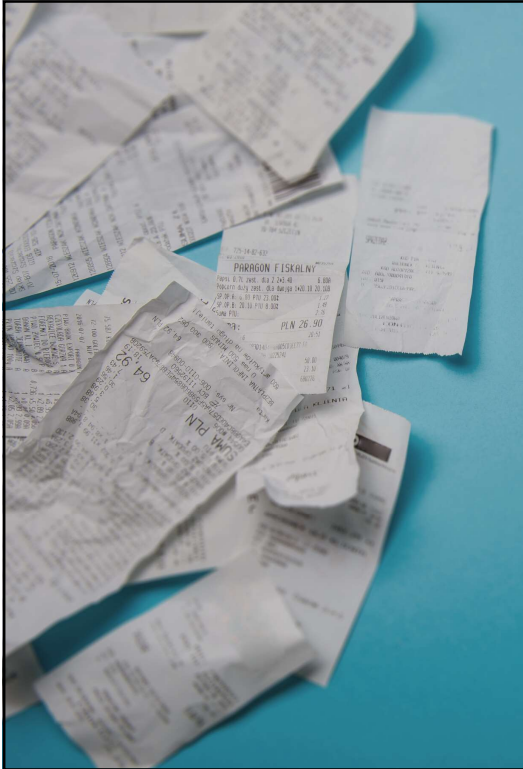
- If you have any balances outstanding in joint credit accounts that you can't transfer and can't pay off, both of you remain responsible for the repayment of the debt.
- One of you can agree to take the loan, and be responsible for its repayment
- The creditor is not bound by decisions you reach with each other regarding your divorce, even in court documents
- Creditors can proceed against both of you, if the loan is unpaid.

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## JOINT CREDIT ACCOUNTS

- Indemnity clause in the Agreement
- if he defaults on a loan and the creditor takes action against you
  - allows you to take your ex back to court to recover any funds you may have had to pay
- If the court finds against him, he may be punished with fines or even jail time and have to pay your attorney fees

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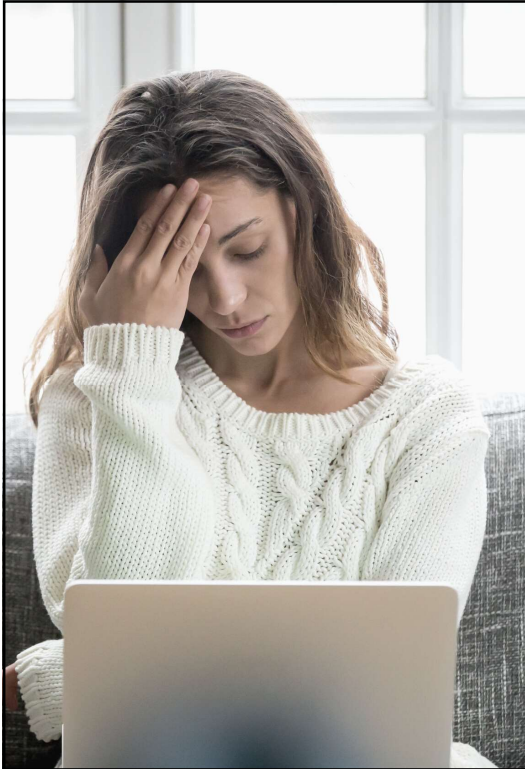
## CREDIT REPORTS

- Monitor the status of your credit regularly
- Make sure that unauthorized charges are not made, especially by your ex
- See Credit Reports in your Workbook.
- If you are in financial trouble, check with a Certified Divorce Financial Analyst™, or visit an accredited credit counseling agency for assistance in figuring out what your options are.

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## THE LAST RESORT

- If the amount of debt is overwhelming and you can't find a way out, even with the help of credit counselling, you may need to consider filing for bankruptcy.
- If this is the case and you are still married, both of you should file at the same time, to avoid having either one of you burdened with joint debt.
- Review the situation with your attorney and divorce team and consult a bankruptcy attorney for specialized advice.

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## FAMILY BUSINESS/BUSINESS OWNERSHIP (POTENTIAL HIGH VALUE)

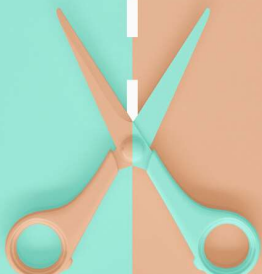
### • Should You Hire an Expert?

- Neither you nor your husband may be able to accurately evaluate the true worth of the company
- Consider hiring an expert, such as a:
  - Forensic Accountant
  - Certified Business Appraiser (CBA)
  - Accredited Senior Appraiser (ASA)
- They are well worth the cost, especially when dealing with a complex and valuable business.

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## DIVIDING MARITAL ASSETS

- This is a very complex and critical set of decisions to make.
- You must get it right the first time. There are no do-overs in divorce
- *Contact me for a private consultation on these important issues. I 'm committed to empowering you to move on to financial independence with confidence*
- As a CDFA professional, I can:
  - Provide details of tax liabilities and benefits.
  - Forecast the long-term impact on your financial situation
  - Help you make financial decisions for immediate family needs, short and long-term and retirement needs, too

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- Special issues: Business interests

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## HOW TO REACH ME

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Whew! That's a lot of information.

If you feel overwhelmed, please contact me for a personal consultation to clarify your situation, so you can negotiate with knowledge and power and get through your divorce with confidence.

### Phone

716.817.6425

### Email Address

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