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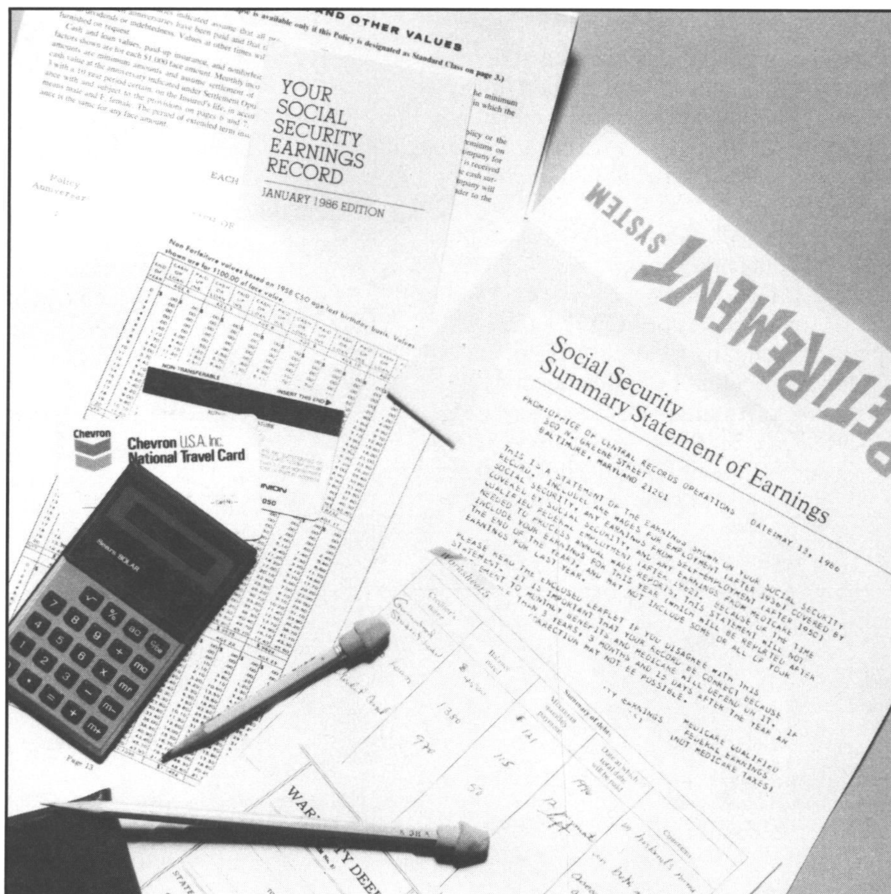
An Oregon Guide, Part 1

Property Division and Spousal Support When Divorce Occurs



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OREGON STATE UNIVERSITY EXTENSION SERVICE

Important: Please read this first!

1.

What is considered property to be divided at divorce, and the guidelines for child and spousal support, differ from State to State. This publication is based on Oregon law in effect in January 1991. *Do not use it as a substitute for seeking necessary advice from attorneys and other qualified advisers.*

2.

For information about child support, see EC 1379, *An Oregon Guide, Part 2: Child Support Decisions When Divorce Occurs.* To order copies of EC 1379, mail $1.25 plus 25¢ shipping and handling for each copy to Publications Orders, Agricultural Communications, Oregon State University, Administrative Services Bldg. 422, Corvallis, OR 97331-2119. For orders up to $100, add 15% shipping and handling. For orders of $100 or more, please call (503) 737-2513 for a price quote.

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An Oregon Guide, Part 1

Property Division and Spousal Support

A. M. Morrow

The financial decisions people make at divorce have long-term economic effects on wife, husband, and children. The decisions are interrelated: valuation and division of property, payment of debts, provisions for child support, and (in some cases) support payments from one spouse to the other.

The decisions may be made by the couple; by the couple with assistance from a mediator, counselor, or the attorneys of husband and wife; or, in a contested divorce, by the judge.

Economic information and an understanding of your financial situation are critical as you make the decisions.

It takes time and effort to become familiar with your family financial situation. The purpose of this publication, and the worksheets it contains, is to help you analyze your financial situation.

The goal of the divorce proceeding is to arrive at a "fair and equitable" settlement. What's "fair and equitable" depends on the situation. In some situations, dividing assets and debts equally would be fair and equitable; in others, it would not. What's "fair and equitable" in a short-term marriage will differ from "fair and equitable" in a long-term marriage.

In some divorces, the decisions made can be carried out at the present time. For example, if the only property to be divided is the bank account, it can be divided at the time of the settlement. In other divorces, there are promises of things to be done in the future: property to be sold, debts to be paid, payments to be made from one spouse to another.

These promises need to be in writing. If they are not, enforcement of the provisions may be impossible. The written agreement is called a "property agreement," and it becomes part of the decree of dissolution.

Do not sign a property agreement you do not understand or that you feel is unfair. If you are uncertain about what it means or if you feel its terms are unfair, consult your own attorney—not your spouse's attorney—before you sign it.

The period before divorce is difficult. You are expected to make rational decisions at a time of emotional turmoil and in a setting that does not lend itself to rational discussion. Most couples experience increased financial pressures due to separation and pending divorce.

Do not let emotions result in missed payments, lapsed insurance, or unnecessary additional financial pressures. Develop a temporary income and expense plan to keep up to date with financial obligations and, if possible, avoid incurring additional debt. Each spouse should keep records of all expenses he or she paid. If you have no money for current living expenses or if you fear your spouse will sell or dispose of assets, get legal help.

Property and debts

A divorcing couple needs to determine how to divide family property and who will pay family debts. Before doing this, you need a list of the property owned, its estimated value, and a list of debts.

Property is real estate and personal property. Real estate is land, buildings, and things growing on the land. Your home is real estate. Personal property is all property that is not real estate—automobiles, furniture, appliances, bank accounts, stocks, bonds, life insurance, pensions, etc.

Estimate the dollar value of your property. Before you estimate value, it is important to differentiate between fair market value and replacement value.

Fair market value is the price at which a willing buyer will buy an item and a willing seller will sell an item. "How much could I get if I sold my car?"

Replacement value is the cost of replacing the property with similar property. "If I don't get the car, how much will it cost me to buy one to get back and forth to work?"

As a couple discusses property values, sometimes the person planning to keep the property thinks in terms of fair market value and the other person (who will be replacing the property) thinks in terms of replacement value.

For example, the one keeping the furniture thinks, "This stuff is 10 years old and almost worthless; I couldn't even sell it." That's fair market value. The other person thinks, "I have no furniture, and it will cost a lot to get my apartment furnished." That's replacement value.

Both fair market value and replacement cost are considerations. But property must be valued the same way by husband and wife; the most common way to value property is fair market value.

Property is supposed to be divided in a fair and equitable manner. Fair and equitable is not the same as equal. It may be fair and equitable for each spouse to retain property of equal value (each gets one-half) if both spouses have similar present and future incomes.

It may be fair and equitable for one spouse to get a larger share of the property, if the other spouse has most of the income-earning ability. As you discuss who gets what part of the property, you must also consider present and future incomes of both spouses.

Plans are needed for the payment of family debts. Family debts include amounts owed on a home, car payments, student loans, bank credit cards, unpaid bills, and unpaid taxes.

The material in this section will help you begin to inventory and value property and to inventory debts.

Alice Mills Morrow, Extension family economics specialist at Oregon State University, is an attorney and a Certified Financial Planner.

This publication does not discuss the valuation of closely held corporations, family businesses, and professional corporations. It also does not discuss *property rights* in (and valuation of) professional licenses and college degrees. If your divorce involves any of these issues, you need technical and legal help beyond the scope of this publication.

If you own a home

If you do own a home, its value is property to be divided at divorce. This value may be divided in several ways:

- Sell the home and divide the proceeds between the spouses.
- One spouse buys the other spouse's share of the house.
- One spouse retains the right to live in the house for a certain period of time (while the children are minors, for example) and at some future date sells the house and divides the proceeds.
- One spouse retains the home, and the other spouse receives other property and/or income of comparable value.

When you make decisions about the house, consider carefully the economic aspects. Here are some considerations:

- What is the market value (estimated sales price) of the house?
- How long would it take to sell the house?
- How much equity do you have in the house? (Equity is the value of your investment—what you could sell it for, less the balance due on the mortgage or purchase contract.)
- How much cash would be available after the house is sold?
- Are there income tax considerations?
- Can either spouse afford to live in the house after divorce?
- What is the cost of alternate rental housing if you do not continue living in this house?

Market value or estimated sales price

Market value is the amount of money a buyer would pay for your house. Market value is not necessarily the same as the price at which a real estate agent would list the house; houses often sell below list price.

You might hire a real estate appraiser to determine the market value of the house. Before you hire an appraiser, find out the cost. When you receive the appraisal, read it carefully. Know what the appraisal includes (it usually includes the major household appliances).

Your property tax statement gives a dollar amount that the assessor's office considers market value. If you do not have the property tax statement, you can get one from your county assessor's office for about 50¢.

Since market values change continuously, the assessor's figure may not be an accurate estimate of value. For example, it may not reflect the current condition of the house or the current condition of the real estate market.

Proceeds from sale

When a house is sold, there are expenses paid by the seller. The proceeds from the sale is the selling price less the selling expense. Estimate your proceeds on worksheet 1.

If you are planning to sell your home, talk to more than one real estate broker because commissions and services differ. Check the real estate broker's contract (the listing agreement) carefully before you sign. Many of the terms are negotiable. However, the negotiations must take place before you sign the contract.

An agreement for the sale of real estate must be in writing. The earnest money agreement names the parties, describes the property, and lists the terms of payment and the conditions of sale. Read and understand the earnest money agreement before you sign.

Selling at some future date

Some property settlements provide for the sale of the family home sometime in the future; one spouse will continue living in the family home for a certain period of time. At the end of this time, the home is sold and the proceeds divided. Sometimes, the parent with the custody of minor children lives in the home, and the sale takes place when the youngest child is 18 or completes high school.

If you are considering postponing sale of the house, decide these points:

- Before the sale, who pays the principal? interest? insurance?
- Before the sale, who pays for major repairs such as a new roof? or a new furnace?
- Before the sale, who pays for routine upkeep such as lawn care? painting? minor repairs?
- Are there income tax consequences to consider?
- When the house is sold, how are the proceeds paid? Will one person have a lien on the house that will be paid off at sale? Or will the sale proceeds be divided?

Income tax consequences

When a home is sold and there is gain (the sale price is greater than the price you paid when you purchased), the gain is income and is taxable. Generally, this gain is taxable in the year in which the home is sold. There are two exceptions:

1. The tax on the gain is postponed if you buy or build another residence within a specified time.
2. If you are age 55 or older when you sell your home, you are allowed to exclude from your income up to $125,000 of the gain realized on the sale.

If there will be considerable gain on the sale of your house and if you or your spouse is age 55 or older or approaching age 55, there are important tax considerations related to the sale. Ask a tax expert about these before you decide whether to sell the house before or after the divorce or whether the house will be sold by the couple or by one spouse.

Two helpful tax publications are available from the Internal Revenue Office: 523, *Tax Information on Selling Your Home;* 504, *Tax Information for Divorced or Separated Individuals.*

The Internal Revenue Service is listed in your phone book under "U.S. Government."

The cost of staying in the family home

Often one person wants to remain in the family home after the divorce. Staying in the family home may provide security and eliminate costs and stresses associated with moving.

Worksheet 2 will help you estimate the monthly cost of living in the house. Is this affordable on after-divorce income? If it isn't, staying in the house will not provide security or eliminate stress.

In addition to costs, think about the household work. Who has been doing the repairs, maintenance, yard work, and housekeeping? If you have been doing all or some household work, will you be able to continue to do it?

If after divorce you will be employed for longer hours, you will have less time for household work. If your spouse has been doing some household tasks, can you do them or can you hire someone to do them?

Estimated cost of rental housing

Is rental housing available as an alternative to staying in the family home? If several children live with you, rental housing may be difficult to find. If rental housing is available, use worksheet 3 to estimate monthly rental costs.

In addition to the monthly rent, there are some one-time costs: moving costs, security deposits, pet deposits, telephone and utility deposits and hookup costs. And you may have to pay the first and last months' rent when you sign the lease.

As you look at the cost of renting, think of other factors related to changing housing location. Will you be closer to or farther from work? Closer to or farther from child care or schools? If you will be farther from work, child care, or schools, you will spend more money and time driving back and forth.

Household appliances and furnishings

Household appliances and furnishings are property you own and property to be divided at divorce. You need to determine who gets which appliances and furnishings, and you need to establish the fair market value of this property. If major appliances were included in the appraisal value of the house, do not list them separately.

The fair market value of property is the price someone would pay for the item. Household appliances and furnishings are expensive to replace with new ones, but the fair market value is often very low.

If you overestimate the fair market value of household appliances and furnishings, you also overestimate both the value of the property to be divided and the share of the property of the person receiving the appliances and furnishings.

Estimate the fair market value by looking at the price of similar items of the same age at second-hand stores and garage sales, and in newspaper ads. You could hire a second-hand dealer to appraise your household goods.

Automobiles and other vehicles

Cars, campers, trucks, motorcycles, etc., are property owned and property to be divided at divorce. You need to determine the value of the vehicle, who gets the vehicle, and who pays any debt owed on the vehicle.

Automobiles and most other vehicles depreciate in value over a period of years. The estimated fair market value of a car may be arrived at by using a used car guide. Reference books on values of used cars are published by the National Automobile Dealers Association (N.A.D.A.) and by Kelley Blue Book, and are available in most libraries.

A car dealer can also tell you the high and low book values for a particular make, model, and year of car. The high book value is an estimate of its retail value—what it would sell for to a consumer. The low book value is an estimate of its wholesale value—what the dealer would pay for it. These are estimates. Cars in very good condition may be sold for more, and cars in poor condition may be sold for less.

If there is money owed on the car and the debt is owed by both spouses, you need to decide who will pay this debt. In some instances, it may be possible and desirable to refinance the vehicle so the loan is only in the name of the spouse who is keeping the car.

If the debt is not refinanced, then usually one person (often the person keeping the car) agrees to pay the debt owed by both spouses. This agreement should be in writing. Usually, a written property agreement says one person "assumes the obligation" and agrees to "hold the other party free from liability" or "hold harmless the other party." This means that one party is agreeing to pay the debt.

However, if the loan is in the names of both husband and wife, the creditor (the person to whom the money is owed) can require payment from either husband or wife. If that happened, the person who was to be held free from liability pays the creditor and then may bring legal action against the spouse who agreed to pay. If you will continue to have responsibility for debt on a car even though you do not actually have the car, be sure that the car remains properly insured.

Bank accounts, stocks, bonds, etc.

If husband or wife has financial instruments such as bank accounts, stocks, bonds, and mutual funds, these are property to be considered in the divorce settlement. Make a list of these and their current values. Determine the current value, using annual or quarterly statements. If you do not know what assets you own, look at Schedules B and D of your Federal income tax returns for the past years.

Schedule B of the Federal income tax return shows if you have had interest and dividend income. If interest income or dividend income exceeded $400, the schedule indicates the financial institution that paid the interest. This gives you some idea of the accounts and other assets of husband and wife.

Schedule D of the Federal income tax return reports gains and losses from the sale of investment assets such as stocks and real estate. If assets have been sold in earlier years, the proceeds may have been reinvested into new assets.

If you do not have copies of past Federal income tax returns, they are available from the Internal Revenue Service. To order, use IRS form 4506, *Request for Copy of a Tax Return*. It takes at least 2 months, and returns are available for the past 5 years (in some instances, for earlier years).

Life insurance

Life insurance is considered in divorce agreements if:

- it has cash value (it is property owned and part of the property settlement) and/or
- it is needed as protection against the early death of a person obligated to pay child support or spousal support.

List the following information about present insurance policies on worksheet 4.

Who is the insured? This is the person on whose death benefits will be paid. The policy will state the name of the insured.

Who owns the policy? This is the person who pays the premium, names the beneficiaries, and can cancel the policy. The owner has control over the policy. The person to whom the bill is addressed is the owner. The policy states the name of the owner.

Who is the beneficiary? This is the person who receives the benefits on the death of the insured; his or her name is stated on the policy.

What is the face value? This is the amount of money that will be paid to the beneficiary at the death of the insured.

Is there a cash value? Some insurance policies not only provide payment on the death of the insured, but also have a cash value. Cash value is the amount of money the owner of the policy would receive if the policy were cancelled before the death of the insured. Typically, whole life insurance has cash value; term and group life policies do not.

Are there any loans against the cash value? Cash value may be used as collateral for loans. Loans reduce the death benefit of the policy.

Life insurance as property

If you own life insurance with cash value, that cash value is property. At divorce, you need to decide who is to own the insurance policies. The owner receives property, and the value of the property is the policy's cash value—not the face value. The owner has the right to name the beneficiary and to decide whether or not the policy will continue.

Life insurance and child or spousal support

The reason for life insurance is to provide income after the death of one of the wage earners. When there are young children, the couple may want the insurance policies on one or both parents to continue.

One common way this is done is to have a paragraph in the property agreement that states:
"(*Name of husband or wife*) shall maintain insurance on (*his or her*) life in the total sum of $________ so long as (*he or she*) is required to pay child support. The insurance should be payable to______________________as trustee for the children. If such insurance is not in force at death, the children shall have a claim against the estate for $ ________."

There are other ways to assure that insurance benefits will be available for the support of the children. If you have young or handicapped children and presently have insurance, ask your attorney about ways to assure continuation of the insurance.

When one spouse is paying spousal support or a property settlement over a period of years, you may want to continue the insurance policy on the spouse owing the payments. A paragraph in the divorce decree similar to the paragraph above is one way of doing this. Another way is actually transferring ownership of the policy to the spouse receiving the payments.

If there are either child support or spousal support obligations, the court can order present life insurance policies to continue, the purchase of additional life insurance coverage, or (if there is no insurance) the purchase of new life insurance policies.

Retirement plans

Many couples have substantial sums of money in retirement accounts or plans. Money accumulated in these accounts during the marriage, and the future benefits resulting from the contributions during the marriage, are property acquired during the marriage and property to be considered in the divorce settlement. The nonemployed spouse may be entitled to a share in the future benefits of these plans.

There are many types of retirement accounts and retirement plans, including: Individual Retirement Accounts (IRA's), tax-sheltered annuities, Keogh plans, deferred compensation, profit-sharing, employee stock ownership, and many varieties of employee pensions.

Each of these is different. A couple needs to list all of these accounts in the name of either spouse and gather as much information as possible about the plan or account.
Valuing the plans is difficult; in most cases, they should be valued by a qualified person, such as an actuary.

If you live in a metropolitan area, you may find the heading "actuaries" in the yellow pages of your phone book. Or your accountant or attorney may be able to recommend someone with actuarial training.

Before hiring the actuary, find out how much the evaluation will cost. In most instances, there is one fee for the evaluation and another fee if the actuary testifies in court.

After plans are valued, decisions need to be made about how these values will be allocated to each spouse. In some cases, the value of retirement accounts/plans is assigned to the employed spouse, and assets of equal value are assigned to the other spouse.

In other cases, the present value of the future benefits of the retirement accounts/plans is divided. And in still others, the retirement assets are not divided until the benefits of the accounts/plans are actually received.

If the divorce settlement requires that, at retirement, a portion of the pension benefits be paid directly to the former spouse, a "qualified domestic relations order" is necessary. This must be prepared by an attorney.

The alternatives differ with type of plan and individual situations. It's impossible to generalize about retirement accounts/plans. The following sections have information about several retirement accounts/plans.

IRA's and Keogh plans

If payments have been made to IRA's or Keogh plans during a certain year, this information will appear on page 1 of your Federal income tax return (Form 1040) for that year. The accounts in which these payments were deposited issue annual statements that indicate present value.

If the money is withdrawn from the account, there are income taxes due and perhaps penalties. Therefore, the present value of the IRA or Keogh plan is the account value less taxes and penalties due if money is withdrawn.

An IRA can be transferred from one spouse's name to the other spouse with no tax consequences. (If, however, the other spouse withdraws the money from the new IRA, there will be income tax due and a 10 percent penalty if the withdrawing spouse is not 59 1/2 years old.)

A Keogh plan is harder to transfer because of income tax consequences. Before terminating a Keogh plan to divide funds, carefully check the income tax consequences.

Other employee plans

Employee wage receipts usually indicate whether or not an employee is participating in deferred compensation tax-sheltered annuities, profit-sharing, or employee stock ownership plans. Gather as much information as possible about these from the personnel office at the place of employment.

You need to know what rights, if any, the employee has to withdraw funds from the account at the present time and, if the employee has such rights, what taxes are due on amounts withdrawn.

Pension plans

There are many kinds. Typical plans include Federal and State civil service retirement, military pensions; and industry, company, and union retirement. Check with employers or labor unions to see what pension plans exist for the employed spouses. Get copies of booklets explaining the plans and benefits.

The information you'll need includes the following:

- *Termination benefits*. This is the amount, if any, the employee could withdraw if he or she quits or is fired at the present time.
- *Vesting*. When the pension is vested, the employee has the right to some future benefits from the plan, even if she or he quits or is fired.
- *Maturity*. When the plan matures, the employee has the right to the benefits. Usually, this is after the employee has worked a specified number of years and reaches a specified age.
- *Amount of future benefits*. This is the amount that will be paid when the plan matures. It may be expressed as a percentage of the high 3 or 5 years' salary. It may be available in a lump sum or as a payment made monthly or annually until death. Look for information about the benefits paid at early or late retirement, and the benefits paid if the employee becomes disabled or dies before retirement.

Note: This section doesn't cover Social Security benefits. However, Social Security does provide income at retirement age for an employed person and (under some conditions) for a former spouse. This is discussed in "Spousal support," below.

Debts

In addition to dividing your property, you must determine who will pay which part of the family debts.

Make a list of all of the debts of husband and wife. Include home mortgage, car payments, student loans, credit card accounts, unpaid bills, and unpaid taxes. Decide who will be responsible for each debt.

Usually, one person "assumes the obligation" and agrees to "hold the other party free from liability" or "hold harmless the other party." This means that one person agrees to pay.

If he or she does not pay, the creditor must collect from the other spouse. That spouse has the right to bring action to collect from the spouse who agreed to pay.

Summarize information about debts on worksheet 5.

Proposed property division

Make a list of all the property owned and debts owed. List the present fair market value for property and the amount owed on debts. Determine the net value (assets minus debts) each spouse would receive under this proposal. Record the information on worksheet 6.

The property settlement, and what is fair, are related to the present and future income-earning ability of both spouses. Review the income of both spouses before you determine the final property settlement.

If the property settlement includes promises to pay amounts or to sell property in the future, it must be in writing. This is called a "property agreement."

Do not sign a property agreement until you understand it. If you are uncertain about what it means or if you feel it's unfair, consult your own attorney—not your spouse's attorney—before you sign it.

Spousal support

Spousal support is payments made after divorce by one spouse to the other spouse. It is sometimes called "alimony" or "maintenance." There is no automatic right to spousal support.

It's awarded when one of the spouses has no means of adequate support. When it's awarded, it is usually for a temporary period to give the spouse time to become employable.

In deciding whether or not one spouse should pay the other spouse support, consider the earning capacity of each and what happened to the earning capacity of each during the marriage.

Did one spouse decrease earning capacity during the marriage by staying home to care for children? Did one spouse decrease earning capacity during the marriage by quitting a job to move when the other was transferred? Did one spouse increase earning capacity by acquiring additional education?

Look at present earnings. If both of you are employed and have similar incomes, there is most likely no need for spousal support. If one spouse is not employed, is it possible for that spouse to become employed? Will that person's health and family responsibilities allow employment? If so, estimate the probable salary by checking the local newspaper or talking with an employment counselor at the State employment office.

Is it possible for the unemployed or underemployed spouse to increase earnings by attending school or participating in a training program? If so, how much would this cost, and how long would it take? One spouse may help support the other while this "employment rehabilitation" is taking place.

In addition to the present earnings of husband and wife, consider what earnings will be in 5 or 10 years—are they likely to increase or decrease? Estimate also the income from pensions, Social Security, and investments that will be available for each spouse after retirement age.

Social Security

A married couple

If either husband or wife has worked under Social Security coverage, the married couple has retirement benefits either as worker or as spouse of the worker. If both husband and wife worked all their adult lives and had high earnings, both will receive benefits as workers.

If one (usually the wife) never worked, stopped working for several years, or had low earnings, that person will receive benefits as the spouse of the worker.

A divorced couple

If a couple divorces, one spouse may still be entitled to Social Security benefits under the other spouse's work record.

As of January 1, 1985, a divorced person who is at least 62 years of age is eligible for benefits based on a former spouse's earnings, even if the former spouse is not retired. If the divorced person has been divorced at least 2 years, was married at least 10 years, and is 62 years of age, benefits will be paid under the former spouse's work record.

If a divorced person has his or her own pension based on work in public employment not covered by Social Security, the Social Security benefit payable on account of the former spouse's Social Security may be reduced by the amount of the public pension.

The divorcing couple approaching retirement age needs to consider what Social Security and retirement benefits will or will not be available for husband and wife after the divorce.

The Social Security office is listed in your phone book under "U.S. Government, Health and Human Services." If you are at least 60 years old, they can provide fairly accurate estimates of your future benefits. If you are less than 60, they can tell you the average benefits for retired people with your work history.

To receive these estimates, call the Social Security office in your area and ask for the "Request for Earnings and Benefit Estimate Statement."

Health insurance

If one spouse is presently insured under the other spouse's health insurance policy, the couple needs to determine how both spouses can continue health insurance coverage after divorce.

If both spouses are employed, does each have health insurance coverage available through employment and, if so, when can each transfer to his or her own policy? Some health insurance policies have specified periods for changes and enrollment.

If one spouse is unemployed, it is sometimes possible to continue coverage under the employed spouse's policy. Ask the clerk of the county court for the insurance notice that tells a dependent spouse of the right to continue health insurance coverage. Check with the employer to see how much this will cost. Which spouse will pay the premium?

If one spouse is presently unemployed, would she or he be able to obtain her or his own coverage? Group insurance or individual insurance policies are two health insurance options available. Many individuals are eligible for group insurance through places of work, unions, or fraternal organizations.

Whenever group insurance is available, it generally costs from 15 to 40 percent less than the same insurance through an individual plan. There may be other advantages to group insurance, such as no requirement of a physical examination to qualify for coverage, no exclusion for a preexisting condition, and no canceling of a policy unless the policyholder leaves the group.

Estimated income/expense statement

A projected income/expense statement shows estimated income and expenses in the future. Use worksheet 7 to estimate income and expenses for husband and wife after divorce.

As you fill this out, list all sources of income in the income section. If as part of the property settlement, you receive cash that you will invest, list anticipated earnings from the investment. If the parent with custody of the children receives child-support payments, the parent receiving the payments lists them as income, and the person paying lists them as expenses.

It's usually not possible after divorce to support two households at the same level as the one household before divorce. Completing the projected income/expense statement will help you visualize your own future financial situation. If you complete the statement for both husband and wife, it will help both of you understand and evaluate the fairness of your proposed settlement.

Other considerations

Credit

The ability to borrow money is based on your creditworthiness. Your credit history stored at the credit bureau tells a credit grantor about your past ability to handle money. This credit history and your income are the two biggest factors that determine creditworthiness.

After divorce, a creditor cannot close your account or change its terms unless you're unable or unwilling to pay. However, the creditor can require you to submit a new credit application if the original credit account was based on your former spouse's income.

To get credit after divorce, you must be creditworthy—that is, you must have a good credit history (including your years before the divorce) and the necessary income. You don't have to indicate maintenance or child support payments as income unless you want to have them considered as part of your income.

If you do indicate these as income, the credit grantor must count those payments as part of your income. The credit grantor may, however, verify the regularity with which those payments are made.

If you have no credit rating

The best way to develop a credit rating is to develop a good employment record and have a checking and a savings account. Then open a small charge account with a local retail store, get a credit card with a low limit, or get a secured loan from a financial institution. Make the payments on these promptly as they become due, and you will develop your own good credit history.

Income tax

Divorce has income tax consequences. Some information is presented here. You may also want to obtain IRS publication 504, *Tax Information for Divorced and Separated Individuals*. To order IRS publications, look under "U.S. Government" in your phone book.

Before divorce

Your marital status on December 31 determines your tax filing status for that year. For example, if your divorce was not final on December 31, 1990, you may file a joint return for 1990 even though your divorce is final when filing the 1990 return in April 1991.

If you are divorcing, filing a joint return, and expect a refund, determine how the refund will be divided. This is property that belongs to both of you.

If you are divorcing, filing a joint return, and owe additional taxes, determine who will pay the tax. This is a debt you both owe.

If your divorce is not final, you may also file as a head of household if you meet all the conditions outlined in the Form 1040 instruction book.

After divorce

If you were divorced on December 31, you cannot file a joint return. You file either as a single person or as a head of household. The income tax booklet explains who may file as head of household.

Divorced parents file separate returns and must determine which parent claims the child as a dependent. The parent who has major physical custody is entitled to claim the child as a dependent, regardless of the amount of support provided by the other parent.

A custodial parent can waive the right to claim the child as a dependent in a given year, and the other parent can claim the child as a dependent. If this is done, the other parent must attach to his or her tax return a signed statement from the custodial parent waiving the dependency exemption.

Either parent can deduct medical expenses he or she paid for the child, regardless of who claimed the child as a dependent.

For tax purposes, child support is not income to the parent receiving it and is not deductible to the parent paying it.

Maintenance or spousal support payments are usually but not always considered taxable income to the person receiving them and not always deductible to the person paying them. Before finalizing agreements about spousal support, get tax advice.

Wills and estate planning

Estate planning is deciding who will receive your property at your death. You may have already done such planning—preparing a will, and naming beneficiaries on insurance policies, pension funds, IRA's, certificates of deposit, or government bonds. If you are divorcing, review these and see if changes are needed.

If you have minor children and, in the event of your death, you would want your property to be used for your children, you need to determine the best way to do this and to provide for someone to manage the property for the children. Two alternatives are:

1. write a will naming a conservator to manage the child's property *or*
2. develop an estate plan that, if you died, would pass your property into a trust for the benefit of the children. The trust would be managed by a trustee you name according to a trust agreement you prepare.

A new financial life

Your income and expenses after divorce will not be the same as they were during the marriage. A saving/spending plan—a budget—will help you save for emergencies, plan ahead for big expenses, and control your financial life. Use worksheet 8 to develop your plan.

Step 1: Estimate your income.

The first step in making a saving/spending plan is to figure out your income. It is important to be accurate and include only income that is "for sure," not what "might be."

If your income varies from month to month, figure average monthly income. If the yearly estimated income from one source is $9,600, the average monthly income is $800 ($9,600/12 months = $800 month).

If there are times of the year when you have no income, you need to save money for these times. Know which months you expect less income and which you expect more.

Step 2: Estimate your expenses.

Use old bills, canceled checks, and receipts to help you estimate expenses. Remember there always are expenses you don't expect—auto repairs, dental and medical bills, and appliance repairs, for example. Set up an emergency fund to pay for these things.

Some expenses, such as car insurance, holiday expenses, back-to-school clothes, and property taxes, occur only once or twice a year. Know the months you have these expenses. Figure the average monthly cost. For example, if the car insurance bill is $240 for 6 months, the average monthly cost is $40 ($240/6 months = $40). Set aside $40 each month for this expense.

Change the list of expenses on worksheet 8 to fit you. If you have expenses not listed, write them in.

Step 3: Make a monthly saving/spending plan.

After you have estimated monthly income and expenses, make a saving/spending plan each month. On a piece of paper, list the income available to spend this month. Using your list of expenses, itemize the expenses that you will have this month. Look ahead to see what money must be set aside for future expenses. It's okay if every penny isn't budgeted. In fact, it's good to have some leeway for the unexpected.

Step 4: Keep track of actual income and expenses.

During the month write down the income you actually receive and the money you spend. Compare actual expenses to your plan. If you overspend in one area, adjust the plan.

Glossary

actuary—a person skilled in calculating the value of life interests, annuities, and insurance.

alimony—payment made after divorce by one spouse for the support of the other spouse. Also called **spousal support** or **maintenance**.

assets—money, property, and money—related rights owned by a person; property of all kinds, real and personal, tangible and intangible.

decree of dissolution—restores the parties to the status of unmarried persons.

dissolution—commonly referred to as divorce, the legal act of terminating a marriage.

earnest money agreement—a deposit paid by a buyer to hold a seller to a deal and to show the buyer's good faith; an assurance that the buyer is in earnest and good faith.

estate plan—arranging for the disposition of one's property after death.

group life insurance—a form of insurance whereby individual lives of a group of persons, usually employees, are covered by means of a single or blanket policy; such insurance is renewable on a year-to-year basis and does not accumulate in value (that is, no cash surrender value is built up).

lien—the right to enforce a charge or encumbrance on the real or personal property of another for the satisfaction or payment of some debt or claim.

property settlement agreement (also called **property agreement**)—a written contract between divorcing spouses that lists and divides the property and financial obligations; it may also include plans for custody, child support, and spousal support.

real property—land and things attached to the land, such as buildings, fences, and things growing on the land.

term life insurance—a form of insurance that promises payment only within the specified term covered by the policy, though such policies are commonly renewed each term. Term policies have no cash surrender value.

valuation—the act of determining the estimated monetary worth of a thing.

whole life insurance (sometimes called **straight life insurance**)—insurance for which premiums are collected as long as the insured person lives. Whole life policies build up cash reserves.

Worksheets

Worksheet 1

Estimated proceeds from sale of house		
Estimated sales price		$________(a)
Selling expenses		
Realtor's commission (6%-8% of sales price)	$ ________	
Fix-up costs connected with sale: paint, minor repairs, etc.	________	
Seller's portion of closing costs (approximately 1% of sales price)	________	
Amount required to pay off loan(s) in full	________	
Other sales costs	________	
Total selling expense		$________(b)
Estimated proceeds from sale (a minus b)		$________

Worksheet 2

Estimated cost of staying in the family home	
Monthly mortgage payment	$ ______
Monthly insurance payment*	______
Monthly property tax payment*	______
Gas, electricity	______
Water and sewer charges	______
Garbage pickup	______
Maintenance and repair	______
Yardwork	______
Homeowner fees, association fees	______
Other	______
Total monthly cost	$ ______

* These may be included in the mortgage payment. If not, divide the yearly expenses by twelve to arrive at the monthly cost.

Worksheet 3

Estimated cost of renting	
Monthly costs	
Rent	$ ______
Gas, electricity	______
Yardwork, if it is the renter's responsibility	______
Other	______
Total monthly charges	$ ______
One-time costs	
Moving	$ ______
Deposits (security, cleaning, pet, etc.)	______
Utility hookups and deposits	______
Other	______
Total one-time costs	$ ______

Worksheet 4

Summary of life insurance policies						
Life insurance company, policy #	Name of insured	Policy owner	Beneficiary	Face Value	Cash value if any	Loans against cash value

Worksheet 5

Summary of debts (include all debts, credit card accounts, back taxes, loans, student loans, etc.)				
Creditor's name	Balance owed	Minimum monthly payment	Date at which total debt will be paid	Comments

Worksheet 6

Summary of proposed property division [a]							
Assets	Fair market value (FMV)	FMV allocated to wife	FMV allocated to husband	Debt	$ of debt allocated to wife	$ of debt allocated to husband	Comments

Value of assets allocated to wife	less	Value of assets allocated to wife	equals	Net value of property allocated to wife
$ ______________	-	$ ______________	=	$ ______________
Value of assets allocated to husband	**less**	**Value of assets allocated to husband**	**equals**	**Net value of property allocated to husband**
$ ______________	-	$ ______________	=	$ ______________

[a]If this division of property between spouses is not what the couple desires, see next page.

Worksheet 6—Explanation

If the net values allocated to each spouse are not what is desired, the couple may either reconsider who gets what property or adjust the allocation by having one spouse make a payment to the other spouse. If cash is available, the payment may be made in a lump sum. If not, the payment may be paid in installments over time.

Example: A couple wants to divide their property equally. They decide that the wife will keep the house and be responsible for mortgage and the wife would keep the car and be responsible for the loan remaining on it. The husband will keep the value of his retirement plan and the truck and camper, and the husband is responsible for the loan remaining on the truck. They have divided their furnishings equally. They have no other property. They completed worksheet 6 and determined that the husband was to pay the wife $750 in order to divide property equally.

Worksheet 6

Summary of proposed property division

Assets	Fair market value (FMV)	FMV allocated to wife	FMV allocated to husband	Debt	$ of debt allocated to wife	$ of debt allocated to husband	Comments
House	56,000	56,000		42,000	42,000		
Retirement Plan	8,000		8,000				cash value as of 1/1
Car	4,200	4,200		1,200	1,200		
Camper	8,000		8,000	3,700		3,700	
Truck	6,200		6,200				

Value of assets allocated to wife	less	Value of debts allocated to wife	equals	Net value of property allocated to wife
$ 60,200	-	$ 43,200	=	$ 17,000
Value of assets allocated to husband	**less**	**Value of debts allocated to husband**	**equals**	**Net value of property allocated to husband**
$ 22,200	-	$ 3,700	=	$ 18,500

Net assets allocated	Desired allocation	Difference
wife $17,000	50% of 35,500 = 17,750	17,750 -17,000 750
husband $18,500	50% of 35,500 = 17,750	18,500 -17,750 750
Total $35,500		

If the husband (who has received more than the desired one-half) pays the wife (who has received less than the desired one half) $750, each will have received an amount equal to half the net value of the assets.

Husband $18,500 in property less $750 payment = $17,750
Wife $17,000 in property plus $750 payment = $17,750

Worksheet 7

Projected income/expense statement

For the period from ______________, 19 ___ to ______________, 19 ___

	Name	Name
Income		
Salaries (before deductions)	$ ________	$ ________
Commissions, tips, bonuses	________	________
Investment income		
Interest	________	________
Dividends	________	________
Profit from rental property	________	________
Profit from sale of assets	________	________
Other investment income	________	________
Alimony/child support	________	________
Cash gifts	________	________
Other income	________	________
Total income	$ ________	$ ________
Expenses		
Taxes		
Federal income	$ ________	$ ________
Social Security (F.I.C.A.)	________	________
State income	________	________
Property	________	________
Other	________	________
Housing		
Rent or mortgage payment	________	________
Utilities	________	________
Property and liability insurance	________	________
Furniture and other durables	________	________
Household maintenance	________	________
Other real estate payments	________	________
Transportation		
Car payment	________	________
Gasoline, repairs, tires	________	________
Insurance, licenses	________	________

Expenses (continued)	Name	Name
Food	$ ________	$ ________
Clothing, clothing care	________	________
Recreation, hobbies	________	________
Personal care	________	________
Health care		
Services and medications	________	________
Health insurance	________	________
Education, publications	________	________
Life and disability insurance	________	________
Liabilities	________	________
Bank loans	________	________
Charge accounts/credit cards	________	________
Other	________	________
Savings		
Savings account	________	________
Investments	________	________
Pension contributions	________	________
Payments to others		
Child care	________	________
Family allowances	________	________
Charitable contributions	________	________
Gifts	________	________
Child support/alimony	________	________
Business/professional expenses	________	________
Other	________	________
Total expenses	$ ________	$ ________
Total income	$ ________	$ ________
Minus total expenses	________	________
Difference	$ ________	$ ________

Worksheet 8

A spending/saving plan

Income for the month of ______________	
Income	**Amount**
Job/self employment	______
Job/self employment	______
Overtime and part-time work	______
Alimony and child support	______
Social Security	______
Veteran's benefits	______
Worker's Compensation	______
Food stamps, WIC and AFDC	______
Unemployment insurance	______
Other ______________	______
Total income this month	______

To convert weekly income to monthly income, multiply weekly income by 4.33.

Expenses for the month of ______________	
Expense	**Amount**
Rent or mortgage	______
House and auto insurance	______
Property taxes	______
Federal/Oregon income taxes	______
Electricity and gas	______
Water and sewer	______
Telephone	______
Cable TV	______
Child care	______
Life and health insurance	______
Loan payments	______
For car	______
For furniture and appliances	______
For other items	______
Food at home	______
Food away from home	______
Clothing	______
Transportation (gas, auto parts and repair, bus fare)	______
Contributions	______
Personal care	______
Medical/dental	______
Recreation	______
Household supplies	______
Educational expenses	______
Other ______________	______
Savings	______
Total expenses this month	______

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