

# Ten Most Frequently Asked Questions Regarding

# FAQs



## Divorce Settlements

### **Q: Am I going to receive spousal support?**

**A:** The tests for spousal support (also called "alimony" or "maintenance") include some of the following; however, keep in mind that no two cases are the same. You need to seek individual advice in order to determine how the specifics of your case may impact your ability to receive spousal support:

- **Need.** Can you support yourself with earned income plus investment income?
- **Ability to pay.** Does the payer of alimony have sufficient funds to pay?
- **Length of marriage.** A long-term marriage (ten years or more) is typically a stronger case for the lower-earning spouse.
- **Health of both parties.**

### **Q: Will I lose some or all of my pension as a result of divorce?**

**A:** Pensions and retirement plans are marital assets; generally speaking, the portion you earned during your marriage will be subject to division. Depending on the state or province you live in, the portion that was earned before your marriage could also be considered a marital asset. However, it may be possible to keep your pension intact and have it offset with other assets.

### **Q: I'm the custodial parent. Should I keep the house?**

**A:** This is a great question. The answer is sometimes yes, sometimes no. It's important to pinpoint exactly what it will cost to maintain the home, factoring in taxes and insurance. The next step is to analyze if there is enough money coming in to stay comfortable in the home (in other words, pay the bills each month and keep the house in good repair). Once that has been determined, the advisability of retaining the home must be compared to the advisability of giving up other assets (such as liquid accounts, retirement plans, etc.). Finally, all decisions need to be weighed against current economic and stock market conditions. Certified Divorce Financial Analysts are trained to help people answer this question before they commit to a settlement that cannot be changed.

**Q: What if I brought a house into the marriage that was in my name only – but after we married, I added my spouse's name to the deed?**

**A:** In this case, the whole house could be considered marital property. You might have made a "presumptive gift" to the marriage and should consult with a family law lawyer to discuss your options. In some areas, if your spouse moved into this house, and both of you lived there during your marriage, the house is marital property no matter whose name is on the title. Again, you need to discuss your unique situation with a family law lawyer.

**Q: Is my IRA/RRSP considered marital property? It's in my name only.**

**A:** Everything acquired during the marriage, no matter whose name it's in, is typically considered marital property. In some states/provinces, the increase in value of separate property could also be considered marital property. If you are going through a divorce, you should evaluate the financial drawbacks to having your IRA/RRSP included in the list of assets you will retain post-divorce. Remember, the funds in the IRA cannot be accessed before 59 1/2 without paying a 10% penalty for early withdrawal. Regarding RRSPs, there is a little-known window of opportunity to access your spouse's accounts before retirement *without* triggering the penalty. Talk to your CDFA™ professional about your options.

**Q: I have never worked. Can I get Social Security?**

**A:** If your spouse has worked and if you have been married for 10 years or more, than you are entitled to one-half of your spouse's Social Security or your own, whichever is higher - even if you are divorced. Your spouse still retains 100% of his/her Social Security benefit. This is an automatic guarantee and therefore it is not a negotiation point in a divorce.

**Q: How do we figure how much child support should be paid?**

**A:** In the USA, every state has Child Support Guidelines that are mandated by the state. However, the Guidelines get tricky when one (or both) spouses is an independent business owner who can control their wages. In this situation, it typically helps to bring in a financial or tax expert who can help determine the true potential income of the partie(s).

Child support in Canada is determined by guidelines that are mandated by the Federal court.

Generally speaking, it is based on these factors:

- ages of minor children (under 18)
- number of minor children
- income of the parents

These factors are plugged into a formula, which then supplies a recommendation for the Court. The Guidelines may not cover the children's actual costs - for instance, extraordinary medical expenses, private school tuition, or extracurricular activities are generally not covered. Speak to your lawyer about the possibility of increasing the Guideline amounts to cover reasonable expenses.

### **Q: Do we have to go to court to get divorced?**

**A:** Only if you can't reach an agreement. Then, a court date is set and a judge hears the case. Less than 2% of all divorce cases go to trial in the United States.

### **Q: What is a QDRO and why do I need one?**

**A:** A QDRO (or Qualified Domestic Relations Order) is the legal document that divides up a qualified pension or retirement account (including 401k's) pursuant to a divorce. The Judgment of Divorce is not sufficient to divide up qualified plans, a QDRO is needed. There are many nuances that go into QDRO's and make it an advocating (versus neutral) document. In order to protect your assets, be sure to obtain qualified advice in this area from a specialist.

### **Q: Who can help us to sort out our finances during divorce?**

**A:** A Certified Divorce Financial Analyst is trained to help people through the maze of divorce. They sift through the financial issues including incomes, expenses, assets, tax issues, pensions, division of property, and help you reach an equitable solution that is fair to both parties. A CDFFA professional has specialized skills and experience that enables him/her to analyze financial issues in divorce in their long-term context. A CDFFA can take the offer on the table and project out 5, 10, 20 years to show you what you'll have to live on if you sign the agreement. Click on the "Find A CDFFA" button at the top right to find a list of CDFFA professionals in your area, or call us at 1-800-875-1760 and IDFA can supply a list of names to you.

### **Q: How is a CDFFA™ professional different from a financial planner or accountant?**

**A:** There are many designations for a financial expert, including: financial planner, Certified Financial Planner® (CFP®), Chartered Financial Consultant (ChFC®), accountant, Certified Public Accountant (CPA), Chartered Accountant (CA), Certified General Accountant (CGA), and Certified Divorce Financial Analyst® (CDFFA™).

The role of the financial planner (usually a CFP or ChFC) is to help people achieve their financial goals regardless of whether they are divorcing or happily married. After determining the client's goals, the next step is to take an inventory of current assets and liabilities and then the planner looks at what needs to be done to achieve the client's goals.

Conversely, an accountant (usually a CPA in the USA or a CA or CGA in Canada) typically looks at the details of the scenario as it is today and makes no future projections. In a divorce, they are hired to calculate the tax effect of dividing property and the effect of spousal and child support for one or two years. They typically do not project further into the future. They may also be retained to perform an audit of account activity or to perform forensic accounting functions to help find "hidden assets."

To best meet the needs of divorcing people, you need a blend of these two ideologies; the CDFA™ designation was created to fill this need. The role of the CDFA™ professional is to assist the client and his/her lawyer to understand how the financial decisions he/she makes today will impact the client's financial future based on certain assumptions. That way, the client can make informed decisions about his/her future.