



**The Estate Planning
Council of
Rochester**

Estate Planning and Divorce

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Steps to consider if you are getting divorced:

1. Find out what you can and cannot alter
 - a. Many beneficiary changes are locked while a divorce is under way. Once a divorce action is commenced, there are automatic restraining orders that accompany the filing of the divorce summons that protect against changes.
2. Update your health care proxy, power of attorney, will
 - a. You may want to change beneficiaries, executors, guardianship to the extent allowed before the divorce. Definitely after. You do not want to leave an ex-spouse (or soon to be ex) or a member of that person's family in a position of control.
 - b. Do not depend on NY EPTL 5-1.4 which revokes any nomination of an ex-spouse as a trust fiduciary, executor, agent, guardian, representative, trustee, or attorney-in-fact after the divorce. You may have named alternatives who are members of that family.
3. Preparing for Divorce
 - a. Clients have process choices.
 - b. Put together a comprehensive listing of and identification of assets and debts.
4. Look at your prenuptial (or postnuptial) agreement – check consistency with your estate plan
5. Amend your trust
 - a. See 2. – there may be issues of guardianship or alternative trustees.
 - b. Again, do not depend on NY EPTL 5-1.4.
6. A warning: the period of time between the execution of a final divorce settlement and the receipt of a signed judgement of divorce may be lengthy. Therefore, parties should be protected by a provision in the divorce settlement agreement stating that each party has waived his or her right of election and other rights under the EPTL.
7. Revisit the estate plan after the divorce is final
 - a. There will have been things that could not be changed until after the divorce is final.
 - b. If a QDRO was issued as part of the divorce settlement, insure that it is executed timely. The same is true for distributions from IRA's, HSA's, and MSA's.
 - c. There are multiple other items to be considered to implement the divorce settlement.

1. Find out what you can and cannot alter

The "Hold Still" Order with the commencement of a Divorce Action

NOTICE OF AUTOMATIC ORDERS (DRL 236)

PURSUANT TO DOMESTIC RELATIONS LAW SECTION 236 Part B, Section 2, as added by Chapter 72 of the Laws of 2009, both you and your spouse (the parties) are bound by the following AUTOMATIC ORDERS, which have been entered against you and your spouse in your divorce action pursuant to 22 NYCRR §202.16(a), and which shall remain in full force and effect during the pendency of the action unless terminated, modified, or amended by further order of the court or upon written agreement between the parties.

1. Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

2. Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax-deferred funds, stocks or other assets held in any individual retirement accounts, 401(k) accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court.

3. Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

4. Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

5. Neither party shall change the beneficiary of any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

TAKING CARE OF YOURSELF

There may be substantial impact to your emotional and psychological well-being at the time of your separation or divorce.

The impact of separation and divorce may manifest itself in some or all of the following ways:

- A **“crisis of identity”**. When you have shared a life with someone, how can you start to envision life again as a single person? Who will that new single person be?
- A **“crisis of faith” or challenge to long-held assumptions**. It is hard to make sense of the experience. How can your marriage be ending when it showed so much life and promise at the beginning? Why is it happening, when you both once shared so many values and beliefs?
- A **“crisis of survival”**. The body itself seems to perceive the experience as an attack on its ability to survive. You may experience sleep disturbances, eating disturbances, increased vulnerability to outside viruses and disease, and even become more accident-prone.

How can you find a way to thrive in the context of separation or divorce?

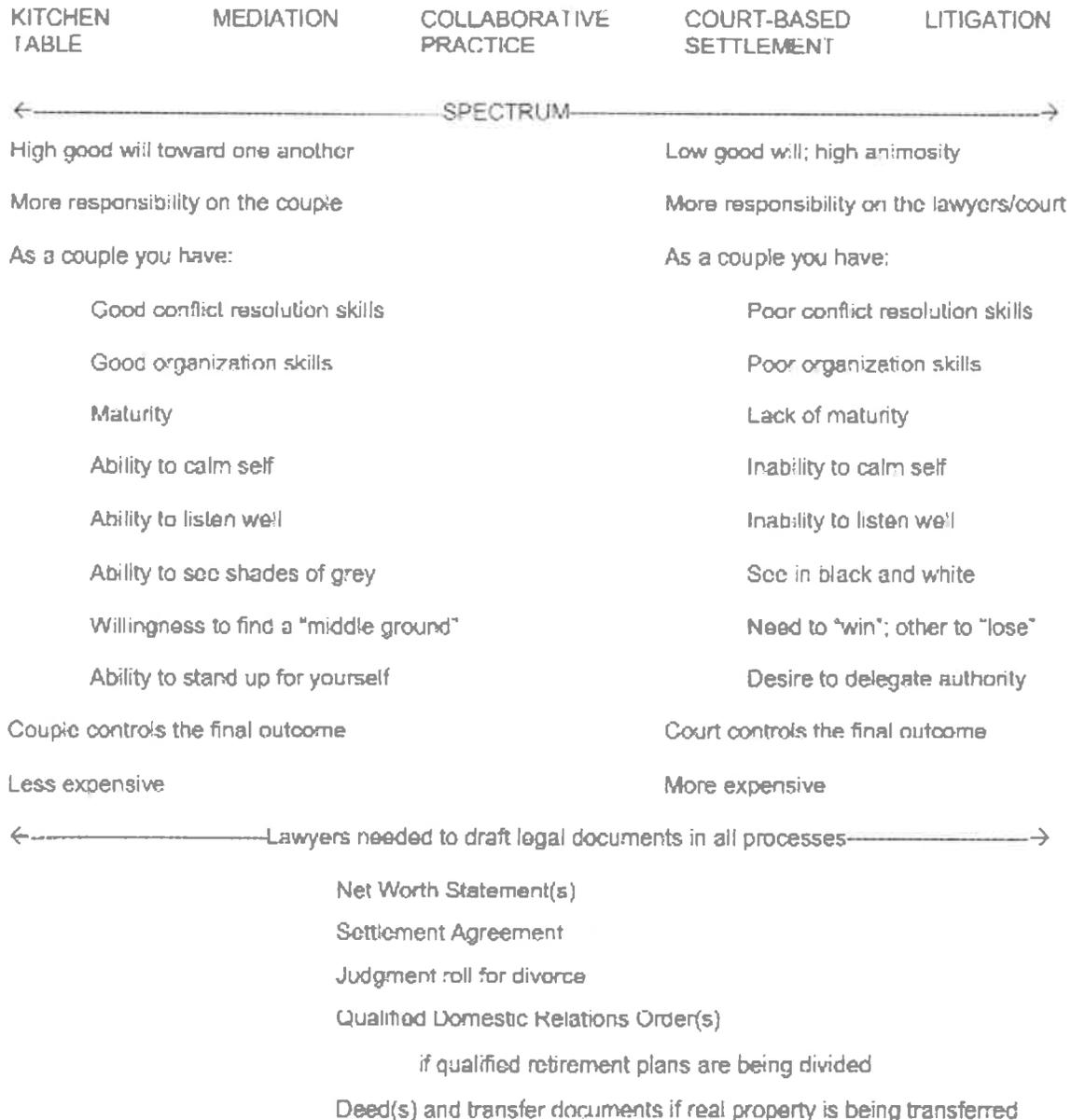
Know that self-care is not selfish. Ending a marriage is more likely to increase rather than decrease the number of one’s responsibilities and obligations as many jobs that had been shared are no longer. Meeting these new obligations – to children, employers, etc. – must begin with responsible care for your own mental and physical health. Do not wait until the divorce is final to begin paying attention to things like:

- **Healthy Eating and Exercise**. Healthy eating and exercise are known to be directly connected to mood and overall emotional health. Keeping your body properly fueled with a sensible diet will help you stay focused and stable. Even modest exercise done regularly will brighten your moods and increase your confidence.
- **Personal Connections**. While it may be tempting to withdraw, this is the perfect time to lean into your friendships and other relationships. Seek out new connections, whether at work, at church, or in your neighborhood. You may need to tell your story for awhile, but your life doesn’t need to be permanently defined by the words “my divorce”. Receive the genuine concern and support from people who care about you.
- **Support Groups or Therapy**. You may need months or years to be able to sort out all the questions you have from the breakdown of your marriage. Giving yourself time to do that is critical. When asking these questions is getting you nowhere, and going in circles, it can take a lot of emotional energy.

Many people find the directed support of divorce recovery groups or therapeutic counseling to be invaluable self-care as they seek to navigate their new reality as a single person. Ask your doctor, lawyer, or clergy person for help in finding a group or a therapist.



CONTINUUM OF PROCESS CHOICES FOR SEPARATION AND DIVORCE



Collaborative Professionals providing assistance – as needed:

Financial Specialists help with gathering financial information and guiding you through the budgeting process, may provide valuations;

Mental Health Professionals help with emotions and relationship transition or provide a voice for children and assist with parenting plan;

Mediator/Facilitators help with communication and constructive negotiations for all.



IS AN OUT OF COURT SETTLEMENT PROCESS SUITABLE FOR ME?

(10 commitments to help you decide)

1. I know that I will be better served in the long run if my spouse and children are also well served. I want my children to be in our center rather than in the middle.
2. I want to speak and act from my best self, even though sometimes my words and actions seem to come from my worst self.
3. I want my lawyer to be a wise counselor and an engaged moral agent rather than a hired gun or alter ego.
4. I am willing to be in the same room with my spouse and to speak for myself and my own legitimate self-interest with the assistance of one or more professionals.
5. I am open to solutions that will respect both my and my spouse's legitimate needs and interests.
6. I want to make decisions affecting the future of myself and my family from a place of calm, considered wisdom, rather than from a place of anger, humiliation or fear - even though I may be experiencing those hard feelings, now, and during the process of divorce.
7. I know that at times the going will be difficult and painful, but I am willing to stay with this discomfort and to persevere through the process.
8. I want to act ethically for myself, for my spouse and for the sake of my children.
9. After the divorce is completed, I want to be able to look back and feel good about how I handled myself during the process.
10. I know that by choosing an out of court settlement process I am accepting the responsibility for the outcome, along with my spouse. This way requires more of us as we accept the challenge of crafting a resolution of the issues ourselves with the assistance of our chosen professionals.

By Suzanne L. Brunsting, Esq., building on the ideas of Nancy J. Foster, JD

DOCUMENT INFORMATION CHECKLIST FOR DIVORCE/SEPARATION

The following documents and other information will be needed to complete the paperwork necessary for you to prepare an accurate Net Worth Statement and to enter into a Property Settlement and Separation Agreement and have a Judgment Roll for Divorce prepared. *Please make two copies of the documents needed (one for the other spouse and one for the process).*

Personal Data Information for each Spouse:

Spouse A:

First Name	Middle Initial	Last Name	Birth Name if different	SS #
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Date of Birth Month/Day/Year	State of Birth	Sex	State of Residence	County of Residence	Locality City/Town/Village
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Address	If city or Village, is residence within the city or village limits? If not, specify Town: _____
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Spouse B:

First Name	Middle Initial	Last Name	Birth Name if different	SS #
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Date of Birth Month/Day/Year	State of Birth	Sex	State of Residence	County of Residence	Locality City/Town/Village
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Address	If city or Village, is residence within the city or village limits? If not, specify Town: _____
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Contact Information for each Spouse:

Spouse A:

Name	cell phone #	e-mail address
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Spouse B:

Name	cell phone #	e-mail address
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Information Regarding Marriage:

Place of Marriage – City/Town Village	County of Marriage	State of Marriage	
Date of Marriage	Approximate month/year of separation	# of children ever born Alive this marriage	# of children under age 18 this marriage

Religious or Civil Ceremony	If religious, denomination
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Confidential Information:

Spouse A

Race	Number of this marriage	If previously married, how ended: divorce/death	Education – highest grade completed
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of minor children from previous marriage/relationship

Obligations from previous marriage/relationship	child support	spousal maintenance
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Spouse B

Race	Number of this marriage	If previously married, how ended: divorce/death	Education – highest grade completed
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of minor children from previous marriage/relationship

Obligations from previous marriage/relationship	child support	spousal maintenance
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For Billing Purposes:

Name on Credit Card	Address Associated with credit card	e-mail address
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Number of credit card	expiration date	cvv
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Documents Needed:

1. _____ Individual Income tax returns for last three years (Federal and State)
2. _____ Business Income tax returns for last three years (Federal and State)
3. _____ Information regarding your income (W-2 forms, the last paystub of the year, 1099 forms, K-1s, a recent and representative paystub). Include any government benefits or disability benefits.
4. _____ Prenuptial or post-nuptial agreements, if any
5. _____ List of any income or resource sources not detailed above
6. _____ List of assets you own, including most recent statements for what is on your list (bank account statements, brokerage statements, etc.)
7. _____ If any accounts were opened before marriage, include the balances and proof thereof at the time of marriage.
8. _____ List of separate property (owned prior to marriage or acquired by you by gift or inheritance or as a personal injury award). Include any and all documentation you have regarding same.
9. _____ List of assets in your minor children's names, including most recent statements (bank accounts, 529 plans and the like)
10. _____ List of debts you ow that are not paid in full each month. Include most recent statements for each.
11. _____ Documentation regarding any past bankruptcies.
12. _____ Health insurance information, including current policy coverage and costs. Include a copy of your health insurance card – front and back.
13. _____ Life insurance carried by either party. Include copies of policies and statements.
14. _____ Real property information - appraisals, copy of current deed and, if purchased with separate property, details of the separate property contribution
15. _____ List of all vehicles, Kelly Blue Book "private party" values, amount of any remaining lease or loan and details re same
16. _____ Business financial statements (profit and loss statements, balance sheets, etc. for past three years, if applicable.
17. _____ Loans taken out in last three years
18. _____ Details of any degrees and/or licenses held by each spouse. Include any student loan debt.
19. _____ Details regarding future social security benefits for each spouse.
20. _____ Most recent Social Security Statement

SCHEDULE

For assets, enter the fair market value in the "Value" column. For Debts, enter the number with brackets () in the Debt column to indicate a negative number.

Assets and Liabilities
 If Separate Property, do not include in the Value column

DESCRIPTION	VALUE	DEBT	SELLING EXPENSE	EQUITY	Jt/HW TITLE	SM Sep/Marital
Cash, Bank Accounts and Security Deposits			0%	0		
				0		
				0		
				0		
Stock, Bonds, Notes & Mutual Fund Accounts				0		
				0		
				0		
				0		
				0		
				0		
Loans to Others and Accounts Receivable				0		
Cash Surrender Value of Life Insurance				0		
				0		
Vehicles (Autos, Boats, etc.)				0		
				0		
				0		
				0		
Real Property :			0	0		
			0	0		
			0	0		
			0	0		
Household Furnishings				0		
Jewelry, Art, Antiques, Precious Objects				0		
Other				0		
Debts (list outstanding balance in column C)				0		
				0		
				0		
				0		
Subtotal 100% Assets and Liabilities	0	0	0	0	0	0

DESCRIPTION	VALUE	DEBT	NET EQUITY	TITLE	Sep/Marital
Retirement Accounts (401(k), 403(b), IRA, pension, annuity)			0		
			0		
			0		
			0		
			0		
			0		
Subtotal Tax-Affected Assets	0	0	0	0	0

Checklist: Post- Settlement Agreement/Divorce Actions To Take

- Divide all property as set forth in the settlement agreement.
- Execute a quitclaim deed to transfer title to real property to your former spouse, and/or make sure that your former spouse does the same, as required by the settlement agreement.
- Change the titles to your motor vehicles to reflect the ownership as set forth in the settlement agreement.
- Notify your auto insurer of any changes in automobile drivers, ownership, and addresses.
- Make sure that your name has been removed from any debts or loans that are no longer your responsibility.
- If you change your name (such as by reverting to your maiden name) as a result of the divorce, notify the Social Security Administration of your name change. You will need a Clerk certified copy of your Judgment of Divorce to take with you.
- If you are changing your name, you will take your new Social Security card to the Department of Motor Vehicles and have a new Driver's License issued with your new name.
- With the two new forms of I.D., change your name on all credit and bank accounts.
- If you move, notify all of your creditors of your change of address.
- Apply for a driver's license with your new address on it.
- Apply for credit in your own name.
- Remove your former spouse's name from your lease or mortgage.
- Change the beneficiary on your life insurance policy, if permissible under the divorce decree.
- Obtain life insurance naming your former spouse and/or children as beneficiaries to ensure continued support if you should die, if required by the settlement agreement.
- Write a new will.
- Determine who will prepare the QDROs to share retirement.
- Make sure that the Qualified Domestic Relations Order (QDRO) is entered and implemented, if required under the settlement agreement.

The process of an uncontested divorce is like a **minuet** with a series of defined steps:

1. Spouses choose who will be the Plaintiff and who will be the Defendant. There are no negative repercussions by those designations. The Plaintiff will be saying that the marriage is irretrievably broken and has been broken for at least six months. The Defendant does not have to agree; he/she simply agrees not to oppose the divorce on those grounds.
2. A Summons with Notice is signed by the attorney for the Plaintiff and filed in the County Clerk's Office. An index number is purchased at that time for \$210.
3. The Summons with Notice is hand-delivered or scanned and e-mailed to the spouse who is going to be the Defendant. An Admission and Waiver form is delivered to the Defendant at that same time. The Defendant signs the Admission and Waiver form in front of a notary and returns that form to the Plaintiff's attorney. (If the Defendant is going into the lawyer's office to be "served", the lawyer can notarize the Defendant's signature.)
4. The Plaintiff's attorney prepares a sheaf of related documents comprising the Judgment Roll for Divorce (the papers used to be rolled into a tube shape and tied with a ribbon, hence "roll").
5. The Plaintiff reviews a Verified Complaint and a Plaintiff's Affidavit with jurisdictional information and the basic information about the settlement, signing both before a notary, returning those documents to the Plaintiff's attorney. Again, if the Plaintiff is going into the lawyer's office, the lawyer can notarize the Plaintiff's signature.
6. The proposed Findings of Fact and Conclusions of Law and Judgment of Divorce are sent to the Defendant's attorney for review and approval as to form. These are then returned to the Plaintiff's attorney. If the Defendant chooses to represent him/herself, then this step is not needed.
7. The Plaintiff's attorney then files a Request for Judicial Intervention and Note of Issue. This filing fee is \$125. There is a Certificate of Dissolution prepared, as well, and a filing fee of \$5 is paid.
8. The whole Judgment Roll will be sent to the Assignment Office for the Supreme Court and will then be assigned to a Supreme Court judge.
9. The judge's law clerk (an attorney) will review the paperwork, contacting Plaintiff's attorney if there are any questions.
10. A records search is performed to see if there are any Orders of Protection involving the Plaintiff, the Defendant or their children, if any.
11. When the Judgment Roll papers have been approved by the law clerk, the

assigned judge will sign the Findings of Fact and Conclusions of Law and the Judgment of Divorce. Plaintiff's attorney will be notified.

12. The judgment roll will then be picked up from the assignment office and docketed in the County Clerk's Office. The Clerk's Office will time-stamp the documents. On that day, the divorce is final. Originals are filed and copies of the Findings and Judgment of Divorce are returned.

13. Your attorney will let you all know as soon as the papers have been signed by the judge and docketed with the Clerk's Office.

Then, attorney certified copies of the Judgment of Divorce will be mailed to Plaintiff, Defendant and Defendant's lawyer, if the Defendant is so represented.

If one of you wishes to retake a former name (maiden name), you will need a Clerk Certified copy of the Judgment of Divorce.



“Every financial journey crosses lines of choice and decision. Having an experienced guide matters.” – Louis A. Falvo, Founder

Estate Planning Council Presentation – Estate Planning and Divorce

1-16-29 8am

Revisit the plan after the divorce is final – Post-Divorce Financial Checklist

- a. General
 1. Interview and retain the services of a financial planner.
 2. Interview and retain the services of a tax preparer.
 3. Go over every detail of your Marital Settlement Agreement with your attorney and financial advisor to make sure everything is completed.
 4. Consider using applications such as Our Family Wizard (www.ourfamilywizard.com) to help facilitate co-parenting and information sharing between parents.

- b. Credit and Debt
 1. Settle all outstanding bills with your legal counsel and other divorce professionals.
 2. Close all joint credit accounts. Make sure all credit card bills and loans are paid promptly and closed by you or your spouse if responsible.
 3. Open new credit card accounts in your separate name.
 4. Obtain a credit report 30 days later to verify no joint accounts remain.

- c. Bank and Brokerage
 1. Close joint bank accounts and open new checking and savings accounts in your separate name.
 2. Close joint brokerage accounts and open new accounts in your individual name. Contact current company to facilitate transfer of assets in kind where necessary.

- d. Real Estate and other Real Property
 1. Transfer ownership of all deeds for your homes or automobiles, boats, etc. and have them recorded at the appropriate county recorder or DMV office.
 2. Complete the process of refinancing or assumption of mortgages.

- e. Insurance
 1. Change beneficiaries on all Life Insurance policies.
 2. Revise health insurance coverage for spouse and/or dependents depending on divorce decree. If insurance is not available through an employer; begin COBRA coverage or open a new individual policy.
 3. Obtain new property and casualty insurance for auto, homeowner's etc.

4. Obtain a life insurance policy on the payor of Child and Spousal Support as security for the payments that otherwise end on the death of the payor. The support recipient should be the owner and beneficiary and pay all premiums.
-
- f. Retirement Accounts
 1. Change beneficiaries on all Retirement & Pension accounts.
 2. Follow up with your attorney and/or QDRO drafter to ensure that the plan administrator has accepted the order and it has been filed with the court.
 3. Complete necessary transfers of IRA and other accounts per settlement once you receive a copy of your judgment.

 - g. Estate Planning
 1. Execute a new will and/or trust. Designate guardians for your children if necessary. Be sure to update your health care proxy and your power of attorney documents.

 - h. Cash Flow and Taxes
 1. Review and update your post-divorce budget for income and expenses.
 2. Execute IRS form 8332 to transfer dependency exemptions to non-custodial parent if necessary based on settlement.
 3. Review your tax withholding allowances with your tax advisor or CPA and determine if estimated quarterly payments will be necessary.

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CEO and Founder

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