

DIVORCE PLANNING GUIDE

How to Be Organized and
Prepared for Divorce in Utah

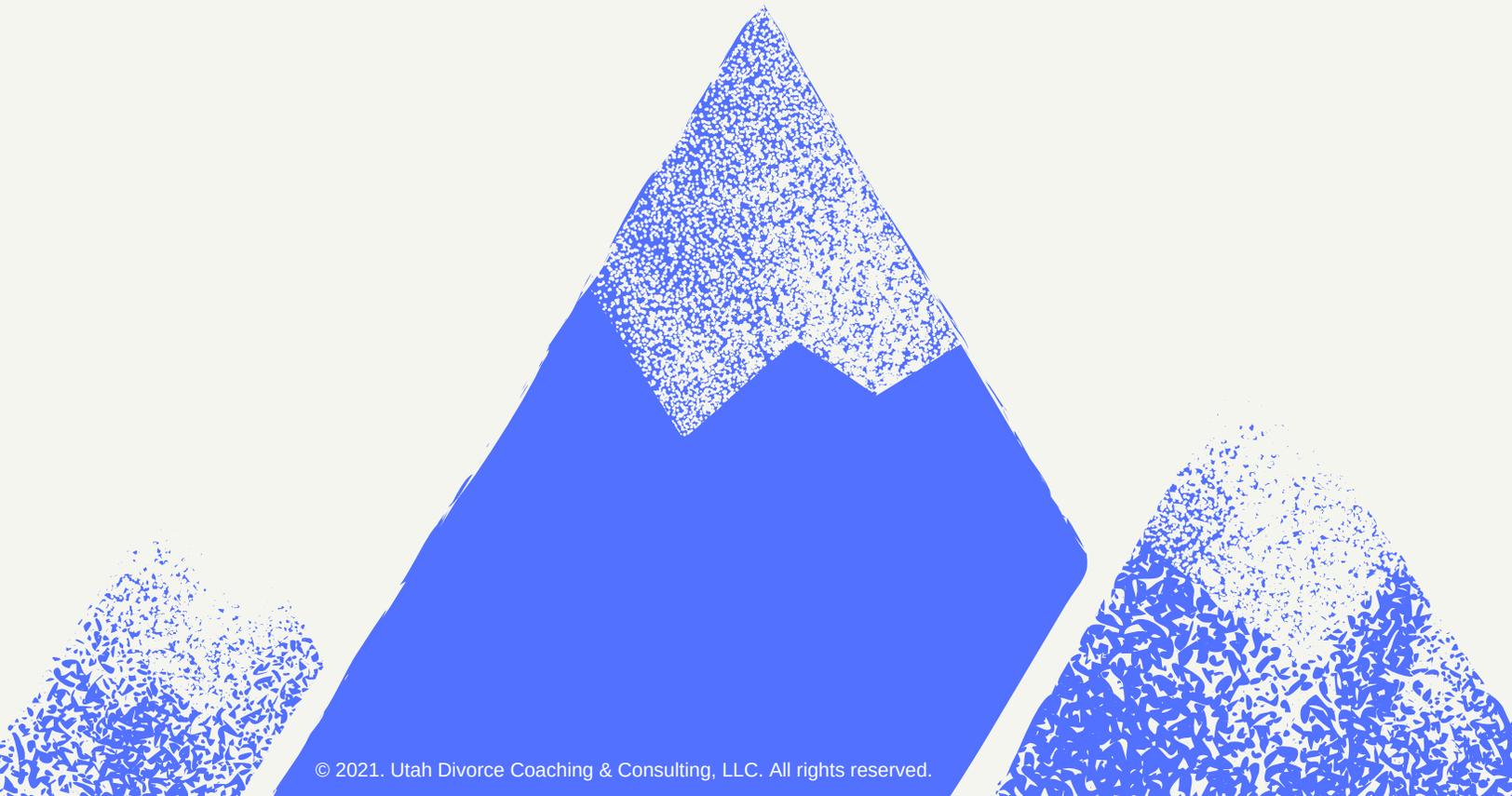


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8 Essential Considerations for Your Pre-Divorce Exit Strategy

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The decision to get a divorce may be among the most difficult decisions you ever make, yet it is only the beginning of an often misunderstood and expensive process.

In order to get divorced there are a multitude of legal and practical events that need to take place. Where will you live? Will you sell the house? Where will the children primarily live and go to school?

Most people will suffer a financial setback post-separation since there will be two households with financial needs, instead of only one. Therefore, it is important to have a good understanding of what your goals are, what your financial condition/needs are, and what the first step will be in the legal process (hint: see No. 8). Following is a list of common considerations to help you plan a successful exit from your current situation and plant the seed for a successful new life.

1. Children

If you have minor children with your spouse, they will most certainly will be your biggest concern. How will you and your spouse cooperatively inform



the children? Will your children need outside support and/or resources during the divorce process? It's not too early to think about how physical custody will be shared and how much each parent will be involved with the day-to-day care of the children. When formulating an exit plan with children, the best approach is a seamless one. Try to consider exit plans that maintain the children's pre-separation routines as much as possible. Review and begin completing your legal parenting plan. Become familiar with the legal terms and issues now and incorporate them into your exit strategy. Don't try to take on all of this heavy lifting by yourself. Gather information on resources that can assist you and your children. For example, Utah State Courts have a program for children of divorcing parents that offers support and resources to families going through divorce.

Become familiar with legal terms and parentage issues if you have minor children. To help you in this endeavor, get a copy of our *Parenting Plan Discussion Guide*.

2. Your Immediate Future

Becoming single again requires a significant adjustment to one's lifestyle. Typically, such adjustments revolve around housing, budgets, and career.

Whether you are dedicated to your career or you have been out of the workforce for a while, you will need to determine what your current employability and earning potential is. You must also examine your spouse's employment history and earning potential. A smart plan would be to locate income information regarding your spouse for as far back as possible. Locate and copy all tax returns, w2s, income statements, business bank account registers. Certain Social Security documents may show income information. Also gather any documents concerning your spouse's education, training, certifications, or endorsements.

Examine your household budget, needs, and expenses. What are your individual debts? What are your spouse's individual debts? Are there any jointly held debts? You will need to report a household budget when you file your financial declaration, so having a handle on this data early on will help. In the meantime, get a copy of your credit reports and examine your credit history and make a comprehensive list of all debt.

If you want to go through your divorce with as few hiccups as possible, consider putting off a new romantic relationships until your divorce is finalized. Parents of young children should consider waiting at least 6 to 8 months before introducing new partners. Although it may not be easy or preferable, staying single during the pre-divorce process can offer some clarity and much-needed personal space during this highly charged time.

3. Financial Documentation

You will need financial documentation. Period. Are you the breadwinner? Are you the person in control of the finances and making sure the mortgage gets paid every month? Or, is it the other way around? Are you the sort of spouse who lets the other manage and control the household finances? Either way, you will need to gather and maintain a robust file of your financial documentation if you wish to have a smooth divorce. If you are not an active participant in the household finances and you are not using a *cooperative* or *collaborative* divorce method, this step may be *much* more difficult. It is, in fact, a good reason to start gathering files now, rather than waiting. If you move away or your spouse moves out and removes all of the important documentation, you will be thrust into the more adversarial position of having to demand these crucially necessary documents in litigation. It will make your position in the divorce *much* more difficult and expensive since you will probably need to *pay lawyers* to do it. This, alone, could cost you thousands of dollars.



What documentation should you gather and save? Once your petition is filed, you will be required to share specific financial documents. These are called your “initial disclosures.” Get a copy of our *Initial Disclosures Check*

List for divorces and use the checklist to create and maintain your own file so that you are prepared and ready when the time comes.

4. Opening new accounts

Your attorney will likely tell you to withdraw half of your marital account before proceeding with your divorce to ensure you have funds available for court and living expenses. As such, opening a new individual checking, savings, and credit card account in your name only should be done in the early divorce planning stages. It is critical that you have a financial source that cannot be affected by your spouse's spending. Such a private account will act as your nest egg for lawyers' fees, retainer fees, moving out expenses, or in case your ex stops paying bills or attempts to remove, secure, or hide family funds when they learn of your divorce plans.

5. Open a post office box

Whether or not you will be moving to another home after the separation, you should consider setting up a post office box. There are numerous reasons why this may be beneficial. First, forwarding important documents to a separate p.o. box, such as new bank account statements, credit card statements, and divorce papers, will help ensure and maintain your independence. It will help you stay organized during the separation process so that sensitive documents aren't lost or inadvertently (or on purpose) taken by your spouse. Finally, it will give you peace of mind during the "limbo" stage between that your information is in a secure, confidential location.

6. Make a List of all Household and Personal Property

Make a comprehensive list of all major personal property items and include items such as furniture, furnishings, art, jewelry, appliances, and automobiles. Remember to include items that may be in a storage unit or safe deposit box. If possible, note each item's market value and date of acquisition.



You will need the date of acquisition to determine whether the property is marital or separate. Typically, property acquired during the marriage is “marital” and property acquired before the marriage or by inheritance is the individual’s separate property. However, Utah recognizes three general exceptions to this rule and may support an award of the property in question in the divorce or treat it as marital property subject to division (1- where the property has been consumed or commingled and lost its identity during the marriage; 2-where the other spouse has contributed to the property’s enhancement, maintenance, augmentation or protection; or 3-in extraordinary circumstances where justice or equity demand). This applies to real property and other types of property and assets. Premarital agreements can also affect property division. You should consult with an attorney and discuss your circumstances.

7. Obtain current credit report

Getting a copy of your credit report is just as important as knowing what your property and assets are going in to a divorce. While you cannot obtain your spouse’s credit report without their/his/her permission or cooperation (such would likely be a crime), your lawyer may be able to in the discovery process. If you and your partner choose to divorce using the collaborative method, you will likely each agree to exchange your individual credit reports at the beginning of the process.



You can and should get your own credit report from all three credit bureaus at the time of your separation. The three credit bureaus are Equifax, Experian, and TransUnion. It is free to request *one* credit report each year from each of the credit bureaus. Knowing what is being reported on your

credit is necessary when getting divorced. It is information your lawyer will want and that you should be disclosing in the divorce process.

8. Decide your legal method

This is the first step you will take when it comes time to take legal action. The process of divorce, whether for good or bad, is a legal one. But, did you know there are different methods parties can choose to get a legal divorce? It is wise to begin the planning process with a thoughtful consideration of each of the four methods of divorce:

- 1. Uncontested**
 - a. DIY*
 - b. Attorney-Assisted*
- 2. Cooperative process**
 - a. DIY*
 - b. Attorney-Assisted*
- 3. Collaborative process**
- 4. Litigated process**

Uncontested means you and your spouse agree on all issues and will cooperate to sign legal paperwork and documentation. You can do your own divorce (*DIY*) with a little know-how and the help of some canned legal forms. You can also hire a consulting attorney to guide you. It is the rarest, but least expensive method to divorce.

Cooperative describes an out-of-court legal process whereby two parties resolve issues using a best-fit negotiation method. For example, some parties have been able to resolve their differences using a “kitchen table” approach. Others prefer using email. More complicated cases have found success using a professional family law mediator. With the *cooperative* process, a party may be represented by a lawyer or they/she/he may be self-represented, or *pro se*.

The *collaborative* process refers to a specific method for reaching a resolution. The collaborative process was founded in 1990 by an attorney in Minneapolis, Minnesota named Stuart Webb. The use of this process has since spread worldwide. The Uniform Collaborative Law Act was adopted by Utah in 2010.

Like the *cooperative* process, *collaborative* process is a voluntary, out-of-court dispute resolution process. Unlike the *cooperative* process, however, both parties *are* represented by his/her/their own lawyer who is trained in the collaborative process. The goal of the collaborative process is to support the interests of all parties involved. At the beginning of the process, the parties agree to freely share and exchange information. A financial neutral may collect data and create some reports that help you better understand your financial landscape. Issues are resolved using a multidisciplinary approach so that the best choices are made available to the parties.

The first three methods to divorce share one commonality: they are voluntary. Meaning, they require your spouse's agreement and cooperation. Talking to your spouse about divorce is never easy, but it is necessary in order to get to a place where you can agree on a divorce process.



Ultimately, if you cannot get your spouse's cooperation with an out-of-court process, you may have to file a litigated divorce.

Litigated divorce is the process of taking your divorce to a court to resolve issues you are unable to resolve on your own. It is an adversarial method of dispute resolution. It is inefficient, taking months and in some cases years to complete. It is expensive, relying heavily on lawyers and other paid professionals. Unlike the collaborative process, litigation does not set up your family for success. Instead, it pits party against party, lawyer against

lawyer. It is not the ideal approach when children are involved. In fact, litigation is best left as the last resort, if possible.

If you aren't sure where to start, begin by taking these eight considerations to heart. Little by little, you will probably start to discover that your divorce is taking shape. Understanding the legal process of divorce is more than half the battle. But, with well over 90% of litigated divorce matters ultimately resolving by agreement, there is **no** reason **not** to attempt a cooperative or collaborative divorce *before* resorting to litigation.

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Financial Documents Check List

Please review each item and indicate whether said item is applicable to either you or your spouse. If the item is applicable, please provide copies of all documents as specified:

- a. Social Security statements
- b. All personal (1040) federal and state tax income returns, gift tax returns, and intangible personal property tax returns for the preceding 3 years;
- c. IRS forms W-2, 1099, and K-1 for the past year because the income tax return for the past year has not been prepared.
- d. Pay stubs or other evidence of earned income for the 12 months before the service of the financial affidavit.
- e. A statement identifying the source and amount of all income for the three (3) months, if not reflected on the pay stubs produced.
- f. All loan applications and financial statements prepared for any purpose or used for any purpose within the 12 months preceding the service of the financial affidavit.
- g. All deeds to real estate in which I presently own or owned an interest within the past 3 years.
- h. Your individual credit report from **all three** credit bureaus (Experian, TransUnion, and Equifax).
- i. All promissory notes in which I presently own or owned an interest within the last 12 months.
- j. All present leases in which I own an interest.

- k. All periodic statements for the last 3 months for all checking accounts and for the last year for all savings accounts, money market funds, certificates of deposit, etc.
- l. All brokerage account statements for the last 12 months.
- m. Most recent statement for any pension, profit sharing, deferred compensation, or retirement plan (for example, IRA, 401(k), 403(b), SEP, KEOGH, etc.) and summary plan description for any such plan in which I am a participant or alternate payee.
- n. The declaration page, the last periodic statement, and the certificate for any group insurance for all life insurance policies insuring my life or the life of me or my spouse.
- o. All health and dental insurance cards covering either me or my spouse and/or our dependent child(ren).
- p. Corporate, partnership, and trust tax returns for the last 3 tax years, in which I have an ownership or interest greater than or equal to 30%.
- q. All credit card and charge account statements and other records showing my (our) indebtedness as of the date of the filing of this action and for the prior 3 months.
- r. All promissory notes on which I presently owe or owned within the past year. All lease agreements I presently owe.
- s. All premarital and marital agreements between the parties to this case.
- t. If a modification proceeding, all written agreements or court orders entered into between the parties at any time since the order to be modified was entered.
- u. All documents and tangible evidence relating to claims for non-marital status of an asset or debt.



Parenting Planning Discussion Guide

This list of discussion points is presented here to stimulate your thinking about how parenting may change in the divorce process. This information is not all-inclusive and it is not an official form. In Utah, if you wish to have joint legal custody, you must have a Parenting Plan. The best interests of the child(ren) is the primary consideration in the Parenting Plan.

A. PARENTAL RESPONSIBILITY AND DECISION MAKING

1. Parental Responsibility Options

- Joint Legal Custody or Shared Parental Responsibility. It is in the best interests of the child(ren) that the parents confer and **jointly** make all major decisions affecting the welfare of the child(ren). Major decisions include, but are not limited to, decisions about the child(ren)'s education, healthcare, and other responsibilities unique to this family.
- Shared Parental Responsibility with Decision Making Authority: It is in the best interests of the child(ren) that the parents confer and attempt to agree on the major decisions involving the child(ren). If the parents are unable to agree, the authority for making major decisions regarding the child(ren) shall be as follows:
 - Education/Academic decisions [] Mother [] Father
 - Non-emergency health care [] Mother [] Father
 - _____ [] Mother [] Father
 - _____ [] Mother [] Father
- **Sole** Parental Responsibility: It is in the best interests of the child(ren) that the [] Mother [] Father shall have sole authority to make major decisions for the child(ren). It is detrimental to the child(ren) to have shared parental responsibility.

2. Day-to-Day Decisions

Unless otherwise specified, each parent shall make decisions regarding day-to-day care and control of each child, including the performance of daily tasks, while the child is with that parent. Regardless of the allocation of decision making, either parent may make emergency decisions affecting the health or safety of the

child(ren) when the child is residing with that parent. A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

3. Final Decision Making Authority – All Major Decisions

Which parent should have the final say on all major decisions if there is a dispute? Legal custody concerns *decision making* on, usually, three main topics: (1) the education of the child(ren); (2) the health of the child(ren); and (3) the religious upbringing of the child(ren). Having final decision making authority means that both parent must still discuss all major decisions together. However, if a mutual resolution cannot be reached, the parent with final authority can make his or her decision the final decision and begin implementing it. If the parent without final decision-making authority continues to object, he or she must follow the dispute resolution mechanism outlined in the parenting plan (usually mediation). If you are unable to resolve it after attempting mediation in good faith, typically the objecting parent can bring his or her complaint back to court.

4. Extracurricular Activities Options

- Either parent may register the child(ren) and allow them to participate in the activity of the child(ren)'s choice.
- The parents must mutually agree to all extracurricular activities.
- The parent with the minor child(ren) shall transport the minor child(ren) to and/or from all mutually agreed upon extracurricular activities, providing all necessary uniforms and equipment within the parent's possession.
- The costs of the extracurricular activities shall be paid by:
Mother _____% Father _____%
- The uniforms and equipment required for the extracurricular activities shall be paid by:
Mother _____% Father _____%
- Other: _____

B. INFORMATION SHARING CONSIDERATIONS:

- Each parent shall have access to medical and school records and information pertaining to the child(ren) and shall be permitted to independently consult with any and all professionals involved with the child(ren). The parents shall cooperate with each other in sharing information related to the health, education, and welfare of the child(ren) and they shall sign any necessary documentation ensuring that both parents have access to said records.

- Each parent shall be responsible for obtaining records and reports directly from the school and health care providers.
- Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child(ren).
- Both parents shall have equal and independent authority to confer with the child(ren)'s school, day care, health care providers, and other programs with regard to the child(ren)'s educational, emotional, and social progress.
- Both parents shall be listed as "emergency contacts" for the child(ren).
- Each parent has a continuing responsibility to provide a residential, mailing, and contact address and contact telephone number to the other parent. Each parent shall notify the other parent in writing within 24 hours of any changes.
- Other: _____

C. SCHEDULING

1. School Calendar

If necessary, on or before _____ of each year, both parents should obtain a copy of the school calendar for the next school year. The parents shall discuss the calendars and the time-sharing schedule so that any differences or questions can be resolved.

The parents shall follow the school calendar of: (Choose all that apply)

- the oldest child
- the youngest child
- the school calendar for _____ County
- the school calendar for _____ School

2. Academic Break Definition

When defining academic break periods, the period shall begin at the end of the last scheduled day of classes before the holiday or break and shall end on the first day of regularly scheduled classes after the holiday or break.

3. Schedule Changes (Choose all that apply)

- A parent making a request for a schedule change will make the request as soon as possible, but in any event, except in cases of emergency, no less than _____ before the change is to occur.

- A parent requesting a change of schedule shall be responsible for any additional child care, or transportation costs caused by the change.

D. TIME-SHARING SCHEDULE

If it differs from child to child, you will have to reach agreement for each child and define the individual schedules.

1. Weekday and Weekend Schedule

The following schedule shall apply beginning on _____ with the
 Mother Father and continue as follows:

- a. The child(ren) shall spend time with the **Mother** on the following dates and times:

WEEKENDS: Every Every Other Other (specify) _____

From _____ to _____

WEEKDAYS: Specify days _____

From _____ to _____

OTHER: (Specify) _____

- b. The child(ren) shall spend time with the **Father** on the following dates and times:

WEEKENDS: Every Every Other Other (specify) _____

From _____ to _____

WEEKDAYS: Specify days _____

From _____ to _____

OTHER: (Specify) _____

2. Holiday Schedule

There could be several options about how to approach holiday planning:

- Follow the statutory holiday sharing in Utah Code 30-3-35;
- Holiday time-sharing shall be as the parties agree; or
- You create a schedule with which both agree and this holiday schedule will take priority over the regular weekday, weekend, and summer schedules. Fill in the blanks with Mother or Father to indicate where the child(ren) will be for the holidays. Provide the beginning and ending times. If a holiday is not specified as even, odd, or every year with one parent, then the child(ren) will remain with the parent in accordance with the regular schedule

| <u>Holidays</u> | <u>Even Years</u> | <u>Odd Years</u> | <u>Every Year</u> | <u>Begin/End Time</u> |
|-------------------------|-------------------|------------------|-------------------|-----------------------|
| Mother's Day | | | | |
| Father's Day | | | | |
| President's Day | | | | |
| Martin Luther King Day | | | | |
| Easter | | | | |
| Passover | | | | |
| Memorial Day Weekend | | | | |
| 4 th of July | | | | |
| Labor Day Weekend | | | | |
| Columbus Day Weekend | | | | |
| Halloween | | | | |
| Thanksgiving | | | | |
| Veteran's Day | | | | |
| Hanukkah | | | | |
| Yom Kippur | | | | |

This holiday schedule may affect the regular time-sharing schedule. Parents may wish to specify one or more of the following options:

- When the parents are using an alternating weekend plan and the holiday schedule would result in one parent having the child(ren) for three weekends in a row, the parents will exchange the following weekend, so that each has two weekends in a row before the regular alternating weekend pattern resumes.
- If a parent has the child(ren) on a weekend immediately before or after an unspecified holiday or non-school day, they shall have the child(ren) for the holiday or non-school day.

3. Winter Break

A. Entire Winter Break (Choose only one)

- The Mother Father shall have the child(ren) from the day and time school is dismissed until December _____ at ___ a.m./p. m. in odd-numbered years even-numbered years every year. The other parent will have the children for the second portion of the Winter Break. The parties shall alternate the arrangement each year.
- The Mother Father shall have the child(ren) for the entire Winter Break during odd-numbered years even-numbered years every year.
- Other: _____

B. Specific Winter Holidays

If not addressed above, the specific Winter Holidays such as Christmas, New Year's Eve, Hanukkah, Kwanzaa, etc. shall be shared as follows:

4. Spring Break Options:

- The parents shall follow the regular schedule.
- The parents shall alternate the entire Spring Break with the Mother having the child(ren) during the odd-numbered years even numbered years.
- The Father Mother shall have the child(ren) for the entire Spring Break every year.
- The Spring Break will be evenly divided. The first half of the Spring Break will go to the parent whose regularly scheduled weekend falls on the first half and the second half going to the parent whose weekend falls during the second half.
- Other: _____

5. Summer Break Options

- The parents shall follow the regular schedule through the summer.
- The Mother Father shall have the entire Summer Break from _____ after school is out until _____ before school starts.
- The parents shall equally divide the Summer Break. During odd-numbered years or even numbered years, the Mother Father shall have the children from _____ after school is out until _____. The other parent shall have the child(ren) for the second one-half of the Summer Break. The parents shall alternate the first and second one-halves each year unless otherwise agreed. During the extended periods of time-sharing, the other parent shall have the child(ren) _____
- Other: _____

6. Number of Overnights:

Based upon the time-sharing schedule, the Mother has a total of _____ overnights per year and the Father has a total of _____ overnights per year.

Note: The two numbers must equal 365.

E. TRANSPORTATION AND EXCHANGE OF CHILD(REN)

1. Transportation Options:

- The [] Mother [] Father shall provide all transportation.
- The parent beginning their time-sharing shall provide transportation for the child(ren).
- The parent ending their time-sharing shall provide transportation for the child(ren).
- Other: _____

2. Exchange

Both parents shall have the child(ren) ready on time with sufficient clothing packed and ready at the agreed upon time of exchange. If a parent is more than _____ minutes late without contacting the other parent to make other arrangements, the parent with the child(ren) may proceed with other plans and activities. Here are some options:

- Exchanges shall be at Mother's and Father's homes unless both parents agree to a different meeting place.
- Exchanges shall occur at _____ unless both parties agree in advance to a different meeting place.
- Other: _____

3. Transportation Costs (Choose only one)

- Transportation costs are included in the Child Support Worksheets and/or the Order for Child Support and should not be included here.
- The Mother shall pay ____% and the Father shall pay ____ % of the transportation costs.
- Other: _____

4. Foreign and Out-Of-State Travel Options:

- Either parent may travel within the United States with the child(ren) during his/her time-sharing. The parent traveling with the child(ren) shall give the other parent at least ____ days written notice before traveling out of state unless there is an emergency, and shall provide the other parent with a detailed itinerary, including locations and telephone numbers where the child(ren) and parent can be reached at least ____ days before traveling.
- Either parent may travel out of the country with the child(ren) during his/her time-sharing. At least ____ days prior to traveling, the parent shall provide a detailed itinerary, including locations, and telephone numbers where the child(ren) and parent may be reached during the trip. Each parent agrees to

provide whatever documentation is necessary for the other parent to take the child(ren) out of the country.

- If a parent wishes to travel out of the country with the child(ren), he/she shall provide the following security for the return of the child _____

F. EDUCATION

1. **School designation.** For purposes of school boundary determination and registration, the Mother's Father's address shall be designated.
2. *(If Applicable)* The following provisions are made regarding private or home schooling: _____

3. **Other.** _____

G. COMMUNICATION

1. Between Parents

All communications regarding the child(ren) shall be between the parents. The parents shall not use the child(ren) as messengers to convey information, ask questions, or set up schedule changes.

The parents shall communicate with each other through the following options

- in person
- by telephone
- by letter
- by e-mail
- Other: _____

2. Between Parent and Child(ren)

Both parents shall keep contact information current. Telephone or other electronic communication between the child(ren) and the other parent shall not be monitored by or interrupted by the other parent. "Electronic communication" includes telephones, electronic mail or e-mail, webcams, video-conferencing equipment and software or other wired or wireless technologies or other means of communication to supplement face to face contact.

The child(ren) may have telephone e-mail other electronic communication in the form of _____ and communication with the other parent (here are some options:

- Anytime
- Every day during the hours of _____ to _____
- On the following days _____ during the hours of _____ to _____

3. Costs of Electronic Communication shall be addressed as follows:

H. CHILD CARE OPTIONS

- Each parent may select appropriate child care providers
- All child care providers must be agreed upon by both parents.
- Each parent must offer the other parent the opportunity to care for the child(ren) before using a child care provider for any period exceeding _____ hours.
- Other _____

I. OTHER CONCERNS _____