



PLANNING GUIDE

Get organized, be prepared.

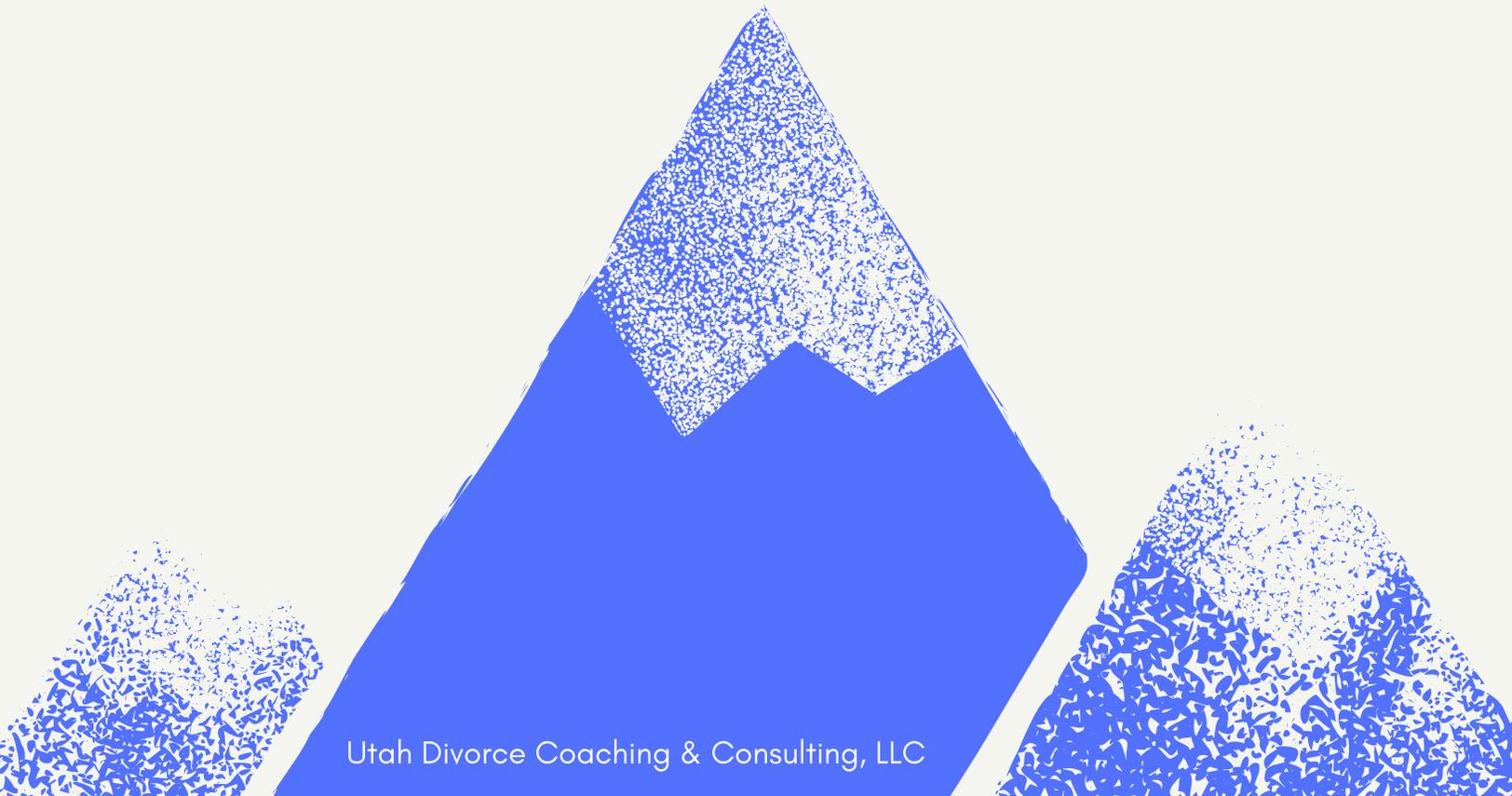


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8 Essential Considerations for Your Pre-Divorce Exit Strategy

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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 *Financial Documents 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 CHECKLIST

Necessary Documents:

Done!

Federal & State Income Tax Returns, 2 yrs

Pay stubs/evidence of earned income, 12 mos

All Bank Statements for the last three 3 mos

All loan applications and fin. stmnts within 1 yr

Deeds to real estate owned within past 3 yrs

Credit reports from all 3 credit bureaus

Most recent statement from retirement plan

All credit card statements for the last 3 mos

Venmo Transactions for the last 90 Days

All pre-marital agreements btn the parties

All brokerage acct/ otr fin. acct stmnts, 12 mos



Divorce Process Flowchart

