

# Divorce:

## The Financial Impact



**THE MICKLIN LAW GROUP** LLC

FAMILY MATTERS ARE TOUGH FOR MEN - MAKE SURE YOUR LAWYER IS TOO



#### A little about Brad...

- Member of the New Jersey State Bar Association
- Licensed to appear in both State and Federal Courts
- Served as a Superior Court judicial law clerk to the Honorable Eugene H. Austin, J .S.C.
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# Introduction

Divorces are a very trying and complex matter for most. The following information is intended to provide insight on the financial aspects of divorce. The information is by no means complete, and is *not* legal advice. It is simply a beginning guide. Anyone considering a divorce would be well served to meet with an attorney to better understand the issues he or she will face.



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# Alimony



### Did you know...

Alimony, also known as spousal support, was created to assist a spouse who lost the opportunity to advance his or her career during the marriage. The purpose of alimony is to assist that spouse in maintaining a comparable life style that he or she shared while married. Some of the factors that a court will consider in determining whether or not to award alimony include, but are not limited to:

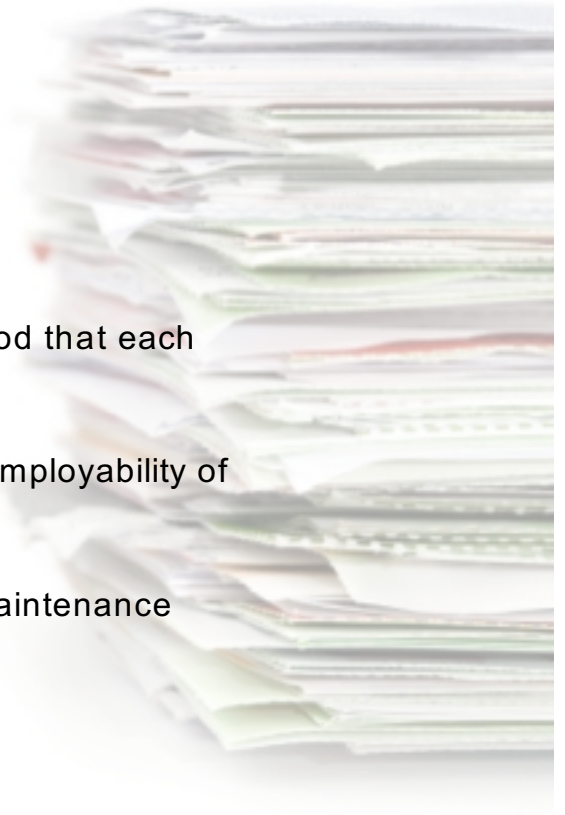
- Their respective ability to pay
- The duration of the marriage
- The age and health of the parties
- The standard of living during the marriage
- Their earning capabilities and employability
- Equitable distribution of the marital property





In all actions brought for divorce, divorce from bed and board, or nullity, the court may award one or more of the following types of spousal support: permanent spousal support; rehabilitative spousal support; limited duration spousal support; or reimbursement spousal support to either party. In doing so the court shall consider, but not be limited to, the following factors:

- The actual need and ability of the parties to pay
- The duration of the marriage
- The parties' age, physical and emotional health
- The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living
- The earning capacities, educational levels, vocational skills, and employability of the parties
- The length of absence from the job market of the party seeking maintenance
- The parental responsibilities for the children





- The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the opportunity for future acquisitions of capital assets and income
- The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities
- The equitable distribution of property and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just, and fair
- The income available to either party through investment of any assets held by that party
- The tax treatment and consequences to both of any alimony award including the designation of all or a portion of the payment as a non-taxable payment
- Any other factors which the court deem relevant



# Pendente Lite Support



# Pendente Lite

Pendente lite support is temporary support ordered during the course of litigation. It is intended to preserve the “status quo” of the marital relationship. In many cases, it is larger than a final support order because it is intended to preserve the marital lifestyle and all assets whereas alimony is determined, in part, based on ability to pay and the lower earning spouse’s ability to earn.

One significant issue of this type of support is the allocation for tax purposes. As stated above, alimony is an income tax deduction for the paying spouse and is taxed as income to the recipient. Pendente lite support is often considered “unallocated” for tax purposes. From the court's perspective, this unallocated distinction does not permit the paying spouse to deduct any of it until it is later allocated. However, the Internal Revenue Service says that any unallocated support is deemed alimony. *Kean v. Commissioner*, 407 F3d 186 (3rd Cir. 2005). It is an area of confusion for matrimonial practitioners and this issue should be avoided by indicating to the court to allocate temporary support at the pendente lite stage.

*“Pendente lite  
support is often  
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tax purposes.”*

# The IRS Tax Code States:

- 1) In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.
- 2) Alimony or separate maintenance payment means any alimony or separate maintenance payment which is includible in gross income of the recipient defined under 26 U.S.C. 71.6
  - a) Section 71- This is defined as any payment in cash if:
    - i) Such payment is received by a spouse under a divorce or separation instrument,
    - ii) The divorce or separation instrument does not designate the payment as a payment that is not includible in gross income or not allowable as a deduction,
    - iii) The payee and payor are not members of the same household at the time payment is made, and
    - iv) There is no liability to make any payments after the death of payee spouse and there is no liability to make any payment as a substitute for such payments after the death of payee spouse.



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# Child

# Support



# Child Support

Child support is determined by using the New Jersey child support guidelines. The guidelines utilize an income proportionate calculation to determine the noncustodial parent's weekly child support obligation. This weekly obligation is then adjusted to account for the noncustodial parent's overnight schedule, the cost of medical insurance, any extraordinary or reoccurring medical expenses, daycare costs and any other support obligation, among others.

Child support is also considered to include the first \$250 per child per year of uncovered medical expenses and extracurricular activities, among other things. That means the custodial parent will normally pay a larger share of uncovered medical expenses in an average year per child. The child support calculation is presumed to be the accurate number and in the child's best interest. The court, however, does have the ability to deviate from the child support guidelines if it is found to be in the child's best interest.

**Tip From Brad-** Child support is not tax-deductible to the paying spouse nor is it an income tax addition to the recipient.



# Expenses Included in Child Support

New Jersey Court Rules Appendix IXA 8:

These expenses represent the average amount an intact family spends on their children. Costs include the child's share of expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care up to and including \$250 per child per year and miscellaneous items. Below is a more detailed explanation of each category.

**Housing-** Mortgage interest payments or home equity loans, property taxes, insurance, refinancing charges, repairs, maintenance, rent, parking fees, property management or security fees, expenses for vacation homes, lodging while out of town, utilities, fuels, public service, domestic services, lawn care, gardening, pest control, laundry and dry cleaning, moving and storage, repairs on home, furniture, major appliances, purchase or rental of household equipment of tools, postage, laundry or cleaning supplies, cleaning and toilet tissues, household and lawn products, stationary, all indoor and outdoor furniture, floor coverings. All small appliances and house wares, all household textiles, and miscellaneous household equipment (e.g., clocks, luggage, light fixtures, computers and software). Net purchase price of a home and mortgage principal payments are considered savings and are NOT included as expenditures.



**Food**– All food and non-alcoholic beverages purchased for the home consumption or purchased away from home, including vending machines, restaurants, school meals, and catered events.

**Clothing**– All children's clothing, footwear (not special footwear for sports), diapers, repairs and alterations to clothing and footwear, storage, dry cleaning, laundry, watches, and jewelry.

**Transportation**– All costs involved with owning or leasing an automobile including monthly installments toward principal cost, finance charges, lease payments, gas and oil, insurance, maintenance and repairs. Also, costs related to transportation such as public transit, parking fees, license and registration fees, towing, tolls, and automobile clubs are included. Net outlay (purchase price minus trade in value) is NOT included.

**Unreimbursed Health Care up to and Including \$250 per Child per Year**– These expenditures (e.g., medical and dental) up to \$250 are included. These are considered ordinary and may include non-prescription drugs, co-payments or health care services, equipment, or products. The parent's cost for adding a child to a health care policy is NOT included.

**Entertainment**– Fees, memberships and admissions to sports, recreation, or social events, lessons or instructions, movie rentals, television, radios, sound equipment, pets, hobbies, toys, playground equipment, photographic equipment, film processing, video games, and recreational, exercise, or sports equipment.

**Miscellaneous Items**– Personal care products and services, books and magazines, education (e.g., tuition, books, supplies), cash contributions, personal insurance, and finance charges (excluding for mortgage and vehicle purchase). Certain expenses may be added to basic child support obligations. These expenses are not incurred by a typical intact family or represent a large or variable expenditures. Examples of these expenses are: Child-care expenses; Health Insurance for the Child; Predictable and Recurring Unreimbursed Health Care Expenses In Excess of \$250 per child per year and other expenses approved by the court. Below is a more detailed explanation of each category.

**Child Care Expenses**– The average cost of child care, including day camp, is NOT factored into the schedule. Net costs (after tax credits) of work-related child care should be added to the basic obligation.

**Health Insurance for the Child**– A parent's marginal cost of adding a child to their health insurance policy is not included in the support schedule and should be added to the basic obligation incurred.

**Predictable/Recurring Unreimbursed Health Care Expenses in Excess of \$ 250 per Child per Year**– These expenditures are NOT included in the schedule. Such expenses should be added to the schedule if they are predictable and recurring. If not predictable and recurring, the cost should be shared by the parents in proportion to their relative incomes incurred.

**Other Expenses Approved by the Court**– Predictable and recurring expenses such as private elementary or secondary education, special needs of gifted or disabled children, and visitation transportation expenses must be approved by the court. Expenses that are not predictable and recurring should be shared by the parents in proportion to their income.

# Other Issues on Support



**Cost- of- Living Adjustments**– Cost living adjustments are supposed to be made to child for every 2 or 3 years. However, this child was not being paid through probation or by wage garnishment, the child or may not be adjusted for COLA. If you are the recipient of child support, you would want to require payment to be through the court or probation system to ensure your receipt of cost-of-living adjustment. Failure to receive cost-of-living adjustments is not a reason to seek a modification child sport so if you are not getting it automatically through the probation department, you may not get it at all.

**Extracurricular Activities**– One issue that is often overlooked but very significant is the payment of extracurricular activities. Extracurricular activities can be very expensive, especially for families that have more than one child. As the children grow older, this cost exponentially increases. The child support guidelines indicate that extracurricular activities are included in child support. In other words, the custodial parent does not get the right to ask for contributions for extracurricular activities. One can, however, agree otherwise. It is strongly urged that the parent agreed to a division of extracurricular activities in addition to a child support order.

**Emancipation**— Emancipation is when a party is relieved of his/her duty to support a child. Emancipation can occur upon the child's marriage, entry into military service, by court order, or by attainment of an appropriate age. Although emancipation does not need to occur at any particular age, a rebuttable presumption against emancipation exists prior to reaching 18 years old. Whether a child is emancipated at age 18, depends upon the facts of each case. Emancipation occurs when the court finds the child has moved beyond the sphere of needing parental support. In other words, the child is self-supporting. In some cases a child is considered to never become self-supporting and child or can continue indefinitely.



**College Contribution**— Generally, parents are not obligated to support children after reaching 18 years old. Nonetheless, the privilege of parenthood carries with it the duty to assure a necessary education for children. Frequently, the issue of that duty arises in the context of a divorce or separation proceeding where a child, after attaining majority, seeks contribution from a non-custodial parent for the cost of a college education. In those cases, courts have treated "necessary education" as a flexible concept that can vary in different circumstances. In evaluating the claim for contribution toward the cost of higher education, courts should consider all relevant factors, including:

- Whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education
- The effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education
- Amount of the contribution sought by the child for the cost of higher education
- Ability of the parent to pay that cost
- Relationship of the requested contribution to the kind of school or course of study sought by the child
- Financial resources of both parents
- Commitment to and aptitude of the child for the requested education
- Financial resources of the child, including assets owned individually or held in custodianship or trust
- Ability of the child to earn income during the school year or on vacation
- Availability of financial aid in the form of college grants and loans
- Child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance
- The relationship of the education requested to any prior training and to the overall long-range goals of the child



Newburgh v. Arrigo, 88 N.J. 529 (1982).

**Payment of Support**— There are generally 2 ways of paying support: direct pay or through probation. If there is a probation, account the payments for alimony or child support, it will either be by wage execution, directly garnished from a person salary, or by direct payment by the paying individual but to the probation account instead of the individual directly.



**Did you know...**

The law presumes payment through probation is preferred. This enables prompt enforcement of delinquent support payments also called arrears. For instance, the state has the power to suspend drivers license, professional license and passports for delinquent support payments. Paying through probation enables a court to know automatically when there are arrears for these enforcement purposes. It depends which side of the support obligation and you stand on as to whether or not you want to pay directly or have it go through probation.



# Tax Issues in Divorce



# Income Tax Rates

**Tip from Brad-** Your tax rate will be affected by separation and divorce. The income tax rate for a married couple is lower than that of a single individual. However, the increase in income tax rate may be offset by a big decrease in total household income. This will depend on a case-by-case analysis of your current situation.

2018 Income Tax Rates	
Single	
\$0	10%
\$9,525	12%
\$38,700	22%
\$82,500	24%
\$157,500	32%
\$200,000	35%
\$500,000+	37%
Joint	
\$0	10%
\$19,050	12%
\$77,400	22%
\$165,000	24%
\$315,000	31%
\$400,000	35%
\$600,000+	37%

# Equitable Distribution

Equitable distribution is the principle that divides assets and debts. This does not mean equal distribution but, instead, is determined by the court after considering a number of factors. Some of these factors include, but are not limited to, the length of the marriage, the contributions of both parties to the acquisition of assets and debts, the ability of the parents to earn once divorced, childcare responsibilities of either parent come, any other assets available to contribute to support, and any other factor that the court considers relevant.

Despite these issues, the equitable distribution of assets and debts in a divorce case are commonly equal because there rarely reasons to deviate. Some common reasons to deviate are unequal contribution to the acquisition of assets and debts, a grossly disproportionate ability to earn support once divorced and other reasons deemed equitable by the court.



Distribution of assets in the divorce do not trigger any tax consequence. However, capital gain taxes are an important issue to consider. Assets sold can bring a income tax liability of approximately 23.8% from the gain or profit made on the sale.

So, for instance, if a stock is purchased for \$100 and sold for \$200, you will pay \$10.00 to \$15.00 income tax. This is an important issue to consider when dividing your assets in a divorce. One common perception is that dividing assets equally is equitable, but this isn't always the case.

In some cases, one spouse keeps one asset, such as the marital home, and the other keeps a different asset, such as a 401K and, if the values are comparable, everyone thinks it is a fair distribution. However, if the house was purchased 20 years ago when the parties first married for \$100,000 and is now worth \$400,000, there will be a 10-15% tax on the sale of the property for the \$300,000 of equity, or \$30,000 to \$45,000, thereby leaving the spouse with \$355,000 to \$370,000.

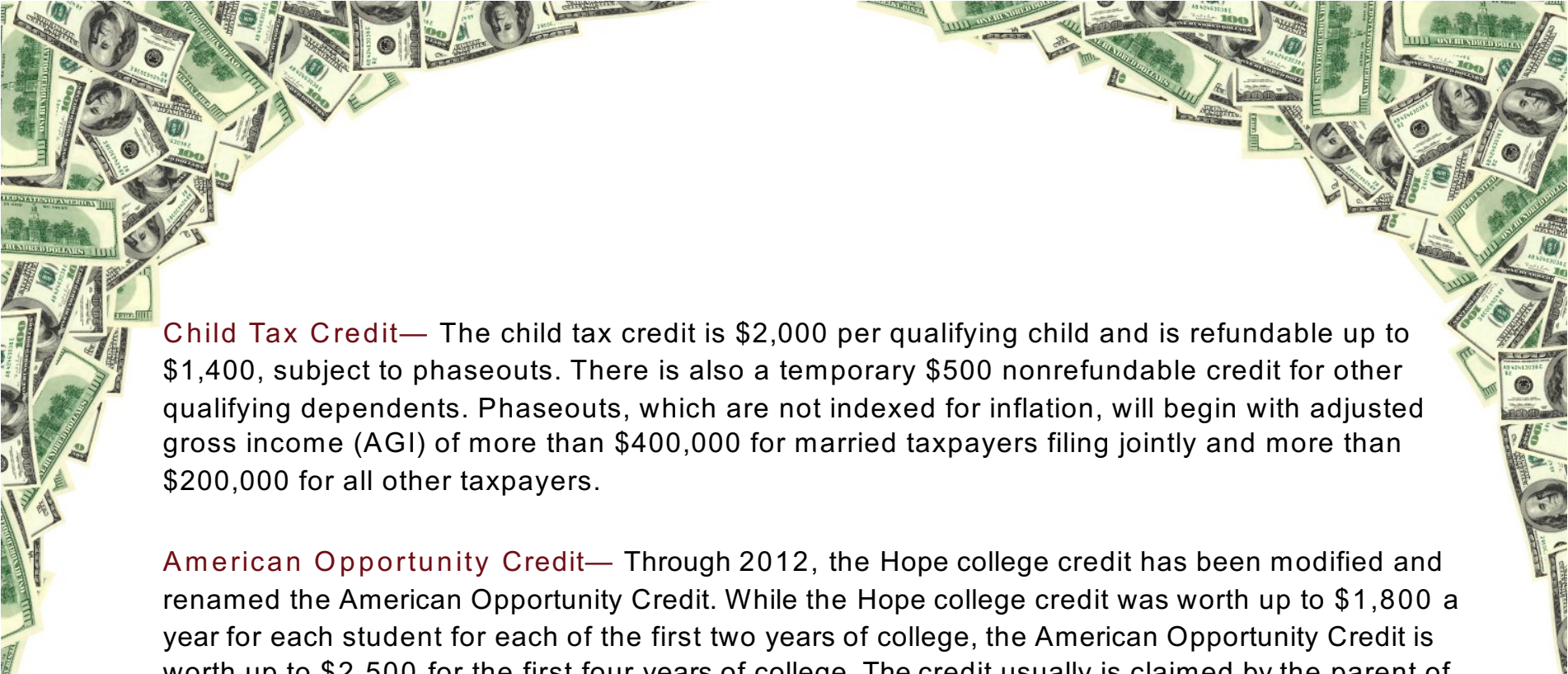
Let's say, in this example, the 401k was also valued at \$400,000 but was the result of contributions of \$200,000 over 20 years, thereby creating a basis of \$200,000. Liquidating the 401K results in a tax of \$20,000 to \$30,000 and leaves the spouse with \$370,000 to \$380,000, \$10,000 to \$15,000 more than the other spouse who believed he or she was receiving an equal share of assets. Moreover, the second spouse has an asset more easily converted to cash. You must consider the basis of assets before equitable distribution.





From the book-

- A) Generally, no gain or loss will be recognized on a transfer of property from a person to a spouse or former spouse, but only incident to divorce
- B) The transfer is treated like a gift, which means that the receiving party (transferee) gets the transferring party's (transferor) basis. Ex: Transferor bought a house for \$300,000. \$300,000 is the basis. Upon transfer to transferee, the transferee's basis is \$300,000
- C) For a transfer of property to be incident to divorce, such transfer must take place either (1) within 1 year after the date on divorce or (2) is related to the cessation of marriage
- D) This general rule does not apply if your spouse is a non-residential alien

A decorative border composed of various US dollar bills, including \$100 and \$50 bills, arranged in a jagged, irregular shape along the top and sides of the page.

**Child Tax Credit**— The child tax credit is \$2,000 per qualifying child and is refundable up to \$1,400, subject to phaseouts. There is also a temporary \$500 nonrefundable credit for other qualifying dependents. Phaseouts, which are not indexed for inflation, will begin with adjusted gross income (AGI) of more than \$400,000 for married taxpayers filing jointly and more than \$200,000 for all other taxpayers.

**American Opportunity Credit**— Through 2012, the Hope college credit has been modified and renamed the American Opportunity Credit. While the Hope college credit was worth up to \$1,800 a year for each student for each of the first two years of college, the American Opportunity Credit is worth up to \$2,500 for the first four years of college. The credit usually is claimed by the parent of the student. The American Opportunity credit phases out income rises between \$80,000 and \$90,000 on single returns and between \$160,000 and \$180,000 on joint returns.

**Coverdell Education Savings Accounts**— You can't deduct what you contribute to a Coverdell account, but earnings are tax free if the money is used to pay college costs or expenses for elementary and secondary school education. This includes private and parochial schools. Up to \$2,000 can be contributed to a beneficiary's account per year.

**Day Camps**— The cost of day camps for your children while you work can be paid with pretax salary run through a dependent-care reimbursement account or can serve as the basis for the dependent-care credit. Overnight camps do not qualify!



# Attorney Fees



Nobody likes paying legal fees. However, often missed by clients and his/her accountant is that some of fees paid in a divorce may actually be an income tax deduction. Subject to the two percent benchmark for miscellaneous expenses, you may be able to deduct fees that cover tax research and advice on such items as alimony, property transfers and dependency exemptions for the children. But you can do so only if the bill specifies in a reasonable way how much is for tax counseling. Moreover, there is no deduction at all for your payment of your spouse's legal fees, even if they are entirely for tax advice. The deduction is allowed just for advice you receive about your own tax problems.

*“Nobody likes paying legal fees.”*

**Court- Awarded Legal Fees**— Absent an agreement, R. 1:10-3, 4:42-9(a) and 5:3-5(c) provides discretionary authority for the allowance for counsel fees in family actions. The discretion is broad. Maver v. Maver, 150 N.J. Super. 556, 569 (Ch. Div. 1977). A counsel fee award may encompass all aspects of the litigation so long as the award is for services rendered. Lannone v. McHale, 245 N.J. Super. 1727 (App. Div. 1990).

Trial courts, however, must give reasons for attorney fee awards. Williams v. Williams, 59 N.J. 229, 232 (1971). The three most common reasons for such an award are the applicant's needs, Slater v. Slater, 223 N.J. Super. 511, 519 (App. Div. 1988); the financial ability of the adversary to pay, 223 N.J. Super. at 519; and the applicant's good faith in instituting or defending the action, 59 N.J. at 233. See also R. 5:3-5(c).

Courts have also looked at issues such as the complexity of the case, Chalmers v. Chalmers, 65 N.J. 186 (1974) and equality of financial positions, Lavene v. Lavene, 148 N.J. Super. 267, 277 (App. Div. 1977).



Life



Insurance

### *Something to think about...*

Many divorce agreements include provisions for life insurance to be maintained by one of the spouses or both. Commonly this is used to ensure alimony payments and child support in the event that the parent who is paying support dies prematurely. While the types and benefits and detriments of each type of insurance policy available are too broad for the limited topics discussed, the obvious impact is the out-of-pocket cost to obtain life insurance especially as the paying spouse ages and his or her health changes. One must factor in the increasing cost of life insurance when evaluating the financial impact a divorce can have.

One thing to consider is whether or not to obtain a term or variable life insurance policy. Term policies are the most common and the least expensive but they only provides for a death benefit and only for a limited period of time. Once the term has expired, the life insurance coverage disappears as well as all premiums you have paid up to that point. Avariable life insurance policy, on the other hand, has a death benefit as well as an investment component. Some of the premiums you pay are invested into a cash value account separate and apart from the death benefit. For many, a variable life insurance policy is a very good tool for retirement planning.



# Estate

# Planning





# Estate Planning

You should immediately revise your estate plan if you want to file for divorce. Any will drafted prior to a divorce is revoked by operation of law. That means your property will pass by the intestate statute and not necessarily as you may have intended. Additionally, an important issue in estate planning for divorced couples is what happens to the money you leave your children. In many cases, a divorcing spouse does not want the other parent to control assets left to the children. Although most would say the custodial parent is the best person charged with handling this money, the animosity that remains from a divorce often clouds that decision. Without a will, the money is left to the other parent, in trust, to use for the children's best interest with no guidance whatsoever.

In addition, divorcing greatly affects the potential estate tax for your estate. As the law stands now, married couples can pass an unlimited amount of assets to the other spouse without estate tax consequence. Once divorced, a single person can only pass \$1 million without estate tax consequence. Additionally, a single person's estate can often pass to beneficiaries who then have to pay inheritance tax in addition to a potential estate tax.

A full review of the estate, inheritance, and gift tax laws are well beyond the scope of this e-book, you would be wise to consult with an attorney for estate planning purposes once you decide to file for divorce.

The financial impact of a divorce upon a family will vary greatly from case to case. No two cases or families are ever the same. While this guide is intended to give you an introduction to the financial issues and impact of filing for divorce, nothing replaces a consultation with an experienced divorce attorney. If you want to speak with an experienced attorney who is familiar with these areas of law, call us at 973-562-0100. Our firm is focused on divorce, custody, and family law for men and fathers.

**Keep up on legal developments in divorce, custody, and family law:**



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