



# STAYING ON COURSE

Separation, divorce and your finances

There's Wealth in Our Approach.™



RBC Wealth Management





This guidebook provides ideas and suggestions to help you stay on course during separation and divorce. The information is not intended to provide legal or tax advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified legal advisor before acting on any of the information in this guidebook.

## SEPARATION, DIVORCE AND YOUR FINANCES

If you find yourself going through a relationship breakdown, coping with the emotional aspects is just one step in a long journey. There are also many legal and financial issues that need to be addressed – whether your relationship is common-law, a civil marriage or a civil union.

If you have children, custody and access issues will have to be worked out. Financial support for you, your children or your spouse must also be considered. In addition, the division of property needs to be settled.

Managing your finances can be challenging even in the best of times. However, it is often the decisions that you make, or don't make, during transitional periods in your life that will have the most impact on your overall financial picture.

Whether you are currently contemplating a separation from your spouse, or you are in the final stages of divorce, it's never too early or too late to plan for your financial future. Even if you remain with your spouse, or reconcile at a later date, it is a good idea to know where you are at and where you are going financially.

## HOW RELATIONSHIPS ARE DEFINED IN CANADA

### MARRIAGE

In Canada, the responsibility for marriage is divided between the federal and provincial governments. The federal government is responsible for the definition of marriage and for laws governing divorce, while the provinces and territories are responsible for the licensing and registration of marriage.

### LEGALLY RECOGNIZED RELATIONSHIPS

#### CIVIL MARRIAGE

Governments are concerned only with civil marriage. Religious marriages, by themselves, have no legal effect. The difference between religious and civil marriage is often invisible in Canada. In most provinces and territories, religious officials are licensed to simultaneously conduct the religious and civil marriage.

#### CIVIL UNION/DOMESTIC PARTNERSHIP

A civil union or domestic partnership is different from a civil marriage. It is a registration system that allows two individuals to register their relationship in order to trigger legal consequences. This system is only available in certain provinces and territories.

#### COMMON-LAW RELATIONSHIPS

Common-law relationships are legally recognized in Canada provided that the couple can show they have been living in a marriage-like relationship for a certain amount of time. Under most federal laws, that time is one year. Under most provincial and territorial laws, it is two or three years.

#### SAME-SEX MARRIAGES

In July 2005, Canada legalized same-sex marriage with the passage of the Civil Marriage Act.

*In this guide, we use the term "spouse" to refer to all the above relationships.*



# GETTING ORGANIZED

## Make a list of your assets and liabilities

The first step you should take, regardless of what stage in the relationship breakdown you may be in, is to organize your financial affairs. This involves finding out exactly what assets you and your spouse own and what liabilities the two of you may have.

By knowing the financial positions of both you and your spouse, you can gain some insight into your net-worth should you formally end your relationship.

This can also help protect you from the possibility of your spouse disposing of assets without your knowledge, or simply not disclosing them to you.

In addition, you will need to provide this information to the professional advisors who are helping you get your financial life back on track. Some of the information you should gather includes:

- Birth and marriage certificates
- Will and Power of Attorney documents
- Marriage contracts/domestic agreements
- Title deeds to your home and any other property you own
- Ownership records for your motor vehicles
- Investment account statements
- Tax returns for you and your spouse for the past three to five years or longer, if possible
- Business tax returns
- Retirement account statements such as Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs)
- All insurance policies (such as home, auto and life)
- Stock option plan statements
- Business financial statements
- Shareholder / partnership agreements
- Company pension statements

- CPP/QPP information statements
- Current bank account statements
- Current credit card statements
- Most recent mortgage statement
- Promissory notes or evidence of family loans
- Current statements of all other outstanding loans
- Trust deeds

## FIGURE OUT YOUR SOURCES OF INCOME

Except in the most amicable cases, should you proceed with separation or divorce, it will normally take a period of time before your financial affairs are resolved. During this period, you will need to know what sources of income you will receive to support yourself and any dependants.


Sources of income can include employment income, interim spousal and/or child support, income from your investments, and income from retirement vehicles like your RRSP or RRIF.

## ESTABLISH YOUR OWN CREDIT

It is important to establish your own credit record so that you will have the ability to get credit if needed.

If you have never had a credit card in your own name, consider applying for one. You may want to do this even before deciding whether or not to separate. Once you have established your own credit, you should think about when you should close all joint credit card accounts.

You should also contemplate getting a line of credit in case you have a temporary need for cash while your financial affairs are being settled. The interest charges associated with a line of credit are generally much lower than credit cards. In addition, you should notify all other known creditors (such as your mortgage representative or bank loan officer) of your change in status. If possible, you should ensure that your spouse cannot further bind you to any new debt.

A man with dark hair, wearing a brown sweater over a white collared shirt, is leaning over a black filing cabinet. He is looking down at the papers inside the cabinet, with his hands resting on the top edge. The background is a plain, light-colored wall with a window covered by white blinds.

By knowing the financial positions of both you and your spouse, you can gain some insight into your net-worth should you formally end your relationship.

### **OPEN YOUR OWN BANK ACCOUNT**

If you do not have a bank account in your own name, you may want to open one. Once you have your own bank account, consider closing any joint bank accounts shared with your spouse. If any joint accounts need to remain open, ask that both signatures be required before any transactions are made. You should also think about revoking any Powers of Attorney/Mandate in Anticipation of Incapacity in Quebec that you have given in favour of your spouse.

### **NOTIFY YOUR INVESTMENT PROFESSIONALS OF YOUR STATUS**

If you hold any investment accounts in joint names with your spouse, make sure you notify your investment professionals of your status. You may want to rescind any trading authorization granted to your spouse.

# FINDING THE PROFESSIONAL HELP YOU NEED

## The next step is to seek professional assistance

The next step is to seek professional assistance to guide you through the separation and divorce process. These professionals – lawyers, accountants, and financial services experts – can help you address the various legal and financial issues that arise during a relationship breakdown.

If you are unsure where to get the professional assistance you need, an RBC advisor can refer you to qualified professionals. If you already work with professional advisors like lawyers and accountants, an RBC advisor can work with them to ensure all aspects are considered in helping you stay on track financially.

### YOUR LAWYER

Ending a relationship can be a difficult and stressful time. There are many legal issues that must be sorted out. To help you through this process, it is important to seek the assistance of a qualified family lawyer. Your lawyer can assist you in deciding how best to resolve the outstanding matters between you and your spouse. There are ways to resolve disputes with your spouse outside of the court system that you may wish to consider. These include mediation, collaborative processes, arbitration, and negotiation.

Even if you and your spouse are able to agree on issues related to property division, support and child custody, it is still worthwhile to consult a family lawyer to ensure that you are fully aware of your rights and responsibilities.

Some of the issues your lawyer will help negotiate on your behalf include:

#### 1. The amount of spousal support

If you are married (or for most provinces and territories if you are in a common-law relationship) you may be entitled to receive spousal support from your former spouse. The amount and duration of any spousal support awarded will generally depend on the needs, means and other circumstances of each spouse.

Spousal support can be awarded on an interim, lump sum, or fixed-term basis. It can also be varied if there is a change in circumstances.

#### 2. The amount of child support

Federal and provincial/territorial family law legislation include support guidelines that set out the amount of child support to be awarded. This amount is generally fixed according to the annual income of the person providing the support, as well as the number of children involved. The guidelines may not apply in cases where a child is over the provincial age of majority or the person providing support earns in excess of a certain amount of income. In addition, there may be other special circumstances where the guideline table amount is varied and other special expenses added to the guideline table amount for support.

#### 3. Parenting arrangements for children

Your lawyer will help you negotiate the terms and conditions around custody and access to your children if you have any. Custody and access matters are generally resolved by considering the best interests of the children, taking into account their physical, emotional, intellectual and moral well-being.

#### 4. The division of family property accumulated during the relationship period

Married and civil union spouses are generally entitled to an equal division of property accumulated during the marriage, subject to certain exceptions. For example, gifts or inheritances received during the marriage may be excluded from the division of property. In some provinces and territories, common-law spouses also have this sharing right. Your lawyer will be able to help you understand and determine what kind of property is subject to division, how the property is valued, and how the sharing of property will be achieved.





Going through a relationship breakdown can be a confusing and stressful experience. Your professional advisors can help you cope during this difficult time, and provide the expertise you need to achieve an equitable settlement and organize your financial and legal affairs.



## YOUR ACCOUNTANT

You should also consider seeking out the help of an accountant to help you work through the various tax implications associated with separation and divorce. Your accountant may also be able to help you determine the current value of your or your spouse's pension plan or the fair market value of any jointly owned business. In addition, your accountant can help you prepare long-term personal financial projections that can be used by your lawyer in settlement negotiations or to determine the viability of any proposed settlement option.

As in choosing a lawyer, you should choose an accountant who is experienced in family law matters and who you feel comfortable with.

Some of the common tax issues arising from a relationship breakdown include:

### 1. Child support payments

Child support payments made pursuant to a court order or written agreement after April 30, 1997 are neither taxable to the recipient nor deductible by the person making the payment.

### 2. Spousal support payments

Spousal support payments are taxable to the recipient and deductible by the person making the payment provided they meet certain conditions, including that the

payments are periodic (as opposed to lump sum) and are made pursuant to a court order or written agreement.

### 3. Lump sum payments

Lump sum spousal support or child support payments are not taxable to the recipient nor deductible to the person making the payment, unless they represent arrears of periodic support payments.

### 4. CPP/QPP splitting

CPP/QPP benefits accumulated during the relationship period may be split between married, civil union or common-law spouses (where applicable).

### 5. Legal fees

Legal fees paid to obtain a separation or divorce or to establish custody of or visitation arrangements for a child are not deductible for tax purposes. Legal fees incurred by the recipient to establish the right to support payments, to obtain an increase in support, to collect late support payments or to make child support nontaxable are deductible for tax purposes. From the payor's standpoint, legal fees incurred in negotiating or contesting an application for support payments or for the purposes of terminating or reducing the amount of support payments are not deductible.

### 6. Transfer of capital property

Property may be transferred from one spouse to another at the adjusted cost base of the spouse making



the transfer, if the transfer is in settlement of rights arising from the relationship breakdown. This way, the spouse who transferred the property will not be subject to any tax consequences resulting from the transfer. If desired, property can also be transferred between spouses at fair market value. However, in this case, there are potential tax consequences to the spouse making the transfer.

The payment of taxes that may be incurred when transferring capital property in settlement of marital rights is something you and your spouse may wish to address and negotiate.

### 7. Transfer of registered plan assets

Assets held in an RRSP or RRIF can be transferred on a tax-deferred basis from one spouse's RRSP or RRIF to the other's pursuant to a court order or written agreement in settlement of their rights upon a relationship breakdown.

Tax-Free Savings Account (TFSA) assets may be transferred directly between spouses upon a relationship breakdown. There will be no reinstatement of contribution room to the transferring spouse and no contribution room is required for the recipient spouse. Alternatively, a spouse may withdraw assets from their TFSA and give these assets to the other spouse. The amount of the withdrawal will be added back to the contribution room of the transferring spouse in the following year. The recipient spouse, however, will only be able to contribute these assets to a TFSA if the spouse has unused TFSA contribution room.

Depending on the federal, provincial or territorial legislation that governs a registered pension plan, some or all of the pension benefits acquired during the marriage may be transferred to a locked-in plan for a spouse on a tax-deferred basis. The option to receive a lump sum settlement immediately or a deferred annuity will depend on the terms of the pension plan and the governing legislation. Subject to the governing pension plan legislation, assets held in a locked-in account may also be transferred on a tax-deferred basis to another locked-in plan on relationship breakdown.

### 8. Attribution rules

The attribution rules are a set of tax rules designed to prevent income splitting between non-arm's length

persons, including spouses. According to these rules, income from property transferred or loaned to a spouse or a trust of which the spouse is a beneficiary will generally be attributed back to the transferring spouse and taxed in the spouse's hands. The attribution rules cease to apply upon a relationship breakdown.

## YOUR ADVISORS

### FINANCIAL ADVICE

In addition to a lawyer and accountant, you should also seek the assistance of a qualified advisor. By knowing the details of your personal financial situation and understanding your goals and objectives, this person will be able to work closely with your lawyer and accountant to achieve a financially equitable settlement that is right for you.

You may wish to explore the possibility of creating a financial plan with your RBC advisor. A financial plan will address questions such as: Can you afford to keep the house? Do you have enough money to retire? What kind of lifestyle can you afford?

The following are some of the other services your RBC advisor can help you with:

- Analyze your cash flow
- Determine your interim and long-term needs



- Estimate the education costs for your children
- Facilitate the transfer of investment or retirement assets from your former spouse
- In conjunction with your other professional advisors, your RBC advisor can assist with the preparation of your net-worth statement and budget

#### **DETERMINE YOUR NET-WORTH**

Your RBC advisor will be able to help you determine and update your net-worth periodically over the course of the divorce. A sample net-worth worksheet (Appendix 1) is enclosed to help you determine your current net-worth. You can get an idea of what you have to work with by subtracting your total liabilities from your total assets. Don't forget to include the value of a family business or any shared property, such as your home, in your calculation.

#### **SET YOUR GOALS AND PRIORITIES**

Once you have determined your net-worth, you should set your financial goals and priorities, both for the immediate future and long term. While not an exhaustive list, some of the most common short-term goals and objectives could include:

- Securing a sufficient cash flow to pay expenses
- Maintaining an adequate standard of living for you and your dependants until your financial matters have been resolved
- Ensuring adequate disability insurance coverage to protect you and your dependants in the event of personal disability
- Making sure you have sufficient life insurance coverage to protect your dependants
- Updating your Will and Power of Attorney /Mandate in Anticipation of Incapacity

Your long-term goals and priorities could also include:

- Securing sufficient funding for your retirement
- Providing for the education of any children
- Developing and implementing a new estate plan

#### **DEVELOP A BUDGET**

To achieve your goals and objectives, you may have to limit the amount of money you spend. Your RBC advisor can help you develop a cash-flow analysis that details

your income and expenses, as well as a personal budget that will help you determine what you can safely spend to achieve your goals and objectives.

The following are some suggested guidelines on your income and expenses:

- Mortgage or rent payments each month should add up to less than 30% of your monthly net income
- Total debt, excluding your mortgage, should be less than 20% of your net income

Ongoing childcare expenses might also need to be considered, as will the cost of replacing any items you have lost.

You can use the sample cash flow worksheet in Appendix 2 to help you get started on developing your own budget.

#### **INVESTMENT SOLUTIONS**

Once you have figured out your net-worth and established a budget, it's time to decide how to manage your assets. If you haven't already established one, you will most likely want to open an RRSP. You may also need to open a non-registered investment account.

Depending on your situation, you may require professional assistance with your investments. An investment professional can help you clarify your investment objectives, and create a plan to achieve them.

#### **DEVELOP AN INVESTMENT PLAN**

Your RBC advisor's first – and most important – job is to listen to you and understand your personal situation and investment needs. Based on this information, your RBC advisor can help you establish your investment objectives and create your investment plan. If you receive a settlement on your relationship breakdown, you may want to set aside the proceeds in safe, liquid investments until your investment plan is developed. If you have made a payment to your former spouse on your relationship breakdown, you may want to consider re-balancing your investment portfolio.

Once your investment plan has been agreed upon, your RBC advisor can recommend an appropriate blend of investments that will help turn your objectives into achievements. Your goal is to have a mix of investments (such as mutual funds, stocks and bonds) that is suitable for your life stage and risk tolerance.





It is important to stick with your investment plan over the long term. Making hasty adjustments in reaction to short-term market volatility can impede progress towards achieving your financial goals. Instead, necessary and appropriate adjustments should be made through a disciplined process of regular monitoring and review.

#### **ESTATE PLANNING**

At the same time you are developing your financial plan, you should also consider your estate plan. Careful estate planning ensures that your assets will be distributed in accordance with your wishes after you are gone or if you become physically or mentally incapacitated. This usually implies updating both your Will and any Power of Attorney/Mandate in Anticipation of Incapacity you may currently have.

A Will is a legal document that takes effect upon your death. It outlines how you want your property distributed to your beneficiaries and appoints an executor (liquidator in Quebec) to act on your behalf and carry out your wishes. Though the law varies from province to province, a separation or divorce may cancel a gift to your former spouse in your Will or the former spouse's appointment as executor/liquidator.

A Power of Attorney/Mandate in Anticipation of Incapacity is a document that empowers an individual to act on your behalf if you are unable to make decisions on your own. Divorce does not revoke a Power of Attorney/Mandate in Anticipation of Incapacity.

Establishing a trust during your lifetime or through your Will for your beneficiaries is another option you may wish to consider. Trusts enable you to transfer your assets to your beneficiaries while still maintaining a degree of control over them.

## **INSURANCE PLANNING**

Insurance can also play an important role in the preservation of wealth. For example, insurance can help you leave a lasting legacy for your family or other beneficiaries of your estate. At death, your assets can trigger significant tax obligations. These obligations are frequently met by liquidating the assets of your estate. A life insurance benefit can cover these obligations and leave the estate intact. Determining exactly how much and what type of insurance is most suitable for your situation can be best assessed through the preparation of a financial plan and the aid of a life-licensed representative.



### **HELPING YOU DURING TIMES OF TRANSITION**

During times of transition in your life, such as separation and divorce, it is important that you have all the support and guidance that you need. Your RBC advisor can assist you with a broad range of financial and investment solutions including:

- Setting up a new account, getting a new credit card, establishing a line of credit or arranging a loan.
- Planning for your retirement and ensuring there is money set aside for the education of your children. Your RBC advisor can answer any questions you may have about RRSPs and Registered Education Savings Plans (RESPs).
- Investment strategies and solutions appropriate for your situation. Your RBC advisor can help you achieve your investment objectives, no matter your level of investment experience or degree of assistance required.
- Estate planning and wealth protection – whether you want to create an estate for your heirs, minimize the financial burden on your loved ones in the event of your passing, or ensure your personal savings are not jeopardized by unexpected events.
- RBC offers a broad range of services, including banking, financing, investing, insurance, group financial services and succession planning.



# NET-WORTH WORKSHEET (APPENDIX 1)

ASSETS	CURRENT VALUE
<b>Liquid Assets</b>	
Bank accounts	
Money market funds	
Certificates of deposit	
Treasury bills	
Cash value of life insurance	
Other	
<b>Investment</b>	
Stocks	
Bonds	
Stock mutual funds	
Bond mutual funds	
Other mutual funds	
Other	
<b>Tax-deferred investments</b>	
Employer savings plans	
Pension (lump-sum value)	
Accumulated value of annuity	
Other	
<b>Personal property</b>	
Principal residence	
Vacation home	
Rental property	
Partnership or business ownership	
Cars, trucks, boats	
Home furnishings	
Art, antiques, coins, collectibles	
Jewelry, luxury items	
Other assets	

**Total Assets** \$

LIABILITIES	CURRENT VALUE
<b>Current</b>	
Credit card balances	
Margin loans on securities	
Estimated income tax owed	
Other outstanding bills	
<b>Long-term</b>	
Mortgages	
Home-equity loans	
Car loans	
Tuition loans	
Life insurance policy loans	
Other long-term debt	

**Total liabilities** \$

**Total Assets** \$

**Total Liabilities** \$

**Total Net-worth\*** \$

\*total assets minus total liabilities

# CASH FLOW WORKSHEET (APPENDIX 2)

INCOME	CURRENT VALUE
Wages, salary, commissions and bonuses	
Self-employment	
Dividends, interest and capital gains	
Annuities, pensions and Canada/Quebec Pension Plan	
Trusts, estates and insurance	
Real estate rentals	
Other sources	

<b>Total Income</b>	<b>\$</b>
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<b>Total Income</b>	<b>\$</b>
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<b>Total Expenses</b>	<b>\$</b>
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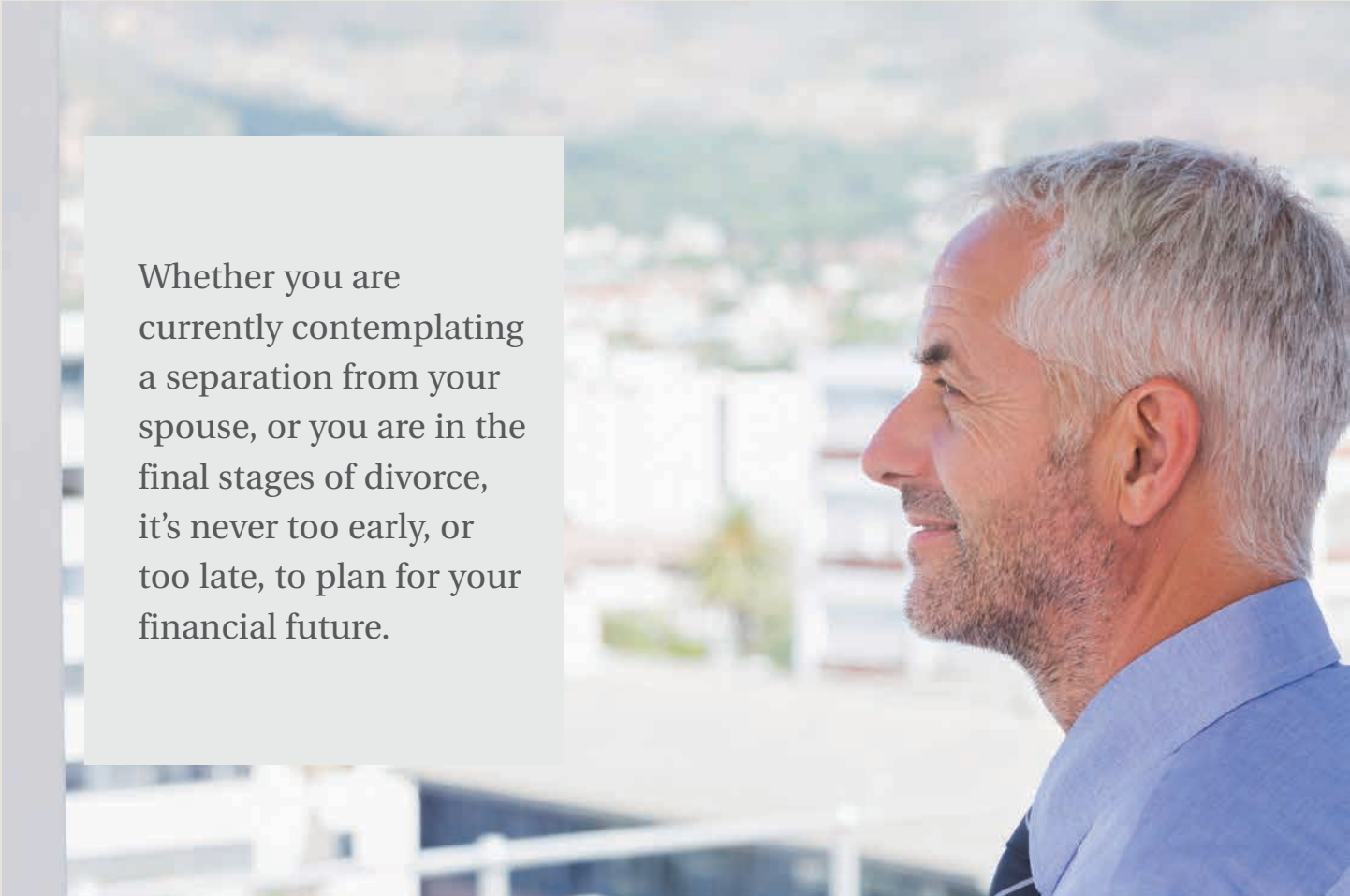
<b>Total Income minus Expenses</b>	<b>\$</b>
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EXPENSES	CURRENT VALUE
Mortgage/rent	
Housing expenses (taxes, condominium or co-op fees, homeowner's or renter's insurance, and utility bills)	
Food	
Clothing	
Cosmetics/toiletries	
Entertainment	
Transportation (car payments, insurance, fuel and repairs)	
Travel/vacations	
Non-reimbursed medical-care expenses and health insurance payments	
Credit-card bills	
Income-tax payments	
Life/disability insurance	
Tuition	
Dependent care (parent or child)	
Gifts and donations	
Subscriptions/dues	
Other expenses	

<b>Total Expenses</b>	<b>\$</b>
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Whether you are currently contemplating a separation from your spouse, or you are in the final stages of divorce, it's never too early, or too late, to plan for your financial future.

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