READ LAW LLC

DIVORCE GUIDE TO DIVISION OF PROPERTY AND FINANCES

UTAHDIVORCEATTORNEY.COM

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DAVID W. READ, ESQ.

David Read practices family law and divorce law throughout Utah and advises lawyers throughout the United States as they prepare to argue their clients cases at trial. Prior to establishing his own firm, his practice was at the regional law firm of Strong & Hanni and later at the national divorce law firm of Cordell & Cordell. David serves as a professor of business law and has taught university courses in law, philosophy, and government classes for over twenty years.

Utah Business Magazine's list of "Utah Legal Elite" and Super Lawyers have recognized David for his legal expertise. He provides clients with seasoned legal counsel as he focuses on the most efficient and effective litigation strategies. He works closely and effectively with qualified professionals and expert witnesses, including business evaluators, forensic accountants, clinical psychologists, custody evaluators, social workers, guardians ad litem, and real estate appraisers.

David served as a founding co-editor-in-chief of the Utah Journal of Family Law. He also served as the Managing Editor of the nationally-recognized academic journal, the Journal of Legal Studies Education, a publication of the Academy of Legal Studies in Business.

EDUCATION, TRAINING, AND EXPERIENCE

- Graduated from the University of Houston Law Center
- Graduated from the London School of Economics & Political Science- MSC Political Philosophy
- Graduated from The University of Utah- BA Political Science
- Was recognized as Business Law Practitioner of the year by the Utah Bar Association in 2016.
- A two-time graduate of National Institute of Trial Advocacy
- Served as founding Co-Editor-in-Chief of the Utah Journal of Family Law
- Served as the managing editor of the Journal of Legal Studies Education
- Serves as a Professor of business law & business ethics
- Served as editor of the Journal of Criminal Law

GARDNER v. GARDNER

In 2019, the Supreme Court of Utah sided with us when we argued before it in the case of Gardner v. Gardner, on the issue of alimony due to fault of a divorcing party.
In addition, the Supreme Court was in accordance with our attorneys that adultery and other considerations should impact the amount of alimony awarded.

LISTEN TO INTERVIEWS OF THE APPELLATE ATTORNEYS

> *"David Read and his office staff were wonderful to work with. They helped me and my father work through his divorce as quickly and as efficiently as possible. Staff was incredibly professional and answered every question with knowledge and accuracy. I would recommend the Law Office of David W. Read to anyone having to go through a divorce, or any other family law needs."*
>
> — LIZ SLUSSER

LEAVE US A REVIEW

We want you to experience the best a lawyer can offer. If we have serve you positive in a positive way, please leave a positive, 5-star review about your experience. Google will reward our online presence in a big way because of your review.

GOOGLE **FACEBOOK**

UNDERSTANDING DIVORCE IN UTAH

Divorce is a major life transition that involves important legal, financial, and emotional considerations. Whether you're contemplating divorce or already in the process, understanding Utah's divorce laws can help you make informed decisions.

REQUIREMENTS FOR DIVORCE IN UTAH

- **Residency Requirement** – At least one spouse must have lived in Utah for at least three months before filing.
- **Grounds for Divorce** – Utah allows no-fault divorce (irreconcilable differences) and fault-based divorce (adultery, abandonment, cruelty, etc.).
- **Mandatory Waiting Period** – Utah requires a 30-day waiting period before a divorce can be finalized.

KEY ISSUES IN DIVORCE

1. Division of Assets & Debts

- Utah follows equitable distribution, principles meaning assets and debts are divided fairly, but not necessarily equally.
- Courts consider factors like each spouse's financial contributions and future needs.

2. Child Support & Alimony

- Child support is calculated based on both parents' incomes and parent - time arrangements.
- Alimony (spousal support) may be awarded based on factors like the length of the marriage and financial need.

3. Mediation Requirement

- Utah courts require divorcing couples to attend at least one mediation session before moving the date to trial to encourage settlement.

HOW LONG DOES DIVORCE TAKE?

- **Uncontested Divorce** – Can be finalized in as little as 30-45 days if both parties agree to all terms.
- **Contested Divorce** – Can take several months to years, depending on complexity and nature of disputes.

WHY LEGAL REPRESENTATION MATTERS

Divorce involves critical decisions that can impact your future. Having an experienced attorney ensures your rights and interests are advance and protected throughout the process.

UTAH DIVORCE PROCESS

Hiring the right firm is essential to the outcome of your case whether your divorce is amicable, contentious, or complex. You must ensure you retain an expert divorce attorney who will properly and successfully advocate for your needs before a divorce court. We find this holds true even when you and your soon-to-be former spouse are in agreement on the terms of your divorce.

PHASE I — Initial Action

1. Petition for Decree of Divorce
2. Petition to Modify Decree of Divorce
3. Initial Disclosures
4. Financial Declaration
5. Motion for Temporary orders*
6. Rule 109 Injunction
6. Protective Order
7. Restraining Order
8. Mediation Preparation
9. Alimony report
10. Child support report
11. Global Settlement Agreement
12. Marital Property Balance Sheet Agreement

*In most Utah's District Courts, a Domestic Relations Commissioner will rule on most pre-trial matters (except as set forth in Rule 101), judges hear and rule on certain dispositive motions, Rule 108 Objections, pre-trial and trial matters.

PHASE II — Discovery

Discovery of Opposing Party

1. Request for Production of Documents
2. Request for Admissions
3. Depositions lay and expert witnesses

Discovery of Third Parties

1. Subpoenas (medical records, bank records, police records)
2. GRAMA Requests

Expert Identification and Retention

1. Custody Evaluation Report
2. Vocational Assessment Report
3. Business Valuation Expert
4. Real Estate Valuation Expert

PHASE III — Pre-Trial and Trial

1. **Pre-Trial Conference Before Commissioner**
Certifying the issues to be tried at trial before the judge.

2. **Pre-Trial Conference Before Judge**
Schedule deadlines; exhibits, witness Disclosures, expert witness report disclosures, objections to exhibits and witnesses and schedule date for trial.

3. **Trial**
Trial prep includes compiling exhibits in desired order, anticipating evidentiary objections, trial binder preparation, witness prep, expert witness review.

PHASE IV — Appeal & Post-Divorce

1. Appeal
2. Briefing Phase
3. Oral Argument
4. Appellate Court Decision
5. Writ of Certiorari or Decree of Divorce
6. Petition to Modify Order Post-divorce
7. Motion to Enforce Court Orders

UNDERSTANDING THE FINANCIAL IMPACT OF DIVORCE & CUSTODY

Divorce and custody decisions can have long-term financial consequences. From dividing assets to determining support obligations, understanding your financial rights and responsibilities is crucial. This guide provides key insights into managing the financial aspects of divorce and child custody in Utah.

DIVIDING ASSETS & DEBTS IN DIVORCE

- **Equitable Distribution** – Utah follows equitable distribution, meaning marital assets and debts are divided fairly but not necessarily equally.
- **Marital vs. Separate Property** – Only marital assets (acquired during the marriage) are subject to division; separate property (owned before marriage or received as a gift/inheritance) generally remains with the original owner.

COMMON ASSETS TO DIVIDE

- [x] Real estate (homes, rental properties, cabins)
- [x] Bank accounts, investments, and retirement funds
- [x] Business interests and personal property
- [x] Debts, including loans and credit cards

CHILD SUPPORT

- Based on both parents' incomes and the custody arrangement (# of overnights).
- Covers basic necessities such as food, housing, education, and healthcare.
- Utah provides standardized guidelines to calculate child support obligations.

ALIMONY

- Courts consider factors like length of marriage, earning capacity, and financial needs.
- May be temporary or long-term, depending on the case.
- Designed to help a financially dependent spouse transition post-divorce and maintain the standard of living.

PARENT-TIME & FINANCIAL CONSIDERATIONS

- The parent with primary custody often incurs more day-to-day expenses.
- Non-custodial parents may be responsible for additional costs beyond child support, such as medical expenses, extracurricular activities, and schooling.
- Our Parent-Time Calculator can help estimate financial obligations based on custody arrangements.

Navigating divorce and custody finances is a complex process. At Read Law LLC, we provide experienced legal counsel to protect your rights and ensure you a fair financial outcome.

CUSTODY AND FINANCIAL IMPLICATIONS

Custody isn't just about parenting time—it directly impacts financial obligations like child support, healthcare, and shared expenses. Understanding how Utah law calculates support and what costs are split helps parents plan for stability and fairness post-divorce.

IMPACT OF CUSTODY ARRANGEMENTS ON CHILD SUPPORT

In Utah, child support is heavily influenced by the number of overnights each parent has with the child. The state uses an income-sharing model based on:

- Each parent's gross monthly income
- The number of children
- The custody schedule (e.g., sole, joint, or split custody)

Examples:

- In a joint physical custody arrangement (at least 111 overnights with each parent), support is often lower because both parents share significant parenting time and expenses.
- In a sole custody arrangement, the non-custodial parent typically pays more in support.

Courts can also deviate from the formula for special circumstances, such as special needs or long-distance parenting.

SHARED EXPENSES AND REIMBURSEMENTS

In addition to base child support, both parents may be required to split additional child-related costs, including:

- Uninsured medical expenses (copays, prescriptions, therapy)
- Childcare needed for a parent to work or attend school
- Educational costs (tutoring, school fees, supplies)
- Extracurriculars (sports, music, camps, etc.)

These costs may be divided proportionally based on income unless the court orders otherwise.

Best practices include:

- Keeping detailed records and receipts
- Using parenting or expense-tracking apps (e.g., OurFamilyWizard, TalkingParents)
- Submitting reimbursement requests in writing and within the time frame set by court order

DIVORCE CALCULATORS

Navigating a divorce involves making critical financial and custody decisions that can have long-term consequences. At Read Law LLC, we provide powerful tools to help you gain clarity, confidence, and strategic advantage throughout the legal process. Our Divorce Calculators allow you to estimate child support, spousal support, property division, and parent-time schedules, helping you make informed choices before entering negotiations or court proceedings.

CHILD SUPPORT CALCULATOR

Estimate child support payments based on income and custody arrangements.

SPOUSAL SUPPORT CALCULATOR

Get an estimate of potential spousal support obligations.

PROPERTY DIVISION CALCULATOR

Assess how assets and debts may be divided in your case.

PARENT-TIME CALCULATOR

Create a visual parent-time schedule to plan time-sharing arrangements.

These tools are invaluable for anyone contemplating or currently going through a divorce. While they provide helpful estimates, every case is unique—consulting an experienced attorney ensures you receive the best legal guidance tailored to your situation.

SPOUSAL SUPPORT CALCULATION

A major purpose of spousal support, also commonly referred to as alimony, is to enable the spouse receiving financial support to maintain the same standard of living they held during the marriage.

REHABILITATION ALIMONY

In the state of Utah there is no set formula to determine how much spousal support to award. Instead, Utah courts must consider a number of factors when determining an award of support. Generally, these considerations include the financial conditions of the parties such as the needs of the recipient spouse and the payor's ability to pay those expenses. Utah appellate courts have issued a number of opinions on the matter of spousal support. We will advise you on your rights.

While there is no calculation, we have created a spousal support calculator to help give you an idea of what the spousal support payments may be in your case.

CALCULATE SPOUSAL SUPPORT

PROPERTY IDENTIFICATION, VALUATION, AND DISTRIBUTION

IDENTIFY PROPERTY → CLASSIFY AS MARITAL OR SEPARATE → VALUE PROPERTY → EQUITABLY DISTRIBUTE

- Intellectual Property
- Business Ownership
- 401K or Student Loans
- Real/Personal Property
- Debts

Separate Property includes inheritance, gifts, or premarital property.

Separate property or gifted (inherited) to one party, is not considered in the equation of distributing marital property.

CALCULATE PROPERTY DISTRIBUTION

CHILD SUPPORT CALCULATIONS

Although mostly child support can often be a point of contention, the State of Utah uses a fairly straightforward child support calculation to determine each parent's financial obligation regarding their children.

Formula

The child support formula is based on general living expenses for a child, but does not take into account any additional expenses, such as extra-curricular activities, private school, medical expenses, and so forth. The calculation is based on the following three factors.

- Gross income of both parents
- Number of children
- Custodial arrangement

Child Tax Benefits

Either parent can claim dependents, or parents can alternate each year. This can be negotiated as part of the terms of your divorce.

Other Considerations for Children

- Children Tax Benefits/Credits
- Life Insurance
- Health Insurance
- Daycare Costs
- Extra-Curricular Activities
- Out-of-Pocket Expenses for Children
- Relocation Costs
- Other Mandatory Costs

CALCULATE CHILD SUPPORT ON OUR WEBSITE

UNDERSTANDING MARITAL VS. SEPARATE PROPERTY

Before you can divide property fairly in a Utah divorce, you must first understand what belongs in the marital estate—and what doesn't. Courts in Utah classify property into two main categories: marital and separate. This distinction is critical because it determines what is subject to division and what a spouse may keep exclusively.

MARITAL PROPERTY

Marital property generally includes any assets or debts acquired during the marriage, regardless of whose name is on the title. Courts presume marital property should be divided equitably, though not necessarily 50/50.

Common examples of marital property include:

- Wages earned by either spouse during the marriage
- Real estate purchased together (even if only one name is on the deed)
- Joint bank financial accounts
- Retirement accounts accrued during the marriage (401(k), pensions)
- Vehicles, furniture, or other items acquired during the marriage
- Debts like credit cards or loans incurred while married

SEPARATE PROPERTY

Separate property generally belongs to one spouse and is not subject to division—unless it has been commingled or otherwise transformed into marital property.

Examples of separate property:

- Assets owned before the marriage
- Inheritances or gifts received by one spouse (even during marriage)
- Personal injury settlements (if awarded solely to one spouse for pain/suffering)
- Property protected by a valid prenuptial or postnuptial agreement

COMMINGLING AND TRACING RULES

Even if something started out as separate property, it can become marital property if it's commingled—that is, mixed with marital assets in a way that makes it hard to distinguish.

Commingling examples:

- Using an inheritance to buy a family home titled in both spouses' names
- Depositing pre-marital savings into a joint account used for family expenses
- Paying off a spouse's separate debt using marital funds

When commingling occurs, the original separate asset may lose its protected status unless it can be "traced" back to its separate origin. This is where tracing comes in.

Tracing involves showing a clear paper trail that proves a portion of an asset originated from separate funds. Courts may allow that portion to remain separate—but the burden of proof is on the spouse claiming it.

WHY THIS MATTERS

Understanding which assets are marital and which are separate can have a major impact on your financial future. If you're unsure, it's best to:

- Gather documentation (titles, account statements, gift records)
- Be transparent with your attorney
- Use tools like our Property Division Calculator to understand your records

Accurate classification is key to fair property division. We're here to help you sort through the details, protect what's rightfully yours, and build a clear, defensible case.

DIVISION OF REAL ESTATE

Real estate is often one of the most valuable—and most contested—assets in a divorce. Whether you own a marital home, rental properties, or vacation real estate, understanding your options is key to making informed decisions and avoiding costly mistakes.

VALUATION METHODS

Before real estate can be fairly divided, it must be accurately valued. This is often the first and most important step in property division.

Common valuation methods include:

- Professional Appraisal – A licensed real estate appraiser evaluates the property based on market conditions, comparable sales, and the condition of the home. Courts typically rely on formal appraisals in contested cases.
- Comparative Market Analysis (CMA) – A realtor may offer a less formal market estimate based on nearby sales. This can be useful for informal negotiations but is not likely court-admissible evidence.
- Tax-Assessed Value – Often outdated or below market value, this method is less reliable for divorce purposes but can offer a starting point.

Valuations should also account for mortgages, liens, home equity lines of credit, or unpaid property taxes, which affect the net value of the asset.

SALE VS. BUYOUT SCENARIOS

Once real estate is valued, the next question is what to do with it. Generally, divorcing spouses have two main options:

1. Sale of the Property

- Proceeds are divided based on the court's equitable distribution principles (often 50/50 or based on contributions).
- This option provides a clean financial break but may take time depending on the market.

2. One Spouse Acquires Other's Share

- One spouse pays the other their share of the equity and keeps the home.
- The buying spouse may refinance the mortgage to remove the other's name and take full financial responsibility.

Factors to consider:

- Can either spouse afford the mortgage, taxes, and upkeep alone?
- Are there children who would benefit from remaining in the home?
- Is the property worth fighting over, or is it a financial burden?

EVALUATING JOINTLY TITLED PROPERTY

Many couples hold real estate in joint tenancy, which can create complications during divorce. Title status does not control divisions in Utah, but it does affect logistics.

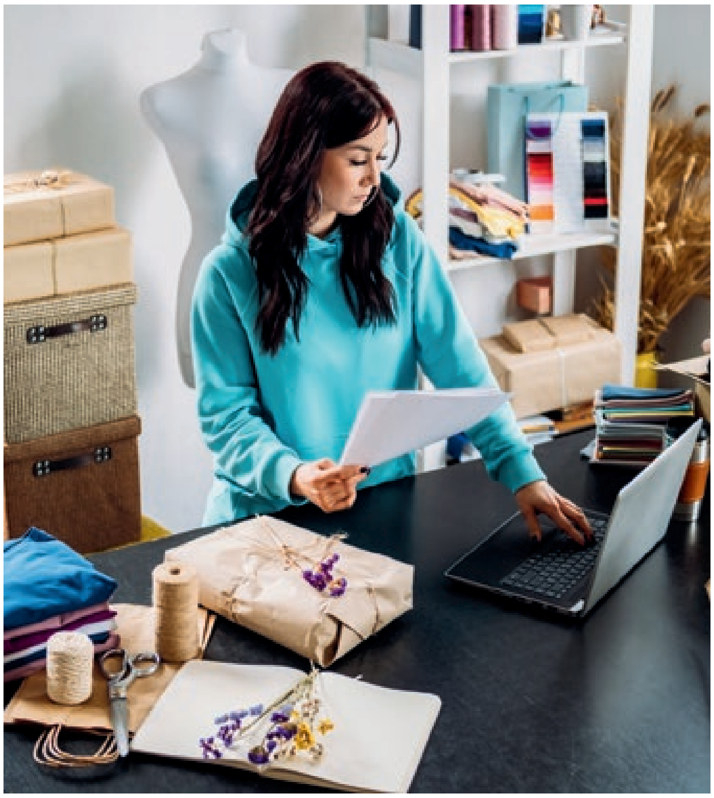
Key considerations:

- Joint title does not override equitable distribution laws— courts can order a sale or transfer regardless of whose name is on the deed.
- If one spouse is awarded the home, the other's name should be removed from the title and from any mortgage (typically through refinancing).
- If both parties retain partial interest (e.g., in a delayed sale agreement), the divorce decree should specify responsibilities for payments, taxes, and maintenance.

Clear documentation and legal filings are crucial to avoid post-divorce disputes.

BUSINESS OWNERSHIP IN DIVORCE

When a business is involved in a divorce, it can become one of the most complex and financially significant assets to address. Whether the business is a solo practice, an LLC, or a partnership or corporation, its valuation, ownership, and division require careful legal and financial analysis.



IS THE BUSINESS MARITAL PROPERTY?

Determining whether the business—or any portion of it—is marital property is the first step in the analysis. Courts consider:

- Whether the business was started before or during the marriage
- The use of marital funds or efforts in growing the business
- Contributions made by the non-owning spouse
- Commingling of personal and marital resources

Even if a business was started before the marriage, any increase in value during the marriage due to joint effort or investment may be subject to equitable division.

VALUING A BUSINESS IN DIVORCE

There are three primary methods used to value a business

Income Approach: Focuses on future earnings, typically using a Discounted Cash Flow (DCF) analysis or applying a multiple to EBITDA (Earnings Before Interest, TaxesDepreciation, and Amortization).

Example: If EBITDA is $500,000 and a 4x multiple is used, the business may be valued at $2,000,000 before adjustments.

Courts may apply discounts for lack of marketability or minority interest.

Market Approach: Compares the business to similar businesses that have sold.

Works best when reliable data on comparable sales is available, which is rare for closely-held businesses.

Asset Approach: Values tangible and intangible assets minus liabilities.

Common for asset-heavy companies or those being liquidated.

Valuation must also distinguish between enterprise goodwill (divisible in divorce) and personal goodwill (typically not divisible under Utah law).

EXPERTS IN BUSINESS DIVORCE CASES

Because valuation is technical and often contested, attorneys must retain the following experts:

- Business valuation analysts
- Forensic accountants (to identify hidden income or unreported revenue)
- CPAs with litigation support experience
- Industry-specific appraisers
- Vocational or economic experts, if the business is tied to a professional license or reputation
- Courts may accept a neutral joint expert or hear competing expert reports.

BUYOUT VS. CONTINUED CO-OWNERSHIP

Most courts avoid ordering divorced spouses to continue running a business together. Options include:

Buyout: The owning spouse purchases the other’s interest, often by:

- Paying a lump sum
- Offsetting with other marital assets
- Structuring a payment plan over time

Sell and Divide: If neither spouse can continue operations, the business maybe sold and proceeds divided.

Continued Co-Ownership: Rare and only advisable if the parties have an exceptional working relationship. Requires a new post-divorce operating agreement to prevent future disputes.

DIVORCE FOR BUSINESS OWNERS & SELF-EMPLOYED INDIVIDUALS

Divorce is rarely simple—but when one or both spouses own a business or are self-employed, the financial and legal stakes rise significantly. This guide is designed to help entrepreneurs, professionals, and self-employed individuals navigate divorce while protecting what they've built.

BUSINESS VALUATION AND TRACING

The first step is to determine whether the business is marital property and, if so, how much it's worth. Even if one spouse founded the business before marriage, growth during the marriage may be considered marital—especially if both spouses contributed financially or operationally. Careful planning can avoid these problems.

Key valuation methods include:

- Asset-based valuation (for holding companies or asset-rich businesses)
- Income-based valuation (using cash flow, earnings, or EBITDA)
- Market-based valuation (comparing to recent sales of similar businesses)

If the business contains both marital and separate elements, tracing is required to isolate each part. This process must involve forensic accountants and extensive documentation.

CASH FLOW VS. INCOME IN ALIMONY

For business owners, reported income on a tax return may not reflect actual cash available. Utah courts recognize this, especially when:

- Income is reinvested into the business
- Owners take distributions instead of salaries
- Perquisites (vehicle use, meals, travel, etc.) can reduce taxable income

Courts may consider actual cash flow or normalized income when calculating alimony or child support, rather than just net taxable income. Gross income is the statutory standar to determine child support.

RECORDS TO PREPARE

Expect to provide at least 3–5 years of detailed records, including:

- Business tax returns
- Profit & loss statements
- Balance sheets
- Payroll reports
- Business bank account statements
- Operating agreements or partnership documents

Accurate and transparent records can prevent costly disputes and delays. We work with specialized bookkeepers who can organize your financial affairs.

PLANNING FOR LIQUIDITY AND BUYOUTS

If the business is considered marital property, one spouse may need to “buy out” the other’s interest. This can be done by:

- Refinancing business loans
- Offsetting with other marital assets (like retirement or real estate)
- Setting up structured payments over time

Advance planning for liquidity—without disrupting operations—is essential.

PROTECTING BUSINESS CONTINUITY

A contentious divorce can destabilize a small business. We help clients:

- Shield sensitive business information through confidentiality agreements
- Limit access or decision-making power for non-operating spouses
- Preserve customer and vendor relationships
- Create court-approved plans that maintain continuity and protect employees

Whether you’re a sole proprietor, consultant, or multi-entity owner, preserving your business interests through divorce requires careful legal and financial coordination.

DOCUMENTS DIVORCE ATTORNEYS WILL NEED

Thorough and accurate business valuation depends on the availability of key documents Divorce attorneys should request or subpoena the following:

- Formation and Governance Documents
  - Articles of Incorporation / Organization
  - Bylaws (corporations), Operating Agreements (LLCs), Partnership Agreements
  - Shareholder Agreements or Buy-Sell Agreements
- Stock ledgers or ownership certificates
- Financial Statements and Records
- Profit & Loss statements, Balance Sheets (last 3–5 years)
- General ledger and cash flow reports
- Payroll and distribution history
- Accounts receivable/payable summaries
- Tax Documents
- Corporate or partnership tax returns (last 3–5 years)
- K-1s and Schedule C (if applicable)
- Personal tax returns reflecting business income
- Valuation and Loan Materials
- Prior valuations or appraisals
- Loan applications or lender underwriting packages
- UCC filings and asset depreciation schedules
- Contracts and inventory of intellectual property
- Major customer and vendor contracts
- Franchise agreements
- Licenses, trademarks, and intellectual property filings
- Other Relevant Records:
  - Business insurance policies (e.g., key person insurance)
  - Ownership interests in subsidiary entities
  - Divorce financial disclosures (Rule 26.1 compliance in Utah)

PRACTICAL CONSIDERATIONS

- **Double-Dipping:** Courts may prevent using business income both for property division and again for alimony calculations.
- **Tracing and Forensic Analysis:** If the business predates the marriage or involves mixed funds, forensic tracing may be required.
- **Non-Owning Spouse's Contributions:** Courts may compensate for unpaid labor or support provided to the business indirectly.

In cases involving a business, early strategy, document gathering, and expert engagement are key. A misstep or undervaluation can significantly impact a party's financial future.

RETIREMENT ACCOUNTS AND PENSIONS IN DIVORCE

Under Utah law, retirement accounts and pension benefits are generally considered marital property to the extent they were earned between the date of marriage and the date of divorce. Contributions or growth before the marriage or after the divorce decree are typically treated as separate property.

This principle applies whether the account is a traditional 401(k), an IRA, or a defined benefit (plan). Accurate identification and division of retirement interests is essential to ensuring a fair distribution of assets in divorce.

DEFINED BENEFIT VS. DEFINED CONTRIBUTION PLANS

Understanding the type of retirement plan at issue helps determine how it will be valued and divided.

Defined Contribution Plans
These plans have an individual account balance that grows through contributions and investment returns.

Examples: 401(k), 403(b), TSP (Thrift Savings Plan), IRA, Roth IRA

Valuation: Based on the current balance

Division: Typically split by percentage or fixed dollar amount as of a specific date (often the date of divorce)

Defined Benefit Plans
These are pensions that provide a fixed monthly benefit at retirement, based on salary and service.

Examples: Government pensions, PERS, military pensions, union pensions

Valuation: Requires actuarial analysis or present-value calculations

Division: Can be deferred (share of future benefit) or offset (with current assets)

QDROs Explained (Qualified Domestic Relations Orders)
For many retirement plans, a QDRO is required to lawfully divide the benefits and prevent tax consequences.

What is a QDRO?
A QDRO is a specialized court order that instructs a retirement plan administrator to divide a qualified plan according to the terms of the divorce.

Applies to: ERISA-covered plans (e.g., 401(k), pensions)

Does not apply to: IRAs, which require only a court order under IRC § 408(d)(6)

What it Must Include:
- Specific division terms (percentage or amount)
- Identification of the parties and plan
- Valuation date (usually the date of divorce)
- Distribution structure (e.g., rollover, lump sum, deferred payout)

Division Strategies
Dividing retirement benefits should be aligned with overall settlement goals, tax efficiency, and liquidity needs.

1. In-Kind Division
- The most straightforward approach: split the retirement account into two parts.
- Non-participant spouse may roll their share into an IRA tax-free account
- Most common with 401(k)s, IRAs, and other defined contribution plans

2. Offset Method
- One party keeps the retirement account and offsets the other's interest with other marital assets (e.g., home equity).
- Requires accurate valuation and tax-adjusted analysis
- Often used when one party wishes to retain full control of a retirement plan

3. Deferred Distribution
- The non-participant spouse receives a share of future benefits once the participant retires.
- Most common for defined benefit pensions
- Ensures each spouse receives their proportional share as it is paid out

Tax Implications
Improper division of retirement accounts can trigger tax liabilities and penalties.

Tax Treatment of Distributions:
- Distributions from traditional accounts (401(k), traditional IRA) are taxed as ordinary income
- Roth accounts are tax-free if conditions are met
- Taxes are the responsibility of the recipient when funds are withdrawn

ESSENTIAL DOCUMENTS AND PLANNING TIPS

To ensure proper division and valuation, your attorney will need:
- Plan and Financial Documents
- Plan statements showing balances from marriage to divorce
- Summary Plan Description (SPD)
- Employer benefit guides
- Plan administrator contact information
- Court Orders
- Ensure the divorce decree clearly references all retirement accounts
- Submit the QDRO to the court promptly after divorce to preserve rights

PRACTICAL ADVICE FOR CLIENTS

- Do not assume that you automatically have rights to your spouse's retirement—you must address it in the divorce decree
- Remember that the date of marriage to the date of divorce defines the marital portion
- Don't delay in preparing and submitting QDROs—delays can jeopardize your share

FINANCIAL DECLARATION & INITIAL DISCLOSURES (RULE 26.1)

HOW TO WIN YOUR CASE

Utah law requires both parties in a divorce to make full financial disclosures early in the case under Rules 26 and 26.1 of the Utah Rules of Civil Procedure. These disclosures are essential for resolving alimony, child support, and property division. Incomplete or delayed disclosures can harm your case.

INITIAL DISCLOSURES — WHAT'S REQUIRED

Due 14 days after the first answer is filed (or by the first Rule 26 conference), each party must provide:

- Names/contact info of key witnesses
- Documents that support your claims or defenses
- Damage calculations (if any)
- Insurance agreements
- A Financial Declaration with documentation

FINANCIAL DECLARATION — WHAT TO INCLUDE

Each party must file a court-approved Financial Declaration form 3 months prior to date of filing with:

- Income: Pay stubs (3 months), last 2 years of tax returns
- Expenses: Monthly costs like housing, food, insurance, child care
- Assets: Bank accounts, property, retirement, vehicles, valuables
- Debts: Credit cards, loans, mortgage statements

WHY IT MATTERS

Accurate disclosures are the foundation of your divorce case. Missing, incomplete, or misleading information can lead to an adverse court finding on a motion in limine.

We guide you through the process to ensure your disclosures are thorough, organized, and compliant—while holding your spouse to the same standard.

PERSONAL PROPERTY AND HOUSEHOLD ITEMS

Dividing personal property—like furniture, electronics, and sentimental items—can be deceptively difficult. Though these assets may not hold high market value, they often carry emotional weight and can lead to major disagreements during divorce.

This section helps you prepare, stay organized, and approach division with clarity.

CATALOGUING ASSETS

Start by creating a complete inventory of all personal property, including:

- Furniture and home furnishings
- Appliances and electronics
- Jewelry and watches
- Tools, equipment, and collectibles
- Artwork or décor
- Items of sentimental value (photos, heirlooms, gifts)

STRATEGIES FOR FAIR DIVISION

Unlike real estate or financial accounts, many personal items can't be easily sold or split. Here are ways to keep the process manageable and civil:

- Start with what matters most – Identify items each party values most and work toward mutual exchanges
- Use a "pick and pass" system – Each spouse takes turns selecting items from a shared list or room
- Assign estimated values – This can help equalize the division, especially if one spouse receives more tangible goods
- Trade for offset value – One spouse keeps more personal property in exchange for less of another asset (e.g., less of a savings account or retirement share)
- Avoid nickel-and-diming – Focus on fairness in total value, not a perfect split of every item

If disputes persist, a third-party mediator or neutral evaluator can help sort out impasses without escalating to court.

DEBT DIVISION

Dividing debt can be just as important—and complicated—as dividing property. In Utah, the courts aim to divide both assets and liabilties equitably, which means fairly, but not always equally. Understanding what debt is shared and how it should be handled is essential to protect your financial future.

MARITAL VS. INDIVIDUAL DEBT

- Just like with assets, debts are categorized as either marital or separate:
- Marital debt includes any debt incurred during the marriage, even if it's only in one spouse's name.
- Individual (or separate) debt generally includes debt incurred before marriage, or debts that were never used for marital purposes (like an old credit card or personal loan not used jointly).
- Courts consider:
  - When the debt was incurred
  - Who benefited from it
  - Whose name is on the account
  - Whether it was used for family or personal purposes
  - Even if a debt is legally in your name alone, you may still be responsible for part of it if it's considered marital under Utah law.

CREDIT CARD, MORTGAGE, AND STUDENT LOANS

Credit Cards
- If used for joint expenses (groceries, travel, household items), they're usually treated as marital debt.
- If used for personal expenses (affairs, luxury items, gambling), courts may assign responsibility to the spending spouse.

Mortgage Debt
- Mortgages on the marital home or other real estate are typically divided along with the property.
- If one spouse keeps the home, they often assume the mortgage—but may need to refinance to remove the other's name.

Student Loans
- Student debt allocation can be complex. Courts may treat it as individual if the education only benefited one spouse.
- However, if both parties benefited from the increased earning power (especially during a long marriage), it may be considered marital.

PROTECTING YOURSELF

- Request a full credit report to identify all debts early.
- Avoid running up new joint debt during the divorce.
- Consider indemnity clauses in your divorce decree—so if your ex-spouse fails to pay a debt assigned to them, you have legal recourse.

HIDDEN ASSETS AND DISCOVERY TOOLS

In high-conflict or high-net-worth divorces, it's not uncommon for one spouse to hide, transfer, or undervalue assets. Utah law entitles both parties to a full and honest financial disclosure—but when that doesn't happen voluntarily, legal discovery tools can help uncover the truth.

HOW TO UNCOVER HIDDEN OR TRANSFERRED PROPERTY

Spouses may try to:

- Transfer assets to family or friends
- Underreport income or delay commissions and bonuses
- Hide bank accounts or cryptocurrency
- Undervalue business interests or collect cash off the books
- Purchase items (e.g., art, collectibles) to convert cash into hard-to-trace assets

Warning signs include unexplained account withdrawals, missing documents, or significant lifestyle changes without clear financial backing.

USE OF SUBPOENAS, INTERROGATORIES, AND FORENSIC ACCOUNTANTS

When voluntary disclosure is incomplete or questionable, your attorney can use formal discovery tools, such as:

- **Subpoenas:** Legally compel banks, employers, or businesses to release financial records, account statements, or transaction histories.
- **Interrogatories:** Written questions your spouse must answer under oath regarding income, assets, and financial transactions.
- **Requests for Production:** Demand copies of specific documents—such as loan applications, ledgers, tax returns, or appraisals.
- **Depositions:** Sworn, in-person testimony that may uncover inconsistencies or deliberate omissions.

In complex cases, we may work with forensic accountants who can trace cash flow, identify hidden income, and analyze financial patterns across multiple accounts or businesses.

NOTICE ABOUT RULE 109 — AUTOMATIC INJUNCTION IN DIVORCE AND CUSTODY CASES

Warning: Don't Move Money, Hide Assets, or Make Major Changes Without Legal Advice

Under Rule 109 of the Utah Rules of Civil Procedure, an automatic injunction goes into effect as soon as a divorce or custody petition is filed and served. This injunction legally restricts both parties from taking certain financial or parental actions without the court's permission.

WHAT YOU CANNOT DO UNDER RULE 109 WITHOUT COURT APPROVAL:

- **Transfer, hide, or dispose of marital property**
- **Change beneficiaries on insurance or retirement accounts**
- **Withdraw large sums from bank accounts**
- **Cancel health, auto, or life insurance policies**
- **Remove the children from Utah or conceal their location**

These restrictions are automatic and binding—violating them can result in serious legal consequences, including contempt of court or sanctions that harm your case.

PLAY IT SAFE—TALK TO YOUR ATTORNEY FIRST

If you need to make a financial move or change involving your children, consult with us before taking action. There are proper legal steps for seeking exceptions, but trying to get creative or acting unilaterally can backfire.

TEMPORARY ORDERS AND EMERGENCY RELIEF

Divorce can take months to finalize, but life doesn't pause in the meantime. Temporary orders provide critical, court-ordered protection during the separation process—ensuring financial stability, parenting structure, and personal safety until a final judgment is entered.

HOW TO OBTAIN INTERIM FINANCIAL PROTECTION

If you need support or protection during the divorce, you can file a motion for temporary orders. These orders may cover:

- Temporary child support
- Temporary spousal support (alimony)
- Exclusive use of the marital home
- Responsibility for household bills or debts
- Temporary custody and parent-time arrangements

The court will typically hold a short hearing and issue rulings designed to preserve the status quo and prevent hardship until the case is resolved.

EMERGENCY RELIEF

In urgent situations—such as threats of violence, financial exploitation, or child endangerment—you may qualify for emergency (ex parte) relief. These are fast-track orders issued without advance notice to the other party when immediate protection is necessary.

Common emergency filings include:

- Protective orders in cases of domestc violence or coercive control
- Restraining orders to prevent the sale or transfer of marital assets
- Emergency custody orders when a child's safety is at risk

Emergency motions require sworn affidavits and must show that irreparable harm will occur without immediate court intervention.

PROTECTING YOUR CREDIT RATING AND FINANCIAL IDENTITY

Divorce can leave your credit rating and financial security vulnerable—especially if your spouse has access to joint accounts or shared financial information. Taking early action is essential to safeguard your credit score and prevent unauthorized debt or identity misuse.

MONITORING YOUR CREDIT

Start by obtaining credit report from all three major bureaus (Equifax, Experian, TransUnion). Review for:

- Joint accounts
- Unknown debts or credit inquiries
- Accounts where your spouse is an authorized user

You're entitled to one free credit report annually from each bureau at mediationweekend.com

Consider enrolling in credit monitoring to track changes in real time and alert you to suspicious activity.

FREEZING OR LOCKING CREDIT

To prevent your spouse—or anyone else—from opening new accounts in your name, you can:

- Freeze your credit: Prevents new credit from being issued. Free, reversible, and available through each credit bureau.
- Lock your credit: A faster, app-based alternative offered by some bureaus with similar protections.

This is especially important if there has been financial dishonesty or identity misuse in the marriage.

CLOSING JOINT CREDIT LINES

Joint credit cards and loans remain your legal responsibility—even if your spouse agrees to pay. If possible:

- Close joint accounts or remove your name with the lender's approval
- Convert to individual accounts where appropriate
- Document all account closures and balances
- Avoid adding new debt until the divorce is finalized

For any debt that remains shared, include clear repayment terms in the divorce decree and consider indemnity clauses to protect against default.

TIPS FOR FINANCIAL SURVIVAL DURING DIVORCE

Divorce often means adjusting to a single income while managing legal fees, new housing costs, and changing financial responsibilities. With the right strategies, you can regain control and build a more secure financial future—we will guide you.

BUDGETING ON ONE INCOME

Divorce often means adjusting to less income. Focus on essentials—housing, food, childcare—and track spending with apps like Mint or YNAB. Cut non-essentials and plan for both short-term needs and long-term changes in support or asset division. But consult first with an attorney.

BUILDING CREDIT IN YOUR NAME

Open a personal credit card and pay bills on time. Remove yourself from joint accounts. Strong credit helps with future loans, housing, and financial stability.

ACCESSING SUPPORT RESOURCES

Look into temporary support orders and community programs for housing, food, or bills. Free legal clinics and nonprofit credit counselors can also help. We can guide you to the right resources for your situation.

MEDIATION AND SETTLEMENT STRATEGIES

Most divorces in Utah settle out of court—often through mediation. It's a cost-effective way to resolve disputes with less stress, provided both parties are willing to negotiate in good faith.

WHEN MEDIATION WORKS

Mediation is most effective when both sides are open to compromise and willing to engage in productive dialogue. It works best in situations where there's no history of abuse or coercion and when the key facts—such as income, asset values, or custody preferences—are not in dispute. If you're looking for more control over the outcome than a judge might provide, mediation can offer a flexible, less adversarial alternative.

HOW TO PREPARE

Before mediation, it's important to define your goals and know your dealbreakers. Bring relevant documents, including financial statements and any proposed parenting plans. Stay calm and focused during the session, and be open to listening as much as speaking. Discuss possible outcomes in advance with your attorney so you're prepared to make informed decisions, whether it's reaching a settlement or knowing when to walk away.

FOR MORE INFO ON MEDIATION

We will prepare a full draft agreement for your review so you can know what an agreement will look like.

TRIAL PREPARATION AND LITIGATION STRATEGY

When settlement isn't possible, divorce cases move to trial—where preparation can make all the difference. A well-organized case and a clear courtroom strategy give you the best chance of achieving a positive outcome in contested issues like custody, support, and property division.

ORGANIZING EXHIBITS

Exhibits are the documents, photos, communications, and financial records that support your case. Proper organization is essential for clarity and credibility in court. We do all of this for you.

Key steps include:

- Labeling each exhibit clearly (e.g., Exhibit A: 2023 Tax Return, Exhibit B: Text messages from July 10)
- Creating a master exhibit list for the court and opposing counsel
- Highlighting key portions of bank statements, emails, or calendars to streamline the judge's review
- Making copies for the judge, opposing party, and your own reference

Common exhibits may include:

- Income records and budgets
- Parenting schedules or logs
- Property appraisals or business valuations
- Communications showing agreements, threats, or abuse
- Financial Declarations

TESTIMONY PLANNING

Testimony is your opportunity to present. As a witness, the key is clarity, truth, and preparation—not performance.

We help you:

- Map out your narrative—what you need to convey and why it matters legally
- Practice answering tough questions calmly and truthfully
- Prepare witnesses (e.g., therapists, teachers, appraisers) to deliver focused and admissible testimony
- Anticipate cross-examination and respond with confidence
- We'll also work on courtroom demeanor, timing, and how to support your case without overreaching.
- Remember: Less is more. Be brief.

POST—DIVORCE CHECKLIST & GUIDE

Divorce doesn't end when the decree is signed. There are important steps to take to protect your future, stay organized, and avoid common pitfalls in the months that follow. This guide helps you close the loop and transition into your new life with clarity.

- **Name Change Process**
  If your divorce decree includes a name change, you'll need to update your name with the the Office of Vital Statistics, Social Security Administration, DMV, banks, and other institutions. Gather certified copies of your decree to make this process smoother.

- **Update Estate Planning Documents**
  Revise your will, powers of attorney, and healthcare directives. Remove your ex-spouse from roles like executor, trustee, or agent, and update guardianship plans for children if needed.

- **Review Insurance, Titles, and Accounts**
  Change beneficiaries on life insurance, retirement accounts, and workplace benefits. Update vehicle titles, deeds, and remove your ex from joint accounts. Ensure health insurance coverage is addressed—either through COBRA, your employer, or a marketplace plan.

- **Parent-Time Logistics**
  Start your new parenting schedule smoothly by syncing calendars, planning exchanges, and clarifying school and holiday responsibilities. Use parenting apps if communication is strained or documentation is needed.

- **Financial Adjustments**
  Rework your budget for your new income and expenses. Adjust tax withholdings, update filing status, and monitor your credit. If child support or alimony is involved, track payments and follow up on any enforcement needs.

We provide the tools and support you need to move forward with confidence—because good planning makes for a stronger new beginning.

MOTIONS TO ENFORCE COURT ORDERS

COMMON ENFORCEMENT ISSUES

- **Parent-Time & Custody Violations** – Ensuring court-ordered visitation and custody agreements are upheld.
- **Non-Payment of Child Support** – Collecting unpaid child support through wage garnishment, liens, or contempt motions.
- **Non-Payment of Spousal Support** – Enforcing alimony obligations to ensure financial stability.

HOW WE HELP

- Filing and defending enforcement motions
- Representing you in enforcement hearings
- Seeking remedies such as contempt, fines, or wage garnishments
- Negotiating resolutions to avoid prolonged court battles

If a party does not pay alimony or child support or transfer an asset pursuant to the decree of divorce, a violation of the court order, the legal process to seek remedy is through a motion to enforce.

If you're struggling with a court order that isn't being followed, we are here to protect your rights and take action. Contact us today for guidance.

MONTHLY EXPENSES TRACKER

Managing your finances during and after divorce can feel overwhelming. One of the most important steps is understanding where your money goes each month.

Our Monthly Expense Tracker is a straightforward tool to help you organize and track your regular expenses. Completing this tracker will not only assist you in budgeting but also ensure you're prepared to provide accurate financial information during your case.

WHY USE A MONTHLY EXPENSE TRACKER?

- Gain clear insight into your spending habits
- Plan your post-divorce budget with confidence
- Prepare for financial disclosures and court hearings
- Identify areas to reduce expenses and save money

If you need help filling it out or understanding how your expenses impact your case, feel free to contact us for a consultation.

☎ (801) 348-6723

ESTATE PLANNING AFTER DIVORCE

Divorce doesn't just change your marital status—it changes your financial future, including what happens to your assets if you pass away. Updating your estate plan is a critical step in regaining control and protecting your loved ones.

WILLS AND TRUSTS

After divorce, your existing will or trust may still list your ex-spouse as a beneficiary, executor, or trustee—even if you don't want them to be. While Utah law may revoke some of these designations automatically, it's not guaranteed, and it's best to take proactive steps:

- Create a new will that reflects your current wishes
- Amend or revoke revocable living trusts
- Name new guardians for minor children, if applicable
- Appoint someone other than your ex-spouse as executor or power of attorney

An updated estate plan ensures your assets go where you intend and reduces the chance of legal disputes later.

BENEFICIARY UPDATES

Certain assets pass outside of your will, so it's crucial to review and update all beneficiary designations:

- Life insurance policies
- Retirement accounts (401(k), IRA)
- Bank or brokerage accounts with payable-on-death (POD) designations
- Employer benefits or pension plans

If your ex-spouse is still named, they may inherit these assets—even if your divorce decree says otherwise. Most changes require only a simple form submitted to the institution.

Divorce Law
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LISTEN AND SUBSCRIBE

DIVORCE LAW PODCAST

We want to share the knowledge and expertise we have garnered. To that end, we host the Divorce Law Podcast, where David Read, Esq. interviews seasoned attorneys from Utah and across the country about their experiences representing family law clients. Our discussions cover a wide range of topics, including tips for divorcing parties and insights for lawyers in the field. We delve into cases that have been argued on appeal and insights lawyers on those cases can offer, explore hard-won experiences in trial and appellate court, and feature interviews with family law judges and national experts. This podcast serves as a valuable resource for anyone who wants to have cutting-edge information they need to protect their children and assets in divorce.

- **Expert Guidance** – Gain insights from experienced attorneys on divorce, custody, and family law matters.
- **Practical Advice** – Learn actionable strategies to navigate legal challenges and protect your rights.
- **Clarity & Confidence** – Understand complex legal processes in simple terms to make informed decisions.
- **Convenience** – Access valuable information anytime, anywhere on your preferred streaming platform.

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We offer specialized mediation through MediationWeekend.com, providing convenient weekend sessions from Thursday through Sunday. This service is ideal for individuals who work during the week and need flexible scheduling to address their legal matters. Parents, executives, and business owners benefit from this option as it allows them to dedicate focused, undistracted time on the weekend to settle their legal matters.

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READ LAW LLC

Read Law LLC provides experienced legal representation in family law and other legal matters throughout the state of Utah. Whether you're facing divorce, custody disputes, or other legal challenges, our team is dedicated to protecting your rights and guiding you through every step of the legal process.

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