THE USAA EDUCATIONAL FOUNDATION®

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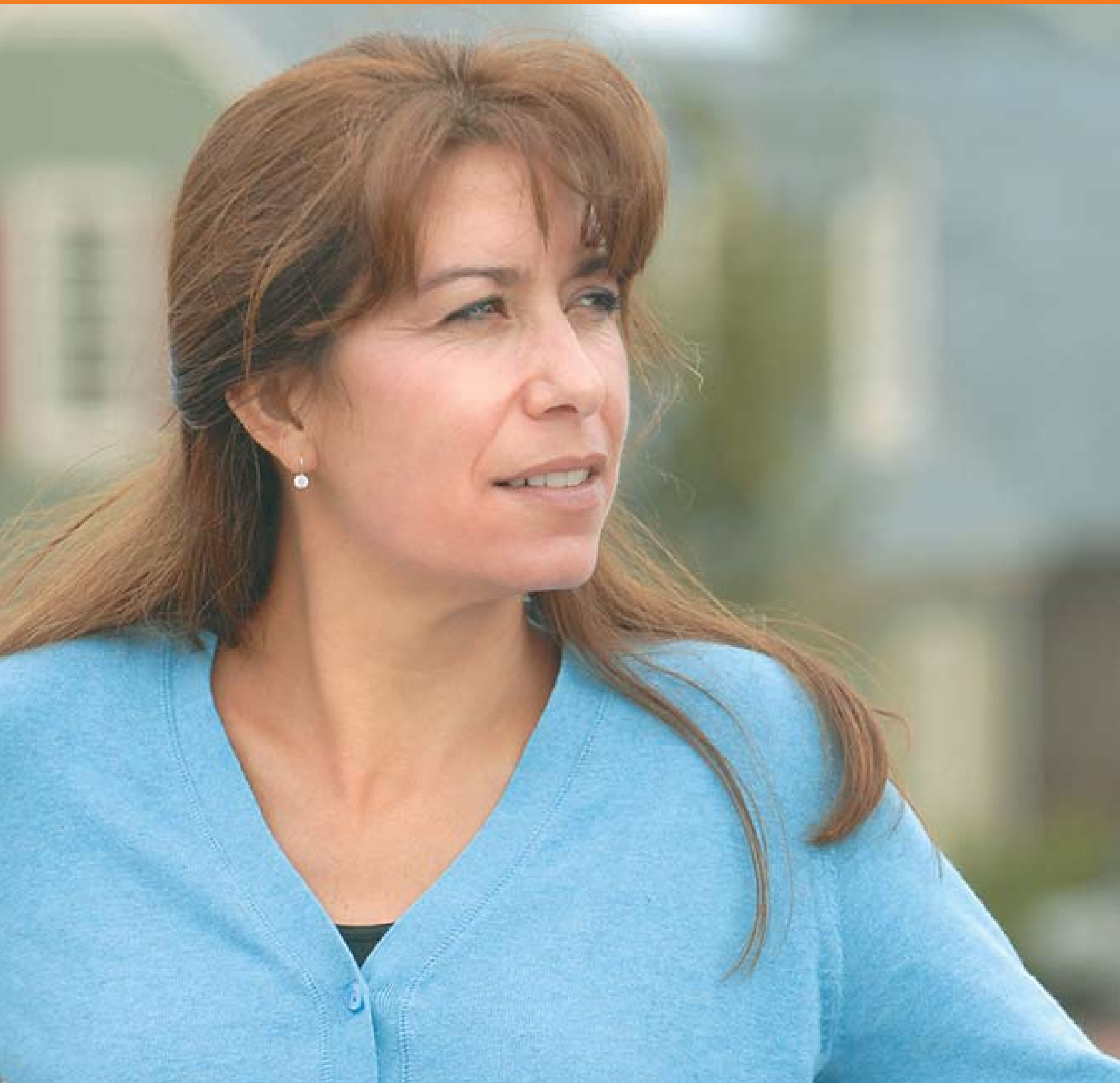
TRANSITIONS

DEALING WITH DIVORCE



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OUR MISSION

The mission of The USAA Educational Foundation is to help consumers make informed decisions by providing information on financial management, safety concerns and significant life events.

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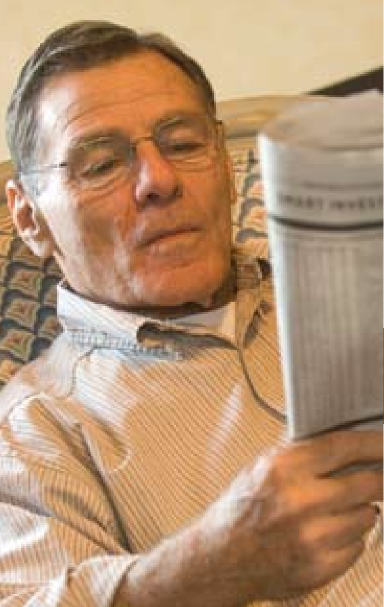

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October 2009

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As a divorce unfolds, emotional, family and financial problems can multiply. The end of a marriage almost always means costs and complications for both partners.

Starting a life without your spouse, managing your finances, planning for your future and caring for the children can leave you feeling overwhelmed.

If possible, avoid making any life-altering decisions when you are emotionally fatigued.

- Do not let anyone rush you through decisions that will affect the rest of your life.
- Set the pace of your divorce. As a general rule, it is better to achieve long-term financial security than short-term emotional relief.
- Before you agree to anything, make sure that you have mental and emotional clarity. Understand the lifelong effects of any choice you make.

No matter how simple or complex you expect your divorce to be, you will need to supplement the information in this publication with appropriate legal counsel and financial counsel from financial planning professionals.

STARTING A LIFE WITHOUT YOUR SPOUSE, MANAGING YOUR FINANCES, PLANNING FOR YOUR FUTURE AND CARING FOR THE CHILDREN CAN LEAVE YOU FEELING OVERWHELMED.

Choosing The Right Professionals To Guide You Through A Divorce

Generally, you cannot get through a divorce on your own. Questions of property, custody and support are complicated. You are likely to need a professional's guidance to structure a settlement that is fair and meets your state's legal requirements.

Many individuals seek a skilled, dedicated attorney with experience handling family law and divorce cases. Generally, your spouse will need a separate attorney. If you suspect your divorce could be contentious, you will want an attorney with courtroom experience as well.

Obtain referrals from trusted friends and family members. Some employers offer programs for legal assistance referrals. Check with your local and state bar associations. If you have limited financial resources, consult with a legal aid clinic in your area. Also, visit your local library and find a copy of the Martindale-Hubbell directory, a resource that lists attorneys and their professional credentials. You may also choose to perform an online search for an attorney.

- Interview at least two attorneys. Many offer brief, no-cost or low-cost initial consultations.
- Ask questions about how your case might be handled and about fees. Attorney's fees vary. You should be able to get approximate fees for an amicable divorce and a contentious divorce.

Choose your legal counsel carefully and consider the following:

- Their experience.
- Your comfort with discussing your circumstances.
- The proposed processes and approach.
- Fees for services.
- The availability of a team of legal professionals to assist your attorney in the event of a lengthy court battle.

If you are a military servicemember, you may be able to get civilian attorney referrals and some general information about divorce laws from your installation's legal office, but it cannot act as your legal representative.

RESOURCE

American Academy of Matrimonial Lawyers
(312) 263-6477
www.aaml.org

Mediation

You and your spouse can reduce legal expenses, minimize stress and avoid the typical courtroom procedures through mediation. In this process, a divorcing couple, with coaching from a neutral, impartial third party, works out a settlement cooperatively.

A MEDIATED AGREEMENT MAY TAKE SEVERAL HOURS OR SEVERAL MONTHS.

Mediators do not need to be licensed. Because of a lack of regulation to ensure mediators' skills, divorce attorneys are often reluctant to suggest mediation to clients.

In some cases, mediated agreements may need to work out important matters relating to life, health, disability and long-term insurance or possible complex tax issues.

MEDIATION CAN WORK IF

- You and your spouse are motivated to work together.
- You are both able to communicate easily with each other.
- Your property and custody issues are straightforward and uncomplicated.
- Your estate is reasonably small.

Costs for mediation vary depending on your geographic location and the experience and reputation of the mediator.

A mediated agreement may take several hours or several months. If your mediation leads to an agreement, your mediator will generally prepare a written memorandum of agreement. Your attorney and your spouse's attorney will review that agreement for approval.

Once the agreement is signed, it becomes a part of your final divorce documentation. Also, you may want to consider the use of a Certified Divorce Financial Analyst™ (CDFA™).You can perform an online search to help you locate a CDFA™ in your area.

Answers to most questions about dividing your assets will come from you and your spouse.

If you cannot agree, you will submit your disputes to the court, which uses the laws of your state to decide. You will want to acquaint yourself with the applicable state laws when you begin planning a divorce. Your attorney should be able to fully explain laws and how they will affect you.

To understand what might be at stake, take a look at the difference between property division in states that use the concept of community property and those that use equitable distribution.

Community Property

In nine states — Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin — property is either owned by married couples together and is called community property or it is owned separately by one of the spouses. Alaska has an optional community property system.

When a couple divorces, community property is generally divided 50-50, equally between the two spouses (exceptions exist in some states). Community property typically includes all earnings during marriage, everything acquired with those earnings, and debts incurred during the marriage. There are, however, exceptions to the 50-50 rule. Examples include; education loans, personal injury funds and debt incurred from wrongful conduct.

Separately owned property — generally including assets and debts acquired before the marriage, individual inheritances and gifts, proceeds of a pension vested before the marriage and other property specified by law — may be retained by the spouse who owns the property. It is imperative to keep records of all separate property.

Equitable Distribution

In the remaining states, any assets and earnings accumulated during the marriage are divided equitably (fairly), though not necessarily equally. If a couple cannot agree about the division of their property, a judge has discretion to make decisions for them.

Factors, such as length of the marriage, each partner's financial contribution to the marriage and each spouse's ability to earn a living, may contribute to the court's resolution. Generally, a partner's separate property, such as premarital assets, is unaffected by divorce, unless a judge believes it should be included in the property division to maintain fairness.

Prenuptial Agreements

If you have a comprehensive prenuptial agreement, you should have few questions about who gets what in a divorce.

Ideally, your agreement outlines the treatment of assets accumulated before you married and those you acquired during the marriage. You should be able to divide property just as your prenuptial agreement specifies, even if you moved from one state to another during your marriage. Enforceability of the agreements can vary from state to state.

As you begin to work through the details of your divorce with your spouse, consult your attorney and a tax accountant or a financial planning professional with tax expertise.

Common Issues In A Divorce

The house, the vehicle, the boat. If there are children, the custodial parent may want to stay in the home. Courts often agree, not wishing to disrupt children's lives any more than necessary. Even so, the award of a house may actually be a financial burden (mortgage payments, insurance, maintenance, taxes, etc.) instead of a source of financial security.

The loss of a tax deduction for mortgage expenses may impact the tax status for a spouse who does not get the house. It is often best to work this out with your spouse.

If you and your spouse are joint account holders on your mortgage, generally, you are both responsible for making the payments. If your spouse keeps the house but fails to make the payments, you could be responsible for making the payments. If you fail to make the payments, your credit record could suffer. One of you may decide to buy out the other.

You may also consider selling the house jointly, prior to the divorce. Current tax laws allow eligible married couples to exclude as much as $500,000 in capital gains when they sell or exchange a primary residence as long as you have owned and lived in the home for a minimum of two years.

Similarly, any other major asset, such as a vehicle or boat, may have serious financial implications for one or both spouses including loan payments, repairs and insurance. Some spouses may opt for a lump-sum cash property settlement rather than taking hard assets. Before making this decision, talk to your attorney and a tax accountant about the tax consequences of such a transaction.

Child support. Generally, both parents are expected to share in paying for the care of a child according to their ability and means. Each state, however, has its own complex formula for determining who pays what amounts.

Parents should agree in writing about who pays for extras such as summer camp, private schooling and travel between parents. Generally, child support stops when a child reaches the age of 18 (in some states, 21). But if both parents are college graduates, for example, a court may sometimes require the parent with the higher income to underwrite the expense of the children's college education.

Child support payments generally have no direct tax consequences. They are typically neither tax deductible to the parent paying them nor are they taxed as income to the recipient. If you plan to request child support, make a monthly and annual expense budget that your attorney can use to support your case.

In the divorce settlement, include a requirement for adequate life and disability insurance coverage on the individual making payments with the individual receiving the payments (or a trust, if appropriate) as the owner and beneficiary so that income will continue. Consult a financial planning professional and/or attorney about the benefits of a trust.

Finally, negotiate who gets the dependent tax exemptions for the children. Generally, the custodial parent takes the exemptions, but you can agree to allocate them in any way.

Spousal support/alimony. If you are seeking alimony, document monthly and annual expenses to support your case for maintenance. If alimony is awarded, consider including a requirement in the settlement for adequate life and disability insurance coverage on the individual making payments (the individual receiving the alimony, or a trust, should probably own the policy and be the beneficiary).

Alimony or spousal support is deductible for federal income tax purposes, to the spouse who pays it and taxable to the spouse who receives it if alimony is based on a written agreement or is ordered by the court. An agreement can also require one spouse to provide life and health insurance to cover the former spouse and children.

Federal law, the Consolidated Omnibus Budget Reconciliation Act (COBRA), also allows a divorced spouse to purchase health insurance coverage provided by the other spouse's employer subject to COBRA at group rates for up to 36 months after a divorce. That coverage may be extended beyond 36 months if the purchasing spouse is disabled.

Debts. Close joint accounts and make every effort to eliminate as many debts as possible before you divorce. If you cannot eliminate debts before you divorce, work with your spouse to divide them.

If you cannot agree to a division, state laws will dictate how to divide debts you incurred during marriage.

Remember that even though you are divorcing and may no longer use an account, you cannot disregard the debts you have incurred.

Federal income taxes. Talk to a tax accountant before you make any divorce decisions. Consequences can be serious if you do not plan properly.

THE USAA EDUCATIONAL FOUNDATION PUBLICATIONS, *LIFE INSURANCE* AND *ESTATE PLANNING*, OFFER MORE INFORMATION. SEE "RESOURCES" ON THE INSIDE BACK COVER OF THIS PUBLICATION TO ORDER FREE COPIES.

Dividing assets generally does not have any immediate federal income tax consequences. You are allowed to make tax-free transfers of houses, vehicles, real and personal property, business ownership interest and investments held in taxable accounts while you are still married or as part of your property settlement. But if you take appreciated assets in the divorce (for example, stocks, art, collectibles), you may eventually owe federal income taxes when those assets are sold.

With future federal income tax liability as a consideration, think about what assets could eventually cost you more than you anticipated.

Your marital standing at the end of the tax year — generally December 31 — determines your tax filing status for the entire year. If you are unmarried as of December 31, you generally must file as a single individual for that year. If you are married at the end of the year, you can choose to file jointly with your spouse or use the married, filing separately status. You and your spouse will have to decide how to divide potential deductions such as home mortgage interest, property taxes and child care expenses. When you file jointly, you are each generally liable for what the other individual puts on the federal income tax return.

If the IRS discovers that your spouse misrepresented income or deductions, both you and your spouse could be liable for back taxes, penalties and interest. The IRS generally can take action against either spouse to receive payment.

Retirement benefits and pensions. In most states, retirement benefits and pensions are marital property to be divided. These plans are complex and full of tax implications. Make sure you know how your and your spouse's retirement plans work.

The most common retirement benefits are defined-contribution plans. They are valued based on what you and your employer have contributed and vested, plus any accrued earnings. Be careful as you divide these to avoid incurring unnecessary fees and federal income tax.

Consult your attorney and a financial planning professional before you make any decisions.

Military benefits. If you are divorcing a military servicemember, you may be able to claim a share of your spouse's military benefits if certain requirements are met.

In 1982 Congress enacted the Uniformed Services Former Spouses Protection Act (USFSPA). This public law allows state courts to divide military retirement pay as community property. While the law does not direct state courts to divide retired pay, the law only allows state courts to consider the division of retired pay for divorce settlements occurring after June 25, 1981.

As much as 50 percent of your spouse's military retirement pay may be yours if you were married at least 10 years and the servicemember completed at least 10 years of creditable service for retirement during that time. You may also be designated as a beneficiary of your spouse's Survivor Benefit Plan (SBP).

Other temporary or permanent benefits including medical services and commissary and exchange privileges, may be available to you if your servicemember spouse served at least 20 years and other requirements are met.

Social Security benefits. If you are divorced after at least 10 years of marriage, you can collect retirement benefits on your former spouse's Social Security if you are at least age 62 and if your former spouse is entitled to or receiving benefits. If you remarry, you generally cannot collect benefits on your former spouse's record unless your later marriage ends (whether by death, divorce or annulment). For additional information, visit www.ssa.gov/gethelp1.htm or call (800) 772-1213.

Following divorce, rebuilding a life as well as finances means establishing goals and making plans.

- **Take your time.** Financial planning professionals recommend you take time to adjust to your new life before you make major life decisions and that includes how to invest money.

  If you have received a large financial settlement, put it in a safe place, for example, a no- or low-risk account with easy access. Leave it there until you are better equipped to make clear decisions.

- **Resist the urge to splurge.** If you received a large settlement, resist the temptation to spend the money. Instead reserve all or most for an emergency fund and possible investment goals.

- **Check your credit report to verify that your spouse has not incurred debts in your name since your divorce or separation.** Request a free annual credit report at www.annualcreditreport.com.

- **Establish new goals for yourself and make a budget.** Good planning starts with goals, and now is the time to redesign the life you want for yourself.

- **Make arrangements for nonfinancial emergency resources.** Could a family member offer you a place to live if necessary? Who would be able to take care of your children in a crisis?

- **If you remarry, consider the benefits of a prenuptial agreement.** Consider whether you want to merge your assets or keep them separate.

  You can use such an agreement to:

  - Protect the control and ownership of a business you have established.
  - State the separate or marital nature of certain assets you bring into the marriage or you acquire during the marriage.

12 DIVORCE CHECKLIST

WHEN YOU BEGIN TO CONSIDER A DIVORCE

- ❑ Obtain information about divorce and property division laws in your state.
- ❑ Make sure you have access to all relevant information such as account numbers, financial institutions, insurers, brokers, your tax accountant, location of important documents and contact information for each.
- ❑ Make copies of all relevant documents and computer files with financial data for yourself.
- ❑ Meet with a financial planning professional and a tax accountant to discuss the financial and tax implications of decisions you will need to make as you plan a divorce.
- ❑ Make sure you have access to savings of your own in the event that you must suddenly rely on your own resources to meet household and personal expenses.
- ❑ Make sure you have credit in your own name. If not, apply for and use your own credit card.
- ❑ Begin an inventory of all separately- and jointly-owned assets.
- ❑ Obtain appraisals of assets such as art, antiques, fine jewelry and other tangible items. Include investments, cash, vehicles, real estate and furniture.
- ❑ Make a list of all outstanding debts.
- ❑ Verify the contents of any joint safe deposit box.
- ❑ Pay the balance of as many bills as possible.

WHEN YOU DECIDE TO GET A DIVORCE

- ❑ Find a qualified, experienced divorce attorney.
- ❑ Consider revoking any power of attorney documents that name your spouse as your agent.
- ❑ Contact banks, investment companies and brokerage firms where you and your spouse have joint accounts. Ask what actions, if any, you can take to protect your interest in those accounts.
- ❑ Contact creditors with whom you and your spouse have joint accounts. Discuss and decide with your spouse who should pay the balance and close the accounts, if at all possible.
- ❑ Make copies of all legal, financial and other important documents.
- ❑ Take your personal documents (birth certificate and passport) out of joint files and create your own file.
- ❑ Contact your insurer to review auto and homeowners or renters policies.

WHEN YOU DECIDE TO GET A DIVORCE *(CONTINUED)*	
❑	If you are eligible for military benefits, contact your installation's legal assistance office to get information about how those benefits may be divided.
❑	Work with your spouse to negotiate a division of assets, custody of children, child support and visitation rights.
❑	If you want child support or spousal support, make a monthly and annual expense budget including food, medical care, housing, clothes, child care, school supplies and activities and other relevant expenses that could be used by your attorney to support your case.
❑	Discuss and decide with your spouse who will take the dependent tax exemptions for children, if any.

AFTER THE DIVORCE IS FINAL	
❑	Plan a budget. Include all living expenses and your emergency fund savings.
❑	Change names on documents, as necessary, to reflect the division of assets decreed by your divorce settlement.
❑	If you have changed your name as part of the divorce, contact financial institutions, business service providers and others to make the change on legal, financial and business documents.
❑	Review health, life and disability insurance coverages. Replace any lost protection. Consider changing beneficiaries on policies you own. If your settlement agreement requires you to continue to name your former spouse, check with your attorney to see if your state requires you to redesignate your former spouse as beneficiary after the divorce.
❑	Change beneficiaries on life insurance policies and in your will.
❑	Review your will and other estate planning documents. If you have no will, prepare and execute one. Name a guardian for your children. Consider establishing a durable power of attorney for a trusted friend or family member to make health care decisions on your behalf in the event you are incapacitated.
❑	Contact your employer to make changes to benefits as needed. Do not forget to change your W-4 form with your employer, if necessary.
❑	Obtain advice about the tax filing statutes to use to file your first tax return as a single individual, particularly if you were still married at the end of the previous tax year.
❑	Collect and organize your important legal and financial documents.
❑	Establish an emergency fund of 3–6 months of basic living expenses. Put the fund in a safe, liquid account.
❑	Check your credit report to ensure your ex-spouse has not incurred debt in your name.

14 CHANGING YOUR NAME WHEN YOU DIVORCE

If you took your spouse's last name when you married, you may want a new name that reflects your identity as a single individual. You can either go back to your birth name or a name from a previous marriage, or take a completely new name of your choosing.

If you decide to change your name, consider making the change as part of the divorce process, which is generally easier and less expensive than changing your name later when you will pay attorney and court fees for the necessary legal work. Inform your attorney of your intentions before divorce documents are prepared.

As soon as your divorce is final, request that your name and, if necessary, your address be changed on all legal and financial documents and business accounts. You may be required to complete paperwork or make changes in person. You may also need to produce a copy of your divorce decree to change your name on certain documents.

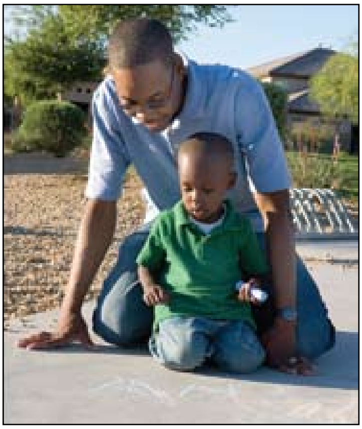
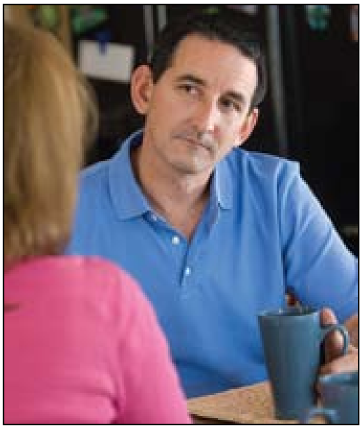
Use the following checklist to help you identify any documents that should be changed.

DOCUMENTS/RECORDS

- ❑ Automobile Insurance Provider
- ❑ Business Cards
- ❑ Checking Account
- ❑ Club Membership
- ❑ Credit Card(s)
- ❑ Dentist
- ❑ Driver's License
- ❑ Employee Records
- ❑ Health Insurance Provider
- ❑ Homeowners/Renters Insurance Provider
- ❑ Internet Service Provider
- ❑ IRA
- ❑ Life Insurance Provider
- ❑ Loan Account(s)
- ❑ Medical Specialist(s)
- ❑ Military Or Department Of Veteran Affairs
- ❑ Mutual Fund
- ❑ Passport
- ❑ Pension Plan
- ❑ Personal Physician
- ❑ Phone Company
- ❑ Post Office
- ❑ Professional Licensing Organization (for physicians, attorneys, other licensed professionals)
- ❑ Property Title Or Lease
- ❑ Safe Deposit Box
- ❑ Savings Account(s)
- ❑ School Records
- ❑ Social Security Card
- ❑ Stock/Bond Registration(s)
- ❑ Subscription(s)
- ❑ Taxes/Internal Revenue Service
- ❑ Trust(s)
- ❑ Utility Company(s)
- ❑ Vehicle Registration
- ❑ Voicemail Message
- ❑ Voter Registration
- ❑ Will (Revise or write new will)

16 NOTES

RESOURCES

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