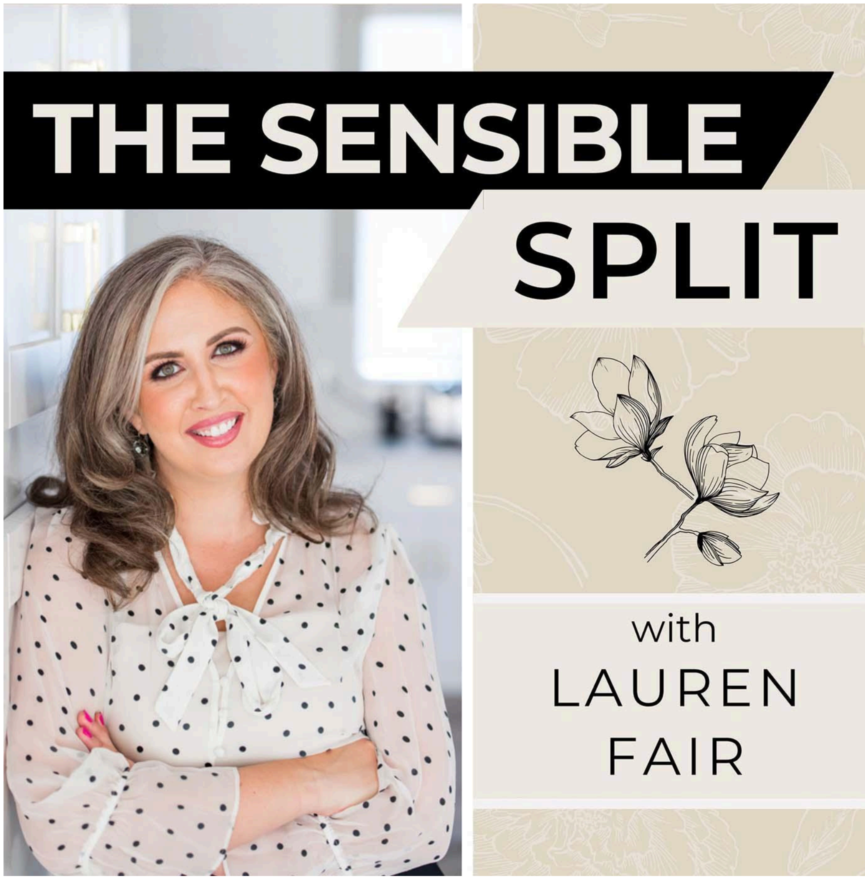
Ep #33: How To Afford Your Divorce: 10 Payment Options



Full Episode Transcript

With Your Host

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Ep #33: How To Afford Your Divorce: 10 Payment Options

You're listening to *The Sensible Split* podcast, Episode 33. Today, we're talking about how to afford your divorce legal process. No doubt, you've heard divorce can be pricey. I'm going to break down for you today options that may exist to help you pay for a divorce.

The Sensible Split is a podcast for smart but overwhelmed women in search of a roadmap to a successful separation and divorce. If you are looking for guidance in navigating the practical, legal, and emotional aspects of divorce with confidence, this is the show for you. Here's your host, Master Certified Life and Divorce Coach, Divorce Attorney, and Mediator, Lauren Fair.

Hi there. Welcome to Episode 33. How are you? I hope you're doing well. I'm doing pretty well on my end. We've had some exciting milestones in my house this past month. My son turned 10, double digits. Oh my gosh. I cannot believe that double digits are already upon us. It feels like the time is going by so fast. I know, so the cliché goes, but also does reality. We celebrated at Universal Studios Hollywood. That's what he wanted to do for his birthday. We had a really fun trip up there.

And today, my middle stepchild graduated from high school. And y'all, she was the salutatorian of her class. We are super proud of her. There's a lot of changes happening in the house right now with the kids growing up. So, let's dive into today's topic. And actually, real quick before we do that, I'm just going to tell you, there's a lot going on in my office today. So there might be some background noise. I'm doing my best. I have some guys working on the HVAC system in the ceiling above where I am. There are a lot of people in and out of the office today. So, even though I am here in the cozy comforts of my office, there's a lot going on in the greater suite. And so, at the same time, I want to get this done for you today. So here we go. And please forgive me for any background noise.

So, for today, like I said, we want to be talking about how to afford divorce. How are you going to pay for a divorce? I know for a lot of people, the cost of divorce is daunting. Whether you're already in the early stages of separation or perhaps you've already started the process and need help that you don't already have, and are concerned about how are you going to afford that, or maybe you already have an attorney and are seeing that legal fee bill stack up quickly. So these money questions can quickly become overwhelming.

So, today I want to walk you through the practical ways to pay for your divorce that maybe you're not already thinking about, some of them at least. So, I think one thing to realize sooner rather than later is that free assistance in terms of legal advice in family law cases is very limited to non-existent, depending on where you are.

Family law is different than criminal law in the sense that when you're in a criminal proceeding and you're charged with a crime, then you are potentially entitled to counsel at that point. So there's a difference when you have a right to counsel and when you don't. When you have a right to counsel in a criminal proceeding, that's when you have something like a public defender, for example. They want to make sure that people who are charged with crimes have access to legal counsel to help defend them because their liberty is at risk.

Family law is not the same as criminal law in that respect and in many other respects, of course. But I think people believe that there are a lot of resources for people who have difficulty affording divorce, and it's really just not the case in many jurisdictions. And it's unfortunate, perhaps, but that's the reality of it. So, you want to have a plan on how you can cover necessary legal fees in the event that there's no cost or low-cost option available to you.

As you know, if you've been listening to the podcast, I'm a proponent of minimizing these fees as much as possible. And if you're looking for ways to minimize your fees, I encourage you to tune into other episodes of the podcast, as I go through a lot of ways that you can do that. But most people do pay some legal fees related to the legal process. So let's talk about options that may be available to you to pay those fees.

And it's important, as we're talking through these options that you remember. It's important to consider having the input of legal counsel in your jurisdiction to help you confirm which of these options might be available to you where you are based on your local law and the availability of asking for, for example, a contribution to your legal fees that we'll talk about later on here, or accessing certain funds that you might have some access to, what might be the consequences of that in your case, etc. These are a starting point for you to get local legal advice on whether it would be appropriate for you to avail yourself of that option, okay?

So, I'm going to give you 10 different ways you can pay for a divorce.

The first one is from your savings. This is the most straightforward option. Perhaps if you've built up some personal savings, then that might be available to you. So, I know one thing that can be challenging for people is, well, I think we have marital savings, but I don't have access to it. And so, that's something that you would want to talk to an attorney about in your jurisdiction. If we have some marital savings somewhere, but I can't get to it, what are my options? But if you have your own individual savings, that could be a potential option for you to utilize to pay an attorney.

So, you'll want to check with an attorney to understand if using these funds will affect how the assets would be divided or if there'd be any other implication in your case. But this is a common way that people pay for an attorney is from savings that they've already built up.

Number two, credit cards. Yes, people often use credit cards to cover retainers or legal bills. And while this might not be ideal in the long term, it can bridge the gap when cash flow is tight. Just be mindful about interest rates and whether you're putting the charge on an individual credit card, a joint credit card. I mean, for example, if you're wanting to keep the retention of counsel to yourself, like maybe you're not ready to share that with your spouse, putting that charge on a joint credit card, obviously, could complicate things. So, it's important to know though, that a lot of attorneys accept credit cards. And so that is an option for you, potentially, to consider. At least as one part of a greater strategy to pay counsel in the long term.

And also, I think it's also just important to know that when I'm talking about paying counsel and we're talking about attorneys in general, this could also be for if you are hiring a mediator or some other professional in the process. Maybe a coach, maybe a financial advisor. There are different people that you may want to pay in the process. So, these suggestions could apply to any of those people, not just attorneys, but I will refer to attorneys throughout this.

All right, number three, family help. It's not uncommon for clients of mine to have family help them. Sometimes they have family help them because they don't have the financial resources available to pay me. And maybe that's a liquidity problem, like they have it, but they don't have access to it. But sometimes it's also because they just don't want it to be obvious that they're working with me. So sometimes family will step in to help out and be the person that's responsible for the bill.

So, I know it can be tricky sometimes to have that conversation with family members about needing financial help. But oftentimes, family members are willing to help when asked. And so it's a personal decision whether you want to reach out to family members, whether you want them to know the type of help that you are needing. Sometimes I know even just telling family members about a divorce on the horizon is something that people don't look forward to, having that conversation around or they want to time it appropriately. But family help is one area where I do see people going to get financial resources to utilize in the divorce process.

One tip on that front is it could be important to decide with your family member upfront, is this a gift or a loan? Because that distinction might matter later in your case.

Number four, legal fee financing companies. So this is something that is a little bit newer. They've been around for a while, but the scope of them has widened. Like the list of options has become more plentiful now in terms of financing companies who are offering financing to people for divorce purposes.

I'll give you one example that we've utilized in the law firm is LawPay Pay Later. So LawPay is a merchant service processing company, meaning they process credit cards, like they act as a intermediary between the merchant, like the business owner who's running credit cards, and Visa, MasterCard, American Express, etc. So, LawPay is one that's particularly designed to be utilized by law firms. They have now a service called Pay Later. And this is a newer option where they're offering financing for divorce purposes. And other purposes as well for other types of cases, I believe. But for our purposes here today, for divorce-related legal fees.

So, there are other companies out there that do this too, that offer loans specifically for divorce-related costs. And the terms of what that looks like, like what's the interest rate, what's the repayment period, what's the total that I can take as a borrower, if I'm utilizing that service, vary, those terms vary widely. So you've got to vet the fine print carefully, kind of understand what you're getting into. Some people at that point would just rather use a credit card. But some people would rather use a financing company because maybe in that situation they have some more flexible payment terms, or maybe the interest rate is just lower. So it's something that you could consider among other options.

A tip about if you're going to use a legal fee financing company, it is this: When you work with an attorney, oftentimes the retainer amount upfront is not the full amount that you're going to end up needing to pay. Because usually the fee agreement provides in family law proceedings that there's going to be a retainer deposit upfront. Which is like an advance on the hourly rates. So you kind of start with a credit on your bill, and then from there, there are hourly charges that are applied as the attorney works in your case, and that's deducted from the retainer deposit.

The total cost of the case depends on many factors. I talk about this in another episode. But typically, the ultimate cost of the divorce is going to end up being more than the retainer deposit. Unless your case is really, really uncontested or the attorney tells you otherwise. Maybe they are estimating what it might be for the whole case. But you can assume in most situations, it's probably not going to cover the whole extent of the bill ultimately from the attorney.

So, if you're going to take out a loan from a financing company, you may want to consider possibly borrowing more than the retainer deposit if you think you're going to need another loan to cover fees beyond the retainer deposit that you're making initially to the attorney.

So, for example, if the attorney's retainer deposit is $5,000, and ultimately the attorney thinks, I don't know, maybe this ends up being $15,000, maybe more, maybe less, depending on how things go. You might want to consider taking a little more that might get you a little further if you don't think you're going to have another source to pay fees for the attorney beyond the $5,000. Or you always have the option of applying for a separate loan if you exceed the $5,000. You could do that too. But it's just something to think about is, would it make more sense just to take a little extra upfront? If I don't need it, I could pay it back, etc.

All right, number five, contribution from your spouse. So, there are laws in certain jurisdictions that allow for a court to order a less resourced spouse to receive a contribution from the greater resourced spouse. So, here in California, there is such an option where if you don't have an equal playing field in terms of access to funds to pay counsel. If there's a significant disparity between the financial resources of the spouses. Then that may give rise to an order that the person who has the greater access to funds to pay counsel to make a contribution, and I really want to highlight that word, a contribution to the less resourced spouse's attorney's fees.

And it really is that. A lot of the time is a contribution. It's not necessarily 100% payment. Most times it's not, in fact. Here locally, 100% of the less-resourced spouse's fees. So, it can help defray the cost, but maybe not cover all of it. And what that might look like in your area would be a question for a local family law attorney.

Number six, retirement accounts. Some people utilize funds in a 401k or an IRA, for example, by taking early distributions. This is potentially an option, but it's one where you kind of want to pause for a minute and really look into what are the consequences of this. Because it can involve early withdrawal penalties and income taxes, which can eat up a chunk of that money. So, there's that. And there's also the question of, depending on where you are in the process, that may or may not be okay to do without there being some transparency or agreement that's what's happening.

So, that is something that happens, though. You know, there are some people who decide and are permitted to take a withdrawal from a 401k or a loan sometimes. Often times a loan is a little bit more accessible, you have a little less consequences sometimes involved with a loan from a 401k. But that's something that's available to be tapped. Probably not your first preferred solution, but it's one that may be available.

Number seven, payment plans with the attorney. So some attorneys will offer some flexible payment arrangements. Particularly if they think that there are other assets that they may ultimately get paid from at the end of the case. So, let's say that you have some money coming in from the sale of an asset. Sometimes that might be like a sale of a marital residence. And maybe that might free up some liquidity for you to pay at the end. Some attorneys might be willing to defer your bill, at least in part. Like, sometimes they still want a retainer deposit upfront. But they might be willing to defer some of the payment on additional fees to a later time, in the case when some of the assets have been freed up to make good on what the bill is.

So, that is totally up to the individual attorney because that also involves them waiting to be paid on a case while they're still doing work, they're still maybe paying employees to do work on your case without receiving money in exchange for those services at that time. So, it's something that you could certainly ask about. You know, what kind of payment plans do you allow? What does that look like? Is there an interest rate associated with that? What might the options be available for your particular situation based on the assets you have, the extent of the work involved, what the attorney is willing to entertain?

Number eight, sell assets. In some cases, people sell things, various things, jewelry, collectibles, second vehicles, other non-essential items. I live in an area where a lot of people have desert toys, we call them. Things that you don't necessarily need for your day-to-day living. They might have been nice things to have, but when finances are a little tighter, they could be things that could be easily sold in order to generate some liquidity to be able to afford the legal services that you want.

So, when you're selling assets though, you also want to be mindful about where you are in your case and make sure that you are not doing anything wrong by selling assets, depending on whether your case is pending or not, or what the status of it is. Because sometimes in cases, there are orders that automatically go into place that don't allow you to sell things without court approval or the agreement of the other party. But there could be some exceptions to that, and that's something you need to get legal advice on in your particular area.

Number nine, borrowing against assets. You can potentially borrow against assets to access some liquidity. And that could be, for example, a whole life insurance policy or a loan against your home. If you and your spouse own a home, like a HELOC or refinancing the mortgage, is a way to access equity to pay for divorce expenses. I wouldn't say that's super common. Again, because there could be orders preventing one party from doing that without the agreement of both parties.

So that's something you would never want to unilaterally do without legal advice. But it is something that is available if you both need access to funds, maybe you can reach an agreement to access, maybe via HELOC. I don't see refinancing too much. But sometimes HELOC funds could be something that could be utilized if you need to access some funds for the short term, and then what to do with that HELOC that's been created. Like maybe there's now a debt on that property via the HELOC that didn't exist before. It's going to have to be dealt with as an issue in the divorce. But this I find works best if both parties are in agreement about accessing funds this way.

All right, number 10, a FLARPL. FLARPL. It's a funny word. It's not really a word in of itself. It's just an abbreviation for a Family Law Attorney's Real Property Lien. That's what it's called in California anyway. It might be called something else where you are. If this is available to you, where you are. Basicall,y what this is, is a lien that can be placed by agreement with your attorney against a certain amount of the equity in a property that you own or a piece of real property.

So, what this looks like is if the attorney is willing to grant a FLARPL to a client, then that's a conversation that happens. And it's usually when a client has insufficient liquidity to pay for their retainer or to pay, I would say, for fees that are from after the retainer has been exhausted. So a lot of the time, the attorney will want a retainer deposit initially, and then you get to a point where maybe there aren't enough funds available to continue to pay counsel. And that's a situation where I see a FLARPL being utilized most often.

And so how that happens is there's a conversation generally between the client and the attorney about the need to secure the work that the attorney is doing. They want to make sure they're going to get paid for that work at some point. And if the client is in agreement, then they can enter into a formal agreement to put a lien on behalf of the attorney on a piece of real property.

So that lien is there, kind of like a mortgage lien would be on your house. The terms of it depend on what you agree upon with the attorney. Usually, there's a specified amount that gets put in the lien, although it can be adjustable as well, depending on where you are. But it then also would be recorded against the property and would need to be satisfied at some point. So, how does it get satisfied? It usually is through sale of the home or a refinance of the home by the person who is keeping the home.

And then it gets factored into the equation of how much does the out spouse, the one not staying in the house, receive in equity from the refinance or the sale of that property. You know, their attorney's fees are going to come out of their share generally, unless there's an agreement otherwise. So, it certainly would reduce the property settlement likely of what you would be getting at the end, but it would allow you to maintain counsel in the short term. So there are benefits to doing a FLARPL. It's just something that you want to be mindful of if you're anticipating a lot of fees, then you just got to really think about the implications of that, of what am I going to end up with at the end if we end up spending all these fees.

So, that kind of just brings me to a message that I don't think can be said enough, which is you really want to be mindful about how you are approaching your divorce and what your divorce budget is. How much are you willing to spend? What is the cost of spending the money that way? If you're spending all of that money on the divorce, what are you missing out on spending that for elsewhere? It's not to say that these aren't important issues that warrant putting money toward them, absolutely.

You need to make the call about what is the appropriate amount for you that you are willing to spend. But you don't always have to spend a lot to get a great result. Because alternative dispute resolution processes on the whole cost a lot less than litigation does. And you can get just as good of outcomes, if not better, in an alternative dispute resolution process, such as mediation, as opposed to or as in comparison to a litigated process, which costs a lot more.

And I don't know about you and what you've heard, but when I hear horror stories from people about their divorce, it usually is tied to a litigated process that they spent a lot of time on. A ton of money on and were very unhappy with. So, there are always those cases that have to be litigated because of certain factors in that particular situation. And that's always a possibility. But I just want you to consider the possibility that yours might be able to be resolved in a far more cost-effective way. And that you have options in how you can pay for your divorce. And I hope that maybe you've learned a little bit about some options that may be available to you that you weren't already thinking of.

All right? So the bottom line is, you have options. You don't have to have it all figured out before you start. But it's helpful to do that. At least to have that conversation before you start a legal process that you really are not clear on what that's going to look like, how much it's going to cost, etc. These are the conversations that I have with clients every day in a coaching capacity is, what are your options here before they decide to move forward so that they can make smart, sustainable decisions? Not a decision that next month they can't afford. You don't want to be in a situation where you start a process one month and the next month you can no longer afford it, and now, what do we do? You can't walk back a certain level of aggressiveness or conflict after you've just initiated it. So it's just something that we want to be really intentional about.

So if you're feeling overwhelmed, you're not alone. And it can be really helpful to talk through all these things and get a plan, because when you have a plan, then the fear starts to lessen about what your future is going to look like. All right? I hope you learned something today. It was great to be back with you and I will see you in the next episode.

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Thank you so much for tuning in to this episode of *The Sensible Split*. If you're looking for more information and guidance to help you successfully navigate a divorce, please visit TheSensibleSplit.com.

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