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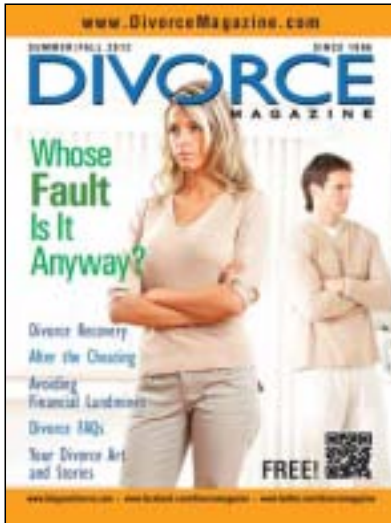
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**W**hen you unhappily remain in any of life's situations, be it a job, a neighborhood, or a relationship, a part of you dies: your spirit. Feeling stuck with no remedy in sight usually results in some form of soul sickness. Even though you always have choices, it may not feel that way, because the choices you have right now seem less than ideal.

Contemplating these big decisions can be daunting, especially since feelings of sadness, guilt, fear, and anger have become commonplace due to a relationship where you are unhappy and unsupported. You are not alone. There are hundreds of thousands of people feeling stuck in matrimonial confusion.

### Standing at the Crossroads

Just thinking about divorce may feel scary or as if you are betraying those close to you. Witnessing the growing divorce trends over the past few decades doesn't make marital dissolution any less difficult when it's a personal event rather than one endured by friends or neighbors.

Regardless of whether you tied the knot knowing that you could divorce someday if things didn't work out, or believing that divorce would never be an option, you are now viewing your marriage and your life from a different perspective — one in which you are open to being unmarried to your spouse.

Whatever your reason for coming to this place (you fought like cats and dogs, you changed but she didn't) or however long you've been unhappy or unfulfilled, you are reading this article because you need some guidance. There is no right or wrong way to go through the challenging decision of what to do next, but there are commonalities I've seen among those in marital flux.

### The Divorce Contemplation Continuum

There are three distinct stages of consideration in marital dissolutions: precontemplation, contemplation, and postcontemplation.

Precontemplation is when the notion to separate has just begun to develop. Someone at this stage may not think of divorce as a serious option, but may feel that something is not working in the relationship. Precontemplation of marital dissolution usually begins after a serious argument or a betrayal of some kind. In both scenarios you may feel as if a line has been crossed, but that it's not so egregious as to make divorce a serious notion.

Contemplation comes when the individual or couple has a serious need to consider divorce but perhaps needs more information to make a definitive decision. In this phase, it's not uncommon for the scales to be tipped one day at 85 percent toward staying and the next at 60 percent toward leaving. It's normal, although not necessarily comfortable, to experience a great deal of mental and emotional confusion at this stage, which can be very draining.

Postcontemplation is the final stage, with or without resolution. Here, those considering divorce have either decided to stay in the marriage, leave the marriage (both of which include a form of resolution), or continue grappling with whether or not to stay. With the latter, the person takes no action to find resolution, so the turmoil continues endlessly. This latter group is painfully aware that their indecision hurts them, yet they remain stuck and cannot move forward.

### Are You In or Out?

If you are like most of the people I

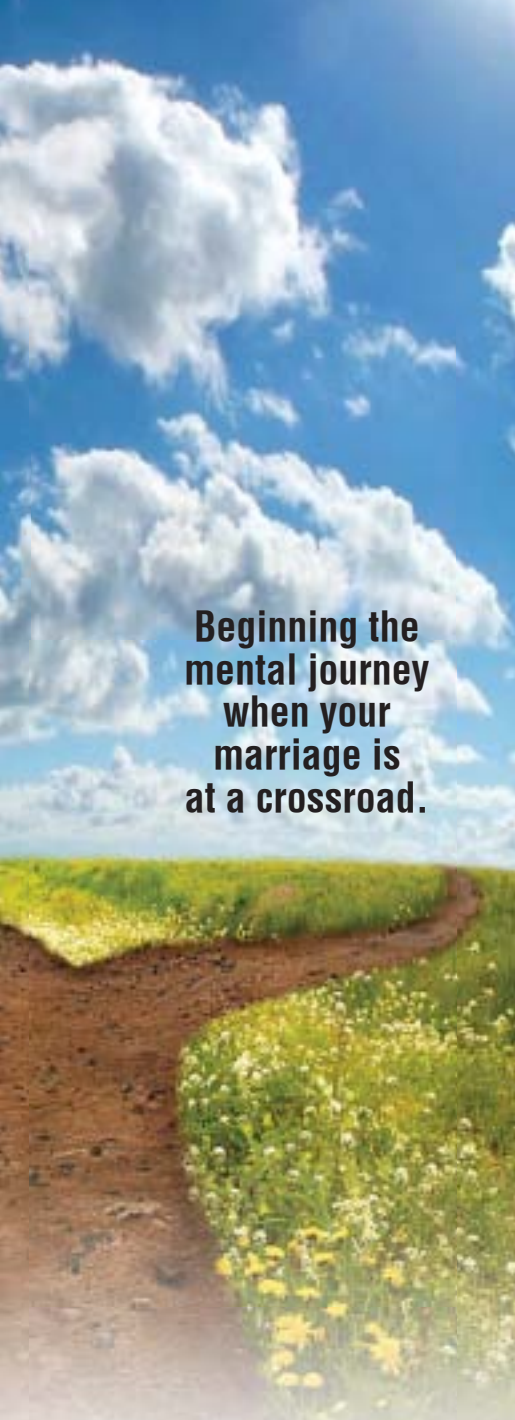
By Susan Pease Gadoua

# Are You In or Are You Out?

see, you are somewhere between contemplation and postcontemplation. A few of you may be in the precontemplation phase, but most don't make the choice to stay married or divorce until they have crossed the line into the contemplation stage. Given that you are seriously considering leaving your spouse, you probably feel a great deal of fear — of the unknown, of doing irreparable damage to your children, of loneliness, and so on.

What differentiates an unhappily married person who is contemplating





## Beginning the mental journey when your marriage is at a crossroad.

divorce from someone who is simply unhappy with certain aspects of the marriage is how they view their relationship. A typical marriage has its rough times, and when conflict arises each spouse feels normal frustration or anger. In a healthy marriage each will look within the marriage for the solution. When a partner has arrived at the place of contemplating divorce, however, they see leaving the marriage as a solution.

It can feel like a form of insanity to experience an amazing connection with your spouse one day and the following

week want to throttle him or her, wondering what you ever saw in them in the first place. Your friends and family may feel as if they are watching a Ping Pong match, but this back-and-forth is quite common.

### The Marital Indecision Cycle

Every marriage has good times and not-so-good times; this is natural and normal. However, when you are questioning whether to remain in the relationship, these highs and lows may be more profound. Not knowing the future of your marriage can feel as if you're riding on a roller coaster that you can never get off of; there are endless ups and downs and loop-the-loops. Although there are periods of calm, they are few, far between, and short lived.

After meeting with hundreds of clients who were contemplating divorce, I began to notice a very predictable path that these people were following. This marital indecision cycle can feel like imprisonment, even though all it would take to be free would be to step off the merry-go-round.

The marital indecision cycle begins with a routine period followed by a slow buildup of tensions. There may be questioning of the marriage at this juncture, and if there is this can actually hasten the process of reaching the argument or crisis. After that there is often remorse followed by another questioning period, which diminishes, as the tensions do, over time. Eventually the routine phase returns, and the cycle then repeats.

### Where Are You and How Did You Get Here?

As with any journey, you need to know where you are starting from to know how far you have to reach your

goal. The following questions are meant to give you a reference point as you proceed in making your decision.

1. How long have you been married?
2. Why are you considering divorce?
3. How long have you been considering leaving your spouse?
4. Where are you on the divorce contemplation continuum?
5. Have you experienced the marital indecision cycle?
6. As of this moment, where are you in the marital indecision cycle?
7. Using three columns, make a list of concerns or complaints you have or have had about your spouse or about your marriage. Then write what you, your spouse, or both of you have tried to do to resolve the concern or complaint. Finally state the outcome of each intervention.
8. When you see the history of interventions that you and your spouse have employed, do you feel hopeful that things can change, or do you feel discouraged? Describe your feelings. ■



This article has been adapted and excerpted with permission from *Contemplating Divorce: A Step-by-Step Guide to Deciding Whether to Stay or Go*.

*Susan Pease Gadoua, LCSW is founder and executive director of the Transition Institute of Marin, an agency that provides coaching, therapy, and workshops to people who are at some stage of marital dissolution, in the greater San Francisco Bay Area.*

For more articles to assist you if you are considering divorce or separation, visit [www.divorcemag.com/articles/Considering-Divorce](http://www.divorcemag.com/articles/Considering-Divorce).



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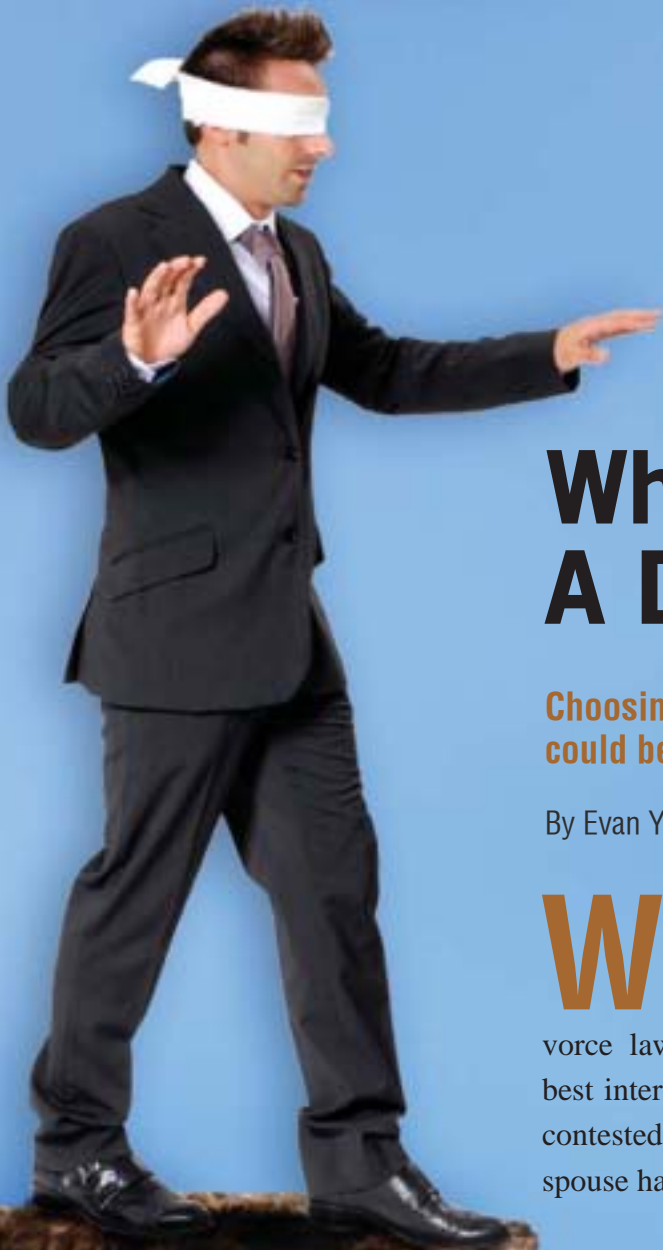
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# Why You Need A Divorce Lawyer

**Choosing to represent yourself could be a costly mistake.**

By Evan Yeong

**W**hen going through a divorce, one of the most important decisions is whether to hire a lawyer or not. While you may not always need a divorce lawyer, obtaining a good one is often in your best interests, especially if your divorce is complicated, contested, involves children, or if your soon-to-be ex-spouse has a divorce lawyer.



## Reduce Your Chances of Getting Your Desired Result

In court, self-represented people are not given any special treatment; judges hold you to the same standards as the lawyer you are facing off against. Judges are patient people, but if you do not know the law, or what documents are required, or what to do next, you can make them work longer and harder than they need to. The more annoyed a judge is, the less sympathetic they will be.

Family lawyers are experts in knowing what to say to make their case seem more reasonable than yours. It is unlikely that you will be prepared to face the full process and your spouse's lawyer by yourself. You can jeopardize your entire case by saying or doing one wrong thing.

## An Emotional Decision is Often the Worst One

Divorce is an extremely emotional time for everyone. You may experience sadness, betrayal, fear, depression, rage, and many other feelings all wrapped together in one confusing package. This level of emotional involvement in a case will skew your judgement. Depending on where you stand with your soon-to-be ex-spouse you may not be able to work productively with the other side to resolve important matters; your ability to see past the trial and plan for the future may be inhibited. As an objective third party, a family lawyer can keep a clear, level head and separate themselves from the emotional side of the case in order to work towards the best resolution for everyone involved. Throughout the divorce process a lawyer can remind you to keep your emotions in check and even introduce you to other professionals who can help you channel your emotions into positive strategies.

One of the most helpful pieces of information a lawyer can provide is letting you know when you are being unreasonable or are asking for something

that is not likely to happen without a long drawn-out court battle. Without their guidance, you may only see your own side of the argument, and might even push it too far. When emotions are running high it is easy to say or do things that may come off as aggressive or vindictive. Having a lawyer is like having a buffer between you and the other side, allowing you to make sound decisions instead of letting your feelings get in the way.

## A Lawyer Will Offer Many Viable Options

A family lawyer can calmly and effectively evaluate everyone's position and the range of possible results and outcomes. Based on their experience with the judge and other cases, they will be able to offer many options and give you a variety of choices that they know are acceptable within the law. If you and your spouse represent yourselves you may agree on items that the judge will reject. When that happens, you are causing more work and more delay for yourself, your spouse, the judge, and the court system.

A lawyer will help you take up a strong, reasonable position and let you know when to settle, walk away, or fight for what is rightfully yours. Lawyers are also able to resolve matters much more quickly than if you self-represent, as they are experts on the law, the court procedures, and how to properly achieve a final resolution that can be upheld.

## A Lawyer Will Guide You through the Crucial Paperwork

Going through a divorce may seem like a never-ending sea of documents that need to be filled out. While they may be tedious, many of these documents are very important as judges will rely heavily on them to decide the outcome of your case; some of them will also be the judge's first impression of you. Using the wrong tone on a single form could result in the judge perceiving you

as combative, hateful, or uninterested. Leave something out by mistake and the other side can accuse you of trying to hide information, which will greatly hurt your case. A family lawyer knows how to fill out these documents properly and persuasively in a way that will cause the judge to be sympathetic with your side of the argument. Judges have expectations of how documents will be filed and how things are done in court, and a good lawyer knows how to cater to their individual preferences, which in turn will strengthen your case. Today, many cases are bogged down in the court system due to incomplete work presented by do-it-yourself divorcees.

## A Lawyer Will Focus on the Big Picture

While you may be solely focused on "winning" the divorce, a family lawyer will concentrate on getting quick results that will satisfy everyone going forward instead. Lawyers often ask themselves, "Is this a good deal that will last?" The last thing anybody wants is to be fighting over the same thing months or even years down the line. Cost is also a big concern in a divorce. Family lawyers represent one person, not big corporations who have unlimited money to throw into a case, so they know cost is important. A good divorce lawyer strives to settle cases quickly, which saves you money. They can implement strategies to get you the best possible result at the lowest possible cost. By helping achieve resolutions quickly, a family lawyer will help close a chapter in your life and allow you to move on. Dragging out the divorce process by representing yourself will only make the split tougher.

## A Lawyer is a Professional Negotiator

Choosing to represent yourself in court leaves you with little chance against an experienced lawyer who handles divorce cases for a living. It is

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# YOUR PARTING WORDS:

## How to Break the News Responsibly



I'm leaving and taking the children with me.

I think it might be best to separate for awhile.

I want a divorce.

We have exhausted every option, and I don't see any other choice but to divorce.

By Susan Allison

This Divorce Expert and Counselor shares some wise advice on how to tell your spouse that your marriage is over, and it's time to move on.

Telling your mate you want a separation or divorce is the moment of truth, and every individual I interviewed remembers precise details about this instant. In my case, we were vacationing in Lake Tahoe when I told my husband. We sat looking at clear blue water, at our kayak tied to the dock, and ducks bobbing on the surface. And then I broke the stillness by saying, "I think we should separate for awhile and see what happens. I need my space to find out who I am and what I want. I need to leave when we get back home." I said a few other things, to make it sound less final, less threatening, and hurtful. As I spoke, I felt strong and exhilarated to finally be saying these words. I felt terrified as well.

Candace, now divorced for seven years, says of her leaving speech: “I felt mixed emotions when I said to Lenny, ‘I’m leaving and taking the children with me,’ because I still loved him; I still love him to this day. But for three years I tried to get him to come to therapy with me. I tried to get him into rehab for his addictions, but he would not go. He wouldn’t look at his part. I feel I did everything to try to make my marriage work. Finally, I had to get out of there. Right before I left I had a dream or vision that said I was going to die if I did not leave. I left to save my life in a way.” Ironically, Candace is now a therapist who works with people with addictions. As a therapist, her advice to those who are preparing to leave a marriage is, “Be honest. Tell the truth as long as you are safe to do so. Say: ‘I’m leaving. This is what I need to do for me. I think it is the best thing for both of us at this time.’”

## Words You Can Use

Depending on whether you are preparing to leave, wanting a trial separation, or a divorce, your choice dictates the degree of finality in your words. The following scripts make this progression clear:

### 1. Prepare to leave

“I’ve been thinking a great deal about our relationship and I think it might be best to separate for awhile. I don’t have any timeline in mind, but I’d like to talk about it.”

“Our relationship doesn’t seem to be improving. We’ve tried a lot of things, we have been talking more, and I’m not sure it’s better. What do you think about a separation?”

In an ideal situation, both parties are open and agreeable, very adult and willing to listen calmly. In a more realistic scene, one person is dissatisfied, and the other thinks things are fine, or is less invested in change occurring. It can be scary to tell your husband or wife that you have

been thinking about leaving. This is why it’s good to write in your journal, talk with someone, and do some planning, before communicating with your partner.

### 2. Begin a Trial Separation

“I need some time and space to sort out my feelings about our relationship. I can’t seem to get this perspective while we’re living together. I just feel more confused. Maybe if we live separately for awhile, we can get centered, continue to go to therapy, and be able to sort things out.”

“For now, I think the best thing is to separate. It’s just not working while we live together. Maybe some time apart will help each of us sort out our feelings and what we want.”

“Living together right now is just not working. We don’t seem to have the perspective or ability to understand the problem or each other. It might be best if we live separately right now.”

How you say this depends on the desired outcome. Do you want the separation in order to eventually reconcile, or is the separation a stepping stone to divorce? You may not know the answer at this point. Some couples begin a separation in order to gain useful tools to negotiate reconciliation. Others buy time with a trial separation because it’s too hard emotionally or financially to file for divorce immediately. They are taking the first step towards dissolution. You just need to take one step at a time, consciously choosing from a place of inner truth.

### 3. File for Divorce

“I want a divorce.” This phrase has been used by millions of people, at times at the height of an argument, at others after months or even years of work on the marriage.

If your spouse has asked you for a

divorce, and the two of you have not communicated, have not talked with a counselor, have not tried some of the other options such as an in-house separation, then suggest to your husband or wife that it is premature. If your spouse will not negotiate and insists on leaving and filing for divorce, there isn’t much you can do to change his or her mind. You can ask for a trial separation, for time to try to re-negotiate, but you can’t change anyone. Jessie, separated from her husband Mel after four years of marriage, is in this situation. Mel will not return her calls, and when she finally reached him recently, he said, “I don’t want to be with you. I want a divorce.”

If, on the other hand, you are the person who wants the divorce, and you are certain that this is what you need to do, then you can say something like: “We have exhausted every option. We have tried to make this marriage work, but I don’t see any other choice but to divorce.”

## Striving for “Right Relations”

As a free individual, you have the option to do whatever you want. You don’t have to be conscious. You don’t have to explore all options. You can just say you want a divorce. My belief, however, is that as human beings we have a higher consciousness; we have choices, and every action has a corresponding reaction. If we want “right relations” with others, then we need to think carefully about our choices, and strive to harm no one in the process. I believe we should attempt to be conscious every moment, for the choices we make in the present will affect our lives in the future.

Part of my reason for writing about “right relations” is that I did not always behave responsibly during my divorce, and it has taken a few years

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# 10 Detrimental Misconceptions about What Really Happens in Court

It's not possible to take the moral high ground in court while aligning yourself with negativity.

By Judge Michele Lowrance

Preparing for trial requires superhuman strength. Many people try to simultaneously mobilize sufficient reserves of the required negative emotion while trying to remain on a moral high ground. An angry confrontation between both parties can alter the course of negotiations and, with the flick of a switch, lead a couple into the start of a nasty divorce.

When you find yourself at the end of your marital journey it can be excruciating to witness the brutality in the spouse you once loved, not to mention getting a glimpse of your own brutal nature. You may have shocked yourself with how easily, and even candidly, you revealed your spouse's personal secrets to your lawyer, and then published those private embarrassments in a public court record. There are rare exceptions, but the fact that you are in court means you've likely aligned yourself with negative and often erroneous assumptions.

Here is a list of the ten most detrimental misconceptions about what really happens in court:

1. Destruction of your spouse is an acceptable means for getting what you need.
2. Your goals can be accomplished and sure victory attained by putting on a good fight.
3. Once you ignite a match in the courtroom, you can control the direction and intensity of the flames.
4. Your lawyer will understand and execute your goals and desires in a way that satisfies your sensitivities and needs.
5. Your concept of fairness will approximate that of the judge's. There is a clear-cut, nondiscretionary standard of

justice that is not dependent upon the judge's values.

6. Your habitual negative thought patterns, fueled by well-developed propaganda to "create the enemy" will cease once the trial is over.
7. It is your spouse's fault you are at trial.
8. The judge wields a wand, not a gavel, and can magically solve your problems, in spite of how much damage has been done to the family.
9. The court process will not hurt you, because you are invulnerable. Whatever pain you feel will go away when the trial ends.
10. Your lawyer can be vicious to your spouse because that is your lawyer's conduct, not your own. People who are abusively cross-examined in court never hold it against their spouse.

Too often, many people end up in trial because they can't tolerate any more negotiations. You think you are at the end of your collective ability to problem-solve. But that is not true. You may not really be at a stalemate; you may just have stale negotiations. ■



*This article has been excerpted and adapted with permission from the book The Good Karma Divorce which was written by Judge Lowrance (HarperCollins).*

*Judge Lowrance spent 20 years as a domestic relations lawyer prior to becoming a domestic relations judge in the Circuit Court of Cook County, Illinois in 1995. She has been a guest on Good Morning America, the CBS Morning Show, CNN, ABC and other shows. She also appeared, produced and hosted radio shows and is a regular guest lecturer.*



## An Interview with Judge Lowrance

The following is an excerpt of an interview that our Publisher, Dan Couvrette, had with Judge Michele Lowrance.

### Tell us about the three myths about divorce and what inspired you to write the book *The Good Karma Divorce*?

Well, I've been sitting on divorce court as a judge for years. Prior to that, I was a lawyer for 20 years. It became very clear to me over time that people had three myths about the divorcing process that ended up being very damaging to them:

1. The first myth is that children of divorce are resilient. That myth creates the failure in parents to take adequate precautions.
2. The second myth is that your emotions won't hurt you and that you'll just get over it in time.
3. The third myth is that ultimately the court system will save you no matter what happens in your case.

The reliance on any of those three myths causes people to hurt themselves.

Let me start with the first one, the resiliency of children. People stand in front of me and say, "I love my children. I would never do anything to hurt them." And yet their behavior is not in concert with their heart's intentions. There is a different kind of parenting, upgraded parenting skills, to protect children, and the failure to do that has caused 50% of the children of divorce

to never want to get married, and two thirds of them don't want to have children. That's really problematic.

The other is that people give up all their power to lawyers and even to the court system and to people like me, thinking that that's where their healing is going to take place. The courts are not built to house these emotions, and lawyers are not trained to reduce this kind of suffering. The problem is that divorcing people expect relief far beyond what the legal realm can provide, and then end up feeling powerless and unprotected.

### Is there anything you can tell us about feeling like the victim?

I'm going to say that we all want to feel like the victim when we're going through a divorce, because we get so much compassion. First we tell a story to our friends, then our family, then our lawyer, and all of a sudden it seems to have a tremendous payoff. It's completely understandable, but ultimately being a victim means that the other person has power over you, and you have to try and avoid them because you're afraid of what emotions they're going to evoke in you.

It's better not to be a victim and keep your own power. Thinking of yourself as a victim is the single most disempowering thing you can do, and we all have our storylines that we create in the divorce. You can't learn when you have a storyline. There is much that we have

responsibility for, and yet we don't want to take responsibility. It's so much easier to be the victim, which means soon you're a victim to them, then you're a victim to the court system, then you're a victim to your lawyer, then you're a victim to the world. It's very dangerous because it has a very adhesive quality.

### What does karma mean to you in the context of divorce?

It means many things. The most important thing karma means is opportunity, and the opportunity to take a different path. That opportunity is afforded to you when you're going through a divorce on a daily basis, maybe even an hourly basis, to pick an action or a thought and whatever action or thought you pick is how your life is ultimately going to turn out. ■

To read the entire interview, please visit our website at [www.divorcemag.com/good\\_karma\\_divorce.html](http://www.divorcemag.com/good_karma_divorce.html).

### Another Related Article

#### Observe Courtroom Etiquette

The courtroom is likely to feel like a foreign place, with rules of behavior all its own. Learning the etiquette in advance will help ease your worries about making a gaffe.

[www.divorcemag.com/articles/Divorce\\_Law/courtroom-etiquette-family-law.html](http://www.divorcemag.com/articles/Divorce_Law/courtroom-etiquette-family-law.html)



*Left to right: Michael Sarris, Wendy K. Tse, John J. Gilligan, Brian K. Brandmeyer, Janet E. Dockstader, Janine M. Frisco, John T. Bachmayer*



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A SPECIAL ADVERTISING FEATURE



How to get the best possible advisors during your divorce

# Selecting Your Professional Divorce Team

By Diana Shepherd, edited by Josh D. Simon

**D**ivorce is a complex process that affects just about every aspect of your life: financial, emotional, physical and legal. Unless you've been married for only a short time and have no property, assets, or children, you'll probably need the advice of more than one divorce professional to help smooth the road ahead of you. You will need expert services from one, some, or all of the following professionals: lawyer, mediator, accountant, divorce financial specialist and therapist. While each of these professionals can help you through a challenging transition period, finding the right ones can be stressful.

Here's a guide to help you choose the best possible advisors to support you with your divorce. At the end of this article, you'll also find a list of useful

questions to ask these professionals when you interview them.

## Selecting a Divorce Lawyer

Choosing a lawyer may be the most important decision you will make during your divorce. As in any profession, there are good lawyers and bad lawyers. It's up to you to do your homework and to ask the right questions to determine which group your lawyer belongs to (a list of questions to ask a potential lawyer is provided at the end of this article). Look for a lawyer who:

- **Practices family law.** A lawyer who specializes in taxation isn't going to be much help to you.
- **Has experience.** Make sure your lawyer has practiced family law for a while, and find out if they have

written books or lectured/mentored other family lawyers.

- **Is a skilled negotiator.** If your case can be settled without a protracted court battle, you'll probably save a great deal of time, stress, and money.
- **Is firm.** If you end up going to court, you don't want your lawyer to crumble at the first obstacle.
- **Is reasonable.** You want someone who'll advise you to settle if the offer is fair, and not have the case drag on to satisfy the need to win.
- **Is not in conflict with your best interests.** Do not share a lawyer with your spouse, or hire your spouse's best friend (even if this person is a friend of yours, too), business partner, or any member of your spouse's family to represent you — even if you're on good terms



with them. Aside from the obvious conflict of interest, you'll likely create enemies and spark a family feud before your divorce settles.

## Selecting a Divorce Mediator

With mediation, you, your spouse and a third-party mediator work together to negotiate how to live successful lives apart. Mediation can save time and money, and is usually less emotionally damaging than a full-blown court battle. Together, you and your spouse work out an agreement you can both live with from the same side of the mediation table, rather than opposing sides of the courtroom.

Mediation is not an option in all divorce cases. However, when both parties are willing to look at the issues instead of the emotions that cloud the issues, mediation is worth a try. Statistics show that when a case is negotiated through a mediator, the parties tend to stay out of court in the future. Another benefit of a mediated settlement is that you and your spouse will learn powerful new communication techniques, which is particularly important if you have children or share business interests.

Mediation doesn't normally eliminate the need for a lawyer, and your lawyer will have to approve any agreements made by you and your spouse before they become legally binding. However, the mediation process can speed up negotiations because you and your spouse communicate directly instead of through a "broken telephone" chain from your spouse, to your spouse's lawyer, to your lawyer, and then finally to you. Many family law practitioners are also trained mediators, and so finding a mediator may simply be a question of asking your lawyer about his or her qualifications.

## Selecting an Accountant

A Certified Public Accountant (CPA) can handle many of the financial matters of your case. His or her responsibility is to calculate you and your spouse's net worth, and to produce fig-

## It is up to you to do your homework and to ask the right questions to determine who is right for you.

ures that are agreeable to both you and the courts. There are a number of different accreditations given to accountants, and you'll find these designations after their name. Wading through the differences between someone who is a CFE (Certified Fraud Examiner) or a BCFE (Board Certified Forensic Examiner), or a member of the ASA (American Society of Appraisers), or a member of NACVA, (National Association of Certified Valuation Accreditation) may seem a daunting task, but by doing a little research, you'll come to understand what you need to know. If you think your spouse is hiding assets, a forensic accountant could be helpful. If you and/or your spouse own your own one or multiple businesses, a business valuator will be important to value company assets and company goodwill.

You could ask to be introduced to an accountant through your lawyer. These two members of your divorce team may have to work in tandem from time to time, so it's beneficial to find someone with whom your lawyer is familiar. You can also ask your personal accountant (if you have one) to suggest someone who has a matrimonial background, but be sure to check his/her prior experience.

## Selecting a Divorce Financial Specialist

When your marriage has dissolved, and even during the divorce process itself, you may want to employ a financial expert who has been specially trained in issues that pertain to separation and divorce.

Certified Divorce Financial Analysts (CDFA™) tend to be financial planners or accountants who have completed the Institute of Divorce Financial Analyst's training. Equipped with the specific training on handling divorce cases, a CDFA™ can analyze settlements in the context of your long-term financial situation and inform you of the ones that appear fair and equitable on the surface, but will not stand the test of time. A CDFA™ can also reduce future uncertainty by forecasting the financial impact of alternative settlement proposals. For instance, a CDFA™ can tell you what the financial consequences will be of keeping your home instead of selling it. A CDFA™ can work with your lawyer and provide the financial data required to support your case.

Additionally, a CDFA™ can help you with budgeting, or assist with tax, estate, or retirement planning. He or she will help you organize your financial future by proposing a personalized plan with a time horizon, and a solid investment strategy to help you move towards financial stability after your divorce.

You'll also need valuations or other paperwork detailing property owned by you and your spouse (together or separately), and everything else from the contents of a safety deposit box to the cars. And while you'll be dealing mainly with "big ticket items," if something is very important to you, make sure it's on your list. If a business is involved, brokerage statements or corporate minute books will also be required.

Basically, your accountant or divorce financial specialist needs to see any major paperwork that involves the transaction of money for both you and your spouse.

## Selecting a Therapist

A therapist can help you deal with the various emotions that could get in the way of negotiating a divorce settlement. During your separation, you may experience grief, anger or depression. Also, until you achieve an "emotional

divorce,” you won’t truly be free to create a fulfilling new life. A qualified therapist can help you work through the issues that are holding you back and keeping you stuck in the past.

However, the process of finding the right therapist can be a frustrating one. Anyone can call him or herself a “therapist” regardless of background or training, so do your due diligence to find someone competent. A therapist with an “MD” after his/her name is a psychiatrist; one with a “Ph.D.” is a psychologist. If you see the letters “MSW,” it means this person has a master’s degree in social work, while an “LCSW” is a Licensed Clinical Social Worker. If possible, choose a therapist who specializes in marriage and divorce.

Setting realistic limits and goals is an important part of the therapist’s services. Good therapists are willing to listen, but they don’t always have to agree with you. A good therapist will encourage questions that indicate you’re interested in your own recovery. As you glance around the therapist’s office, try to imagine yourself coming here every week for several months.

Remember, it can take three to five sessions before you have a clear idea of whether this therapist is the right one for you. However, if after this period you don’t feel right about the relationship, then trust your inner voice, thank the therapist for his/her time, and interview the next candidate.

## What to Ask Your Prospective Lawyer

- What percentage of your cases go to trial? (You may want to choose a lawyer with a low percentage here: a good negotiator who can settle your case without a long, expensive court battle. A good trial lawyer may be necessary if every indication is that nothing could possibly be settled outside of a courtroom.)
- Are you willing and able to go to court if this case can’t be settled any other way?

- Who will be handling my case: you, an associate, or a combination of senior and junior lawyers and paralegals?
- Should I consider alternative dispute resolutions, such as mediation?

## What to Ask Your Prospective Accountant, Financial Advisor, Mediator, and Therapist

When you first meet the divorce professional you may hire, you should be prepared with some well thought-out questions. Here are some suggestions of what to ask:

- What is your training, experience, credentials and affiliations?
- How long have you been working in this field?
- Do you serve divorcing people exclusively? If not, what percentage of your work involves divorcing people?
- How much direct experience do you have dealing with cases like mine? (This is an especially important question if there are aspects that make your divorce unique.)
- How many times have you been to court? These professionals may be testifying on your behalf, so you want someone who has experience in the courtroom. If possible, find out how these cases turned out.
- Have you worked with many family lawyers? Ask for a few references, and call them.
- What is your approach? Do you have any biases? (We all have certain viewpoints, which cloud our judgment, and professionals are not exempt. If you have children, you should ask if this professional has any strong views about the role of mothers or fathers, or about the care of children.)
- Will you keep our communications confidential? Can I call you between scheduled meetings? If so, do you charge for these calls?
- Do you require a retainer, and if so, what is it? Is this fee refundable? What is your hourly fee? What are your payment terms?

- Approximately how much will your services cost? (The professional will only be able to provide an estimate based on the information you provide and your realistic estimation of how amicable you and you spouse are. If you think your case is extremely simple, but your spouse’s lawyer buries your lawyer in paperwork, you can expect your costs to increase.)
- What do you think the outcome will be? (Remember, you’re looking for truthfulness here, not to be told a happy story.)
- If your spouse has retained professionals of his or her own (and you know who they are), ask if they are familiar with any of them.
- How long will this process take? (Again, the answer will be an approximation.)
- What are my rights and obligations during this process?
- What are your hours? Do you work any evenings or weekends?
- How accessible is your office (close to parking, public transport; wheelchair accessible; etc.)? Is it located in a safe neighborhood?
- What happens next? Do I need to do anything? And when will I hear from you?

Indeed, the path of divorce is typically a challenging one on many levels. The decisions you make now will affect your long-term future, and that of your children. By using the guidance and questions above to choose the right professionals, you’ll not only make your divorce easier, less expensive, and less stressful — you’ll also empower yourself to successfully start your new life after divorce. ■

*Diana Shepherd is the former Editorial Director of Divorce Magazine. Josh D. Simon is a writer for Divorce Magazine.*

For more articles on working with your divorce lawyers, visit [www.divorcemag.com/articles/Divorce\\_Lawyers](http://www.divorcemag.com/articles/Divorce_Lawyers).





## PETITION FOR DISSOLUTION OF MARRIAGE DIVORCE

# Understanding the DIVORCE PROCESS

A guide to the legal process of divorce. By Jeffrey Cottrill, edited by Josh D. Simon

No two divorces are exactly alike. Every marital breakup has its own unique legal, financial, and/or parenting issues, which require their own resolution strategies. However, every divorce undergoes the same general journey from initiation to closure. Whether you and your spouse make this journey slowly or quickly, expensively or inexpensively, stressfully or peacefully is up to you, but the destination is always the same: from shared to separate lives.

Here's a basic primer of how the divorce process works in the United States and Canada. Bear in mind that you need to speak to a family lawyer to discover how the options vary in your state or province, as well as how the details and circumstances of your situation may affect the process.

### Temporary Orders and Filing Divorce Papers

One of the first things you and your spouse have to do after you separate is to get a “temporary order” or agreement. This is extremely important, because it could set the precedent for your final divorce settlement. A temporary order/agreement establishes quick decisions about the children, property, bank accounts, and other issues that may be important between the separation and the final outcome. For example, if one spouse moves out of the home and the other has no income, how will the latter feed the kids and pay the bills? Get more information about temporary orders, by visiting [www.divorcemag.com/articles/Financial\\_Planning/getting\\_prepared\\_temp\\_orders.html](http://www.divorcemag.com/articles/Financial_Planning/getting_prepared_temp_orders.html).

You should hire a divorce lawyer and/or mediator, and financial advisor, as soon as possible. You'll set your temporary order/agreement in a brief, relatively informal hearing before a judge — so prepare a complete list of what you want to request. The items you can request include: temporary custody and visitation arrangements; a restraining order so your spouse won't contact you; child or spousal support; and/or who gets the car and house.

Next, you or your spouse will file a petition, application, or complaint for divorce with your local family court. The person who files (“the plaintiff”) serves a summons upon the other spouse, stating that they want a divorce and what they are seeking in terms of property, child custody, support, etc. The other spouse (“the defendant”)

## Consult all the necessary divorce professionals to make your divorce as quick and painless as possible.

must answer the summons and, if they wish, can make their own claim.

Check [DivorceMagazine.com](http://DivorceMagazine.com) for information on the grounds for divorce in your state or province. Most states and all Canadian provinces are “no fault” jurisdictions, so you don’t have to justify filing for divorce by accusing your spouse of wrongdoing.

### Collecting Information and Discovery

Once you have hired your divorce lawyer, you must gather all relevant information for your lawyer’s perusal:

- Full names, addresses, phone numbers, and Social Security or Social Insurance numbers for you, your spouse, and your children
- The date of marriage, date of cohabitation, county or region where the wedding occurred, the wife’s maiden name, and any information about prior marriages of either spouse (including the names and prior names of ex-spouses)
- A copy of your premarital agreement (or other domestic contract) and information about any prior legal proceedings, separations, or marital counseling during the marriage
- All available financial data, including: income-tax returns from the past several years; a recent pay slip; the major assets and liabilities of both you and your spouse; budget worksheets; insurance policies; credit-card statements; wills; and any credit or mortgage applications.

Unless you create a separation agreement, your lawyer will use this as a starting point for the discovery process. Your lawyer needs as much specific information about the marriage as possible in order to work out the financial and children’s issues fairly.

Most of discovery involves financial matters, for which your lawyer needs specific, accurate details. From the value of items you bought during the marriage to stocks, pensions, and revenue from a business, you and your divorce professionals (e.g. lawyers, mediators, financial planners, accountants, appraisers, etc.) have to retrieve documentation of every dollar value — including that of premarital assets. For articles on preparing for a deposition and separation agreement, visit [www.divorcemag.com/articles/Divorce\\_Settlement\\_Preparation](http://www.divorcemag.com/articles/Divorce_Settlement_Preparation).

### Contested vs. Uncontested Divorce

There are two general types of divorce. If you and your spouse can not agree on the divorce terms — or if one of you doesn’t want the divorce — it’s a contested divorce, and a judge will decide the outcome if you can’t come to an agreement on your own. In an uncontested divorce, both of you agree on how to divide your assets and debts, who gets custody and pays child support, and whether one spouse needs to pay spousal support to the other. Obviously, an uncontested divorce will be faster and simpler. But even a divorce that starts with major disagreements can be worked out if you choose to make it that way, and the majority of cases do settle.

If you’re in the United States, ask your lawyer if you’re eligible for a “summary” divorce. This is a simpler and faster divorce process which involves less paperwork, fewer court appearances, and less time in negotiation. However, this will only work if your marriage was relatively short and if you have no children, little property, and no intention to seek spousal support. In Canada, the closest would be an uncontested divorce or a joint application.

### Motions

If you need to readjust certain arrangements during the divorce process — such as custody, visitation, or support — you can initiate this by filing a motion with the court. Next, a short hearing takes place in which the lawyers representing you and your spouse present their cases before the judge. In most cases, only the lawyers are permitted to speak. However, if you are going the Do-It-Yourself route in your divorce (a path that’s only recommended for very simple divorce cases), you will be able to represent yourself in this hearing. Once the judge makes a decision on the matter, the regular process continues as before.

### Litigation or Negotiation?

If your divorce is contested, you and your spouse must decide how to resolve your divorce. Will you fight it out through adversarial litigation, or can you set aside personal feelings long enough to negotiate outside of court? If you want to avoid the “divorce from hell”, Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation, and Collaborative Divorce, have become popular means of settling divorce in a cooperative environment with reduced stress and expense. Some states and provinces have made mediation compulsory in the divorce process.

Talk to your lawyer (and to your spouse) about the different options. For more information on divorce mediation, please go to [www.divorcemag.com/articles/Mediation](http://www.divorcemag.com/articles/Mediation). For information on Collaborative Divorce, please go to



## Trial

If you and your spouse just can't agree, then your case goes to trial. Divorce trials can take many months or even years, and they're never pleasant.

Generally, you and your spouse each tell your respective side of the story before the judge or a jury depending on your state law. You take the stand, and your own lawyer asks you questions that prompt you to explain your side — and then your spouse's lawyer has the option of cross-examining you or challenging the validity of your perspective. The same goes for both sides' witnesses (both personal and professional): each of you dukes it out through conflicting testimony and attempts to make your respective case look more believable. Finally, the judge or the jurors who only know you through what they have seen in court — weigh all the evidence and make all the final decisions.

## The Issues

- **Money and property:**

Who gets what? What items and accounts legitimately belong to you? Who should keep the marital home? Who gets which car? How about the cottage? The family business? The pets?

Many states classify property owned by the spouses as "marital" or "separate" — the latter meaning that the property belonged to one spouse before marriage or was a gift to one spouse. The goal of property division is "equitable distribution" — meaning an even division of assets and debts. If you negotiate asset division with your spouse directly, be clear about which items are high priorities to you and which ones you would be willing to let go.

The more financially complicated your divorce, the longer this will

take, and you'll likely need an accountant, a business valuator, a Certified Divorce Financial Analyst, a Financial Divorce Specialist, or a financial planner to make sense of all the assets involved. For more helpful articles, go to [www.divorcemag.com/articles/Financial\\_Planning](http://www.divorcemag.com/articles/Financial_Planning).

- **Child and spousal support:**

Often referred to as "alimony" or "maintenance," spousal support is a monthly amount of money that a financially advantaged divorcee can be ordered (or agree) to pay their ex-spouse, to help maintain a lifestyle to which the latter has become accustomed. Ask your lawyer whether you're eligible for spousal support — and if so, don't be afraid to take it. The purpose of spousal support is not to punish your ex but to maintain your lifestyle.

Child support is what a non-custodial parent regularly pays to the custodial parent in order to support the children from the marriage. This way, both parents can financially contribute to bringing up the children, even if one isn't present on a regular basis. For more helpful articles, go to [www.divorcemag.com/articles/Child\\_Support](http://www.divorcemag.com/articles/Child_Support).

- **Child custody and visitation:**

One of the most important decisions is where and with whom the children will live. Is joint custody in their best interests, or should they live with one parent full-time with regular visits with the other? Unless your spouse is abusive, both of you should work together to create an agreement in which you both get a fair share in raising your children.

Custody battles in court are usually full of character slurs and accusations that are emotionally traumatic for you — and more so for the children. For more articles, go to [www.divorcemag.com/articles/Child\\_Custody](http://www.divorcemag.com/articles/Child_Custody).

## The Waiting Period

There is usually a set minimum waiting period between the divorce petition and the final decree. Even if your process is very quick, the waiting period must elapse before the judge officially grants the divorce. Lengths vary between states and provinces, but the average waiting period is about six to twelve months.

## The Divorce Judgment

After all the issues have been decided (either by you and your spouse or by a judge), a court clerk reviews all the papers and sends them to the judge. When the judge signs a document that officially ends the marriage (a Divorce Judgment Order or a Divorce Decree), you are legally divorced — and free to remarry if you choose.

The divorce process is complicated, and this brief summary doesn't touch on what an emotional rollercoaster ride a divorce is. It's a wrenching experience that can cost a lot of money and upset your lifestyle in profound ways; it can also damage your children's psychological growth if you and your spouse don't consider their well being and act in a way that supports an amicable divorce. But once it's done, you're free to start over — so the sooner you get to the end, the better for all involved. Consult the necessary divorce professionals (family lawyers, divorce mediators, Certified Divorce Financial Analysts, accountants, therapists, etc.) to find out how to make your divorce process as quick and painless as possible. ■

*Josh Simon and Jeffrey Cottrill were contributing writers for Divorce Magazine.*

For more articles, and a more in-depth explanation of each of the subjects covered in the divorce process, visit [www.divorcemag.com/articles/Separation\\_Divorce\\_Process](http://www.divorcemag.com/articles/Separation_Divorce_Process).



Tips for keeping your legal fees down and getting the best possible outcome.

# How to Work with Your Divorce Lawyer

By Diana Shepherd, with notes from Josh D. Simon

**Y**ou and your lawyer will become partners, for better or for worse, during and perhaps for years after the divorce process. How well your partnership works can have an enormous effect on your divorce and how much you'll have to spend in legal fees. Here are some tips on how to work with your divorce lawyer.

## What Your Lawyer Needs to Know

Once you've chosen a lawyer, you'll need to provide information. When your lawyer requests information, respond as quickly, completely, and concisely as you can; don't write a 24-page document when all that was required was a "yes" or "no." The following checklist will give you an idea of what you may need to disclose:

- Why are you seeking a divorce?
- What caused your breakup? If you're secretly hoping for reconciliation, then you and your lawyer are working towards different goals.
- Personal data about you, your spouse, and your children (if any). Write down your names; your home and work addresses and telephone numbers; your ages and places of birth; your Social Security or Social Insurance Numbers; your states of health, both mental and physical; your Green Card(s) and immigration papers (if applicable).
- Facts about your marriage. When and where did you get married? Did you sign a prenuptial agreement? If so, bring a copy. Have either of you been married before? Will there be issues involving your children, such as custody or access?
- Financial information. What assets and debts did each of you bring into the marriage? What are your incomes and what are your expenses, jointly and individually? What are the names and addresses of your employers? How much money do both of you have invested: in the bank, the stock market, etc.? Has either of you invested in insurance or a pension plan? What property do you own? Was the property purchased before or after the marriage? Do you have a mortgage? Prior to seeing your lawyer, create a budget detailing how much you spend every month on items such as housing, food, clothing, personal grooming, gifts, vacations, etc. If you have children, make sure you include their expenses.
- Legal documents. Bring copies of prior or pending lawsuits, bankruptcy suits, judgments, and garnishments. Your divorce goals. Be very specific about your goals in terms of realizing your future; make sure your short-term goals for property, other assets, custody,

visitation, and support are consistent with that future.

## What Your Lawyer Expects from You

Your lawyer hopes you'll be calm, businesslike, and well prepared. Ideal clients can control their emotions, are organized, willing to work with the lawyer, and listen to their lawyer's advice.

Your lawyer will expect to be paid on time and in full. If your financial situation is bad, your lawyer may be able to create some kind of payment plan. If you're broke because your ex cleaned out the bank account, your lawyer can file motions asking the court to grant temporary orders for child or spousal support, custody, payment of your lawyer's fees, etc. And if you suspect your divorce might get nasty, ask your lawyer about filing orders to protect you and/or your kids — financially and physically.

To get the best service from your lawyer, it's essential to be a good client. Here's how to gain your lawyer's respect:

- Don't call your lawyer outside of work hours unless it's an emergency.
- Don't burden your lawyer with your emotional issues; hire a therapist for that.
- Always tell your lawyer the truth, even when it's unpleasant or unflattering to you.
- Be realistic. Don't expect your lawyer to behave like the heroic lawyers on TV or in John Grisham novels.
- Don't blame your lawyer for the system or expect him or her to change it.

If you don't abide by these tips, your lawyer may want to quit your case. This may also happen if you don't communicate properly, if you continually don't follow the lawyer's advice, or if you don't pay your legal bills. But if you're cooperative and reasonable, it's more likely that your lawyer will trust you and work hard on your behalf.

However, your lawyer may keep representing you even if you inadvertently annoy him or her — if only because you're still paying him or her to work for you. Or maybe your lawyer is just too polite. If you detect impatience or weariness in your lawyer's tone or body language, consider whether you're burdening him or her with too many complaints about your spouse, or whether you're wasting time by asking a lot of obvious questions or by venting your frustrations. It's also possible that you did something to hurt your case strategy, such as mentioning something to your spouse (or your spouse's lawyer) that should have been kept secret. Perhaps your last check to the lawyer bounced, or maybe you were rude or unprofessional to one of the firm's paralegals or secretaries.

**How well  
your partnership  
with your lawyer works  
can have an enormous  
effect on your  
divorce and legal fees.**

If you think you may have annoyed or angered your lawyer, ask if this is the case. If you have done something wrong, apologize for it; if there has been a misunderstanding, clear it up immediately. It's important that you and your lawyer maintain a strong, trusting relationship in order for you to get the best possible representation — and to achieve the best possible outcome.

## What You Should Expect from Your Lawyer

From the day you hire your lawyer, you both should have a clear understanding of what you need and expect from each other. Ask for a written agreement that details the terms of your lawyer-client relationship. If he or she won't provide one, find another lawyer.

After learning about your case, your lawyer should create a strategy. Be aware that this plan may change along the way, depending on what your ex and his or her lawyer does.

Your lawyer should clearly explain all your options, and offer advice regarding the best paths to follow, but respect your wishes if you strongly disagree with a suggested course of action. If you find yourself in constant disagreement with your lawyer, either you've chosen the wrong person or you're being unreasonable. Consider your motivations and actions to see if you're refusing your lawyer's advice for purely emotional reasons.

Even a good divorce lawyer will sometimes have bad news for you: that your spouse won't budge on an important issue; that you'll have to give him or her money or other assets; or simply that your expectations are unrealistic, illegal, or not financially feasible. Expect to feel frustrated or disappointed from time to time as your divorce progresses, but don't take it out on your lawyer! He or she can't always pull a great solution out of his or her metaphorical hat.

You should expect your lawyer to return phone calls reasonably promptly (24 hours is reasonable if he or she isn't on vacation), and to consult you before taking any major actions.

Finally, if you want to ensure that your divorce agreement reflects your goals — and doesn't cost you an arm and a leg — then stay involved with the process, and answer your lawyer's requests promptly and honestly. ■

*Diana Shepherd is the former Editorial Director of Divorce Magazine. Josh D. Simon is a writer for Divorce Magazine.*

**For more financial articles to help you with your divorce process, visit [www.divorcemag.com/articles/Divorce\\_Lawyers](http://www.divorcemag.com/articles/Divorce_Lawyers).**

# A Look at Property Issues in Divorce

By Diana Shepherd, Certified Divorce Financial Analyst™



Your divorce or settlement agreement should state who gets each asset or how the asset or the proceeds from its sale will be divided. Here's a look at the most common categories.

**Y**ou've sat down with your spouse and hammered out what you think is a pretty great settlement: you get to keep all of the property you really wanted, and your ex gets stuck with all of the debt. But whether or not that agreement will hold up in court depends on a number of factors, including how it is worded, whether or not there was full financial disclosure by both parties, and possibly whether both parties had independent legal counsel.

.../CONTINUED ON 23



# Common Divorce

# Questions



## Answers to some of the more frequently asked questions about the divorce process in California

### LEGAL ISSUES

**“I expect that I will be awarded alimony. How long can I expect to collect it for?”**

John Gilligan, a family lawyer in Long Beach answers:

The award of alimony, otherwise known as spousal support in California, is based on a number of factors that are set forth in Family Code §4320. Some of those factors are the income of the spouses, the length of the marriage, the health of the parties, the age of the parties, the assets of the parties, the debts of the parties and, most importantly, the marital standard of living of the parties that they enjoyed when they were married and living together.

If your marriage is deemed a “lengthy” marriage, typically over 10 years, there can be no termination date of the spousal support at the time of the divorce. It will continue until the death of either party or the remarriage of the recipient spouse. It also will be continued until there is a new order made which either increases or decreases the order but this can only occur if there is a substantial change in the circumstances of the parties following the imposition of the original order for spousal support.

If the marriage is less than 10 years, then there is a rebuttable presumption that spousal support should be paid for one-half the length of the marriage. However, the court has discretion on how long this should last. For example, if there is a marriage of short duration,

say less than 3 years, it is quite possible the court could order no spousal support at all, not even for one-half the length of the marriage. If the marriage is closer to the 10 years, depending upon the circumstances, the court may not set a termination date.

Spousal support is probably one of the most litigated areas of family law due to the nebulous aspect of the 4320 factors mentioned above. It is a highly technical concept of family law which requires a substantial amount of knowledge in this area. You need to consult with a certified family law specialist who is an attorney and has completed an inordinate amount of trials and other court matters in the areas of family law and who has taken a second bar exam to become specialized in this highly technical field of family law.

**“I think my spouse has been having an online affair, is there some way I can trace his personal activity on our home computers? Could that information be used in my favor if we divorce?”**

Megan Green, a family lawyer in Los Angeles, answers:

Generally speaking, information as to whether your spouse is having an affair will not be helpful in your divorce proceeding because California is a no-fault divorce state. This means that whether or not one person was unfaithful during the marriage typically has no bearing on the outcome of the divorce; that is the property division or support award.

Additionally, unless your spouse has given you permission to use his/her computer and or has given you access to his/her various email accounts that he/she may be utilizing to carry on the extramarital affair, you may be treading in some murky and even criminal waters.

California Penal Code Section 502 provides that any person who “knowingly accesses and without permission alters, damages, [...] or otherwise uses any data, computer [...] or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data [...] is guilty of a public offense.”

The Federal WireTap Act provides that any oral or wire communication that someone intentionally intercepts in violation of this Act is inadmissible in both federal and state court proceeding AND any intentional use of the contents of oral, wire communications collected in violation of this Act is punishable under Federal Law. The Federal Stored Communications Act provides that it is illegal to intentionally access (without permission) a facility through which an electronic

communication service is provided (for example an email server) and then take, alter or prevent access to a wire or electronic communication while it is in electronic storage. Last but not least, Family Code Section 2022 provides that evidence collected by eavesdropping in violation of Penal Code Sections 630-637.9 is inadmissible, and the Court may report violations to a prosecuting agency.

In conclusion, I would advise that you seek counsel before you consider engaging in such tracing of your spouse’s personal activity so as to safeguard yourself from criminal prosecution, not to mention a waste of money if the information is inadmissible in court, and any needless emotional heartache that you may learn from the spying.

**“Do I need an attorney to get a divorce?”**

Michael J. Rojas Jr. Legal Document Assistant/Paralegal, in Los Angeles, answers:

No, you have the right to represent yourself; you may be able to divorce your spouse without paying for an attorney. It’s called a Pro Se (on your own behalf) divorce, it’s a matter of completing all the required paperwork, paying the filing fee or asking for a fee waiver so you don’t pay the court costs such as filing and process of services, all of which you can do yourself.

Please note that going to court and doing a “do-it-yourself” divorce is not always wise, but it’s an option you should consider if money for an attorney is not available and your divorce isn’t complicated. I do, however, recommend that you get a competent professional LDA/Paralegal to assist you.

Save yourself the hassle of walking through deputies and a security gate, going to court, standing in long lines

and being tended by overworked clerks that cannot give you any advice. There should be a certified Paralegal or LDA in your area that is legally able to assist you as a “Pro Per” litigant.

In the state of California there are thousands of Pro Per Divorces filed everyday. Here are the Legal Steps for a Divorce:

Have a discussion with your spouse and gather the forms you need to file for divorce or contact an LDA/Paralegal to get the following:

- a. Prepare and File Petition for Divorce
- b. Serve your Forms
- c. Disclose all financial information
- d. Finish the divorce case in one of four ways:
  - No Response and No Written Agreement
  - No Response With Agreement
  - Response and Agreement
  - Response No Agreement

Each and every case is different. This is why it’s always recommended to get fully informed and consulted by attorneys and paralegals/LDA’s that are qualified to assist you in this time of need. This is not an easy process. In fact, doing a so called “simple divorce” is never simple because you are required to invest your time, effort and money. Remember to protect yourself and ensure your due rights as a pro per litigant. Good Luck.

**“What if I don’t like my divorce lawyer’s tactics and strategies? Can I get a second legal opinion without firing my lawyer?”**

Fern Salka, a family lawyer in Los Angeles, answers:

You definitely can get a second legal opinion without firing your divorce lawyer. Here are some things you should consider:

Most family law attorneys charge by the hour to act as consultants. (Some



*Left to right: Michael Sarris, Wendy K. Tse, John J. Gilligan, Brian K. Brandmeyer, Janet E. Dockstader, Janine M. Frisco, John T. Bachmayer*



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lawyers will meet with you for free if they think they will get a new case, but their advice may be less than impartial.) An impartial consultation, though, may be a valuable expenditure if it gives you peace of mind.

Sometimes, however, getting a lot of divorce advice is confusing. Everyone has a different style, and many family law decisions are judgment calls, not black-and-white options. Second-guessing another divorce attorney's decisions is difficult at best for the attorney, and many clients find it difficult to sort out which opinion is better.

The advice you will receive is also limited by the input you provide. If the consulting divorce attorney does not have all the facts, or if you present information in a biased or confusing manner, the advice you get will be less valuable. To avoid getting back the information you want rather than the truth, ask your consulting divorce lawyer not to advocate for a particular position. Choose reality over wishful thinking.

You may also be confusing your unhappiness about the divorce with your unhappiness with your legal representation. Use counseling to sort out your emotional issues.

If the issue is one of personality and you are unhappy with your attorney, a consultation with another attorney may help open up your options. A relationship with an attorney during a divorce is a close one, and you must be comfortable with your attorney. You must also feel that your attorney is behaving in a way which does not make the process worse for you or your children in the future.

Be careful in choosing a second divorce attorney, though. It is the general folk wisdom among family lawyers that clients who have had more than two attorneys are not good clients, and judges also look askance at parties with serial lawyers.

**“My spouse and I are not getting along and I am planning to move out of the martial home we bought 10 years ago. Is moving out a wise thing to do?”**

David Miller, a family lawyer in Irvine, answers:

If one or both spouses are unable to respect the other while under the same roof, especially if children are witnessing disrespect, anxiety and acrimony, then by all means relocate. You are not “abandoning” the property. Your property rights do not follow you; they remain with the property. Remember, the spouse who has exclusive use of the home (i.e., “the in-spouse”) will generally be responsible for making the payment(s) on the home up to the property’s “fair rental value.”

**“Are there any special things that I need to be made aware of when it comes to long term spousal support?”**

Marie Moreno Myers, a family lawyer in Riverside, answers:

Alimony, currently referred to as spousal support, may be awarded for a “reasonable” period of time under the California Family Code. For example, if you were married for less than ten years, reasonable is defined as half the length of marriage (if you were married for five years, you could expect support for 2.5 years.) If you have a long term marriage (ten years or more), the court usually will not set a terminate date for spousal support unless the parties agree to a termination date. In those cases, specific language needs to be included in the termination order. There isn’t a definition for “reasonable” period of time for long term marriages. Further, there is nothing that limits the court’s ability to award support for longer or shorter periods of time.

There are many factors the court takes into consideration and each case is different. For example, if you have a short term marriage, but a spouse is

suffering from a long term disability which renders that spouse unable to become self supporting within half the length of marriage, the court may extend support. Therefore, “reasonable” support for that spouse could be longer compared to a spouse who just graduated with a degree and is immediately employable. The spousal support order may be less than half the length of marriage if the party was self supporting sooner.

The court will look to the needs of the party, the ability of the supporting party to pay, each party’s hardships, and several other factors listed in California Family Code § 4320. The length of support can vary depending on each individual set of circumstances. The court must weigh each factor and conduct the great balancing act of what is fair and equitable for both parties under their specific set of circumstances. In a nutshell, the court will preliminarily look at the length of marriage to determine how long to award support.

## FINANCIAL ISSUES

**Where do I start? What information do I need to gather?**

Megan Stirrat, a wealth management advisor in Irvine, answers:

The first financial shock to face is the cost of the divorce itself. You’re already splitting assets; when you add a messy divorce with high legal fees, it becomes a considerable financial and emotional drain. It’s vital to have someone on your side who has a handle on a financial exit strategy that meets your needs.

Start with a complete inventory to help you understand what you are entitled to receive or retain. Assets should include retirement plans, savings and checking accounts, properties and pensions, business interests, and inheritances. In addition, list any

financial obligations or debts that you and your spouse may have incurred. You should document each item by gathering tax returns, paycheck stubs, wills, trust instruments, bank and credit card statements, insurance policies, property deeds, and brokerage account documents. Financial housekeeping is essential during a divorce, arming you with the knowledge needed to make the right financial decisions.

**“Can I collect half of my ex’s social security after we divorce?”**

Ginita Wall, a certified divorce financial analyst in San Diego answers:

Yes — maybe. Here are the specific requirements:

If you were married for ten years or longer, you will be eligible to collect derivative Social Security benefits based on your ex-spouse’s earnings record when you reach retirement age, assuming you are not married to someone else at the time.

The derivative benefits are equal to one-half the amount your former spouse is eligible to collect, based on his entire earnings over his entire career, including the years after your marriage was dissolved.

You can’t double up: you’ll collect derivative benefits based on his earnings, or benefits based on your own earnings, but not both. You get whichever is higher. Don’t worry, you don’t have to make the computations. When you are ready to apply for benefits, just provide your ex-spouse’s social security number and proof that you were married for at least ten years, and they will compute what you are due. Your ex doesn’t have to approve — matter of fact, he won’t even be notified that you are collecting benefits based on his earnings.

There is nothing that you need to put in your divorce decree to preserve your right to derivative benefits.



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The benefit is provided by federal law, which can't be altered by provisions in your divorce agreement.

But wait! There's more you need to know:

1. Even if he remarries, you'll still be entitled to derivative benefits. And guess what, his next ex-spouse will also be able to collect, as long as that marriage lasted 10 years. Mickey Rooney's seven ex-wives didn't collect, since none of the marriages lasted more than 10 years, but three of Johnny Carson's marriages lasted over 10 years, so those ex-wives were entitled to benefits based on his earnings.
2. You'll be able to collect benefits when you are both of retirement age (62 for reduced benefits, 66-67 for full benefits). That's true even if he is still working and isn't collecting Social Security yet, as long as you and he have been divorced at least 2 years. (This rule is inexplicably more generous than the rule for still-married spouses, who have to wait until their husbands actually file for benefits.)
3. If he dies, your derivative benefit ends. But all is not lost: after his death you will be entitled to survivor benefits based on your ex's entire earnings history, not just 50% derivative benefits, even if he leaves an actual widow behind.
4. If you are a government employee, your derivative Social Security benefits will be reduced by a portion of any government pension that you are receiving based on your own earnings. But if you receive a government pension because an ex-spouse worked for the government, it won't impair your ability to collect Social Security.

**“How does one go about determining if financial assets are separate property (owned by one spouse) or community property (owned by both spouses) in a divorce?”**

Cathleen Collinsworth, a certified

divorce financial analyst in Irvine, answers:

As an accountant and CDFA™, my firm has been involved in many cases of tracing the separate property of an individual spouse throughout a marriage. One such case involved almost two million dollars in deposits over a ten-year period in thirteen different accounts. The scope of the assignment was to show that the community did not have an interest in one particular bank account, regardless of how title was held.

While this process can seem tedious and overwhelming, we have compiled a list of tasks, which make the tracing faster and easier. The following process was followed in resolving the above-mentioned case, and represents the general system used in all cases:

1. Inventory all pertinent documents.
2. Determine what documents are missing and or still needed.
3. Prepared a document request.
4. Schedule each disbursement and each deposit for all related bank accounts.
5. Analyze each bank account deposit by deposit to determine the source of funds.
6. Determine if any deposits are transfers between bank accounts.
7. Analyze each disbursement to determine if it was a transfer between accounts.
8. Whenever a direct tracing is not possible, you have to look at all documents and possibly find a corresponding date and amount.
9. Once all bank accounts have been analyzed:
  - Prepare a summary of the bank activity showing
  - Total deposit and withdrawals
  - Identify origin of non-transferred funds
  - Identify where non-transferred funds were spent
10. Inventory all pertinent documents.
  - Prepare a schedule of the community bank account
  - Schedule community income

- Schedule community living expenses
- Schedule other disbursements

Once all of these tasks are completed, step back and look at the work and ask: “Does this make sense?” When I reviewed my work, looking at the total traceable funds and compared it to the community standard of living, I was able to show the funds were not community (owed by both the husband and wife).

While you will need to determine which records are applicable for your individual case, this basic process has been extremely successful in tracing separate property.

**“What information will my financial planner need from me regarding figuring out a post divorce budget and financial plan that will work for me?”**

Karen L. Dalmau, a certified divorce financial analyst in Torrance, answers:

Budgeting can be a challenge for any family. When you add a divorce to the mix it can go from bad to worse pretty quickly. Fortunately, working with a financial planner who understands those needs and concerns can relieve some of the pressure of trying to do it all on your own.

To get started, you need to get organized. There are 9 categories of information your financial planner will need:

1. Divorce: all settlement proposals, agreements, and judgments
2. Banking: checking, savings, CD's, business accounts, and credit card balances
3. Investment: online trading accounts, IRA's, Roth IRA's, 401(k), SEP, and trust accounts
4. Insurance: Life insurance policies for everyone in your household, disability statements, Long-Term care coverage, auto, home, and health
5. Employment: most recent pay stub,



stock options, projected pension or defined benefit amounts

6. Tax Returns: Last 1-3 years
7. Estate Planning: Will and Testament, and Trust Agreements
8. Real Estate: Mortgage balances and interest rates, details of purchases, and rental income properties
9. Monthly Spending: Current monthly expenses and projected monthly post-divorce expenses.

Setting up a budget is the first step towards getting yourself back on track after a divorce. Your financial plan will help you stay on track by setting a strategy for achieving your goals, and ultimately your dreams for a new beginning.

## CHILDREN'S ISSUES

**“What do I do when my child wants me and my spouse to stay together?”**

Marshall Waller, a family lawyer in Calabasas, answers:

While your decision to obtain a divorce may be out of the question, your child may still want you and his or her other parent to stay together. This trying — and common — dilemma can potentially lead to animosity between you and your children, but this is not your only option. Unless your child harbors bitterness towards you or your co-parent, he or she likely wants you and your co-parent to work together peacefully. Cooperating with the other parent and taking equal responsibility for your child's life and growth will show your child that you still see him or her as an important, valuable part of your life. Ask your child what they want you to do. If they want to play catch or need help choosing a college, you can easily show them the love you have for them and the seriousness with which you take your relationship.

Obviously, there are dozens of obstacles that can interfere with your relationship with your child. Obstructive custody agreements, unwilling co-parents, and your child's extracurricular activities and social commitments can all limit your time with your child. If you can't make private time to be a parent, try attending sporting events, offer to drive your child to and from school, or otherwise work yourself into their busy schedules. Your child wants and needs a supportive, helpful parent who can (and will) respect their lives too.

Situations that require coordination with your co-parent can be some of the most important in your child's eyes. Even if your separation is uncomfortable and difficult, civilly coordinating back-to-school nights, athletic events, and school responsibilities shows

.../CONTINUED ON 22j



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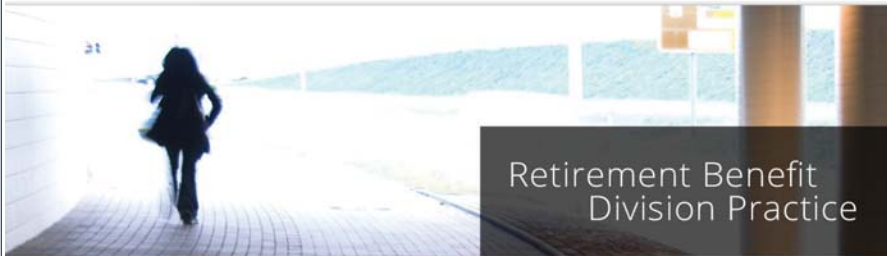
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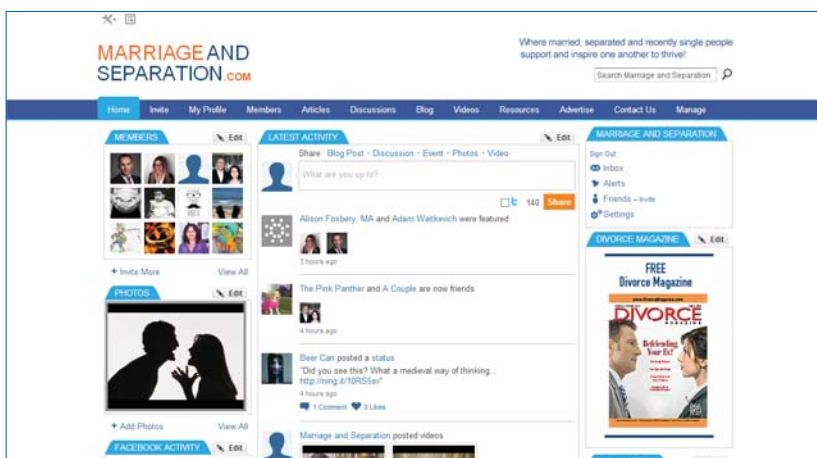
child that you are willing to put up with something unpleasant for the sake of their success, which can boost his or her confidence dramatically. As always, if your co-parent is becoming obstructive in your relationship with your child, speak to an experienced divorce attorney to inquire about altering your custody agreement.

What your child wants most is usually that their parents stay together, and it is a difficult lesson for a child to learn, usually at a very young age, that, as Mick Jagger once sang “you can’t always get what you want.” As he also sang, however, “if you try sometimes you just might find you get what you need.” In this instance, it is the parents who must carry this burden and do the “trying.” The parents must rise above the difficulties and unpleasantness that brought them to divorce and not only tell their children that “everything will be all right,” but actually show them that not only will everything be all right, everything actual is all right.

Children learn from what we tell them, but they learn much, much more by what we show them. Show your children, then, that they are loved and respected by their parents as you help them through this difficult time in their lives. As parents we often say things like “I would take a bullet for my child,” or “I would run into a burning building for my child,” but how often are we actually ever called upon to do those things? What we are called upon to do, however, and what parents so often fail in doing, is to show our children that we put them first, that they are loved and that they are safe and that everything is all right, regardless of the transient circumstance of divorce that has befallen the family. It’s not easy being a parent, and very often we are called upon to put our personal feelings aside and put the children first, even if, or perhaps more accurately, when we are called upon

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to treat the other parent with respect and civility, regardless of our personal feelings for them. It's not easy, but it's not impossible, either; we just need to keep our children's well-being and best interests first and foremost.

### **“Can my former spouse file for bankruptcy to avoid paying child support?”**

Wallace Fingerett, a family lawyer in Los Angeles, answers:

Child and spousal support are referred to as domestic support obligations in the Bankruptcy Code. A former spouse that files bankruptcy cannot avoid paying domestic support obligations. However (you knew what was coming), any support that was owed as of the date of the filing of the bankruptcy may not be paid to the obligee spouse immediately. There is an automatic stay in bankruptcy proceedings that is not applicable to do-

mestic support obligations. Any assets that the debtor spouse owns at the time of filing bankruptcy becomes property of the bankruptcy estate and cannot be paid to the child support recipient spouse until the payment is approved by the trustee and confirmed by the Bankruptcy Court.

If the bankruptcy estate is a large estate and there are many creditors, waiting for child support owed prior to the filing of the bankruptcy could take several months or years until the support is received. Any child support due after the date of the filing of the bankruptcy can be collected as it becomes due by the usual enforcement remedies, including garnishing wages, execution on real and personal property and contempt. However, you cannot enforce the child support obligations that are due after the date of filing of the bankruptcy by executing on assets of the debtor spouse that are property of the bankruptcy estate.

### **“What makes the difference between whether children do well or do poorly after their parents separate?”**

Kathy Memel, a marriage and family therapist answers:

It is very important for parents to get help with their anger and upset about the separation, and stop fighting in front of the children. Otherwise, the hurt and anger can last for years and adversely affect, not just the parents, but especially their children.

What helps children is for parents to make use of their separation to settle their feelings about each other, to close the door on issues they can't change, and not use old issues as a way to keep on fighting.

A mediator can help parents settle the differences on their own behalf, and even more importantly, on behalf of their children.

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What enables children to do well or causes them to do poorly as a result of their separation?

The most important and crucial factor is for a child to have a continued relationship with BOTH parents after they separate, even if their relationship with one parent was not very close while the parents were together.

Sometimes a child and a parent who were not very close can use the separation as a second chance to develop a more loving and closer relationship than they had when the parents were together.

Children who suffer the most from their parent's separation are those who have their relationship with one parent disrupted by loss of contact with that parent. These children never recover the momentum and become unhappy and depressed children in the years following their parents separation. Your children need to have frequent and continuing contact and access to both of you.

## EMOTIONAL ISSUES

### How do I mentally and emotionally go through my divorce?

Dr. Ronit Lami, a psychologist in Beverly Hills, answers:

We enter our marriage thinking it will be forever, but somewhere along the way it doesn't go exactly how we imagined it, and we find ourselves in the process of divorce.

"Why?" we ask. After all we have invested in our marriage (time, energy, our whole self and more) now everything crumbles. It is hard for us to accept, to let go, to comprehend. Our emotions feel like they are on a roller coaster. We may have conflicting feelings about the divorce. There might be days when one feels excited about the new life ahead and other days when the

fear of the future creeps up. Divorce is not something that anyone wants to do, but something that has to be done, once agreed upon.

So, with all the confusion and the slew of emotions, how can one stay sane throughout the process of divorce?

- One of the most important things to have is someone trustworthy that you can confide in, someone who will listen to you and be there for you without passing judgment. A professional will help you work through the anger, fear, shame or guilt that often accompanies a divorce. Short term professional counseling can be a big help during times of transition, such as divorce.
- Keeping a journal is a great way to help you express your feelings and thoughts. Make sure to write whatever is on your mind without screening or censoring anything. You will be surprised how helpful it is to allow the things present at the subconscious level to be brought to the surface. Moreover, writing things down helps us to process what we are feeling. If you have children, be sure to keep your journal in a secure spot where they cannot find it. Many of the things you feel while going through a divorce should not be shared with them.
- Do not be afraid to confront your fears. One of the biggest fears that people face when going through a divorce is the fear of the unknown and what comes after your divorce. Think about what you want to do with your life when this is all over, and aim at starting to make plans.
- If you can, make sure to join a support group. Divorce support groups exist to bring together people with similar experiences to provide insight and mutual support.
- Remember to be patient with life and yourself. You should understand that when we go through a divorce we often mourn the loss of our partner, much like we mourn a death. Allow yourself time to go

through the pain and move towards healing.

- Use visualization techniques to see your life after divorce the way you would like it to be!

## MEDIATION ISSUES

### "What if we try divorce mediation and it doesn't work out? Do we have to go to court, or are there other options?"

John C. Juarez, a mediator in Pasadena answers:

Yes, there are other options. You don't have to go directly to court if divorce mediation doesn't work out.

There is very little downside to divorce mediation, even if you don't reach a mutual agreement. Divorce mediation is a voluntary and confidential process, and it usually becomes clear early in the process if the mediation is not progressing. You don't waive your right to go to trial by participating in divorce mediation. If you can't reach a mutual agreement in mediation, you can proceed through the regular court procedure, or you might choose other options.

One option you may choose is to arbitrate your case. Another option is to use the Collaborative Divorce process. California recently adopted a statutory framework for Collaborative Divorce, in which both parties have attorneys, but the attorneys file a joint stipulation that they will work collaboratively and not go to court. If the case has to go to court, the collaborative attorneys withdraw from the case. Typically, in addition to the attorneys for each side, there are: a financial expert, sometimes a therapist, consultant, or coach; an advocate for the children; and perhaps a mediator.

### "Do I and my spouse need to be in the same room if we go the mediation route for our divorce?"



Mari Frank, a family lawyer and mediator in Laguna, answers:

Although it is best for both of you to be in the same room for mediation, if you absolutely are uncomfortable, you should discuss this with your mediator. Most of the time, it is best to meet together; however, occasional private sessions are appropriate. If there has been domestic violence, then of course you may feel frightened and under those circumstances you may wish to make special arrangements.

However, if it is just “uncomfortable” to be around him/her, then perhaps if you try a joint session with both of you in the same room you may feel differently. Here are the advantages of being in mediation together in the same room: it is private, there are no court reporters, no public records, the process is confidential, and you may wish to be heard by your spouse with the assistance of a neutral professional to be supportive of your right to speak.

You will hopefully choose an experienced neutral professional to make sure that there is a fair and balanced process where each of you can be heard without interruption or intimidation. The mediator is your facilitator to make sure that neither party bull-dozes the other. If you are not in the same room, you will be wondering what accusations may be said about you by the other party — you won’t know what is said and won’t know how to respond or rehabilitate what may have been said. You will be more trusting of the mediation process if all is fully disclosed in an open trusting environment.

Be assured that if you must speak to the mediator by yourself (perhaps to share a particular issue such as a health problem, your new significant other, possible allegations of the other hiding money, etc), you have the right to ask for a caucus, which is a private time with the mediator without your spouse present. A caucus may be on the phone or in person. It is a time when you may

speak to the mediator about something that you are concerned about revealing in front of your spouse. A caucus is an ethical element of mediation. Once the mediator hears your concerns, he/she may (with your permission) bring up the issue in a very calm and neutral manner to resolve the issue and help you to get your interests and needs met. If there are only caucuses, the parties are less trusting of what is happening in the other room. The goal of mediation is to build trust and empower the parties come to a mutually agreeable settlement. Because mediation is consensual and meant to meet the needs of the parties, if, after you try a joint session, it is not working for you, discuss creative options with the mediator who should accommodate your concerns. ■

For more FAQs and answers by divorce professionals, please visit [www.divorcemag.com](http://www.divorcemag.com).

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# Critical Tax Information to Consider Before Agreeing to Your Divorce Settlement

By Heather L. Locus

As if living through a divorce was not hard enough, I know from personal experience how learning new legal acronyms and jargon while also learning about the issues you have to address can feel like you are back in school getting a new degree. Unfortunately, I often find new clients so engrossed in the legal and personal issues with the divorce that they often do not have the time or energy to ensure they are making smart financial decisions, which can result in a costly tax bill.

The complexity of new tax laws further increases the importance of tax planning during a divorce. Accurate tax estimates improve your chances of getting an equitable settlement and help you understand if you need to make quarterly tax payments to avoid unnecessary penalties. The information below is designed to empower you to feel knowledgeable when speaking with your attorney, accountant and financial advisor and to make sure someone on your team is focused on how much of your settlement you will get to keep after paying the tax man.

All assets are not equal in a divorce settlement. Retirement accounts have embedded tax liability and a \$100,000 IRA

may only be worth \$75,000 after taxes, while a \$100,000 investment account may have a \$90,000 tax basis and be worth \$98,000 after taxes. New legislation magnifies the impact of taxes as there are increased income tax rates, limitations on deductions and a Medicare surtax that all became effective January 1, 2013. To estimate how much the embedded tax liability is when calculating the after-tax value of proposed divorce settlements, it is critical to pay attention to key terms on your tax return. While the new laws affect primarily high income taxpayers, anyone going through a divorce should be aware of the impact of taxes to make sure they are getting an equitable settlement.

## Adjusted Gross Income (AGI)

The total of all of your earnings from working and investments minus retirement plan contributions and other potential adjustments. This is the figure that determines whether the benefit of deducting the children will be phased out, if itemized deduction such as mortgage interest will be



reduced and whether the Medicare surtax will be applicable.

The **personal exemption** is a deduction for yourself and your children. It's \$3,900 per dependent in 2013. Therefore, if you have 3 kids the potential exemption totals \$11,700 for them. It is reduced if a single person's AGI is over \$250,000, in which case it may make sense to let your former spouse take the exemption and agree to use the tax benefit to help fund college or some other mutual expense for the children.

The **3.8% Medicare surtax** is assessed on investment income such as taxable interest (not Municipal Bond Interest), dividends, capital gains and annuities when a single taxpayer has AGI in excess of \$200,000. This can result in higher taxes when selling assets to equalize a divorce settlement or provide cash to pay expenses.

## Taxable Income

AGI minus allowances for personal exemptions and itemized deductions such as mortgage interest and property taxes. This is the figure you use to calculate how much tax you owe. We have a graduated tax system which results in portions of your income falling into different brackets that are assigned different rates. The first dollar you make is taxed at a lower rate than the last dollar you make. Your highest marginal rate is the rate at which the next dollar of income will be taxed. It is important to know what your marginal rate will be as well as what your former spouses marginal rate will be when negotiating whether maintenance will be taxable and who gets to deduct the personal exemptions for the children. Gains on stocks or mutual funds that you sell after owning them 1 year or longer are eligible for a lower capital gains tax rate.

As you will see highlighted in Table 1 (page 22p), the increase in rates from the new law only impacts taxpayers with taxable incomes of at least \$400,000. Keep in mind, these are

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Table 1:

Taxable Income — Line 43 from 2012 1040 Tax Return			Ordinary Income	Capital Gains & Dividends
Married Filing Joint	Head of Household	Single		
\$0 to \$17,900	\$0 to \$12,750	\$0 to \$8,950	10%	0%
\$17,900 to \$72,500	\$12,750 to \$48,600	\$8,950 to \$36,250	15%	
\$72,500 to \$146,400	\$48,600 to \$125,450	\$36,250 to \$87,850	25%	15%
\$146,400 to \$223,050	\$125,450 to \$203,150	\$87,850 to \$183,250	28%	
\$223,050 to \$398,350	\$203,150 to \$398,350	\$183,250 to \$398,350	33%	
\$398,350 to \$450,000	\$398,350 to \$425,000	\$398,350 to \$400,000	35%	
<b>\$450,000+</b>	<b>\$425,000+</b>	<b>\$400,000+</b>	<b>39.6%</b>	<b>20%</b>

federal income tax rates only and state income taxes would be additional.

The tax issues below often come up during a divorce and are primarily unchanged by the new laws:

- For the sale of a principal residence, taxpayers can exclude \$250,000 per person if they owned and used the house for 2 of the last 5 years. A non-occupying spouse can include the use of an occupying spouse if it is pursuant to a divorce decree.
- A Qualified Domestic Relations Order (QDRO) is an order from the court to a retirement plan administrator detailing how the plan's benefits are to be assigned to each party. Retirement accounts split pursuant to a QDRO are exempt from a 10% penalty on withdrawals before age 59 ½ but IRA withdrawals are not. Use caution in rolling money from a QDRO retirement plan to an IRA if

you are younger than 60.

- Taxable maintenance will qualify as 'earned income' for IRA/Roth IRA contribution qualification. This allows you to make IRA/Roth IRA contributions of up to \$6,500 even if you do not have employment earnings.
- Legal fees paid to obtain taxable maintenance or for tax research and advice qualify as miscellaneous itemized deductions, but now have the phase out limitations discussed above.
- Contributions to 529 Plans for college may have tax benefits. In Illinois, contributions to Bright Start and Bright Directions qualify for deduction up to \$10,000 per taxpayer. The 5% Illinois tax rate makes that worth \$500.

This summary highlights only a few key terms, revised laws and common tax issues that affect divorcees. There

are many more potential deductions or credits you may be eligible for that may save you significant tax dollars, especially if you have children. The rules for many of these are complicated and even more so with parents filing separate returns. Therefore, it is important that you meet with an experienced tax expert before finalizing your divorce to ensure all issues have been considered based on your unique situation. ■

*Heather L. Locus, CPA, CFP® is a principal at Balasa Dinverno Foltz LLC, a fee-only wealth management firm. Heather is passionate about helping women make smart financial decisions so they can enjoy their wealth. As an owner and leader of BDF's Women's Service Team, Heather provides financial guidance to divorcees and business owners before, during and after the challenging transitions in their lives. [www.bdfllc.com](http://www.bdfllc.com)*

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### 5 Tax Traps to Avoid During Divorce

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That being said, you should make every effort to negotiate your divorce agreement rather than fight over every item in court. Such agreements have several benefits over a judge's ruling, including: they take less time; they reduce the financial and emotional costs; and the parties are more likely to abide by the terms of the agreement.

This article will cover property issues only; your divorce agreement will need to thoroughly address spousal or child support as well as custody and visitation issues. Your agreement should be very comprehensive — particularly with regard to how the property is divided. Once you sign an agreement regarding property division, it cannot be changed unless both of you agree to the changes. It's up to you to make sure that your lawyer doesn't leave any assets out of your agreement (unless it's something that you're going to litigate in court). Your agreement should list financial assets, including retirement assets and real estate, and personal items that are valuable and/or important to you. It should state who gets each asset or how the asset or the proceeds from its sale will be divided.

Let's take a look at the most common categories.

## Financial Assets

Financial assets include checking accounts, savings accounts, Certificates

of Deposit, money-market accounts, stocks, bonds, Real Estate Investment Trusts (REIT), mutual funds, savings bonds and cash. These assets may be more important to the non-working or lower-income-earning spouse, who may need to use them to cover some of his or her living expenses.

## Retirement Assets

Remember that not all assets have the same tax consequences. Retirement assets are generally "before tax" assets. This means that in order to access the money, you have to pay income tax on any distributions you receive. In some cases, you may also have to pay a penalty on the distribution in addition to any income tax. For example: Mary suggested to Gus, "You keep your retirement assets, valued at \$100,000, and I'll take the money-market account, valued at \$100,000." Gus agreed because it sounded like an equal division of the assets. However, when Gus retires in 2015, he'll pay tax on the distributions. So if Gus pays tax at a rate of 25%, then he would end up with only \$75,000 versus the \$100,000 that Mary received.

In the U.S., there are many different types of retirement assets, including defined benefit plans, defined contribution plans, IRAs, and Roth IRAs. You need to determine how defined benefit plans, such as pensions, will be divided between you and your spouse; this is generally spelled out as a percentage

of the retirement benefit at the time of the divorce. It is also imperative for the agreement to state if the employee's spouse will be entitled to survivor's benefits if the employee dies. If you're the non-employee, you must find out whether you qualify for survivor benefits; if not, you may be better off with another asset.

Defined contribution plans include 401(k) plans, profit sharing plans, simple IRAs, and other types of contributory plans. Generally, these can be divided today, and the non-employee spouse can take the percentage that is awarded and roll it over an IRA or perhaps maintain it as a separate account in the same plan. The agreement should specify the percentage that you and your spouse will receive.

IRAs or Roth IRAs are also easily divisible. Remember that distributions from Roth IRAs will generally not be taxed, while distributions from IRAs will generally be taxed. As a result, \$10,000 from a Roth IRA is probably a better asset than \$10,000 from an IRA.

In Canada, there are two basic types of pension plans. They are called "Defined Contribution Plans" and "Defined Benefit Plans." A defined contribution (DC) pension plan specifies who makes the contribution(s), how much the contribution(s) will be, and when the contribution(s) will be made. In

**Generally, the person who takes the property will be expected to pay debt related to the property.**

**Does this mean that the other spouse has no financial obligation for a joint debt? ABSOLUTELY NOT.**



general, the value of a member's entitlement under a DC pension plan at any point in time is simply the account balance at that point in time. In contrast, a defined benefit (DB) pension plan specifies the formula to determine a lifetime pension to be paid to the member upon retirement; you should consider using an experienced pension valuator (usually an actuary) to value the benefit of this future income stream. Depending on the type of plan and which province you live in, a portion of the pension (usually the portion accumulated during your marriage) may be subject to division like any other family asset. If one or both spouses have Registered Retirement Savings Plans (RRSPs), the portion accumulated during marriage will also be subject to division.

The Canada Pension Plan (CPP) also provides for the sharing of pension credits accumulated during a marriage or common-law partnership. When a relationship ends, CPP credits built up by the individuals during the time they lived together can be combined and then divided equally between them by means of "credit splitting". As a result, the person with fewer credits receives some credits earned by the other so that they both have the same number

of credits accumulated during the relationship. In order to take advantage of credit splitting, you must contact Service Canada and provide the necessary documentation; to learn more, go to: [www.servicecanada.gc.ca/eng/isp/pub/factsheets/credit.shtml#tphp](http://www.servicecanada.gc.ca/eng/isp/pub/factsheets/credit.shtml#tphp).

## Employee Benefits

In addition to retirement plans, many employers provide other fringe benefits and incentives to their employees. These benefits include year-end bonuses, accrued vacation time, accrued sick time, health insurance, life insurance, disability insurance, expense accounts, stock options, and more unusual benefits such as Phantom Stock, Stock Appreciation Rights, and Restricted Stock.

Some of these benefits may be included in your list of assets, other benefits may be included as income, and some may not be included at all. Determining if a benefit should be treated as a marital asset, income, or nothing at all can be very subjective. Different jurisdictions and judges may view the benefits differently. As a rule of thumb, if the benefit is guaranteed, then it should be included as an asset or as income. A year-end bonus could arguably be an asset, an income item, or nothing at all if it is not guaranteed. For example: Barbara and Jeremy were married for 15 years. Jeremy, the employee-spouse, received a bonus every year. Barbara could certainly make a reasonable argument that it is an asset or income

for purposes of calculating child support and alimony. Vested stock options would also be an asset; with the changes in the market, they may not have any value, while unvested stock options, on the other hand, may not be an asset.

## Personal Property

List your personal possessions, particularly those that are important to you, and note how they are going to be divided. This would include big-ticket items, such as cars, boats, and motor homes, as well as items such as expensive jewellery or furniture (note: most furniture will be assessed at garage-sale prices, so that leather sofa is now worth \$200, not \$2,000).

Keep the value of these assets in perspective — and recognize when it is time to give up the fight. We have all heard of those cases where parties spend thousands of dollars fighting over an asset that's worth less than \$100.

Each spouse should keep copies of joint tax returns. We recommend that you keep at least the past five years; in addition, you will need records to calculate the cost basis for any assets that you keep.

## Real Estate

Real estate includes your marital home and any other homes, vacation properties, timeshares, and rental properties — commercial and residential





## Once you sign an agreement regarding property division, it cannot be changed unless both of you agree to the changes.

— as well as any business property. The properties should be listed, and the divorce agreement should address how they are going to be divided. If the property is going to be sold, the following issues need to be addressed:

- Who is going to pay the expenses until the property is sold?
- How will the proceeds be divided?

### Debts

Generally, the person who takes the property will be expected to pay the mortgage or debt related to the property. Does this mean that the other spouse has no financial obligation for a joint debt? Absolutely not. Unless the spouse who takes the property refinances the mortgage, both spouses will still be obligated to pay the debt. The divorce decree cannot terminate a financial obligation to your creditor: in the case of joint debt (mortgage, joint credit-card, etc.), even if the divorce agreement specifies that one spouse will be responsible for paying the debt, this does not release the other spouse as far as the creditor is concerned. If one spouse refuses to or cannot pay, then the creditor will come after the other spouse to pay the debt no matter what the divorce agreement states. If only one spouse is obligated on a debt (e.g., credit card in husband's name only), however, then the other spouse cannot be held liable for it.

### Closely-Held Business

A closely-held business can be in the form of a sole proprietorship, corporation, general or limited partnership, or limited liability company. Before one spouse agrees to take a business interest, he or

she has to make sure there are no restrictions on owning the interest. There could be legal or contractual restrictions on which spouse could own the business interest.

For instance, if the business is a professional corporation (as defined by state or provincial law), then one spouse may be legally restricted from maintaining an ownership interest. Here's an example. Joe is a physician and Barb is an accountant; in many states or provinces, only Joe could own his medical practice and only Barb could own her accountancy practice. Another restriction may exist if there is a liquor license or taxicab medallion that is only transferable with government approval.

A "buy-sell" agreement is an example of a contractual restriction that may preclude a transfer to a spouse. If the "non-owner" spouse is awarded the business interest in the divorce, then the spouse may be forced to sell the business interest at a substantial discount. For example, Joe owns 25% of a business that has a total value of \$100,000; his share is valued at \$25,000. If the buy-sell agreement requires Barb to sell her interest at 50% of the value, and if she is awarded the stock in the divorce, she would be required to sell her interest for \$12,500.

### Other Assets

Some other assets to address in the divorce agreement include: Frequent Flyer Miles, lottery or other prize winnings, club dues and annual membership fees, inheritance and gifts (part or all of which may constitute separate property and not be subject to

division; ask your lawyer about this), and trusts naming one spouse as a current beneficiary.

Keep in mind the assets listed in this article are not by any means exhaustive. You and your spouse may have other assets that could make a huge difference to your post-divorce life, so take the time to list them carefully and discuss the financial impact of keeping one asset over another with your Certified Divorce Financial Analyst®. ■

*The co-founder and former Editorial Director of Divorce Magazine, Diana Shepherd is currently the Director of Marketing for the Institute for Divorce Financial Analysts™. For more information about how a Certified Divorce Financial Analyst® (CDFA™) professional can help you with the financial aspects of your divorce, visit [www.InstituteDFA.com](http://www.InstituteDFA.com).*

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# The Key to a Financially Successful Divorce: **PREPARATION!**

Secure your financial future by taking the right steps now.

By Loretta Hutchinson, Certified Divorce Financial Analyst

If you are contemplating a separation or divorce chances are your life is turning upside down, and you're overwhelmed by the uncertainty of your financial future. In order to save yourself time, money, and emotional distress later, it is important that you get started on your financial planning now.

## Take these Five Steps Now

1. **Build your personal credit.** Obtain and review your credit reports from the three major credit agencies: Experian, TransUnion, and Equifax. A free credit report is also available to you once a year from the annual creditreport.com website. You may be surprised by what you will discover. As an example, your spouse may have incurred debt on joint accounts for which you are liable.

It is important to establish credit in your own name. If you are a stay-at-home spouse, you can establish credit based on the household income, but do it now while a household income still exists.

Set up credit card, savings, and checking accounts in your name and start setting aside cash reserves. These cash reserves will enable you

to pay a lawyer, other professionals and any unexpected expenses during your divorce process. You certainly do not want to feel forced to sign a divorce settlement agreement that is not equitable or one that does not meet your needs due to your lack of financial resources.

2. **Establish a new and private mail box.** Create a confidential, personal email and/or P.O. Box address to which your spouse does not have access. Another option is to have your mail sent to a trusted relative or friend's address. This will enable you to communicate sensitive information privately with your lawyer, certified divorce financial planner, financial institutions, credit agencies, investment advisors, etc.

3. **Gather and copy documents.** Make certain that you have your own copies of all relevant financial records. This will ensure that they do not mysteriously disappear during the divorce process and your spouse can't raid joint accounts unobserved.

You are entitled to copies of all asset and liability statements (such as bank, investment, retirement plan, mortgage, auto, student loans, and

credit cards. As well as duplicate real estate deeds, insurance policies, tax returns for the past three years, CDs, pre-marital agreements, promissory notes, wills, money market accounts, and check registers.

If a business is involved, ensure that you copy business appraisals, tax returns, financial statements, 401(k) and pension summaries, loan applications, bonuses, buy/sell agreements, exercised stock options, and contributions to retirement accounts. Unfortunately, cash under the table is difficult to document.

If you are employed by a company, retain and copy your last several paystubs.

4. **Take inventory.** It is important that you also create an inventory of all your valuables such as: art, jewelry, collectibles, furnishings, furs, and motor vehicles. Don't forget to check your attic, basement, storage facility, and safety deposit box. It is also a good idea to take photographs of everything to help in this documentation process.

5. **Assemble a top-notch divorce team.** Having a team of quality divorce

professionals can put you in a strong negotiating position with your spouse so that you achieve the best possible divorce financial settlement.

Aside from having an experienced divorce lawyer to be your legal guide throughout the divorce process, you should also have a seasoned Certified Divorce Financial Analyst who will assist you in developing realistic financial projections and ensure that emotions do not cloud your judgment. Working together, they will help you make informed decisions that can produce positive results.

By taking these five steps now, you will launch a divorce process that offers you the greatest opportunity to make intelligent decisions and secure your financial future.

For your convenience, we have provided a Financial Information Checklist so you may use it to keep track of what you need to do. ■

*Loretta Hutchinson, CDFA, NCC is the CEO of Financial Divorce Plan, LLC which offers services to family lawyers and divorcing people in Pennsylvania, New Jersey and Florida. You can find out more about the firm at their website: [www.FinancialDivorcePlan.com](http://www.FinancialDivorcePlan.com).*

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# FINANCIAL INFORMATION CHECKLIST



## Some Financial Next Steps:

- ☐ Obtain credit reports from AnnualCreditReport.com
- ☐ Apply for personal credit in your name
- ☐ Set up confidential email and mailing address
- ☐ Obtain copies of all relevant financial information
- ☐ Estimate your current monthly expenses and expenses after your divorce

## Income information:

- ☐ Pay stubs: most recent from all employment sources
- ☐ Last 3 years filed tax returns: personal and joint with any amendments

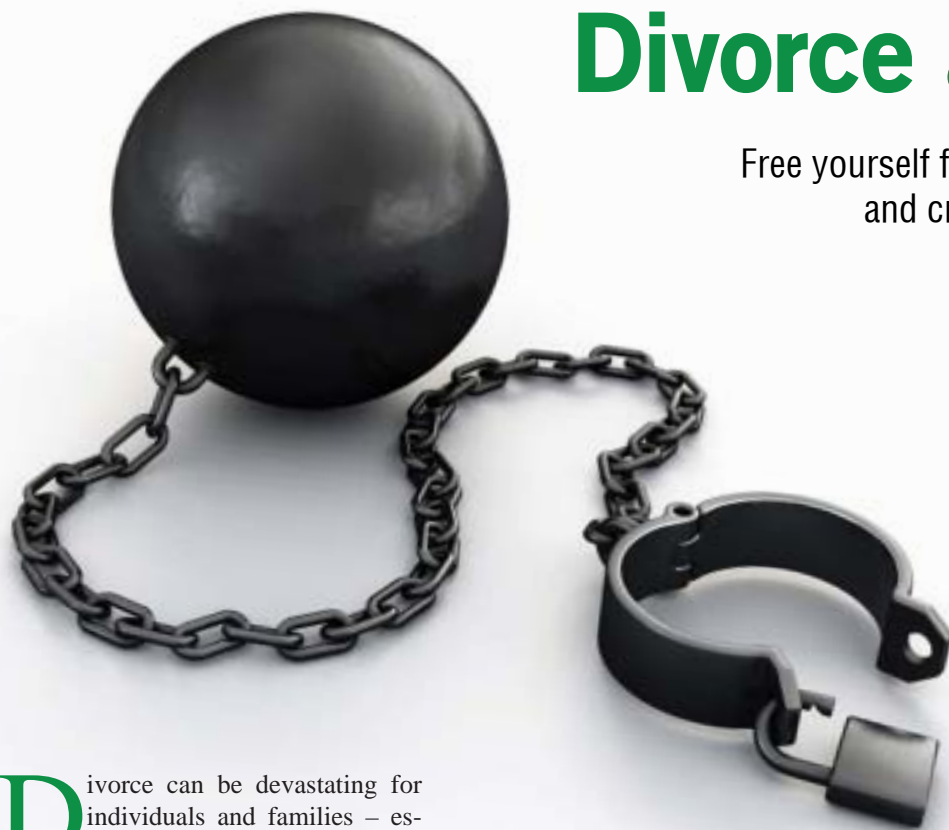
## Statements for:

- ☐ Checking, savings, money market accounts and CDs
- ☐ Savings bonds and cash held in safety deposit boxes/safes
- ☐ Investment accounts and individual stock/bond accounts
- ☐ Retirement accounts (including 401K, IRA, ROTH, SEP IRA, 403B, 457 Plans, Thrift Plans in the U.S. and RRSP and RRIF in Canada)
- ☐ Pension plan statements and documents
- ☐ Closely held business interest and debt obligations
- ☐ Stock options
- ☐ Corporate bonus and incentive plans
- ☐ Annuity holdings
- ☐ Term, universal and whole life insurance policies
- ☐ Mortgages held and valuations on real estate properties
- ☐ Personal, auto, home equity and school loans
- ☐ Credit card and any outstanding debt obligations



# Divorce and Debt

Free yourself from debts that are not yours  
and create a new financial identity.



**D**ivorce can be devastating for individuals and families – especially when it comes to your finances. While the legal aspects of the dissolution of marriage may end when the divorce is granted, the financial implications may last for years to come.

If you're currently going through a divorce, thinking about one or are already divorced, now is the time to take the necessary steps to get your financial house in order to ensure you enter into single life with a good handle on your personal finances.

## Obtain a Credit Report

While divorce discussions may have revolved around custody, alimony and division of assets, it's often difficult to decide who will be responsible for the debt you have incurred while married. In order to do this, you will need to know how much you owe, individually, and as a household.

Start by taking a look in your wallet to see how many credit cards you share with your spouse, and stop using any joint accounts. The last thing you want to do when creating a new financial identity for yourself is to add more joint debt.

It is also a wise idea to get a copy of your credit reports. You can obtain your credit report(s) from one of the three major credit reporting bureaus, TransUnion, Equifax and Experian in the U.S. and TransUnion and Equifax in Canada. The reports list your financial liabilities and if you are paying your creditors on a regular basis. Take extra care when reviewing your reports to make sure there are no secret accounts waiting to surprise you. When a marriage begins to fall apart, it is not uncommon for one spouse to run up debt without the other knowing.

By Jeffrey Schwartz

Even if you completely trust your ex, or soon-to-be ex, taking this step will give you a better understanding of where you stand financially.

## Debts: Ours, Yours or Mine?

Next, take the time to go through your credit reports carefully to identify which debts are shared and which debts belong to you as an individual.

When you are approved for a credit account in your name only, you become the primary account holder. This means that you alone are responsible for any debts incurred. Even if your ex has been piling on debt as an authorized user on

the account, you are still liable for the full amount.

If you are joint account holders, you are both responsible for the debt and any defaults or late payments will show up on both of your credit reports. When it comes to joint accounts, it's important to know that your agreements with any creditors are separate from the terms of your divorce settlement. Even if your divorce decree orders your spouse to pay a particular debt, creditors can still demand payment from you as a joint account holder – leaving you with a financial headache down the road.

Likewise, if the court orders your spouse to pay a debt that is solely in your name, you can still find yourself on the hook for the debt. If your ex defies this court order by not refinancing or failing to make payments against the debt, there is no real legal recourse against him or her. Again, the creditors are only concerned with who owns the debt – not who has been assigned responsibility through the courts.

## Beware of Unexpected or Hidden Debts/Costs of Divorce

While enveloped in the emotional aspects of divorce, you may overlook some hidden or unexpected costs. This may result in financial trouble for you down the road.

If you have to sell your home and terminate your mortgage early, you may have to pay a penalty to your lender. If your home has increased in value, you may have to pay tax on your capital gains. These deductions need to be taken into consideration.

If you have co-signed on an auto lease or loan with your spouse, it is a wise idea to have yourself released from the obligation. Failure to release yourself could lead to serious debt or even legal action if your ex fails to make payments.

Similarly, it is a wise idea to review any life insurance or health insurance

policies that covered your matrimonial household. If you are not listed as an owner on these policies, your ex can easily cancel or alter the policy without having to disclose this information to you. This can be detrimental to older divorcees, who may find it difficult to get insurance coverage later in life.

One of the biggest items often overlooked in the emotional turmoil of separation and divorce are the tax implications. Child tax benefits, dependent tax credits and child care credits will no longer be added to the household finances. Instead these will be paid out to one party or the other, potentially leaving you with an unexpected reduction in income.

**Enter your single life  
with a  
good handle on your  
personal finances.**

If you collect alimony or child support, be prepared to claim it as taxable income. While Canadian legislation excludes child support payments from taxations, many states consider support payments as income. On the opposite side of this, the individual paying the alimony or support can write it off as a tax deduction.

If you are taking a disproportionately large amount of marital property, you may be required to pay your spouse a sum of money (sometimes referred to as an "equalization payment") to even out the financial split. Situations that might require an equalization payment could involve a valuable work of art or a pension plan that cannot be divided.

## Seek Legal and Financial Advice

Once you have a better handle on your financial situation, it is a good idea

to consult with both your legal advisor and your financial advisor. At the end of the day, divorce is not a simple process, and you will want expert advice when it comes to dividing assets and debts.

If you find yourself struggling to make ends meet, or if you're having a difficult time managing your debts and don't know where to start, try contacting a trained, credit counselor, they will put you on the right track. They can help assess your debt and provide you with options to make debt repayment a priority in your single life. ■

*Jeffrey Schwartz is the President of the Credit Association of Greater Toronto (CAGT) and the Executive Director of Consolidated Credit Counseling Services of Canada. Consolidated Credit is a Canadian non-profit credit counseling organization that instructs consumers about personal finance through web-based budget and debt analysis tools, financial literacy community outreach programs and in-person or telephone counseling. For more information on credit counseling, debt management, and budgeting visit their website at [www.consolidatedcredit.ca](http://www.consolidatedcredit.ca).*

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# Breaking The News To Your Kids

How, what, and when to tell the children about your divorce.

**H**urt, pain, loss, and anger are feelings you may have about your divorce. And while this may be one of the most stressful periods in your life, it's at least doubly so for your children.

Experts agree that far too often, it's children who suffer most in separation or divorce, so it's important to handle telling them in a mature, adult manner. "Before you tell your kids about your decision to end your marriage, discuss with your spouse what you are going to say and how you will say it," says Stephanie Marston, a licensed marriage, family, and child counselor, in her book *The Divorced Parent*. Julie Criss-Hagerty, Ph.D., a licensed clinical psychologist in Newhall, CA, concurs and adds, "The optimum time is when you have made the final decision to separate and you have a time line as to what is going to happen. Have a game plan in mind with details about visitations, phone calls, and where Mom and Dad are going to be living." The more information children have about the day-to-day facts, the better they are able to deal with this period. Here are some strategies for talking to your kids and helping them deal with the aftermath of the news.

## Tell Them Together, as Early as Possible

If possible, this job should not be done solo. "There are several advantages to telling your children the news together. You let them know that your decision is mutual, mature, and rational, one that you both have considered carefully and to which you are committed," says Marston.

While it's important not to put off breaking the news for too long, you should also avoid jumping into it without thinking about it first. You and your ex-spouse need to take the time to develop a clear plan or strategy for telling the kids before you talk to them. You can make this difficult conversation a little easier by deciding who will say what and by agreeing to support each other in front of the children.

Parents are often surprised that their children know about an impending separation or divorce long before they are officially told. That's because separation and divorce are usually preceded

by tension or arguing in the home. However, the kids still need to be officially told, no matter what they might have figured out for themselves.

"It's best if both parents can give the children the news as a couple," confirms Robert M. Galatzer-Levy, M.D., a Chicago-based child and adolescent psychiatrist and the author of *The Scientific Basis of Child Custody Decisions*. "If they can cooperate enough to do this, it will send a positive message about the future." This approach will give both of you an opportunity to reassure your children of your continued love for them. However, if you think there's going to be a lot of conflict or a confrontation if you tell the children together, then it's better to have one of you break the news to the children alone. Re-enacting major battles in front of your children will probably do more damage than the news of the separation or divorce itself.

## See Things Through Your Children's Eyes

It's a good idea to work out some of the details of your divorce before you sit down with the kids. Knowing things such as where they will live, which parent they will live with, and visitation schedules will help your kids get over the initial shock of the news. Although your children will have an immediate emotional response to the news of your separation or divorce, don't be surprised if most of their questions are practical and appear somewhat self-centered.

By Teri Morrison



Children's concerns often depend on their age. "Most children have questions about their security: where they are going to live, or if they're going to stay at the same school," says Carol-Ann Flicker, Ph.D., a clinical child psychologist in Beverly Hills. "If they don't ask the questions, they may act them out. Younger children in particular 'play divorce' and take various roles. In some children, there will be sadness and depression. Other kids will be hyper or aggressive, and in some cases, you will see regressive behavior."

"It's important to see the problem through your child's eyes," says Dr. Galatzer-Levy. "A three-year-old might be most concerned about where the dog's going to be living, while a fifteen-year-old wants to know if he or she'll be going to a different high school." Both you and your ex-spouse may want to consult parenting books or a therapist or mediator before talking to your children.

## Be Honest

When it comes to telling the children about the reasons for your separation or divorce, honesty is of the utmost importance. "Try to be as truthful as you can given the age of the kids. Children don't just listen to the words. They listen to the tone; they notice the look. They see the evidence," Flicker says. Criss-Hagerty agrees: "Deceptions may be easier for the parent in the beginning, but they will backfire later, and the child will get angry when he or she finds out that the truth has been withheld."

## Be Age-appropriate

Being honest doesn't mean you should fill them in on every sordid, adult detail; make sure you talk to them in an age-appropriate manner. "A younger child needs simple information, and it should cover what's happening and what's going to happen to them. Don't give them too much information all at once," advises Flicker. "Teenagers may be more willing to ask why — and they may question the fidelity of one parent. The bottom line in divorce is: don't lie and don't bad-mouth the other parent."

## Stick to the Facts

Divorcing parents of adult children should also refrain from saying too much. It's tempting to use your adult kids as sounding boards or therapists, but the long-term problems you'll cause far outweigh any short-lived satisfaction you might feel after unburdening yourself to your child.

## Keep It Real

You may also feel compelled to paint a picture of a "better life" after the divorce to smooth things over. Don't promise things that won't or can't happen. If the children ask you something that you're unsure of — whether or not everyone has to move out of the family home, for example — let them know you're not sure and that you'll keep them up-to-date.

## Be Prepared for All Types of Reactions

A child's age, gender, and level of understanding will affect how they react to the news of your impending separation or divorce. A preschooler may not understand the implications of divorce, but they will certainly notice an absent parent and may fear complete abandonment. An adolescent might assign blame to the parent he or she believes is at fault. Most children feel guilty, but while a teenager may wonder and ask if he or she is the cause of the separation, a younger child will often assume he or she is responsible. Above all, let your children express their feelings about the separation or divorce, whether it's denial, sadness, or anger. Since you're probably going through a pretty tough time yourself right now, you may be tempted to conclude that your kids are fine when they're actually quite upset.

## Listen

Most children respond to the news of a separation or divorce with a lot of questions, such as: "Why is this happening to us/me?" or "Why can't we all live together?" While it's important to listen to their concerns and answer their questions honestly, it's just as important to listen for their "hidden" questions and concerns. A child often won't ask the questions that are really on his or her mind: "Is it my fault?" "Will you leave me next?" "Will you always love me?" Children of any age will need repeated assurances that you love them and won't leave them. "Children of divorce often feel abandoned, particularly when one parent leaves. This is why the phone calls and the knowledge of when they will be visiting the absent parent are crucial. Reassure them that you understand their feelings," says Criss-Hagerty.

## Keep the Kids Out of the Middle

You can't stress enough that this is an adult problem, that the adults are going to work it out, and that you're going to continue to love your children, no matter what happens.

Don't ever use your kids as bargaining tools. Every parent in the middle of a divorce has probably thought at least once of using his or her child to get back at a former spouse. Thoughts of withholding support, refusing visitation, or just plain dumping on your kids about your ex may give you moments of pleasure, but ultimately, these actions will only hurt your children. Nor should you force your children to take sides. Do whatever you can to avoid asking them to give up their loyalty and love for their other parent, either directly or indirectly. This includes subtly trying to find out information about your ex's activities or telling the kids you'd like to buy them new shoes "but Dad's not giving us enough money," for example. Trying to co-opt a child's loyalty is very damaging: your children will start to feel responsible for your problems and try to solve them. Remember that your kids aren't divorcing your ex: you are. ■

*Teri Morrison is a former Contributing Editor to Divorce Magazine.*

# 15 Things You Must Do as a Co-Parent

Co-parents should seek to act in the best interest of their children.

By Deesha Philyaw and Michael D. Thomas



**A** co-parent's work is never done. Not only must you avoid the minefield of negative behaviors that can undermine your parenting partnership, but it's in your children's best interest for you to adopt civil and conciliatory behaviors as well. The following action-oriented guidelines make cooperative and kid-centered parenting across two households possible.

## 1. Know Which Pitches to Swing At

Do not swing at everything that's pitched. Even when both co-parents are committed to being cooperative disagreements and misunderstandings are inevitable. Knowing which pitches to swing at — and which to let pass — is the key to your peace of mind as a co-parent.

## 2. Be the “Bigger” Co-Parent

Even when you're not swinging at everything your ex pitches, it's still possible to get burned out on co-parenting, especially when your co-parent is not pulling his weight. When that happens, your child needs you to be the “bigger” co-parent. Being the “bigger” co-parent means doing the right thing for your

child regardless of what your co-parent does or doesn't do.

## 3. Take Responsibility

When your children witness you at a less-than-proud co-parenting moment (it happens to all co-parents), let them also see you not blame the other parent for it. Instead, take full responsibility for your actions. You can't control other people, but you can control yourself.

## 4. Be Flexible

While kids do thrive on the consistency and stability a schedule provides, there are times when a little flexibility can go a long way in the best interest of your kids. Usually, if you weigh the pros (the kids get to go on a special trip) and the cons (the kids will be with him during my time), you'll find that your flexibility is worth it because your kids are worth it.

## 5. Lose the Sense of Entitlement

A common roadblock to cooperative co-parenting occurs when one parent feels entitled to more parenting time than the other. The entitled parent con-

siders himself the real parent or the better parent. He wants the other parent to go away, or he tries to act as a gatekeeper to the child. You may believe your ex's infidelity or character flaws render her undeserving of time and closeness with your child, but your child deserves and has a right to this relationship, regardless.

## 6. Enjoy Your Child-Free Time

Consider it a glass-half-full approach to co-parenting: though you miss your child when she is with the other parent, your co-parenting arrangement affords you child-free time that's yours for the taking.

Some co-parents struggle with deep sadness when their children are with the other parent, even in the absence of safety concerns. They feel as if they are missing out on parts of their children's childhoods, or this aspect of their divorce is unfair. We encourage them to acknowledge and work through those feelings and also to see the situation through their children's eyes.

## 7. Respect Your Child's Relationship with the Other Parent

Regardless of what happened in your marriage or since the breakup, your child has a right to have a relationship with both parents if both are fit and willing, without micromanagement or interference from the other parent. Divorce brings a lot of change and uncertainty for children, but having a relationship with both parents is one thing they should be able to count on, enjoy, and not feel conflicted about. Try to be a gateway, not a gatekeeper.

## 8. Encourage Your Child to Respect the Other Parent

The best way to encourage your child to respect the other parent is to demonstrate that respect yourself. Respect does not equal agreement; you may disagree with your ex's parenting style, her religious beliefs and practices, whom she dates, and other choices, but short of any harm coming to your child, you can still show respect for or at least hold your tongue about them.

## 9. Keep the Lines of Communication Open

Co-parenting isn't possible without some level of communication. Using children as messengers isn't an option, so co-parents must be willing to stay in touch and share information. If face-to-face and telephone communication proves too volatile, some co-parents use e-mail or texting. But remember that with e-mail and texting you don't have the benefit of tone of voice, facial expression, or other nonverbal clues to soften words that might otherwise sound harsh.

## 10. See Your Ex through Your Child's Eyes

If negative feelings about your child's other parent just won't subside, try seeing him through your child's eyes. A child looks at a parent, warts and all, with love. You may no longer share these feelings, but the other parent remains central to your child's life and well-being. So when you interact

with your ex, do so as you would with any person who is important to your child — with respect and civility.

## 11. Mind Your Business

It's unfortunate, but some co-parents attempt to use their children to spy on the other parent. Anything that happens in your ex's personal life or during her parenting time that doesn't harm your kids is no longer your concern. If you do believe something is going on that is harmful or potentially harmful, communicate your concerns to your ex, acknowledging her right to privacy, right to discipline, and right to make decisions regarding your child's welfare, including health, education, and religion, if you share legal custody.

## 12. Move On

Simply put, though not simple to do: let go of the old relationship. Doing so frees you to be a fully engaged parent and a more cooperative co-parent.

## 13. Turn Over a New Leaf

Each day, each interaction, is an opportunity to repair and rebuild a co-parenting relationship that has been damaged. How you started is not how you're destined to end. Be willing to extend (and accept) olive branches, for your child's sake.

## 14. Offer (or Ask for) Forgiveness

Many of the dos and don'ts we're sharing may sound impossible given the intense feelings and fallout many co-parents experience in the wake of a breakup. What helped us and other co-parents get to a place where we could focus primarily on our children (and not each other) was a clear separation between our past marital relationship and our current parenting partnership. We consider our old relationship dead and buried. When unresolved issues from this relationship "rise from the dead," we think of them as zombies

that can terrorize our parenting partnership. That's pretty dramatic imagery, but some co-parents have found it helps them envision what's stopping them from moving forward as a team. One thing that can help keep the walking dead of your old relationship at bay is forgiveness.

## 15. Look to the Future

Your child won't be a child forever. If you're wrangling with the other parent right now over issues related to your child, these may no longer be issues when your young child becomes a teen or when your teen becomes an adult. But adulthood isn't necessarily the end of your connection to your ex, if you factor in higher education and possibly weddings and grandchildren. Will your present co-parenting conflicts matter then? Do they really matter now, in the grand scheme of things? ■



*This article was adapted with permission from the book Co-parenting 101: Helping Your Kids Thrive in Two Households after Divorce by Deesha Philyaw and Michael D.*

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# 5 Ways to Keep Children Out of Conflict During Your Divorce

By Alison Fosberry

Parents often face very stressful situations during a divorce. Sometimes stress can cause parents to vent to their children, and conflict can surface in front of them. It is important to realize that children can become anxious when they are exposed to family conflict.

Children rely on their home environment for stability and comfort in order for them to develop emotionally. When there is conflict, it can feel as though their world is crumbling, and their sense of safety and trust becomes compromised. Certain issues that seem trivial to adults are significantly intensified in the mind of a child.

It's not too late to do the right thing if you have mistakenly fought in front of your children or have said negative things about your ex. Here are 5 ways you can ensure children, especially the young ones, are left out of conflict:

1. Resolve your anger. You and your ex-spouse are beginning a different relationship as co-parents. Resolving anger and resentment will make your life much easier, and it will make for a relaxed transition. If you need professional help with resolution, get it quickly. Your children will thank you for finding peace, and your interactions with your ex will become stress-free.
2. Discuss issues only when children are not around. It is very important to address disagreements with your ex at a place where children



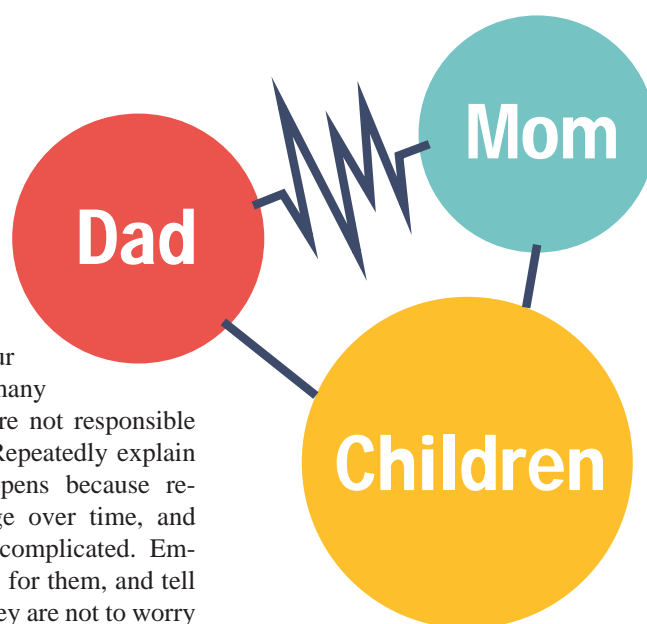
cannot hear. This does not mean going into the bedroom to raise your voice. Children are very perceptive, so even if they can't hear exactly what you are saying, they know you are fighting. They immediately become frightened, and if this continues they can develop persisting issues with anxiety. Consider meeting with your ex when your children are in school or while they are at an after school activity; or meet your ex at a quiet café where the environment encourages a more friendly discussion.

3. Don't burden children with adult problems. Children can panic when they hear parents complaining about money, custody, or other issues that they don't fully understand. They may think their football team, hockey league or other expenditures are the reason for your worries. It's best to vent about these issues with another adult. Children often blame themselves, and when there is a divorce or separation they become even more sensitive.
4. Speak only positively about your ex. Dealing with an ex can be extremely challenging. When you make negative comments, know that you are attacking either your child's mother or their father. When you experience the urge to point out your ex's flaws, imagine how it would feel if someone was attacking one of your parents. Even if your ex is not the best role model, pointing this out only damages their relationship further, and children will eventually resent you for these comments. If you change your attitude and only speak highly of your ex, they will be humbled by your maturity during this difficult time.

5. Ensure that they understand the divorce is not their fault. You can never tell your children too many times that they are not responsible for the divorce. Repeatedly explain that divorce happens because relationships change over time, and adult issues are complicated. Emphasize your love for them, and tell them daily that they are not to worry about adult problems. Tell them to concentrate on being children and good students, and that you as parents will solve any problems that may arise.

It's unfortunate that your marriage has ended for one reason or another, but you can ensure your children don't have to deal with the consequences of their parents' decisions. Find positive ways to nurture your child's relationship with your ex. Your optimism will relieve them, and they will be glad to take a break from worrying about their family situation. When they are old enough to make sense of their childhood, they will be extremely grateful that you took control of your behavior and left them out of conflict.

*Alison Fosbery, M.A. is a relationship and family counselor practicing in the Greater Toronto Area. She has worked with children and adults of all ages and backgrounds for over ten years. She is a member of the Association for Conflict Resolution and has authored several articles for [www.MarriageAndSeparation.com](http://www.MarriageAndSeparation.com) and is an expert blogger on the site [www.BlogsOnDivorce.com](http://www.BlogsOnDivorce.com). Visit her website for more information at [www.AlisonFosbery.com](http://www.AlisonFosbery.com).*



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# Minimizing the Damage

By Kevin Karlson

Small group divorce recovery programs are invaluable for your healing.

A good divorce recovery program has no equal — nothing is as helpful for recovering from the trauma of divorce, and that includes counseling or therapy. Good divorce recovery programs include these components:

- Education about the process of recovery from the trauma of divorce, normal legal processes of divorce, effects on children, relationship patterns to be recognized and broken, what good relationships look like, the importance of forgiveness to healing.
- Small group discussion and the formation of supportive, non-romantic personal relationships.
- Daily journaling about all the feelings, thoughts, memories, and reactions of your marriage and divorce.

Of the three components, it is the small group discussion that people find the most useful (I know because we did follow-up surveys and interviews in a divorce recovery program I helped to lead, and that is what we found every time). Make sure the program you attend has a small group component. Being in a small group (with no more than eight people) who are going through, or have gone through, what you are experiencing in your attempt to recover from your divorce is very healing. The stories you will hear, and the challenges that you share, create a bond that can begin the process of healing a broken heart, can lead to forgiving former spouses,

and can create new and positive relationships that last a lifetime.

Daily journaling during the program (or at any time if you don't find a divorce recovery program) can be immensely helpful in facilitating your own divorce recovery. The idea is to write letters to yourself about your current thoughts, feelings (especially important), and experiences as you recover from your divorce. Expressing feelings on paper is very helpful in both understanding what they are and how they affect you, as well as in unblocking the normal grieving process that can readily be interrupted by the chaos of divorce. Going back to read your earlier entries can be enlightening and reassuring as you can see the progress you have made right there on the page.

Most people who get stuck in the process of recovering from their divorce are stuck because they can't get past their anger toward their former spouse, whether they initiated the divorce or were surprised when their spouse filed on them. Small groups are the best forum for discussing the factors that feed and maintain anger, and recognizing the incredible damage that chronic anger does to the angry person in new relationships, as well as other topics like health, risks of substance abuse, and the inability to move on. Journaling is helpful, but a supportive small group is better, because relationships are healing.

Many divorce recovery programs are sponsored or hosted by churches or synagogues. Do not be put off by that. Most of these programs are not designed to evangelize or proselytize, but rather offered as a community service. The costs are usually minimal, and the programs run for a few weeks to a couple of months. Be on the lookout for a program near you. Most programs advertise online, in the newspaper, or on temporary signs placed next to busy streets when a new session is about to begin.

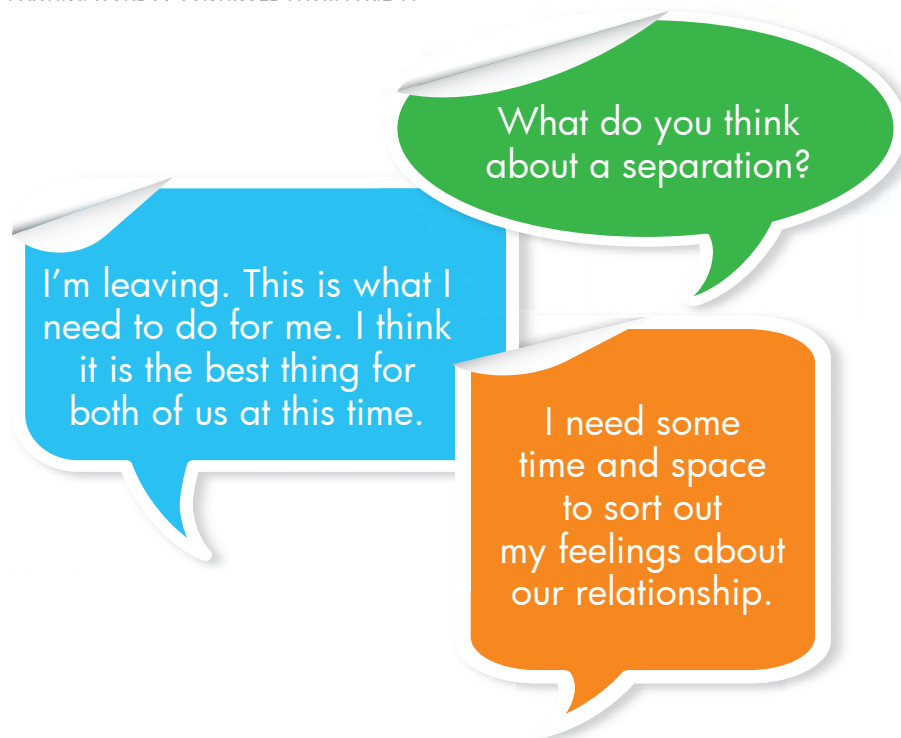
The bottom line on divorce recovery, with or without a divorce recovery program, is this: In order to heal and recover, you must be able to forgive your spouse. ■

This article has been adapted and used with permission from the book *When All Else Fails: Minimizing the Damage Before, During, and After Divorce*, by Kevin Karlson.



Kevin Karlson, J.D., Ph.D., is a consultant, coach, and divorce litigation expert. After 25 years of experience in civil, family, and professional malpractice litigation, he now works as a leadership coach and consultant to lawyers and business leaders. He writes a blog for family lawyers and their clients. His website is: [positivedivorce4u.blogspot.ca](http://positivedivorce4u.blogspot.ca).





## STEPS TO DELIVERING UNCOMFORTABLE COMMUNICATIONS

**PURPOSE:** To allow both parties to feel complete and bring the relationship into present time, so that each is free to choose to have the relationship in the present form, or a new form, or not at all. You may repeat steps if necessary to better facilitate the process.

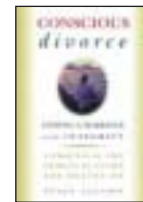
### BEFORE COMMUNICATION

1. Clean the emotional slate of feelings such as: judgment/guilt, fear, pride, anger
  - a. Responsibly express and release feelings with a confidant or in your journal before talking with the person.
  - b. Write forgiveness is for the other person or for your own specific behavior; (whatever you are able to forgive at this time; the more you can forgive, the more the communication can be delivered from a loving, present time place).
2. Review all the above steps outlined here for the communication.
3. Review what you want to communicate, and assess the time it may take for the process.

### DURING COMMUNICATION

1. Tell the person:
  - a. You want to deliver a communication.
  - b. How much time you desire.
  - c. Ask: "Is this a good time?" If not, see "d."
  - d. Set up mutually agreed upon time.
2. Tell them your greatest fears about delivering the communication.
3. Tell them what you want from them ideally during the communication.
4. Tell them the whole truth, and deliver your communication from a loving place until you feel complete.
5. Hear their response without interrupting. Acknowledge their position and whatever response they give. It may not be your ideal, but it is their truth.

to rectify my behavior. After making amends to my former husband at several junctures, showing kindness to him in words and deeds, our relationship is again based on trust and friendship. But to be honest, while leaving my marriage, I often deliberately hurt his feelings; I was not tactful when telling him I was leaving; I was greedy about what I wanted from the house, and I left him with the responsibility for our son, and the upkeep of our large home. In other words, I behaved selfishly. This doesn't mean I should have taken full responsibility for our marital problems, nor that I should have stayed in the marriage. His treatment of me, especially his absence and neglect, in part, caused me to be cruel out of anger and retaliation. However, I wish I could have been more aware of the effect of my actions and words on everyone. You, hopefully, can learn from these mistakes. ■



*This article was excerpted and edited with permission from the book Conscious Divorce: Ending a Marriage with Integrity by Susan Allison, Ph.D., published by Three Rivers Press 2001. Dr. Susan has a Ph.D. in Transpersonal Psychology and a private practice with individuals and groups to bring about healing, using traditional therapies, hypnosis, process therapy, shamanic journey, and energy medicine. Learn more at [www.empoweredhealer.com](http://www.empoweredhealer.com).*

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likely that you don't know the divorce laws or the proper procedures inside out. This makes the whole process more time-consuming, expensive, and difficult to resolve. An experienced lawyer will have negotiated with many other divorce lawyers and know how to deal with them. Often their strategies change when they know who your spouse has hired as their lawyer. The same can be said about the judge assigned to your case. A smart lawyer will present their information in the way the judge prefers to receive it. The likelihood of you knowing the preference of the judge is very low.

There are many reasons you should consider hiring a family lawyer when going through a divorce. However, the number one reason is experience. Family lawyers have firsthand knowledge and experience (not to mention years of schooling) in law, as well as the negotiation and settlement tactics necessary to make sure your divorce is resolved as quickly and cleanly as possible. ■

*Evan Yeong is a staff writer for Divorce Magazine.*

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