

# So You're Getting Divorced

## What to expect and how to proceed

Published in *Family Advocate*, Vol. 28, No. 1, (Summer 2005) p. 4-5. © 2005 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

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**Always keep in mind the potential risks of starting a fight and possibly harming your children in the process.**

#### ■ Can I stop the divorce?

Unfortunately, it is very difficult for one spouse to stop a divorce. In some states, you have the right to ask the judge to order marital counseling. In other fault-based states, the spouse seeking the divorce must prove certain grounds for divorce, and the reluctant spouse has the opportunity to refute those grounds. However, the reality is that in most cases, the divorce will occur even when only one spouse wants it.

#### ■ Can one lawyer represent both of us?

Though this is permitted in some states, it generally is a bad idea. Most good family law attorneys will not represent both spouses, as it is most always a conflict of interest and unethical conduct. An attorney who represents “both sides” prevents you from obtaining your own, independent legal advice. Even worse, the agreement becomes vulnerable to an attack to set it aside. There are many better ways of conserving money, such as hiring a trained mediator to help you and your spouse work through your issues.

#### ■ Should I hire a private detective?

It depends on your goals. In a “fault” state, it might be helpful to have a private investigator (PI) find out about your spouse’s behaviors that may impact the property settlement. Otherwise, a PI might help you trace money that you suspect your spouse of hiding. However, always keep in mind the potential risks of starting a fight and possibly harming your children in the process. In addition, most good divorce lawyers can help you track assets and obtain documentation if your finances are not too complicated.

#### ■ How long will the divorce take?

Check your state law, as there are different “waiting” or “cooling off” periods in many states. It may be as little as 30 days or as long as a year. Plus, your case may be delayed if you live in a jurisdiction that has crowded court dockets. Finally, it is a rule of thumb that if you and your spouse cannot reach an agreement and your case becomes “contested,” it will take longer to complete.

#### ■ Should I move out of the house?

The answer depends on your individual circumstances. There is no one right answer that fits every case. However, in making that decision keep in mind the following: the person who moves out does not forfeit all claims to any marital equity in the property or entitlement to a division of the furnishings. However, it might be wise to list or photograph the contents before you leave.

Once a party moves out, a lawyer may have difficulty getting an order for him/her to move back later. If there are disputes relating to children and one parent moves out without them before reaching an agreement regarding contact, there may be a time lag before arrangements are in place for that parent to see the children.

If you believe your children should reside primarily with you, it is generally not a good idea to move out unless you have adequate and safe arrangements for your children to go with you.

#### ■ Can I read my spouse’s mail/e-mail or tape our telephone conversations?

Before you do anything like this, talk with your attorney. You may be violating federal and state law. Plus, many people are surprised to learn that information gleaned through these actions may not be admissible in a courtroom anyway. There are exceptions to these general rules but, again, it is wise to seek counsel first.

#### ■ How do I prove that my spouse is hiding cash?

Both parties will be required to disclose financial information in the early stage of the divorce. This documentation may include bank records, check stubs, and retirement statements. In addition, your attorney has other “discovery” tools at his/her disposal, which, for example, allow you to demand further documentation or take depositions. Additionally, your attorney may discuss with you the possibilities of retaining other experts, such as private investigators or forensic accountants to help with the investigation.

### ■ Can I continue to use my credit cards?

Typically, it is wise to act in a conservative, financially prudent manner. This means that you should avoid extravagant purchases or consult your attorney first. If you use credit cards in your normal course of business and for your everyday needs, you generally can continue to use them. It is wise, however, to confirm with credit card companies that you have credit in your name and that your spouse hasn't canceled the credit cards.

### ■ Can I change the locks on the house?

No, unless you have a court order granting you exclusive use and possession of the house. If you have concerns about your safety in the meantime, consider obtaining a restraining order, which typically would include granting you temporary possession of the house.

### ■ What about wedding gifts?

This is a thorny issue. In most jurisdictions, gifts given to one of the parties are not considered "marital" property and, thus, remain the "separate" property of the recipient. However, for joint gifts, you and your spouse will need to come up with a fair way of dividing them. If you cannot do so, seek the help of a trained mediator.

### ■ Can I make my spouse sign a joint tax return?

Typically, no. During your divorce, get the advice of a good CPA as to what makes the most sense financially. If you are still married as of December 31 of the tax year in question, you can file a "married but separate" tax return.

### ■ Will my spouse be required to return to work?

This will depend on your circumstances and finances. Without question, after your separation, you and your family may experience tremendous financial strains. Many people choose to seek employment or return to work to make ends meet, and others are required to do so as part of an alimony agreement. However, talk with your attorney and a good financial advisor to help plan your options.

### ■ What about my "prenup"?

You should talk with your attorney about the impact of a prenuptial agreement on your divorce. Typically, it will be enforceable if it meets certain strict criteria, including whether it was entered into voluntarily and with full disclosure of all finances. A judge may scrutinize whether any provisions for alimony are fair at the time of your divorce.

### ■ Can I change the judge?

Only in rare circumstances can you change the judge. You would have to prove blatant bias or a conflict of interest. The best thing you can do to avoid going through a trial is to settle your case out of court. This will almost always save you a lot of money and emotional stress.

### ■ What should I wear to court?

Dress as if you are going for a job interview. Dress in conservative styles and colors. Remember, you are putting your fate in the hands of a judge who has likely never met you and who typically has a short period of time to make crucial judgments about your character and trustworthiness.

### ■ What if I don't show up in court?

Definitely contact a lawyer to determine whether you can present any valid excuses. Judges sometimes will give litigants a second chance to present their cases, particularly when crucial issues are at stake, such as child custody and alimony. **FA**

Can I buy a house?



**It is generally wise** to avoid making any major purchases during the divorce. Your attorney can and should help you plan for this purchase, and a settlement can be structured to best position you to buy a house once the divorce proceeding is concluded.