

DIVORCE GUIDE



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For most people, divorce is much more than a major legal process. It's also a challenging time of transition that can negatively impact virtually every area of life: emotional, psychological, domestic, parental, financial, physical health, social, vocational, and more.

This special **Divorce Guide** contains hand-picked articles, advice, book excerpts, and more to assist you and your family through this transformational process. It will help empower you to build the satisfying new post-divorce life you desire – and deserve.



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SELECTING YOUR PROFESSIONAL DIVORCE TEAM

How to find the best possible advisors to help you through the challenges of divorce.

By Diana Shepherd, CDFATM

Divorce 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. Your team of experts could include a lawyer, mediator, financial advisor, and therapist or divorce coach; depending on your situation, you might also need a business or pension valuator,

forensic accountant, or parenting expert. Here's a guide to help you choose the best possible advisors to support you during your divorce.

Divorce Lawyer

Choosing a lawyer may be the most important decision you'll 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 ask the right questions to ensure you've

chosen a lawyer who's not only good at his or her job, but one whose personality and outlook are compatible with yours. Look for a lawyer who:

- Practices family law.
- Has relevant experience. If possible, choose a lawyer who has worked on many divorce cases similar to yours. If your lawyer is fresh out of law school, make sure he or she has an experienced mentor at the law firm.
- 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 your lawyer's need to "win."
- Is not in conflict with your best interests. Don't 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.

Ask your prospective lawyer the following questions:

- 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 you and your spouse can't agree on anything.)
- 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?
- Do you offer alternatives to litigation – such as mediation or collaborative divorce? An alternative to traditional adversarial divorce, collaborative divorce asks the divorcing couple to resolve their differences – without going to court – with the help of a collaborative team – which usually consists of two lawyers, a financial specialist, a divorce coach, and other professionals as needed.

The outcome of your divorce proceedings will change the course of your life forever, so invest the time and

money to find the lawyer who will do the best job for you. Interview two or three lawyers before deciding who'll represent you.

Divorce Mediator

In mediation, you and your spouse work with a neutral third-party mediator to negotiate your future. Mediation can save time and money, and is usually less emotionally damaging than a full-blown court battle. 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 isn't 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 via mediation, 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 eliminate the need for a lawyer; your lawyer should read and offer advice regarding 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 lawyers are also trained mediators, so finding a mediator may simply be a question of asking your lawyer about his or her qualifications.

Financial Advisor

If money will be an issue during your divorce, you should consider hiring a financial specialist with expertise in issues pertaining to separation and divorce. Certified Divorce Financial Analyst® (CDFA™) professionals tend

to be financial planners or accountants who have completed an additional level of training. One of their roles is to analyze the short- and long-term consequences of settlements 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.

An accountant (CPA, or CA or CGA in Canada) can also handle many of the financial matters of your case – from tax issues to net-worth calculations. Some accountants hold additional designations that could be useful in your case, including: ABV (Accredited in Business Valuation), ASA (Accredited Senior Appraiser), BCFE (Board Certified Forensic Examiner), CFE (Certified Fraud Examiner), CVA (Certified Valuation Analyst), MAFF (Master Analyst in Financial Forensics), and PFS (Personal Financial Specialist). If you think your spouse is hiding assets, a BCFE, CFE, or MAFF should be able to either confirm your suspicions or set your mind at ease; if you and/or your spouse own your own business, an ABV or ASA can value company assets and goodwill.

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 to the cottage. If a business is involved, brokerage statements or corporate minute books may also be required.

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

Ask your prospective divorce financial advisor the following questions:

- 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 lawyers? Ask for a few references, and call them.

Therapist/Divorce Coach

A therapist or divorce coach can help you deal with the emotions – including grief, anger, depression, or fear – that could get in the way of negotiating a divorce settlement. Also, until you achieve an “emotional divorce,” you won’t 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.

Finding the right therapist can be frustrating: 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 someone who specializes in marriage and divorce issues.

In the collaborative divorce process, the divorce coach is a mental-health practitioner whose role is to help you communicate your needs as well as to let go of feelings that are clouding your judgment and preventing you from reaching an agreement. They can provide tools and resources to help you communicate constructively and co-parent effectively with your ex, and help you create a co-parenting plan that will work for the whole family.

What to Ask Your Divorce Professionals

Prepare a list of questions relevant to your unique situation before your initial meeting with a prospective professional. Here are some suggestions:

- 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.)
- 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 your spouse are. If you think your case is extremely simple, but your spouse’s lawyer buries yours 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 the professional is 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?

Divorce is often challenging 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 make your divorce easier, less expensive, and less stressful – and you’ll also empower yourself to successfully start your new life after divorce. ■



Diana Shepherd is the co-founder and Editorial Director of Divorce Magazine and a Certified Divorce Financial Analyst®.

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An introduction to the professionals who come together to help couples resolve divorce-related conflict.

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Prepare for Mediation: The Checklists

There are many decisions that need to be made when going through the mediation process.

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Here's some information and a handy checklist to help you set goals and think about options as you move forward with your divorce – and life.

By Henry Gornbein, Esq.

When you build a house, it all starts with the foundation. In divorce, the foundation is the initial complaint or document putting your spouse on notice that you want a divorce.

In some states and provinces, the parties must reside separately and apart for a year before a divorce can be filed. In others, the husband and wife can not only live together throughout the divorce – and commonly do – but they can even remain sexually intimate during the divorce process.

I have had many cases where

throughout the divorce process, the relationship is off and on again and again while the couple attempts to decide whether to proceed with their divorce. This can be very confusing, especially to children.

It's best to check with a lawyer where you live for the legal requirements and ramifications relating to this issue.

Filing the Complaint

In some areas, the complaint will be a petition for the dissolution of a marriage: "In the Matter of Jane Smith and

John Smith", for example. In others, the laws require that there be a plaintiff (the person filing for divorce) and a defendant (the person being sued for divorce): "Jane Smith, Plaintiff vs. John Smith, Defendant".

The complaint should meet the legal requirements for a divorce in the state/province in which it is filed, but should not include a lot of information intended to inflame the divorce or embarrass the spouse. In most areas, divorce filings are public and your personal lives should be kept out of court as much as possible.

The goal is to try to handle the process with dignity, demonstrating as much respect to your spouse as possible. In some situations, this proves impossible and then you have total warfare with no winners except the lawyers, who will be charging a lot more money.

With the complaint comes a document called a summons. This paper states that you have been served with a complaint or petition requesting a divorce and gives the respondent or defendant so many days – typically 21 – to respond. It is summoning you to take action or be in default. If you are the defendant, this is the time to immediately contact a family law attorney, if you haven't already, to find out what your legal rights are and what you should do next.

Ex Parte Orders

In many cases, some original orders go along with the initial complaint or petition. These are called ex parte orders, entered on behalf of the plaintiff. Based on the complaint that has been filed, it's a request in the divorce petition or complaint for a specific purpose, with immediate relief that can be granted without a hearing. I typically use an asset injunction or restraining order: an order putting your spouse on notice that no money is to be removed from bank accounts, no assets are to be taken, and no insurance is to be changed. This maintains a level playing field as the divorce proceeds, making sure that neither spouse is taking advantage of the other by removing or transferring funds, liquidating retirement or money market accounts, or changing life or medical insurance beneficiaries.

Sometimes, one spouse starts transferring or disposing of property, or running up large credit-card debts. In a recent case, one of the parties tried to prepay his daughter's four-year college education – \$250,000 – and also tried to repay loans that he claimed were due to his father in the amount of \$75,000. An asset restraining order is intended to stop these practices and make sure

The goal is to try to handle the divorce process with dignity, demonstrating as much respect to your spouse as possible.

that property doesn't disappear.

Last but not least, domestic violence is a factor in some divorces. In some areas, there will be an order regarding the protection of the victim spouse: a personal restraining order, a personal protection order, or some similar type of legal device. These are very important in cases where there has been a history of domestic violence or the threat of violence. You should discuss these issues with your lawyer at the initial meeting.

Interim Orders

Other possible orders include those issued on an interim basis regarding child custody. I only use these in cases where one parent is threatening to remove the children from the home, state, or country. In cases where the children have already been taken, an interim order can be needed to require the immediate return of the children.

To obtain an ex parte interim order, you must state in the divorce complaint or petition why it is imperative that an order be entered at once without a hearing and give examples.

In some cases, an interim order is put into place along with the original filing setting child support; a status quo regarding the payment of marital obligations such as the mortgage, utilities, and other expenses; or even the setting of spousal support in some instances. These orders can differ from place to place – even from lawyer to lawyer, depending upon the facts of

your divorce and the traditions, laws, and rules where you live and file for divorce.

Serving Papers

In many cases, divorce papers are delivered using a process server, a public official, or someone else who is legally able to serve the papers. I encourage the other party to accept the papers without the need for formal service. Why? Because being served with divorce papers – especially at work or in a public place – can be embarrassing. Getting served at home – especially if children are there – can be humiliating and upsetting to everyone.

To avoid this, I ask clients to ask their spouses if they will accept the papers by mail delivery to the home. Normally, a husband cannot serve his wife or vice versa. However, establishing an acceptance of service agreement in advance to sign for and acknowledge the papers eliminates the need for a process server.

In one case, my client was having an affair – but he had neglected to inform me of this fact. His wife was extremely angry, and her lawyer wanted to have him caught in the act and served at a motel where he had been meeting his girlfriend. This only added fuel to the fire and was not a good way to start the divorce.

If the other party has retained a lawyer, he or she can accept service on behalf of the other spouse. That lowers the level of acrimony and embarrassment, and sets a non-adversarial, cooperative tone from the outset.

Trolling

Where I practice, an issue known as “trolling” has reared its ugly head. In trolling, lawyers obtain a list of divorce filings from the courthouse where your divorce has been filed. They then send a letter informing your spouse that a divorce has been filed against him or her. The letter requests that your spouse contact the attorney for possible representation in the upcoming divorce

action. I find this tactic reprehensible for several reasons:

1. In some cases, papers may be filed, but service is being delayed for a special family event such as a birthday, wedding, or graduation; illness; or a long-planned vacation.
2. There could be minor children involved, and the spouse who is filing may want to meet with the other spouse prior to service, to discuss ways of moving forward in an amicable fashion as well as how to tell the children.
3. Sometimes, a spouse will file and then reconsider or suggest marriage counseling to his or her spouse. Then the other spouse gets the trolling letter in the mail and all bets are off.
4. When there is domestic violence, the filing and service must be very carefully handled. A trolling letter can have tragic consequences.
5. Finally, it makes lawyers look like bottom-feeders. Trolling letters are universally viewed with disgust by clients who receive them.

Answering the Complaint

Once a spouse is served with papers, the next step is for the defendant spouse to file a response or answer. In some situations, there may be a counterclaim or cross-complaint filed by the other spouse seeking a divorce as well. The strategies will differ depending upon your own situation, who your lawyer is, and where you live.

If the original papers are the divorce's foundation, then the final judgment or settlement agreement represents the rest of the house, so to speak. It should cover every relevant issue and provide the steps for you and your spouse to follow going forward.

I use the following checklist in my practice to help my clients set goals and know what may or may not be important in their divorce. Bear in mind that this is not necessarily inclusive and is meant only as a general guide; some of the points will not be relevant to every case and may not be applicable in some areas. The goal is just to get you

thinking about possible options as you move ahead with your divorce and the rest of your life.

First Steps Checklist

1. Counseling to save your marriage or to help build a support system as you go through the divorce.
2. Choosing a lawyer.
3. Filing for divorce.
4. The initial papers, including ex parte or temporary orders.
5. Child-related issues including custody and parenting time/visitation.
6. Child support.
7. Medical insurance and uninsured medical, dental, and other health-related expenses regarding your children.
8. Extracurricular activities for your children, including the associated costs.
9. College and private or parochial school expenses and issues.
10. Spousal support.
11. Medical insurance going forward for a spouse (in the US, this can be done through COBRA, a federal law that permits a former spouse to be kept on medical insurance for a maximum of three years if the other spouse is employed by a company with a minimum of 20 employees).
12. Discovery issues, or techniques for learning exactly what assets and liabilities are in your marital estate.
13. Property, including real estate holdings, personal property, investments, professional practices, and degrees.
14. Businesses of all sizes, ranging from small family businesses to larger corporate entities.
15. Cars, boats, leisure vehicles.
16. Collectibles.
17. Savings accounts, stocks, bonds, and other investments.
18. Retirement accounts, pensions, and other vehicles for future retirement.
19. Furniture and furnishings, including antiques.
20. Issues involving gifts and inheritances.
21. Debts such as home equity loans, mortgages, credit cards, debts to

- relatives, auto loans, or leases.
22. Tax issues.
23. Life insurance.
24. Lawyer and expert fees.
25. Security for a divorce settlement.

Every state/province has its own laws and quirks – that's why it's so important to talk to a lawyer where you live. The information provided here is general and will vary depending on your locale, the laws of your state/province, and the practices of your courts. ■



This article has been excerpted from Divorce Demystified (Momentum Books, 2014) by Henry S. Gornbein, Esq. A leading expert in family law, Gornbein deconstructs the divorce process and serves it up in small, manageable steps. Practicing family law in Michigan for more than 40 years, Gornbein has written frequently on divorce topics. Divorce Demystified is available at Amazon. www.lippittokeefe.com

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There are many options to settle your divorce issues, including mediation, arbitration, collaboration, litigation, and pro se. But which process is right for you?

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Charting Your Living Expenses

During your divorce, you need to have a complete understanding of your own as well as your ex's financial situation. Here's help figuring out your living expenses.

By Cathleen Belmonte Newman, CDFA™

During your divorce, your lawyer or financial professional is going to ask you about the financial aspects of your marriage in order to calculate spousal and child support, and divide all marital assets and debts. To do this, you need to have a complete and in-depth understanding of your own as well as your ex's financial situation.

In most states and provinces, each spouse must complete a Financial Affidavit (sometimes called a Financial Statement or Financial Disclosure) containing truthful and accurate information about his/her income, expenses, assets (this includes

all property acquired or earned during the marriage, such as homes, cars, bank accounts, retirement benefits information, stocks and stock options, business assets, and valuable art, jewelry, or collectibles) and liabilities (these are your debts).

One area of the Financial Affidavit that often creates confusion is the section for living expenses. In most jurisdictions, this section is completed using monthly figures (ask your lawyer or financial professional to confirm this for you). When filling this out, keep in mind that there are 4.3 weeks per month – not 4. This is an easy mistake to make, and one that

will result in an under-estimate of your expenses.

As you start to fill this out, the best sources of information to have handy are bank statements (including cash withdrawals), cancelled checks and credit card statements, and year-end summaries.



Charting expenses by category will enable you to create this information accurately. You can do this by hand, or by using software such as Microsoft Excel or money-management software such as Intuit Quicken (which is also available as apps for iPhone and Android).

Analyze your expenses over at least a full year so that you don't overlook expenses that only occur at certain times of the year – such as back-to-school or holiday expenses or high utility bills in winter or summer.

If you aren't going to have the time or patience to prepare this analysis in detail, here are some quick tricks that can help you complete this task fairly rapidly.

1. First, add the expenses for the items where you already know the exact cost – your mortgage, real estate taxes, home and auto insurance, telephone/cable/internet bills, housekeeper, car payments and life insurance.
2. Next, tackle the expenses that you can estimate by week – dry cleaners, groceries, lawn service, fuel for auto, parking, cabs/tolls, grooming, dining out, allowance for kids, sitters/child care and tutors. Remember that there are 4.3 weeks per month.
3. Then, call service providers who can provide an annual figure (remember to divide by 12): call the gas, electric and water companies, vet for pet expenses, car dealership or service center for maintenance and repairs, doctors for medical expenses, and health club for recreation expenses.
4. Now you're down to the expenses you need to estimate: home repairs and maintenance, clothing for you and your children, entertainment, newspapers, magazines, books, gifts, donations, vacations, computer expenses, extra-curricular expenses for children, children's entertainment, and gifts to others.
5. Add footnotes to your financial affidavit so you remember how you calculated expenses – especially the ones that you're estimating.

6. Make sure your math is accurate: double-check your figures, especially if one seems much higher or lower than you expected it to be.
7. Review your draft document with your financial professional and/or lawyer.
8. The total monthly figure is a net number that does not include state/provincial or federal taxes that you'll be responsible for paying. Your gross monthly number is the net number plus an estimate for taxes.

Here are a few other categories to consider:

1. Expenses for second homes or vacation residences.
2. Expenses that you pay on behalf of a parent or emancipated child (these may not be considered by the court, but add them to your first draft to make sure all your regular expenses have been identified).
3. Satellite radio.
4. Cell phones for you and children.
5. Clothing includes shoes, jewelry and accessories.
6. Credit-card charges for stores such as Costco, Walmart, Target, Sears, Walgreens, etc.
7. Sporting goods.
8. Purchases from hobby stores like Michael's, Jo-Ann Fabrics, and Hobby Lobby.
9. Your continuing education classes or certification renewals.
10. Health club usage, classes, personal trainer, lessons.
11. Cash withdrawals.
12. Boarding expenses for pets when away.
13. Reasonable replacement of computers and printers for home and children.
14. Vacation costs, including air and ground transportation, tips, dining, entertainment, hotel costs, and airline fees/taxes.
15. Therapists for you and children.
16. Membership dues for organizations and clubs that you belong to.
17. Pass or fees for toll-roads you use regularly.

Sometimes, you won't have the information to prepare this analysis completely because the information is not available or is in the control of your spouse. If that's the case, then make sure to add the word "Preliminary" in front of "Financial Affidavit/Statement" as well as footnotes on pages where you lack complete information. ■



Cathleen Belmonte Newman (MBA, CDFA™) has been supporting clients through the divorce process since 1990. An experienced financial analyst, she specializes in the preparation of lifestyle expense analysis, disclosure statements, forensic accounting, and litigation support.
www.f4financial.com

Financial Fraud and Divorce

There are warning signs that your spouse may have committed financial fraud in your marriage; the greater the number of red flags, the more likely that there is something fishy about the family's finances.

By Peggy L. Tracy, Certified Fraud Examiner



Divorce can create feelings of sadness, anger, and betrayal – especially if one spouse had an affair, or the divorce request came “out of the blue.” Those feelings can lead to an intense mistrust of your spouse, which may make you believe that your spouse is hiding assets or engaging in other financial misbehavior. Before we start to discuss fraud and divorce, you need to know that serious fraud only occurs in a very small number of cases. So if your spouse is a salaried employee, and you’ve been living a normal, middle-class life for the last 20 years, it is very unlikely that there’s a hidden offshore account full of cash waiting to be discovered. Now, let’s talk about how and why fraud could occur in a divorce.

Hidden or missing assets and misrepresentation of family income are two common areas of money manipulation that, if left undiscovered, can lead to a disproportionate share of the assets going to one spouse. A divorcing

spouse may convince otherwise honest relatives and friends to assist with concealing marital assets by telling them that their ex is racking up debts or emptying bank accounts. Concealment is the cornerstone of fraud.

During divorce, forensic (or investigative) accounting professionals can trace the paper-trail of funds through the various accounts of the marriage, determine the actual income of the family, verify claims of “co-mingling” marital and separate assets, or determine the validity of a potential claim for dissipation of marital assets (see “Dissipation Issues” for more on this topic).

A financial expert will review general records, including the couple’s tax returns, bank statements, credit-card statements, business ledgers, appraisals of properties owned, and retirement accounts. The more money a divorcing person has, the more places it can be squirreled away out of sight. Employees of companies may have

deferred compensation plans, stock options, bonuses, expense accounts, or other fringe benefits that they “forget” to declare. Business owners have ample opportunities to hide both income and assets from the lawyer’s and spouse’s eyes – unless someone has the financial skills to comb through the records and make a professional judgment about the authenticity of the books, records, and tax returns.

For families that have built up a sizable nest egg, the hiding places can become more numerous – and they also might intentionally become more complicated. Shell corporations, unfunded trusts, life insurance vehicles, unknown safe deposit boxes, and hidden brokerage/online accounts are among just a few of the hiding places that can be uncovered through good financial detective work. Schemes vary depending on perceived opportunity and motive, but the ultimate goal is to defraud the other spouse of their entitlement.

Red Flags

Evaluating changes in secrecy, lifestyle, and income can lead to important circumstantial clues that may lead one spouse to believe that fraud may be taking place. The most difficult element to prove in fraud cases – fraudulent intent – is usually proved circumstantially. It can be that “aha!” moment when faced with evidence that cannot be ignored any longer. Typical red flags include items such as:

- Change in the level of confidentiality between spouses.
- Mail being rerouted to an office or new mail being received.
- Unexplained changes in habitual behavior.
- Pattern changes due to addictions.
- Spending more time on the computer, closing the screen when the spouse walks in.
- Getting caught in lying or deceptive behavior.
- Concealing details of transactions from the spouse.
- Unusual and repeated cash withdrawals from bank accounts.
- Loaning or giving money to family and friends without spouse’s knowledge or consent.

The greater the number of red flags, the more likely that there is something fishy about the family’s finances. The longer a spouse has access to perpetrating a fraud, the easier it is to get away with it; the more time that passes, the more difficult it can be to access certain records or trace funds.

The Fraud Triangle

During the 1940s at Indiana University, Dr. Donald Cressey created the “Fraud Triangle” hypothesis to describe a new type of criminal: the white-collar fraudster. Similar to the idea of a three-legged stool (which cannot stand without all three legs), Dr. Cressey theorized that there are three elements that must be present for a person with no criminal history to commit fraud:

1. **Perceived Opportunity.** The person believes he/she can commit the

indiscretion without being caught.

2. **Pressure.** This is the motive, usually of a social or financial nature. This is a problem the perpetrator believes he/she cannot share with anyone.
3. **Rationalization.** This takes place before the indiscretion. The rationalization is necessary so the individual can maintain his/her self-concept as an honest person caught in a bad set of circumstances.

Trusted persons can become trust violators at any point during the marriage. Some start lying and cheating soon after the wedding, others don’t start until decades into the marriage, and others never go down this road. However, when someone sees him/herself as having a problem that he/she can’t share, then applies a rationalization to the thought of committing a dishonest act to secretly resolve the issue, he/she is on the path to immoral or illegal behavior.

Dissipation Issues

A type of fraud specific to divorce is dissipation. Dissipation occurs when one spouse, essentially, wastes property or money without the knowledge or consent of the other spouse. There are many legal definitions of what constitutes dissipation, but they all involve minimizing marital assets by hiding, depleting, or diverting them. Some examples include:

- Money spent on extramarital relationships (hotels, trips, gifts, etc.).
- Gambling losses.
- Transferring or “loaning” cash or property to others.
- Selling expensive assets for much less than they’re worth.
- Spending down business cash account.
- Excessive spending, including hobbies.
- Residence falling into foreclosure
- Ruining personal items.
- Work tools left out to rust.
- Destroying or failing to maintain

marital property.

If there has been an intentional dissipation of marital assets, the innocent spouse may be entitled to a larger share of the remaining marital property; this is something to discuss with an experienced lawyer.

Other Fraud Issues

Aside from dissipation, other types of fraud can be discovered during divorce by investigating the family finances. There are cases of forgeries and questionable documents, tax fraud, loan fraud, and insurance fraud – but the majority of divorce fraud is centered within the framework of misappropriation of assets. Before launching an investigation, ask yourself whether there has been transparency and truthfulness about finances during your marriage and divorce. Did both of you take an active role in managing the money and taxes together, or did you allow your spouse to handle the finances during your marriage?


One of the easiest ways to prevent fraud in a marriage is to treat finances like businesses do: using a checks-and-balances system where both spouses see, understand, and review the finances. Holding family members accountable for missing assets eliminates the perceived opportunity and takes away the ability to commit fraud. Although this advice may come too late for you, deterrence and vigilance is the best way to stop fraud from starting in the first place. ■



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How to Work with Your Divorce Lawyer



Tips for working with your lawyer to save time, money, and aggravation – and get the best possible outcome during your divorce.

By Diana Shepherd, CDFA™

You 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 family lawyer, you'll need to provide information about your marriage, minor children (if any), assets, and liabilities.

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:

- 1. Why are you seeking a divorce?**
- 2. 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).
- 3. 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?
- 4. 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.
- 5. Legal documents.** Bring copies of prior or pending lawsuits, bankruptcy suits, judgments, and garnishments.

- 6. 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. If you think your lawyer is giving you bad advice, then get a second opinion. If the second lawyer provides similar information, then your expectations – not the lawyer's advice – may be the problem.

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:

1. Don't call your lawyer outside of work hours unless it's an emergency.
2. Don't burden your lawyer with your emotional issues; hire a therapist for that.
3. Always tell your lawyer the truth, even when it's unpleasant or unflattering to you.
4. Be cooperative. Provide requested information and documentation promptly, and don't create roadblocks in your own case.
5. Be realistic. Don't expect your lawyer get you the sun, moon, and stars, or to behave like the hero in a John Grisham novel.
6. Be reasonable. 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 decide to fire you as a client (yes – lawyers can and do fire clients!). This may also happen if you don't communicate properly, if you continually disregard the lawyer's advice, keep asking the same questions and expecting different answers, or if you don't pay your legal bills.

Some lawyers may keep representing difficult clients as long as the clients continue to pay their bills. Sometimes, clients actually sabotage their own cases – by blurting something damaging in person or on social media, lying to try to discredit the other side, or hiding/destroying property, for instance. This behavior can be intensely frustrating for a lawyer, and could ultimately end with him/her walking away from the case.

If you think you may have done something wrong, ask if this is the case. 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. Your lawyer should provide a written “retainer agreement” or “engagement letter” that details the terms of your lawyer-client relationship. This document should explain four key areas:

- 1. Scope of Services.** This portion outlines your goals as well as the legal services that the lawyer, associates, and/or paralegals will provide to achieve specific results.
- 2. Fees, Disbursements, and Billing Policies.** This is an estimate of the fees or disbursements you can expect to pay as well as the lawyer’s billing policy and rates.
- 3. Client Communications.** This area details how and when the lawyer will update you about your case (e.g., phone calls, emails, snail-mail, in-person meetings) and estimated time he/she will take to respond to your calls, emails, etc.
- 1. Withdrawal from Representation.** This part discusses the circumstances under which the lawyer may withdraw from your case, and how your files will be transferred to you or to another lawyer.
If he/she won’t provide such an agreement, 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/her lawyer do. 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 professional or you’re being unreasonable. Consider your motivations and actions to see if you’re refusing to accept 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/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/she can’t always pull a great solution out of his/her hat!

You should expect your lawyer to return phone calls reasonably promptly (24 hours is reasonable if he/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 a Certified Divorce Financial Analyst® and the co-founder and Editorial Director of Divorce Magazine.

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5 REASONS TO HIRE A DIVORCE LAWYER

Choosing to represent yourself in court instead of hiring a lawyer could be a costly mistake.

By Diana Reid

If you're at the beginning of your divorce process, you may be considering representing yourself instead of hiring a lawyer, thinking you'll save time and money by doing so. If your marriage was very short, if both of you are committed to ending your marriage without a legal or financial battle, if you have no children or assets, and if neither of you wants or needs to receive spousal support (alimony) from the other, then you may be able to process your own divorce using a kit or online tools.

However, most people find divorce to be a complicated and confusing process, and they're grateful to have an experienced family lawyer to help guide them through it. You'll need to make a lot of decisions that will affect the rest of your life – at a time when emotions may overwhelm your ability to think clearly. So although not everyone needs a divorce lawyer, obtaining a good one is often in your best interests – especially if your divorce is complicated, contested, involves children, you have significant assets, or if your soon-to-be ex-spouse has hired a divorce lawyer.

Here are five reasons to consider hiring a divorce lawyer rather than representing yourself in court.

1) You are unfamiliar with matrimonial law and/or family court.

In court, self-represented litigants are not given any special treatment; judges hold them to the same standards as the

lawyer for the other side. Most judges are fairly patient people, but if you don't know the law – or what documents you need, or even what to do next – you may be pushing the judge's patience past the breaking point. The more annoyed a judge is, the less sympathetic he/she is likely to be. Family lawyers are experts in knowing what to say to make their case seem more reasonable than yours. Lawyers who focus on areas outside family law hire a family lawyer when they're getting a divorce; they recognize that they'll be out of their depth when faced with a lawyer who practices family law exclusively. So it's extremely unlikely that you'll be able to adequately prepare to face the court process – and your spouse's lawyer – by yourself. To make matters worse, you can jeopardize your entire case by saying or doing just one thing wrong.

2) You need objective advice at this emotional time.

Divorce is an extremely emotional time for both spouses. You may experience feelings of sadness, betrayal, fear, depression, rage, confusion, and resignation – sometimes all on the same day! This level of heightened emotions, and the fact that you cannot possibly be objective about your case, will skew your judgement. Very few people have had the time or the willingness to work through their emotions about their

.../Continued on page 29



How Mediation Works

In this form of alternative dispute resolution, a neutral third party helps divorcing couples negotiate their differences – without going to court.

By Randall M. Kessler

Mediation is a form of alternative dispute resolution in which a neutral third party – known as a mediator, or neutral – helps parties negotiate their differences with an eye toward resolution and settlement. Stated another way, mediation is an informal, out-of-court process that includes rules, ethics, and a timeline by which parties can settle. There is no testimony or other formal means of presenting evidence during mediation, though it is a more structured process than a settlement conference.

Mediations are conducted by independent, third-party neutrals, whose purpose is to facilitate a voluntary agreement between the parties without necessarily rendering an opinion on the merits of the case. The mediator has no authority to force a settlement, but rather to serve as a catalyst for dialogue between the parties. Those present at a divorce mediation can include the mediator,

parties, family members, significant others, expert witnesses, and lawyers (although most often only the parties and their lawyers attend). Everything shared during the mediation is generally kept confidential – unless there is a threat of violence, child abuse, or imminent danger. Under these circumstances, the mediator has an obligation to report such conduct or abuse. If the parties do not reach an agreement at mediation, the right to a trial is still available; however, the mediator cannot be called as a witness.

The Advantages of Mediation

A key advantage to mediation is that the mediator can explore the underlying background and emotional history behind a case far more than a judge can or would, allowing the mediator to get to the root of the underlying conflict.

Additionally, mediation can provide an invaluable opportunity to get an unbiased evaluation of the case from experienced judges and family law litigators, should the mediator fall into one of those categories.

Mediation allows for an examination of the root cause of the underlying issues that led to the marital discord in the first place. It provides an opportunity to dig deeper into the background of the case, and for the divorcing couple and their lawyers to be heavily engaged in the settlement process. Such dialogue can affect how and when parties settle, and also the quality of the settlement itself. Ideally, it is an opportunity for the parties to address all of their desires in a more comprehensive settlement package than a court can offer. In the majority of family law disputes, it is better for parties to decide the outcome for themselves than to have a judge make the final

determination. It also may give parties an opportunity to vent (hopefully while in caucus and not in front of the opposing party), which many need to do before being able to accept a final resolution and the termination of their marriage.

With regard to the quality and comprehensiveness of a settlement, there are many different terms that can be agreed upon through mediation that a court either cannot or will not address. For instance, parties can address and craft their own resolutions surrounding complex issues like tax exemptions, parenting time, division of property, timing and conditions of property sales, religious upbringing of the children, and almost any other issue arising out of the marriage. For child support and custody, the court does have the discretion – and the obligation – to ensure that any agreement on these issues is in the best interests of the children. But, because courts and judges tend to only deal with the “here and now,” the ability to mold and craft customized settlement terms in mediation is highly advantageous.

Of course, there are also situations in which mediation is *not* a better alternative to trial. For instance, some lawyers and/or parties may choose to use mediation as an opportunity to posture and “gain an advantage” over, or intimidate, the other side. In such cases, mediation likely will be unsuccessful and may even be detrimental to the ultimate outcome of the case, since it may create even more anger and frustration than already exists. If you and your lawyer sense that this applies to your specific case, then it might actually end up being more cost-effective and efficient to take the case to trial.

When Is Mediation Appropriate?

Mediation is rarely considered “inappropriate,” as there are many advantages to at least attempting it in good faith. In fact, mediation is becoming increasingly required by many Georgia judges in all contested cases: many judges now expect parties to have attempted mediation prior to appearing before them for relief.

Of course, there are exceptions to the general presumption that mediation is appropriate, including those situations involving domestic violence or those where one side is clearly not going to participate in the mediation in good faith. In such cases, mediation may prove to be a fruitless endeavor that may not even be worth the time and expense of attempting. However, the specific circumstances should always be evaluated in each particular case, as it may still be appropriate to hold an abbreviated mediation to test the waters and perhaps even learn something valuable about the other side. There is very little risk in this strategy, as you can always leave the session at any time without repercussion if the mediation is futile. Ultimately, the decision of whether or not to mediate should be based on case-specific facts, but generally speaking, it is typically advisable to at least attempt it.

Even if a party lives out of town and cannot afford to travel for mediation and trial, mediation can still occur with one party only being available by telephone. Of course, almost everyone familiar with mediation will agree that in-person mediation – which allows both parties to experience the true dynamics of the process – makes resolution more likely.

However, there is never a “one size fits all” solution, and each case must be evaluated on its own merits to determine whether mediation would be fruitful. Cases involving violent parties, bullies, or the opposite (“pushovers”) may not be appropriate or ripe for mediation unless and until the parties are truly ready to appropriately mediate in good faith.

Must the Case Settle at Mediation?

The case does not have to be settled at mediation under any circumstances; in fact, a good degree of caution should be exercised prior to reaching a final agreement in mediation. In some cases, settlement may be a goal, but the primary goal may be simply to acclimate the parties to the process of mediation in anticipation of future settlement discussions. If the parties learn how to negotiate in good

faith the first time around, there may be hope that they will do so again in subsequent interactions and possible future mediations.

Even if the process ultimately breaks down, it is likely that the client will have walked away with more information and insight into the other side’s position than would have otherwise been the case. It has been said that mediation provides the most “bang for your buck” in terms of learning about the other side. There may be a tremendous amount of insightful information gained at mediation that may allow for a far more enlightened case strategy, should settlement negotiations ultimately fail.

During mediation, it might become clear what the other side’s “hot buttons” are, which allegations they acknowledge, which items of property they covet most, and who their potential witnesses may be. Settlement via mediation can save a divorcing couple a great deal of money, and it can also spare them the inevitable emotional drain of trial.

It is usually in the client’s best interests to attend mediation in good faith and in furtherance of settlement. If that fails, regroup and discuss what was learned at the mediation and how that information can assist in the case – either in litigation strategy, or in future attempts at settlement. ■



This article has been excerpted and adapted from How To Mediate A Georgia Divorce (Institute of Continuing Legal Education in Georgia, 2015) by

Randall M. Kessler. Written with input from many well-respected authorities on mediation, this book provides a good overview of the process. The founding partner of Kessler & Solomiany, Kessler has taught domestic relations at Atlanta’s John Marshall Law School since 2005. He is also the author of Divorce: Protect Yourself, Your Kids and Your Future. www.ksfamilylaw.com

The “New You” embodies cherished elements of your pre-divorce self intermingled with aspects of your deliberately chosen post-divorce persona.

Creating the New You After Divorce

By Michele Rosenthal,
Certified Professional Coach

Divorce can careen into your life with all the force of a meteor, rupturing who you are into the realms of Before and After. While you can’t go back to who you were previously, you can go forward to the New You: a person who embodies cherished elements of your pre-divorce self intermingled with aspects of your deliberately chosen post-divorce persona.

The process of combining what you love about your past self with who you wish to be in your present self relies on integrating different parts of you in new ways. Healing the wounds that divorce

inflicts requires specific decisions in creating your post-divorce identity. The challenge is to tease out desirable elements in your past self that will assist you in creating a new overall identity that feels connected, positive, and effective.

This begins by pulling your past selves into contact with your present self. The purpose here is to identify what elements of your past selves you want to have present in who you are today. This process has three phases: connecting to that past self or selves in ways that are gentle and declarative; borrowing

qualities to exhibit in your daily life; and choosing to consciously employ these facets of your past self in your present self in the way you approach, perceive, and behave.

Your Past and Present Selves

In their quest to develop one self with core control of their identity, many of my clients discover that the self they choose needs to develop additional skills before it is truly ready to take control. Kate’s story is a great example of what happens when you combine the

power of your past and present selves.

Kate married her college sweetheart. Financially supporting them while her husband followed his dream to become a surgeon, Kate deferred her desire for a family until Hal was securely on the fast track to success. Eventually, they had twin daughters. This should have been a happy time for Kate, except for the fact that Hal had changed since their college romance. Success had made him demanding, controlling, ego-driven, and often mean. When she tried to speak to him about these things he derided and snarled at her, then slammed out of the house, often disappearing for several unaccountable hours. When Kate discovered Hal was cheating, she finally decided to leave. With that decision she entered a battle for her freedom. Hal's financial and social power in the community massively overshadowed any resources Kate had been able to develop. Twenty years later the wounds of her divorce were still fresh.

"I didn't gain my freedom," she says sadly. "I lived in a prison of Hal's control. Because he could afford better lawyers than I could, the terms of the divorce were in his favor. I had no job and two little girls to raise. Hal threatened me constantly with phone calls and letters and emails that claimed he was going to take the girls from me and leave me homeless and penniless. On a couple of occasions he got so angry he shoved me up against the wall and made his threats verbally. I lived in constant fear."

Feeling helpless and powerless Kate developed a large distrust of men and her own ability to choose a man who could maintain a healthy relationship. By the time she reached her mid-fifties she'd been alone for over twenty years. She was a single woman desperately wanting to be in a loving relationship with a man but too traumatized by her divorce to imagine finding a partner. Reclusive, Kate rarely went out socially, preferring her animals (three dogs, a cat, and a parrot) to interacting with people. When our work together brought her to a sense of healing that allowed her to trust herself again and consider being more social, Kate decided it was time to

open herself to finding love.

Her first forays into her community did not go well. Out of practice with just the basics of being social, Kate found herself at a loss for words, uncomfortable meeting new people, and lacking confidence that any man would want to speak with her.

"I just don't have that social ease I used to have," Kate commented one day. "You should have seen me when I was twenty – I was a hellraiser!"

She continued to describe the free spirit she had been in college: dancing in bars, inviting other students to join her table of friends, and having a reputation as the most cheerful person on campus. When I asked Kate to describe to me the qualities of that twenty-year-old self – what made her the strong, vibrant woman Kate remembered – she readily listed many.

Becoming Your Best Future Self

Healing from divorce requires focus, dedication, and commitment. To help support my clients in developing these traits, at the end of every meeting I give them an assignment for the upcoming week. On this day, my assignment for Kate was to identify three qualities that she most loved about her twenty-year-old self and find ways to embody them in her present-day life. The purpose was to connect Kate with a part of her identity that she valued and from which she could deliberately draw strength, inspiration, and action. She did this and returned the next week, breathlessly exclaiming, "That was fun!"

Having established a comfortable connection with this self, Kate expanded her work to include getting to know and then inhabit every aspect of who that twenty-year-old had been. She listened to her music, ate her favorite foods, adopted her hairstyle, dressed in her updated fashions, and even spoke with her energy. With constant connection to her younger self, Kate's present self relearned how to enjoy, be bold, lean in, and stand out. She joined a new church, through which she developed a vast and active social network. She also joined

a dating website, through which she is currently exploring group get-togethers and individual dates as she seeks The One.

Establishing your connection to and focusing on your past and present selves sets you up to create your vision and then a strategy for becoming the future self you most desire. As you construct your post-divorce identity, you'll notice that one self naturally leads to another and another and another, with an authentic core connection that continues to strengthen. My grandmother collected elephant figurines with their trunks up for good luck. As a world traveler, she'd picked up different depictions of elephants from places as close to home as California (she lived in San Diego) and as far away as Spain, Portugal, and India. When I was a child, what I loved about her collection was how it spread around her apartment like several herds. Of all the individual figurines, my favorite part of the collection was the elephants walking in a line holding each other's tails. I liked the connection of the many individuals through just one simple gesture. Your selves can create this same kind of connection, holding on to each other loosely to form one long line of traits, qualities, and characteristics that make up the overall you from past to present and on into your future. ■



This article has been excerpted and adapted from Your Life After Trauma: Powerful Practices to Reclaim Your Identity (W.W. Norton & Company, 2015) by Michele Rosenthal.

Like a therapist in your back pocket, this hands-on workbook can help you regain a sense of calm, confidence, and control on your road to recovery. Michele Rosenthal is a popular keynote speaker, award-winning blogger, award-nominated author, workshop/seminar leader, trauma-survivor, and certified professional coach.

www.yourlifeaftertraumabook.com

Heal From Feelings of Rejection



Feeling rejected is a normal part of grieving and letting go after a marriage ends. Here are seven ways to heal from feelings of rejection, and six ways to boost your self-esteem.

By Terry Gaspard, MSW

When a marriage dissolves because your partner leaves or betrays you, it's normal to experience feelings of rejection. After

being rejected, you're likely to become introspective and examine yourself in an attempt to figure out which of your faults caused him/her to leave.

Self-examination is part of the healing process, and it can help you relate to others in new ways. However, it's important to resist the temptation to feel

like a victim because this will prevent you from moving on with your life.

If you were blindsided by your partner leaving, it can be a devastating experience that leaves you feeling angry, sad, and self-critical. You may be in shock and feel shaken to the core of your being. Self-defeating thoughts can grab hold because you're vulnerable and trying to make sense of things. However, it's important to realize that feeling rejected is a normal part of grieving and letting go after a marriage ends.

One crucial step in overcoming feelings of rejection is to recognize that the breakup of your marriage may not be your fault. Because your love relationship ended does not necessarily mean that you are inadequate or that there's something wrong with you. Relationships end; the end of your relationship may have nothing to do with your shortcomings.

Although it's natural to go through a period of self-reflection when you're rejected by your partner, it's important to keep things in perspective. Ask yourself if your fears of being alone are preventing you from looking at the breakup honestly. For instance, it's likely that there have been problems in the relationship for some time and that one or both of you have been unhappy.

Part of the grieving process at the end of a relationship is accepting that what you wanted to happen no longer will happen. Thoughts might range from "We will never be sexually intimate again" to "We won't ever watch a TV show together again." During a counseling session, Caroline told me that the hardest part of being left by her husband John was facing not eating meals together after he moved out.

Is it possible that you are listening to destructive "inner voices" – which are rarely based in reality? According to Dr. Lisa Firestone, the author of *Conquer Your Inner Critical Voice* (New Harbinger Publications), these voices can cause us to stay in the victim role. "When we're listening to these destructive thoughts, we're more likely to feel humiliation than real



sadness over our loss," she notes in "Why Do Break Ups Hurt So Much?" (www.huffingtonpost.com, 07/17/2013). "Our inner critic fuels feelings of not being able to survive on our own, often saying that no one will ever love us. When these voices aren't viciously attacking us, they are often raging at our partner, which only supports a victimized orientation to a situation."

Seven Ways To Heal from Feelings of Rejection

1. **Accept that it's natural to feel rejected when a relationship ends.** Most likely, there have been problems in your marriage all along, but they are intensified during the divorce process.
2. **Don't take your divorce personally.** Just because your marriage is over, it doesn't mean you're inadequate or inferior – or there's something wrong with you. Give yourself a break.
3. **Focus on self-love.** You are a worthwhile person who doesn't have to let the end of your love relationship define your self-worth. No person can complete you.
4. **Work toward forgiving your ex and yourself.** Moving beyond feelings of anger, bitterness, and

resentment does not mean you condone their behavior. Forgiveness allows you to create a new story for your life. Research shows that practicing forgiveness is good for your health.

5. **Discover that relationships are our teachers.** It's easier to move on from feelings of rejection if you learn from your experiences and can approach the next partner with your eyes wide open.
6. **Adopt a mindset of adventure and expanding your interests.** Stay open to new experiences, hobbies, or interests that you couldn't pursue with your partner.
7. **Cultivate supportive relationships.** Being with people who accept and support you can help ease feelings of rejection. Get energized by the possibilities ahead for you.

An essential part of the healing process after divorce is recognizing and accepting that the way you feel about yourself affects the way you relate to others. Feelings of rejection are closely tied to feelings of self-worth and self-love. Consequently, as you learn to accept what happens and begin to love yourself again, your feelings of rejection will diminish. When you're connected to feelings of self-worth, you'll have more energy to relate to others in meaningful ways.

Six Ways To Boost Your Self-Esteem

1. **Focus on your potential instead of your limitations.** I am not the best athlete, but I can cook a gourmet meal and host a fun gathering. Keep practicing your craft, whether it's dancing or writing, and you'll find that persistence pays off.
2. **Use intentions to guide your journey to self-worth.** For example: "I will walk for 30 minutes today with my daughter and talk about her day." This will enable you to feel a sense of purpose in your life. Try to limit yourself to two intentions each day.
3. **Refuse to let feelings of rejection dictate your actions.** Try a new hobby or interest, take the initiative in a project at work, or invite a friend to the movies.
4. **Cultivate relationships that bring out the best in you.** Identify a potential new friend, join a book club, or get to know one of your current friends better. Try not to get too disappointed if it doesn't work out. Water finds its own level and not all friendships are meant to last.
5. **Examine self-defeating thought processes and substitute positive thoughts for negative ones.** For instance, instead of telling yourself, "I'll never find anyone to love me," tell yourself, "I'm growing and learning more about my relationship needs every day."
6. **Keep a success journal and write down three things you accomplish or feel good about each day.** Don't forget to include your intentions in this journal! For instance: "Intention: I will read for 60 minutes a day. Completed: I read a book about gardening and learned about how to plant vegetables."

Being Left vs. Leaving

Let's take a closer look at rejection and examine whether someone is a dumper or a dumpee in the divorce process. These two terms were coined by divorce expert Dr. Bruce Fisher in his groundbreaking book *Rebuilding: When Your Relationship Ends* (Impact Publishers). "Dumpers are the partners who leave the relationship, and they often feel considerable guilt; dumppees are the partners who want to hang on to the relationship, and they often experience strong feelings of rejection," explains Dr. Fisher. As a result, dumppees usually have a desire to work on the relationship, while dumpers are likely to feel guilty but are unwilling to make the changes needed to preserve the relationship. For instance, a dumpee might say, "Just tell me what you want me to change and I'll work on it," and a dumper might say, "I have to go and find myself."

Keep in mind that the roles of dumper and dumpee aren't always clearly defined and that sometimes they can be reversed. For instance, a partner might be told by his/her spouse that the marriage is over, and then the dumpee is the one who files for divorce. Sometimes, the dumpee simply gets tired of waiting and takes this bold step as a way to take charge of their life.

For your own sake, you need to learn to accept the breakup of your marriage and come to a place of "it is what it is." But healing takes time and patience. Consulting a counselor, support group, or divorce coach may help to facilitate healing. Be gentle with yourself on the journey.

Looking at how feelings of rejection may be impacting your mood and attitude toward life can help you gain a healthier perspective. Are you neglecting your health, interests, family, or friends due to grieving the loss of your marriage? It's critical that you don't fall prey to a victim mentality because your partner made a decision to end your relationship. Ultimately, being able to forgive yourself and your ex will help you to let go of negative

feelings. Developing a mindset that you don't have to be defined by your divorce experience can help you to heal and move forward with your life. ■



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www.movingpastdivorce.com

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Designing a Parenting Plan

Virginia Satir, a well-known psychologist in the family and divorce field, once said, “Parents are teachers of human beings, not owners of human beings.” This is a wise view to keep in mind when creating your parenting plan. A child needs the love and affection of both parents, but they also need both as teachers. These roles should override your desire to “own” your children. Ultimately, you cannot own them; you can only prepare them for their future. How well you prepare them will ultimately reflect your qualities as parents.

Another well-known expert in this field, Joan Kelly, has observed that, “It is not the divorce per se, but the conditions and agreements the parents create during and after the divorce that will determine the child’s adjustment.” The marriage is over, as are your lives as Mom and Dad parenting under the same roof. You will begin new lives as Mom and Dad parenting apart.

There are three basic types of living arrangements for children: sole custody, split custody, and shared custody. The most common is sole custody, in which one parent becomes the resident parent while the other has “reasonable access.” About 70% of all parenting plans result in the mom being the resident parent – although the number of fathers becoming the resident parent increases with income.

The Language of Parenting Plans

Most parents say they want to “win custody” of the kids. This suggests control – or possession – of the children is the goal. Instead, your goal should be to work out the best parenting plan for your children, so call it a parenting plan rather than a custody battle. The child may be in one parent’s home more than the other; refer to that person as the “primary residential parent,” not as the “custodial parent.” The other parent should be viewed as the “secondary

Here are the important issues you should consider as you design your parenting plan.

By Dr. Donald A. Gordon and Dr. Jack Arbuthnot

Take the time to design a good, flexible plan. Someday, as young adults, your children will look back on their childhood and judge how well you handled this difficult time. They'll look at how you cooperated, and remember if you put their interests ahead of your "marital issues."

residential parent," not someone who just has visitation rights. No caring and involved parent wants to just "visit" his or her kids.

In split parenting plans custody of the children is divided: one or more child/ren may go to one parent, and the other child/children the other; boys often go to fathers and girls to mothers. However, this is rare in initial separation decrees, and it generally only happens when there are unusual circumstances. It may occur when a child is old enough to choose which parent they wish to live with (age 12 in some jurisdictions). Many people believe it is a bad idea to separate siblings, but there isn't enough good research to corroborate this.

In shared parenting, both parents share legal control of the children. Shared decision-making does not mean shared time, which can vary from equal time (50/50) with each parent to 60/40 or even 65/35. With shared parenting, the children may live primarily with one parent but they may spend more time with the other parent than is normal in a non-shared parenting arrangement. The parent with whom the child lives most is called the primary residential parent, and the other is called the secondary residential parent.

In most areas, shared parenting is presumed to be the best plan for children. Judges must provide a strong reason if they wish to order some other arrangement; in some areas, judges have the authority to order shared parenting if they believe it would be best

for the child, or if one parent requests it.

Many judges require parents to develop a parenting plan before granting a divorce. Conflict between the parents can be minimized by a written plan stating specific dates and times when each is in charge of the child; because everything is in writing, there is less need for parents to negotiate or argue. Adherence to the plan will increase trust between the parents and encourage them to cooperate in the future.

Guiding Questions for Parenting Plans

There are several important issues you should think about as you design your parenting plan. Ask yourself:

1. What goals for our children do we both share?
2. How will we continue to be effective parents in separate households?
3. Do I only want to resolve our legal matters, or also our family issues?
4. How do we want our children to look back on this time and on our behavior as parents?

You need to spend time talking about what goals you have for your children, what their childhood should be like, what you want them to be like both as children and adults, and what each of you can contribute to these goals. Write it down on paper and share it with your children; they'll know that you both care about them, and they'll see that you're working together for their welfare. Set an example of cooperation

— even though it may be a heroic effort.

Parenting is difficult under the most ideal circumstances, and it is more of a challenge when done from two households. Plan how you will coordinate your efforts: plan for the big issues (like school, religion, etc.), and plan for the small, day-to-day stuff (such as transportation, parties, etc.). You should set up regular meetings, emails, or phone calls to catch up on important developments, work out schedules, and discuss concerns.

Your parenting plan will spell out conditions and terms — some of which can be legally enforced. Take the time to design a good, flexible plan. Someday, as young adults, your children will look back on their childhood and judge how well you both handled this difficult time. They will look at how you cooperated, and they'll remember if you put their interests ahead of your "marital issues."

Frequency of Contact with Each Parent

The amount of time children should spend with each parent is one of the most fought-over issues in a family break-up. It is also the most misunderstood by all involved — including parents, lawyers, and judges. As a result, parenting plans are often flawed, which can cause a great deal of emotional suffering for children.

There has been much psychological research on children's attachment to their parents, and the most recent findings are clear: children — particularly young children — need frequent and meaningful contact with both parents. A young child becomes deeply attached to both parents at a very early age; to be separated from either parent causes distress and can even cause trauma.

Young children need frequent transitions to ensure continuity and provide comfort. This goes against what many people assume is "common sense", and many parents, lawyers, and judges misunderstand this fact. Although quality of contact is more important than quantity, there must be enough quantity.

Infants and toddlers form bonds with both parents, and extended separations put these bonds at risk over time. Fathers, especially, are likely to drop out of the child's life. If court orders restrict the father's access to a young child, it may cause a decline in contact with the father over time. This decline in contact can also happen with the mother.

The ideal situation for young children is to interact with both parents daily. Some interaction is functional, including meals, bedtime routines, limit-setting, discipline, and play. After age two, most children can tolerate two back-to-back overnights with one parent. Avoid long separations lasting more than five days.

Frequent contact will mean more transitions from one house to the other. Many people – including some judges – automatically assume this is bad. They assume that frequent transitions will upset a child, and should be avoided. But, there is evidence to the contrary: even a young child will get used to frequent transitions if they are not too stressful.

Unfortunately, a concept of stability – one-home, one-bed – for children still prevails. The concept has been emphasized too much in many courts, and it is to the detriment of the child's other needs. They need strong and meaningful relationships with both parents, and most children adapt quickly to having two homes.

Research points out that less frequent transitions may cause more stress. Children must leave the home they have been in for a week or more, and they must also leave their second parent and go “home” with the prospect of not seeing the second parent for a long time. Frequent transitions between homes eliminate this problem.

Outlining the Issues

You must discuss the parenting plan for your child, and both parents must be clear about the issues. What assumptions should you start with? Here are the major issues that most parents face:

1. A child needs two loving, caring, competent parents.
2. Both parents have a right to an active role in their child's development.
3. Both parents must be willing to share in the tasks of parenthood.
4. Conflict and competition over the children will hurt both them and you.

Your parenting plan should be specific; this way, everyone is clear about what will happen and when. Here are some reasons to be as specific as possible:

1. Children need predictability.
2. Parents will experience less conflict if plans are specific.
3. It is easier to recognize when a plan needs to be modified when its terms are clearly spelled out in detail.
4. The time and energy of the courts and lawyers will be better used if a plan is specific. It will result in fewer phone calls in the middle of the night, and fewer court filings.

Finally, recognize that no plan is perfect, and most plans need to change over time as children develop and their lives and needs change.

Flexibility Is Essential

Although parenting plans need to be specific to minimize conflict and misunderstandings, be aware that situations – and people – change over time. For most families, anger diminishes over time. Parents usually remarry or re-couple, and stepchildren may enter the picture. And, of course, your own children will age and mature. Their interests will change, and the need for parent input in their lives will also change.

A parenting plan should not be carved in stone. It is not an unchanging document, and you should be prepared to modify it over time. The truly wise mother and father can sometimes anticipate some future changes, which could be built into the original court decree. However, few of us are able to predict the future, so be prepared to work with the other parent. You'll have to make

changes when necessary, and the best way to do this is by mutual agreement.

If you cannot create a parenting plan yourselves, work with a mediator, parenting expert, or other third party. Put into your plan that you both agree to mediate before court action. ■



This article was adapted with permission from the book What About the Children? A Simple Guide For Divorced/ Separated And Divorcing Parents (CDE, eighth edition, 2011) by Donald A. Gordon (Ph.D.) and Jack Arbuthnot (Ph.D.). Based in Athens, Ohio, the Center for Divorce Education (CDE) is a non-profit corporation founded in 1987 by a



consortium of attorneys and psychologists. The CDE is dedicated to advocating for children and helping parents to minimize the harmful effects that divorce and separation has on children. More information is available at online.divorce-education.com

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By Diana Weiss-Wisdom, Ph.D.

Creating a Successful Stepfamily

Points to Ponder

- As stepparents, we are stepping into an existing family structure and having to create a place for ourselves.
- In reality, we have very little control – especially in the beginning.
- We can look for opportunities to make a positive contribution.
- We should be open to feedback and proceed cautiously.
- It is possible to significantly affect the adjustment and well-being of our new family.

In these increasingly complex times, maintaining a long-term relationship is challenging enough; when you add ex-spouses and children from previous marriages into the mix, making a happy life together can seem daunting. But it is possible. Many people have done it. And if you and your spouse are committed to doing so, you will find some tools here that can help you.

Becoming really great parents requires adults to develop a new level

Successful stepparenting challenges you to take your character development to a higher level: to consider the importance of the parent-child relationship even when it may seem to undermine your own needs at times.

of maturity in which they care about the needs of another person more than their own. With healthy adults, there is a strong biological imperative to take care of your children. With stepparents, this innate wiring is a little weaker, because we didn't give birth to these children and in most cases we have not known them since they were babies. Successful stepparenting challenges us to take our character development to a higher level: to discipline ourselves to consider the importance of the parent-child relationship even when it may seem to undermine our own needs at times. The experience of being a stepparent can be a teacher, giving us an opportunity to deepen our capacity to love.

According to the most recent

statistics, blended families are rapidly outnumbering the traditional nuclear family. And second marriages with children have a 60–70% likelihood of ending in divorce. With this kind of success rate, it's a wonder that people keep trying; but we are social beings with a genetic imperative to bond. Thankfully, when it comes to love, hope springs eternal. Being a stepparent can provide an opening to love just for the sake of loving.

More Points to Ponder

- As stepparents, we play an important role in creating a family in which every member can thrive.
- When we choose to marry someone with children, thereby becoming

stepparents, we make a commitment to our spouse and children.

- Divorced families have had enough of instability and dysfunction; they need both partners to be committed and bring the best of ourselves to the table.

For some stepparents, it may seem like you are stepping into a fractured family system and trying to make it whole again, in a different shape, while some family members may still be attached to the old family structure. Nevertheless, millions of stepparents are helping their new families to heal in various ways every day. You may feel you have very little control in your blended family. It's a tough balancing act to keep in mind the rights, needs, and wants of others while being true to your own self. Most divorced families have at least a little leftover baggage. When you marry someone who has had children with another adult with whom they can no longer live for whatever reason, there are bound to be complications. It's possible that you've never been in such a challenging situation before. I can't think of anything that motivates us to stretch and grow our character as much as true love.

Seven Key Components for Successful Stepparenting

1. Commitment
2. Love
3. Self-awareness
4. Empathy
5. A good marriage
6. Optimism
7. Resiliency

Exercises

1. Write down two positive qualities of each individual in your step-family; include your spouse, your children, your stepchildren, and the other biological parents.
2. What are two things that you and your spouse can do to cooperate with the other biological parents of your children and stepchildren?

3. What are some of your core values or spiritual beliefs that can help you cope and flourish as a stepparent? ■



This article has been edited and excerpted from Wisdom on Stepparenting: How To Succeed Where Others Fail (CreateSpace, 2012) by Diana Weiss-Wisdom (Ph.D.). Written by a psychologist and stepmother, this book teaches stepparents how to be resilient, happy, and confident in their relationship with their spouse and their stepchildren. Dr. Weiss-Wisdom offers realistic coping strategies and proven techniques to help individuals build caring relationships with their stepchildren. In private practice in San Diego, CA for more than 25 years, Dr. Weiss-Wisdom is a noted expert in marriage counseling, stepfamily issues, and psychological testing.

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Parenting is a pretty tough job, but stepparenting can be even harder. What are your roles and responsibilities? How does it compare with parenting your biological children? And what happens to step-relationships when the stepfamily breaks up?

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soon-to-be ex-spouse during the divorce process, which will hinder their ability to work productively with the other side to resolve important matters. If you're thinking of representing yourself, you need to be aware that your emotional state may prevent you from making wise decisions about the future. 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 – or even introduce you to other professionals who can help you channel your emotions into positive strategies. A good lawyer can let you know when you're being unreasonable or are asking for something that's more-or-less impossible. When emotions are running high, it is easy to say or do things that may come off as aggressive or vindictive; a lawyer creates a buffer between you and the other side, and will do his/her best to prevent you from allowing your emotions to sabotage your case.

3) A lawyer can suggest options you didn't even know existed.

A family lawyer can evaluate your situation and let you know the likely outcome if you take your case to court. Based on their experience with the judge and similar cases to yours, they'll be able to offer a variety of legally-acceptable options to settle your case. If you and your spouse represent yourselves, you may agree on items that the judge will reject; when that happens, you're causing more work and more delay for yourself, your spouse, the judge, and the court system. A lawyer will help you create a reasonable settlement proposal; if the proposal is coming from the other side, your lawyer will let you know whether to settle, make a counter-proposal, or fight it out in court.

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Your Emotional Filing Cabinet



By Lynn Kaplan, Divorce Coach

Working through the legal, financial, and even practical issues of divorce can trigger strong emotions. Here's a way to make sure they don't overwhelm you – or stop you from making wise decisions.

Anyone considering, immersed in, or wading through the years after separation and divorce knows of the intense emotional rollercoaster that goes along with this huge life transition. These emotions can be highly charged, and they can feel – or actually be – out of control. They can seep into work situations, and drain relationships with friends and family. These free-ranging emotions can get in the way of making wise decisions while working with mediators, lawyers, and other professionals, and they can negatively affect communication with ex-spouses.

Family members, friends, self-help books, therapists, and divorce doulas/coaches can help you find your personal path to wellness of mind and heart during and after divorce. There are also some proven tips and strategies to help you cope with the upheaval of emotions – and to make positive and long-lasting life decisions as you move through the process.

As you chip away at the piles of paperwork associated with the divorce process (from credit card and mortgage statements to tax returns and notice of assessments), the key to staying

organized and in control is a good filing system. Labeling files, filling each folder with the proper documents and notes, organizing the folders in a filing box or cabinet – all of these actions help in managing the business side of divorce.

Now imagine setting up a similar filing system for your emotions. Begin by acknowledging and naming the emotion: grief, anger, fear, frustration, guilt, or even relief are all associated with this life transition. Working through the legal, financial, and practical issues of divorce can trigger strong emotions. Are you afraid of how your children might

respond? Are you aggravated that your ex is not making support payments on time? What is the emotion you're experiencing, and what is the thought or action generating the emotion?

Once you're able to identify the emotion, visualize a file folder and a filing box in your mind's eye, then place each emotion in its labeled file. The object of this exercise is not to repress or deny your emotions – just the opposite. You're going to acknowledge each emotion, understand its importance and intensity, and then file it in the folder that feels right. You can take out and examine the emotion, or place it back in the folder until you have the time and energy to explore and resolve it. You can keep adding more files as necessary, while at the same time closing others you've resolved.

Once you've set up your "Emotional Filing Cabinet", you need to consider how and when to use it. The challenge will be to find the right time and place to file, examine, and resolve the emotions during this time of transition and upheaval.

For example, if you need to write an email to your ex-spouse regarding financials or scheduling, but there's unresolved hostility between you, it's easy to give those feelings of anger and frustration an outlet in your email. Although your feelings are real and understandable, will an angry email truly help to resolve the situation – or is it likely to make everything worse? Instead, open up the file that holds those emotions, then write a draft email letting those hot emotions out of their file in a controlled manner. Do not send this draft to your ex-spouse! If that SEND button is calling your name, send it off to a trusted friend, your therapist, your divorce doula or coach – to someone who will truly hear your pain and will be there to help you work through it. Then slip those emotions back into that file, put the file back inside the Emotional Filing Cabinet, and find the strength to write a calm, businesslike email – one that is more likely to produce the results you're looking for than an email filled with angry accusations.

This method can also be applied to texts: by writing an emotional draft and sending it to a safe place, you can be "heard" without feeding the storm.

Use this Emotional Filing System when meeting with your mediator, lawyer, or financial professional – whenever you need to contain your emotions so they don't prevent you from making wise decisions. You'll know that the emotion is still there, tucked away in its proper file to bring out when it is safe and not detrimental to the present situation. Venting at the right time and place (and to the right person) can be key to your emotional recovery – and to preventing you from making "scorched-earth" decisions that will destroy your future.

You may have some extremely painful emotions that you may need to file deeply away until the dust settles. Find the right therapist to help you deal with the contents of this emotional file – which will be waiting for you, organized and ready to be opened.

In addition to creating your Emotional Filing Cabinet, keeping a journal can be helpful. Finding the time in your daily or weekly life to write down how your emotions are growing and changing can assist in keeping them in place. A journal is also a good place to vent, to write down those strong, angry, frustrating, and sometimes irrational feelings.

Everyone experiences strong and sometimes overpowering emotions during separation and divorce; the key is knowing where to place each emotion, to understand and accept them, but to not let them get the better of you. Using this Emotional Filing System will help you on the journey to a balanced and productive life. ■



Using her training as a family mediator and parenting coordinator, Lynn Kaplan supports individuals through the logistical and emotional challenges of separation and divorce.

She helps people across North America turn obstacles into opportunities, working with clients in person, via phone, or Skype.
www.lynnkaplan.ca

5 Reasons / Continued from page 29

4) One word: paperwork.

Going through a divorce can feel like being buried alive under a mountain of paperwork to be filled out and filed with the court. Knowing which forms you'll need for your unique situation can be challenging, and collecting all the information to complete them can be both difficult and tedious. However, producing complete paperwork is crucial: the judge will rely heavily on your documents to decide the outcome of your case. Using the wrong numbers on one form and the wrong tone or words on another could result in the judge perceiving you as careless or combative. If you omit something by mistake, the other side might accuse you of trying to hide information – which will damage your credibility and your case. A family lawyer knows how to fill out the paperwork properly and persuasively, increasing the chances that a judge will view your side of the argument favorably. Today, many cases are bogged-down in the court system due to incomplete work presented by do-it-yourself divorcees.

5) A lawyer can help you focus on the Big Picture.

While you may be solely focused on "winning" the case, a family lawyer will concentrate on creating the best deal possible – which may mean helping you to compromise on some issues so that you can get more of your "must haves." In divorce, a good deal is one where both sides gave up some of what they had hoped to gain, but both can live with the settlement – literally. Family lawyers represent individuals with finite resources, not big corporations who have unlimited money to throw at a case, so they know cost is important. A good divorce lawyer will advise you not to waste your money by fighting over every issue, and they can help you set your priorities so you end up with more of what you actually need – even if you have to give up some of what you want to achieve it. ■

Divorce Settlements and Executive Compensation

An introduction to dividing stock options, restricted stock, or other executive compensation during divorce.

By Nancy Hetrick, CDFA™

If you or your spouse must decide how to separate stock options, restricted stock (RSU), or other executive compensation, it can be challenging at best. Several of these items provide income and can be difficult to value – or even understand! Let me walk you through a primer and try to remove some of the mystery.

Employee Stock Options

The most common type of non-wage compensation used to be stock options in shares of the employer company.

Accounting rule changes have made them less common, but there are still plenty of plans out there. Occasionally, the options can even be for shares of a different, related company. There are two primary types of stock options: Incentive Stock Options (ISOs) and Non-Qualified Stock Options (NQs). Generally, you won't see ISOs anymore since recent tax changes have made them less advantageous for employers. The difference between the two is in tax treatment and transferability. Stock options give an employee the right – not the obligation – to buy

stock at a discount at some date in the future and are usually subject to some sort of vesting schedule. Where it gets tricky is if the options are partially vested at the time of divorce but can't be touched for four more years. Obviously, some of the intrinsic value belongs to the spouse, but how much? The calculations are ugly. Trust me: you need to bring in an expert to perform the calculations correctly.

Restricted Stock

Restricted stock is now the most commonly-used form of executive compensation. These are shares of company stock given to an employee as either compensation for past performance or an incentive for future performance. It's critical to get the actual grant documents to know which the case is since it makes a big difference when determining how many of the shares are marital property. They can be in two forms: either actual shares of stock (RSAs), or a right to acquire shares at vesting (RSUs). RSAs have less risk than RSUs, and they are usually worth something. Again, depending on award dates, vesting schedules, dates of marriage and separation, the marital portion can be quite complex to calculate, but it is critical that you have it done. This is a job for a financial expert familiar with executive compensation issues.

Employee Stock Purchase Plan

This is a benefit that allows the employee to buy company stock at some regular frequency, usually at a price that is discounted from the current market price. Purchased shares can be sold immediately, or they can be held for at least a year for more favorable tax treatment.

Deferred Compensation Plans

With this option, the employee can choose to defer some portion of current compensation until a future date. These deferrals may be salary, bonus, or even



equity compensation. Sometimes the employer will also match these deferrals. They are totally discretionary, so any spousal maintenance should be based on total compensation before any deferrals. Any balances in the plan are likely marital property as well and should be analyzed carefully. Most plans are distributable at retirement, but some plans allow distributions during employment as well. These plans can also be either qualified, pre-tax contributions or non-qualified.

My spouse has executive compensation and has filed for divorce. Now what?

Do yourself a favor and bring in a financial expert as early as possible, preferably before the discovery phase. A Certified Divorce Financial Analyst® (CDFA™) should be able to provide you with a list of exactly what documents will be necessary to properly value the assets and determine marital property vs. separate property. This will prevent any last minute scrambling if you end up at trial. Most CDFA™ professionals are qualified to do this, but not all. Be sure to find one who is well-versed in executive compensation.

It will also help if the financial expert is available for any depositions so that he or she can be qualified as an

expert early and preview for the other party the quality of financial information that you're having prepared. Sometimes, this is just what it takes to encourage a settlement!

The financial expert can also help ensure that the final Settlement Agreement is written to properly reflect the way the compensation will be handled. Executive compensation accounts are not usually eligible to be given to a non-employee spouse at the time of divorce, so the employee spouse must have very specific instructions on what must happen to specific shares, options, and grants upon vesting that takes into account the taxation responsibilities, etc.

Executive compensation can be very complicated, and if you take it on yourself, you're exposing yourself to a lot of risk. These assets are often substantial pieces of the marital pie and it is critical that they are valued correctly so that you can negotiate the best settlement. ■



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www.SmarterDivorceSolutions.com.

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