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MAGAZINE

Befriending Your Ex?

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Coping with an
Emotional Divorce

Answers to
Frequently Asked
Questions



contents...

feature stories

- **Befriending Your Ex**
Make life better for you, your kids, and, yes, your ex.
- **Coping with an Emotional Divorce**
Unpack your emotional baggage, take a step away from the past and move forward.

common divorce questions

- **Frequently Asked Questions Related to Divorce**
Local professionals answering frequently asked questions.
- **Special FAQs on Pensions and QDROs**
Retirement plans and pensions are important and complicated assets that need special attention.

tips, advice and insights

- **Tax Tips and Traps**
Some good and not so obvious financial advice about divorce and taxes.
- **Surviving Divorce**
Tips from a family lawyer on what you should know before, during and after a divorce.
- **Quality Virtual Visits with Your Children**
Today's technology offers parents more opportunities to spend time with their children.
- **Your Divorce Art & Stories**
A real story from one of our readers who used art to heal herself after her divorce.

your essential divorce guide

- **Understanding the Divorce Process**
- **Selecting Your Professional Divorce Team**
- **Safe Harbor**
- **How to Work with Your Divorce Lawyer**
- **Introduction to Divorce Mediation**
- **Rules for Divorcing with Children**
- **Letting Go**

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Do I have to pay alimony forever?

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BEFRIENDING YOUR EX

Befriending an ex is a process and a relationship that takes time and effort, but it can be accomplished if you are truly committed to doing so.

By Judith Ruskay Rabinor

What Befriending Is

Stereotypical tales of bitter divorces and their ensuing endless warfare have affected most of us. We have taken our cues about how ex-spouses behave and feel toward their exes from popular movies and stories. Yet, what I've experienced in my personal life and learned in my office is that many divorced people can and do form a friendly, supportive and communicative relationship with their ex-spouses.

Befriending is a process and a relationship that takes time and effort.

It may involve going through unique periods of darkness and pain, but can be accomplished if you are truly committed. The circumstances under which your marriage ended are very relevant to your relationship going forward and to the steps you will need to take to develop a befriended relationship.

Befriending Is about Developing a New Relationship

Befriending your ex-spouse is about forming a new and positive relationship that is different from the one you had as a married couple. It's starting

over, making a conscious, mindful and deliberate effort to let go of past hurts, wounds, and beliefs. This new relationship is likely to begin when you focus on the best interests of your children, and it will continue to include emphasizing goodwill, collaboration and cooperation as you and your ex navigate the specific details of your life, and if you have children, their lives.

What's important is the quality of the relationship, what I call a commitment to the five "Cs" of befriending:

- Communication
- Collaboration



- Compromise
- Compassion
- Celebration

What Befriending Is Not

Befriending your ex is not about retaining the intimacy you once had as a married couple. You can no longer expect to know the details of how your ex spends their time and money, or whom they see. You can no longer expect them to be available to you 24/7. You can no longer rely on them for emotional support for the events in your life that don't involve the children. Although you may find that your ex can be emotionally supportive, this shouldn't be a given. Your physical, or sexual, connection is over, even if at times you feel sexually attracted to one another. And — this may be the hardest one — although you may often have angry feelings toward your ex, you no longer have the right to act on them. We can't always control our emotions, but we can control our actions. And now it's up to you to control your behavior.

Why Befriend Your Ex?

- **For Your Children**

If you and your ex-spouse share children, you have created a bond that is far stronger than anything that could be broken by a signature on a divorce decree. Regardless of your custody agreement, you won't be able to excise your ex from your life forever because your ex is your child's parent forever. One of the most important and consistent research findings regarding the adjustment of children to divorce is that children who have two involved parents adjust to divorce far easier than those who do not. Since you can't get your ex spouse out of your life completely, you might as well develop the most positive relationship you can.

- **Avoiding the Trickle-Down Effect**

Ranked as one of the top stressors in adult life, divorce is said to bring



**We can't always control our emotions,
but we can control our actions.
And now it's up to you to control your behavior.**

out the worst in people. When compared to children from intact families, children in adversarial divorces are at greater risk of experiencing a whole host of future psychological problems. Being locked into a hostile or alienated relationship with your ex is arguably the worst stress for your children. Children absorb parental stress. Being mindful of this trickle-down effect will help you minimize the stress of your divorce on your children.

- **Children Benefit When Parents Cooperate**

Arguably the number one predictor of how children of divorced parents fare emotionally and psychologically is the degree to which their parents can cooperate and communicate. Even if you were in a high

conflict marriage, the odds are that if you work at it, you will be able to get along as parents.

- **For Your Own Well-Being**

Life is precarious, having enduring connections with others helps all of us feel more grounded and secure. Even if, right now, you are still soothing the wounds of your divorce, your ex might be able to be a compassionate co-parent and a generous collaborator. Hopefully, your ex is someone whom you once loved and who loved you. You don't want to worry about a continuing negative relationship with the person with whom you are likely to share many extraordinary moments in your children's lives. Remaining enemies with your ex is bad for your mental and physical health.

When You Should Not Try to Befriend Your Ex

Befriending an ex isn't appropriate for everyone. If your ex-spouse is physically or emotionally abusive, or neglectful to you or your children, you may need to create space rather than connection.

Substance abuse is another situation that mitigates befriending or at least requires careful evaluation. In this case, consider:

- Has your ex expressed genuine remorse?
- Has your ex begun treatment, and if so, do you see these behaviors changing?
- Does your ex agree that it's crucial that these behaviors be stopped?

If you answered yes to these questions, consider letting go of the past. If, however, you answered no, befriending may not be an appropriate option right now, and further changes and communication may be necessary before you can consider it.

What Gets in the Way of Befriending

Even with the best of intentions, roadblocks may emerge that make you stumble in your befriending process. These roadblocks fit into one of two categories:

• Unrealistic Beliefs

Unrealistic beliefs about the kind of relationship we are "supposed" to have when we divorce surround us in the images found in popular culture and society. To overcome unrealistic beliefs, first examine your belief system, and second, let go of or revise any ways of thinking that are not useful, that are dysfunctional, and that may be getting in the way of befriending your ex.

• Difficult Emotions

It's easy to harbour animosity, pain, or both toward your ex, who has

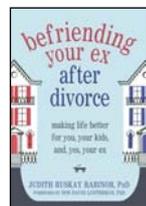
undoubtedly hurt or angered you. You should embrace your emotions, regardless of how difficult it is to deal with them. However, that's not the same as having a license to act them out. In fact, the opposite is true: learning to feel, accept, and manage your emotions allows you to feel safer about embracing them if only because you won't fear being overcome by them.

Creating a New Vision

Whether you realize it or not, you are always choosing a perspective that either enriches or diminishes your reality.

In the book, *What Happy People Know*, psychologists Dan Baker and Cameron Stauth remind us that no matter how difficult your life is, you always have the power to rise above suffering. This idea is particularly important during divorce, since divorce always brings us face to face with new and challenging situations, events and emotions. We bring our chosen perspectives to every new challenge. Becoming mindful that we always bring our own biases or chosen perspectives to each new situation and event we face is an important step in assessing reality. ■

This article was condensed and adapted by Divorce Magazine with permission from New Harbinger Publications from the book *Befriending Your Ex* © 2013 by Judith Ruskay Rabinor.



Judith Ruskay Rabinor, PhD, is also author of *A Starving Madness* and founder and director of the American Eating Disorders Center of Long Island. She has a private practice in New York City. Divorced more than twenty-five years ago, Rabinor has since remarried and co-parented her two grown children. *Befriending Your Ex* can be found here: www.newharbinger.com.

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A SPECIAL ADVERTISING FEATURE

Coping With an Emotional Divorce

Strategies to help you unpack your emotional baggage, take a step away from the past, and move forward.

By Terry L. Orbuch

After a relationship or breakup, it's important to have an outlet for your emotional stress. A successful strategy to unpack your emotions is to identify ways to constructively release your emotions. On the good side, these outlets can also provide you with many other positive benefits. Here are a few ideas to get you started:

Get Physical

High-energy exercise or physical activity can zap your stress and your negative emotions. Exercise decreases stress hormones like cortisol and, at the same time, increases your body's "feel good" endorphins, which will give your mood an instant boost. By hitting a punching bag at the gym or grunting through your last set of weights, you'll also release pent-up anger that could otherwise impact your health. In addition, certain sports like swimming, golf and yoga provide you with personal time to effectively reflect and meditate on your feelings. And new research suggests that physical activity may even reduce your body's reaction to future stress. So by exercising now, your emotions will be even easier to deal with later on.

Find a Sense of Community

Take in roommates, join a club or gym, or move to a condo complex. Seek the company of good friends and family. Renewing your ties to the community not only provides you with a source of emotional support, it's a great way to meet new people.

Volunteer

By volunteering, you become less concerned with your own problems; your own personal issues may suddenly appear very small compared to the challenges of those

**Paint, play music, garden, or write.
Creative activities make you live in the present.**

you are helping. Put the focus on others and what you can do for them. You'll feel good about helping others, you'll keep your mind from dwelling on your emotions, and you'll keep your perspective in check.

Create!

Paint, play music, garden, or write. Creative activities make you live in the present. These right-brain activities also continue to stimulate the emotional and intuitive side of your brain.

Scream in a Safe Place

Get inside your car where no one can hear or see you, and then yell at your ex at the top of your lungs until you've said absolutely everything you need to say and have gotten it all off your chest. After you're through, you'll feel renewed.

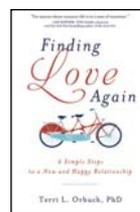
Write a Letter to Your Ex

Try writing a really honest letter to your ex without holding back – let loose and really give your ex a piece of your mind, or clear the air and confess the mistakes that you made in the relationship. When you are done, put the letter away. Don't send it. That's right, save it. This letter is for you. Write a letter like this once a week or once a month, and keep it in a special place that only you know about. You can describe your anger, sadness, frustration, guilt, or other emotions. Putting your feelings on paper will help to defuse your emotions, and over time, reviewing your letters will allow you to see the change in yourself and how you are putting the past behind you.

A Word of Warning! Again, whatever you do, do not send a letter to your ex. No matter how great you think your

letters are, they are for your eyes only. Why? When we share something with others, even if this something is just a letter or email, we subconsciously expect a response in return. Writing a letter to your ex isn't a reason to start talking with your ex again, and it's not a way to "get back at" your ex-partner. Writing this letter is completely and totally 100 percent for you. ■

This article was adapted and condensed by *Divorce Magazine* from the book *Finding Love Again* © 2012 by Terri L. Orbuch, with permission from Sourcebooks.



Dr. Terri L. Orbuch is a relationship expert, a therapist, and the project director for the Early Years of Marriage project funded by the National Institute of Health, a landmark study of marriage, divorce and repartnering. Dr. Orbuch is a research professor at the Institute for Social Research at the University of Michigan and a professor at Oakland University. For more information visit: www.drterrihelovedoctor.com.

A Letter to Your Ex: How to Express Your Anger

Are you angry with your ex, but find that you're having a hard time letting your feelings out? Does your letter sound too wimpy, too tame, or too nice? Follow these four steps to release your anger:

- 1. Admit your anger.** Would your friends or family be surprised to know just how angry you are? Well, they might be surprised, but your ex should know better. Admit to your ex, and yourself, just how angry you are.
- 2. Tell your ex why you are angry.** Are you angry because your ex cheated on you? Spent your savings? Never wanted to have sex? Was never home? Didn't pay attention to you? Tell your ex exactly why you're angry, and don't hold back.
- 3. Allow yourself to feel negative.** Do you feel like your ex ruined your life? Are you upset that your ex lavishly spent money on a Caribbean cruise instead of your children? Do you feel like your ex is a terrible parent? Let it rip!
- 4. Explain how your ex has affected your life.** What are you dealing with thanks to your ex? Are you now a single parent? Are you struggling financially? Do you miss Friday night pizza or card games with your mutual friends? Let your ex know what he or she should feel responsible for, and the consequences you are dealing with, as a result of your breakup.

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We only practice family law. Three of our attorneys are certified by the State Bar of California as Family Law Specialists. Our vast experience covers all divorce matters from relatively straightforward uncontested divorces to highly

contentious divorces involving complex property division and child custody disputes to divorce mediation. We frequently appear in front of the same courts — and are therefore very familiar with the tendencies of the Judges, local court personnel, and the nuances of local court procedures.

Our Up-to-Date Knowledge

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Common Divorce

Questions



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

LEGAL ISSUES

“What should I do before I tell my spouse that I want a divorce?”

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

Depending upon the circumstances of your case, you may want to consider marriage counseling. If you have one, you may want to chat with your priest or rabbi. If you do not want to end the marriage, you should try talking with your spouse to determine if there is anything that can be done to salvage the marriage.

If there is no possibility of salvaging the marriage, and you are the spouse

who was not in charge of the financials, it would behoove you to collect all of the most recent tax returns and financial documents including but not limited to bank statements, credit card statements, income statements, and or all financial records concerning your spouse’s income and business records (if applicable) so that you know exactly where you stand when you file for divorce.

A wise man once said, “One of the most important things you can know about a situation, is where you stand because then you can act accordingly.” By having a detailed understanding of you and your spouse’s financial situation, you can know where you stand financially and then you and your lawyer can act accordingly.

The next thing you should do is consult with a lawyer prior to informing your spouse. This way you and your lawyer can determine a plan of action. Once you inform your spouse that you want a divorce, they may conceal the assets or community books and records, but if you have obtained a copy of all of the books and records that you can, prior to informing them of your decision, you will be in a better position to address any chicanery by your spouse.

With the help of an attorney, you may explore the options of hiring a forensic accountant who could assist in analyzing the family expenses, income, and overall community assets.

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What are the grounds for divorce in California and the residency requirements?"

Donald Schweitzer, a family lawyer in Pasadena, answers:

In California, spouses who wish to end their marriage must meet one of the two legal grounds for divorce. The first ground is irreconcilable differences, and the second ground is incurable insanity. If the spouses meet these grounds, they may continue forth with the divorce process.

Spouses who wish to divorce must make sure that they meet state mandated residency requirements before they begin the divorce process. In the state of California:

- A judgment of dissolution of marriage may not be entered unless one spouse has been a resident of California for six months and of the county in which the petition is filed for three months.
- For the purpose of a petition for the dissolution of marriage, the husband and the wife may each have separate residences depending upon proof of the fact and not upon legal presumptions.

"Our house is an 'under water' property and it's the main reason my spouse and I haven't moved forward with a divorce. We just can't stand living together any longer and we want to get on with our lives. Do you have any suggestions as to how we can do so?"

Erik Newton, a family lawyer in San Francisco, answers:

Unfortunately there is no easy solution when your house is "underwater" and you are going through a divorce. There are, however, some ways to approach the dilemma in a more creative fashion depending upon the current relationship between you and your spouse and the level of trust between you. If there is sufficient trust,

an easy solution is for one of you to remain in the house and be responsible for the mortgage and other expenses, promising (in writing, preferably in a Marital Settlement Agreement or Stipulated Judgment) to pay all expenses on a timely basis so that the other spouse's credit is not impacted by late payments and deficiencies. For couples who opt to do this, provisions can be included to allow for a forced sale if the mortgage gets behind or if there are substantial deficiencies. This provision would need to be spelled out clearly so that there is no question as to what the rights and responsibilities are for both of you. The provisions should also require the spouse living in the home to make efforts to refinance the mortgage within a certain period of time. For example: Jim and Jean have a home which is underwater. Jim has sufficient money to pay the mortgage and wants to remain in the house. Jean agrees to move out. They draft a provision which requires Jim to pay all the mortgage, insurance, property taxes, repairs, etc. on the residence and immediately begin exploring refinance options to remove Jean's name from the mortgage, a process that needs to be completed within 12 months. If Jim gets more than 2 months behind in the mortgage payments, Jean has the right to request the sale of the family residence.

This works well with divorcing couples who have trust in one another. Understandably, however, there are couples who — at the point of divorce — do not have sufficient trust. If the spouse hoping to keep the house cannot immediately refinance the house, the best option would be to consider a short-sale of the family residence or simply sell the residence and share the loss.

"My spouse and I are not getting along and I'm planning to move out of the home we bought 10 years ago. Is moving out a wise thing to do?"

David Miller, a family lawyer in Irvine, answers:

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

Can one lawyer represent both my spouse and me? I think it would save us both time and money.

Judith Nesburn, a family lawyer and mediator in Los Angeles, answers:

You cannot each be represented by the same lawyer, because an attorney owes a duty of loyalty to his/her client and a duty of care in representing his/her client's interests. There may be certain situations in which there is a conflict between your best interests and those of your husband. In those situations, the attorney could not represent both of you without breaching his duties under California law.

However, you have other options if you and your husband wish to save time and money during the divorce process. For example, you can hire a mediator who can work with both of you to help you find solutions which address each of your needs. A good divorce mediator is specially trained to help you communicate effectively, consider alternatives which can work for you and for your family and keep your children's interests as a priority. The mediator can also help you understand and complete the many forms, such as disclosure forms, which California requires. If you wish, you can each hire a "consulting attorney" to meet with on a limited basis during the mediation process — because his or her role is limited, the cost will also be limited. Finally, the more effort the two of you put into educating yourself about your finances and other

challenges during this time of transition and thinking about realistic solutions to these challenges, the more prepared you will be for the mediation process and the less costly it will be.

There are also other, cost effective alternatives: Many courthouses have self help centers, with employees trained to guide you through the maze of forms necessary to obtain a divorce. However, they cannot give you any legal advice. There are self help books and websites which explain the process of divorce and may include workbooks to help you review your assets and address issues to be resolved. Finally, many communities have agencies which provide services on a sliding scale or may even offer “no fee” services for certain clients who meet stated criteria.

“What’s the Difference between a Legal Document Assistant and a Paralegal?”

Michael Rojas, a paralegal in Los Angeles, answers:

I was in court today and I was talking with an attorney who did not know what an LDA was. In fact, most people do not know the difference between a legal document assistant or paralegal. Many clients need to have the main difference between the two explained to them. The distinction is simple: only a legal document assistant can work directly for you, the consumer. He or she must have a current bond and be registered with the county in where they work. Legal document assistants can help you with an array of litigation support.

A paralegal, on the other hand, also known as a legal assistant, is a professional who is qualified by education, and or training, to assist lawyers in providing legal services or litigation support. In California, paralegals are regulated by California Business and Professions Code section 6450. The law prohibits a paralegal from working independently for consumers. Instead, a paralegal must be employed by or have a contract with an attorney.

Paralegals:

- Cannot set or accept fees from a consumer
- Cannot independently prepare documents for consumers
- Cannot represent you in court
- Cannot give you legal advice
- Cannot work as LDAs unless meeting the requirements of being bonded and registered

Legal Document Assistants:

- Cannot represent you in court
- Cannot give you legal advice

Legal Document Assistants CAN:

- Can help Pro Per Litigants
- Can assist clients representing themselves
- Can prepare File and Serve Motions
- Can provide Litigation Support
- Can provide Legal Research

“Cual es la diferencia entre un Asistente de Documentos Legales (LDA) y un Paralegal?”

Michael Rojas, paralegal en Los Angeles, responde:

Hoy estuve en el tribunal, y estaba hablando con un abogado que no sabia qué es un LDA. La mayoría de la gente no sabe la diferencia entre un Asistente de Documentos Legales (LDA) y un Paralegal. Muchos clientes necesitan que se les explique, y preguntan cuál es la diferencia principal. Es muy sencillo, sólo un Asistente de Documentos Legales (LDA) puede trabajar directamente para usted, el consumidor. Él o ella deben tener un seguro de garantía al corriente y estar registrados en el condado en el que trabajan y le puede ayudar con una variedad de apoyo en litigios.

Los Paralegales también se conocen como Asistentes Legales. Él o ella es un profesional que está calificado por medio de educación y/o entrenamiento para ayudar a los abogados en la prestación de servicios legales o de apoyo en litigios. Los Paralegales están

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FINANCIAL ISSUES

“I have some cash I don’t want to share with my spouse (that they don’t know about) — can my lawyer help me keep that money from my spouse during our divorce?”

Todd Coulston, a family lawyer in Irvine, answers:

When people marry each other, they enter into a fiduciary relationship with

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each other which involves, among other things, duties of good faith, fair dealing, and accounting to the other spouse for the receipt and use of marital income, expenses, assets, and obligations. Upon separation, these fiduciary duties become more heightened in the context of divorce where many jurisdictions require spouses to make a full disclosure and accounting to the other spouse of all assets, debts, income, and expenses including all marital assets as well as all assets which might be considered the separate property of a specific spouse. If a spouse fails to disclose certain assets or funds to the other spouse and, it is subsequently discovered that there has been a failure to disclose, that spouse may suffer significant penalties and/or sanctions from the court as a result. In addition, to ordering the non-disclosing spouse to reimburse the other spouse for their share of the non-disclosed asset, the court can order the non-disclosing spouse to provide an accounting for the funds and their use of those funds. Additionally, in situations where a court determines that a spouse

has intentionally (or even fraudulently) hidden an asset from the other spouse, the penalties can lead an award of 100% of the non-disclosed asset to the other spouse as well as the payment of the other spouse's attorney's fees, costs, and the payment of monetary sanctions.

If I have a client who has an asset that they are reluctant to disclose and/or that they are seeking to protect, my advice to them is always to disclose the asset to the other spouse. There are often ways in which a settlement can be crafted to protect that asset for the client and accomplish their goals. It may be that the character of the funds will allow them to maintain the asset as their own separate property anyways. For instance, funds that are inherited or received by gift are typically considered to be the separate property of the receiving spouse even if they are received during the marriage. It is a much better practice to disclose the asset at the outset and then work to protect it for the client. The potential severe penalties and significant additional litigation costs resulting from

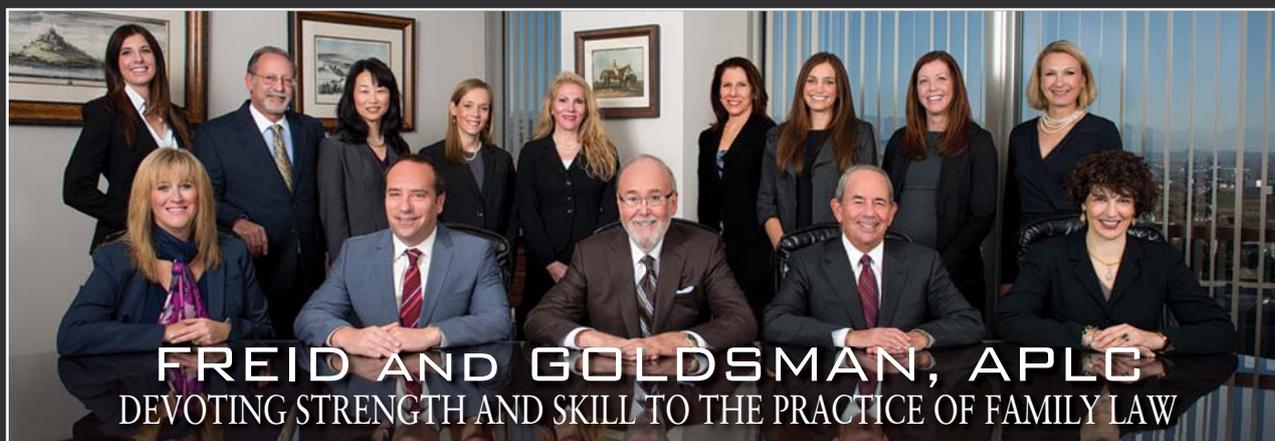
the future discovery of a non-disclosed asset just aren't worth the risk of non-disclosure.

“Can I make my spouse sign a joint tax return if we divorce?”

John Gilligan, a family lawyer in Long Beach, answers:

Once the divorce is final, you are no longer married and therefore you may no longer file a joint tax return. Even if you were married the entire year and you divorced on December 31st, it causes you to be ineligible to file a joint tax return for that particular tax year. Depending upon the respective incomes of you and your former spouse, you may wish to wait a couple of days and have the divorce final in the subsequent tax year so you can file jointly in the preceding tax year.

You cannot “force” a spouse to file jointly with you. However, the IRS does not consider community property laws since they operate under federal law, not



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state law, which community property is. Therefore, if you are the higher earning spouse, it probably makes sense from a tax standpoint to file jointly since this is a better tax bracket than married filing separate. Also, since you are the spouse earning the money, you are the one that is going to have to declare the income on the tax return you file.

However, if the lower earning spouse acts out of vengeance and deliberately files a married filing separate tax return during the year you were married for the sole purpose of having the higher earning spouse declare those higher earnings on his or her tax return so the higher earning spouse pays all the taxes, the higher earning spouse could contend that the vengeful lower earning spouse that filed the married filing separate tax return acted out of bad faith and could seek reimbursement and/or sanctions against the vengeful filer for breaching their fiduciary duty to the community. This is especially true

where the earnings that the higher earning spouse must declare on his married filing separate tax return is community earnings due to the fact it was earned during the time the parties were married and living together.

Again, this is the reason it is important for parties going through a divorce to seek legal counsel from an experienced family law attorney who has a tax background before filing their taxes. Also, there is an IRS code that says that tax advice sought from an attorney can be deducted on the client's tax return.

“I want to keep the house but I’m afraid I won’t be able to afford it over the long term. How can I be sure?”

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

Your home is often the largest marital asset. It is also the most difficult to divide. It is natural to want to keep the

home. After all, home is where the heart is, and it is also the place that people feel most secure. But before you decide to keep it, be sure that you are thinking clearly on the subject, and wanting to keep it for the right reasons. Here are a few of the wrong reasons:

- **The Marriage Museum**
Some people want to keep the property because it embodies all the dreams they had for the marriage. They don't want to let those dreams go, but they can't hold onto the marriage, so they hold onto the house instead.
- **Familiarity Breeds Content**
Though your home is familiar to you, that is not always a good thing. Your home may not be the best fit for your new life, so think critically about your anticipated new lifestyle after divorce and make sure that your current home makes the most sense for you and your family.
- **The Fix-Up Blues**
As a marriage deteriorates, often the

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house does too. Many people list all the deferred maintenance that needs to be done to get the home into shape to sell, and then conclude that they can't afford the repairs, so they need to keep the house instead. But those repairs will have to be done sometime, so keeping the house will only make them more costly down the line.

• **Immovable Children**

Many people don't want to uproot their children in a divorce, and that is understandable. But if the home is too expensive or cumbersome to maintain as a single parent, your children are going to suffer from lack of attention as you struggle to keep up the payments and repairs.

Once you have carefully examined your motives, you may decide that keeping the house is still the sensible thing to do. But can you afford the costs associated with it? Be sure to consider the cost of maintenance, repairs, homeowner's association fees, gardeners, and other household expenses. Although you may be able to afford the mortgage, the other expenses may break your budget.

Where will you get the funds to buy your spouse out of his portion? If you are going to refinance the house, will you be able to afford the payments? Many people opt for some creative financing methods to lower the payment, choosing to pay interest only, which is sort of like renting from the mortgage company, since you aren't building up equity through mortgage principal pay down. Worse yet, some choose negative amortization, where they aren't even paying the interest in full each month. The unpaid interest is added to the principal balance of the mortgage, which increases the interest the next month while eating up the equity in the home. This may work if you are going to be living in the house just a few more years before you sell. But these creative financing methods won't stand the test of time, so if you plan to stay in the home for a long time, make sure that

YOUR DISTINCT ADVANTAGE

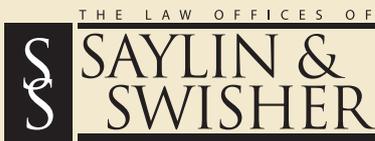
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If your plan allows your spouse to keep retirement assets in trade for you keeping the home, figure out how you are going to build up your retirement assets to a sufficient amount to fund your own retirement. If you plan to fund your retirement by selling the home, remember that you will be paying all the costs of sale and capital gains taxes yourself, and that a portion of the remaining funds will be needed to buy a new home. You may anticipate your home going up in value, but remember that the new home you intend to buy will have gone up in cost as well.

And finally, be sure that you can afford the capital gains tax when you sell. You can exclude up to \$250,000 of capital gain when you sell your primary residence if you've lived there for two of the five years before sale. If your home has gone up more than \$250,000, you may want to sell while both spouses' names are on title, so that you can together exclude up to the \$500,000 of gain.

“What things should we consider regarding divorce and taxes?”

Cathleen Collinworth, a Certified Divorce Financial Analyst™ in Irvine, answers:

Many issues need to be addressed whenever two people decide to get divorced. One major issue is income taxes.

Some of the more common questions are:

- Do we file jointly or separately?
- Do we have to allocate the income, and if so, how?
- Do we have to allocate the expenses, and if so, how?
- My spouse is self-employed. Who pays the self-employment taxes?
- Who gets credit for the estimated tax payments?
- We have one child. Who gets the

deduction?

- We have more than one child. Can we split the deduction?
- I paid a lot of attorney and accounting fees. Can I deduct them?

The following is a list of some of the issues that a Certified Divorce Financial Analyst™ and tax professional can bring to the table that attorneys and the participants in a divorce often overlook. This list is not all-inclusive:

- Discounting Epstein credits for the tax benefits
- Weighing the risks of filing a joint return
- Considering the child support trap of IRC § 71
- Not fighting over the dependency exemption when the client can not use it
- Considering if both can be head of household
- Not assuming that the capital-gains tax is based on the client's share of the proceeds
- Evaluating whether attorney's fees can be deductible or capitalized
- Not considering the tax traps in dividing stock options.

There can be significant tax implications when the parties divorce, you owe it to yourself to consult a financial professional (forensic accountant, CPA, and/or Certified Divorce Financial Analyst™) to make sure you and your attorney understand all of the financial and tax implications of your divorce.

CHILDREN ISSUES

“My ex-wife and her two kids moved in with her boyfriend. Do I still have to pay her alimony? What about the child support payments?”

John Gilligan, a family lawyer in Los Angeles, answers:

You must continue paying alimony and child support if there is an existing court order requiring you to do so. The

mere fact that your ex-wife and children have moved in with her boyfriend does not change your obligation, unless your child support and alimony are modified by a new court order.

You may wish to consider going back to court to change your court order. Your ex-wife's boyfriend's income — or “new mate income”, as we call it in California — has different applications based upon whether we're talking about child support or alimony. Normally, the new mate's income is not considered in determining the amount of child support, since the new mate has no legal obligation to support your children. However, the court will consider new mate income if excluding it would result in difficulty for your children. This typically occurs when your ex-wife stops working as a result of her new mate's income. In this situation, if you went back to court, your ex-wife might be imputed the salary she had been receiving at the job she quit. This would not help you, since your current child support order is probably based on her income at this job. But if she refused promotions, or intentionally remains underemployed in reliance upon new mate income, a good argument could be made that her earning potential is higher, which would mean your child support should be lower. This is difficult to prove, unless subpoenaed records from your ex-wife's employer show that she turned down promotions and raises.

If your ex-wife's expenses went down due to perks given to her by her new mate, this could be used as additional income to your ex-wife. For example, if the new mate was not charging your ex-wife rent, utilities, or other household expenses, these “freebies” could be added to your ex-wife's income as additional non-taxable income. You would need to subpoena your ex-wife's checking account records, after she has lived with her new mate for a number of months, to see whether she still pays rent, utilities, food, and other necessary living expenses.

Payment of spousal support is a completely different animal. Typically, spousal support lasts until either the death of you or your ex-wife or until she remarries. Living together with a boyfriend is not considered remarriage, but it makes an arguable presumption that there is a decreased need for spousal support. Because of this, many ex-spouses try to hide the fact that they're cohabiting. If your ex-wife is cohabiting openly, it will be easy to prove in court.

Since spousal support is not governed by any child support guideline and is within total discretion of the court, the mere fact that she's living with her boyfriend is sufficient to warrant a revisiting of your support order. This would be the case whether she quit her job or continued to maintain the same employment while living with him. It's obvious to the court that two people can live together less expensively than one on their own.

“What are some co-parenting strategies after a divorce?”

Marshall Waller, a family lawyer in Calabasas, answers:

Co-parenting is an effective way to help children move on from divorce. It allows both parents to guide the child's development, as would be the case in an intact family. The only difference, though, is that in a co-parenting situation, the child lives in two houses. Each parent spends time raising the child and then allows the other parent to do the same in a separate location. For co-parenting to work, divorced spouses must work cooperatively with each other. Spouses need to drop whatever bitterness they have from the divorce and focus on doing what is best for their child.

This is easier said than done, but a few strategies can help. First, find a friend, a therapist, or other trusted adult to discuss your feelings about the divorce. By venting feelings to an outside person, you may avoid venting to the children. Children of divorce are entitled to a

relationship with both parents and should not be dissuaded by one spouse from having contact with the other.

Parents who have problems setting aside their feelings could also follow the co-parenting strategy of remaining child-focused. This strategy involves looking at photographs and other items featuring the children. Such items will remind a parent why it is important for them to place the children first and give co-parenting a chance.

A third co-parenting strategy is to commit to regular communication with the ex-spouse. Ex's who communicate on a regular basis find it easier to coordinate their parenting efforts. They also make it clear that they are united in supporting the children's best interests. This unity can go a long way toward helping children feel safe and secure in the wake of divorce.

“How should I tell my school-aged children about my divorce?”

David J. Glass, a family lawyer in Los Angeles, answers:

Telling your children about your plans to divorce can be one of the hardest parts of the process. However, the situation presents an opportunity to set the tone for the separation and how both parents are going to work together for the benefit of the children. To this end, parents need to put their own feelings aside and present as a united front, even if one parent wants the separation and the other one does not. When parents tell the children together, there is only one story, which is easier for children to assimilate.

Tell the children that you are coming together as a family to discuss something very important. Tell them that you, together as parents, have something to tell them, and that they need to listen first, but that there will be plenty of time for them to ask questions and for you all to talk together. Pick a time and place when everyone

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can come together with no distractions. The best time is usually on a Saturday, so the children have that full day and Sunday to process the new information before returning to school on Monday. The weekend after telling the children is also an opportunity to show the children that they will continue to be supported, and loved, by both parents, and that everything is going to be “okay.”

Some suggestions for making the process as positive as possible for your children, include:

1. Start off saying that you both love the children very much, and always will. Tell them that you both will always be here for them whenever they need/want you. But, there are going to be “some changes in our family.”
2. Acknowledge that sometimes parents can love each other, but not want to live together anymore. Say that you have had some problems, which have nothing to do with the kids, and that you’ve worked very hard on those problems to try to fix them. But, ultimately, you think everyone would be happier, in time, if Mom and Dad lived separately, and the kids continued to be with Mom and Dad as much as possible. You should not share the specific problems of the marriage with your children. Those are adult issues. Children just need to know that there were problems, you tried hard to fix them, it didn’t work, and this is the “next best” plan for everyone.
3. Talk about “separation” rather than “divorce.” The word is less scary, and there will be plenty of time later for the children to learn and understand that the changes are going to be permanent.
4. Throughout, you need to impart as much security as possible in your presentation. Your children need to know that you and your spouse have a plan, have thought things through, and are going to make things as nice as possible for them.
5. If at all possible, the parent who is moving out should already have

made new living arrangements so the children know where that parent will be, how to get in touch with the parent, and where they are going to go to stay when they’re with that parent.

6. Parents should take turns speaking, so the children feel that they both are part of the presentation.
7. Parents need to be caring with the children’s feelings throughout. Whatever emotion your children have, be it anger, or sadness, or anxiety, that emotion is “okay” and “natural” and not a problem. Parents cannot be defensive in response to strong emotions from the children. You need to acknowledge what the children are feeling, name/identify those feelings, and say you can see how the news would make them feel that way. And, then go a step further, and talk about how your “joint plan” will help the children not to feel angry, sad, or anxious over time.
8. Emphasize that although having your parents live in two different houses is a big change, that you are going to try your best to make sure that as many things as possible do not change for them.
9. Talk about how the family living situation will be different, but you will all still always be a “family”
10. Be clear throughout that the separation has nothing to do with them, that they neither caused it nor can they stop it.
11. Finally, remember to apologize to your children. Acknowledge that this is hard and feels sad. Say something like “We are both very sorry that even though these problems are between us, they will mean some changes for you as well.” Reassure the children that you love them and always will love them, and want them to have a loving, supportive relationship with both of you.

MEDIATION ISSUES

“I would like to have a peaceful divorce through mediation. Would my

spouse have to agree to using mediation before we can use it?”

John Juarez, a mediator in Pasadena, answers:

Yes, mediation is a joint, voluntary negotiation process in which the parties work together, with the help of a neutral third-party (mediator), to arrive at a fair resolution; therefore, it is necessary for both spouses to participate. Both parties have to be engaged in the process, and are responsible for all decisions made because it is the parties who are making decisions together. Parties may not like one another at the time, but need to be willing to work together to find solutions that will meet the needs of everyone involved.

Not only is participation voluntary, but so are all agreements reached in mediation. Agreements are not imposed by the mediator nor by the parties — the content of all agreements are determined by the parties. Mediation allows parties to devise their own agreements without doing battle in the adversary arena when the parties want to arrive at a mutually-acceptable solution, which the parties feel is fair and in the best interests of all involved. There are no final agreements until the parties are comfortable and mutually satisfied with the proposed agreements.

EMOTIONAL ISSUES

“I recently found out that my spouse is having an affair and wants a Divorce. I feel like my world is caving in. How will I recover?”

Allison Pescosolido, M.A. and Andra Brosh, Ph.D.:

Many divorcing individuals are surprised by the depth of pain they feel in response to this challenging life transition. Divorce is riddled with grief, and profound feelings of sadness. Even the most amicable divorces invoke pain, loss and a sense of despair.

Advisory Board

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It's important to remember that the depth of your pain is not only connected to the person you were married to. You have lost your dream of forever, your lifestyle, your marital role and so much more. Studies show that the brain areas associated with the pain of romantic rejection are the same ones involved in physical pain, craving and addiction. With divorce you are feeling the loss of something you needed, depended on and loved. Attachments in marriage run deep so when one partner breaks the attachment bond, the pain of loss can feel unbearable and unsurvivable. The normal reaction to loss is grief yet most of us never properly learned how to grieve. The old saying "time heals all wounds" is a fallacy leaving many grieving individuals stuck in their pain for too long.

Healing from divorce involves taking action to move through the pain to create a solid foundation based on authenticity and meaning.

Here are some steps you will need to start healing:

- Learn how to grieve
- Process painful emotions instead of avoiding them
- Get relationship closure
- Start to know yourself again as an individual
- Renew and restart your life

As you take action to heal your wounds you will begin to move on from your divorce and to build a foundation for a secure, fulfilling future. ■

For more FAQs answered by divorce professionals, visit www.divorcemag.com.



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Marshall W. Waller has been in private practice since 1981 and is a Certified Family Law Specialist*. He has garnered a top AV rating from Martindale-Hubbell, the premier attorney rating system in the nation. Marshall taught family law as a professor of law for sixteen years and has written two books in the area of California Family Law.

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Special FAQs On Pensions and QDROs

Does my pension statement show my pension's marital asset value?

Mark K. Altschuler, actuary and President of Pension Analysis Consultants, Inc. (PAC) of Elkins Park, PA, an actuarial firm specializing in pensions and QDROs in divorce, answers:

Many pension plans issue yearly individual-benefit statements to each participant, although it is not required by law to do so. While it is possible to obtain a monthly figure — as if the employee will retire at a given date, this is not the mari-

tal present value of the employee's pension.

Depending on the occurrence of retirements, and the employee's age and years of service, there are different types of possible benefits.

The primary benefit is the pension paid when the employee retires at the plan's normal retirement age. This is known as the Projected Benefit. During active employment, the employee is earning vesting credit per the plan's vesting schedule. This is the employee's Vested Benefit.

A pension becomes due and pay-able at normal retirement age. However, when employment ends before normal retirement age, then the Vested Benefit may be paid out as an early retirement pension with various formulas operating, according to the provisions of the plan.

At any point in time, unaffected by the form of payout or the timing of the payout, the Actuarial Value of an employee's accrued benefit may be computed using actuarial science.

The Actuarial Present Value of the Marital Portion is the value of your pension plan as a marital asset. This value is used in your distribution determination of how to apportion equitable division between the parties. That said, no plan is required to inform a participant of this marital present value. In fact, in the majority of plans that information is simply not available.

To value your pension for divorce purposes, you may request a benefit statement from your plan showing your normal retirement age benefit, accrued as of the agreed-upon-date of marriage dissolution for your state's jurisdiction, or, the benefit accrued as of current date in states that use the coverture method. You can then retain an actuary who specializes in pensions in divorce to determine the marital asset worth of your pension benefit.

Is it true the federal government does not accept QDROs and what would be different than dividing a private sector pension?



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Tim Voit, a financial analyst, founder of Voit Econometrics Group, Inc. and author of Federal Retirement Plans in Divorce — Strategies and Issues, and Retirement Benefits & QDROs in Divorce, answers:

This is partly true, in the sense that the term QDRO, or Qualified Domestic Relations Order, applies to the private sector. Federal pensions are exempt from QDROs because they are exempt from ERISA, the Employee Retirement Income Security Act of 1974.

This is not to say that if the Office of Personnel Management were to receive a court order with the term QDRO in it that it would be rejected. But rather, that it would need to make reference to Part 838 of Title 5 of the Code of Federal Regulations (CFR).

The federal government's functional equivalent of QDRO is the Court Order Acceptable for Processing (COAP), and for the Federal Thrift Savings Plan it is referred to as a Retirement Benefits Court Order.

What makes COAPs different from QDROs is that a QDRO served on a pension plan in the private sector can provide for a separate interest for the alternate payee, if served on the plan before retirement. This allows for the monthly pension benefit to be pay-able over the lifetime of the alternate payee.

This is not true of most government plans, nor will the military provide for a separate interest for a former spouse. Separate interest QDROs only pertain to private sector pensions and prior to retirement.

Government, military, and pensions in-pay status (private sector and government pensions)

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can only allow a non-participant spouse to “share” in the pension payments, hence the term Shared Interest QDROs, where payments end upon the death of either party. This is a good reason to consider survivor annuity language for the former spouse.

Aside from the voluntary federal Thrift Saving Plan, there are also two different federal pensions, namely Civil Service Employees Retirement System (CSRS), for those federal employees who began employment prior to December 31, 1983, and Federal Employees Retirement System (FERS), for those that commenced employment on or after January 1, 1984.

It is important to note that not only are the terms and conditions of the federal pensions different from the private sector in what can be provided to a former spouse,

but there are also differences between FERS and CSRS. Understanding the differences will prevent you from having different expectations as to your awarded share.

What are the most common financial mistakes divorcing couples make during their divorce?

QDRO Counsel, Inc. a professional law corporation, which focuses on providing QDROs for the division of retirement benefits throughout the United States, the principal attorney, Louise Nixon, answers:

Based on my years of experience as an attorney who specializes in the division of pension benefits in divorce, the most common financial mistake made is failing to identify a pension plan that needs to be divided at the time of divorce with a qualified domestic relations order (“QDRO”). Often a pension

plan is a major asset in the divorce. Often that pension plan is not adequately identified or not identified at all in the divorce documents. Very often even if identified, a QDRO has not been filed to protect the non participant spouse’s interest in the pension. In both of these scenarios, after divorce, if the participant subsequently dies in most cases it will not be possible for the nonparticipant spouse to receive any of the pension. If the participant subsequently re-tires, in most cases it will not be possible to ensure that the nonparticipant spouse’s interest in the pension be paid for the rest of nonparticipant spouse’s life. However if a QDRO is filed concurrent with the judgment of divorce or soon thereafter with appropriate division language included in the judgment of divorce, the nonparticipant spouse’s interest in a lifetime benefit from the pension, if applicable, can be secured.

In the case of pensions for military and federal employees, to avoid draconian effects occurring to the nonmember spouse’s interest in these benefits, we recommend that parties do NOT enter the final judgment of divorce until these pensions have been divided with a domestic relations order and all issues regarding survivor benefits have been resolved. This applies whether the member is active, reserve, or retired.

The parties or their family law attorneys should retain an experienced attorney who specializes in the division of pension benefits in divorce to ensure the matter is handled correctly. ■

Tax Tips and Traps

By Diana Shepherd, CDFATM

Here are two topics you'd probably rather not think about: Divorce and Taxes. If you're separated or newly divorced, however, it could be worth your while to get some good financial advice about both.

Spousal Support

Also known in some areas as "alimony" or "maintenance", spousal support is typically treated as taxable income to the person receiving it and tax-deductible for the person paying it. Before deciding whether a specific amount is going to work, you need to know what the actual out-of-pocket cost is if you're the payor or the net amount that you'll receive if you're the payee. For example, if paying \$30,000 in spousal support annually, how much is that \$30,000 going to cost you after factoring in the tax deduction? And, if you're receiving the \$30,000, how much of that will you have to pay in taxes? For payments to qualify as spousal support, they must meet a number of requirements; make sure you've met them all.

Child Support

Generally speaking, child support is non-taxable income to the person receiving it and it is not tax-deductible by the person paying it. If you're going to be paying both spousal

and child support, you may be tempted to lump both payments together and call them "spousal support" so you can claim a bigger tax deduction. Sorry to burst your bubble, but the IRS and CRA are wise to this "strategy", which could land you in serious hot water! You can also end up owing back taxes, penalties, and interest if your support payments are not structured correctly in your divorce agreement. In the US, if spousal support is reduced or terminated because of a contingency related to a child (such as a child attaining a specific age or income level, dying, marrying, leaving school, or gaining employment), it can be reclassified as child support. There are many other ways the IRS could reclassify some or all of the deductible spousal support you have paid as non-deductible child support; make sure your agreement doesn't contain one of these hidden traps before you sign it.

Third-party Payments

Usually, payments must be made directly to the recipient to be classified as support. But what if you're going to be



paying child or spousal support to an ex who has a genuine problem with money — a gambling addiction, for instance? “Third-party or specific-purpose payments can be considered support payments [under certain circumstances],” says Mary Krauel (CPA®, CA, MBA, CDFATM), who practices in Mississauga and London, Ontario. “Specific-purpose payments may include rent, property taxes, insurance premiums, and educational or medical expenses for the benefit of the recipient.” This is helpful in settlements where there is concern the support payments will be used by the recipient for necessary expenses while at the same time preserving the deductibility for the payor, she adds. “To guarantee deductibility — clearly state it in the agreement.”

Divorce-related Fees

In the US, you can deduct the portion of fees paid to divorce-industry professionals (e.g., lawyers, actuaries, accountants, or appraisers) for tax advice or for help in getting spousal support. In Canada, you can deduct legal fees paid to establish, increase, or collect support payments; however,

Reckers (CFP, CDFATM), who practices in San Diego, California, the HOH filing status strategy is a simple and elegant way to reduce overall tax bills and even has some other benefits. “HOH filing status comes with tax brackets identical to those available to the Married Filing Jointly scenario, but also allows for each party to the divorce to file separate tax returns,” he says. Inquire about the requirements for claiming HOH to see if this strategy can work for you.

Joint Tax Returns

If you are still filing joint returns with your spouse, make sure to review your tax return before signing on the dotted line. “Remember — you will be held liable for what is being reported, whether your spouse or a professional accountant prepared the form,” warns Carlton R. Marcyan (JD, MBA, CPA®, CFP, CDFATM), a partner at Schiller DuCanto & Fleck in Chicago, Illinois. “In my nearly 25 years of practicing law, I would estimate that two out of three spouses do not look at their tax returns before signing and are not aware of what they are consenting to.”

Two out of three spouses do not look at their tax returns before signing and are not aware of what they are consenting to.

Make sure you're taking advantage of all possible tax credits and benefits during and after divorce.

only the recipient of support may claim these deductions — not the payor. “There is an inequity in the deductibility of legal fees paid by the recipient of support payments versus the payor,” points out Karen Archibald (CDFATM, CGA, MBA, and Mediator), who practices in Truro, Nova Scotia. “This inequity is exacerbated by the fact that often it is the payor of the spousal support who would benefit more from being able to deduct legal fees as that person is most often in the higher tax bracket.” Find out if you can deduct any of the divorce-related professional fees before you file your taxes.

Filing Status

“Filing status is often more important than dependency exemptions: someone filing as a Head of Household (HOH) can claim a higher standard deduction and lower tax rates than a single filer,” says Heather Smith Linton (CPA®, CFP, CVA, CDFATM), who practices in Durham, North Carolina. “This can often translate into more of a tax savings than a dependency deduction. A couple needs to have at least two children to make this strategy work,” she continues. “The general rule for filing as HOH is that an unmarried taxpayer would have to maintain a household that is the principal place of abode for over half the year for a qualifying child.” According to Justin

Tax Credits and Benefits

Make sure you're taking advantage of all possible tax credits and benefits during and after divorce; if your agreement isn't structured correctly, you may be unable to claim tax relief. Karen Hallson-Kundel (CGA, CBV, CDFATM), who practices in Winnipeg, Manitoba, points out that the separation agreement must specifically identify the parent who will claim the child in order to preserve the Eligible Dependant tax credit, for instance. “Families with two children can structure the separation agreement to indicate that each parent claims one child, effectively doubling the tax benefit,” she says. “Carefully planning this aspect of a separation agreement can save your family between \$4,052 and \$6,702 (depending on your province) for the 2012 tax year.” Terry Hawes (MBA, CGA, CFE, CDFATM), who practices in Port Moody, BC, adds that: “The Eligible Dependant Amount has specific caveats that must be met to qualify.

This tax credit is often missed as practitioners and clients believe that these conditions must exist for the entire year since separation or as at December 31. In fact, the legislation states, ‘at any time in the year’. This strategy is often available in the year of separation to multiply the tax credit.” In the

year of separation, get your CDFA™ or accountant to crunch the numbers to see whether you should be claiming the spousal support or any allowable tax credits. “If you pay support and you are separated for only part of the year, you may claim either the deductible support paid that year or allowable refundable tax credits — whichever yields the larger benefit,” says Karen Archibald. “For example, Sally and Joe separated on September 1, and Joe pays Sally \$300 each month in deductible support. Joe would be far better off claiming the spousal credit of \$10,527 versus the support of \$1,200.” Of course, there are different tax credits and benefits in the USA and Canada, so find out what is available in your area and for your situation.

Please consult your Certified Divorce Financial Analyst™, accountant and/or family lawyer for specific guidance since each case and each state or province may have different requirements. For more tax tips and articles about the financial aspects of your divorce, go to www.institutedfa.com. ■

Diana Shepherd is Director of Marketing for the Institute for Divorce Financial Analysts™. For more information about how a CDFA™ professional can help you with the financial aspects of your divorce go to www.institutedfa.com/Public.php.

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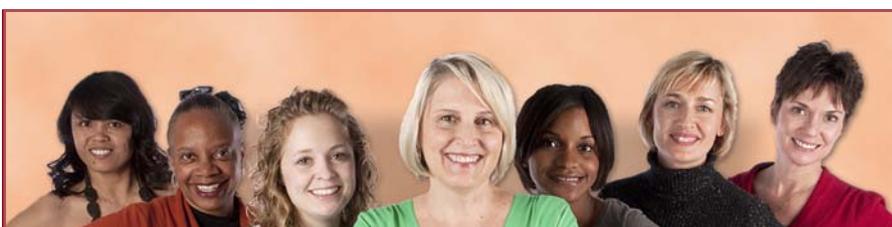


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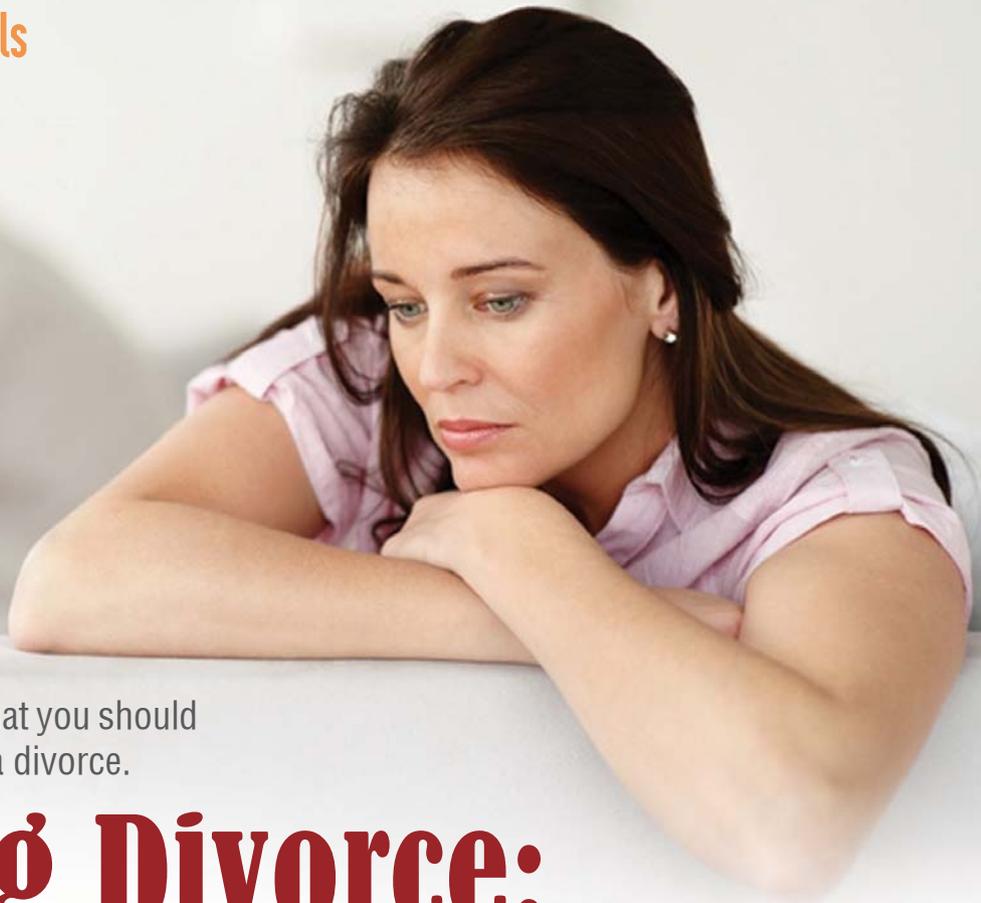


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Tips from a family lawyer on what you should know before, during and after a divorce.

Surviving Divorce:

By John Hollins, Jr.

Before, During and After

During the Process

The laws of physics also apply in divorce cases — for every action there is an equal and opposite reaction. You cannot control the divorce process. If you are a controlling person, the divorce process will frustrate and disappoint you. Those who simply want to punish their spouse and delay the case will waste a lot of time and money and accomplish nothing.

Spend less time worrying about who is right and more time worrying about what is right. Always take the “high” road. You will never regret it.

In most cases you are not as innocent as you claim, and your spouse is not as guilty as you claim. There is always another side to your story.

If you and your lawyer fully cooperate with your spouse’s lawyer and provide full and complete disclosure, you will speed up the resolution of the case. If you and/or your lawyer intentionally delay responding to your spouse’s discovery requests, you will quickly create distrust, which will make your case more difficult to resolve.

Spend less time worrying about who is right and more time worrying about what is right.

You and Your Spouse

In most cases, extreme emotions are only temporary. It is normal to experience extreme emotions such as anger, fear, guilt, loneliness, frustration, helplessness, sorrow, resentment, regret, and depression. If you experience extended, severe mood swings, you should consult with a counselor or a doctor.

Remember that the time you spend hating your spouse deprives you of those moments of happiness you shared together. All couples have shared good times.

Children

Divorce can be more difficult on the children than the parents. What is best for your children should always come first. What is best for you is not always best for them.

It is usually best to break the news about divorce to the children in a meeting where both parents are present. Your children will often blame themselves. Assure them they are not responsible.

If parents make every effort to effectively co-parent, it is less likely that the children will act badly. If you truly love your children, you will allow them to love the other parent. Remember, if you have children, you will likely deal with your spouse forever.

Selecting the Right Lawyer

Meet with a lawyer before you hire him or her and ask how many cases he or she has tried in your judicial district. If you do not feel more knowledgeable after you leave, he or she is not the right attorney.

Ask your lawyer about his or her fee structure.

Ask your lawyer for an estimate of the total amount of fees and expenses to complete the case. Remember that the lawyer's estimate is made at the beginning of the case and could change dramatically depending on the difficulty and length of the case.

Working Effectively With Your Lawyer

In a divorce case, nobody likes surprises. To avoid being blindsided at any point, give your lawyer all the details from the very beginning. Hiding information can cause serious problems down the road.

Pay your attorney bills on time. Nothing will kill your lawyer's enthusiasm for your case faster than an unpaid bill. Lawyers have a hard time thinking about your case when they are not getting paid.

Custody

Don't get caught up with the titles of "sole custody" or "primary custody." The most important issues are the amount of each spouse's parenting time with the children and each spouse's right to make significant decisions about the children.

There are no real winners in custody fights. In most cases, they have a devastating effect on the parties and their children. The emotional and legal cost of custody trials is substantial. Custody battles should be avoided if at all possible.

Support Payments

If you are receiving alimony and/or child support, you should have life insurance on the payer's life in a sufficient



Judges may forget much and forgive more, but they never forget or forgive a client's dishonesty.

amount to cover the full amount of alimony or child support if the payer dies prematurely.

Living with someone after the divorce, even if you are not romantically involved, may cause your alimony to be stopped or reduced. If an alimony recipient remarries, then the spousal support stops in most cases.

When you pay or receive child support and/or alimony, always keep a copy of every payment.

Dividing Assets and Liabilities

Be very careful when making an agreement that your spouse must pay any jointly titled debts, especially if he or she is financially irresponsible. On a jointly titled debt, the creditor can sue either party for the unpaid debt. Your creditors couldn't care less about what a court order says about who must pay a debt.

If you are seeking custody of the children, do not move out of the marital home just because your spouse wants you to. If you move out, talk to your lawyer first. It may be difficult to move back in if you change your mind.

Protecting Yourself

Silence is golden when it comes to divorce. Watch what you say and be extremely careful about confiding important details of your case to anyone. Even your closest family members and friends can slip up and accidentally reveal something that could hurt your case.

Ask your lawyer before you close joint bank accounts and/or joint credit card accounts. Also ask your lawyer before you withdraw funds from a joint checking account, savings account, and/or brokerage account. This may be illegal.

Be cautious about signing any document or making any agreement suggested by your spouse that changes any court order. Any change in a court order requires a new court order signed by the lawyers and the judge.

Mediation

Mediation dramatically reduces the costs and time necessary to settle your case. The process is considerably less contentious than a trial. Settling a case in mediation can also help decrease the hostility between spouses. This is particularly beneficial if children are involved.

You and your lawyer should also discuss what, if any, evidence provided to the mediator should not be shared with your spouse and his or her attorney. You don't want to educate

the other side about the strengths or weaknesses of your case if the mediation is unsuccessful.

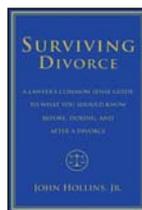
Court Hearings

Judges may forget much and forgive more, but they never forget or forgive a client's dishonesty. Just as there is no such thing as being a little bit pregnant, there is no such thing as being a little dishonest. Honesty is truly the best policy. Make that your guiding star.

Final Thoughts

Make peace with the past. Learn from your mistakes and turn them into opportunities for positive change.

Live so that when your family and friends think of fairness, honesty, and integrity, they think of you. ■



This article has been adapted by Divorce Magazine and reprinted with permission from Surviving Divorce © 2011, by John Hollins, Jr. John Hollins Jr. is the president and managing partner of the law firm Hollins, Raybin and Weissman, P.C. in Nashville, Tennessee. www.hwylaw.com.

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Spending Quality “Virtual” Time with Your Children

By Martha Chan

Many divorced or separated parents are often unable to be with their children in person due to parenting/custody agreements or travel schedules. This is especially frustrating on certain occasions, such as birthdays, special holidays or a child’s first school play. However, there are still ways to spend quality time – with a little help from technology.

Bridge the Gap

Here are a few ways a parent can bridge the geographical distance between them and their children:

1. Use Skype to place a video call instead of a traditional phone call. Skype-to-Skype calls are free, and most laptops come with built-in web cams. If not, a basic webcam that does the job costs about \$20.
2. Make a special video greeting and send it to your kids to watch on birthdays, or any other time of the year so they can “be with you” and “you with them.” You can take a short video with any smart phone. Recording and editing a video on your computer is also a simple task. Creating a fun and memorable video is easier than you imagine.
3. Email, text, Tweet and “Facebook” your kids to let them know that you’re thinking of them, and that you hope they are doing well. There are plenty of free, easy-to-follow tutorials online, or you can pick up a “for Dummies” book at your library or bookstore — or better yet, try asking your kids!



Click here (<http://youtu.be/A1JcrMC4kN4>) to view a short video on how to make a video using an iPhone.



Creating a fun and memorable video is easier than you imagine.

An Opportunity for Ex-spouses

Using technology to send a heartfelt message isn't something that should only exist between parents and their children. Ex-spouses can get in on the hi-tech action and reap the rewards as well.

Ex-spouses can find that one-on-one communication can be quite difficult, especially if their divorce is relatively recent. Technology can make it personal and simpler to say "thanks for taking care of junior while I have to travel on business," or "this year, let's both work on making things better for our kids," or any other kind-hearted message — even if it's just acknowledging something that your ex-spouse did that made a positive difference. A message of this nature could be an extremely meaningful gesture.

Think Things Through

That said, it's important that you not use technology without first thinking things through. It's worth taking the time to draft what you want to say, before making a video or sending an email, just to ensure that the message is clear and appropriate. Emotions can be harder to convey — and easier to misinterpret — when you two aren't face-to-face. And of course, you should never forget that your communication may not be confidential, especially if it's a Tweet or a Facebook post,

even if the profile is set to private. Anything confidential or sensitive should be saved for a phone call or an in-person meeting. ■

Martha Chan is the co-owner and Editorial Director of Divorce Magazine and www.DivorceMagazine.com.

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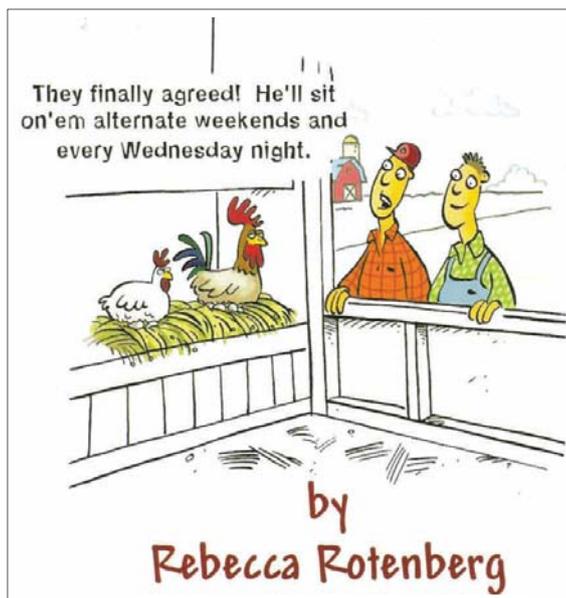
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We feature a few divorce-related stories submitted to us through email and our blog on DivorceMagazine.com in each issue of *Divorce Magazine*. Here is this issue's selection.

Flying Solo

“My husband, a successful lawyer, weakened to the temptations of drugs, lost our home, my car and my savings. Needless to say, our marriage ended, but there was no doubt in our minds that the children had to survive this and come out the other end healthy and secure. Bags in hand, the kids and I moved in with my mother-in-law. A day did not go by that Dad didn't see his kids, and have dinner with us. Years later, Dad met a nice woman, and according to him there was no question that I should now be included at meal time. The day they married, I was on the guest list... Tradition in Jewish weddings is to dance with joy after the ceremony. My ex approached me with the traditional handkerchief held by two people and together we danced for his happiness. Which memories do you think the children thrive more on: their mother and father celebrating together, dining together and loving their children together... or the yelling and greed that takes place more often than not?

I was in my 30s, when my husband and I split up. Although we remained close, I couldn't help but feel the stigma that was associated, in those days, with being divorced. It prompted me to design a logo representing the lone parent. "Flying Solo" was born... Shortly after,

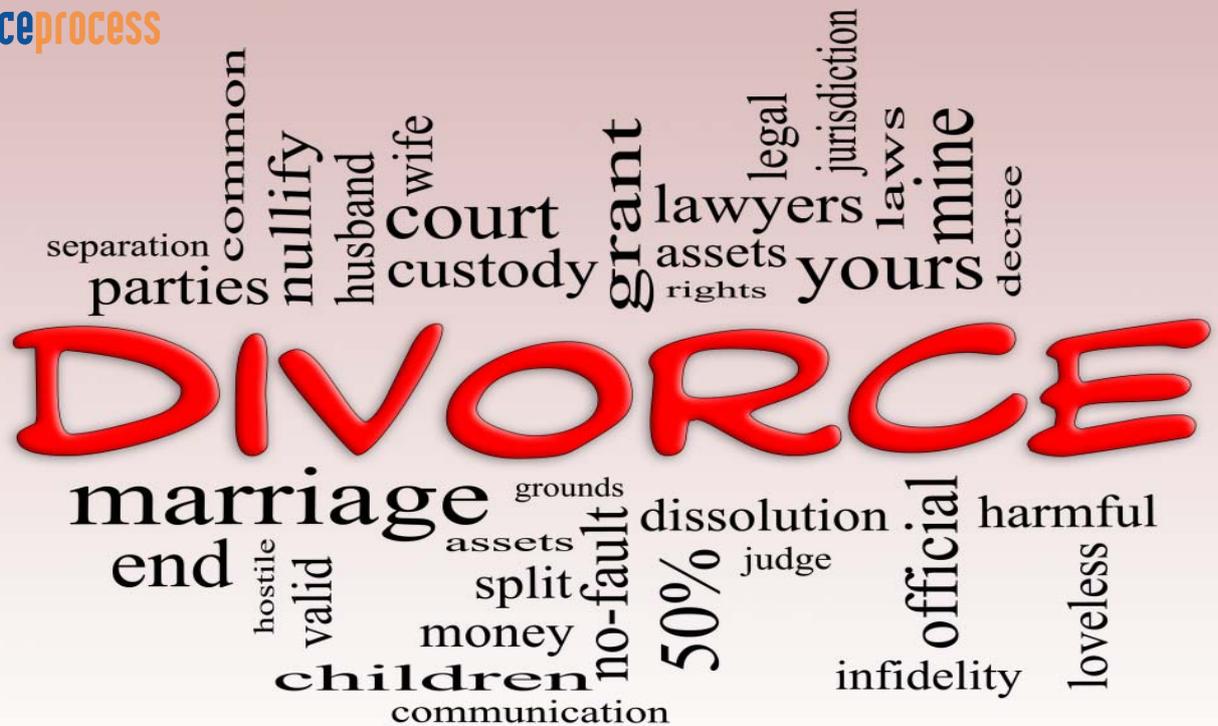


I began to think up funny situations; the mother who is sitting by the phone, waiting for it to ring, thinking 'I don't understand, he promised he'd call', and underneath the table, her young son had pulled the jack out of the wall. I began to write anywhere and everywhere; on napkins, bubble gum wrappers. I got someone to draw a few and away I went to the Ottawa Citizen Newspaper which immediately signed me on. An early death of my parents and lack of confidence prompted a long break.

Twenty years later, I'm back and I won't stop this time until *Flying Solo*, now a book of cartoons, is on every bathroom counter in the world. *Flying Solo* helps create a shift in consciousness. *Flying Solo* cartoons remind us that we are not alone.”

Flying Solo is available at www.flyingsoloagain.com.

To see more personal stories of divorce and divorce artwork, or to submit your own divorce story, please visit our Divorce art and Stories page. <http://divorceblog.divorcemag.com/submit-your-divorce-art-express-your-emotions.html> and <http://divorceblog.divorcemag.com/category/your-divorce-stories>.



Understanding the **PROCESS**

A guide to the legal process of divorce.

By Jeffrey Cottrill, edited by Josh D. Simon

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

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

circumstances of your situation may affect the process.

Temporary Orders and Filing Divorce Papers

One of the first things you and your spouse have to do after you separate is to get a "temporary order" or agreement. This is extremely important, because it could set the precedent for your final divorce settlement. A temporary order/agreement establishes quick decisions about the children, property, bank accounts, and other issues that may be important between the separation and the final outcome. For example, if one spouse moves out of the home and the other has no income, how will the latter feed the kids and pay the bills? For more

information about temporary orders, visit www.divorcemag.com/articles/Financial_Planning/getting_prepared_temp_orders.html.

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

Next, you or your spouse will file a petition, application, or complaint for

divorce with your local family court. The person who files (“the plaintiff”) serves a summons upon the other spouse, stating that they want a divorce and what they are seeking in terms of property, child custody, support, etc. The other spouse (“the defendant”) must answer the summons and, if they wish, can make their own claim.

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

Collecting Information and Discovery

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

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

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

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

Contested vs. Uncontested Divorce

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

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

Motions

If you need to readjust certain arrangements during the divorce process — such as custody, visitation, or support — you can initiate this by filing

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

Litigation or Negotiation?

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

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

Trial

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

Generally, you and your spouse each tell your respective side of the story before the judge (and the public). You take the stand, and your own lawyer asks you questions that prompt you to explain your side — and then your spouse’s lawyer has the option of cross-examining you or challenging the

validity of your perspective. The same goes for both sides' witnesses (both personal and professional): each of you duking it out through conflicting testimony and attempts to make your respective case look more believable. Finally, the judge — a stranger who only knows you through what he or she has seen in court — weighs all the evidence and makes all the final decisions.

The Issues

- **Money and property:**

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

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

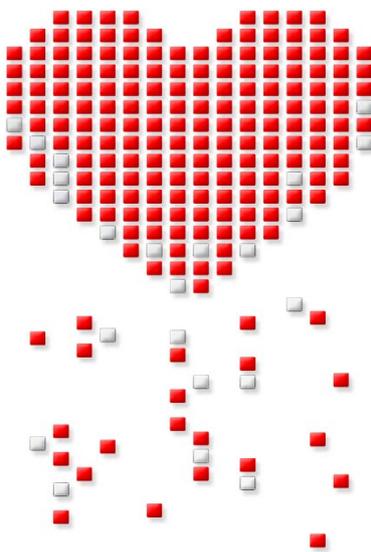
The more financially complicated your divorce, the longer this will take, and you'll likely need an accountant, a business valuator, a Certified Divorce Financial Analyst, a Financial Divorce Specialist, or a financial planner to make sense of all the assets involved. For more helpful articles, go to www.divorcemag.com/articles/Financial_Planning.

- **Child and spousal support:**

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

to take it. The purpose of spousal support is not to punish your ex but to maintain your lifestyle.

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



- **Child custody and visitation:**

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

Custody battles in court are usually full of character slurs and accusations that are emotionally traumatic for you — and more so for the children. For more articles, go to www.divorcemag.com/articles/Child_Custody.

The Waiting Period

There is usually a set minimum waiting period between the divorce

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

The Divorce Judgment

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

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

Jeffrey Cottrill is the former Managing Editor of Divorce Magazine. Josh D. Simon is a writer for Divorce Magazine.

For more articles, and a more in-depth explanation of each of the subjects covered in the divorce process, visit www.divorcemag.com/articles/Separation_Divorce_Process.



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ROBERT BURCH, PARTNER, is an aggressive and tenacious attorney that is dedicated to advancing and protecting the interests of his clients. He is an experienced family law attorney who is known in the family law community for his superior knowledge of family law issues. While he attempts to resolve his cases through settlement whenever possible, Robert Burch understands that some cases require litigation. He is a skilled and experienced courtroom litigator who provides vigorous representation for his clients when litigation is required.

Robert Burch has practiced exclusively in family law for his entire career and has handled all types of family law matters. Robert Burch has focused his career on representing business owners and handling complex marital estates. He has worked on marital estates involving as much as fifteen million dollars and has secured child and spousal support awards as high as \$50,000 per month.

Mr. Burch has received numerous professional awards and recognition, including being recognized in 2011 and 2012 as one of the top five attorneys in Orange County by *OC Metro Magazine*; receiving the highest rating of 10.0 from the independent lawyer rating service, *AVVO*; and being recognized as a Rising Star by *SuperLawyers Magazine*. He is also a frequent author and lecturer on family law issues.



ANNIE COLEMAN, ATTORNEY, is one of only a handful of family law attorneys exclusively practicing family law and possessing an advanced law degree in taxation. This unique skill set and Annie's deep understanding of financial and tax matters give her clients a tremendous advantage. Annie strives to provide her clients with the highest level of professional service. One of Annie's strengths is to provide her clients compassionate advice while also providing vigorous representation of her clients in interactions with judicial officers, opposing parties, and their attorneys.

Annie earned her law degree, Magna Cum Laude, from Whittier Law School, and an advanced law degree in Taxation from Loyola Law School. She has received the prestigious CALI Award and is an adjunct professor of taxation at Whittier Law School.



TODD COULSTON, PARTNER, is a dedicated, well-prepared, and compassionate advocate that provides the highest level of professional service for his clients in family law matters.

Todd Coulston has decided to focus his practice exclusively in the area of family law because he believes the extremely personal and emotional issues involved in family law matters provide him with the best opportunity to have a significant and positive impact for his clients.

Todd Coulston works individually with each client to develop and implement a case plan that best serves their needs and goals. Although Todd Coulston strives to resolve all matters through the settlement process, he understands that some issues will not be resolved short of litigation. If litigation is required he will advocate zealously for his clients.

Todd Coulston is a Certified Family Law Specialist, Certified by the State Bar of California Board of Legal Specialization, and a 2003 graduate of the American Bar Association Family Law Trial Advocacy Institute. He earned his J.D. degree from the Santa Clara University School of Law in 1999.



COURTNEY SHEPARD, ATTORNEY, is an aggressive and passionate advocate for her clients. She exclusively practices in the area of family law and is a Certified Family Specialist, Certified by the State Bar of California Board of Legal Specialization.

Courtney Shepard has successfully handled cases involving issues of child custody, child support, spousal support, and attorney fees, and completed a nationally-recognized Trial Advocacy program which focused extensively on the litigation of child custody, support and complex business matters.

Courtney Shepard has a distinguished academic background. She graduated from UCLA and earned her Juris Doctor degree, cum laude, from Whittier Law School, where she was a member of the Law Review, a Dean's List honoree and a fellow in the Center for Children's Rights.

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How to get the best possible advisors during your divorce

Selecting Your Professional Divorce Team

By Diana Shepherd, edited by Josh D. Simon

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 of you. You will need expert services from one, some, or all of the following professionals: lawyer, mediator, accountant, divorce financial specialist and therapist. While each of these professionals can help you through a challenging transition period, finding the right ones can be stressful.

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

Selecting a Divorce Lawyer

Choosing a lawyer may be the most important decision you will make during your divorce. As in any profession, there are good lawyers and

bad lawyers. It's up to you to do your homework and to ask the right questions to determine which group your lawyer belongs to (a list of questions to ask a potential lawyer is provided at the end of this article). Look for a lawyer who:

- Practices family law. A lawyer who specializes in taxation isn't going to be much help to you.
- Has experience. Make sure your lawyer has practiced family law for a while, and find out if they have written books or lectured/mentored other family lawyers.
- Is a skilled negotiator. If your case can be settled without a protracted court battle, you'll probably save a great deal of time, stress, and money.
- Is firm. If you end up going to court, you don't want your lawyer to crumble at the first obstacle.
- Is reasonable. You want someone who'll advise you to settle if the offer is fair, and not have the case drag on to satisfy the need to win.
- Is not in conflict with your best interests. Do not share a lawyer with your spouse, or hire your spouse's best friend (even if this person is a friend of yours, too),

business partner, or any member of your spouse's family to represent you — even if you're on good terms with them. Aside from the obvious conflict of interest, you'll likely create enemies and spark a family feud before your divorce settles.

Selecting a Divorce Mediator

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

Mediation is not an option in all divorce cases. However, when both parties are willing to look at the issues instead of the emotions that cloud the issues, mediation is worth a try. Statistics show that when a case is negotiated through a mediator, the parties tend to stay out of court in the future.

Another benefit of a mediated settlement is that you and your spouse will learn powerful new communication techniques, which is particularly important if you have children or share business interests.

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

Selecting an Accountant

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

You could ask to be introduced to an accountant through your lawyer. These two members of your divorce team may have to work in tandem from time to



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

time, so it's beneficial to find someone with whom your lawyer is familiar. You can also ask your personal accountant (if you have one) to suggest someone who has a matrimonial background, but be sure to check his/her prior experience.

Selecting a Divorce Financial Specialist

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

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

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

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

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

Selecting a Therapist

A therapist can help you deal with the various emotions that could get in the way of negotiating a divorce settlement. During your separation, you may experience grief, anger or depression. Also, until you achieve an "emotional divorce," you won't truly be free to create a fulfilling new life. A qualified therapist can help you work through the issues that are holding you back and keeping you stuck in the past.

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

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

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

What to Ask Your Prospective Lawyer

- What percentage of your cases go to trial? (You may want to choose a lawyer with a low percentage here: a good negotiator who can settle your case without a long, expensive court battle. A good trial lawyer may be necessary if every indication is that nothing could possibly be settled outside of a courtroom.)
- Are you willing and able to go to court if this case can't be settled any other way?
- Who will be handling my case: you, an associate, or a combination of senior and junior lawyers and paralegals?
- Should I consider alternative dispute resolutions, such as mediation?

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

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

- What is your training, experience, credentials and affiliations?
- How long have you been working in this field?
- Do you serve divorcing people exclusively? If not, what percentage

of your work involves divorcing people?

- How much direct experience do you have dealing with cases like mine? (This is an especially important question if there are aspects that make your divorce unique.)
- How many times have you been to court? These professionals may be testifying on your behalf, so you want someone who has experience in the courtroom. If possible, find out how these cases turned out.
- Have you worked with many family lawyers? Ask for a few references, and call them.
- What is your approach? Do you have any biases? (We all have certain viewpoints, which cloud our judgment, and professionals are not exempt. If you have children, you should ask if this professional has any strong views about the role of mothers or fathers, or about the care of children.)
- Will you keep our communications confidential? Can I call you between scheduled meetings? If so, do you charge for these calls?
- Do you require a retainer, and if so, what is it? Is this fee refundable? What is your hourly fee? What are your payment terms?
- Approximately how much will your services cost? (The professional will only be able to provide an estimate based on the information you provide and your realistic estimation of how amicable you and your spouse are. If you think your case is extremely simple, but your spouse's lawyer buries your lawyer

in paperwork, you can expect your costs to increase.)

- What do you think the outcome will be? (Remember, you're looking for truthfulness here, not to be told a happy story.)
- If your spouse has retained professionals of his or her own (and you know who they are), ask if they are familiar with any of them.
- How long will this process take? (Again, the answer will be an approximation.)
- What are my rights and obligations during this process?
- What are your hours? Do you work any evenings or weekends?
- How accessible is your office (close to parking, public transport; wheelchair accessible; etc.)? Is it located in a safe neighborhood?
- What happens next? Do I need to do anything? And when will I hear from you?

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

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





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SAFE HARBOR

By Diana Shepherd, CDFATM

Here's help navigating the financial dangers of divorce so you'll reach safe harbor: a financially sound future.

While you were married, you and your spouse were both co-owners of the “business” called your marriage. Like any business owners, you accumulated both assets and liabilities. Maybe you bought a house, a car, a cottage, some furniture. One or both of you earned income, maybe put some money aside for retirement. In addition to mortgage and car loans, you might also have accumulated some credit-card debt. Maybe one or both of you had a bad year — you got sick, or your spouse was laid off — and your financial troubles were the final straw in an already troubled relationship.

Whatever your own reasons were for ending your marriage, money is going to play a big part in your divorce process. Since property division on divorce is a state or provincial matter, there are regional differences when it comes to dividing the marital pie. You'll need to ask your lawyer about the rules governing property division in your area, but here are some general rules to get you started.

Marital vs. Separate Property

The first thing to know is that there are two kinds of property: Marital and Separate. Anything that is marital will go into the marital pie that's going to be divided; anything that's separate property will not. The distinction between the two is a gray area and should be discussed with your lawyer, but here's how most courts typically define separate property.

Separate property is anything that was gifted during the marriage, inherited during the marriage, or brought into the marriage and kept in either spouse's separate name. Everything that is not considered separate property is considered marital — no matter whose name it's in. Let's take a look at some examples.

Eight years ago, Susan's Aunt Virginia passed away and left Susan \$150,000 in her Will. Susan placed the money in a bank account in her separate name, which means that the money she inherited is her separate property and not up for division now that she's getting divorced. But what if Susan had taken her \$150,000 inheritance and used it to pay off the mortgage on the marital home? She could ask her lawyer to try to subtract \$150,000 from the marital portion, but the courts are likely to rule that the inheritance became marital property when she invested it in the home. As a general rule, separate property can become marital property if it is "commingled" (e.g., if Susan had put the inheritance into a joint account with her husband Bill rather than one in her name only), or by making a "presumptive gift to the marriage" (e.g., using the inheritance money to renovate the kitchen, or to take the family on vacation, or to buy a motor-boat that the family all enjoyed at the cottage).

So if Susan kept her inheritance completely separate, it remains her separate property. But what about the interest the original inheritance earned — is that her separate property, too? Probably not: any increase in value on the inheritance (or any other separate property)

is considered marital in most areas. So if that original \$150,000 had grown to \$175,000 at the time of her divorce, the \$25,000 in growth might be considered marital, depending on local law.

When Sara and Frank got married 10 years ago, Frank moved into the house Sara had inherited from her parents. She was in love, so she told her husband Frank: "What's mine is yours and what's yours is mine." So she changed the title on her house from her name alone to both of their names. Even if Frank husband never contributed a dime to the upkeep or maintenance of the house, in most areas, the house will likely be part the marital pie and up for

The general rule is that everything that either of you earned, purchased, or saved during your marriage is marital property, which must be divided with your spouse when you divorce.

division now that they're getting divorced. In some areas, the marital home is treated differently than other assets; even though Sara owned the house before she got married, the mere fact of Frank's moving in would have turned the home into a marital asset — whether or not Sara had put his name on the title. This is not true in all states and provinces, so make sure to ask your lawyer about how the marital home is treated in your area.

Let's look at one more example. Don was the saver in the family, and during his marriage to Joan, he automatically deducted \$100 from each paycheck and placed it in a high-interest account in his separate name. Do you think the money in that account is marital or separate property? It's marital, because everything Don earned during his marriage is marital property regardless of whose name is on the account.

The general rule is that everything that either of you earned, purchased, or saved during your marriage is marital property, which must be divided with your spouse when you divorce.

The Marital Home

In many divorces, one of the biggest questions is what to do with the marital home. Should the wife get it, should the husband, or should they sell it and split the proceeds? What if the house is "underwater" — meaning that the house-holders owe more on their mortgages than their houses are worth?

In a normal economy, couples typically build equity in their homes; if they decide to divorce, they would usually divide the equity they had built by selling the house or by one partner buying out the other's share. But these days (due to economic factors beyond divorcing people's control), many couples own houses that neither spouse can afford to maintain on his/her own, and that they cannot sell for what they owe. With the housing market still struggling in many areas, what used to be one of a couple's biggest assets has turned into a liability.

Before the recession, there were generally two main options for the home:

1. One spouse stays in the house (with the children, if any) and buys the other spouse's share.
2. The spouses sell the house during or after the divorce process and split the proceeds.

Now, let's look at today's reality.

.../CONTINUED

AVOIDING THE ROCKY SHORES

Here are ten tips to help you avoid some of the common financial mistakes of divorce.

- 1. Negotiate a reasonable settlement.** Get some advice from a CDFA professional to make sure you'll be able to live with the financial terms of the settlement — now and into the future.
- 2. Don't live beyond your income.** Reduce your expenses — or increase your income — so that you're always putting something aside for a rainy day. Ask your financial advisor for help creating a budget if necessary.
- 3. Consider whether you can afford to keep the family home.** Ask your financial advisor whether you can truly afford it, and ask him/her to show you what cash you'd have available for investment if you moved to a smaller home.
- 4. Identify your priorities — what you can and cannot live without.** Make a short list of "Must-Haves" and be prepared to compromise on everything else. Look at the big picture; is this asset best for your situation?
- 5. Don't forget about retirement.** Make sure you keep some retirement assets as well as some liquid assets in your settlement.
- 6. Become debt-free ASAP.** Try to negotiate taking on as little debt as possible in your divorce settlement. Also, use debt sparingly, and avoid maintaining balances on credit cards.
- 7. Get a copy of your credit report.** If you have not established your own credit rating, get a credit card in your name, use it sparingly, and pay it off in-full and on-time every month.
- 8. Know what you have — and what you need.** Start by collecting statements for all your financial holdings and put together a list of your assets. Note the value of each asset, and who owns what portion of it.
- 9. Expect your income to drop post-divorce.** If you were barely getting by on two salaries while you were married, don't expect to "get rich" because of divorce. Even if you were doing OK during your marriage, the income you used to share must now fund two separate households.
- 10. Settle out of court if at all possible.** Don't spend months and thousands of dollars fighting over furniture, appliances, or other personal items.

In some cases, keeping the home can be a big mistake — a mistake that could lead to financial ruin.

In a recent survey of Certified Divorce Financial Analyst™ (CDFA™) professionals across the U.S. and Canada, 67% of respondents stated that the current housing market has forced them to come up with creative solutions to property-division problems when the matrimonial home fails to sell — or would sell for less than what clients still owe on the mortgage. The most common solution is for ex-spouses to retain joint ownership and continue to live in the house (often, he moves into the basement and she lives upstairs) until the market improves, agreeing to postpone final division of assets until after the house is sold. Other common solutions include:

- Renting the house to a third party until the house can sell for more than the debt.
- One ex-spouse stays in the house until the market improves.
- “Birdnesting”. The ex-spouses retain joint ownership of the home, they rent a small apartment nearby, and each one alternates living in the house with the kids and in the apartment on his/her own.
- One ex-spouse stays in the house and pays rent to the other until the market improves.
- Structure two levels of spousal support: before and after the house sells.
- Agree to sell the home at a loss, share the loss, and move on with their lives.
- Short-sale, foreclosure, or bankruptcy.

If you and your spouse have agreed to continue to own the house together for a period of time post-divorce — for instance, until your children reach a certain age, or until the market recovers and they can at least break-even on the sale of your home — but only one of you is going to continue to live in the home, then you’ll have to negotiate who pays for what until the house is sold. In many cases, the person who remains in the home pays the mortgage and taxes

and may get some credit for any reduction in principal on the mortgage from the date of the divorce until the date that the home is sold. If the mortgage payment is similar to what the other person has to pay in rent, then they might agree that the person who stays in the home gets no credit for reducing the principal since he/she is enjoying the benefits of living in the home. Major repairs are usually divided between the parties — either at the time of the repair, or by reimbursing the person who has paid for the repair over time or when the house is sold.

Hopelessly Devoted

At times, some people — mostly women — are determined to stay in the marital home no matter what. It’s the place where their children were born; they decorated it with loving care over the years; it represents security and familiarity in the rapidly-shifting landscape of divorce. In some cases, keeping the home can be a big mistake — a mistake that could lead to financial ruin. We’ve seen people willing to give up their share in their spouse’s pension, joint investments, or savings accounts in order to keep the house. But if you can’t afford to cover the mortgage, taxes, repairs, and maintenance on your own — without dipping into your savings or retirement accounts — then keeping the home may be a decision you’ll come to regret. Talk to your CDFA™ professional about what your financial future will look like if you keep or if you sell the home before making your final decision.

Create a Budget

It is absolutely crucial to develop a realistic post-divorce budget so you’ll know what you need — and whether the property division and spousal or child support payments (if any) will cover these needs. To do this, you’ll need to determine the income and expense for

both you and your spouse and also try to estimate what both of your expenses will be after the divorce is final. This is a difficult task for many people — especially if you were not the spouse who handled the family finances while you were married. A CDFA™ professional can help you to develop a budget and figure out your cash-flow needs — and also let you know if you’re steering towards financial security or disaster. Working with a CDFA™ pro allows you to see both the short-term and long-term financial effects of accepting “Settlement A” vs. “Settlement B”, which will help you to make better financial decisions at a difficult time.

Go to www.institutedfa.com/Public.php, click on the “Checklists/Worksheets” tab, and download a copy of the “IDFA Monthly/Annual Expense Worksheet” to help get you started. While you’re there, check out the other useful checklists and worksheets you can use to help you figure out the financial aspects of your divorce. ■

Co-founder and former Editorial Director of Divorce Magazine, Diana Shepherd is currently the Director of Marketing for the Institute for Divorce Financial Analysts™. For more information about how a CDFA professional can help you with the financial aspects of your divorce, call (800) 875-1760, or visit www.InstituteDFA.com.

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

How to Work with Your Divorce Lawyer

By Diana Shepherd, with notes from Josh D. Simon

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

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

make sure your short-term goals for property, other assets, custody, visitation, and support are consistent with that future.

What Your Lawyer Expects from You

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

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

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

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

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

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

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

your last check to the lawyer bounced, or maybe you were rude or unprofessional to one of the firm's paralegals or secretaries.

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

What You Should Expect from Your Lawyer

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

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

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

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

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

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

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

For more financial articles to help you with your divorce process, visit www.divorcemag.com/articles/Divorce_Lawyers.



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



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An Introduction to Divorce Mediation

Mediation is a viable option for couples who want to avoid the adversarial divorce process.

By Josh D. Simon



For many people, the word “divorce” conjures up a stressful — even nightmarish — scenario where spouses battle it out in court and attempt to destroy each other’s character and credibility. But it doesn’t have to happen to you, and one of the ways that you and your spouse can survive the experience and preserve your finances, self-respect and relationships is through a consensual dispute resolution (CDR) known as divorce mediation.

What is Divorce Mediation?

Divorce mediation is a process in which you and your spouse work with a neutral 3rd party divorce mediator to reach a settlement. There is no time limit to the mediation, which is welcome news for spouses who need more than a few sessions in order to clarify their goals, views and expectations. There is also no limit as to what issues can be mediated (such as spousal and child support, assets, visitation, and so on) but, ultimately, all decisions must be deemed legal and appropriate by the courts in your jurisdiction.

And speaking of jurisdictions: different jurisdictions impose various rules and procedures for divorce mediation. In fact, some jurisdictions make it mandatory for spouses to learn about divorce mediation upon filing for divorce, in the hopes that they’ll amicably settle their differences outside of court.

It’s beyond the scope of this article to itemize all of the different rules and regulations in each jurisdiction. Suffice to say that divorce mediation is an approach that some couples have relied upon to make their divorce journey relatively smooth and even — believe it or not — peaceful and productive.

The Benefits of Divorce Mediation

Some of the broad benefits of divorce mediation have already been mentioned — including the most important of them all: it’s not court!

There are many other key benefits that are worth highlighting; especially in light of what’s at stake during divorce, and how quickly things

can unravel and become nasty (or worse). These key benefits include:

- **Divorce mediation can save you money.** If your divorce winds its way through court, you can count on huge legal bills, plus other experts that you'll need to bring onto your team (financial experts, child care experts, etc.). Divorce mediation isn't free, and you still may need to bring in expert legal and financial expertise, but it is normally less expensive than litigation.
- **Divorce mediation can save you time.** Unless your divorce situation is incredibly simple (i.e. you have no children, few shared assets, and both you and your spouse are eager to put the marriage in the rear-view mirror ASAP), then be prepared for a relatively lengthy process. But with mediation, you and your spouse can reduce the time involved if you prioritize your goals, put your emotions aside, follow the guidance of the mediator and negotiate in good faith.
- **Divorce mediation is fair. Mediation doesn't promise an ideal, happy win-win outcome.** That's unrealistic. However, a trained mediator can even out the level of the playing field by ensuring neither spouse will overpower the other with emotional or financial control. A skilled mediator will diffuse emotions and show you how to focus on your common goals and resolve your differences. This way, neither of you feel railroaded into accepting an offer. On some issues, you'll bend a little. On other issues, your spouse will do the bending.
- **Divorce mediation is private.** This is a benefit that many spouses don't pay much attention to (or don't know about) until they wind up in court and are forced to state — on the public record — personal and financial information that they likely wouldn't even dream of telling their closest friend. Information about affairs, about substance, alcohol, physical and emotional abuse, about addictions, about their financial settlement... and so on. With divorce mediation, while these aspects may indeed come up, the information is kept private and

your personal information is destroyed when the process is finished.

- **Divorce mediation can broker better long-term solutions.** When you and your spouse co-create solutions on everything from alimony to visitation to who gets the family dog, there's a greater chance that you'll both be satisfied with those solutions in the long-term future. Compare this to having a decision imposed on you by a judge — which can be shocking and hard for you to accept.
- **Divorce mediation can preserve your relationships with your spouse and your children.** During mediation, you and your spouse will learn how to communicate and negotiate without being adversarial. This is invaluable training that will be useful even after the divorce, especially if you have children. Studies have shown that, contrary to popular belief, divorce itself doesn't necessarily have a negative or even a traumatic impact on children. Rather, it's how parents behave during and after divorce that deeply influences children. Mediation helps you and your spouse put your personal agenda aside and co-create a parenting plan that's best for you and your children. Indeed, as the old saying goes, "marriages may end, but families continue." Divorce mediation can help make this old saying be something that you appreciate, rather than dread!

How do I Know if Divorce Mediation is for Me?

Divorce mediation is not for everyone, or every divorce situation. And while there's no hard-and-fast set of rules or consistent "checklist" to tell you if divorce mediation is a viable option for you, here are some situations when divorce mediation will work best:

- **When you and your spouse can communicate reasonably (or are at least willing to try).** Keep in mind that, by no means do you and your spouse need to get along in order to attempt divorce mediation. You just need to be willing to communicate and, to some extent, exit your com-

fort zones and work together towards a shared goal: the fair dissolution of your marriage.

- **When there is a basic level of trust between you and your spouse.** At any time, during mediation, you or your spouse can get up from the table and march into court. Obviously you want this to happen only as a last resort, and not at the first sign of stress, tension or trouble. Remember, divorce mediation isn't as brutal as court (which is adversarial by its very nature), but it's no picnic either. Be prepared for some ups and downs, and be willing to really give it an honest try before giving up.
- **When you're honestly prepared to end the marriage.** This may seem like a very strange point, but there are many couples who, fundamentally, don't want to get divorced. And so they end up viewing the divorce mediator as a marriage counselor. This is an extreme mistake. Divorce mediators are not trained to patch up a marriage. They are focused on helping both parties co-create fair, reasonable and acceptable resolutions as part of the dissolution of the marriage.

What are My Next Steps?

If you believe that divorce mediation could be an option for you and your spouse, here are your next steps:

- Read more on divorce mediation to deepen your understanding of this consensual dispute resolution option. You will find plenty of articles here: www.divorcemag.com/articles/Mediation and divorce mediation FAQs here: www.divorcemag.com/faq.
- Speak with a divorce mediator in your area to learn more about how the process works in your jurisdiction. You'll find local mediators here: www.divorcemag.com/findprofessional.php. ■

Josh D. Simon is a contributing writer for Divorce Magazine.



Rules for Divorcing with Children

Doing it with dignity and grace while raising happy, healthy, well-adjusted children.

By Melinda Roberts

There's no easy way to divorce with children; you have to learn by doing. You can start by putting their confused, fragile hearts and minds first, and doing your best to build a new life for all of you without destroying one another in the process. However, you must try for the sake of the children to treat your ex exactly as you hope your ex will treat you. This is critical for your children to have any chance for a future that includes a loving, healthy, adult relationship of their own.

Your children can't help feeling that if either parent is perceived as bad, then part of them must be bad. They will internalize whatever you project to your ex, so project your best side. Try to have a divorce characterized by dignity and grace, at least with regards to the children.

Decide How, When, and Where to Break the News

We told our children during snuggle time in bed, when everyone was feeling safe and close. We didn't want a formal, nerve-racking meeting where everyone sat with hands folded in laps.

We were lucky that we could cooperate about how to break the news. Not everyone will have that luxury. If you have any control over how, when, and where you tell the children, choose to do it lovingly, and with a united front.

- Plan ahead. Agree on what to say and not to say. It's not helpful for one parent to say it's temporary and the other to say it's permanent.
- Emphasize that it's because of discord between the parents, NOT because of anything the children did, said, felt, or dreamed.
- The children will argue. Given the choice between a happy parent in another household or an unhappy one under the same roof, nine times out of ten they will prefer you crying in the next room. This is not about giving them what they want, but about what will enable the family to function better.
- Emphasize that you will be a better team apart. Sometimes it's just not possible for two people to live together and be happy, or safe, or kind.
- Listen to the children. The decision isn't open for discussion, but feelings, fears, and logistics are.

Never Tell the Children Why You Divorced

You cannot get through a divorce without confiding in someone! Talk to your parents, family, friends, counselor, priest, or rabbi. Do not talk about it to your children.

If you tell the children something other than what you've negotiated with your co-parent, they will forever have tremendous difficulty reconciling competing "truths" and so will distrust all of them. Deep down, most children think they could have done something — anything — to make things turn out differently. You do not want to burden them with something beyond their understanding. Even your adult children will not want to know the gory details.

Live Nearby

If you cannot give your children togetherness, then please try to give them proximity. When I divorced, my ex husband rented a house one mile away, but even then it was heart-wrenching for our children to go from one home to the other. He and I now live fifteen miles



FAMILY LAWYERS FOR YOUR FAMILY

When choosing a law firm to handle your divorce in L.A., you should find one that's prepared and qualified to deal with any legal curveball your case might throw you. They should also be working to make the process as easy and efficient as possible, so that you can move on with the least damage to your wallet and your emotions. With these traits in mind, you need look no further than Feinberg, Mindel, Brandt & Klein, LLP, based in West Los Angeles.

"A family lawyer must have the ability to listen patiently, to understand the problems thoroughly, and to resolve those problems as quickly and efficiently as possible," says Robert Brandt, the head of the Family Law Department at FMBK. According to Managing Partner Steven Mindel, who heads the Business Transactions Department at FMBK, a top family law attorney must also be knowledgeable about all areas of law. "To use a baseball analogy, you have to be a utility player. Divorce law combines so many different legal areas, including business, child custody, finance, and property. There's always some collateral issue involved. You also have to respond to the clients' needs: returning phone calls, listening to what they're saying, changing gears from toughness to compassion whenever necessary."

FMBK's staff has extremely high standards for their own work. They're versatile in their legal abilities, and they expect only the best of themselves. Seven of the lawyers are Certified Specialists in Family Law*, Howard S. Klein is a Certified Specialist in Estate Planning, Trust and Probate Law**, and the team has the knowledge and experience to handle all types of cases — from prenups to paternity to palimony to divorce to post-divorce matters. "We're also able to serve a broad spectrum of the community — from higher-asset to lower-asset cases," adds Brandt.

Aware that divorce is very expensive, they also do what they can to make it less so. "We're very conscious of cost control and we work closely with the client to reduce fees if necessary. We aim to minimize the expense and maximize the return." says Mindel.

One of the best ways to minimize the cost of divorce is to concentrate on completing the process as quickly as possible — and not to fixate on trivial issues, says Brandt. "Don't fight for principle or for your own ego; carefully choose what the important issues are — such as your children's best interests," he advises. "The more you battle, the more expensive your divorce becomes."

FMBK will explore a realm of solutions to divorce cases before even considering the adversarial court system. "It is always preferable to work out a settlement rather than to have one dictated to you by a court," says Brandt. "So be reasonable and realize that a truly just settlement is one that no one is 100% happy with." Mindel adds that they "try to reduce the animosity between parties to help them build trust and move on." In addition to setting up realistic goals and showing clients where to get the tools to deal with their anxiety and grief, FMBK offers a broad spectrum of legal services. The firm can assist you with wills, trusts and estate planning issues, complex civil litigation matters, real property law, and commercial litigation, in addition to dealing with your divorce; many of these additional fields become involved in divorce cases.

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apart and still share custody equally. We negotiate the drive between houses every couple of days. Both of us are willing to accommodate the kids' need for continuity in friends and activities. It consumes a lot of time, gas, and energy, not to mention sometimes annoying negotiating time, but they have learned that mom and dad are ALWAYS there.

Arrange Things from the Children's Point of View

Each child has their own toolkit of feelings, defenses, self-comforting ways, and ways to get comfort from others. They especially have their own ways of getting comfort from their parents. These differences were there even before you decided to divorce. In your new setup as a separate household, make an effort to provide the same kind of outlets, ways of seeking comfort, ways of having fun, and ways to keep communication flowing between you and your children.

If you can, involve them in the process of arranging your new life without giving too much over to them. It's scary, overwhelming, and not fair to overburden them, but give them just enough input so that they don't feel completely left out.

Children crave structure, boundaries, and rules. Try to make the major rules the same in both houses, including chores, discipline, etc.

There are different schools of thought regarding what to do when the kids break rules that have significant consequences, such as grounding or loss of screen time. Some parents want a consequence to be carried over to the other parent's home if the duration is greater than the time remaining before they leave for the other home. Others believe it's not pragmatic to expect the other parent to carry out a sentence they did not impose. I personally believe that one should never assign a timeout one is not prepared to sit out, and that goes for toddlers on up to teenagers. Try to have some consistency in routines such as

Let your children know that if there is one place in the world where they're safe, it's with you

meal times, bath time, homework time, and play time. The worst that could happen is that the kids have to learn how to survive in each house according to that house's set of rules.

Remember: Children Sense All, See a Lot and Hear More Than You May Think

Your children see and hear far more than you can ever imagine. They talk about it together. They will also talk to others if they don't feel they can talk with you. If you are angry, bitter, and resentful, they are not going to feel safe opening up to you.

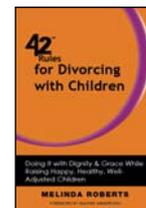
Progress may include sucking it up and being civil and cooperative with your ex's new partner. Your children will see it, appreciate it, and even relax a little knowing that you are able to put aside your differences so that they can have some semblance of a normal childhood.

Grow satisfied with your new life rather than waste time comparing your life to your ex's life. In one way or another, you each helped craft the circumstances leading up to divorce, and you must each do more work to craft new and better circumstances. Work to create your new and better reality while letting as little of those feelings as possible thwart your creation.

Resentment takes up space in your brain and in your heart. It hangs hugely

on your back and doesn't look good on you. Pick a new direction, adjust your expectations, and go for it.

If you remember nothing else about this rule, remember this: your children may not always remember what was said, but they will always remember how they felt when they heard it. ■



This article was excerpted and adapted with permission from the book *42 Rules for Divorcing with Children* ©2012 by Melinda Roberts. You can visit

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Letting Go

In order to move in a new direction after your divorce, you need to get rid of your old map.

By Diane Adkins

To get yourself pointed in the right direction, and to make room for wonderful things to come into your life, you need to learn to let go. This includes emotions, beliefs, possessions, and other 'baggage' that may be holding you back, or worse, pointing you in the wrong direction.

The Fear of Letting Go

Letting go is frightening for a number of reasons.

The first is change. People generally do not like change.

The second is fear of the future. The future, by definition, is unknown. This causes some people a lot of stress. This is especially true after a midlife divorce because your future is going to be drastically different than the one you had envisioned while married.

Third is fear of losing the important things and people in your life. Divorce will force you to make sacrifices of not only material possessions you have accumulated in your marriage, but it will also force certain relationships and friendships to end.



The important point to remember is that if you refuse to face these fears of letting go, you will not be able to know your deepest self, aspire to your life goals or even know who your real friends are.

Letting Go of the Ex

While it is commonly recommended to maintain a civil relationship with your ex, it is also important to set and maintain boundaries. In order for you to truly move on to your new life, it is critical that you learn to fully disengage yourself from any emotional, physical and even financial dependency with your ex.

You need to view your ex as just that — an ex. He/She is now part of your history — your past — and you do not live in the past!

Here are some of the important reasons why you need to let go of the ex:

Reason 1: It is difficult to get past the pain and the reality that comes with divorce if you choose to stay fixated on your ex, your marriage and your divorce.

Reason 2: By letting go of the ex, you will be able to focus on reconnecting with yourself emotionally.

Reason 3: The act of letting your ex go will help you avoid the habit of idealizing your marriage or your ex.

Reason 4: By letting go of your ex, the temptation to have sex with them will be removed.

Reason 5: By letting go of your ex during your divorce recovery, you will lay the groundwork for the possibility of becoming friends, or at least somewhat friends, in the future.

Reason 6: Letting go of your ex will allow you to heal any self-doubt and

negativity you are harboring, and will give you the chance to work on a more positive outlook.

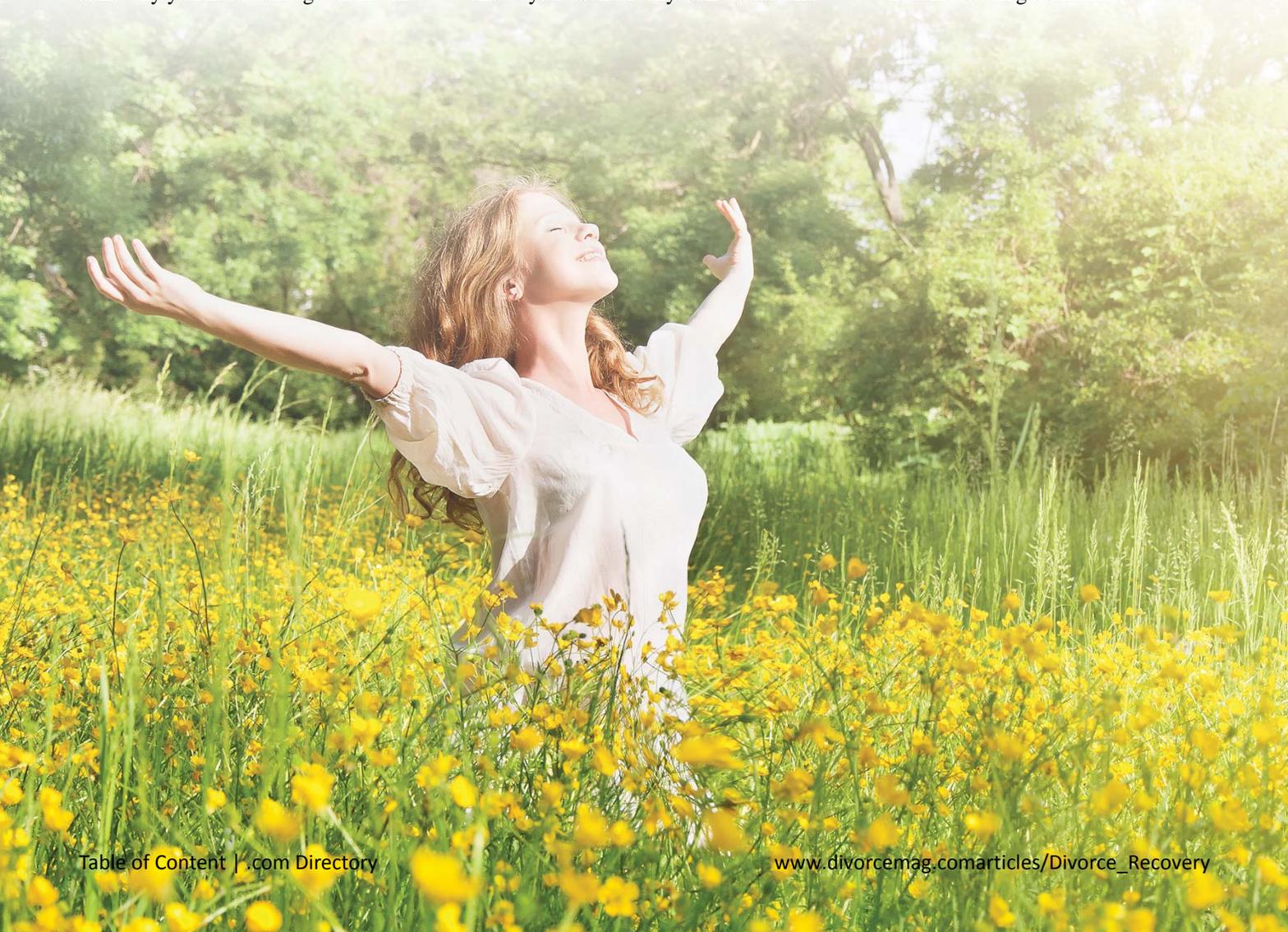
Reason 7: You need to let go of your ex if you ever hope to find a new relationship that may be better for you.

Reason 8: You must let go of your ex in order to grow from the woman you were before the divorce, into the woman you want to be.

In order to effectively cut the ties with your ex:

Only communicate with your ex when absolutely necessary — having a plumbing problem come up or wondering how to start the lawn mower is not an absolute necessity.

- Tell your ex that you need to sever the ties for a while, so that you can work on yourself and move on. This is called setting boundaries!



- Invest time in working on your personal development. Continue on and start looking forward to the new you and your new life.

The behaviors we display over an extended period determine the quality of our lives.

Letting Go of Your Comfort Zone

Open yourself up to letting go of old habits, ideas and people that are not serving your best interests since your divorce. Make no mistake, it isn't easy to step away from people, habits or ideas that you have had for a long time and that are comfortable; however, choosing to cling to the past will prevent you from making the most of your life.

One way to embrace change and help you step out of your comfort zone is when you begin to see the good in every change. If you do this, eventually you'll be ready, willing, and able to expand your comfort zone.

Try these effective techniques to help you break free of the limits of your comfort zone:

- Think positively
- Take small steps
- Use your imagination
- Do something new
- Accept help
- Meet new people

Letting Go of Dysfunctional Habits

Part of the preparation in carving out your new life is to identify your dysfunctional habits. While most dysfunctional habits began to provide temporary relief from some sort of pain or suffering, they can subtract years from your life.

They include seemingly innocuous things — skipping meals, not getting enough sleep, obsessively searching the internet for information on divorce — to much more serious habits such as excessive alcohol consumption, smoking, taking stimulants or depressants.

In order to start letting go of these habits, you need to believe that you are

worth the effort. The best way to do that is to substitute better habits. Start taking better care of yourself.

Letting Go of Your Limiting Beliefs

A limiting belief is your very own notion about you that holds you back from reaching your potential. Our beliefs dictate our behavior, and the behaviors we display over an extended period determine the quality of our lives.

This is not about believing in the impossible. To achieve most goals requires a mixture of belief, talent, age and innate intelligence. The bottom line is that to truly change your life you need to first discover, and then change, some of your limiting beliefs.

Examples of limiting beliefs include:

- Fear of embarrassment
- Guilt
- Resentment
- Remorse
- Most judgments
- Excessive self-induced pressures — all those expressed with 'oughts', 'shoulds', 'musts' and 'have tos'.

Limiting beliefs have a way of coming out, especially after you have experienced something traumatic — like a divorce — and they have a way of hanging around and blocking you from moving ahead with your life.

Choose Peace

One important aspect of letting go is the very decision you make to TRULY LET GO. To do this you need to consciously choose to be at peace with your marriage, your divorce and your ex, as

well as your life right now. This will give you the freedom and ability to see the possibilities for a better future. ■

This article was adapted by Divorce Magazine from the book *Rewriting Your Happily Ever After* ©2012 by Diane Adkins.



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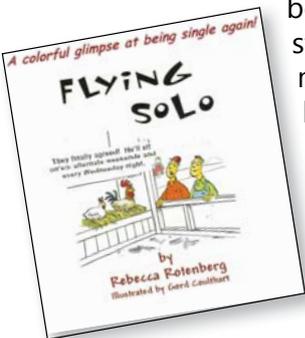
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