

Divorce myths abound -- know the facts and be prepared

By Trey Yates

I often find myself dispelling the many myths surrounding the divorce process when the topic comes up among friends, family or clients. I usually start by saying, "Divorce in real life is nothing like divorce on reality TV." With that said, I begin by explaining how the actual process unfolds and what clients can expect along the way. One of the most common myths of divorce is that by law, "the couple's assets will be divided equally."



The Texas Family Code requires that, at the time of divorce, the court divide *the community property* of the spouses "in a manner that the court deems just and right." This does not mean that a court is required to divide the marital property on a 50-50 basis.

In fact, the court can look to a variety of factors in deciding what percentage each spouse is awarded to arrive at a "just and right" division. The factors that can influence the court's division of the couple's property include, fault in the breakup of marriage, conduct of the spouses during the marriage, fraud, waste, earning power of the spouses, who will be the primary caregiver of the children, the nature of the property to be divided, whether a specific asset will be subject to taxation, attorney's fees and more.

Another misconception held by many is what constitutes "community property" and what constitutes "separate property" in a divorce. Here are the definitions:

Separate property consists of property owned or claimed by a spouse before marriage; property acquired by a spouse during marriage by gift, devise, or descent; and, recovery for personal injuries sustained by a spouse during marriage, except any recovery for loss of earning capacity during marriage.

Community property consists of the property, other than separate property, acquired by either spouse during marriage. This is true regardless of which spouse has possession of the property. The fact that one spouse is named on the title, deed, or account, or that one spouse receives the asset as payment for personal services (e.g. salary), or the asset will not be paid until a later date (e.g. retirement benefits), will not change the character of the property.

Presumption of Community Property

In Texas, there is a legal presumption that property possessed by either spouse during or on dissolution of marriage is presumed to be community property. This legal presumption can only be overcome by “clear and convincing evidence” that the property in question is indeed separate property. The most common way of proving separate property is by tracing the asset from the date of acquisition to the present date.

Right to Reimbursement

The increase in value of a spouse’s separate property during marriage is generally considered separate property. However, a spouse may have a claim for reimbursement when the community estate in some way improves the separate estate of one of the spouses, or vice versa. The right of reimbursement is not an interest in property or an enforceable debt; rather, it is an equitable right that arises upon dissolution of the marriage through death, divorce, or annulment.

For example, the court can determine the rights of spouses in any pension or retirement plan or their rights under any life insurance policy.

Valuation of a particular asset of the parties can sometimes be difficult. Family businesses, stock options, unique collections such as wine, antiques or interests in retirement plans can all pose questions as to their real worth.

Much of the time, determining the value of complex marital assets requires expert appraisal or testimony. In all cases, individuals going through divorce should evaluate all property and assets currently owned by each spouse and discuss them with their attorney.

An individual's best asset in divorce is the advice and counsel of an experienced, board certified family law attorney who can help sort through the applicable divorce laws in your case. It is also a good idea to make sure he or she is well acquainted with the courts and judges in your community since that information may also factor into a couple's unique settlement outcome.

Divorce requires a financial focus – all assets are not created equal *By Patricia Barrett, CFP, CDFA*

Few of us plan to get divorced when we marry. However, (and you've likely heard this before) about half of all marriages end in divorce. And while divorce is typically thought of as a legal matter, the process also significantly affects one's life emotionally, spiritually and financially.



For those going through the painful and often chaotic process of divorce, the reality is you will likely need professional assistance, as well as personal support during this time. Don't feel ashamed or guilty seeking out the help you need. Accept it and plan on it! This is typical and smart!

In addition to requiring a board certified family law attorney, such as Trey Yates, to manage the legal process, document creation and filings with the court, you may want to consider other professionals to help you. The assistance of a qualified family therapist can be vital to an individual or a parent with young children struggling to get through this difficult time. In addition, you may also want to engage a life coach or career counselor to help you sort out your next steps with regard to seeking additional training or education and getting back in the workforce.

As you proceed through this ordeal, do not neglect the financial aspects of your divorce, because the decisions you make in this area likely will significantly impact you for the rest of your life. Consider consulting a Certified Divorce Financial Analyst to help. These financial experts are trained, certified and experienced in guiding clients through the difficult and unique financial issues surrounding divorce. They have studied divorce law in their respective states, often working with attorneys, know about the tax issues surrounding divorce and can help you in the area of asset division and financial planning for your life after divorce.

Increasingly, divorce attorneys suggest clients consider the assistance of a CDFA during the divorce process. CDFAs guide individuals or couples toward making informed decisions on dividing the marital estate equitably based on the unique aspects of each individual financial situation and respective tax requirements. This often includes issues such as estate valuation, asset/liability division, budgeting, home purchase or sale, retirement and other financial considerations. Here are some additional areas where a CDFA can help:

- Reviewing financial documents which can frequently be complicated and may require financial expertise
- Documenting and analyzing an inventory of all marital assets and liabilities

- Guiding you in estimating your children’s needs and expenses over the coming years
- Estimating your taxes for a) the year of divorce, and b) for the first year post-divorce
- Informing you concerning medical insurance options post-divorce
- Exploring the options for college funding if children are involved
- Helping you create a realistic post-divorce budget
- Calculating a personal financial roadmap for future years based on several asset division scenarios

These financial experts also can help individuals or couples determine the financial aspects of temporary orders, prepare household budgets, develop settlement agreement parameters, secure asset valuations and appraisals, such as closely held family businesses, participate in mediations and more.

There are many myths surrounding divorce and quite few center around the financial side of this process. For example, I often remind my clients that all assets are not created equal. Some have the potential of appreciating over time, while others depreciate. For best results, get the help of a CDFA to ensure that your marital estate is divided in an equitable manner.

My Divorce:

“When someone shows you who they are, believe them.”

By Heather S.

When I finally decided to get a divorce, after months, even years of agonizing about it, I found myself swimming in a sea of anxiety, disappointment and sadness – and at last, relief and hope. However, unlike my usual boot-strap dogged determination to “handle this,” I quickly understood I needed expert assistance.

I knew I was likely in for a fight from my spouse. Ours had been his third marriage, and in his mind, the two before had not ended particularly well for him. He had been “unjustly victimized” by both, he’d told me many times over the years. I expected that this time around, he had no intention of falling “victim” to a departing wife again. I simply wanted a fair settlement, but his sense of “fairness” had always been far from mine. More than a decade of marriage had taught me a lot about how this guy viewed the world and battled with his adversaries. So, I put my energies into getting smart about this divorce and preparing for the worse he could throw at me.

In some ways, it was how I had learned to deal with him in our relationship. At the beginning of our marriage, this interaction was occasional. But as the years went by, his disapproval of me and lack of support grew more and more prevalent. It seemed sometimes like I was always



preparing for what he'd throw at me next: an almost a continual flow of negative digs which he claimed were mostly teases -- disdain for something I liked, veiled and outright criticism for not doing something he thought I should do, scowls or glares when I said something he disapproved of, etc. I found myself feeling off balance a lot of the time. I reached a point where I simply could not and would not live like this anymore.

My first step was to secure an experienced, board certified divorce attorney. I knew little about divorce law and would need to rely heavily on a pro who could stand up to his potential antics. Trey Yates was personally referred to me by a friend and came with other recommendations. He listened intently to me with concern and empathy. I immediately felt reassured that I was in good hands. He advised me to begin pulling all my financial records together as he gave me a detailed introductory packet of forms and materials on the divorce process.

I soon learned that while I had secured expert legal advice, it would be important for me to get fully engaged with my team. I was the one most intimately acquainted with all the details of our finances. It made sense – both financially and practically – for me to do my homework and get Trey's team everything they needed to protect me and secure a fair settlement. This was no time to melt into a puddle of emotions. I needed to be fully present, as if my life depended on it. And quite literally, it did, at least financially. I also had my own business to run. I decided to set aside time for my emotional response to the divorce – take a few minutes here and there to allow myself to fully feel the impact of this life change and to grieve the loss. I also turned to God and renewed my spiritual commitment to listen to that small still voice within that I had been ignoring for many years. Learning to embrace the relief, sense of hope and my inner happiness was also part of this transition.

I spent many hours journaling my thoughts, and releasing my frustration and anger over a failed relationship. “How did I get to this place after such a seemingly good beginning,” I asked myself. Yet, as I looked back, I recalled many red flags during our dating days and early in our marriage signaling trouble ahead. Twice I broke up with him before we married. But, he would make excuses for his behavior (mostly blaming his previous bad experiences with women) and I let myself believe him. Despite the red flags, he had a number of good qualities I admired, so I would try again. At the time, I chose to focus on those attributes and not the serious shortcomings that eventually proved to be insurmountable. Those shortcomings bubbled up more and more frequently as the years went by. I worked hard to ignore or rationalize them away all in the name of “accommodating, compromising and going along for the sake of the marriage,” as I am sure many other wives and husbands do.

I've always considered myself a pretty strong and independent woman. I think most of my friends see me the same way. Yet, gradually over the years, I had relinquished much of my voice in this marriage, deferring to his, to keep the peace, avoid confrontation and often because he had very strong feelings about little things and I didn't. Often, he was passive aggressive, seemingly agreeing with me only to thwart the outcome using some indirect way to prove me wrong, or find an excuse not to do something. When I did take a stand on something, there was usually hell to pay. This interaction progressively beat me down to the point where I found myself striving to avoid any confrontation with him whatsoever. I began to proactively take steps

to make sure I didn't piss him off or set off a nasty response, patronizing comment or his relentless stonewalling that seemed to be going my way, but ultimately led nowhere.

This was my second marriage and I did not want to "fail" again. I really wanted to make it work. Yet ultimately, I discovered I was doing all the compromising – sacrificing my wants and needs for his, time and time again.

I finally got fed up. I'd reaching a tipping point of frustration with his constant bullying and intimidation, and posturing to control me. (I read a few good books on *narcissism* during this time and it was like a light went off in my head. Suddenly I understood that much of his behavior was based in his tumultuous childhood and his lack of self esteem.) I woke up to the fact that this was a form of spousal abuse. This was not love. This was not a healthy relationship. It was never going to work for me, no matter how hard I tried, and I wanted out.

A key life lesson for me in all this comes from one of Oprah's mentors, author and poet, Mayou Angelo who told her once, "When someone shows you who they are – believe them."

I also discovered that when a woman, or a man for that matter, is experiencing something as emotional, important and life-changing as divorce, even the strongest among us needs support. Thank God Trey and his team was there for me making sure the legal side of my divorce was handled well. Trey even suggested I consider consulting a certified divorce financial analyst to answer my questions regarding the financial aspects of my divorce. At his recommendation, I engaged Patricia Barrett, CDFA, which turned out to be extremely helpful to me in structuring my final divorce settlement. She accompanied Trey and myself in mediation and helped us evaluate the short- and long-term impact of each settlement proposal in real time, using a spreadsheet process. Seeing that bottom-line figures throughout the negotiations helped me make informed choices about my financial future during a very emotional and exhausting time. Looking back, I can only imagine how difficult it would have been without their help.

[20 questions to ask your prospective divorce attorney](#)