

The Guide to Good Divorce Spring 2019 Enews

Before you file for divorce, prioritize, plan and prepare

By Trey Yates

If your marriage is on the brink of divorce, do yourself a favor and take some time to protect yourself and your children, and prepare for this process. Learn all you can about divorce in Texas, commit to being fully engaged and plan your strategy before you act. Most importantly, prioritize your efforts.



Understandably, this will require focus and resolve. Life for you has suddenly turned upside down. Your emotions are in overdrive and you're trying to wrap your head around the fact that your life is about to change dramatically. Yet, my experience in handling thousands of divorces over the years has shown me that taking the following steps will almost certainly benefit you, your children, if applicable, and your future. Pausing to prepare now, before you file for divorce or even mention the word to your spouse, offers you the opportunity to better control the outcome, which is invaluable.

First and foremost, take action to guard your safety and that of your children. If you or your children have been physically or emotionally abused by your spouse, bring this to the attention of an attorney immediately. This can be a difficult moment for you. Perhaps you are ashamed or reluctant to take this step. How do you decide to seek legal action against someone who you have been intimately involved with for many years? Most abused spouses are conditioned over many years to condone, play down and hide this treatment from their spouses. Consider seeing a family therapist about this; and be brutally honest with him or her about why you believe you or your children are or may be in danger at the hands of your spouse. Don't sugar coat prior incidents and listen to your intuition on this. Even if you suspect that things could take this direction, or you fear it could escalate to this, it's best to inform an attorney. He or she can assist you in getting legal protection for you and your family immediately.

Commit yourself to being fully awake and actively engaged in this process. This step may also require you to discuss your situation with a therapist, for yourself and your children. A family therapist can offer you advice on handling the pain, stress and anger that often accompanies divorce. Therapists can also advise you on how to tell your children and effectively handle their reactions and emotions. It is vital that you practice self-care during this time. Get plenty of sleep, take long walks, meditate, eat healthy and limit alcohol consumption.

Get smart quick about divorce law. Learn all you can about divorce law in Texas, because these laws vary widely from state-to-state. For example, your girlfriend's divorce settlement in California may not even be possible in Texas. There are also many myths about divorce law, so make sure you have your facts straight, despite what your spouse may tell you. And every situation is unique. Free resources are available for you to start reviewing now in your mission to get down the basics. Visit www.GuideToGoodDivorce.com/Resources for a number of guides and articles about divorce.

If you aren't already, become knowledgeable about your marital finances. This is especially important with regard to how your assets and debts may be divided based on Texas Law and the judge in your jurisdictional court. Find and copy all financial statements and

documents that you can find pertaining to yours and your spouse's real estate holdings and your mortgage, pensions, retirement, profit-sharing or other employee benefit plans; all documents pertaining to life, casualty, liability and health insurance; recent statements from bank accounts, savings & loans, credit unions and brokerage firm accounts; the last 3-5 years of income tax returns; copies of credit card statements and statements for any outstanding loans for cars, motorcycles, boats; etc. Now is also a good time to request a Credit Report on yourself and your spouse. You may be surprised at what you find there.

Build a team of experts to help you. Before choosing a divorce lawyer, interview a number of board-certified family law attorneys experienced in divorce. Ask many questions based on what you've learned and gauge whether he or she and you "click" with regard to philosophies and approaches. If you believe your marital estate has some complicated financial components to it, contact a Certified Divorce Financial Analyst to assist you. They have specialized, advanced financial knowledge and training and will help you figure out the best way to divide marital assets and debts to benefit you and your future. Typically they charge by the hour, or offer a flat fee for an initial assessment. Carefully choose a close friend or family member you can trust to talk to and be a sounding board for you.

Get your personal financial house in order. Now is a great time to set up credit in your name only. If you and your spouse have a joint savings account, obtain the passwords and consider withdrawing half of that balance and putting it into your own personal savings account for safe keeping. (You will be responsible to the court on how this is spent, so keep all records of your transactions.) Be mindful of the timing of this withdrawal since it will probably signal to your spouse that something is amiss. It may make sense to charge your legal fees to a joint credit card or your new personal credit card account instead of using any cash reserves. Discuss this with your attorney and financial advisor for best results. If you share a safe deposit box at a bank, visit the box and take photos of its contents or remove any separate property or sentimental items. Stay off all social media and consider closing accounts until after your divorce is final.

Start thinking like a single person.

Set up a new email account your attorney, financial advisor, therapist and others going forward. You also may want to set up a post office box to receive important and private documents from your team. Be sure that you carefully guard all of your personal electronic devices – laptops, cell phones, tablets and iPads. If your spouse has access or passwords to these devices, change the passwords or purchase a new cell phone, iPad or laptop to use going forward. Keep any new devices in a safe place.

Take courage and know that if you decide on divorce, you can do this. You are not alone. Start building a team of experts and a confidante or two to help. Focus on what you want for your future and the future of your children.

What you may not know about divorce and debt

By Patricia Barrett, CFP, CDFA

The financial aspects of a divorce case involve multiple, interrelated components. All eyes are typically on the couple's assets and how to equitably divide them in a settlement. Yet, in my view, one area of a

couple's financial landscape that warrants equally close consideration during divorce is the couple's debt.

Get a credit report on yourself and your spouse

I recommend ordering a credit report for each spouse to assure that all outstanding debts are included in the settlement discussions. Even if you are still just considering divorce or are early in the process, order your own copy of your credit reports – yours and your spouse's – to review and dissect. You can get them for free from annualcreditreport.com.



These reports generally reveal most outstanding community debts associated with each party. They may also hold surprises that require a closer look. For example, a credit report may indicate that one spouse has outstanding debt the other spouse has no idea about. There could also be errors in a credit report. In this case, order additional reports from other credit bureaus to check for discrepancies, then contact the provider for further information.

Stabilize finances during divorce

Once one of the spouse's files for divorce, it's generally a good idea to limit the amount of debt each spouse adds to the "community" during the divorce process. Until the couple is divorced, any debts incurred are considered "community" responsibility. It is also wise to maintain the status quo in terms of making timely, monthly payments to creditors during the divorce process. Both parties should strive to protect individual credit ratings during divorce. Sometimes, agreements are legally set in place with Temporary Orders (drafted by your attorney, signed by all parties and filed with the court). In a cooperative divorce, the couple makes these decisions informally, sometimes working with a divorce financial analyst. These temporary arrangements should also outline who pays for what until the divorce is final. Both spouses should maintain good records for all the payments made during this time.

Protect cash reserves

While it is a good idea not to run up credit card or other debt during this time, consider putting your divorce financial analyst's or attorney's fees on a credit card in order to protect cash reserves. It may also make sense to pay minimum payments on credit cards now for the same reason.

Who gets the family home?

Many married couples carry a mortgage in both names on the family home. This is usually a key consideration during a divorce. Should the home be sold and the proceeds split before the divorce? If there is equity in the home, can one spouse afford to keep the home as his or her part of the settlement? She may have to forego important financial assets such as savings, stocks, bonds or mutual funds in order to offset the equity in the home.

Many people believe that a home must be refinanced to remove the other party's name. However, an attorney can draft legal documents to handle a mortgage that isn't refinanced. It's called a "deed of trust to secure assumption." This legal document is filed in county records and allows the spouse who isn't staying in the home to secure another mortgage, since he or she has a lien against the home.

All of these questions will have to be considered and carefully analyzed before the details of a settlement are worked out. One unique approach to crafting a divorce settlement involves how the community debt and assets are divided between the two parties. It actually may make sense for one party to assume some or all of the debt in exchange for other marital assets, such as 401(k) savings. Typically, the higher earning spouse retains most of debt, but is rewarded with more of assets for doing so.

Debt as separate property

Another aspect of divorce debt to consider involves whether one or both spouses entered into the marriage with significant debt that was paid off over time using community funds. Assets brought into a marriage are considered separate property. Consequently, they remain separate at the time of divorce. In other words, they are not part of the division of the marital estate that occurs during settlement. Debts, if significant enough, are viewed the same way. They come into the marriage as separate debt owed by the responsible spouse. So, if the debt is paid off using community funds, the other spouse should get “credit” or an asset of equal value for helping to pay down half or part of that debt.

Crafting an equitable divorce settlement often requires creative thinking and an intimate knowledge of divorce law. I've found that how couples approach the community debt in a divorce can offer them a win-win solution that is also practical from big picture perspective.

This article is designed to provide readers with a general overview of the issues discussed and is not a substitute for individual legal or financial representation.

Free download Divorce Manual A Client Handbook

When couples begin the divorce process, it is common for them to feel overwhelmed, confused, lost in legal system jargon, and headed for an unknown destination seemingly out of their control. This manual is published by the American Association of Matrimonial Lawyers to help those going through divorce to better understand the process. For more free information on navigating divorce, visit <http://www.GuideToGoodDivorce.com/Resources>.