



## **Guide to Good Divorce Enews January 2020**

### **A healthier approach to divorce**

*By Trey Yates*

Often when I meet with a potential client for the first time to discuss a divorce, they readily state that their divorce will be “uncontested.”

“We both pretty much agree on the basic terms of the divorce settlement and want to move ahead as quickly as possible,” I am told.

However, based on decades of experience, I advise my client to strive for civility, but be realistic about how the process will ultimately shake out. After all, they would not be getting a divorce unless there was some degree of contention in the relationship. We are all human and divorce is no walk in the park. It is a major life change that few of us ever anticipate.



Confusion or misinformation about divorce law and divorce finances can turn an otherwise balanced person into someone you don’t recognize. When things don’t turn out as expected, emotions can bubble up, and may reveal deep pain, underlying conflict and resentment.

For some individuals, being civil during a divorce is simply impossible. Perhaps your soon-to-be ex has a tendency to be confrontational or even abusive. Whatever the reason, if you foresee constant fighting and conflict in your divorce, it’s a good idea to be honest about this with your divorce attorney immediately. And be as specific as possible. If you believe your spouse will put up a fight over certain items or community assets, or has ideas about how the marital estate should be divided, explain this to your attorney. He or she can factor that into a strategy for moving through negotiations.

If you anticipate being involved in a high-conflict divorce or aren’t certain what to expect, here are a few tips on how to make the best of a potentially difficult process.

### **Establish Protections for yourself and your children**

High-conflict personalities tend to be destructive in a variety of ways in a divorce situation. Whether your spouse is simply argumentative, emotionally aggressive, or physically dangerous,

do whatever is necessary to protect yourself and your family as you move toward and through the divorce process. If your spouse is physically dangerous, call the police if you feel threatened. Be sure you talk honestly to your attorney about this aspect of your relationship; if necessary, ask about securing a restraining order.

Open new, protected bank accounts and credit cards in your name only to prevent your spouse from harming you in a financial way. You may want to move half your marital funds into a separate account in your name only. You will be responsible for these funds, but they are considered community assets and you have a legal right to access them. Also, consider changing the locks in your home. Stay off social media. The less information you give your spouse the less he or she will have to get upset about, or try to use against you; so be private about your affairs and leave communication to your attorney.

### **Get Temporary Orders in place immediately**

Your divorce attorney will help you obtain temporary orders from the court regarding child support, a temporary parenting plan, living arrangements, and finances. Work with your legal team to develop these, especially with regard to finances. Temporary orders are legal orders signed by the court that establish rules on how both spouses behave during the divorce process. If your spouse does not follow the order, you will have legal recourse.

### **Talk with a therapist**

Most people going through divorce have regrets. During the process, you may experience moments of guilt or remorse that trigger a desire to “try one more time to make it work.” Sharing these kinds of feelings with a therapist, and not your spouse, is your best move. A therapist will assist you in sorting through these emotions and help you to take the best course of action for you. If your spouse has been abusive or has a high-conflict personality, make sure you are honest with your therapist about this. Consider the fact that few of these individuals will ever really change who they are. Also, never apologize to your spouse during your divorce, especially in writing. This could be used as an admission of guilt, legally speaking, and could be used against you in court.

### **Stay neutral toward your spouse in front of your children**

It's never a good idea to disparage a spouse in front of your children. Remember, your issues with the other parent should not affect them. Don't use children to send messages, and don't deliberately try to alienate your children from your spouse. These are all actions that could be used against you in a custody fight. Once temporary orders are in place, abide by these, especially where visitations with children are concerned.

### **Don't dwell on past hurts**

You can't change the past. If you are seeking a divorce, you are already moving toward a new chapter of your life. Make choices now that will create the life you want. If your spouse tries to drag you back into the past, or wants to argue or find fault, stay calm and stick to the business at hand. The best approach is to limit contact and interaction with your spouse unless your attorney is present. It may be best to not answer texts, emails or phone calls. If you have children together, only respond succinctly to communications about their care, etc.

### **Express you needs and priorities**

It's likely, the contention between you and your spouse during your marriage will never be fully resolved. Try to be realistic about what you expect to come from your divorce emotionally,

financially and legally. Express your needs, make a list of your priorities and then list them in order according to your goals. Work with your attorney to ensure how realistic these goals are in light of his or her experience. If you have children, consider their needs as well. Getting a divorce isn't about "winning" or "losing," even though some people may see it that way. Accept that you will likely not get everything you want. But also, aim for the best agreement you are willing to settle on. Then, move forward into the future you desire for yourself.

## **What happens to the family home in a divorce?**

*By Patricia Barrett, CFP, CDFA*

The question of what happens to "the house" in a divorce is often one that requires careful consideration. In my experience, this issue is often clouded by emotions that can get in the way of the couple, or one spouse, making the best financial decision. I advise my clients to pause, set aside emotions and objectively consider all the significant, interrelated factors before deciding on what happens to the house. Consider the following:



### **First, is there equity in the home, and if so, how much?**

If there is significant equity in the family home acquired during the marriage (present value minus amount owed on any loans), it is typically divided or allocated between the parties in some way. Home values can be determined by getting an appraisal of the property by a qualified appraisal company, then talking to an experienced real estate agent who is familiar with current market values and what comparable homes are selling for in the area. A realistic value may be somewhere between these two.

If there is significant equity in the home, one spouse may decide to keep the home while the other receives different assets of comparable value. If the parties don't own other sufficient assets, it may be necessary to devise another way to buy out the person not retaining the home. Or, the couple may need to sell the home to equitably divide the marital assets.

### **Second, can either party realistically afford to keep the house?**

The answer to this question depends on a number of interrelated issues, only one of which is whether either spouse can afford the monthly payments. Time and again, I see women initially insist on keeping the family home until I flesh out a budget and show them the real costs of this decision -- short- and long-term. Maintenance and repair expenses, utilities, homeowners' association fees, as well as property taxes and insurance costs can push home ownership beyond a newly single wage-earner.

If the couple would like to keep the children in the same schools, compare what it might cost to rent an apartment or smaller home in the area. Also, I try to demonstrate to the couple the long-term financial impact of this decision by projecting the above numbers out 10, 15, 20 years, and illustrating how not keeping the home may place them in a much better financial position in the future. Quite often, this is a major wake up call, especially for women, to see how keeping the home in lieu of investments can be financially unwise.

### **Third, would it be to the advantage of the couple to sell the home to pay down debt or yield cash to the marital estate?**

In some cases, the home will need to be sold, ideally before the divorce is final. After payment of the real estate commission, mortgage balance, and other costs of the sale, the proceeds may be used to pay down or pay off marital debts, if any, or may be split equitably between the parties. Divorcing couples are sometimes surprised to learn that monies invested in renovations or remodeling may not bring a dollar-for-dollar increase in a home value/sales price.

If the home is to be sold, both parties will typically be equally affected by the costs of the sale and both will share the risks and benefits of a sale for less or more than expected. However, if one party retains the home, he or she will typically bear the entire cost of any post-divorce sale, including paying the real estate commission, closing costs, unexpected repairs to the property that may turn up during an inspection, real estate market or economic uncertainties, etc. That person also would have the sole risk or benefit relating to the ultimate selling price. As a result, keeping the house may not be a wise financial move in the long run if the plan is to sell it a year or two after the divorce.

If one party decides to keep the home, an appraisal is highly advisable to determine the current market value, unless both parties can agree on a present value. In many areas of the country, the assessed value of a home for property tax purposes is not a reliable measure of its current market value in a sale. Hire a home appraisal professional to determine the home's value.

### **What about the mortgage loan?**

Most people who own a home have a mortgage in the names of both parties. Though transferring a home into the name of only one party can be done quite simply post-divorce, that transfer does not change who is responsible to pay the mortgage.

Typically, removing a name from the mortgage requires that the loan be refinanced, which involves an application and qualification process. Even though both parties were on the original loan, it isn't a given that the party who wants to keep the house will qualify for a new loan, especially since his or her income and assets will change post-divorce. As well, new interest rates or other terms may not be as favorable as on the existing loan.

Divorcing couples are not required to refinance their mortgage loan, but this loan remains on the credit report of both parties until paid off. Even if there is a formal agreement making one party solely responsible for paying the mortgage, that agreement has no effect on the lender's ability to pursue either party for payment. Also, this mortgage loan could prevent the non-owner from obtaining a mortgage on a new home until the original joint loan is paid off, or refinanced by the other party.



## Prepare for key events in your case

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. That is a difficult spot to be in for most competent adults who are accustomed to making their own decisions and dictating their own lives.

[This free manual](#) is published by the American Bar Association Section of Family Law, and was written to help those going through divorce to better understand what to expect from the process. Because each participant in a divorce must be fully awake and actively engaged, this manual is designed to enhance the lawyer-client relationship.

For additional free information on navigating divorce, visit <http://www.GuideToGoodDivorce.com/Resources>.

