

20 INITIAL QUESTIONS ABOUT DIVORCE

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SEPARATING AND INITIATING A DIVORCE

1. WILL I/MY SPOUSE HAVE TO BE SERVED WITH DIVORCE PAPERS?

A. The non-initiator spouse may be concerned that he or she will be embarrassed or humiliated by being served with divorce papers at his or her place of employment. Service of divorce papers by a process server is not necessary if the spouse agrees to sign a statement acknowledging that he or she has received the papers and is willing to waive service of process. If the spouse is not willing to sign, formal service will be necessary.

2. I DON'T KNOW WHERE MY SPOUSE IS TO SERVE WITH PAPERS. CAN I STILL GET A DIVORCE?

A. Yes. If your spouse cannot be located after a reasonable search, the court may permit you to serve him or her by publishing a notice in the newspaper. You can get divorced, but the court will not be able to order support or divide any marital property.

3. SHOULD I TELL MY SPOUSE I AM PLANNING A DIVORCE?

A. You are not legally obligated to tell your spouse in advance that you are planning to seek a divorce. However, the best approach, whenever possible, is for you and your spouse to talk openly about the problems in your marriage and the desire of one or both of you for a divorce. Blindsiding your spouse with divorce papers can damage the trust between you and inflame hostilities making settlement negotiations more difficult and your divorce potentially more costly. However, if you have good reason to fear that announcing your decision to divorce will be met with violence, you should not tell your spouse in advance. First meet with your attorney to discuss your particular situation and develop a plan to ensure your safety and the safety of your children. You may need to plan for a safe haven, money for the safe haven, and secrecy.

4. WILL I HAVE TO MOVE OUT/CAN I MAKE MY SPOUSE MOVE OUT?

A. In most cases, the answer is no. You both have the right to continue to live in the marital home until the divorce is final and the ultimate disposition of the home has been determined. Although you need to be separated to obtain a divorce, courts typically consider spouses separated when they have ceased sexual relations even though they live in the same home.

Some couples choose to remain under the same roof while the divorce is in progress to avoid having to pay for a second household. When parents are contesting custody, they sometimes continue living under the same roof as some judges give preference to the parent with whom the children are residing.

However, in cases of domestic violence, the court may order the perpetrator to leave the home. Typically, you will need to prove to the court that the abuse occurred, it will probably happen again, it would be more of a hardship on you (and the children) to move than on your spouse, and your spouse has someplace to go.

5. WHAT CAN I DO TO PREVENT MY SPOUSE FROM TAKING OR DESTROYING OUR POSSESSIONS ON FINDING OUT ABOUT THE DIVORCE?

A. Sometimes, one spouse is so upset by the divorce that he or she clears out the house or destroys property he or she knows is valued by the other spouse. If you fear this could happen to you, your attorney can ask the judge to enter an injunction prohibiting you and your spouse from destroying or disposing of property during the divorce. If your spouse violates the injunction, he or she can be punished for contempt. In addition, here are a few steps you can take to protect yourself:

- Photograph or video the contents of your home just as you would for insurance purposes.
- Make an inventory of the items that you own with their cost and your estimate of their value.
- Save any purchase receipts or appraisals in a safe place.
- Remove the most valuable items or those that are particularly important to you and store them in a safe place.

If your spouse does take or destroy property, you will have proof that the property existed so that it can be taken into account in your property settlement.

6. IS IT OK TO DATE ONCE MY SPOUSE AND I ARE SEPARATED?

A. In general, it is better to wait until after your divorce is final before you begin dating. You are emotionally vulnerable during a divorce and may not exercise the best judgment in choosing whom to get involved with. Many spouses are surprised by the jealousy their spouses exhibit when a new relationship begins before the divorce is finalized. One sure way to increase the difficulty of your divorce is to get serious with someone else while you are still in negotiations with your spouse. If you date before your divorce is final, do not introduce your dates to your children. Otherwise, your spouse will be able to complain to the court that you are using poor judgment in bringing strangers into the children's lives.

7. MY SPOUSE TREATED ME BADLY AND I WANT TO TEACH HIM/HER A LESSON. CAN I BEAT HIM/HER IN COURT?

A. Do not think of your divorce as something to win at your spouse's expense. You should not attempt to use your divorce to punish your spouse for wronging you. Unreasonable demands for property, support, or limitations on your spouse's contact with your children will be unsuccessful and emotionally and financially devastating. Your goal should be to reach a mutually beneficial out-of-court settlement that enables you both to start a new life.

If you have children, the best result is for you both to emerge from the dissolution process with a good working relationship. If you do not reach an amicable solution with your spouse and your case must go to trial, you and your spouse are not likely to be able to have a working relationship. You are more likely to return to court after your divorce is final, continuing a conflict that is detrimental to the children.

MONEY, BILLS, AND DEBTS

8. MY SPOUSE IS THE PRIMARY BREADWINNER. WILL HE/SHE STILL HAVE TO PAY THE BILLS ONCE I FILE FOR DIVORCE?

A. If you believe your spouse will stop paying the bills once you file for divorce, you can ask the court to make an order for temporary support that will require him or her to give you money for the bills. However, it may take some time to get the order in place. Therefore, you may need to do some advance planning before filing for divorce. You should try to plan for a way to pay your bills for several months. This could be by borrowing from friends or relatives, establishing a credit card in your own name, or withdrawing some money from a joint account and depositing it in an account in your own name. You should use this money to pay bills and for necessities and keep track of how you use it. You also may want to delay telling your spouse about the divorce until after the mortgage or rent has been paid for the month.

9. WHAT SHOULD I DO ABOUT OUR JOINT CREDIT CARDS AND JOINT BANK ACCOUNTS?

A. Some spouses withdraw more than their share from a joint bank account and by run up credit card expenses on joint accounts. The better route is to discuss in advance how to separate accounts and handle credit cards. You may decide to close the joint bank accounts and split the cash in them. If you think that approach is unwise in your situation, then you could withdraw half of the money from the joint account and use it to open an account in your name.

Close your joint credit card accounts and obtain a credit card in your own name. Any debt on the joint card can be transferred to the individual cards. Alternatively, you can tell your credit card company that no new charges can be made on the joint card. Watch your credit report to make sure that your spouse does not obtain a new joint card (or apply for a joint loan).

Ask creditors to close any joint accounts and provide you with written confirmation. Try to reopen these as individual accounts. If your ex-spouse handles a joint account irresponsibly, your credit record may suffer.

Freeze all your joint investment accounts so cash cannot be withdrawn and loans cannot be placed against them. Obtain statements for all the accounts.

10. DURING OUR MARRIAGE, MY SPOUSE MANAGED ALL THE FINANCES. I HAVE NO IDEA WHAT WE OWN. HOW WILL I KNOW MY SPOUSE IS NOT HIDING MONEY OR PROPERTY FROM ME?

A. As part of the divorce process, you and your spouse will be required to participate in financial disclosure. Financial disclosure means that you and your spouse must reveal to each other all of your assets and liabilities. Your attorney will review your spouse's disclosure for completeness. If your case warrants, your attorney can employ additional methods to obtain financial information. Your attorney can question your spouse under oath in a deposition, subpoena financial records directly from your spouse's employer or financial institutions, and even hire a forensic accountant to look into your spouse's finances.

WHO WILL GET THE PROPERTY?

11. ALL OUR PROPERTY IS IN MY SPOUSE'S NAME. DOES THAT MEAN IT WILL ALL GO TO HIM/HER IF WE DIVORCE?

A. No. How title to the property is held does not control its division and distribution. When spouses divorce, the marital estate is divided between them equally or equitably as required by state law. As a general rule, the marital estate is made up of all assets (and liabilities) acquired by either spouse after they marry, regardless of whose name is on the title. However, a gift made to one spouse is not included in the marital estate.

12. MY SPOUSE HAS ABUSED ME/CHEATED ON ME. DOES THAT MEAN I WILL GET ALL THE PROPERTY IN OUR DIVORCE?

A. In general, a spouse's bad or criminal behavior is not directly relevant to the property distribution. However, it may lead to your obtaining a larger share of the existing marital assets in some cases. For example, if your spouse has dissipated marital assets maintaining an affair, those assets are likely to be counted as part of your spouse's share of the marital property leaving you with more of the existing property. If you are entitled to spousal support (alimony) and believe your spouse is unlikely to pay it, you may be able to negotiate for a greater share of the marital assets or a court may order a greater share be awarded to you.

PROTECTING THE CHILDREN

13. I DON'T THINK MY SPOUSE IS A VERY GOOD INFLUENCE ON THE CHILDREN. CAN I KEEP HIM/HER AWAY FROM THEM?

A. In general, no. Children need frequent continuing contact with both parents if they are to grow up as healthy and well-adjusted as possible. Just because your spouse has behaved like a jerk toward you, that does not make him or her an unfit parent. You have to accept that your spouse may not look after your children exactly the way that you might. But that will not matter to a court. Courts rarely get involved in situations in which they are required to assess the difference between what is good parenting and what is bad. A judge will not care that your spouse feeds the children fast food and lets them stay up past their bedtime. Courts only get involved when the actual physical welfare of your children is an issue. If you believe your children's health or safety is in danger when they are with your spouse, discuss your concerns with your attorney. Supervised visitation may be the answer when your child is truly at risk.

14. MY SPOUSE WILL AGREE NOT TO SEE THE CHILDREN IF I DON'T ASK FOR CHILD SUPPORT. IS THAT OK?

A. No. The right to receive child support and to have contact with a parent is the child's right, not the parent's to give up. Child support is not a payment to you in exchange for allowing your spouse to see the children. Of course, you can't force your spouse to see the children, but you should encourage him or her to do so. And do not fail to seek child support just because your spouse does not see the children. The two are completely independent. Your children are entitled to be supported regardless of whether their other parent spends time with them. And they are entitled to spend time with their other parent even if he or she does not support them. If you have concerns about your children's safety when they are with your spouse, discuss them with your attorney. In some situations, supervised or restricted visitation may be appropriate. Only in rare cases will a court order no contact.

HIRING A LAWYER

15. HOW MUCH WILL A DIVORCE LAWYER COST?

A. Most divorce lawyers charge by the hour. It is very difficult to provide an estimate of the total costs at the beginning of a case. Family law matters can be more complex and more time-consuming than they first appear. Your cooperation with your attorney and your willingness to work with your spouse will go a long way toward minimizing the costs of your case. If your case settles, it will likely cost you far less than if it goes to trial.

You should understand that your attorney is charging for his or her time. This includes time reviewing documents, negotiating with your spouse's attorney, preparing for court, traveling, waiting in court, and talking to you in person or on the phone. You can save some money on attorney fees by:

- Providing your attorney with all of the financial information and documents he or she requests.
- Presenting the documents in an organized fashion.
- Learning basic information about divorce law on your own from books and websites recommended by your attorney.
- Reserving phone calls to your attorney for important matters.
- Being candid with your attorney.
- Trying to compromise with your spouse.

Your lawyer should present you with a written agreement that explains exactly what services he or she is providing and how the fee for those services will be determined.

16. DO I REALLY NEED A LAWYER? CAN'T I JUST DO THE DIVORCE MYSELF?

A. It may be possible to handle your own divorce, but in most cases, it's not a good idea. Do-it-yourself divorces are best reserved for situations in which (a) the marriage is of short duration; (b) the parties have no children; (c) the parties own no real estate and little other property; (d) both spouses are capable of supporting themselves; (e) they agree on how to divide their property and debts; and (f) the spouse handling the divorce is good with details, deadlines, and paperwork. Even if you fit into this category, you may want to hire an attorney to look over your final agreement.

17. MY SPOUSE ALREADY HAS AN ATTORNEY. DO I NEED TO GET ONE AS WELL?

A. One attorney cannot represent both you and your spouse in a divorce, even if the divorce is amicable and you and your spouse have agreed on everything. Ethical rules that attorneys are obligated to follow do not permit an attorney to represent opposing parties in any kind of case. This is called a conflict of interest. Your spouse's attorney has a duty to look out for your spouse's best interests, not yours. Even if you think the agreement you have reached is fair, it may not be and you can benefit from having your own attorney review it. Of course, you can always represent yourself, but if your spouse is represented that is probably not a good idea as you will be up against a professional with far superior knowledge.

18. I DON'T WORK. WON'T MY SPOUSE HAVE TO PAY FOR MY LAWYER?

A. Not necessarily. Although sometimes a court will order one spouse to pay for the other's lawyer, most often, courts hold each party responsible for his or her own fees. Even if your attorney believes the court will ultimately order your spouse to pay your fees, your attorney will likely require you to pay your fee as the case progresses. If the fee is collected from your spouse, you will get an appropriate credit for the amount collected, or a refund of fees collected but previously paid.

19. I'M WORRIED THAT ALL THE DIVORCE LAWYERS IN TOWN ARE PART OF ONE BIG CLUB. DO I NEED TO LOOK FOR AN OUT-OF-TOWN LAWYER TO MAKE SURE I GET ONE WHO WILL FIGHT FOR ME?

A. No. Lawyers who work in the same area are likely to know each other because they have cases against each other, attend the same bar association meetings, and work on committees together. Over time, these lawyers will develop working relationships and even friendships. But that does not mean that a lawyer who is friendly toward your spouse's lawyer cannot or will not represent you vigorously. Your lawyer has a professional obligation to strive to achieve the best possible result for you based on your goals, the law, and the facts of your case. In fact, a good relationship between your attorney and your spouse's attorney will probably help, rather than hurt your case because the attorneys can work together to suggest solutions that both you and your spouse can agree to. Your attorney's job is to represent you "zealously, within the bounds of advocacy." He or she can do that and still be pleasant to your spouse's attorney. An overly aggressive lawyer or one who is determined to best his or her opposing counsel at all cost can hurt your case.

20. MY SPOUSE'S LAWYER IS SUPPOSED TO BE A REAL SHARK. DON'T I NEED TO FIND A REALLY TOUGH LAWYER WHO WILL STAND UP TO HIM?

A. Yes, you want a tough attorney, but don't confuse toughness with lack of cooperation. You don't want an attorney who refuses to cooperate with your spouse's lawyer in scheduling meetings or exchanging documents. Nor do you want an attorney who refuses to negotiate on anything or advises you never to compromise. An attorney shows toughness by telling you the truth about your chances and helping you develop realistic goals. An attorney shows toughness by negotiating vigorously with your spouse's attorney to achieve a fair settlement that you and your spouse both can live with. An attorney shows toughness by being prepared and professional in court. An attorney who does not cooperate with your spouse's counsel will only increase your costs, exacerbate the hostilities between you and your spouse, and drag out your divorce.