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**Before, During, and After Your Divorce**

Divorce is an extremely complicated and emotional process. Just when you think the hardest part will be mustering up the strength to sign the paperwork, you’re faced with having to talk at great length with your soon-to-be ex-spouse about the division of property and custody of your children. The stakes have never been higher in your relationship, and tough decisions must be made. These decisions are not made simpler by obstinance. Throughout this process, compromise where you can. In the interest of preserving mutual respect, if only for your children’s sake, be patient, forthright, and courteous. Maintaining your composure will not always be easy, but as you go through a divorce, this virtue can save you much frustration and disappointment.

**Before You Decide to Divorce**

There are many couples who have come to the brink of divorce but decided not to go over the edge. Some rediscovered their romantic attachment, others simply wanted to give their children consistency. Before you decide to divorce, consider **separation**.

* **Trial Separation.** Couples live apart to decide whether to divorce. They might go to counseling and should prepare a separation agreement stating the terms of their separation. When a couple decides not to reconcile, a trial separation turns into a permanent one.
* **Permanent Separation.** In this case, couples live apart with the intention to divorce. Property, income, and debts acquired after the separation date are the separate property of the spouse who acquires them.
* **Legal Separation.** This is a legal status in between married and divorced. Neither party can remarry, taxes can be filed jointly, and insurance coverage is often shared as in marriage. Not all states offer legal separation.

**Preparing for Divorce**

If after a period of separation, you or your spouse decide to divorce, there are some crucial first steps you should take. These will look different depending on the kind of divorce that you and your spouse are going though and the nature of your relationship. Remember to be as cooperative and understanding as possible; this is a painful time.

* **Tell your spouse and children.** Do not let your spouse be the last to know that you want a divorce. Talk with them about it and, if the conversation goes well, the two of you can discuss when the news should be shared with the rest of your family. When you tell your children, reassure them that the divorce is not their fault and they are not losing either of their parents.
* **Decide on living arrangements.** Typically, the marital home is retained by whichever spouse’s name is on the deed. If the home is

**Assets**

- Checking and savings accounts

- Stocks, bonds, mutual funds, and money market accounts

- Certificates of deposit

- Real estate

- Retirement plans

- Stock options and restricted stock unit (RSU) grants

- Accrued vacation time

- Medical savings accounts

- Cars and other vehicles

- Valuable personal property

- Household furniture

- Life insurance policies with cash value

- Season tickets

- Airline miles and other rewards points

- Tax refunds you expect

**Debts**

- Mortgage

- Home equity line of credit

- Credit cards

- Vehicle loans

- Promissory notes

- Student loans

- Any other obligation

**Include in Your Inventory**

jointly owned, the couple must decide on a

living situation they are comfortable with. In

cases where the couple has children, the

primary caretaker often stays in the family

home with the children until more permanent

arrangements are made.

* **Gather financial information.** Inventory

everything you and your spouse own, making

note of who you believe is responsible for the

asset or debt. Make copies of important

financial documents, like deeds, mortgage

statements, insurance policies, retirement

plan documents, business interests, tax

returns for the past five years, wills and

trusts, and account statements. Additionally,

contact your spouse’s human resources to get

information on your spouse’s retirement

benefits and compensation plans.

* **Manage your family’s money.** Follow these

guidelines to manage your finances until the

divorce is final.

* + **Make a budget**, as you will likely need to file a statement of your assets, debts, income, and expenses.
  + **Start keeping your income separate** so that there is a record of when you stopped being financially dependent on your spouse.
  + **Deal with joint assets** by managing them for the benefit of both you and your spouse, especially before your divorce papers have been filed.
  + **Decide how to file your tax returns**; you can file jointly for years in which your divorce was pending, but not for the tax year in which it became final.
  + **Protect your valuable separate property**, especially if you are worried that your spouse might take or damage any items of value.
  + **Close joint credit accounts** after opening a separate credit card account.
  + **Get your own credit card** to protect your credit report.
  + **Make temporary agreements about child and spousal support.**
  + **Get temporary court-ordered support** if your spouse refuses to continue supporting your family.
* **Get legal and professional help early.** Even if your divorce will surely be uncontested, talking through the process might ensure you are not giving up any of your legal rights. You might also need help from other experts, like actuaries, accountants, or real estate appraisers.

**Court Forms to Start the Process**

The **petition** or **complaint** that starts the divorce proceeding

A **summons** that is served along with the petition; tells your spouse that you are suing for divorce and orders both of you not to disturb the status quo

A **cover sheet** that you must submit in some places along with other forms; gives general information about the marriage

**Financial information sheets** that you must give either to the court or to your spouse early on

**Responsive forms** that your spouse will use to file a response to your petition

**Proof of service** that shows the date that your spouse received the paperwork and describes how it was delivered

* **Take care of yourself.** Divorce is complicated

even when amicable. Do not hesitate to talk to

a counselor or therapist if you are having

difficulty adjusting.

* **Start the process.** There are certain forms

that you must file to begin the divorce process.

Make sure that these are completed and that

you and your spouse can communicate openly

during the divorce.

**Uncontested Divorce Process**

In an uncontested divorce, you and your spouse will

figure out how to handle big issues, like asset

division, custody, and support, without a court battle. Uncontested divorce works for couples who both want to get divorced, agree on property division, and can settle on terms of a parenting agreement.

**Types of Uncontested Divorce**

* **File initial papers.** After filing, deliver copies

to your spouse. In most states, you must also

*Divorce is either uncontested or contested. Contested divorce is expensive and will involve lawyers and potentially a trial. Uncontested divorce is less expensive and simpler. There are a few different types of uncontested divorce.*

|  |  |
| --- | --- |
| Type | How it Works |
| Summary | Spouses file together; simple paperwork; only used if children are not involved |
| Default | One spouse files for divorce, the other does not respond |
| Mediated | Trained mediator helps spouses work out a settlement; no court fight |
| Collaborative | Each spouse has a lawyer for negotiations; cheaper and faster than a contested case |
| Arbitrated | Spouses hire a private judge; more private but only slightly cheaper than contested divorce |

exchange financial documents.

* **Talk with your spouse about the big issues.**

These are division of property, support (child

and spousal), and custody. Each is covered in

detail below.

* **Complete and file the final papers.** Included

in these papers is your **marital settlement**

**agreement**, which lays out your plans for

property, support, and custody. Once all

documents have been filed and the court has

approved them, your divorce is final. The

necessary documents are listed below.

* + Declaration
  + Marital settlement agreement
  + Financial disclosures (if required)
  + Notice of entry of judgment
  + Judgement (for the judge to sign)
  + Other forms required by your local

court\*

\*Research your state’s laws and practices regarding divorce.

**Consider Mediation**

Contested divorce is an entirely different experience. In a contested divorce, both spouses hire lawyers to negotiate on the big issues. You and your spouse might end up settling out of court if terms are set, or you might have to go before a judge and subject yourself and your family to a divorce trial. Here, a judge will make the decisions for your family. Contested divorce is by far the most expensive option, and the one that ends with the most hurt

If you and your spouse have problems communicating but would rather not drag your family into a trial, consider **mediation**. In a mediated divorce, a neutral third party (the mediator) conducts a series of meetings with a divorcing couple to help them reach agreements on all the issues in their divorce. This process is cheaper, less stressful, and more tailored to a family’s needs than a contested divorce.

**Contested Divorce Process**

feelings. However, it is necessary in some cases, particularly if you or your spouse cannot compromise. The following list is an outline of a contested divorce.

* **Find a lawyer.** Look for a lawyer who will try to reach a settlement rather than go to trial. Ask friends and family about their experiences with divorce attorneys and get recommendations. Make sure that your lawyer will act in your best interest without bashing your spouse.
* **Pay your lawyer.** Lawyers charge a retainer and then bill you hourly after it runs out. Before you pay the retainer, your lawyer will provide a fee agreement addressing this and other important terms of your relationship. Contested divorce is extremely expensive, costing at least $30,000 per spouse.
* **Get your financial information together.** Figure out your income, assets, and obligations and provide your lawyer with all this information.
* **If necessary, get temporary support.** If you and your spouse cannot come to an agreement yourselves, you will have to have a short pretrial hearing to establish a temporary order for spousal or child support.

**Mandatory Disclosures**

* **Gather information for trial.** This is the

**discovery** portion of the process, during

*During the discovery process, you will most likely have to provide the following information:*

- Recent pay stubs and other income-related information

- Tax information, like individual tax returns and information related to accounts you own

- Recent statements from brokerage accounts

- Recent bank statements

- Current information about your retirement plans

- Current insurance information

- Documentation of obligations and debt

- Recent credit card statements

- Information about financial opportunities that have come up since your separation on jointly held accounts

which both sides will disclose information to

level the playing field. If your spouse does not

give you enough information, you can make a

formal request.

* **Try to settle.** There will be many

opportunities throughout this process to

settle before going to trial. A settlement

involves negotiation and compromise, but it is

the best opportunity for your family to

emotionally recover from the divorce. If you

and your spouse simply cannot come to an

agreement, your divorce will go to trial.

* **Going to trial.** Most divorce cases do not make it to trial but are resolved by both parties along with their lawyers. For those that do make it to trial, the process can take weeks or months. Trials, especially ones that have been drawn out, become more expensive as you spend time with your lawyer and their staff and pay them for their time preparing. Remember, the decisions are not your own in a courtroom. In most cases, the judge will hear both sides and make all the decisions. Be sure that you are comfortable with this reality before proceeding with a trial.
* **After the trial.** The judge will issue a **judgment**, a document that outlines the outcome of the case and assigns each spouse responsibilities. An **order** or **decree**, created by the lawyer for the winning party, sets out the judge’s ruling. After approval from the judge, this document has the force of law and gives the court authority to make the other person submit to the judgment. The judge issues a **final divorce order** that declares you legally divorced. If, after the divorce is final, you or your spouse believe the law has been unfairly applied, either one of you can appeal the judgment to a higher court.

**The Big Issues of Divorce**

These items provide a brief overview of the big issues in your divorce. Each address important points you should consider as you go through the process. The decisions that you and your spouse make about property, custody, and support will make up your **marital settlement agreement**, a document necessary to finalize your divorce.

- Spousal support, or alimony, is intended to help the lower-earning spouse in a divorce transition to single life

- The amount one spouse is entitled to is dependent on several factors, including need, earning capacity, length of the marriage, and property division

- The duration of support is dependent on similar factors

- Some states have laws directly addressing spousal support. Research the laws in your state to determine what you may be entitled to.

- Spousal support is neither taxable for the recipient nor deductible for the paying spouse, although this was the case before 2019

- If a couple has children, one spouse might be required to pay the other child support. Decisions about the amount of support can be made simply between you and your spouse, or you can bring the issue to court

- Work with your spouse to create a **parenting agreement** which addresses:

+ Basic time-sharing

+ Contact outside of visitation

+ Family birthdays

+ Holidays

+ Religion

+ School

+ Activities

+ Going Out

+ Privileges and discipline

+ Medical care and insurance

**Property**

**Support**

- Take inventory of everything your own, both tangible and intangible

- Take inventory of everything you owe; make note of any obligations you believe you or your spouse have

- Property division is complicated, and rules vary by state. Research your state’s rules regarding marital property

- If you have any reason to suspect that your spouse is hiding assets, consult a lawyer

- Decide what to do about the family home. Divorced couples usually either put it on the market, agree that one spouse will buy out the other, or agree to continue owning the house together

**Custody**

**Post-Divorce Checklist**

After your divorce has been finalized, it might be tempting to distance yourself from anything related to the process you just went through. However, there are some essential steps you must take to ensure everything is in order the way you and your spouse planned.

* **Read the court order and fix any mistakes.** If you find a missing or unexpected provision, contact your lawyer or spouse. The order can be corrected.
* **Get certified copies of your divorce order.** These will most likely be required when you request that an insurance plan administrator, banker, or real estate agent do something to comply with the order.
* **Make new deeds for real estate.** Even if you and your spouse have agreed on plans for your family home, you will need to formally transfer the property.
* **Transfer your personal items and cars**. Much like real estate, ownership of these items must be formally transferred.
* **Update insurance coverage and beneficiaries.** Schedule a meeting with your insurance agent to go over everything.
* **Update other beneficiary designations and your W-4.** Make any beneficiary changes and ask your human resources department to help ensure you have filled out all the right forms.
* **Protect your retirement rights.** To share benefits from a defined benefit plan, you must ask the court to enter a Qualified Domestic Relations Order (QDRO). Splitting benefits from an IRA must also happen formally, but money withdrawn before age 59 ½ will be taxed and subject to an early withdrawal penalty.
* **Update your will, trust, and power of attorney.** Review these documents and edit them if they do not reflect your current wishes.
* **Confirm that all bank and credit accounts are separated.** Contact your bank, credit union, or brokerage company and instruct them on the terms of your divorce order. Additionally, transfer any debts that your spouse is responsible for (according to your divorce order) into their name.
* **Follow up on any name change.** If you changed your name as part of your divorce order, make sure that all official documents reflect this change.

Not only is divorce a life changing process, it is also remarkably complex. If you have questions about your finances or need your accounts serviced, please do not hesitate to call our office at (225) 223-6048 or email [admin@graffinancial.com](mailto:admin@graffinancial.com).

**Contact us**