
SUCCESSFUL
DIVORCE
A Primer

by

J. Murkette

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INTRODUCTION

If you are just considering divorce, or even if the decision to divorce has already been made by you or your spouse, you are probably going through one of the most difficult periods of your life. Some days you may feel completely overwhelmed and unable to make even the simplest decisions; other days you may feel confident and secure with your choices. No matter what your particular circumstances are, the emotional ups and downs you experience are similar to those many other people have when they are involved in the process of getting divorced.


The following information will help you realize that you do have options, you are not alone, and that the struggles you are now involved in can lead you in the direction of a happier and more satisfying life. A divorce may be the end of a marriage, but more importantly, it is the beginning of another chapter in your life. The possibilities are endless. You have a second chance to create your adult life in the way you want it to be. It will take hard work and dedication, but the rewards will be well worth the effort.

A divorce can be divided into two parts:

1. The division of financial assets and debts, and
2. The emotional impact on you and your family.

If you have children you can add custody/visitation and the financial provisions for the children. The first part can be over relatively quickly. The second part can last for years after your divorce is final. And if you aren't comfortable with the results of the first part, the second can last a very long time.

No matter you talk to, everyone will have a different opinion as to what you should or should not do. Even your own opinions can change more rapidly than ever before. And you may not be ready to talk about it, or you may be talking to anyone who will listen. Some of the opinions and information you hear will be helpful; some of it may be totally inappropriate for your situation. How do you sort it out? Who can you trust? What should you do? As you read through this information keep in mind the following:

1. You are not alone.
 2. Your life can get better.
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MAKING THE DECISION TO DIVORCE

The decision to get divorced rarely, if ever, happens instantaneously. There may be a catalyst, an event that suddenly turns your thinking to the “idea” of divorce, of getting away from an unhappy marriage, starting a new life. Whatever your specific circumstance, you will probably change your mind many times, even many times in the course of a day, before you finally make that final choice. This is normal. On the other hand, you may have no choice in this decision because your spouse has made it for you. If you are in an abusive relationship or your partner is an alcoholic or substance abuser, you may have gone through a long period of hoping he or she would change or stop their “bad” behavior. You may even think it is your fault. Still, you may be so afraid of the consequences of divorce or even the process itself, that you would rather live with what you are familiar with, even though it may be bad, rather than make the change, or take the chance.

Many people separate for a period of time, planning to divorce, and then get back together again to give their marriage another try. The reasons for this are as numerous as there are people who do it. This period of reconciliation can be very stressful, as it takes a long time to rebuild the trust that may have seriously diminished during the separation period. Some people have used times like these to go to marriage counseling and have successfully pulled their marriage back together. Many couples, however, have found that an attempted reconciliation has served mainly to clarify, once and for all, the reasons that they decided to separate in the first place.

Eventually the time comes when you know that something must change permanently and unfortunately, divorce is often the only option. You will still be flooded with a wide range of emotion, even after you’ve made up your mind. Once you know you’re getting a divorce, even if you haven’t told anyone yet, there are several things you can do to preserve your financial and emotional resources, and create new ones.

On the other hand, if a lawyer tells you that what you are looking for is impossible, at least get a second opinion before you give up hope. For example, if a good father truly wants custody of his children, many lawyers will say it’s not possible, but today it really is both possible and increasingly common. Be prepared for this issue and do not discount this possibility whether you are a mother or a father!

YOU AND YOUR LAWYER

No matter how amicable your relationship with your spouse may be, you still need a lawyer. Although it is possible to do without one, (called *pro se*) the ramifications of that will be with you forever. Lawyers can handle all the paperwork (there is a lot) and they can help you stay grounded. If you or your spouse starts making unreasonable demands, a lawyer will help you keep your perspective. But bear in mind, a lawyer is not the judge and a lawyer will not always tell you all your options. He/she will charge you for everything he does and there is much you can do for yourself. After all, this is your divorce, not your lawyer's, and you owe it to yourself to get the fairest settlement. Do your own homework and research.


First, set up consultations with a few different lawyers in your area who have been recommended to you or those who specialize in divorce. Your state's Bar Association can help you with referrals if you need one. If you have a family lawyer, ask him/her for a recommendation, but don't expect him to represent you in this matter. Your family lawyer may offer to represent both of you, but that will cause problems in all but the most amicable of situations, and is not advisable.

The initial consultation should be FREE, or do not go to that lawyer. Expect to spend about an hour at the first meeting.

At that meeting you will be asked questions, some quite personal, and you will need to know the answers. You should also bring a list of questions to ask the lawyer. After this meeting, you should have a feel for the type of person this lawyer is. If you don't feel comfortable with him/her, then find another lawyer.

If a lawyer makes promises that seem wonderful, but perhaps far-fetched, chances are he will try everything possible to keep his promise, charging you large sums of money, but remember, there are NEVER any guarantees, and the judge makes the final decisions, not the lawyer.

You will save valuable time and money by being as prepared as you can be for your first (and every) visit with an attorney. The following questions are those you can expect to be asked at the first consultation. You should be prepared to answer them as honestly and fully as you can, but if you don't know the answer, don't fake it. Always be totally honest with your lawyer, even if the answer is "I don't know." The information you give is totally confidential unless you say otherwise.


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1. How long have you been married?
 2. How many children, if any, and their ages?
 3. Your age, spouse's age?
 4. Both of your occupations, incomes from all sources?
 5. Debts and assets of both parties?
 6. Why do you want a divorce?
 7. What are the grounds?
 8. Have you tried/would you consider marriage counseling?
 9. Is there any abuse? They will want specifics.
 10. What issues do you agree/disagree on?
 11. Has there been infidelity? Whose?
 12. Previous marriages?
 13. Criminal history?
 14. Alcohol/drug abuse?
 15. Who contributes what and how much?
(money, child care, housework)
 16. Custody/visitation preferences?
 17. Future plans?
 18. Anticipated problems with spouse?

Remember, every divorce is unique and you will also be asked to provide details of any special situations that may be relevant to your case. The more complete the information you provide, the better the attorney's ability to assess your situation and advise you.

After you have provided the lawyer with the background material, they will be able to give you some idea of what you should do next. If you are comfortable with it, proceed. But first, always ask a potential lawyer about his fees, by the hour or by the case. Ask how much you can expect your divorce to cost based on the information you have provided. When you decide to retain an attorney, make sure you get a written estimate. Don't get stuck owing more than you can afford and if you can't afford a lawyer you like, ask him/her to recommend someone else who is more affordable.

If you really can't afford to pay a lawyer at all, contact your state's Bar Association for referral to attorneys in your area who will provide *Pro Bono* (free) services.

Trust your instincts when choosing a lawyer. Don't give your money to someone you don't respect or trust. Remember . . . lawyers are your employees . . . they work for you!



FINANCIAL MATTERS

If you don't have any financial assets or credit separate from your spouse, now is the time to begin creating them. Open a checking account in your name only. It doesn't have to be with a large sum of money, and it doesn't have to be in the same bank you have used with your spouse. Apply for one or more credit cards in your name only. Get a couple department store cards, too. Sears is great for almost any kind of emergency. In a few months or years you may also need a bank loan and establishing your own good credit in advance will help you immensely. But don't abuse your credit or you will regret it later. Use it only when absolutely necessary and pay off your credit card debt as quickly as possible.


Also consider renting a Post Office Box if you don't want your spouse to see all of your correspondence, i.e. letters from your attorney. Even though it may seem unlikely and may never happen, you need to assume that a time may come when your spouse will want to investigate your personal documents and mail. It is better to protect yourself now, than to be caught totally by surprise if it happens.

Make a list of all the THINGS that were REALLY yours before you were married. These are yours when you divorce, too, if you want them. Find out what, if any, stocks, real estate, etc. are in both of your names and make a list of them. Also make a list of every valuable (even sentimentally valuable) item acquired during your marriage. If possible collect sales receipts, appraisals or any other information you have that will help determine its value and ownership. You are probably entitled to half the value of everything acquired during the time of your marriage unless you or your spouse can prove otherwise.

If you both have names on credit card or loan accounts, you are both responsible for the balance due. You may decide to agree on which of you is responsible for payment but, you MUST contact the account holder and follow the instructions for removing one name from the account. If this isn't done and your ex defaults on payment, no matter what your divorce decree says, the account holder can still hold YOU responsible and your credit rating will suffer.

At some point before you divorce you should request a Credit Report from TRW or one of the other major credit reporting bureaus. About 6 months to a year after your divorce, request another one to make sure your ex's debts aren't still mingled with yours. If they are, take the necessary steps to have them removed immediately. The credit bureaus will provide you with the necessary information to do it right.

These simple measures can help you establish a separate financial identity from your spouse, which you will need when your divorce is final but is easier to accomplish beforehand.




You will also need access to all your financial records. It is a good idea to make copies of them as soon as possible, especially if you think your spouse may try to hide something important. Don't leave the copies lying around, but consider putting them in a Safe Deposit Box or give them to your lawyer. Also keep your new financial records in a safe place. Last year's tax returns, records of financial assets, jointly owned personal property and real estate are all important. Knowing what you own and what you owe, both together and individually, will make it easier to divide when the time comes.

If you and your spouse own your home, *don't move out of it* unless you are prepared to move out permanently. If you want the house, stay in it unless a court orders you to do otherwise. On the other hand, if your spouse won't move out (and you know and agree you will get the house) you may have to find him/her a place yourself. If you are renting, and you have no real commitment to staying in that place, it's probably better to start fresh in another place.

*** MAJOR EXCEPTION ***

If you and/or your children are being abused or you sincerely fear for your or their safety, **LEAVE IMMEDIATELY!** Use every legal means available to protect yourself. Go to the police and request a restraining order to prevent contact between you and your abusive spouse. If a temporary restraining order is issued, (usually for a week or until a hearing can be scheduled in court) **FOLLOW UP** on the hearing needed to continue the order for a longer period of time. If your spouse doesn't comply with the restraining order, don't let it slide. Call the police immediately, and then call your lawyer.

Do whatever it takes to get help. You can get your house back later. Call a crisis hotline, or contact a battered women's service. Tell your family doctor. It is not your fault if you are abused and you are not alone. Don't be afraid to talk about it and ask for help. It is available, and from people who really do understand how complicated and overwhelming your situation feels.



REACHING A SETTLEMENT AGREEMENT

If you think you might have major problems in reaching agreements with your spouse, or a custody fight looms, now is the time to start keeping a journal documenting any incidents that you feel will help you and your lawyer in preparing your case. Include as many pertinent details as you can remember and try to write them down soon after they occur so they will be fresh in your mind. Don't forget to keep this journal in a safe and private place.

The best way to reach a fair agreement that both of you can live with, without having to make many costly court appearances, is by calm discussion with your spouse. This is very difficult in the best of circumstances, but it can save you both a lot of money and animosity. If you have children, avoid such discussions within their hearing range. Their knowledge of these adult issues will cause them needless worry and concern. These are your issues and problems, not your children's.

If talking with your spouse only leads to arguing, write down what you think will be a fair disbursement of assets, debts, and if you have children, what you think should be done in their interests. If your spouse is willing, have him/her do the same. Agree to limit conversation about the issues that are too volatile.


Remember, no matter how hurt or angry you are, revenge and greed both have a way of backfiring and can haunt you for years to come. If you really want to hurt your spouse or take revenge, the best way will be to live your post-divorce life happily and fully without him/her. Now is the time to consider seeking the counsel of a therapist, personal coach or advocate.

Lengthy court battles do take their toll emotionally and financially, and usually it is only the lawyers who come out ahead. This is not to say you should give in to unreasonable demands or requests, but you should be able to compromise and even make a few sacrifices, so that you can get past the divorce and on with your life.

If you and your spouse have made some agreements, give them to your attorney so that he/she can make sure they are legal and fair, and can put them into proper format for court.

If you can't reach any agreement, write down what you want and give that to your lawyer. He/she will then handle a good portion of the negotiation with your spouse's attorney.

A licensed mediator can also be hired to help with these negotiations and is considerably cheaper than the cost of two attorneys engaged in litigation. A mediator is impartial and will not take sides. Instead, he/she will help you and your spouse see each other's points of view and encourage you to reach an equitable compromise. You will still need a lawyer for filing documents and going to court, but by that point his/her work will be minimal and so will the cost.



If you have children, you will have to decide with whom they will live and how much time they will spend with their other parent. It is extremely important to take their true needs into consideration and not to use them as a weapon against your spouse.


Joint Custody is a popular option today and many judges will insist that it be tried at first. This doesn't mean they must spend equal amounts of time with both parents, but that both parents have equal responsibility for making important decisions regarding the children's financial matters, education and religion. The "custodial" parent is the one with whom the child(ren) lives most of the time.

Visitation arrangements should be spelled out very clearly to avoid misunderstandings, disappointments, and unwanted surprises for you and your children. Although it may sound "reasonable", the phrase "whenever is reasonable" may have very different meaning to you and the other parent. If you arrange for a specific schedule and it doesn't work out, or there is a change in circumstance, you can always modify that part of your agreement whenever you need to, either by going back to court or by mutual agreement. (Just make sure it's in writing.)

In most states Child Support is determined by each parent's ability to provide financial support for the children. There is frequently a formula used by the courts for determining the amount, based on incomes, debts and the number and ages of the children. Child Support is not a bargaining tool ... it is a parent's legal and moral obligation to their children. In many states Child Support can now go directly from the non-custodial parent's paycheck to the custodial parent. Non-payment is no longer treated mildly by the courts and can result in publication of the delinquent parent's name and amount owed, and even time spent in jail.

Regarding income tax deductions for children of a divorce, the custodial parent usually claims the standard deduction for dependent children. If not, the IRS will require both parents to file the necessary forms to change this arrangement. Also, Child Support payments are not tax deductible for the parent paying them, and they are also not considered income for the parent receiving them.

Child Support is totally separate from Spousal Support or Alimony. Today alimony is usually awarded when one partner's earnings are excessively higher than the other's, and the other has become accustomed to a style of living that would be impossible to support without supplemental financial support. The terms of alimony are generally for a set period of months or years, with the understanding that the one receiving it will take the steps necessary to live without the extra support. Alimony usually ends when the recipient remarries, or their ex can prove in court that the circumstances have changed so that the terms of the spousal support agreement are no longer reasonable. The awarding of alimony is no longer as common as it once was, and should not be expected. Unlike Child Support, Alimony is tax deductible for the one who pays it, and is considered income for the recipient.





MISCELLANEOUS ADVICE

Especially before you retain an attorney, but at any time during the divorce process, writing things down helps you keep a perspective on your situation and can be a valuable relief valve when you feel overwhelmed or confused. Write down what you think you would like to have happen in your “best case scenario”. What about your “worst case scenario?” Facing your worst fears head on can help you learn to deal with them and how to avoid them. Make a list of what you will or might lose by getting a divorce — all the tangible losses, such as money, but the other losses too, such as a “regular Saturday night date,” or steady relationships with your in-laws. But don’t forget to make a list of what you will gain from a divorce, too.


Keep your writings in a safe place where no one will read them unless you want them to. You need a diary or journal where you can write down anything without having to worry about what someone else will think about it, or do with the information.

There are many things you will be able to keep after you divorce, but you may need to modify them. Relationships with your in-laws and friends are perhaps the most important of those. If you had pleasant and close relationships with your in-laws up to this point, there is no valid reason why you can’t continue to have them. You will no longer be related to them, but you can still be friends. It may be necessary to agree not to discuss divorce issues with them, but if you value your relationships with your in-laws, it will be possible to maintain them post divorce, especially if you don’t ask them to take sides. (They probably won’t take yours.)

Friends, especially couples you have socialized with, may take sides immediately, or try very hard not to. You have to expect to lose a few friends in this process, but those who are lost were probably not true friends to begin with. You will also make new ones as you explore the new territory of single life. Try to remember that it is also a difficult time for your friends. They may want to help, but won’t know how. They may also be overwhelmed by listening to your woes try to be considerate of them, too.

Finally, if you are still overwhelmed by everything, so hurt or angry that you are barely functional, consider talking with a therapist. If you can’t afford one privately, there are many human service organizations that offer therapy on a sliding scale or even free, but you must seek them out.

If you have children, they need you to be “whole” for them. And if they are having difficulty adjusting to the rapidly changing and tense situation in your household, talk to the school psychologist or guidance counselor for recommendations, and make sure teachers are aware of the situation at home. Divorce is always difficult and at times the needs of your children can be overshadowed by your own despair. This is not the time to be a martyr, but children must have their basic needs fulfilled. Asking for help takes a lot of courage and strength. Ignoring your problems, and/or your children’s takes no effort and does nothing to solve them. You have the ability to be strong and you have the ability to survive and thrive in your divorce. Do it!



CONCLUSION

What you have just read, by no means, provides all the answers for your particular circumstances. There are, however, some basic tenets or rules to live by if you want to have a “successful” divorce, even if you haven’t had a successful marriage.

1. Don’t believe everything you hear.
2. Do trust your instincts.
3. Don’t hit or physically injure your spouse in any way.
4. Do take legal action if your spouse hurts you.
5. Don’t give in to threats.
6. Do learn to compromise.
7. Don’t try to do everything yourself.
8. Do take care of yourself, physically and emotionally.

If you have children:

9. Don’t criticize their other parent in front of them.
10. Do tell them the truth in a way that they can understand for their age level.
11. Don’t discuss adult matters of divorce with them.
12. No matter what, always remember the following:

It can get better
and

LIVING WELL IS THE BEST REVENGE !



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J. Murkette
P.O. Box 122
Hardwick, MA 01037-0122

