

I'm Thinking About Filing for Divorce

What Should I Be Doing and Thinking About from a Legal Standpoint?

by Marci R. Carroll, Esq.

Filing for divorce is a big step and sets many things in motion. Many people think about taking such a step long and hard – as they should. This may sound crazy coming from a domestic relations attorney, but you should consider going to marriage counseling with your spouse or individual counseling before filing for divorce. A marriage is a living thing and takes a lot of work to thrive and perhaps even be revived. However, if your marriage has disintegrated beyond repair, ending the marriage and filing for divorce may be the best alternative for you and your children.

If you are seriously considering filing for divorce, there are a lot of things to think about – whether you and your spouse have children together or not. Issues tend to fall under two main categories: what changes to make in your living situation and what documentation to start gathering up while it is more accessible to you.

In terms of your living situation, you need to decide if you and your spouse are going to start living in two separate households or if you are going to try to stay under the same roof for a while longer until the court orders one of you to leave. Very closely related is the issue of who your children will primarily live with and what kind of contact they will have with the other parent until the court issues a temporary order. The frequent and intense arguments and bickering that most spouses are having by this point only complicates matters. Unfortunately, there are no easy answers and your family is essentially in a legal “no man’s land” until the family court can enter a temporary order addressing these issues, which generally isn’t until months after a divorce petition is filed. For the most part, until a temporary order is entered, you and your spouse each have equal rights to live in your home and have equal rights to custody of your children. Ideally, a gentleman’s agreement can be worked out in the interim with respect to these issues. But beware! If you think that you may want temporary or permanent possession of the home, you may well be better off exercising your right to remain in the home until you can consult with an attorney. On a similar note, if you think that you may want the children to primarily reside with you, you are probably better off residing where the children reside until you can consult with an attorney. Of course, negotiating this tightrope takes a lot of finesse and the ability to control your temper (most especially when your spouse is pushing those buttons of yours that they know so well), because such a tense situation can erupt into domestic violence or at least the accusation thereof.

If you do begin living in separate households and have children together, you definitely should consult an attorney about when and how much child support you may expect to pay or receive since a child support obligation may have started to accrue. If you believe that you are accruing a child support obligation and are trying to be a good parent by supporting your children even before the court orders you to, be sure to make

those child support payments by check from a non-joint checking account and write “child support” in the memo section; cash payments and in-kind support (*e.g.*, providing food and clothing) very seldom end up getting credited as child support payments.

If you or your spouse leaves the marital home, documenting (by lists and/or photographs) the items that party removes with them can prove invaluable later on when you and your attorney are completing the financial statement and analyzing the equitable distribution aspects of your case.

Additionally, you may want to consider opening up a non-joint checking account in your name if you do not already have one and rerouting any direct deposits of payroll or other funds coming to you to that account. However, resist the temptation to empty out joint accounts as, depending on a number of factors, you may have to repay some of those funds to your spouse during the equitable distribution process in the divorce; also, make sure that you do not violate the terms of a constructive trust, which may be imposed in an initial court order. Further, be sure to leave enough funds in any account to cover outstanding checks that have been written so they do not bounce. Consider contacting credit card companies and seeing if you can get your spouse’s name removed from your accounts and/or advising them in writing that you will not be responsible for any future charges by your spouse on a joint account.

With respect to documentation, before either you or your spouse leaves or the divorce petition is filed is the optimum time to start gathering some of the documentation that you may need in an upcoming divorce action. Get the documentation (or copies of it) now before it either conveniently disappears or your spouse grabs it and plays keep away! Some items are required attachments to financial statements filed with the court and other documentation will help you and your attorney complete your financial statement and make other assessments in your case. Whatever you can get now is just that much less that your attorney will need to reconstruct or obtain at greater expense and time delay later.

Absolute basics of documentation are income tax returns and paystubs for you and your spouse.

- ◆ Gather your federal income tax returns, all forms W-2 and 1099, schedules, attachments, and worksheets thereto for the most recent three years. If you and your spouse filed separate returns for any year, make sure to get your spouse’s return as well as your own for those years.
- ◆ For both you and your spouse, gather up paystubs from employment and records of all other sources of income for up to the prior thirty-six months.

With respect to assets and debts generally, copies of statements are best, but company names, telephone numbers, addresses, and account numbers are a great alternative if copies are not available.

- ◆ Obtain monthly account statements for checking, savings, credit union, Christmas Club, IRA, 401(k), and any other financial institution accounts in which either you or your spouse have an interest for roughly the past year as well as any cancelled checks for that same period. Do the same thing for credit cards, utilities, and other debts. Be alert for any unusual increase in the rate or amount of cash withdrawals or advances.
- ◆ Start checking with your employer about what kinds of pension or retirement plan you may have – whether or not you are currently vested - and do some research about any such interests you may have from prior employment. Do some discrete research about any past or present retirement and pensions that your spouse may have as these types of interests are particularly susceptible from being left off, unintentionally or otherwise, financial statements.
- ◆ Also remember to get life and health insurance information, including the policy numbers, the type of policy (*e.g.*, whole, term, or modified for life insurance), face and cash values for life insurance, deductibles and premiums for health insurance, the name of the policy owner, and when the policy was taken.
- ◆ Gather pertinent information regarding any annuities that you or your spouse may have.
- ◆ To assist your attorney in valuing your and your spouse's vehicles, take odometer readings; make note of the year, make, and model, and features; and get a dated statement from the lending institution of a payoff amount.
- ◆ Likewise, if you own any real estate, get a copy of the deed and the deed of trust, find copies of any recent appraisals, and get a dated payoff statement from the bank if there are any mortgages on the property.
- ◆ You will also need to value your household goods and other miscellaneous personal property later on with the financial statement; a technique that we have found to be extremely helpful in our practice is having our client take photographs of these items as they are located in the marital home or elsewhere so that they can remember more accurately what they had and so we can better assist them in placing a value on these items. Make sure to make detailed lists and take explicit photographs of any particularly valuable items or collections, such as jewelry, guns, and tools.

Do you find this to be a daunting homework list? Are you uneasy about navigating this process by yourself? Have you obtained the *pro se* divorce packet and realized that the financial statement and other forms that you are required to complete are still very complicated and started to worry about not filling them out correctly? Mistakes on the financial statement form can make thousands of dollars of difference. The advice

and guidance of an experienced domestic relations attorney can be a valuable advantage from the beginning.

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