

# **Tips for a Friendly Divorce**

## ***By Atty. Michael H. Agranoff***

Getting married is a relatively simple process. You can get a license by meeting absolutely minimal requirements. However, if you want to get divorced, even if you agree on everything, you will still need to go to court. This country doesn't permit "divorce by postcard." (I am told that the Russians tried it in the 1920's, but gave it up).

Court proceedings are never pleasant. And even in friendly divorces, there are traps for the unwary. Simple cases will very often have hidden complications. You want to be civil, but you don't want to get cheated.

The bottom line is that you need a lawyer, but one who understands what a friendly divorce is, and who is committed to helping you at minimal cost, without alienating your spouse and children.

Assuming that you and your spouse are both in basic agreement, here are my tips for a friendly divorce.

### **1. BE SURE YOU'RE READY**

Most health and family professionals believe that divorce can be difficult for the parties, even under reasonably friendly conditions. It is usually much worse when there are children. Make sure that this is what you really want. If you need to talk to someone, there are plenty of family counselors available. If you are short of funds, all towns have social service agencies that can help, often on a sliding fee scale. Check with the Town Hall, or with private counselors if you need assistance.

It is true that divorce is common, but that doesn't mean that it is always desirable. To the extent possible, be sure that you're ready, and don't hesitate to talk it over with a qualified person first.

### **2. UNDERSTAND THAT DIVORCE IS A LEGAL PROCEEDING**

A divorce begins by filing a lawsuit, with the spouse being served by a State Marshal (formerly known as a Sheriff). However, it does not have to be embarrassing, and service in private can be arranged. Any lawyer will handle it easily.

It will, unfortunately, be necessary to go to court at least once. However, that need not be embarrassing either. There are usually dozens of couples in court at the same time, and, unless you are famous, no one will be focusing on you.

It is possible to enter court orders before the divorce is final. These are known as "pendente lite" or "interim" orders. For example, orders could be entered to define, temporarily, who lives in the marital home, how much child support or alimony will be paid, or what visitation will be, etc. It is not always necessary to have interim orders in friendly cases, although it is often done. Any lawyer can explain the various options.

Further, when divorce starts, there are so-called "automatic orders." These prohibit one spouse, under penalty of contempt of court, from closing out bank accounts, taking the kids away permanently, changing insurance, incurring excessive debt, etc., until a court orders otherwise. The lawyer will give you more details. The idea is to prevent retaliation, and keep the status quo, until you get heard in court.

The actual divorce is, technically, a "decree of dissolution" issued by the Court. It declares you to be single and unmarried. In virtually all cases, the final Separation Agreement is attached to the decree. This finalizes, as court orders, the various agreements on child support, alimony, custody, visitation, property division, tax deductions, responsibility for paying debts, and the like.

In some cases, divorce never ends. There can be "post-judgment" motions and orders, in case one party wants to change child support, alimony, custody, visitation, or other items of the Separation Agreement. Though this is seldom necessary in friendly cases, you never know. As always, it is best to check with a qualified lawyer.

As one example: child support can almost always be modified if your finances (or those of your ex-spouse) change, or if State Support Guidelines change, or in certain other cases. You may set a diary to remind yourself of this at least annually.

### **3. LIST YOUR ASSETS**

In the first meeting with the lawyer, you will be asked to prepare a list of assets. It helps if you get ready for this ahead of time. Try listing the major items that you and your spouse own (jointly or separately) and their value. For example, list your house, cars, vacation property, retirement plans, stocks and bonds, whole life insurance, and any other items that you may own. The most difficult part is determining the value of your assets, because value can change at any time, and it is seldom the same as what you paid for the asset.

The lawyer will review what you have, ask questions, and possibly make a few suggestions. You will then have time to finalize the list. However, if you have gotten started early, the process will be much easier to finish, and won't seem like such a chore.

### **4. LIST YOUR DEBTS**

In your first meeting with the lawyer, you will be asked to prepare a list of debts. It also helps if you get ready for this ahead of time. Try listing the debts that you and your spouse owe and the amount. For example, credit cards, loans, outstanding bills of any type, etc. Also, note if the debt is in your name, the spouse's name, or joint. Many divorcees are surprised to receive bills for credit cards that they never knew about, but that turn out to be joint.

As with assets, the lawyer will review the list, ask questions, and possibly make a few suggestions. You will then have time to finalize the list. However, if you have gotten started early, the process will be simplified.

## **5. LIST YOUR INCOME**

You will also want to bring as much information as you have for any income that you receive, from whatever source, including public assistance. If you are employed, bring some recent pay stubs. If you are self-employed, bring records of gross income and business deductions that can be used to substantiate your income, and have your accountant's information available.

Bring all of the information that you can, and be honest. Trying to hide income will ALWAYS come back to haunt you. Please, do not conceal income.

## **6. LIST YOUR EXPENSES**

You will want to list your expenses. These include your electric bill, telephone bill, rent or mortgage payment, water bill, clothing, food, entertainment, insurance and any other regular expenses. If there are extraordinary expenses, discuss these separately with the lawyer.

State the expense frequency (i.e., \$20.00 per week; \$300.00 per quarter; etc.) If you translate everything to weekly, remember that there are 4-1/3 weeks in a month, not just 4 weeks.

Please do NOT inflate your debts. That will also come back to haunt you.

The lawyer can give you a very useful form, which will help you to start listing assets, debts, income, and expenses ahead of time.

## **7. LIST (INFORMALLY) YOUR IDEAS FOR PROPERTY SETTLEMENT AND ALIMONY**

Think about how you would like to divide the property (who gets what), and what if anything you would like for alimony (amount and for how long, i.e., \$100.00 a week for 3 years). The lawyer will review this with you at the first meeting, and then again after the financial reports are reviewed. In complicated cases, it may be necessary for an accountant to become involved.

This is usually the subject of considerable discussion, but the earlier you start, the better.

## **8. IF THERE ARE MINOR CHILDREN, LIST (INFORMALLY) YOUR IDEAS FOR CUSTODY AND VISITATION**

If you have minor children, it will be a good idea to write down your ideas for custody and visitation. Connecticut requires you to attend a Parent Education Program, and the lawyer will provide you with a brochure and forms to handle this.

It is customary (but not mandatory) to provide for joint legal custody of the minor children. This means that both parents make the major decisions regarding the children, but one parent's home is designated as the primary residence.

Visitation is often a sticky point, especially with younger children. School and family activities are often difficult to adjust to visitation. The earlier you start thinking about this, the better.

There are, of course, no guarantees when it comes to raising children. However, experience shows that if a divorced parent disparages the other parent, or fights in front of the children, then the children are more likely to become delinquent and/or develop personality problems. Family counseling is sometimes necessary if the parents cannot cooperate. It may even be necessary if they do cooperate.

## **9. GATHER THE ABOVE LISTS, YOUR PRIOR INCOME TAX RETURN, AND CERTAIN OTHER INFORMATION**

Bring as much information with you as possible to the first meeting with the lawyer. The more information that you bring, the easier and more productive the first meeting will be.

Besides income tax returns, you should bring the following: wills, school problem reports, documentation of income and any extraordinary expenses, and any other documents that you would like the lawyer to review.

Sometimes it is hard to gather everything ahead of time. However, do the best you can, and plan to get the rest within a reasonable time. It is important to get started and not procrastinate. This lessens frustration and keeps the ball rolling.

The lawyer will also discuss child support payments with you.

## **10. AVOID FREE ADVICE**

Please try to limit the advice you get from unlicensed persons, whether they are friends, relatives, social workers, co-workers, or newspaper columnists who are paid to write words under a deadline whether they have qualifications or not. Free advice is generally worth what you pay for it.

Be especially wary of those who have "been through it" before. Experience is not always a reliable guide, since the detailed facts of other cases are nearly always different from yours. Also, laws do vary from State to State, and can change within a State.

Be careful of using "mediators" to save money. These people do not always give correct legal advice, and contrary to popular opinion, do not act as your lawyer. A friendly divorce, with cooperative spouses and an understanding lawyer, need not be overly expensive.

## **11. GET AN APPOINTMENT WITH A LAWYER IN YOUR COURT DISTRICT WHO HAS EXPERIENCE IN THESE MATTERS**

Lawyers can be found by advertising or word-of-mouth. Good advertising sources are the phone books and web sites. You will normally want to find a lawyer who is within a reasonable distance of both yourself and the court, to keep your costs down.

You should also ask the lawyer about fees: do they charge on an hourly basis, do they send detailed bills, do they have separate charges for paralegals and lawyers, how much is the retainer, do they offer payment plans to meet your needs, etc.? The law requires a written, signed Fee Agreement in nearly all matters.

## **12. ATTEND THE APPOINTMENT AND FOLLOW-UP**

Make an appointment and keep it. Don't put it off. In a friendly divorce, both spouses should attend together, if possible. Of course, the lawyer can officially represent only one spouse, and will suggest that the other spouse review any agreements with another lawyer before the decree in court.

## **CONCLUSION**

Divorce is unpleasant. So is root canal, but you do it when you have to.

Divorce can be made less unpleasant if the parties approach it in an adult manner, realizing that it is indeed a legal proceeding, not an opportunity to "get back at" the other spouse. The courts are, despite whatever you see on TV and the movies, not the proper place to seek vengeance.

Following the steps listed above, and getting a lawyer who wants to help the parties for a reasonable fee, can minimize the unpleasantness of divorce. Then, divorce can be a new beginning for all concerned.

## **SPECIAL NOTE: Pro Se Divorce**

A pro se divorce means that you, as a non-lawyer, represent yourself.

I sincerely hope that, after reading this article, you are not tempted to do that.

If you cannot afford legal representation, and cannot obtain a pro bono (free) lawyer, then consider hiring a lawyer for what I term "non-court representation."

In non-court representation, the lawyer helps you with paperwork, gives you advice, and tells you what to expect in court. However, the lawyer does not file an "appearance form", and does not appear on your behalf in court or at settlement conferences. The lawyer is available by phone if problems arise.

It is up to you. However, in my view, going it alone makes as much sense as pulling your own teeth.