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How To Get a Divorce

A step-by-step layman's guide.

By Greg Reid

I obtained my divorce in 1997, finalizing a process that started in 1993 when my ex first mentioned the "D word." While divorces are certainly obtained in a much shorter timeframe, I don't think that my experience is unusual for those with children of the marriage to consider and a career to keep them busy in other matters. I've learned quite a lot in the process, and would like to share my experiences with you in the hope that they might save you some time, money, and/or grief in your own divorce proceedings.

I'll caution that I have no legal training, and have tried to stay away from legal jargon as much as possible. Also keep in mind that not everything in this article will be relevant to your own situation. Consult a lawyer before getting into any actual separation or divorce proceedings.

Do you really want a divorce?

The first step is to try everything possible -- including mediation, therapy groups, the clergy, an uninterrupted vacation, your closest friends, and whatever else might help -- to try and keep your marriage together! If you have children of the marriage, all the more reason to try your hardest to work things out with your spouse. (I hasten to add, however, that keeping a bad, acrimonious marriage together "for the kids" isn't really in your children's best interests. There is plenty of literature available on this subject; or you might want to consult a child therapist.)

You might think that things have deteriorated too far in your marriage to be able to save it, and that a divorce is your only option. But except for cases of chronic physical or emotional abuse, there's almost always some hope. Investigate all such avenues. If you think that a divorce is going to be easy, and that it's going to solve all of your problems, think again! Divorce is hard, time-consuming, and can be quite expensive financially and emotionally. Go back and work one more time on saving your marriage; if successful, you may find it even stronger for the "close call," and you'll likely become more intimate with your spouse and your children because of the effort expended and your new perceptions of what your marriage really means to each of you.

Don't scream out "I want a divorce!" in the middle of a heated argument. If this piece of advice has come too late for you, don't panic. Try to talk things out as calmly as possible with your spouse. You've at least obtained his or her attention in the matter. Now try to set things right.

If you and your spouse decide to try mediation or counseling, divorce attorney Susan Kunstler has a cautionary note. "Once you're involved in the process," she says, "do a 'reality check' after a certain period of time to make sure you don't get caught in a 'loop' in which you keep repeating the same complaints and rehashing the same problems. Not only can you waste a lot of time and make the relationship worse, but you can find that you have spent a large amount of money in the process." In addition, do not agree to *anything* when you're mediating your divorce unless you are *absolutely* certain. "The worst thing you can do is agree to something in one session and back out of it in a later session." Kunstler frequently recommends that her clients consult therapists on their own -- another "reality check" -- especially if divorce is the only solution. "Try to recognize and accept that this is probably one of the most traumatic experiences you can go through, and short-term, goal-oriented therapy can be very helpful."

Do you need a lawyer?

People are attracted to do-it-yourself (also known as "*Pro Se*," which is a Latin phrase meaning "for yourself") divorces because they are supposed to save both time and money. Unfortunately, most divorces are relatively complicated -- involving complex property transfers and their tax implications; plus the issues of support, custody, and access if children or an unemployed spouse are involved. "It would be a good idea to have at least one consultation with a lawyer to determine your rights first," recommends family lawyer David Wildstein. You might be able to process your own divorce if:

- it will be uncontested;
- you have been married for a relatively short period of time, and do not have children;
- you and your spouse are in complete agreement regarding the division of property and assets;
- you are both employed and capable of supporting yourselves;
- you possess sufficient mental and emotional strength, meticulous attention to detail, and perseverance to embark upon a relatively difficult and time-consuming task;
- you are able to prove "grounds" for your divorce.

If you want to try the pro se route, there are some resources available to help you. The very first thing you should do is contact the local court in which you will be filing for divorce and obtain a copy of the court's "check list" of documents and information the particular court requires.

Check with your local community college, adult education center, or community center to see if they offer classes on divorce.

There are some low-cost legal clinics and some private-practice attorneys or paralegals who will fill out your forms for a fee and review your separation agreement to make sure the paperwork is complete before it's filed with the court. A paralegal service generally only fills out the forms for you -- which may be all you need if you know all of the legal issues of your case because you have discussed your case in detail with a divorce lawyer before hiring the paralegal to fill out the paperwork. Paralegals are not trained to give legal advice, and you may overlook serious issues if you rely on a paralegal to let you know your rights and obligations.

If you create your Separation Agreement yourselves, you and your spouse should each retain an independent attorney to check all papers before signing -- even if the divorce is "friendly" and you think your agreement is very straightforward. Also remember that it can be extremely helpful to have occasional consultations with an attorney as needed as you negotiate with your spouse.

If things turn nasty while you're negotiating with your spouse, or you suspect he/she's trying to trick you into agreeing to a settlement that really isn't in your best interests, you'll definitely need to consult a lawyer -- who may have to charge you even more money to undo what you did prior to retaining him or her.

Another option for those who'd like to handle some of the divorce-related work themselves is to "unbundle" their legal services. "Unbundling means that the attorney and the client can agree that the attorney will provide some, but not all, of the services contained in a classic family law case," says M. Sue Talia, the author of *A Client's Guide to Limited Legal Services*. "After discussing the issues presented in your case and the options available with an attorney, you instruct him or her on which specific tasks she is to perform, and you take responsibility for the others."

Grounds for Divorce

To find out about the Grounds for Divorce in your state, click visit www.divorcemag.com/articles/grounds.

Documentation Needed

You'll need to provide your lawyer with the following documentation in order to proceed with a **Separation Agreement**. Start gathering everything together as soon as possible so that you can find out what might be missing and submit any requests for duplicates. Here's a list of some of the information you should have ready:

Personal Data

- Full addresses, phone numbers, and Social Security numbers of both parties.
- Full names, birth dates, Social Security numbers, and addresses of all children of the marriage, and their schools and grades.
- The date and county of the marriage.
- Information about any prior marriage of either spouse, including a certified copy of the divorce decree.
- A copy of any domestic contracts (e.g., a prenuptial agreement).
- Information about any previous legal proceedings between the spouses or involving any of the children.
- Dates and particulars about any previous separations, attempts at reconciliation, or marriage counseling.

Financial Data

- Your previous year's income tax return, and any related data from the IRS. (Kunstler recommends providing your lawyer with several years' returns).
- Information about your current income, (e.g., a current pay slip).
- A list of substantial assets and liabilities of both spouses.
- Copies of any applications for credit, such as mortgage applications, which often contain a wealth of helpful information.

The Separation Agreement

Clearly, the easiest way to prove marriage breakdown is by meeting the "living separate and apart" rules. While living apart, you'll probably want to be protected by a **Separation Agreement**, which spells out in detail matters such as financial relief, child custody and support, visitation rights, and division of property. There's often a lot of time and work involved in finalizing a Separation Agreement, so if a suit for divorce has been started, the court has the power to order one spouse to pay support to the other while the case is ongoing. It may also determine temporary custody and enjoin the spouses from doing any of several things -- like removing the children from the state or substantially reducing the marital estate.

If you're amicably separated, it may be possible to create a simple written agreement as to support payments while the divorce is proceeding. (It needs to be written down and signed by both parties so that the amounts paid, as alimony can be tax deductible by the payer.) My ex-wife and I handled things this way just fine and saved the trouble and possible animosity involved in court-ordered interim support. Having an existing Separation Agreement in force greatly simplifies the subsequent filing for a divorce. Lacking a Separation Agreement, the **Petition for the Dissolution of Marriage** will have to address all of the same sorts of issues anyway. So having the Separation Agreement drawn up early is a wise investment.

The Summons

The divorce action is initiated by serving a **Summons** upon the other party (the defendant), briefly stating the grounds upon which the divorce is sought, and a brief outline of what you (as the plaintiff) are seeking (the divorce itself, as well as items such as division of properties, custody of the children, interim support, and legal fees). You then have up to 120 days to serve the papers on the other party. The defendant is required to respond with a **Notice of Appearance** and an **Appearance**.

The Counterclaim

After (or, occasionally, at the same time as) the Summons, the **Verified Complaint** is served. This describes the basis for the divorce and specific relief being sought in more detail. Once served upon the defendant, he or she has 20 days to respond. In the response, the defendant may admit or deny parts of your Complaint, and may also issue a **Counterclaim** against you. If the defendant agrees to go forward with the divorce -- while not necessarily agreeing with it -- he or she would sign a **Defendant's Affidavit**.

The Discovery phase

If there is no Separation Agreement, or the divorce is being contested, each of the lawyers begins the **Discovery Process**, in which they gather as much information as possible about the facts of the case. This information can delve into issues such as custody, fault, and grounds for divorce. But in most cases, the emphasis will be on financial matters. You'll likely be asked to supply various financial documentation, and to detail in writing within a **Statement of Net Worth** all pertinent facts concerning your finances and properties. And I do mean detail! (This is where I got bogged down.)

You're expected to itemize and put a reasonable and provable dollar value on each and every significant item that (a) you brought into the marriage, and (b) that you have in your possession at the time of signing the Statement. So, off you go for the next two months or so trying to track down bills for stuff you purchased before your marriage, getting your bank to print out reams of paper for your bank account and IRA balances the day before your marriage (which is quite involved and expensive if that date was more than 10 years ago, and if, like me, you switched banks several times due to moves between cities, and like me some of those cities were foreign), gathering slips of paper to prove the outstanding balance of your mortgage and your company stocks before you married, the value of the car and motorcycle and canoe and what-have-you on the two dates, and *ad infinitum*.

In the meanwhile, your lawyer has enlisted the services of an actuary to determine the value of your company pension plan at both dates. These calculations can be quite complex and subject to plenty of actuarial best-guessing. "Your lawyer may also use the services of an accountant to review business records, or an appraiser to place a value on your business or real estate," adds Wildstein.

Whew! You're finally through with it -- signed and delivered to your spouse's lawyer. Now you find out that it's the duty of the other lawyer to go over your figures carefully and demand proof of anything in question. So back you go to the books and the appraisers and the banks for further proof of anything contested. Appraisals or valuations may also be requested for such things as the value of a business.

With the possible exception of folks who are meticulous record-keepers, gathering the necessary evidence to support your Net Worth document can be a nightmare. All I can advise here is "keep at it," since the problem won't get solved by itself. It's easy to procrastinate, but it's unlikely that you'll be able to proceed meaningfully until the financial information is deemed complete, accurate, and acceptable by "the other side."

The discovery process can involve several related legal instruments, such as **Interrogatories** (written questions requiring written responses from the other side to clarify one or more areas of concern) and **Examinations Before Trial**, also known as **Depositions** (the same idea, but done verbally under oath, with a court reporter taking notes).

And here's where the trust and goodwill you've been building during your separation -- by treating your ex with courtesy, scrupulous honesty, and kindness -- starts to pay off. In our case, my ex-wife recognized that the delays and expense in obtaining some of the documentation simply wasn't worth the couple of hundred bucks she might have gained in the ultimate property division. She knows -- because I demonstrated it to her over and over again -- that I have no desire to cheat her or our children out of anything. This allowed us to reach a fair settlement without my spending another \$1,500 and several months trying to gather more documentation. We agreed that the dollars are far better spent on our children than on appraiser and bank fees.

Division of Property

The complex topic of property division can vary substantially from state to state. Talk to your lawyer to find out how property is distributed in your state.

Financial support

The other reason for the financial disclosure is to itemize your income and expenses (actual and proposed) so that the lawyers or the court can decide if one of the spouses should provide financial support to the other. If children are involved, the non-custodial parent will usually have to pay a set monthly amount for **Child Support**, according to support guidelines. Another amount may be determined payable for **Spousal Support** or **Maintenance** (formerly called "**Alimony**").

Each of these amounts will have a set start and end date. Typically, child support continues until the children are 21 or until they finish their university education, but it may terminate prematurely if a child chooses to move away from home and separate him or herself from parental influence or control or drops out of school. Maintenance payments may continue for a year or more, or even for life (in the case of longer marriages). These payments are generally intended to "allow the former spouse to continue the lifestyle to which he or she was accustomed," Wildstein says, or in a shorter marriage, to help the former spouse get back on his or her feet again: the payments could be used for university tuition and may include additional money for daycare for the children while he or she attends classes, which should help the former spouse to become gainfully employed in due course.

Child Custody and Visitation rights

The **Support Agreement** or the **Divorce Judgment** will stipulate the custody of the children (under 18 years of age) and the visitation rights by the non-custodial parent. If you have kids, these items are surely the most important in your agreement, especially if your separation has been anything less than amicable. If there's even a *hint* that one parent will file for sole custody, you really need to consult a competent lawyer.

Initially, both natural parents have equal rights to custody. When you separate, you can still maintain this joint custody arrangement, although one of the parents may spend a disproportionate amount of time actually caring for the children.

You and your spouse need to work out the custody arrangements. If you can't work it out (for instance, if both of you insist on sole custody), then the court will have to decide for you. In all cases, the judge will put the best interests of the children first and foremost. Even if sole custody is granted, the court recognizes that in the majority of cases, the children are best off when *both* parents are involved in their upbringing. Discuss any concerns with your lawyer.

As with the custody decision, the courts prefer that you and your spouse work out access or visitation rights. My ex-wife and I have written into our agreement that I have access to the children every second weekend (including the extra days of long weekends), three weeks during the summer holidays, and a week at Christmas. The agreement also spells out reasonable amounts of unencumbered communication by telephone, fax, e-mail, and regular mail. As I mentioned, she and I have a very amicable relationship, so I can and do enjoy seeing the kids at other times. I know that she appreciates me spending the extra time with them as much as the children enjoy seeing me. The point of putting my access rights into the agreement is to protect my interests if for whatever reason our relationship should turn sour. While this is an extremely remote possibility in my situation, having everything in writing is a simple insurance policy: my rights are protected by law.

Settlement or trial?

With all of the necessary financial, custody, support, and visitation issues on the table, it's time to determine whether you're able to work out any disagreements and reach a settlement, or if a trial is required to hear the matters before a judge.

It's encouraging to note that less than 5% of all divorces go to trial. You should consider very carefully any suggestion that your problems can only be resolved by a trial. If at all possible, work out your differences with the help of your lawyers, and/or a competent mediator, and/or other counseling. The panel consists of two lawyers who volunteer their time to make recommendations on how a case should be settled -- fairly and quickly. The timing of this one-time panel meeting varies from county to county, but it generally takes place several months before the trial. Of course you shouldn't forgo your legal right

to a trial if there is true necessity -- such as an impasse over whose custody is truly best for the children, or an honest disagreement in the valuation of a major asset. But the courtroom should only be used as a last resort; it's *definitely not* the place to try and get even with your ex for dumping you for his or her secretary. And remember that every dollar spent is a dollar that would've been much better spent on the children.

The Divorce Judgment

Once you and your spouse sign your agreement and all the required affidavits and other forms for an uncontested divorce, all of your documents are submitted to the court clerk for review. If everything is in order, the papers are then sent to a judge, who will then sign the **Judgment of Divorce** (or **Divorce Decree**), and your marriage is over.

"If an agreement isn't reached, the court will enter a Judgment at the conclusion of the trial," Wildstein says.

Once the judge has signed the Judgment, you are legally divorced. Shortly thereafter, the county clerk will "enter" it, making the divorce judgment part of the court's official records. Now, it's time to celebrate -- or more likely, to reflect back on the happy times of your marriage and wonder again how things went so wrong. In any case, you are now free to remarry if you wish.

Greg Reid is a divorced father of three. He believes that divorce can be civilized if both parties are committed to making it so. "And staying friendly is the only way to do it if you have children," he says.