



THE LAW OFFICE OF
DUSTIN S. MCCRARY PLLC
Divorce & Family Law

Understanding Your Divorce

A Breakdown of Separation,
Finances, and the Legal Process

When most of us make the decision to get married and share our lives with another person, we plan on forever. Unfortunately, it doesn't always turn out that way.

Most people who are married, or were once married for any length of time, can confirm that marriage can be wonderful – but it also can be difficult. Due to any number of unforeseen circumstances, many who once planned on forever find their marriages ending in divorce.

Understandably, when you have either decided upon, or are strongly considering divorce, you may be experiencing a rollercoaster of emotions. You may feel as if you are alone, or like you have failed in some way.

You shouldn't blame yourself for the end of your marriage. You should prepare yourself for the complex process that you're about to begin. Divorce proceedings, as with many types of legal matters, can be complicated. The good news is that you can make a complicated process less so by being as prepared as possible, and by learning as much as you can about what is to come. Doing so can help reduce the stress that you may feel during this emotional time, and can make circumstances easier for all involved.

UNDERSTANDING LEGAL SEPARATION

Under North Carolina law, prior to obtaining a divorce, the couple wanting the divorce must be legally separated for twelve consecutive months leading up to the divorce. Unfortunately, many couples wishing to divorce don't have an accurate understanding of what actually constitutes legal separation. While it doesn't require officially making notification to the court of the separation, legal separation does mean more than just not sharing the same bed. In fact, it requires living in two separate residences for a full year immediately leading up to filing for divorce, and making a sworn statement that you have done so.

PREPARING FOR LEGAL SEPARATION FINDING A SECOND RESIDENCE

Once you've decided to separate, you'll have to find a second residence for one spouse. This can be difficult, both emotionally and financially. As you begin the process of determining what you might be able to realistically afford as a second residence, it can be helpful to spend the necessary time to take a detailed look at your financial circumstances. After all, you will be paying not only for the rent or mortgage on a second home, but also all the related maintenance bills, property taxes, and utilities, among other expenses. This is not to mention the fact that as a result of the divorce you may be required to pay alimony and/or child support. The divorce process itself will be expensive. For all of these reasons, it is a wise decision to make the most economical choice possible on a second residence.

Finding a Second Residence

Here are some helpful tips as you take a close look at your entire financial picture:

BEGIN TRACKING YOUR EXPENSES

If you do not already do so, begin tracking your household expenses and income right away. This should include things like routine bills, utility payments, medical and insurance bills, tuition payments, child care fees, home maintenance expenses, activity fees, and anything else you might regularly spend money on. Take a look at non-routine expenses too including vacations, home repairs, gift-giving, and charitable contributions. Although they may not arise every month, these expenses can accumulate to a significant amount over a year's time. Being aware and informed about what these expenses are and how often they typically arise will also be helpful to build a post-divorce budget, and to determine what you might realistically be able to spend on a second home.

AVOID UNNECESSARY EXPENDITURES

Even for someone with a good deal of disposable income, it's not the time to increase your standard of living. Neither spouse should make major expenditures on expensive furniture, vacations, or vehicles. When potential costs are still unknown and your family is in a transition, it's wise to spend on what is necessary and no more. Divorce puts a financial strain on everyone, and resources are best managed conservatively.

Meantime, it's also wise to consider all of these factors prior to moving out, in order to ensure that you'll be able to adequately cover all anticipated expenditures, many of which will be lasting from the date you move out until far into the future.

In addition to determining what you can afford and finding a second residence, you'll need to determine which spouse will be relocating. This will require determining who could best maintain the marital home, who is primarily responsible for organizing and maintaining the children's schedule and caring for the children, which spouse spends the most time at home and which spends more time at work, and taking into account any other factors that are specific to your family's needs and lifestyle. Thoroughly considering your circumstances can make a difficult decision easier.

DOCUMENTATION AND DETAILS – MOVING FORWARD FINANCIALLY

When preparing to separate, it can also be important and helpful to gather important and necessary documentation regarding your married life together, and determining how you will divide assets, liabilities, and property. This includes documentation of your assets and liabilities, as well as other pertinent information, including:

- Information regarding marital expenses and liabilities, including documentation of your mortgage, auto loans, student loans, credit card balances, or other outstanding loans and liabilities of all kinds;
- Tax returns, pay stubs, and documentation of investment accounts, insurance policies, and other accounts;
- Evidence of routine monthly expenses, payments, and income of all kinds;
- And any other documentation that your attorney and/or financial advisor may recommend.

Managing your finances can be complicated enough even when you aren't preparing for a divorce, as most of us know. It can be difficult not only to thoroughly assess your assets and liabilities, but also to agree upon how you will split financial assets and obligations.

As a starting point, it's helpful to understand that during a divorce, your property will be considered marital, separate, or mixed:

MARITAL

Marital property is any property, possessions, or interests that you share with your spouse and which was acquired during the course of your marriage, unless that property was inherited or by gift during the course of the marriage. Marital property includes both assets and liabilities, regardless of whether the property is in one or both of your names. In the event that property is considered to be marital, the general rule is that your spouse is entitled to 50% of it, though you can agree to a different division of assets if you should agree together to do so. Generally, marital property consists of vehicles, homes, investments, retirement accounts, pensions, and the like.

SEPARATE

Essentially, separate property is any property, possession, or interest that was acquired before the marriage, or that was given to one person as a gift or an inheritance by a person other than their spouse. Separate property can include things like car titles, bank accounts, inheritance money, and other personal gifts.

MIXED

Though marital and separate are the two main categories for property distribution during a divorce in North Carolina, mixed property is a third category, which includes property that one individual initially brought into the marriage, but that has increased in value during the course of the actual marriage. This property can often consist of stocks or other investments, and 401(k) and/or other retirement accounts.

Gathering this information is one of the most important things you can do as you prepare for legal separation and divorce. Ultimately, this information will be used by attorneys on both sides, and by the court to determine spousal support, child support, and other equitable distribution of assets. North Carolina courts attempt to be equitable in division of assets by reviewing all information provided and attempting to make the distribution of property between the parties as fair as possible in light of all circumstances in a particular case.

The court's ultimate determination regarding the division of finances will include not only the distribution of assets and liabilities, but also an order directing one party to pay spousal support, child support, or both, to the other party. A variety of factors will be considered in making these determinations, including whether one spouse is dependent upon the other spouse, which spouse has primary custody of the children, which spouse pays the majority of the bills with respect to the children, and other similar considerations.

It is understandable that as you contemplate a divorce, attempting to process and understand all of this information can be overwhelming. Retaining knowledgeable legal counsel who understands all of the laws applicable to division of property is an essential step in ensuring that you reduce the stress that you might otherwise feel, and that you take the necessary steps toward achieving the results you desire.

MAKING A PLAN

Gathering the necessary information as you prepare for separation is one part of your detailed plan. As you prepare for separation, you should consider your financial circumstances, including questions like:

- How will you transition from paying for things with two incomes, to paying for them with only one?
- If one spouse currently stays at home with the children, beyond spousal and child support, will that spouse need another source of income? If so, what are some good potential job options?
- How will you divide certain property that you now own?
- If you're keeping the marital home, who will become the owner of that property?

If you have children, it's also very important to plan ahead with respect to those matters.

- Have you and your spouse considered what potential custody and child-sharing arrangements might look like?
- Have you discussed who will be responsible for certain bills, including school, medical, and other financial obligations relating to the children?
- Have you considered your children's emotional well-being, and what you might need to do to help, including arranging counseling or other therapy?

Creating a plan as you begin to move forward can make a potentially difficult transition easier.

DRAFTING A LEGAL SEPARATION AGREEMENT

Some couples seek legal advice and enter into a formal legal separation agreement as they begin the divorce process. This can be helpful as it can serve to clarify and clearly document your discussions and any address any concerns you may have in black and white terms that all can see and agree upon.

A thorough and well-drafted separation agreement should address some, or all, of the issues that will ultimately arise in a separation and eventual divorce.

This will likely include issues like:

- Child custody, support, and visitation;
- Health insurance matters;
- Post-separation support and alimony;
- Property and debt division;
- Division of tax obligations; and
- Termination of certain marital rights;

Because a separation agreement is legally binding, it is highly advised that a couple contemplating legal separation in North Carolina consult with their attorneys prior to their actual separation for the purpose of preparing and drafting the separation agreement. This can help the parties be certain that they have the necessary understanding of the applicable laws and how those laws will affect their rights under the agreement. It will also allow for their attorneys to have the time to prepare and draft the separation agreement for the parties' execution.

Spending the time to discuss, agree upon, and draft a thorough and complete separation agreement has many advantages. Most of all it gives the couple the freedom and flexibility to determine what will happen to the things that matter most in your lives. If you're able to address issues together calmly and cooperatively rather than leaving matters up to a judge to

BEGINNING THE DIVORCE PROCESS

After considering all of the necessary components of a legal separation, if you're still ready to proceed with the divorce process, your next step is to consult a qualified, knowledgeable, and experienced attorney who can help you throughout this time. Every divorce is different, and while others may give you advice based upon their experiences, those experiences are, of course, different from your own. Retaining knowledgeable and legal counsel can be invaluable as you move forward with the process of analyzing your financial and life situation, completing necessary paperwork, and learning the

laws as they apply to your unique case.

As you meet with attorneys, inquire about their fee structure, whether they charge a flat fee, or an hourly rate, and when those fees are collected. During a consultation, ask questions about the law and address any of your concerns. You can also discuss a variety of options to make the divorce proceed as smoothly as possible, including the potential for out of court settlement. Consulting with an attorney is the first step in a complex process, and one you should take sooner, rather than later.

SCHEDULE A CONSULTATION TODAY

Divorce is never easy, but with the right support system, and the necessary preparations and planning, it can be manageable. The more you know and understand, the more reassured you will feel. We welcome the opportunity to explain the process to you, answer your questions, and represent your interests with the combination of experience and knowledge that you need. Now that you have reviewed this guide, your next step is to call for a consultation. We welcome the chance to speak with you personally and learn how we can help you today.

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