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Checklist: Documents to be gathered

Divorce is complicated - legally, financially, and emotionally. In order to ensure the best possible outcome, please gather and provide copies of the documents listed below as soon as possible. This will help to reach a resolution of your divorce that protects your interests.

- ___ Individual income tax returns for past three to five years (federal, state, and local)
- ___ Business income tax returns for past three to five years (federal, state, and local)
- ___ Proof of your current income
- ___ Proof of spouse's current income
- ___ Prenuptial agreement
- ___ Separation agreement
- ___ Bank statements
- ___ Certificates of deposit
- ___ Pension statements
- ___ Retirement account statements
- ___ Trusts
- ___ Stock portfolios
- ___ Stock options
- ___ Mortgages
- ___ Property tax statements
- ___ Credit card statements
- ___ Loan documents
- ___ Utility bills
- ___ Other bills (e.g., school tuition, unreimbursed medical bills, music lessons for children, etc.)
- ___ Monthly budget worksheet
- ___ Completed financial statements
- ___ Employment contracts
- ___ Benefits statements
- ___ Life insurance policies
- ___ Health insurance policies
- ___ Homeowner's insurance policies
- ___ Automobile insurance policies
- ___ Personal property appraisals
- ___ Real property appraisals
- ___ List of personal property, including home furnishings, jewelry, artwork, computers, home office
- ___ List of property owned by each spouse prior to marriage
- ___ List of property acquired by each spouse individually by gift or inheritance during the marriage
- ___ List of contents of safety deposit boxes
- ___ Wills
- ___ Living Wills
- ___ Powers of Attorney
- ___ Durable Powers of Attorney
- ___ Advance Health Care Directives

Checklist: Issues to be Discussed with your Attorney

When facing divorce, emotions run high and it is not always easy or even possible to keep a clear head. By referring to the following checklist, you can help ensure that you cover all of the bases, address all of your concerns, and answer all of your questions.

Issues Relating to Children

- Child support
- Child custody, legal
- Child custody, physical
- Visitation with non-custodial parent
- Grandparent visitation
- Visitation with stepchildren
- Health insurance for children
- Dental insurance for children
- Uninsured health care costs
- College education
- Residence in the marital homestead
- Beneficiaries of life insurance policies
- Claiming children as dependents for income tax purposes
- Religious upbringing of children

Property Issues

- Equity in homestead
- Other real property
- Home furnishings
- Business assets
- Professional practices
- Professional degrees
- Retirement benefits (pensions, IRAs, 401(k) plans)
- Motor vehicles
- Recreational vehicles
- Personal property
- Savings accounts
- Stocks, bonds, and funds
- Compensation for contributions as homemaker
- Hidden assets
- Debts

Spousal Support Issues

- Entitlement to support
- How much?
- How long?
- Continued health care coverage through COBRA

Other Issues

- Domestic violence
- Order for protection
- Child abuse
- Parental kidnapping
- Restoration of maiden name
- Post-divorce nonfinancial support
- Attorney's fees and expenses

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• PRE-DIVORCE STRATEGIES

Even if you are just thinking about the possibility of divorce, it is imperative that you take certain actions to protect your interests and the interests of your children.

More than 50% of marriages end in divorce. If you are contemplating a divorce, there is every chance your spouse is as well. Therefore, there are certain steps that should be taken to protect yourself. None of these steps should cause a divorce to occur.

- **Obtain copies of all federal, state and corporate tax returns for the last five years.** Have a complete set of each, including all attachments and schedules. Make an extra copy so it is readily available for you and your attorney when and if the time comes. Do *not* take the tax returns or make them unavailable to your spouse.
- **Prepare a list of all assets and liabilities.**
- **Obtain copies of all insurance policies, including life, automobile, medical and umbrella policies.**
- **Compile a list of all credit cards and obtain one year's statements for these accounts.** Also, have a list of all bank accounts as well as copies of all bank statements and cancelled checks for the last year.
- **Obtain copies of pension plans, profit sharing plans and 401K plans.** Make copies of year end statements (these are usually generated between January and March of each year for every participant in the plan).
- **Obtain copies of all stock accounts.**
- **Establish credit in your own name.** It is easier to obtain credit in your own name prior to a divorce being filed.
- **Do not incur any additional debt.** Do not sign a home equity loan. Do not enter into a contract to buy a new house. Do not sign any business loans. Do not plan any extravagant vacations.
- **Do not liquidate any large assets.**
- **Keep a low profile.** If you are having an affair be discreet. Do not get into verbal or physical altercations. Walk away from a hostile environment.
- **Consult with an attorney.**

Domestic Violence Services (by county)

<p>Atlantic County Atlantic County Women's Center Violence Intervention Program (VIP) 24-hour hotline: 609-646-6767 Tollfree: 800-286-4184</p>	<p>Middlesex County Women Aware, Inc. 24-hour hotline: 732-249-4504 Batterers Services, Family Violence Program Phone: 732-257-6100</p>
<p>Bergen County Shelter Our Sisters 24-hour hotline: 201-944-9600</p> <p>Alternatives to Domestic Violence 24-hour hotline: 201-336-7575</p>	<p>Monmouth County 180 Turning Lives Around 24-hour hotline: 732-264-4111 Tollfree: 888-The-WCMC (888-843-9262) Rape Care Program 24-hour hotline: 732-264-7273 Tollfree: 888-264-RAPE (7273)</p>
<p>Burlington County Providence House/Willingboro Shelter 24-hour hotline: 609-871-7551</p>	<p>Morris County Jersey Battered Women's Services, Inc. (JBWS) 24-hour hotline: 973-267-4763</p>
<p>Camden County Camden County Women's Center 24-hour hotline: 856-227-1234</p>	<p>Ocean County Providence House-Ocean 24-hour hotline: 732-244-8259 Tollfree: 800-246-8910</p>
<p>Cape May County CARA, Inc. (Coalition Against Rape & Abuse, Inc.) 24-hour hotline: 609-522-6489 Tollfree: 877-294-CARA (2272)</p>	<p>Passaic County Passaic County Women's Center Domestic Violence Program 24-hour hotline: 973-881-1450</p>
<p>Cumberland County Cumberland County Women's Center 24-hour hotline: 856-691-3713 Tollfree: 800-286-4353</p>	<p>Salem County Salem County Women's Services 24-hour hotline: 856-935-6655 Tollfree: 888-632-9511</p>
<p>Essex County Family Violence Program 24-hour hotline: 973-484-4446</p> <p>The Safe House 24-hour hotline: 973-759-2154</p> <p>The Rachel Coalition of Jewish Family Service 24-hour hotline: 973-765-9050</p> <p>Linda & Rudy Slucker National Council of Jewish Women Center for Women Office: 973-994-4994</p>	<p>Somerset County Resource Center for Women and Their Families 24-hour hotline: 908-685-1122</p>
<p>Gloucester County Gloucester County Women's Services 24-hour hotline: 866-GCDV-SAFE (866-423-8723)</p>	<p>Sussex County Domestic Abuse Services, Inc. 24-hour hotline: 973-875-1211 Domestic Violence Assessment Center of Sussex County Batterers Intervention Program Phone: 973-579-9666</p>
<p>Hudson County Women Rising, Inc., Battered Women's Program 24-hour hotline: 201-333-5700</p>	<p>Union County Project Protect 24-hour hotline: 908-355-4357 Batterers Services, Men Against Violence Phone: 908-355-1500 Mental Health Association of Union County Choices for Women Domestic Violence Victims Counseling Phone: 908-272-0304 Alternatives for Men-Batterers Services Phone: 908-272-0304</p>
<p>Hunterdon County Women's Crisis Services 24-hour hotline: 908-788-7666</p>	<p>Warren County Domestic Abuse & Rape Crisis Center (DARCC) 24-hour hotline: 908-475-8408 Tollfree: 866-6BE-SAFE (866-623-7233)</p>
<p>Mercer County Womenspace, Inc. 24-hour hotline: 800-572-SAFE (7233) State hotline: 609-394-9000</p>	

WHAT TO DO IF YOU BECOME A VICTIM OF ABUSE

- Call the police
- Make sure you have access to whatever house and car keys you plan to use. Also make sure you have money.
- Go to a safe place for the night (which may be someplace other than your home, such as the home of a friend, neighbor, relative, or a local shelter for battered victims).
- If you believe that you or your children are in danger of being beaten or abused, and that you may have to leave the home, keep a small bag packed with essentials for you and /or your children including copies of important documents such as birth certificates, insurance cards, driver's license and passports,
- If you are physically injured, go to a doctor or hospital emergency room and tell them what happened to you.

HELPFUL PHONE NUMBERS

Domestic Violence Hotline
800-572-SAFE
(statewide, confidential, bilingual, TDD-accessible)

Statewide Women's Referral Center
800-322-8092 (24 hours)

New Jersey Violent Crimes Compensation Board
800-242-0804 Victim-Witness Hotline

New Jersey Coalition for Battered Women
609-584-8107
www.njcbw.org

New Jersey Coalition Against Sexual Assault
609-631-4450

New Jersey Division on Women
Sexual Assault Hotline
800-601-7200

State Office of Victim-Witness Advocacy
609-588-7900

Division on Civil Rights
609-292-4605

Division on Women
Office on the Prevention of Violence Against Women
609-292-8840

• TIME

One of the most common questions everyone asks when entering into a divorce proceeding is, "How long will it take?" Unfortunately, the correct answer is: "No one really knows for sure", or, "It depends."

The time it takes to get a divorce depends on many factors, including the degree to which you and your spouse have agreed on related matters, and on the current backlog of matrimonial cases in your county. A general guide, however, is that if both the husband and wife have agreed on all financial aspects of the divorce, a final court ruling will usually take three or four months.

If aspects of the case are contested, a final decision may take anywhere from eight or nine months to several years depending upon the complexity of the case. In general, however, the average divorce takes approximately 16 months.

There are many reasons why some divorces take longer to conclude than others. There are sometimes tax reasons why parties may want to be divorced prior to the end of the year or wait until the first month in the new year. However, divorces are often delayed due to a failure to provide or receive information that is required under the current statute of New Jersey law. This often occurs when one (or both) parties are trying to hide assets or refuse to show true income.

Parties being unreasonable in their demands and their offers also tend to cause divorces to take more time. Although a highly emotional situation, emotions should not play a role in the divorce. The main issue in the majority of divorces is financial, and emotions can only delay the outcome.

When you are contemplating starting a divorce proceeding, you should plan on approximately 16 months of dealing with the court system and being patient with the slowness and thoroughness of the judicial system. Deadlines are missed and orders are violated without repercussion. In the long run, the system does work and there is light at the end of the tunnel. Once the divorce is over, your new life can begin.



• CHOOSING THE RIGHT LAWYER

The most important decision of your divorce is your choice of lawyer. In the State of New Jersey there are approximately 80,000 lawyers and that number is growing annually. Matrimonial law is one of the most emotional areas of law. It is important that you retain an skilled attorney who practices divorce and has done a significant number of divorces. You need a lawyer who understands divorce, alimony, child support, equitable distribution and is able to determine what is reasonable in your particular case. Opting for a lower hourly rate from an attorney who is inexperienced in this area of the law could turn out to be more expensive in the long run.

It is important to have confidence in your lawyer. A person going through a divorce is usually experiencing extreme emotional distress. It is very difficult to make rational decisions in such a condition. It is to your advantage to retain a lawyer whose advice you expect to follow. The ultimate decision rests with you. However, if you are not relying heavily on your lawyer's advice you are wasting money.

It is important that your spouse also obtain a lawyer who understands this area of the law. Divorce is difficult enough when there are two experienced attorneys involved. It becomes interminable when one of the attorneys does not understand divorce or has a client that will not follow his or her advice.

Have an initial consultation prior to retaining a lawyer. Have more than one consultation to compare lawyers. Arrive prepared to ask questions. (We have provided you with a list of questions later in this booklet.) Although at an initial consultation no one can predict exactly how the divorce will go, it is imperative that you understand the parameters of what could happen during the course of your divorce.

The choice of your divorce lawyer is a decision which will matter for a long period of time. Divorce agreements remain in existence until the youngest child has graduated from college. Returning to the courts subsequent to a divorce is costly. It is best to carve out an agreement which will work for years to come.



CHECKLIST FOR VICTIMS OF DOMESTIC VIOLENCE (Continued)

EMOTIONAL ABUSE

Has the abuser ever:

- Called you humiliating or demeaning names?
- Treated you like a household servant?
- Withheld money, the checkbook, credit cards?
- Tried to control your daily activities such as Where you go, what you do, who your friends are?
- Isolated you from family and friends?
- Is the abuser especially possessive or jealous, saying things such as, "If I can't have you, no one can?"

Has the abuse gotten worse or become more frequent in the past year?

SUBSTANCE ABUSE

- How often does the abuser drink alcohol? Daily? Weekly? Once a month or less?
- Does the abuser's alcohol use affect your daily life?
- Does the abuser ever abuse prescription drugs?
- Does the abuser use illegal drugs?
- Did any of the abusive incidents occur when the abuser was drunk or high?

Has the substance abuse worsened in the past year?

OTHER ABUSIVE BEHAVIOR

Has the abuser ever:

- Threatened to prevent you from leaving?
- Physically kept you from leaving by doing such things as blocking a doorway, taking your car keys or disabling your car?
- Locked you in a room?
- Forced you to go anywhere against your will?
- Purposely or repeatedly followed or stalked you by doing things such as staking our your home or place of employment?
- Come to your home uninvited, or after being told not to?
- Broken into your home with the intention of assaulting you or stealing from you?
- Purposely or recklessly damaged your property or possessions by doing such things as punching holes in the walls, ripping up personal journals, tearing your clothing?
- Harassed you by purposely and repeatedly annoying or alarming you by making hang-up calls, calling your home or place of employment, or deliberately preventing you from sleeping?

Has the abuse gotten worse or become more frequent in the past year?

• CHECKLIST FOR VICTIMS OF DOMESTIC VIOLENCE

Domestic violence is not limited to physical abuse. It also includes emotional and sexual abuse. Following are examples of common forms of domestic violence, but this is by no means a complete list. Use this information to help you document the abuse for legal purposes, such as restraining orders or divorce, or to remind you of the realities of the relationship in order to help you assess your safety.

PHYSICAL ABUSE

Has the abuser ever:

- Spit at you?
- Thrown things at you?
- Pulled your hair?
- Bitten or scratched you?
- Burned you?
- Cut you?
- Pushed, shoved or grabbed you?
- Kicked or thrown you down?
- Slapped you with an open hand?
- Punched you with a closed fist?
- Tried to choke/strangle you?
- Assaulted you with a weapon?
- Beaten you while you were pregnant?
- Been violent toward the children?
- Physically abused family pets?

SEXUAL ABUSE

Has the abuser ever:

- Forced you to have sex when you didn't want to?
- Forced you to perform unwanted sexual acts, or to have sex with other people or to use objects?
- Forced you to have sex after abusing you physically or emotionally?

Has the abuse gotten worse or become more frequent in the past year?

THREATS

Has the abuser ever:

- Threatened to hurt you?
- Threatened to kill you?
- Threatened to hurt or kill a member of your family?
- Threatened to hurt or kill a family pet?
- Driven recklessly when you were in the car knowing that it scared you?
- Threatened to flee with the children?
- Threatened to commit suicide or made a suicide attempt?
- Has the abuser ever been treated for a mental health condition?

Have the threats gotten worse or more frequent in the past year?

• GROUNDS FOR DIVORCE

In the State of New Jersey there are currently 9 reasons that a party can obtain a divorce. They are as follows:

1. Live separate and apart for a period of at least 18 months with no reasonable prospect of reconciliation. This is commonly referred to as a no fault divorce. (The 18 month time period has to occur prior to the filing of the complaint for divorce.)
2. Extreme cruelty. This could be physical and/or mental cruelty. It is a subjective test which requires the complaining spouse to find it unreasonable and improper to continue co-habitation with the spouse.
3. Adultery. This no longer needs to be proved and can be shown by circumstantial evidence. All that needs to be shown is the inclination to commit adultery, the opportunity and the ability.
4. Desertion. Requires a spouse to move out of the marital home against the other spouse's wishes for a period of 12 consecutive months. (The 12 month time period has to occur prior to the filing of the complaint for divorce.)
5. Constructive desertion. This requires a spouse to actually desert a spouse against their wishes for a period of 12 consecutive months. (The 12 month period has to occur prior to the filing of the complaint for divorce.)
6. Habitual drunkenness or drug use. This requires a person to be habitually drunk or addicted to drugs for a period of one year. (The one year time period has to occur prior to the filing of the complaint for divorce.)
7. Imprisonment. This requires the spouse to be in prison for a period of 18 consecutive months. (The 18 month time period has to occur prior to the filing of the complaint for divorce.) A party is allowed to divorce based on these grounds even if the person was released from prison prior to the filing of the complaint as long as co-habitation has not resumed.
8. Institutionalization. This is defined as a person being institutionalized for a period of 22 years. (The 22 year time period has to occur prior to the filing of the complaint for divorce.)
9. Deviant sexual behavior. This requires a spouse to have committed deviant sexual acts against the complaining spouse.

The simplest ground for divorce is extreme cruelty. It is the complaining spouse who determines if a conduct is unreasonable or improper for continued co-habitation, even if others would not agree with that assessment. It is therefore possible to begin the divorce proceedings almost immediately without waiting for any of the time periods required with other grounds.

When filing a complaint for divorce based on extreme cruelty it is usually suggested that the complaint be brief and general. It is not necessary to put every incident between the parties from the start of the marriage to the present. These details do not determine alimony, equitable distribution, custody, child support or counsel fees. One example of extreme cruelty would be a spouse refusing to engage in meaningful communication rendering it unreasonable and unhealthy to remain married. That constitutes sufficient grounds for divorce on the grounds of extreme cruelty.

• ALIMONY

In the State of New Jersey there are four types of alimony: Limited duration alimony, Permanent alimony, Rehabilitative alimony and Reimbursement alimony

The statute provides a that person may receive a combination of different types of alimony. The Court will look at the following factors in determining the type, amount and duration of alimony awarded:

- The needs of the parties and the ability of the supporting party to pay;
- The duration of the marriage;
- The age and physical and emotional health of the parties.
- The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living.
- The earning capabilities, educational levels, vocational skills and employability of the parties.
- A length of absence from the job market of the party seeking maintenance;
- The parental responsibilities for the children;
- The time and expense necessary to require sufficient education or training to enable the party seeking maintenance to seek appropriate employment, the availability of training for employment and the opportunity for future acquisitions of capital assets and income;
- The history of the financial and non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
- The equitable distribution of the property ordered and any pay-outs of equitable distribution directly or indirectly out of current income to the extent that this consideration is reasonable, fair and just;
- The income available to either party through investment of any assets held by that party;
- The tax treatment consequence to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;
- Any other factors which the Court may deem relevant.

Although the above factors are listed by Statute, the four most significant factors that a Court takes into account are:

- The need of the dependant spouse;
- The ability of the supporting spouse to pay;
- The standard of living established in the marriage

DOMESTIC VIOLENCE

Steps for your Protection

If you have experienced abuse, or if you fear the threat of abuse, you may want to be prepared in case it is necessary for you and your children, to leave home quickly. Here are some basic steps you can take beforehand:

- Pack a suitcase with a change of clothes for yourself and your children, along with some personal articles such as a comb, toothbrush, etc. Also include an extra set of car keys, money, personal papers such as Social Security cards or numbers, your driver's license, marriage certificate, any restraining orders, documentation of car ownership, plus any savings and checking account books. Store the suitcase in the home of a friend or neighbor, at work or hide it in your house where it won't be found by anyone and where you can get to it easily.
- Make a list of names and telephone numbers of police, friends, family, local shelters or your employer. Keep this list at work and in the suitcase.
- Plan for transportation to a safe place.
- **PLAN AHEAD.** You can get advice and counseling from the domestic violence program nearest you. (Numbers for shelters in all 21 counties are located in this booklet.) You may also call **1-800 572-SAFE** (1-800-572-7233) for a bilingual toll-free hotline. **This hotline is accessible 24 hours a day, 7 days a week. It is also TDD accessible.**
- Domestic violence programs offer various services, including emergency shelter, court advocacy, counseling, crisis hotlines, children's programs, support groups and referrals. Make sure you are in a safe place when you call for help and guidance.
- Sometimes the abuse and the violence will get worse after you take some protective action like calling the police or going to a shelter. **Be aware that this can happen.** Proceed with safety in mind, whatever you choose to do.
- **IF YOU NEED IMMEDIATE HELP, CALL THE POLICE OR 911.** (911 calls are recorded and can be used as irrefutable evidence in trials.)
- Contact an attorney.

REMEMBER: THERE'S NO EXCUSE FOR ABUSE!

• DOMESTIC VIOLENCE

Domestic violence is physical, sexual or psychological abuse directed towards one's spouse, partner, or other family member within the household. It occurs when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other. It occurs in all cultures. Domestic violence is perpetrated by, and on, both men and women, and occurs in same-sex and opposite-sex relationships. It has many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence.

You are a victim of domestic violence if you have experienced any of the following from a person who is over the age of 18 or an emancipated minor:

- beatings or physical attacks such as kicking, slapping, punching, pushing, hair pulling, or any other physical attack in any other way that causes you harm or fear of harm;
- threats that make you fear serious injury to yourself or your children (example: "When I come home I'm going to kick you, punch the kids, hurt you.");
- threats that make you fear for your life (example: "If you don't do what I tell you to do, I'm going to kill you.");
- imprisonment within your own home or at another location (example: A person locks you in your home, in a room, in a closet, in an automobile, for any period of time);
- kidnapping (example: You are taken against your will from your home, place of business, or anywhere else and not permitted to leave.);
- sexually assaulted where you are forced to have sexual contact or raped under threats of harm to yourself or someone else. This can also include unwanted sexual touching or if the perpetrator exposes his genitals.;
- damage to your personal property;
- forced entry into your home, with or without a weapon;
- theft of your personal belongings;
- threats against you with a weapon such as a gun, knife, machete, baseball bat, or any other object that you feel can harm you;
- repeated verbal humiliation and attacks (example: A person calls you obscene names, or calls you stupid, ignorant, dumb, ugly, or other disrespectful names);
- stalking you by actions done more than one time that include maintaining you in his sight, repeatedly being in physical proximity to you, repeatedly conveying verbal or written threats or threats implied by his actions, or all of these actions, and these actions cause you to fear bodily injury to you or a member of your family or to fear the death of you or a member of your family.

***If the person who has committed the above acts against you is a minor and not emancipated, his or her actions should be reported to the police and a criminal complaint filed.*

Currently there are no decisions in the State of New Jersey that define what is meant by the standard of living established in the marriage. Factors that the Court normally looks at in determining the standard of living during the marriage are:

- The housing during the marriage
- The number of vacations taken per annum
- Automobiles driven
- Expenditures
- Necessities
- Non-necessities
- Spending Habits
- Savings

The simplest way to determine what the standard of living was during the marriage is to have all of the expenditures of the marriage put into a computer with a financial program. Reports can be generated showing various components of the standard of living.

Although many Courts are suggesting that income averaging is a method to determine standard of living in a long term marriage, this is not always recommended. Especially when there has been a significant rise in the income earning of the parties.

Permanent alimony is alimony that is paid from the date of divorce until the death of either party or the remarriage of the receiving spouse. Depending on the particulars of a case there may be other factors involved in the award of permanent alimony.

Limited duration alimony has a specific term. Usually duration alimony is not modified except in unusual cases. Depending on the award, limited duration alimony can sometimes continue to the end of the term regardless of the remarriage of the receiving spouse.

Rehabilitative alimony is a short term award of alimony to enable the former spouse to contemplate the preparation necessary for economic self-sufficiency, and ceases when the dependant spouse is in a position of self support. Rehabilitative alimony is appropriate when one spouse gave up or postponed their education to support the household and requires a lump sum or a short term award to achieve economic self-sufficiency. Rehabilitative alimony is not appropriate where the supported spouse is unable to return to the job market or has already attained economic self-sufficiency.



• CHILD SUPPORT

The State of New Jersey adopted child support guidelines to determine parents' responsibility for the cost of raising children. Child support guidelines are the determination of child support where the combined net income of the parties is \$150,800 or less. If the parties fall into this category child support guidelines are mandatory.

The Court, however, does have the discretion to modify the child support and deviate from the guidelines. Although the following items may be considered, deviation from the child support guidelines is rare.

- Equitable distribution of property
- Income taxes
- Fixed direct payment
- Unreimbursed medical and/or dental expenses for either parent
- Educational expenses for the children
- Educational expenses for either parent
- Single family units having more than six children
- Involuntary placement of children in foster care
- Special needs of gifted or disabled children
- Ages of children
- Hidden costs of caring for children
- Extraordinary high income of child (e.g. actor, trust fund)
- Substantial financial obligations for elder care
- Tax advantages for child's health insurance

Where the combined net income of the parties exceeds \$150,800, the guidelines need to be supplemented for additional support based on the following factors:

- Age of the child;
- Standard of the living and economic circumstances of each parent
- All sources of income and assets of each parent
- The earning ability of each parent
- The need and capacity of the child for education
- Assets and earning ability of the child
- Responsibility of the parents for the court ordered support of others
- Reasonable debts and liabilities for each child and parent

MEDIATION

Divorce Mediation is the step-by-step process through which couples arrive at an equitable and suitable agreement about their differences. Topics for discussion may include distribution of property issues, distribution of debt, financial and support issues, and parenting issues.

Mediation provides an alternative to the adversary system which casts divorcing spouses as opponents. In Mediation, the spouses are viewed as cooperative adults who are restructuring their lives and the lives of their children.

Mediation is conducted under the guidance of a trained professional who helps the couple make the necessary decisions about their changing future.

Mediation may be used by couples who are only separating temporarily, or by those who are getting divorced.

Mediation can be a less stressful and less costly method of dissolving a marriage.

How does Mediation work?

In Mediation, the couple proceeds through a series of steps. Briefly these are:

1. Both spouses attend an orientation session in which a detailed explanation of Mediation is given. Parties are encouraged to have separate counsel to advise them of their legal rights as they go through the process of mediation.
2. After the couple decides to mediate, they sign an Agreement to that effect covering the scope of the Mediation. At that time they will also sign a Fee Agreement and are asked to make a deposit covering the cost of the orientation and a retainer fee against which the time of the Mediator will be billed until depleted. The unused portion of this deposit is returned upon completion of Mediation. If depleted prior to the completion of the Mediation, the Mediator may require an additional retainer. The Mediator may also allow payment on a session by session basis with a smaller initial retainer requirement to be applied to fees incurred in addition to the sessions, such as the drafting of the Agreement, telephone calls, research and administrative costs.
3. At the first Mediation session, the couple may enter into a temporary agreement for the duration of Mediation to address those concerns that require immediate and necessary resolution.
4. The remaining sessions are used to help the spouses arrive at decision concerning any or all of the following:
 - Division of property
 - Spousal maintenance
 - Child Support
 - Parenting schedules for the minor children
 - Any other topic or issue agreed upon by the parties to be addressed by the mediator
5. The mediation culminates in a Memorandum of Agreement which outlines the specifics of the couple's separation agreement.
6. As the last step, the couple may consult with their own individual attorneys concerning the settlement reached. Typically they will have various questions regarding the tax implications of their settlement. One attorney will then prepare a final Settlement Agreement incorporating these elements agreed to in Mediation. Once the couple signs this document, they may then have it made part of their Divorce Decree.

TIPS FOR HEALING

Divorce is the death of a marriage. There is a grieving process. The stages are denial, anger, bargaining, and acceptance. Allow yourself to experience all of the stages of the process. You will find that often a therapist is better at assisting you than a friend. A death is a death and it takes time to heal, but the important issue is that you will heal.

Go Slow. You have been emotionally ravaged by the end of your marriage. You need time to heal. In order to heal you must let go of all the negative feelings such as abandonment and revenge. You cannot undo the past, but you can get over it. Put it behind you before you start with someone else.

Keep busy. Take an exercise class, develop new interests, enroll in a continuing education class, join a club or association, be open to meeting new people and making new friends. Stay connected.

Avoid making life altering decisions until you are thinking more clearly. This may not be the time to relocate or change jobs.

Spoil yourself. Do something you haven't had time to do. Take a long bubble bath, go to a football game, play golf, get a pedicure or book yourself a massage. When was the last time you took the afternoon off to watch a feel-good video with snacks? Whatever it takes, do something nice for yourself.

Be realistic. It's important to have realistic expectations and not to expect too much from yourself and everyone else when you are feeling so bad.

Develop your interests. When did you last take time to work on your favorite hobby? Maybe find a new hobby. Take golf or tennis lessons. Being single means you can do whatever you want without worrying about someone else's timetable.

Take care of yourself. Get the proper amount of sleep and exercise and eat healthy in order to maximize your ability to cope. It's easy to overeat or party too much in an effort to ease your pain, but in the long run, it just creates more problems.

Express anger constructively, not destructively. Anger can take the form of revenge, rage, blame, violence, or feeling out of control. Anger keeps you stuck in the past and connected to your ex.

Don't call your ex. As much as you might feel the need to call, it is highly likely you will either say something nasty or have something nasty said to you.

Plan ahead for holidays. Plan something that is fun, relaxing, and as stress free as possible with people you really care about. If the holidays are just too painful and the reminders are everywhere, consider a vacation that allows you to "escape " the painful triggers.

Take one day at a time. It will get easier. It will get better. It will hurt less.

• EQUITABLE DISTRIBUTION

New Jersey is an equitable distribution state. In equitable distribution states, the Court determines a fair and reasonable distribution that may be more than or less than 50% of any asset to either party. The Court may not only order equitable distribution of marital property but also of marital liabilities.

New Jersey law directs the Court to consider sixteen factors in determining what is an equitable, fair and just division of assets. They are:

- The duration of the marriage
- Age, physical and emotional health of the parties
- Income and property brought into the marriage by each party
- The standard of living established during the marriage
- Any written agreements made by the parties before or during the marriage concerning an arrangement of property distribution
- Economic circumstances of each party at the time the division of property becomes effective
- The income and earning capacity of each party
- The contribution by each party to the education, training or earning capability of the other
- The contribution by each party of the acquisition, dissipation, depreciation of the value of the marital property, as well as the contribution of the party as the homemaker
- The tax consequences of the proposed distribution to each party
- The present value of the property
- Need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects
- The debts and liabilities of the parties
- The need for creation of a trust fund to secure reasonable medical and educational costs for a spouse or child
- The extent to what each party has achieved their career goals
- Any other factors that the court may deem relevant

It does not matter who holds title to the asset or property acquired during the marriage. Individual Retirement Accounts, Pension Plans, and 401K's acquired during the marriage are considered marital assets. Property acquired "in contemplation of marriage" may also be considered marital assets.

The only exceptions to marital assets are the following:

- Assets which are pre-marital
- Inheritances received by one party during the marriage
- Gifts from third parties

Gifts from one spouse to another are marital assets. An engagement ring is considered property acquired prior to the marriage.

If an ASSET was acquired prior to the marriage, and there is an increase in value due to direct action or work by the other partner, the increase in value may be a marital asset but not the asset itself.

If you have been married for 10 or more years you have the right to plan on social security retirement benefits based on your spouse's work records.

COURT ROOM TIPS

• CASE INFORMATION STATEMENT

The most important document in every divorce is the Case Information Statement. The Case Information Statement (CIS) requires each party to set forth a budget as to the standard of living acquired during the marriage as well as the current budget. (A copy of the CIS appears on the CD which can be found on the inside back cover of this publication.)

Every case in the State of New Jersey requires the completion of a Case Information Statement. The CIS has evolved over time and is currently eight pages with ten pages of attachments.

The CIS lists all of the statistical information of the parties such as name, address, social security number, driver's license number, children's names, children's dates of birth, income information, tax information, and statistical information.

It requires the attachment of three years of tax returns as well as the last three pay stubs. The CIS requires each party to account for how the parties spent money over the course of the marriage.

The CIS allows each party to track the money that was spent during the marriage, and also prepare each party for life after divorce. It sets forth all the assets and liabilities that the parties have, not only those that are subject to equitable distribution.

Amazingly people often itemize monthly expenses that far exceed monthly income indicating that even though they are spending more money than was being earned they were able to accumulate assets. This of course is impossible. Numbers must balance.

It is important that this form be completed correctly and accurately. It deserves your time and attention. If you do not complete the CIS correctly, you could end up paying too much (or receiving too little) child support and alimony.

The Court Room is one of the most intimidating places you will ever be. Once you have entered into the Court Room you will have given control of your divorce to someone you have never seen or met before - the Judge. You no longer have control. All decisions will now be made by a stranger. A very human stranger who is prone to mood swings, illogical thinking, personal problems, feelings of superiority and contempt for anyone that stands before him/her. Scary, isn't it?

The following are some tips to help prepare you for the Court Room:

- Listen to your attorney. He has been there before and knows what to expect.
- Try to settle as many issues as possible before entering the Court Room. (See Tip #3, below.)
- Do not expect the Judge to make the "right" decision. There are three directions the judge can go when making a decision: Your way, your spouse's way, or the Judge's way. As you can see, two out three are not in your favor.
- You are represented by an attorney. Do not speak unless asked to do so by the Judge.
- When addressing the Judge, stand and call him/her "Your Honor."
- Always thank the Judge when you are finished speaking. Be respectful.
- Never speak to or make comments about your opposition when you are before the Judge.
- Leave all hostile and negative emotions at the door. Do not make faces or gestures when the judge or your spouse's attorney is speaking. Judges see this and do not appreciate it.
- Do not bring your girlfriend/boyfriend to court.
- Dress appropriately. If you have any doubts about what you have chosen to wear to court, make another selection.
- Take notes. Don't leave anything to chance.
- Do not take children into the Court Room unless told to do so by your attorney. This is your divorce-- not your children's, and they should not hear what goes on in that room.
- Be prepared. Bring as much information, documentation and any pertinent documents that you possibly can with you. It is better to have too much ammunition than to be caught short.
- Bring your iPod or a book to read, as you may have to wait for a long time before your case is heard.



TIPS FOR A LESS STRESSFUL DIVORCE

- Listen to your attorney! You are paying an attorney for advice. If you do not follow the advice, you are wasting money.
- Always take the high road. You may be tempted to use something you've found to humiliate your ex, but don't use your divorce as a platform to air your dirty laundry. A lot of your divorce proceedings are public record and will be publicly available in perpetuity. You may have done it in the heat of the moment, but you can't unring that bell.
- Get all the help that you can. Enlist the help of your priest, rabbi or minister. Find a counselor or social worker who can be there to listen and help you see things less emotionally, as well as advise you in a manner that will help you through this difficult process.
- Be discreet about any affairs you may be having. Flaunting your new romance in your soon-to-be-ex's face is not likely to foster harmonious negotiations. Never bring your new love interest to any of the divorce proceedings.
- If possible, do not uproot yourself from your current residence. Adding the stresses of a move to the stresses of a divorce only heightens the trauma.
- Encourage your children to see your former spouse. Be flexible and try to honor your child's wishes when possible. Use your kid-free time to pursue your own interests.
- Take care of yourself. Get the proper amount of sleep and exercise and eat healthy in order to maximize your ability to cope. It's easy to overeat or party too much in an effort to ease your pain, but in the long run, it just creates more problems.
- Always assume that any statement you make is being recorded. This includes telephone calls and answering machine messages. *Do not say or do* anything that you would not want a court to know about. In New Jersey it is legal to record any conversation that you are involved in. Such recordings are admissible in Court. (However, it is a felony to record a conversation in which you are not involved. An example would be placing a recording device on a telephone to capture conversations between your spouse and another individual.)
- Listen to your attorney!

Maintaining your dignity and aplomb during this highly emotional period will serve you well in the years to come. As time passes and the tension between you and your ex becomes less volatile, you will be glad you didn't act in a manner which will haunt you.



• FORENSIC ACCOUNTANTS

Forensic accountants are typically hired to determine current and future value of assets where reasonable people could disagree on their value. They are also hired to trace income and assets to determine whether:

- Income is available to pay child support or alimony
- What assets are available to either or both spouses
- Hidden income or assets exist

The cost of hiring a qualified forensic accountant is in excess of \$7,500. A decision needs to be made as to whether or not it makes sense to retain one.

• GOING AFTER DEADBEATS

In 1992, the Federal Government passed the Child Support Recovery Act. This law focuses on people who willfully fail to pay past due support obligations for a child living in another state. The judge can set a fine and/or imprison offenders for up to six months. (Repeat offenders can be imprisoned for up to two years.) To qualify the following must be established:

Your ex-spouse does not live in the same state as you and the child. (If they do, this law does not apply.)

A judge has determined the amount of child support due. There must be a court order specifying the amount due.

If the amount due is \$5,000 or less, it must be due for longer than one year.

If the amount due is more than \$5,000, there is no minimum time period.

The person's failure to pay must be willful. If he or she can show that it is difficult or impossible to pay, the law might not apply.

This law is gaining popularity. The national trend to crack down on deadbeat parents is growing. In New Jersey the law requires child support payments to be made through the appropriate probation department via wage garnishment, unless the parties agree otherwise.

• TAXES

Another critical issue in a divorce is its tax implications.

The filing status you choose depends on the marital status on the last day of the year. For example, if you were to get divorced on December 30th, your filing status for that year would be single or head of household. It would not be married-filing jointly, notwithstanding the fact that you were married for 363 days of the year.

Conversely, if the divorce occurs the first week in January, for the prior year you would be considered married for tax purposes.

There are many tax reasons for having the divorce take place in December as opposed to January. Each case has to be separately analyzed to determine what is in each party's best interest. By the time a divorce is taking place neither party is doing things out of love for the other, however, there is no reason to pay more in taxes to the government just to spite a spouse.

The tax benefit is shared equally between the parties. Neither party should be in a position that requires them to pay more taxes.

• NAME CHANGE

At the conclusion of a divorce, a woman has the right to change her name. She has the ability to change her name to a prior name, her maiden name or any other name that she desires so long as it is not done for the purpose of avoiding criminal prosecution or avoiding creditors.

In order to obtain a name change, the Court will require: 1) her name, 2) date of birth, 3) social security number, and 4) an affirmation that she is not changing her name to avoid any criminal prosecution or to avoid creditors or bankruptcy but that she is changing her name merely to disassociate herself from the marriage. Many women choose to maintain their married name while there are still unemancipated children.

• COUNSEL FEES

When a party hires an attorney, they assume responsibility of payment of the legal fees, regardless of whether or not a party's spouse is required to make payments during the divorce or at the end of the divorce proceedings.

In New Jersey, attorney fees are allowable during all stages of a divorce. The statutes permit the court to order that a retainer fee be paid for services when the respective financial conditions of the party make it reasonable and just.

TIPS FOR DIVORCING PARENTS

- Always put your children's interests first.
- Do not use your children as messengers between you and your former spouse. Do not make the children a part of your battle. They are under enough stress already. Discuss relevant issues directly with your spouse via phone or e-mail or, when necessary, through attorneys.
- Accept that your marriage is over and proceed with your own life. Don't try to obtain information about your spouse's private life through your children. The best thing you can do for yourself and your children is to move ahead with your life and find happiness in a new relationship.
- Do not allow your children to become your caretakers. Use clergy, family members and mental health professionals as your counselors & confidantes. Maintain your parent child relationship with your children. They are children. They should not be burdened with your emotional baggage.
- Encourage your children to see your spouse. Be flexible.
- Do not use pickups and drop-offs as an opportunity to continue or begin an argument with your ex. If you do not get along with your spouse then remain in the car. Let the children come out to you.
- Make sure the children are ready when your ex arrives to pick them up. If you are picking up the children, be on time. If you are going to be late, call your ex as soon as possible and let him/her know what time you will be arriving.
- Pay your child support. Your children should not have to worry about how they are going to deal with a sudden loss of income. If you receive child support, don't complain about it in front of the children.
- Never disparage your former spouse in front of your children. They are innocent victims who are dealing with their parents in a stressful situation. As tempted as you may be, refrain from saying negative things about your former spouse or his/her new partner to your children.
- Children should be encouraged to talk about their feelings with a professional counselor.
- If possible, do not uproot your children from their current residence. Adding the stresses of a move to the stresses of the divorce only heightens the trauma.
- Be discreet about any affairs you may be having. Do not introduce any love interests to your children right after splitting up. Wait at least 6-9 months. Your time with your children should be truly with them. Children are already feeling alienated and they are apt to be jealous of a new interest in your life.

Maintaining your dignity and aplomb during this highly emotional period will serve you well in the years to come. As time passes and the tension between exes becomes less volatile you will be glad you didn't ruin a great relationship between a child and a loving parent. Your child should always feel that both parents love him.

• PARENTING PLANS

A parenting plan sets out the agreed upon schedule of parenting time. It also can address other issues about raising the children with both parents involved. The plan should allow for children to have regular contact with each parent.

The quantity and quality of time spent with each parent is important to a healthy post-separation and post-divorce adjustment. Whenever possible, both parents should continue to be involved in their children's lives following a separation or divorce. Studies have shown that a key factor in determining whether children make a good adjustment to their new situation is how well the parents cooperate. Parents should allow their children to love the other parent freely, even if the relationship between the parents has ended. Effective parenting includes protecting the children from conflict between the parents.

In addition to a clear schedule of the time children are to be in the care of each parent, a parenting plan may address a parent's participation in education, health care, religious upbringing, decision making and financial support. Although the courts can determine a parenting plan for you, it is almost always best if the parents work together to agree on the details of the plan.

Try to work out a plan for time sharing that is realistic and flexible. It should fit with your schedules and with that of your children. Try to stick with the schedule, even if it is difficult at first. This will build trust between you and the other parent, and provide stability to the children.

School age children are generally social beings, involved in teams, clubs, school plays, choir, church activities, etc. The basic schedule of parenting time should take these activities into consideration.

Teenagers are also focused on the world of friends and activities outside their home. Parenting time for these children needs to be discussed with them. You need to develop an individual plan that works for both of you, keeping in mind your teenager's developmental needs.

When can visitation be denied? The court has the power to deny visitation. Normally the court will only stop visitation for a certain time or until a certain task is performed. If your spouse should deny you court ordered visitation, you must first file for a modification of visitation for a more definite schedule, before filing a contempt action. **Many parents feel they have the right to stop paying child support, but they are wrong.** Withholding of child support will only get you in trouble and possibly arrested.

Adjustments may also be necessary to the parenting plan as the children's needs change. Pay special attention to birthdays and holidays and allow for sharing them with the other parent so that you foster memories of both parents on those special days. You may want to consider dividing some holiday activities, or perhaps alternating them annually.

When there is a significant change in physical distance between the parents a parenting plan may be adjusted. There are statutes and case law that address relocation with the child out-of-state. Custodial parents should consult with an attorney about any prospective moves.

• CUSTODY/VISITATION/PATERNITY

When spouses divorce, the question of "Who gets custody of the kids?" is one of the most difficult and often the most emotionally draining both for parents and their children. Custody and visitation are the legal terms for court ordered determinations of which parent the child lives with and the conditions for the child to visit the other parent. Custody and visitation are never considered to be final. In New Jersey, the law does not favor either the mother or father. Rather, they look to the relationship of each parent with the child. While grandparents and others may seek custody, there is a presumption in favor of the natural parents.

The welfare of minor children is of major concern to the court. Both parents must participate in a mandatory Parents' Education Program. Property rights and welfare of the adults involved are secondary. Neither parent is entitled to custody of any children automatically. Divorcing parents may come to an agreement by themselves as to custody and parenting time arrangements. If the court decides these matters, the judge must consider many factors that will be discussed at a court hearing. The factors include the age and sex of the children, compatibility with each parent, ability of the parent to care for the children, the personal conduct of each parent and the preference of the children, who may be interviewed by the court. Courts maintain mediation programs to assist the parties in resolving these issues for themselves. Custody orders may take several forms including sole custody; joint legal and/or joint physical custody; split custody; or any other arrangement which is in the children's best interest.

Your children are the most important thing in the entire world. When you are going through the heartache of a divorce, it's hard to keep the right priorities in mind. Children are one of those priorities. Custody arrangements must be put together with the sole intent of keeping the best interests of the children in mind. They must not be used as pawns or bargaining chips for argument with your spouse. As much as your divorce is taking an emotional toll on you, it is many, many times worse on your children.

The decision of single custody or joint custody is an important one. All other factors in mind, think of the welfare of the child. Think realistically about how well you and your spouse are going to get along in the future. Will you be able to cooperate enough to handle the picking up and dropping off of joint custody? Will the child be able to handle the problems and stress that this kind of lifestyle entails? If single custody is your decision, then what are the visiting rights and privileges of each parent? These are important decisions that should not ever be considered lightly.

Legal Custody of the children is commonly viewed as the parent (or *parents*, in the case of joint custody) with whom the decision-making authority rests.

It is generally agreed that when both parents are able to jointly communicate and solve problems concerning the children's health, education and welfare, (or are likely to develop that ability following the stress of litigation and the passage of a bit of time) it is in the children's best interests that both parents remain equally active in decisions that go beyond the day to day. This is called "Joint Legal Custody."

If the parents are unlikely to develop the facility for joint decision-making, one parent should be assigned "Sole Legal Custody".

Types of Custody

Temporary Custody

De facto (means in fact) custody refers to who actually has custody of the child at this time. This does not carry the weight of the court behind it. In order to formalize custody before you begin litigation, one should file a motion for Pendente Lite (meaning pending litigation) or temporary custody. Temporary custody is subject to review based on the "best interests" of the child standard, to be discussed below. It is not an "initial" award of custody because it is understood to be temporary pending a full hearing. In order to be awarded temporary custody you must file a request for hearing and an order for temporary custody and support along with your Complaint for Custody or Divorce.

Sole Custody

Custody is made up of: legal custody and physical custody. A person with legal custody has the right to make long range plans and decisions for the education, religious training, discipline, non-emergency medical care and other matters of major significance concerning the child's welfare. A person with physical custody has the child living primarily with them and they have the right to make decisions as to the child's everyday needs. Sole Custody is when both legal and physical custody are given to one parent. The child has only one primary residence.

Split Custody

Split custody is easiest to describe in a situation where there are two children and each parent obtains full physical custody over one child. Some of the considerations that may bring about this result are age of the children and child preference.

Joint Custody

Joint Custody is actually broken down into three categories. Joint Legal custody is where the parents share care and control of the upbringing of the child, but the child has only one primary residence. In Shared Physical Custody the child has two residences, spending at least 35% of their time with the other parent. Additionally, you can make your own special joint custody agreement that is any combination of Shared Physical and Joint Legal Custody. One example of this is when there is one residence for the child and the parents live with the child there on a rotating basis.

In order to assure the best interests of the child the court looks very closely at Joint Custody agreements. The most important factor to Joint Legal Custody that is also very relevant to Shared Physical Custody is the ability of the parents to talk about and reach joint decisions that affect the child's welfare. If you are constantly fighting over what religion or what school, the court may strike down your agreement.

Other factors include: willingness to share custody; fitness; child's relationships with parents; child's preference; ability to stabilize child's school and social life; closeness to parent's homes (primarily a factor during the school year) ; employment considerations (e.g. long hours, extensive travel, etc.); age and number of children; financial status; benefit to parent.

Additionally, the sincerity of the parties involved is important. The court will want to make sure that joint custody isn't being traded for concessions on other points.

Sole Legal Custody

When one parent has Sole Legal Custody, that parent is under no obligation, unless specified elsewhere in the Judgment, Consent Order or Matrimonial Settlement Agreement, to discuss unusual or atypical decisions with the other parent prior to acting on them. If the other parent approaches the Sole Legal Custodial Parent with a request concerning the children, The Sole Custodial Parent is not required to enter into a discussion or to approve the request. Unless provided elsewhere, the other parent has no recourse but to make application to the Court.

Please bear in mind, however, that the rights of a Sole Custodial Parent can be modified. In fact, the status itself can be modified or even reversed over time. Plainly stated, the parent with Sole Legal Custody can jeopardize this status by being unreasonable. The custody status is a privilege that may be revoked.

Parents must never lose track of the guidance provided in N.J.S.A. 9:2-4 and must also bear in mind certain "informal" factors that significantly influence custody determinations.

The most impactful of these factors is the Courts' interest in identifying the parent who is most likely to put personal differences aside to unselfishly do right by the children.

The parent who demonstrates sincere commitment to rise above existing contentions in order to affect amicable resolution of conflicts has an advantage, both within the without the court system. Another important criterion is which parent is better suited to encourage and foster an appropriate relationship between the child and the other parent.

Joint Legal Custody

When parents share Joint Legal Custody, they must confer prior to making any non-typical decisions affecting the health, education and welfare of the children.

Example: Fifteen year old Carrie wants to get a tattoo. She asks Dad, who sees no problem. However Dad must confer with Mom before allowing her to have it done.

