



Pre-Divorce Planning:

The 10 Things Clients Wish They Would Have Known

Introduction:

If you are like most people wading into the waters of a divorce, you probably have many more questions than answers, and that's ok. Without a doubt, this can be an extremely frustrating and emotional time. This emotional roller coaster can be further complicated by the uncertainty related to the divorce process. However, much of the stress and anxiety related to the decision to move forward with your divorce can be alleviated by having a basic understanding of what steps you can take to prepare for the filing of your divorce action. Having realistic expectations concerning the results of the divorce can also be helpful in handling the uncertainty.

The family law attorneys at the Goosmann Law Firm are whole hearted believers in the mantra "prepare, prepare, prepare." This same mantra applies to you and your Pre-Divorce Planning. The following article highlights "10 Things Clients Wish They Would Have Known" prior to filing for their divorce and will help you prepare yourself to move forward with your divorce.

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1. Joint Finances:

Of particular concern to individuals seeking a divorce is the protection of their financial future. Often times the distribution of marital assets can be one of the most contentious aspects of a divorce action. This can be a major concern for a spouse who is not involved in managing the family's finances and has a limited understanding of what the family's overall financial picture looks like. As such, one of the key pre-divorce planning steps is to gain an in-depth understanding of your joint finances. This means not only understanding what accounts are out there (by account number), where they are located, and what their balances are, but also what the online passwords are to each account, which of these accounts have automatic payments, and who are the institutions/advisors connected to these accounts. This goes far beyond just your basic checking and savings account. You need to ensure that you have a complete understanding of retirement accounts, investment accounts, life insurance policies, and pension accounts, to the extent they exist. All of these accounts can play a major role in the distribution of marital assets and by having a comprehensive understanding of the financial picture; you will be better prepared to discuss the distribution of these assets.



Bonus Point: As important as it is to have a clear understanding of what the marital financial picture is; it is just as important to not succumb to the emotions of the moment. More specifically, if the dollar amount you are fighting over will not make a significant difference 5 years down the road, it is probably not worth fighting about. It really boils down to a simple cost benefit analysis. Is it worth paying your attorney additional fees, and venturing further down the litigation rabbit hole, for a sum of money that is not life changing to begin with?

2. Estimate Your Future Living Expenses:

To properly address issues related to the distribution of marital assets, you need to have a clear understanding of what your ongoing living expenses will be. If you do not have a clear understanding of what your current and future cost of living is, you will not know what financial assets you need going forward, and more importantly, you will not know what financial assets to request as part of the divorce. One of your first priorities should be to identify your current and projected costs of living, and then conduct a basic assessment of how those costs can be addressed through the distribution of marital assets.

3. Create An Inventory Of Household Furniture, Furnishings, And Other Pieces Of Personal Property:

In a contentious divorce, disputes over virtually every piece of property can develop. If you are contemplating filing for divorce, take some time to identify and catalogue a complete inventory of all your personal property items. This can be as simple as taking dated pictures of personal property items and then cataloguing the identified items in a simple Excel spreadsheet. Additionally, it can be helpful to start attaching estimated values to the pieces of property identified. These steps will ensure that you are adequately informed as to marital property so that you can move forward with settlement negotiations in a productive and efficient manner. Furthermore, if you are unable to reach an agreement as to the identified pieces of personal property, the list that you have already compiled gives you a great start for completing final valuation matters related to trial.

4. Gather Information:

This point, to a large degree, cross-references with several of the other points on this list. This is particularly true when discussing joint finances and the identification of marital assets. Prior to filing for divorce, it is important to gather all the information you can regarding the marital finances and other property holdings. Additionally, gathering information can also extend to seeking advice from trusted advisers (i.e. accountants, financial planners, therapists, and attorneys) regarding your preparations for your upcoming divorce.



5. You Should Not Expect To “Win” Your Divorce Case:

This is where managing your expectations becomes a very important consideration. Often times individuals will approach their divorce with the idea of “beating” their spouse in court. However, the very nature of a divorce makes it unlikely that there will be a true “winner.” Divorce is much more complicated than “winners” and “losers.” In a divorce action there are often multiple complex issues at play such as child support, spousal support, and division of property. Very rare is the situation where one divorcing spouse ends up with everything they want.

An “I win” approach will most certainly result in a highly contested divorce, with protracted legal battles taking a heavy financial and emotional toll on both you and your family. A more constructive way to approach the pending divorce action is to fully assess the consequences of this approach. Focus on both the financial consequences of this approach and the impact that your children will experience from such a contentious divorce.

Bonus Point: I often hear clients talk about getting “justice” and “having their day in court.” If your goal is to get your day in court and explain to the judge what a horrible person your spouse is, you are preparing yourself to fail. No fault laws, coupled with the pressure courts face to move cases along, essentially result in the judge being fairly disinterested in who did what to whom, and why that makes them such a bad person. That being said, do you really want a person who has limited knowledge and background of your particular situation making such a live changing decision for you?

6. You May Be Getting Divorced But Your Kids Are Not:

As upset as you may be with your spouse at this point in time, it is important to keep in mind the impact that your divorce is having on your children. Research has consistently shown that highly contentious divorces have a greater impact on the children. Given that, it is important that you make every effort to ensure that both parents are making responsible decisions as it relates to their communications around their children. This includes not only communications between the spouses while the children are present, but also statements made about the other spouse while in the presence of your children. As much as you would like to say that your spouse is a “*\$!@” and a “%*#!” you need to refrain from making those statements in front of the children. The fact of the matter is that unless there is a history of abuse or neglect your spouse will have an ongoing relationship with your children. It is important that you do not discourage or interfere with a productive parent-child relationship.

If you are having substantial difficulties with this point it may be helpful to seek out professional counseling services to assist both you and your children in coping with this difficult transition.



7. Your Friend's Divorce Is Not The Same As Your Divorce:

It is not uncommon to have a trusted friend or friends who have gone through the divorce process. Although these friends can provide valuable support during this difficult time, it is important to take any advice they give you regarding your divorce with a grain of salt. This is not to say they are attempting to mislead you. However, the complexities associated with divorce can vary to a large extent based on the specific facts of a given situation. It is quite likely that your divorce is completely different from what your friend or friends went through, and any advice they provide, particularly as it relates to legal ramifications, could be completely irrelevant.

A better approach is to seek advice from trained professionals that can provide you with the feedback you need, relating specifically to the set of circumstances you are dealing with.

8. Honesty Is The Best Policy:

This is particularly true when it comes to conversations with your attorney. Do not try and hide any facts from your attorney, regardless of how embarrassing or damaging you believe those facts to be. It is impossible for your attorney to develop a comprehensive and complete strategy that provides you the best representation possible if you are hiding critical pieces of information from them. Often times clients will assume that if they keep an ongoing romantic relationship hush hush it will not have any impact on the divorce proceedings. However, what is more likely to happen is that this information will come to light at the last second, creating a compromising position for you that could call your judgment into question. The last thing you want the Judge to be thinking is that you have questionable judgment, or worse yet, are a liar. The information, particularly as it relates to an ongoing romantic relationship, is often far less damaging than a client's attempts to hide the information.

Additionally, many jurisdictions require divorcing spouses to voluntarily disclose complete information and documents regarding their income, expenses, assets, and debts. It is important to be open and honest regarding your financial situation. This rule typically applies throughout the course of the proceedings. So to the extent your financial situation changes prior to the resolution of your divorce, you will likely be required to communicate that change. Again, the potential benefits that can be gained by hiding assets pale in comparison to the consequences you could face if the Judge finds out you mislead the Court.

Note on Jurisdiction: Iowa and Nebraska are both considered purely "no-fault" states for purposes of divorce. What this means in the most basic senses is that neither party needs to prove that the other party committed a wrong that has led to the divorce. The court will grant the divorce upon finding that the marriage is irretrievably broken and cannot be preserved, while giving no consideration to who was at fault for the divorce.



South Dakota takes a slightly different approach. South Dakota, like Iowa and Nebraska, is a “no-fault” divorce state; however, South Dakota Courts may consider fault as a factor in dividing property or awarding alimony. Additionally, South Dakota still recognizes a cause of action for alienation of affection which allows individuals to sue a third party for breaking up their marriage.

9. Focus On The Big Picture:

As difficult as it may be during this challenging time, obsessing over the past, and the bad things you believe were done by your spouse, will only make it more difficult to objectively move forward. If you can initially approach your divorce with a certain willingness to work with your spouse to accomplish a result that is in the best interest of your family as a whole, it can make the process much more manageable. Undoubtedly hang-ups will develop over certain matters, such as who gets the flat screen television or how is a joint IRA going to be distributed. However, how you and your spouse react to these situations will play a key role in how your divorce progresses. Will it be a divorce where you and your spouse can communicate effectively regarding a host of different issues? Or will it evolve into an all-out court battle with ever increasing legal costs? To the extent you can let go of past wrongs and focus on the “Big Picture” it will allow you to move past minor issues (like who gets the big screen TV) and focus on the most pressing matters, such as what will the visitation schedule with the children look like.

Bonus Point: Keep in mind that for your children, a divorce settlement is what will outline and guide their lives until they reach adulthood. Again, focus on the “Big Picture” and decide as best you can what you want for your children in the future, at any age.

10. Take The High Road:

What this means in the strictest sense is no dating and no partying till the wee hours of the morning. This type of behavior can be particularly damaging if child custody is a major issue because it communicates to the Judge that your number one priority may not be your children but rather going out and having a good time. This is an important point, particularly if you are hoping to reach an amicable resolution short of trial. More specifically, this kind of behavior will undoubtedly have an impact on your spouse, and will likely make them less willing to work with you on a compromised settlement.

The best approach, at least until your divorce is finalized, is to maintain focus on the things that are most important. This includes being the best parent possible and playing an active role in the care and custody of your children. During this time it is not a bad idea to spend time at home and focus on how you can take care of yourself both physically and emotionally during this challenging time.



Conclusion:

The above tips are designed to provide some guidance to assist you in preparing for and progressing through the divorce process. Again, it is important to remember that every situation is unique and the circumstances of your situation will impact the course that your divorce takes. To fully evaluate and develop a plan of action to successfully handle your divorce, you need to consult with an experienced divorce attorney.

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