

Divorce: Exit Strategy

By Ivy A. Gracie

BY ITS VERY NATURE, DIVORCE IS CONTRARY: It's an agreement between two people who cannot agree; a business decision influenced by emotion; and there are no simple answers to any of its difficult questions. But here's some valuable, top-line information that's worth considering as you begin the process.

Equal rights means equal risks. Illinois law is gender-neutral when it comes to every aspect of divorce—division of property, spousal maintenance, child custody and child support. “It can be punitive to successful women,” says attorney Steven Lake, adding that women have a tendency to overlook their own exposure when they're getting a divorce. “They may be creating a lifestyle that their husbands can capitalize on.” Steven, a senior partner at the Chicago law firm Lake, Tobak & D'Arco, explains that as gender roles shift within the family it's more commonplace for husbands to win full custody of the children and collect hefty property settlements.

Illinois is a no-fault state—sort of. At least when it comes to the division of property. The State of Illinois offers two options for naming grounds for divorce: No-fault and general. While no-fault divorces cite “irreconcilable differences,” general divorces allow the petitioner to name a specific reason such as impotence, adultery, physical abuse, chemical abuse or criminal history, which will become public record. But fault is irrelevant when it comes to the division of property. That means that no matter how much of a drunken scoundrel your ex was, it won't land you a bigger settlement. Of course, as with everything, there are some exceptions that apply; be sure to discuss details with your attorney.

So what's the difference? Technically, for a no-fault case, Illinois requires that both spouses live “separate and apart” for two years before their case can be concluded. This can be overridden if both spouses agree to sign a special waiver stating that they've been living “separate and apart” for six months. Add to that the fact that Illinois doesn't require proof of living arrangements and, effectively, there's no waiting period for a no-fault divorce.

Similarly, general grounds require no waiting

period. But when cited, marital misconduct can become a factor in deciding custody and visitation issues. Be sure to consult with an attorney for expertise and guidance in this area.

There's no waiting! Unlike other states, Illinois doesn't require a minimum waiting period between the filing and granting of a divorce. And, for the optimists out there, once a divorce is final there's no waiting period to remarry.

Getting therapy won't hurt your case. Many people believe that they must stop going to therapy when they begin divorce proceedings, particularly in child custody cases. But, Beverly Pekala, a Chicago-based attorney and author of *Don't Settle: A Woman's Guide to Getting a Fair Divorce & Custody Settlement*, says just the opposite is true. “Getting therapy shows you're taking the appropriate action given the circumstances,” she says. In fact, she advocates seeking emotional support somewhere other than in your attorney's office. “If you need a therapist, get one. I can't prescribe medication!” She jokes, but in all seriousness, your attorney is there to handle the legal aspects of your divorce; you're better off finding another outlet to deal with the emotional ones.

You don't have to give up everything for custody. It's not uncommon for a husband to try to turn his wife's bid for child custody into a bargaining advantage. In return for custody he may demand outrageous financial sacrifices and might even make a bid for custody himself, especially in the case of the wife's infidelity. And too often, the woman will sacrifice almost anything for custody, to the point of placing herself in financial peril. According to Beverly, such great concessions may not be necessary. “Talk to your attorney and tell the truth. She or he will advise you if the ploy is strategic (financial) or the real thing.”

You can pick your battles. Contested divorces often involve complex financial issues and, depending upon the parties' willingness (or unwillingness) to cooperate with each other, can take years to settle and result in exorbitant attorney's fees. An uncontested divorce is simply one for which the terms have been agreed

upon without going to court. Uncontested divorces move more quickly through the court system and are less expensive.

Beverly will ask her clients: “Do you want to pay me \$10 to fight about \$1?” And she cautions them to remember that once the case gets to the courthouse, a judge will be making all the decisions for both parties and that can result in no one being happy. Arriving at agreements outside the courtroom will allow you and your spouse more control over your settlement. As Steven Lake puts it, “Try to be part of the solution, not the problem.”

A good attorney is an investment. “Divorce is quite possibly the most important event in your life,” Beverly says. “Don't bargain shop when it comes to representation.” She suggests looking at attorney's fees as an investment in your future.

Interview a number of candidates before deciding on representation, giving consideration to a number of factors. Make sure your attorney is willing to go to court if necessary. While most cases will eventually settle out of court, an attorney who's ready to enter the courtroom will be thoroughly prepared in all areas of your case. “A good attorney goes through the process step-by-step with you,” Steven says. “You want to know that person is making sure that deadlines are being met and things are getting done.”

Also, make sure you're comfortable with your attorney. “Divorce is an interactive process,” he says. “Your attorney is going to be your best friend [for that period of time]. Your relationship should feel right.” Beverly adds, “You'll be with your attorney for better or worse. Make sure you get along!”

To that end, Beverly counsels, “Don't waste your time and money telling half the story—tell the truth the first time.” And you should expect the same from your attorney.

“A good attorney is someone who will tell you what you need to hear, not what you want to hear. There's a good rule of thumb,” she says with a chuckle, “If you leave your attorney's office with a smile on your face, you haven't been told the whole story.” ■

First Steps

If you feel a divorce is imminent, here's what you need to do to be prepared:

1. Get as much financial information as you can. Bank accounts, insurance policies, mortgages, tax returns, pay stubs, stock certificates, wills, etc. Don't panic if you don't have access; your attorney will be able to help.
2. Hire the best attorney for your needs. Make sure you can trust your lawyer with the intimate details of your life and finances; you should feel like your attorney is your advocate.
3. Determine your goals and the most effective way to achieve them. Keep your goals and expectations realistic.

Questions for Potential Attorneys

1. How much of your practice is devoted to family law?
2. How long have you been in practice?
3. Are you willing to go to court?
4. How much time do you spend in court?
5. Can I get my questions answered when I need to? Can I email you? Do you give out your cell phone number?
6. Tell the attorney where you think you and your spouse will agree and disagree to help determine the time and cost of your divorce.