

HOW TO PREPARE TO FILE FOR DIVORCE

Separating from a spouse can be one of the hardest decisions that you will have to make, but knowing how to prepare to file for divorce can be even more daunting if you have never given any thought to the process. There are a number of steps that you will need to take to prepare yourself financially and emotionally, but if you put one foot in front of the other to get the process done, hopefully, you can terminate the marriage with little to no hassle.

1. DECIDING HOW TO HANDLE THE PROCEEDINGS.

Consult with a lawyer. Hiring a lawyer to help you navigate your divorce is important for many reasons. When you're firm on your decision to get a divorce, no matter whether the idea was initiated by you or your spouse, consult with a divorce lawyer before taking any other action. The lawyer will participate in your divorce preparation in the following ways:

- A. He or she will work with you to ensure that you will get the assets, property, and child custody to which you are entitled.
- B. He or she will act as a mediator with your spouse's lawyer, so you'll never be put on the spot.
- C. A lawyer will make sure that your divorce proceedings are professional and legal, and that your divorce papers are drafted and filed correctly.
- D. A lawyer will guide you through the entire process and help you make good decisions that may otherwise be clouded by pain and emotion.

2. CONSIDER TALKING WITH YOUR SPOUSE ABOUT THE DIVORCE.

If you and your spouse have mutually come to the decision that divorce is the right choice, you may be able to proceed with the divorce amicably. Divorcing amicably requires spending a lot of time with your spouse to discuss important matters; this is certainly possible, but it can be difficult. Consult with your lawyer first to make sure speaking with your spouse is a good idea. Then, to put things in motion, discuss these big issues with your spouse in preparation for the divorce:

- A. How you want to divide your assets and possessions.
- B. Who will live in the home you now share.
- C. How to divide custody of your children.
- D. Whether child support will be sought by one partner.

3. DETERMINE THAT THE BEST COURSE IS TO MOVE FORWARD ON YOUR OWN.

Sometimes the divorce conversation begins amicably but eventually takes a negative turn. In other cases you know from the start that discussing it with your spouse is a bad idea. It's perfectly fine to forego having a conversation with your spouse and forge ahead with the divorce on your own, notifying your spouse later when you've got everything in place for the proceedings to begin. This might be the best path for you if one of the following circumstances applies:

- A. You're in an abusive marriage, and you're afraid your spouse will try to block the divorce or threaten you with physical harm.
- B. You want a divorce because your spouse had an affair or otherwise broke your trust.
- C. You're concerned that involving your spouse in preliminary conversations will affect your ability to get custody of your children.
- D. You believe your spouse will take action to make sure you don't get your fair share of assets.
- E. You no longer trust your spouse for any reason, regardless of why you're filing for divorce and who initiated the divorce discussion.

4. Create a divorce mission statement.

Regardless of what approach you take to your divorce, it's a good idea to clearly outline your goals and desires from the beginning. Try set your emotions aside and think carefully about what you want your life to look like once the divorce is complete. Think through the major questions that the divorce will affect, then share your answers with your lawyer.

- A. Where do you want to be living after the divorce?
- B. What property is important for you to keep after the divorce?
- C. What child custody specifications are important to you?
- D. How will you make a living after the divorce?

5. GATHER RECORDS OF YOUR FINANCES.

You're going to need a clear picture of the assets you share with your spouse. You may want to do this discreetly, without your spouse knowing, so that he or she doesn't make arrangements to block you from assets to which you're entitled.^[1] Speak with your lawyer and a financial planner to find out exactly what documents you'll need, and take the time to collect the following.

- A. Bank statements from all of your savings and checking accounts
- B. Credit card statements
- C. Records of mortgage payments

- D. Vehicle titles and insurance information
 - E. Records related to big purchases you or your partner have made since getting married
 - F. Records of debts you owe, individually or jointly
 - G. Income tax returns
6. **START SAVING CASH IN A NEW BANK ACCOUNT.**

Lawyer fees and court fees are going to add up over the course of your divorce proceedings. You'll probably need more money than you expect to get through it all. Start a bank account under your own name and begin saving money you can use for these expenses.
 7. **AVOID GETTING ADDITIONAL INCOME UNTIL AFTER THE DIVORCE.**

If you have a raise or influx of cash on the horizon, try to put it off until after the divorce is complete. Otherwise, it will be considered as part of your mutual funds, and your spouse will be entitled to some of it.^[4]
 8. **OPEN A POST OFFICE BOX.**

Have all of your new bank statements and other important papers sent to the post office box, rather than the home you still share with your spouse, so that your financial matters are secure. Correspondence with your lawyer should also be sent to your PO box.
 9. **GATHER EVIDENCE THAT COULD BE USED AGAINST YOUR SPOUSE.**

Discreetly collect evidence like police reports, emails, photographs, journals, and anything else that you can use against your spouse in court to help you get a greater share of the assets or more custody of your children. This is especially important if you're divorcing for reasons involving abuse.
 10. **PLAN A NEW ROUTINE.**

Have a planner or expert help you iron out a budget for how you plan to support yourself after a divorce. Work with an expert to help you figure out how much temporary support or, eventually, alimony and/or child support you will need to keep your household afloat.
 11. **DECIDE WHERE YOU WILL LIVE.**

Plan ahead to prepare yourself in the event that you may have to put your current home on the market. Hopefully the sale of your home won't be a long process. Realize that listing your home may be one of the first

things you need to do once you have officially filed, especially if neither of you can afford to keep and maintain the home by yourself.

12. SEEK HELP IN DEALING WITH YOUR EMOTIONS

Seek help in dealing with your emotions. See a counselor or therapist to help you stay in a functional emotional state to get through the process. Use therapy sessions to help keep you focused on your self-worth and sanity as you ramp up to file for divorce. This person will be an excellent sounding board for your thoughts and ideas and will help keep your stress levels lower and functionality higher through the whole process

13. PREPARE YOUR FAMILY.

Gradually prepare your close family as the time nears to file so that they will not be shocked, and so they can act as your support system for strength and assistance.

14. FINAL STEP

The decision has been made, or maybe it hasn't, but you are leaning toward leaving.

- A. The first thing you must do is get a new cell phone. This is very important; get a new cell phone with not only a camera but the ability to record videos. Anytime something happens that you can use later as evidence, record it. If your spouse starts acting irrational, record it. If the kids say anything good about you or bad about the other spouse, record them. Get in an argument with your spouse, hit record and set the phone down, you may get video of the ceiling, but the audio could win your case. It may not be admissible as evidence, but the judge may listen to it anyway, and in reality, they will take it into consideration. Remember, any evidence is admissible in court if you present it and your spouse (or his/her attorney) doesn't object to it, see what you can get away with.

Along with video, collect any evidence possible. Letters your spouse wrote you, pictures that may be incriminating (for you or him/her), or documents to prove you own innocent something, he/she cheated, you helped him/her, whatever you can bring up later. Keep these things away from your home. Remember, your spouse could come up with a story at any time to obtain a restraining order, and the court WILL believe him/her. At that point you could be barred from your home and anything in it that may help you prove your innocence.

- B. DO Collect important items such as passports or vehicle titles and put them in a safe place away from your home.
- C. DO NOT, and I mean under no circumstances let your Partner's lifestyle improve; conversely don't let your lifestyle diminish. These may very well come into play when it is time to divide up the assets. DON'T move out; offer to help him/her find an apartment. The goal of the court later will be to allow him/her to live the lifestyle he/she was living before the divorce.
- D. DO NOT pay off any debt in his/her name. His/Her creditors will go after him/her, not you, and most likely the court will not make you pay his/her personal debts.
- E. DO NOT take any loans in your name to cover joint debts; any unsecured loans in one persons name will almost always be that person's responsibility.
- F. DO NOT open any new bank accounts or make it appear that you are hiding money. Judges get suspicious of men very easily and will quickly accuse you of hiding money; hiding money or putting it in a trusted friends account would help give you much needed security and stability down the road.
- G. DO continue to live your life like everything is normal. Don't tell anyone about your thoughts of divorce except that one trustworthy friend/sibling.
- H. When the time comes to file for divorce, do everything at the same time. File your divorce, child custody and any supporting documentation the same day. If you need the judge to sign your paper to give you custody, do so, then have your wife served after the judge signs them while you have the kids. Advise her that you have full custody and recommend he/she stay with a friend.
- I. Do not be afraid to call the police if you feel the need. If the police get involved, stay with everyone involved until police arrive, they do what they say.
- J. DO NOT allow your spouse time to make up a story with his/her friends/parents/whomever. Remember, you are Gandhi!

15. EMAIL AND TEXT MESSAGE EVIDENCE IN DIVORCE PROCEEDINGS

In order to prevail in a contested divorce proceeding a party must produce evidence that proves his or her case, and emails and texts are emerging as among the most important types of evidence used in a divorce action. There are several ways to collect email and text evidence.

A. EMAILS AND TEXT MESSAGES SENT DIRECTLY TO THE OPPOSING PARTY

Despite the fact that people are aware of the way the law works to some extent in family court, during a divorce or custody proceeding many people seem to forget that anything in writing may be used as evidence against them. In family court, an overwhelming number of parties come to court prepared with printed emails and text messages sent to them by the other party. Text messages received can be uploaded to a computer and printed using a smartphone app.

Sometimes, text messages and emails go back several years, and show evidence of verbal abuse, admissions of other types of wrongdoing, and other things that the person who sent the messages might not have sent had they known they would turn up in court as evidence to be used against them.

B. OTHER STORED ELECTRONIC EVIDENCE

In this day and age, though, emails and text messages can also be retrieved and used by a party who was not the recipient of the message originally. Sometimes, the other party may produce email evidence when requested to do so through discovery. Otherwise, requests can be made to allow inspection of the entire computer, and a computer expert can often retrieve emails and documents even after they were erased from the hard drive by a party reluctant to turn them over.

Text messages can be retrieved by subpoena to the cell phone provider. Only an attorney can subpoena documents, and a good reason for requiring private messages must be shown. It is also possible for the other party to take legal steps that may result in a court denying access to some of these documents.

C. EMAIL EVIDENCE AND PRIVACY RIGHTS

Indian laws prohibit unlawful interception of electronic communications, so a spouse that accesses the other spouse's computer without authority should be cautioned that such activity may result in the exclusion of the electronic evidence and subject them to legal sanctions. However,

spouses usually have access to each others computers or the same computer, so unless the parties are already separated when the emails are intercepted, this isn't likely.

To be able to admit email evidence, the party introducing the evidence must demonstrate that he or she was authorized to access the computer on which the evidence was stored. If the computer is located in the marital home and accessible to both spouses, the court would likely hold that both parties were authorized to use the computer, particularly if it was purchased with marital funds and used by both parties.

D. AUTHENTICATING ELECTRONIC EVIDENCE

The party introducing the evidence must be able to authenticate it, which means they must be able to prove that the opposing party authored the email or text. The easiest way to authenticate the electronic communication is to have the opposing party admit that they sent the email or text. In family law cases, evidence is commonly introduced as part of a declaration or motion, as well, so it may not be necessary to authenticate a damaging message during a trial.

Although text messages and email may be hearsay, family law courts are notoriously lax and may consider evidence produced by a party even if it seems to violate the law about not presenting hearsay evidence.

Alternatively, an eyewitness can authenticate the communication by testifying that he or she saw the sender create or publish the email or text. If that is not possible, circumstantial evidence may be used. For example, the email or text may be self-authenticating if it contains information that only the sender would know.

The underlying reason for authentication requirements is the possibility that a third party could have used the party's computer to send an email. Courts are hesitant to attribute an email or text to a particular person merely because an email is identified with a unique email address. Without further authentication, an email should not be admitted as a statement by the holder of the email account. Although it is easy to prove that a text message came from a particular phone, the same reasoning applies.

This reasoning wouldn't be likely to apply if the message was sent after the parties separated.