

# **The first 10 things you must consider when planning for divorce or dissolution**

**Douglas B. Dougherty**  
Attorney and Mediator  
Certified Specialist, Ohio Family Law

3010 Hayden Road  
Columbus, OH 43235  
(beside Bravo restaurant)  
(614) 798-1933  
[DDougherty@DivorceAndDissolution.com](mailto:DDougherty@DivorceAndDissolution.com)

Have you decided to end your marriage? If you have, there are 10 issues you should immediately consider to fully protect yourself and your children.

## **1. Are you and your children safe?**

Has your spouse been violent? Has your spouse threatened violence? Two of the best ways to deal with potential violence are: first, move out of the home; or second, get a protection order.

- Move out of the home

You have the right to temporarily or permanently move out of your home. The court will not see this as a bad thing. The court will not consider this to be “abandonment.”

- Get a protection order

You also have the right to file a lawsuit and seek a protection order. A protection order can: first, order your spouse to leave the home; second, order your spouse to stop all abusive behavior; and third, order other relief.

## **2. Will your spouse try to take the children and disappear?**

Has your spouse threatened to take the children and leave Ohio? If your spouse has family in another state or country, this can be a significant risk.

© Copyright 2020  
by Douglas B. Dougherty  
This article may not be copied or used for any purpose  
without the prior written permission of the author.

There are three things you can do to protect your children: first, get a temporary restraining order; second, get a temporary custody order; and third, get other helpful orders.

- Get a restraining order

After you file a lawsuit, the court can issue a restraining order that prohibits your spouse from removing the child from the State of Ohio. This court order can be obtained the same day you file your lawsuit.

- Get a temporary custody order

You can request a court order giving you temporary custody of your child. If you have temporary custody, you have the right to have physical possession of your child and the right to determine where your child will live.

- Get other helpful orders

A court can issue other orders to protect your child. For example, the court can order the other spouse to give the child's passport to you or to the court.

### **3. Will your spouse try to limit your access to marital funds?**

Money that you and your spouse have earned and saved during the marriage is "marital" money. That is, both of you have the right to possess and use these funds.

There are three things you can do to protect yourself regarding marital funds: first, take possession of the funds; second, get a restraining order; and third, get a temporary support order.

- Take possession of the funds

You have the right to take possession of marital funds. Specifically, you have the right to take funds from a joint account and to put those funds into an account solely in your name. If you take this action, you should tell your spouse what you did and why you did it.

- Get a restraining order

After a divorce lawsuit is filed, the court can issue a restraining order commanding your spouse to not withdraw, spend, or otherwise transfer marital funds without court approval. A restraining order effectively "freezes" the funds.

© Copyright 2020

by Douglas B. Dougherty

This article may not be copied or used for any purpose  
without the prior written permission of the author.

- Get a temporary support order

The court can issue an order commanding your spouse to pay you temporary support for your living expenses, attorney fees, and other matters. The support can be withheld from your spouse's paycheck or bank account and paid directly to you.

#### **4. Will your spouse make personal property disappear?**

Personal property includes jewelry, collectables, antiques, phones, computers, financial and legal records, pets, and other items. If a spouse improperly takes these items, it can be almost impossible to get them back.

To protect yourself, you can do the following: first, inventory the items; second, secure the items; and third, obtain a temporary order.

- Inventory or copy the items

Make a list of all significant items of personal property. Include all information to identify and value each item. Making a video recording on your phone showing all aspects of the item can also be very helpful. Make copies of financial and legal records.

- Secure the items

The best way to protect the items is to take possession of the items and put them in a secure place. For example, you could put the items in a safe deposit box, a storage unit, or leave them with a trusted family member or friend. If you take any of these actions, you should let your spouse know that you have the items.

- Get a temporary order

The court can issue an order giving you the right to possess and use any item of property until the final trial. At the final trial, the court will determine who gets ownership of each item.

#### **5. Do I need documents, data, or other information from my spouse?**

You can't negotiate a good deal, or do well at trial, if you don't know the facts. With many couples, one spouse handles all or most of the financial matters. That spouse frequently has control of all important documents, data, and other information.

© Copyright 2020

by Douglas B. Dougherty

This article may not be copied or used for any purpose  
without the prior written permission of the author.

If your spouse will not voluntarily share these materials with you, after you file a lawsuit, there are three powerful legal tools that you can use: first, written requests for information; second, a motion to compel discovery; and third, a motion for sanctions.

- Send written requests

After a lawsuit is filed, you have the right to get documents, data, and information from your spouse. To get these materials, you must send your spouse a formal written request. Generally, your spouse has a duty to provide you with the requested materials within 30 days.

- File a motion to compel discovery

If your spouse fails to provide you with the materials you requested, you can file a motion to compel discovery. If your motion is granted, the court will order your spouse to give you the materials you requested. Generally, the court will also order your spouse to reimburse you for any attorney fees you paid regarding your motion.

- File a motion for sanctions

If your spouse fails to give you the materials as ordered by the court, you can file a motion for sanctions. If your motion is granted, the court will issue additional orders to punish your spouse and protect you at the final trial.

## **6. Do I need documents, data, and other information from other people or entities?**

To fully inform yourself about the facts of your situation, you may need to get information from other people or entities. For example, you may need to get information from your spouse's employer, your spouse's pension plan, or your spouse's bank.

If your spouse will not sign a release form authorizing you to get the information, after you file your lawsuit, there are two legal tools you can use: first, you can send a subpoena; or second, you can file a contempt motion.

- Send a subpoena

A subpoena is basically a legal order that requires a person, a business, or another entity to provide documents, data, or information that is relevant to a lawsuit

- File a contempt motion

If the person, business, or entity fails to provide properly requested materials, you have the right to file a contempt motion. If the court grants your contempt motion, the court will order that the materials be provided and will impose other penalties.

## **7. Should I immediately file a divorce lawsuit or should I first try to negotiate?**

Generally, it's better to try to negotiate a settlement before you file a lawsuit. However, a divorce should be filed immediately in two situations: first, you need the legal tools that you get when you file a lawsuit; or second, there is no realistic chance that your spouse will agree to a fair settlement.

- Get your legal tools

As discussed above, after a lawsuit is filed, you can request restraining orders, temporary custody and support orders, and other helpful court orders. You can also get documents, data, and information from your spouse, other persons, and entities.

- Get a judge involved

When your lawsuit is filed, it is assigned to a judge. The judge will let your spouse know what he or she thinks is a fair settlement. If your spouse will still not be fair, the judge will conduct a trial and will decide all appropriate issues.

## **8. Should I consider divorce mediation?**

In mediation, the spouses meet with a neutral third-party, the mediator. The mediator facilitates the negotiations on each issue and attempts to help the spouses reach an agreement. Typically, a mediator is an experienced divorce lawyer.

Most people agree that mediation is not appropriate in three situations: first, domestic violence is present; second, a power imbalance exists; or third, a hidden agenda is present.

- Domestic violence is present

If domestic violence has occurred in a marriage, communication between the spouses can be very difficult. The victim will probably not be comfortable negotiating with the aggressor. Frequently, the victim will accept a bad deal just to bring the mediation to an end.

© Copyright 2020

by Douglas B. Dougherty

This article may not be copied or used for any purpose  
without the prior written permission of the author.

- A power imbalance exists

Mediation will not provide a fair result if one spouse is more “powerful” than the other spouse. For example, is one spouse smarter, more knowledgeable, more verbal, more aggressive, more persistent, or a better negotiator?

- A hidden agenda is present

Mediation only works well when both spouses want a fair settlement. Some spouses have other goals. For example, a spouse may want to waste time and money, put unnecessary pressure on the other spouse, or try to get an unfair result.

### **9. Do I need a lawyer?**

It depends. If you have a simple case or little to lose, you probably don’t need a lawyer. However, if you have a complex case, or if you have a lot to lose, you need a lawyer (a really good lawyer.)

You need a really good lawyer if your case involves: first, complex child-related issues; second, issues involving significant assets; or third, issues involving income and support orders.

- Complex child-related issues

If you and your spouse are fighting about child custody, parenting time, decision-making authority, child abuse or neglect, parental alienation, or similar issues, you need a really good lawyer.

- Issues involving significant assets

If your case involves real estate, pensions, retirement assets (IRA, 401(k), etc.), bank accounts, investments, pre-marital property, inheritances, gifts, or interests in businesses or professional practices, you need a really good lawyer.

- Issues involving income and support issues

Will your case involve child support and alimony issues? These issues will have a huge impact on the standard of living that you and your children experience in the future. If you’re facing these issues, you need a really good lawyer.

© Copyright 2020

by Douglas B. Dougherty

This article may not be copied or used for any purpose  
without the prior written permission of the author.

## **10. How do I choose a lawyer?**

Very carefully. A lousy lawyer can be worse than no lawyer. A great lawyer can get you a better result on every issue in your case.

Three factors are most important in picking a lawyer: first, knowledge of the law; second, experience in the area; and third, communication skills.

- Knowledge of the law

The best way to determine if a lawyer is highly knowledgeable about divorce and dissolution law, is to determine if the lawyer is a Certified Specialist in Family Relations Law. To earn the specialist certification, a lawyer must pass a special test showing extensive knowledge about divorce and dissolution law. You should also determine if the lawyer teaches the law to other lawyers, and if the lawyer has written any scholarly articles on relevant topics.

- Experience in the area

To determine a lawyer's experience, get the following information:

- How long has the lawyer practiced law?
- Is the lawyer's practice limited to divorce and dissolution?
- How many divorces and dissolutions has the lawyer handled?
- How many trials has the lawyer handled?
- How many appeals has the lawyer handled?

- Communication style and personality

Talk to the lawyer. Does the lawyer directly answer your questions? Are the answers clear? Do you actually benefit from the answers? Is the lawyer arrogant? Is the lawyer courteous? Be sure that you are comfortable with your lawyer's communication style and personality.

### **Conclusion**

I hope you find this information helpful. If you would like to schedule a free consultation to discuss your rights and options, contact me. My direct dial number is (614) 798-1933 and my email address is [DDougherty@DivorceAndDissolution.com](mailto:DDougherty@DivorceAndDissolution.com).