

ON THE ROAD TO DIVORCE:

A Traveller's Companion



By Marcia Kraus

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First printing 2005

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ON THE ROAD TO DIVORCE: A TRAVELLER'S COMPANION

Introduction

Divorce, though ever so common, is one of life's most stressful experiences, second only to the loss of a spouse through death. Divorce evokes a whirlwind of emotions including rage, betrayal, guilt, fear, shame, bitterness – and unbearable sadness. In the midst of this maelstrom of emotions we also have to continue with daily activities, caring for children, going to work, doing the laundry, worrying about making ends meet and making decisions that will profoundly effect the future. And the storm does not pass quickly so that the hurting can heal and “normal” life can resume. It goes on and on, seemingly endlessly. The need for relief is great.



The end of a marriage, however, is not just the end of a once important emotional relationship. Before getting married most of us had other relationships – some of which may have broken up with a flood of emotions. While we may have been devastated, the devastation was confined to the heart. We did not fear the loss of financial security, nor did we need to reorder our relationships with other people.

Divorce has three aspects. There is an emotional aspect based on a loving relationship which has gone awry. Efforts to save the marriage take us to professionals who teach us to communicate better, to understand our needs and emotions better (and the needs of our partners), and to negotiate our way to a



better relationship. Efforts to deal with the end of the relationship may return us to these same professionals to help us understand what went wrong, to apply salve to our souls, to let us ventilate our emotions and to focus on the emotional tasks we must now face in order to heal and go on with our lives.

Marriage also has a legal aspect. It is a legal partnership regulated by the State and executed under State power by authorized religious and/or civil authorities. When a marriage ends, the partnership must be legally disentangled and an order for dissolution entered by a judge. If children are involved, the State must ensure that they are given care and support, and that each parent's rights to continue a parenting relationship with the children is maintained.

Because marriage is a legal partnership, there are many financial issues involved in divorce. The marital financial partnership has earned income, acquired assets, and accumulated debt and now it must be disentangled. Assets and debts must be allocated to each partner according to State law or by agreement, and plans must be made for each spouse to be able to survive financially after the divorce. Again, these plans are made by agreement or by order of a judge operating under State law.

Finances are a difficult issue for many people. In many situations, issues about money have actually led to the divorce. Often one partner handles the day to day bill paying while the other has primary responsibility for big purchases, investments and overall financial planning. Or perhaps one partner handles all finances and the other knows little or nothing about what goes on. He or she doesn't like dealing with money and numbers.



Divorce will force a change in that. Each person is now going to have to know how much day to day living costs and each is also going to have to take responsibility for their



own long term financial choices. Each is also going to have to get involved and up to speed on their financial situation – what they own and what they owe – in order to make informed choices about how assets and liabilities are to be divided.

This booklet has been written with the goal of providing tips and perspectives about financial issues to guide you through the divorce process. It is not intended to be comprehensive. It’s more like a “cheat sheet” to make you aware of some issues you may need to address – without overburdening you with all the details. You can learn the details later. For now, you need to know that there is information available to enable and empower you to be an active architect of your divorce, whether you initiated the idea or whether it was forced upon you.

Preparation

1. **Start building up your own cash reserves.** Open a new savings or checking account in your name alone and put away as much cash as you can. Although this account will be considered marital funds, these are funds you can access when you need to hire an attorney, to put groceries on the table or just to pay for miscellaneous things you need.
2. **Obtain a credit card in your name alone** – with no secondary cards issued to your spouse. Try to obtain one with 0% interest or the lowest interest rate possible. Forget about mileage credits or cash rebates. You may need this

card to help you meet monthly living expenses. If you can't get a credit card based on your own income, get a secured credit card.

3. **Make copies of everything financial you can lay your hands on.** This includes bank statements, monthly credit card statements, checking account registers, tax returns for the last three to five years, monthly brokerage account statements, mutual fund statements, loan applications filed within the last couple of years, and any and all reports on work-related retirement plan benefits, as well as all IRA accounts.
4. **If you do not have copies of your last three to five years of joint tax returns** and your spouse is unwilling to give them to you, you or your attorney can get them from the IRS by filing Form 4506 (can be downloaded from www.irs.gov).
5. **Learn as much as you can about your family's finances.** Are there life insurance policies and disability insurance policies? What is the deductible and out of pocket limit on your health insurance policy? Is there a business in the family? If so, how much does it gross and what's left after expenses?
6. **Prepare a list of what you own and what it's worth, as well as what you owe.** Do you know your car's value? Look it up at www.kbb.com. The value of the house? Ask a Realtor to give you a market analysis of its value in today's market. List all the bank accounts, mutual funds, and brokerage account balances you've found. Do any of the insurance policies have a cash value? What are your

outstanding mortgage balance and car loan balance and credit card revolving balances?

7. **List your expenses in detail.** What does it cost you to live? Separate, if at all possible, your personal expenses for clothing, grooming, entertainment, etc., from those of the children and list their expenses as well. Use your check register and credit card statements to help you tally your expenses. Try to plug up the “miscellaneous cash spending sieve” by writing checks and using charge cards to document your purchases. When you do need to replenish your cash, write a separate check instead of adding to your grocery check. Record purchases you make with cash amounts over \$5.
8. **Explore alternative ways of obtaining a divorce.** Get information on the advantages and disadvantages of each, including adversarial divorce, collaborative divorce, mediation and pro se (do it yourself) divorce. Since only judges can grant divorces, all methods will eventually take you to court. However, how and when you arrive at the day of your divorce will radically affect your own sense of empowerment, the amount of hostility and bitterness between you and your ex-spouse, the cost of your divorce, and the options you have for deciding your own future and the futures of your children. The alternative ways of getting a divorce will be discussed in a later section.
9. **Realistically assess what you can earn.** Even if you are a mother with small children, there is no



guarantee that you will receive enough financial support from your spouse to meet your bills. Explore potential careers. Now is a great time to consider entering a new field. Find out what education or training it would take for you to work at something you'd really enjoy or to brush up skills you haven't used in awhile. Explore the costs and duration of training and what you could anticipate earning once you finished.

10. **Learn as much as you can about the issues to be addressed in divorce.** The internet provides a wealth of information (also a lot of misinformation, so don't accept everything as gospel), as well as information about professionals you may consider consulting. A list of some internet resources will be provided in another section.
11. **Order a copy of your credit report from all three credit agencies:** Equifax.com, TransUnion.com, and Experian.com along with your credit score. Order it directly from one of these three agencies and don't succumb to the "free credit report" offers on the internet. Some inquiries by internet sources can actually lower your credit score. A combined report bought from one of the agencies shouldn't cost more than \$30 to \$40. It will provide useful information about the amount of debt that will need to be addressed in the divorce. Also, it will let you know if your credit score will help or hinder you if you need to purchase housing, or even get approved for a lease or perhaps even a job.
12. **Explore alternative housing.** If it appears that you won't be able to afford your current home's monthly payments or you won't have enough funds to buy out your spouse's

interest, start looking around at housing that could meet your needs. See how much it costs.

13. **Spend extra time with your children.** They are going to need a lot of reassurance and comfort from both you and your ex-spouse in the times ahead. They need to know that you love them and always will love them. If other demands on your time have left you with little time for them, now is the time to reassess your priorities, especially if you want to continue to be involved in their lives after the divorce. This is not to say that you should make a “show” of greater parental involvement for purposes of bolstering your case for custody. It will be better for your children if you can spend more time with them. At the very least, it will make you a better parent.



Tax Issues

14. **Tax considerations can have a big impact on both child support and spousal support issues.** Child support is paid with AFTER-tax money by the non-custodial parent and is not taxed to the custodial parent. Spousal support (alimony) is a tax deduction for the payor and is taxable to the payee. Illinois allows for non-allocated support which combines child support funds and spousal maintenance funds into family support. This is a deduction for the payor and taxable to the payee (the custodial, assumedly lower-earning spouse). This can serve to minimize the total taxes you and your ex-spouse will pay and permit sharing of the money you save. There are, however, very complicated IRS rules which need to be observed in this process so it is imperative that you consult with a divorce financial adviser

or tax accountant in order to avoid tax pitfalls or to avoid returning to court to review the maintenance amount in the future.

15. **You and your spouse will also need to determine who will take the tax exemption for your dependent child(ren).** Tax code automatically gives the deduction to the residential parent (the parent with whom the child lives for the greater part of the year). An IRS form is needed, either annually or on a permanent basis, if the residential parent wants to relinquish the exemption to the other parent.

16. **The dependency exemption (now \$3100) and any child tax credit (\$1000 per child through 2005) are linked** and you cannot split them between parents. If one parent is unable to use the child tax credit or the dependency exemption because of income limitations, financially it makes sense to let the other parent have it.



17. **College tax credits (e.g., Hope and Lifetime Learning) are also linked to the dependency exemption** and only the parent claiming the child as a dependent may claim the education credit for that child. For parents filing either Single or as Head of Household, these education credits are phased out for modified Adjusted Gross Income between \$41,000 and \$51,000 (for 2003).
18. **Only the primary residential parent can claim the dependent care credit for children under 13** (or severely disabled children). This credit is NOT tied to the dependency exemption so it is possible for the noncustodial parent

to claim the dependency exemption while the custodial parent claims the dependent care credit.

19. **Since alimony for the payor of alimony is a deduction, the IRS has specific rules** to prevent divorcing couples from calling their property division “alimony” in order for the higher-earning spouse to get a tax deduction. Property division is a non-taxable exchange between the parties with no deductions or income tax consequences for either party at the time of the division. If alimony should drop more than \$15,000 per year within the first three years after divorce, the IRS will re-characterize the payments as non-deductible and the excess tax deductions will have to be paid back to the IRS.
20. **In dividing marital property, it is essential to remember that different assets have different tax consequences** and are, thus, not necessarily equal. For example, a \$200,000 retirement account is worth considerably less than a \$200,000 unmortgaged house because federal income taxes have yet to be paid on the retirement account when it is distributed. Be sure to offset similarly taxed items against each other or negotiate to make an adjustment for taxes to be paid.
21. **Find out the “tax basis” of all your assets.** Tax basis is a tax term relating to the amount of after-tax dollars originally invested in the item plus (in the case of real property) the cost of subsequent improvements and certain items on the closing statement. The tax basis of a deductible IRA, for instance, is zero because it was established with dollars which had not been taxed. The tax basis of your home or your personal savings, however, is the purchase price plus

any additional investments made in the form of improvements or additional funds.

22. **Capital gains on a house are less of an issue now than they were before the 1997 tax law** which provides a \$250,000 exclusion of profits for each spouse if they have lived in the house for two of the past five years. However, if the profit exceeds \$250,000, think about selling the house while still married so that the \$500,000 exemption will be available, or make other arrangements to get the largest possible exclusion.
23. **If a spouse's 401k funds are being awarded to you and need to be used to provide money for a down payment on new housing or for paying off debts,** be aware that there is a 10% penalty if you are under age 59 1/2. This penalty is in addition to regular income taxes on the 401k withdrawal. There is a one-time window of opportunity to avoid this penalty, but it must be taken before any funds are actually rolled over into your own IRA.
24. **Once you are divorced, if you have assumed your maiden name,** it is imperative that you notify Social Security of your name change. Otherwise, when you go to file your next tax return electronically using your new name, it will be rejected.
25. **If the end of the calendar year is drawing near and you are close to the point of settlement,** the question will undoubtedly come up as to whether you should conclude



the divorce this year so that you can each file separately as Single or Head of Household, or whether you should delay the divorce until the beginning of next year so you can file one last time as Married, Filing Joint. Your marital status for filing purposes is determined on December 31. There is no quick, automatic answer to this question. You need to consult a divorce financial specialist or a tax adviser to calculate the answer or to determine whether taxes could be saved by structuring large alimony payments in the year of divorce to shift income from a highly paid spouse to a low income spouse.

26. **If taxes are filed jointly but after the divorce is final and a tax refund or payment is due**, you need to include the handling of these situations in your negotiations.

27. **Your settlement agreement should not include agreements between you and your partner which are contrary to tax code** because the tax code will override anything you have decided. Filing status, for instance, is determined by tax law and not by you and your spouse deciding that one of you will file as Single and the other as Head of Household. If a divorce is final in December, for instance, and a child lived with both parents until then and in the mother's home during December, the mother could probably qualify as Head of Household even though the father may have paid all the household expenses while they lived together. The father would then have to file Single.



Retirement Plan Tips

28. **Collect all the information you possibly can about all retirement plans for both spouses.** To the extent that they were earned during the marriage, they are marital assets subject to division. Contact your employer's human resources department to obtain the latest Summary Plan Description of your retirement plan. Also ask whether they have a model QDRO (or QILDRO in the case of state, county or municipal retirement plans) and make sure you have the most recent statement of your account balance.
29. **Understand that there are two basic types of retirement plans:** Defined Contribution Plans and Defined Benefit Plans. Defined Contribution Plans include 401k plans, in which the account balance is your retirement plan benefit. Defined Benefit Plans provide for a future monthly payment after retirement, usually based upon length of employment and salary earned. Defined Benefit plans are far more complicated and the amount, if any, you have contributed is usually irrelevant. Defined Benefit plans for a long-term employee, however, can provide a significant benefit. A divorce financial specialist, or possibly your attorney, can give you a close estimate of the present day value of the monthly benefit your most recent retirement statement says you will have earned at retirement. This can help you decide if there are sufficient other assets to offset the value of your pension in a trade-off with your spouse so that you can keep your entire pension, or if the benefit will need to be divided.



30. **If you have been married ten years or longer at the time of your divorce**, you are entitled to the greater of whatever Social Security benefit you have earned from your own employment, or one-half of your spouse's Social Security benefit. Your taking one-half of your spouse's benefit does not reduce that spouse's benefit, nor does it deprive a future spouse of a similar benefit if a remarriage lasts ten years or more.

31. **If you have earned benefits under both a retirement plan**, such as Teachers' Retirement System (which does not come under Social Security) and a retirement plan which does come under Social Security, your Social Security benefits will be calculated with a different formula. They will be significantly reduced under the provisions of the Windfall Elimination Provision.

32. **If you have earned benefits with a retirement plan not covered by Social Security** and you are also entitled to one-half your spouse's earned Social Security benefits, your Social Security benefits will be reduced, and possibly eliminated, by an amount equal to two-thirds of your benefits under the non-Social Security retirement plan.

QDROS, QILDROS, and other orders

33. **QDROS are simply Qualified Domestic Relations Orders and QILDROS are Qualified ILLINOIS Domestic Relations Orders** which apply to Illinois State, County, and Municipal retirement plans. What makes them Domestic Relations Orders is that they have been issued by a Judge in a domestic dispute. What makes them Qualified

is their acceptance by the Administrator of the Plan. Generally your attorney or a specialist hired by your attorney drafts the QDRO.

34. **If you are awarded a portion of your ex-spouse's pension, profit-sharing or 401k benefits in your divorce decree,** you will get NOTHING unless a QDRO has been filed and accepted by your ex-spouse's employer's plan administrator.
35. **To assure your rights to your portion of your ex-spouse's pension or 401k,** the QDRO should be prepared for the judge's signature at, or very shortly after, your date of divorce. Insist that your attorney be prepared to do this.
36. **A divorce decree granting you "50% of your ex-spouse's pension" is too vague to guarantee** that when the QDRO is prepared it will be written so that you will ultimately receive what you thought you were going to get. The phrase "one-half of the husband's pension benefits," though it may seem perfectly clear, can be interpreted in many ways. It also does not include significant other pension benefit rights that should be included.
37. **If your ex-spouse dies or retires before the QDRO has been filed and approved,** or if there are no survivor benefits included in the QDRO, you could lose the possibility of a lifetime pension for yourself.



38. **Some of the major issues to be discussed** and included in your Marital Settlement Agreement and incorporated into the QDRO:

- a) If your ex-spouse dies before receiving his pension, will you still receive your portion of the pension?
- b) If your ex-spouse dies after he has started to receive monthly benefits, will you still receive your portion?
- c) Is there a cost for a post-retirement survivor annuity to assure your benefits after your ex-spouse's death? If so, who will pay that cost?
- d) If, after your divorce, your spouse receives an early retirement bonus package or receives any other supplements or refunds, will you be entitled to any of them?
- e) Will you get a pro rata share of each and every investment in your spouse's retirement plan or will specific investments be allocated to each of you?
- f) If the market goes sharply up or down after the divorce but before the 401k is actually divided, do you participate in those gains or losses?
- g) What happens if your spouse suddenly dies after the divorce but before the 401k is actually divided. Do you still get your share?

As mentioned, retirement plans, particularly Defined Benefit plans, are complicated assets and many issues need to be addressed. Expert guidance is needed if you are to get what you anticipate getting.

39. **Pension plans sponsored by Illinois state, county or municipal governments are divided by a QILDRO not a QDRO.** Such plans do not provide benefits for a surviving ex-spouse. When the participant dies, the pension stops. Alternate arrangements, such as life insurance or offsetting the pension with other assets, need to be made to compensate for the loss of the pension.

40. **Plans divided by QILDROs freeze the pension benefit awarded to the non-employee ex-spouse and do not make any provision for inflation before retirement.**

Insurance Tips

41. **If you will no longer be listed as a dependent on your spouse's health insurance policy at work,** there are several ways to get coverage. The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows up to 36 months of continued health insurance for the ex-spouse of the employee if the company has at least 20 employees. Under the Illinois Spousal Continuation Law for employees of Illinois companies (except those that are self-insured), there is coverage for ex-spouses for up to two years. However, if the ex-spouse is age 55 or over and disabled, coverage can extend to age 65 when Medicare comes in. Getting your own health insurance through your own employer is undoubtedly the most economical alternative. However, if you are not working and are in good health, consider applying for your own individual health insurance policy. It is likely to be less expensive than COBRA and you will be covered as long as you continue to pay your premiums.



42. **Alimony stops upon the death of the payor and while child support remains an obligation of the estate**, if there are few assets in the estate it is extremely important to insure this income with a life insurance policy on the payor's life. Be sure, however, that the policy is in effect when it's needed. This can be accomplished by making the beneficiary (you) the owner of the policy, or by making you an irrevocable beneficiary who is notified if the premium hasn't been paid. The insurance company could supply the forms for these changes. If you are the owner, you will receive notification annually if premiums have not been paid so that you can pay them before the policy lapses.
43. **If you haven't had insurance on your own life**, and you have children who are financially dependent on you and your earnings, you should consider getting insurance. Relatively inexpensive term insurance policies can be purchased to cover this need.
44. **If group disability insurance is offered at your job, seriously consider applying for coverage**. Consider the financial impact on you and your children if you were seriously ill or injured and unable to work for an extended period of time. If your budget allows, consider additional, individual disability insurance to supplement what you can have at work. During your working years not only are the chances of disability greater than the chances of death, but the costs of being alive and disabled can be greater too. This type of insurance is very expensive, however, so group coverage may be the best that you can do.

Miscellaneous Tips

45. **Generally, debts incurred after separation but before the date of divorce are considered the responsibility of the spouse who incurred them.** One exception, though, is “family necessities,” such as food, clothing, shelter, medical care, and children’s expenses. Your spouse may be obligated to pay these; however, if the spouse defaults or refuses to pay, creditors can come after you despite what your marital separation agreement says.

46. **Also, despite what your divorce decree may say about who is responsible for which of the debts incurred during your marriage,** if your partner defaults on payment, creditors may very well come after you for payment, particularly if your name is also on the credit card.

47. **If you have an equity line of credit on your home,** talk to your attorney about visiting your bank and requesting in writing that the account be closed or frozen so that neither of you can increase this debt.

48. **Consider cost of living increases for child support and spousal support.** At a minimum, annual inflationary increases should be discussed. Otherwise, the residential parent is likely to get further and further in debt as expenses for food, clothing and child care, etc., increase each year. Consider, also, increases in child support due to the children’s progression through different developmental stages with needs for sports equipment, computers, braces, cell phones, and auto insurance.

49. **If one or both of the divorcing parties owns a business, it needs to be appraised.** While good appraisals are expensive, this is a necessity. Without knowing what the business is worth, it is really impossible to make good settlement decisions. However, if the business is a professional practice, it may not be worthwhile to get it appraised. If the main revenues of the practice are from the professional services provided by one spouse, for divorce purposes the financial value of the practice may be little more than the furniture and fixtures owned.



50. **Household goods are generally valued at garage sale, or thrift shop, value and NOT at what was paid for them.** Though it's painful to realize that the sofa you paid several thousand dollars for is now only worth a few hundred dollars (especially if you need that money to buy new furnishings), collectibles, antiques, or original art are the only real exceptions. These items may need to be appraised if you feel they have significant value.
51. **Accounts set up for your children under the Uniform Gift to Minors Act** or similar provisions of which you are the custodian are NOT your property and are not divisible as marital property. They belong to the children. You are simply the custodian, holding the accounts for the children's benefit until they reach age 18 or 21 (depending on the law under which they were established). Accounts titled in your name or your spouse's individually or jointly

– even though earmarked by the two of you for the children's education – are NOT the children's property. They are divisible as marital property if they were set up during the marriage with marital funds even though you and your spouse may agree in your MSA that the funds are to be used for college.

52. **Stock options, deferred compensation plans, and some of the less common investment limited partnerships** and more exotic investments can be quite complicated. They require expert assistance on determining their type, if and how they can be divided or transferred, the methods for doing so, and the tax consequences. Collect as much documentation as you can about these assets so the experts can evaluate them.
53. **In general, the grounds for your divorce will have little or nothing to do with the amount of marital assets** you receive or the amount of spousal or child support you receive or pay. Though there are probably strong feelings that have arisen during the course of the divorce, the financial arena will not provide a good venue for exacting revenge on your spouse.

College Tips

54. **It's common for courts to reserve jurisdiction** about how college costs will be shared between parents. Generally the ex-spouses return to court as college draws near. However a principle for distributing these costs can be determined at the time of the divorce, even though college may be a long ways off. If properly planned, a return to court and its associated costs can be avoided. It can be included in the MSA, for instance, that college costs are to be divided



equally or in a fixed proportion, or perhaps in proportion to each party's family income at the time of college, with agreements in place to share the appropriate financial information to determine these amounts. It would also be wise to agree upon issues such as whether private or public colleges are to be supported by the parents, the standard of academic performance expected, and the number of years of undergraduate education to be paid for before a degree is granted.

55. **The FAFSA form, in the case of divorced parents, is filled out** with the financial information of the parent (and any step-parent) with whom the child lives. Any support received from the non-custodial parent is also to be included for FAFSA, but, otherwise, the income and assets of the non-custodial parent are not considered in determining a student's financial need. Many private colleges, however, do consider the non-custodial parent as a potential source of support and may require a supplemental financial form from that parent which may affect the awarding of the school's own financial aid.

56. **Useful Websites for Information on Divorce**

Organizations of Professionals Dealing with Divorce (Good for locating professionals in your area and for getting a sense of what the various professionals do).

- **www.institutedfa.com**: Institute for Divorce Financial Analysts. Lists financial professionals by state who have been certified by this institute.

(Formerly known as the Institute for Certified Divorce Planners)

- www.divorceillinois.org: Association for Illinois Divorce Financial Analysts.
- www.aaml.org: American Association of Matrimonial Lawyers. National organization of family law attorneys.
- www.dcba.org: DuPage Bar Association
- www.abanet.org: American Bar Association
- www.abanet.org/family: American Bar Association's Section of Family Law
- www.illinoisbar.org: Illinois State Bar Association
- www.acresolution.org: Association for conflict resolution
- www.mediate.com: Mediation Information and Research Center
- www.collablawil.org: Collaborative Law Institute of Illinois. Attorneys, mental health professionals, divorce coaches, and financial professionals trained in, and committed to, the collaborative divorce process.
- www.collabgroup.com: International Academy of Collaborative Professionals

Informational Websites (Most sites contain useful information, articles, and listings of professionals who have paid fees to be listed on the websites).

- www.Divorcesource.com
- www.Divorcenet.com
- www.divorcesupport.com

- www.betterdivorce.com
- www.divorceinfo.com
- www.divorcecentral.com
- www.divorceasfriends.com
- www.DivorceMagazine.com
- www.lawlinks.com
- www.findlaw.com
- www.divorceandfinance.com
- www.smartdivorce.com
- www.divorcecentral.com
- www.wife.org
- www.wiser.heinz.org
- www.oasisexperience.com
- www.thelilactree.org



Pathways to Divorce

57. **Adversarial Divorce:** Each spouse hires an attorney to represent him/her and each attorney negotiates on behalf of their client to get the best deal they can for their client. The attorney tells you about the law, what to expect in court from the judge, and protects your interests. If an agreement isn't reached, the lawyers go to court with you for a trial before a judge. Over 95% of divorce cases, however, reach settlement before trial, though it may be literally on the steps of the courthouse.

Advantages:

You have someone to answer your legal questions.

You buy yourself an experienced negotiator.

Someone guides you through the unfamiliar territory of the court system and takes care of the paperwork.

Subpoenas and interrogatories are available to you to get information from your spouse.

58. Do It Yourself (Pro Se) Divorce: You go to the clerk of the circuit court and request the forms you need to file, fill them out, pay the required filing fees and file them. Alternatively, you could go to a Paralegal, Documents Preparation service or to a stationary store and buy a "Divorce package." You fill in the blanks with answers you and your spouse have agreed on.

Advantages:

You save a lot of money today.

Disadvantages:

You may feel you've lost control over your own divorce.

You may feel like the lawyers are escalating your conflict by telling each of you what they think you should or shouldn't give or get.

The expenses seem to mount rapidly with trips to court, etc. You're never sure how much more it's going to cost.

Disadvantages:

No one tells you HOW to fill out the forms.

Advantages:

Disadvantages:

You don't know what you should or should not agree to.

There's no one to answer questions about your legal rights.

There's no one to answer questions about what's financially best for the two of you.

59. **Mediation:** A neutral third party helps you and your spouse negotiate agreements about how each of you will continue parenting your children, how you will divide your assets, and the amount and kind and duration of financial support that will enable both to achieve and maintain financial security.

Advantages:

Usually less costly and bitter than an adversarial divorce.

Disadvantages:

If attorneys are not involved until the end of your mediation, they may not understand the reasons you've made the agreements you have, and may try to talk you out of them, thus derailing the process and the time and money spent.

Paid for on a pay-as-you-go basis at the time of each mediation session with no large retainers required.

Mediators from one discipline, e.g., mental health, may not have full understanding of the financial issues, or vice

Advantages:

Though attorneys need to be hired to consult with you along the way and write up or review the divorce agreement, the lawyer's role is more narrowly defined.

You and your spouse are in charge of the negotiations.

Disadvantages:

versa, and may fail to bring all the relevant issues up for discussion.

If there is a significant power imbalance between the spouses, it may not be possible for the mediator to ensure that agreements are fair for both parties.

60. **Collaborative Divorce:** Two attorneys and their clients meet face to face to resolve issues and reach agreements beneficial to all involved. If an agreement is not reached, the attorneys and any experts involved are disqualified from proceeding further on an adversarial basis. The clients agree to honest and voluntary disclosure of all pertinent information and documentation. A collaborative team consisting of the attorneys, and joint experts, such as financial professionals, therapists, coaches or child specialists, are on call to help the clients with the intense emotions that may arise during the process.

Advantages:

Designed to reduce stress and animosity and facilitate post-divorce parenting relationships.

Disadvantages:

May not be appropriate or effective for very high conflict divorces.

Advantages:

Provides individual control over the negotiations.

Disadvantages:

Though more cost efficient than litigated divorces, it may cost more than mediated divorces because of the presence of at least two or more professionals at each negotiation session.

Protects privacy.

Fosters adherence to agreements because they have been made mutually.

61. How do you choose?

- There may be no choice. If one spouse is totally unwilling to cooperate, the only alternative may be an adversarial approach.
- If you want to keep conflict as contained as possible, then mediation or collaborative law are the best alternatives.
- Remember, cooperation does not mean capitulation.
- With any approach, you need to prioritize your needs and not sweat the small stuff.

Hiring professionals

62. When do you need lawyers?

- When you have legal questions.
- When you need help negotiating.
- When you don't know what your rights are or what you could expect if a judge were to decide the issues.
- When you see your divorce as a battle to be fought against your spouse about one or more issues.
- When you need legal documents prepared.

63. When do you need divorce financial experts?

- To understand the short and long term financial consequences of a proposed settlement.
- To check out the tax implications of a proposed settlement.
- To help you answer the question of how you'll be able to survive financially after the divorce.
- To help you understand the options offered in the retirement plans you or your spouse have.
- When you have financial questions.

64. When do you need a therapist or divorce coach?

- When your emotions are getting in the way of your standing up for what you need.
- When your feelings make it hard to take action on issues.
- If you're concerned about the effect of your divorce on your children and want to know what to expect from them and how to help them.

65. Last, but not least, you need to weigh the consequences of actions you take to protect your interests against the consequences they may have in escalating the conflict between you and your spouse, particularly if you have children. Your spouse is likely to view unilateral actions such as closing or freezing accounts as hostile actions. This does not mean you should allow your rights and needs to be trampled; however, you need to keep your priorities in mind. If enough good will exists between you to discuss

taking these kinds of actions, this would probably be a better approach than acting solely on your own. If, however, there is already a high level of hostility and distrust between you and you are barely speaking, you will probably want to act quickly to protect your financial interests. Research has shown that the only statistically significant factor about how children fare when their parents divorce is how much the parents fight and how they handle the conflict around the children. Do what you have to, but resist bringing it up around the children.

To order additional copies of this booklet, please contact
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ON THE ROAD TO DIVORCE:

A Traveller's Companion



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