

Life after divorce

A guide to some of the matters you may need to handle post-divorce.

By Diana Shepherd

You've just received your divorce judgment. Give yourself a pat on the back for having completed such a long, hard process. But before you breathe that sigh of relief, you should know that it ain't over yet. Your judgment may require you to handle more paperwork, payments, and the transfer of assets. And now you have the challenge of starting a new life on your own: perhaps managing money for the first time, or finding a (new) job, or figuring out how you're going to take care of your kids as a solo or part-time parent.

As with most divorce-related matters, this is going to seem like a formidable challenge indeed. But take heart: if you can maintain a positive attitude, and get some good advice and information, you can tie up all the loose ends and get on with creating a satisfying new life for yourself. Here are some hints and suggestions to put you on the right track.

Your Divorce Judgment

Read your separation agreement (if any) and your divorce judgment carefully. If you don't understand something, ask your lawyer about it. If your agreement has not been finalized yet, now's the time to make sure you understand and can live with all of the stipulations. Whatever you do, don't agree to something in the hope that you can get it changed down the road. You are entering into a legally-binding contract with your ex-spouse, and you can't break the terms of the agreement easily. Unless there's a powerful (and legal) reason to modify an agreement, the courts will not look favorably upon your request to do so. So make sure that you're willing and able to comply with all of the terms before signing anything. After you receive your divorce judgment, do exactly what it requires you to do. This point cannot be made too strongly: if you fail to live up to your legal obligations, you're in for another round of bitterness and acrimony -- and maybe even another court battle. Can you really afford it -- financially or emotionally?

If you want to comply with the agreement, but you're unsure of your next step, talk to your attorney. He or she will tell you what you need to do (in what order), which things you can handle yourself, and which items your attorney should handle. Ask your lawyer to put this list in writing so there's no confusion or wasted effort later on. You can use this letter as a checklist to help ensure nothing gets accidentally overlooked.

According to your judgment, you may need to complete certain tasks and transactions by a specific date. These may cover a wide range, including things such as: issuing the first child or spousal support check; closing your joint checking account; canceling joint credit cards; selling the house; moving your possessions out of the cottage; or returning your ex's comic-book collection. Mark these dates on a calendar so you don't miss them. If you demonstrate your intention to live up to your side of the agreement from the very beginning, it will go a long way towards creating goodwill between you and your ex.

Transferring Real Estate

If your agreement states that you or your spouse will become the sole owner of property you currently own together -- such as a house, rental property, cottage, other buildings, or land -- then one of you will need to transfer his or her interest in the property to the other. If you're the one who's keeping the house, for example, your ex needs to give you a signed copy of the deed to the house. If you don't know where the deed to the house is, check with your lawyer, a title company, or the recorder of deeds in the county courthouse where the property is located. If you are assuming the mortgage along with the house, you'll need to give your ex a deed of trust to secure your assumption of the mortgage loan. If there are still mortgage payments due on the house, you will be liable for the debt -- even if your decree calls for your former spouse to pay it off.

Conversely, if your spouse keeps the house, assumes the mortgage, and then defaults on the loan, the lender can come after you for payment -- despite what your judgment says. So if your ex is keeping property that you used to own together, and you haven't finalized your agreement yet, consider adding a "hold harmless" provision to your agreement; this will give you the right to sue your ex for any money you have to pay to cover his or her default.

Selling the house may be your best option if it's your only real marital asset, if it's too big for you to live in or maintain alone, or if it holds too many unhappy memories. That way, you'll both probably get to leave the marriage with some money in your pockets, and you won't have to worry about being on the hook if your ex later defaults on the mortgage.

If your ex is going to keep the house but pay you a certain amount of money over a set time period -- say \$50,000 over five years -- you may want to secure the money with an asset. This is what a bank would probably do, and there's nothing to stop you from doing it, too. In the example listed above, you would secure the debt by placing a \$50,000 lien against the house (record this lien at the county courthouse where the property is located). This means that your ex can't sell, borrow against, or transfer the house without paying you first. It also means that you can foreclose on your ex and sell the house if you have to. (If you and your ex are still connected to each other by your children, foreclosure really is a last resort since it will certainly exhaust any goodwill remaining in your relationship.)

Foreclosure and subsequent sale can work to your advantage if there's sufficient equity in the house to pay off the mortgage, cover the costs of having a trustee or sheriff sell the house, and hopefully repay some or all of the money your ex owes you.

Here's a list of some of the documents you may need when it comes time to transfer property:

- **Title**
This document outlines the right to ownership of the land. The evidence of the ownership is commonly shown in documents such as: a Certificate of Title; an Abstract of Title with a lawyer's opinion; Title Insurance; a Torrens Registration Certificate; or a Deed for the property). If you can't find your proof of ownership, ask your lawyer or the recorder of deeds at the local county courthouse for a copy.
- **Title Insurance**
This policy insures the owner or the mortgagee against loss by reason of defects in the title to a parcel of real estate (other than defects, encumbrances, and matters specifically excluded by the policy). The title company or your lawyer has a copy.
- **Mortgage**
This is a conditional transfer or pledge of real estate as security for a loan. Ask your lender for this.
- **Appraisal**
Provides the estimated value of the property. Ask the appraiser or your lender.
- **Lien**
Gives the property value and the amount of the debt secured by the property. Information about liens can be obtained from the lender, your lawyer, the title company, and the recorder of deeds.
- **Homeowner's Insurance Policy**
Lists the value of the property and personal property -- everything from computers to bicycles to appliances to artwork. Ask your insurance company for a detailed copy, and make sure to let them know about changes to the policy (e.g., your ex and all his/her property are deleted, etc.) as soon as possible.
- **Affidavit of Title**
You may need to make a written statement, acknowledged by a Notary Public, in which you identify yourself and indicate your marital status; certify that no defects have occurred in the Title since the examination on the date of the contracts; and certify that you are in possession of the property (if applicable).

Transferring other Property

If you need to transfer the ownership of vehicles -- such as a car, motorcycle, or boat -- ask your attorney how best to do it.

If you're going to be transferring assets such as stocks, bonds, or mutual funds to your ex, here's a piece of good news: you won't have to pay a capital gains tax if their value has appreciated (and let's hope it has!) since you originally purchased them.

QDRO Queries

A Qualified Domestic Relations Order (QDRO) is a "required document that awards to a divorcing spouse all or a portion of the pension benefits that would otherwise be paid to the plan participant," says Carter Troyan, the president of Troyan Corporations, a company that prepares QDROs in all states except Minnesota. "The QDRO guarantees that the former spouse will receive that portion of the pension assigned in the property settlement agreement or judgment of divorce." If your divorce judgment states that you are to receive a portion of your ex's deferred retirement income -- such as pension benefits, profit sharing money, or 401(k) funds -- then you'll need a separate QDRO for each retirement plan.

This is a complicated document with serious financial ramifications, so this isn't the place to try to save money by doing it yourself. You need to hire a court-appointed qualified expert to draft this document. If you have it prepared on the cheap by someone without the knowledge or experience to draft it properly, you can jeopardize the tax-deferred status and the receipt of the benefits; if a proper QDRO isn't in place, the administrator may not disperse the funds according to your divorce agreement.

To ensure that you'll get your money when the time comes, send the professionally completed QDRO to the employer, bank, or firm administering the retirement benefits.

Insuring your Future

Your divorce decree may allow you to remain on your ex's health-insurance plan for as much as three years. The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides this time for you to acquire your own health insurance, but continuing the coverage is not automatic: you have to inform your ex's employer in writing within 60 days of your divorce judgment if you want to maintain coverage.

If your judgment requires your ex to pay for your COBRA coverage, ask to receive proof of payment from the company to ensure that your coverage isn't canceled for nonpayment. You don't want to arrive at the emergency room and find you have no health insurance because your ex "forgot" to pay the premiums.

If you'll be receiving spousal or child support, you might want to consider insuring those payments with a specialized plan like the one offered by DPC Inc. Currently available in NJ, MA, PA, OH, and Washington D.C., the "Alimony and Child Support Protection Plan" ensures that your support payments will continue in the event that your ex-spouse has to stop work because of illness or disability.

You may have other insurance needs too -- from car to home to life insurance. If all of these were arranged by your ex, you need to modify them or purchase new insurance altogether.

Writing your Will

If you've never written a Will, now's a good time to do so. Even if you already have one, you'll need to modify it to reflect your new marital status, beneficiaries, etc. Despite what you may think, Wills are not just for the rich and famous: they're for anyone who wants to control who will inherit their property. In the absence of a Will, state law will determine who gets what after you die.

In most states, if you do have a Will, all provisions for a spouse as executor, beneficiary, or administrator are revoked automatically when you get divorced. "The entire Will isn't revoked -- just the parts pertaining to the ex-spouse," explains Patricia Ferrari, JD, a partner in the matrimonial department at Phillips Nizer Benjamin Kris & Ballon in New York City. "But it's customary for people to change their Wills instead of relying on parts being revoked. Many lawyers encourage their clients to change their Wills while the divorce is in process in case something happens to them," she continues. "In New York, you can't delete your spouse until the divorce is final, but you can limit their inheritance to one-third of the estate."

According to Ferrari, it's usually better to draft a new Will rather than adding a codicil (a written amendment). "A codicil requires giving notice, it's more difficult to probate, and it isn't any cheaper to create."

If you have minor children, you have important reasons aside from distribution of property to write a Will. If you have custody of your children, when you die, the children's other parent (presumably your ex-spouse)

normally assumes full responsibility for the children. If you don't want your ex to raise your kids, you can state your wishes in your Will and name another guardian. "However, because your reasons for making this request are probably not flattering to your ex, it's usually not a good idea to state them in your Will," advises John Ventura in his informative book entitled *The Will Kit*. "If you do, your ex-spouse may sue your estate for libel. Instead, you may want to provide your executor with a written statement of your reasons and other pertinent documentation." If you have the resources, Ventura adds, leave some money in your Will for your executor to pursue a contest of guardianship should your ex take the kids in spite of your wishes.

Stating a preference in your Will may not be enough, however. Unless your executor can demonstrate that your ex would be an unfit parent -- because he/she is a drug addict, alcoholic, criminal, has a history of mental illness, or has not seen or taken any interest in the children for an extended period of time, for instance -- the judge will probably award custody to your ex. If you're seriously worried about your ex gaining custody of your children if you die, talk to an experienced family lawyer about your situation; he or she may be able to suggest strategies to you.

Even if you're happy with the thought of your ex-spouse raising your children after your death, you may still wish to appoint a personal guardian for them in the event both you and your ex die while the children are still minors. If this is the case, you and your ex should decide on the guardian together, and name this person in each of your Wills. The same person can be designated as both a personal and a property guardian (the adult who manages the assets you leave to your minor children in your Will).

There are many things to consider when choosing a personal guardian for your child. Choose someone who shares your basic values and morality -- and your religion if that's important to you -- and someone who has the time, willingness, and ability to take on the job of raising your child. Assuming your child is old enough to have an opinion on this subject, discuss your choice(s) for guardian with him or her. Pay attention to any strong objections your child has to a particular person -- you don't want to stick your bereaved child with someone he or she doesn't like, or worse, someone who has been secretly abusing the child.

Other Planning Tools

Aside from a Will, there are a couple of other estate-planning tools that could help to provide for your minor children: "custodial accounts" and "trusts." Before deciding which route to take, you should talk to an estate-planning attorney.

You can set up a custodial account at a bank or brokerage house, which allows you to make *intervivos* gifts (given while you're still living) of assets to a child by transferring these assets into his or her custodial account. You designate an adult custodian for each account, who will manage the assets and pay an allowance (if desired) to the children until they reach the age of majority.

A trust is a legal entity that holds and manages assets for one or more beneficiaries. There are certain types of trusts that can provide tax benefits to the divorced person establishing the trust, but "saving taxes for the beneficiaries is more likely," according to Richard Lert, an estate lawyer and partner at Wilentz, Goldman & Spitzer in NJ. Again, you must name a trustee to manage the assets for your children. Setting up a trust is complicated, and should not be attempted without an experienced estate planning attorney.

Body and Soul

Although they're often neglected, there are two more vitally important things you have to do post-divorce: create a new social life (or pick up with old friends you didn't or couldn't see much during your marriage), and take time to nurture yourself. If you have young children, you'll be tempted to devote to them exclusively whatever time you have outside of work. There's no doubt they need extra love and attention from you right now, but they also need you to be OK -- physically and emotionally. And you won't be OK unless you take some time to care for and enjoy yourself.

I'm not suggesting you go out and party every night, but you must see friends or family at least once a week to nurture your spirits, and reserve 30 minutes to an hour a day to care for your body. If you neglect your social life completely -- even if that's what your kids say they want -- you're not doing your children any favors. When they become teenagers, they're unlikely to want to have you hovering around them at all

times. And if your children are sensitive, they'll pick up on the fact that you have no life outside of them and they'll begin to feel responsible for your well-being and happiness.

To keep from burning out your friends -- you'll want to keep talking about your divorce long after they've lost interest in hearing about it -- join a support group. This group of people will understand what you're going through better than your closest, happily married friend. Consider enrolling your kids in a support group of their peers, too.

How you take care of your physical self is up to you. You could meditate in the mornings after you wake up; go for a walk, run, or join an exercise class (with a friend, if possible) at noon or after work; book a daily or weekly massage; or take a hot bubble bath before bed. What you choose to do will depend on your needs and level of physical fitness, but you need to do something that's only for yourself every day. By participating in "self-centered" activities, you're also sending a message to your subconscious that you're "worth it" -- an added psychological bonus in a time when your self-esteem may be at a low ebb.

A Word about Wills

Even though every Will is unique -- because it depends on your personal circumstances -- most Wills contain similar types of information, such as:

- A clause revoking any and all previous Wills you may have written.
- The names of your estate executor and a substitute executor (in the event your first choice is dead or incapacitated).
- The names of your beneficiaries and exactly what property you are leaving to each one.
- Information regarding how any estate-related expenses -- such as estate taxes and fees, or debts - will be paid.

There are some things you can't do with a Will, including:

- Leaving money to someone for them to use for an illegal purpose.
- Giving away property or assets you don't own.
- Making inheritance conditional on the beneficiary performing an action or behaving in a manner that isn't in the interest of good public policy.