

# Chapter 1

## Divorce Fundamentals

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### *In This Chapter*

- ▶ Figuring out your financial future
  - ▶ Beginning the divorce process
  - ▶ Knowing the steps in the divorce process
  - ▶ Resolving the basic issues in your divorce
  - ▶ Figuring out the financial costs of divorce
  - ▶ Getting through your emotions
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**T**he thought that a divorce is in your future may make your stomach churn and cause you to lie awake at night worrying about what the process will be like, especially if your only knowledge of the legal system comes from watching courtroom dramas on TV. Understandably, the prospect of dealing with lawyers, courts, and legal mumbo jumbo may intimidate you.

Like most people in your situation, you're probably also concerned about what the divorce will do to your finances. You may worry about how much you'll have to spend to get divorced and whether after your divorce is final you'll have to pay every penny you earn on spousal support and/or child support (or whether you'll receive enough spousal support or child support from your spouse). You may also lose sleep wondering about the kind of postdivorce lifestyle you will be able to afford.

And, if you have young children, you probably have worries about how your divorce will affect them. You're right to be concerned because studies show that when parents don't work together to make their children feel safe and to keep their lives as normal as possible during and after their divorce, the children are apt to suffer emotionally. Studies also show that these same children have difficulty establishing healthy relationships as adults.

After you read this book, you should sleep better at night and worry a little less because you'll be armed with the information and advice you need to help you and your children get through your divorce and prepare for life afterward.

This chapter takes you through predivorce planning, provides a peek at the divorce process, and touches on the emotional aspects of divorce. In addition, we introduce you to some of the professionals you may need to call on to help with your divorce, explain the role that mediation may play in your divorce and discuss a relatively new, non-court process for ending your marriage called a collaborative divorce.

## *Considering Whether You Have Cause for Concern*

If your marriage is going through tough times, you may find yourself wondering whether it's an example of the "for better or for worse" your marriage vows mentioned or whether your relationship is truly on the rocks. Although no test exists that can tell you whether your problems are typical reactions to the stress and strain that most marriages experience at one time or another or whether they point to more serious issues, troubled marriages do tend to exhibit many of the same characteristics. How many of the following statements apply to your marriage?

- ✓ In your mind, your spouse just can't do anything right anymore.
- ✓ You fight constantly.
- ✓ You've lost the ability or the willingness to resolve your marital problems.
- ✓ Resentment and contempt have replaced patience and love.
- ✓ You've turned from lovers into roommates.
- ✓ One or both of you is having an affair.
- ✓ You go out of your way to avoid being together and, when you are together, you have nothing to talk about.
- ✓ Your children are reacting to the stress in your marriage by fighting more, having difficulty in school, getting into trouble with the police, abusing drugs or alcohol, or becoming sexually promiscuous.
- ✓ You have begun having thoughts about divorce.

Don't panic if you find that your marriage exhibits some of these characteristics; you're not necessarily headed for divorce court. However, you do have cause for concern; you and your spouse need to assess your options — first separately and then together — and decide what to do next.

## You may be married without realizing it

In some states, you may be married in the eyes of the law if you live with someone long enough (although no state defines just how long “long enough” is) and meet other state criteria, like the two of you have been holding yourselves out as married, you file joint income taxes, or you have plans to marry eventually. Such an arrangement is called a common-law marriage and provides you and your common-law spouse all the same rights and obligations as any other couple in your state who were married formally in a civil or a religious ceremony. It also means that you must obtain a legal divorce in order to officially end your relationship.

The following states recognize common-law marriages:

- ✓ Alabama
- ✓ Colorado
- ✓ District of Columbia
- ✓ Georgia (Assuming a couple satisfied all the requirements for a common-law marriage before January 1, 1997.)
- ✓ Idaho (Assuming a couple satisfied all the requirements for a common-law marriage before January 1, 1996.)
- ✓ Iowa
- ✓ Kansas
- ✓ Montana
- ✓ Ohio (Assuming a couple satisfied all the requirements for a common-law marriage before October 10, 1991.)
- ✓ Oklahoma
- ✓ Pennsylvania (Assuming a couple satisfied all the requirements for a common-law marriage before January 1, 2005.)
- ✓ Rhode Island
- ✓ South Carolina
- ✓ Texas
- ✓ Utah



Marital problems can trigger depression, feelings of vulnerability, powerlessness, and anger, as well as sleep disturbances, any of which can impede clear thinking and sound decision-making. A mental health professional can help you or your spouse deal with these problems so that you can move forward. If your spouse is struggling emotionally, suggest that he or she get mental health counseling, assuming that you think your spouse will be receptive to advice coming from you given the state of your marriage.

## Getting Prepared Financially for a Divorce

Predivorce financial planning is essential to minimizing the cost of your divorce and increasing the likelihood that when your divorce is over, you have a settlement agreement that meets your short- and long-term

postdivorce financial needs. (We discuss how to prepare yourself emotionally in the “Surviving the Emotional Roller Coaster” section, later in this chapter, as well as in Chapter 7.) The amount and type of planning you need to do depends on how involved you’ve been in managing your family’s financial life, whether you have a good credit history in your own name, and whether you have maintained a career outside your home during your marriage. See Chapter 3 for advice about evaluating your family’s finances.



If your spouse totally surprises you with plans for a divorce, predivorce planning may be impossible, especially if you’re clueless about your family’s finances. If that’s the case, your divorce teaches you a painful lesson: That not being an informed and active partner in your family’s financial life is risky because you’re at an immediate disadvantage if your marriage ends (or if you become widowed).

Ideally, before your divorce begins, you will have

- ✔ **Built a good credit history in your own name.** In other words, all or most of your credit should not be *joint credit* — that is, credit that you share with your spouse. Without a solid credit history of your own, you will have a difficult time qualifying for credit that has affordable terms after your divorce. You may even have a difficult time qualifying for certain kinds of jobs or promotions because some employers check your credit history or credit score as part of their decision-making process. You may also have a difficult time renting a nice place to live because some landlords review their potential tenants’ credit histories or scores as part of their screening process. Finally, without good credit, you may not be able to obtain adequate insurance.
- ✔ **Cleaned up your credit history if the one you built in your own name was full of negatives.** To improve your credit history, make all future credit payments on time, don’t go over your credit limits, and don’t take on new debt. Within a matter of months, your credit history should begin to improve.
- ✔ **Begun to update your job skills or to develop new ones if you’ve been a stay-at-home parent or a full-time homemaker during your marriage.** In today’s economy, having the right job skills is critical to being competitive in the job market. You may have to return to school to get the skills that you need.
- ✔ **Considered taking a part-time or full-time job while you’re married.** By taking a job while you’re married, you can begin adding recent work experience to your resume and begin building some professional relationships that may help you after you’re out of your marriage.
- ✔ **Gotten the information you need about financial issues.** If you know next to nothing about money matters or feel that you need a refresher course, take a basic class in personal finance at your local college or university or through some other resource. Having the right money-related





information and skills is essential to negotiating the financial aspects of your divorce and to managing your money wisely after you're on your own.

- ✓ **Created a written inventory of all your family's assets and assigned an approximate value to each one.** Going into a divorce, a complete record of everything you and your spouse own is essential so that you know what assets you have to divide between the two of you. Without a record, you may overlook an asset and not get all that you're entitled to in your divorce. When compiling your list, don't worry about items of little value; instead, focus on financially significant assets like bank accounts, real estate, stocks, antiques, and so on.

When valuing each asset on your inventory, write down its *market value* — what the asset is worth now, meaning what someone would pay for it if you were selling it right now. Market value isn't what you or your spouse paid for the asset when you first purchased it.

- ✓ **Inventoried all your family's debts.** Your inventory should note the name of each of your creditors and how much you owe each one. Creating an inventory of all your marital debts is just as important as inventorying all your marital assets because you have to divvy up those debts during your divorce negotiations, too.
- ✓ **Located all the ownership papers for your assets.** These documents include
  - Deeds to property
  - Titles to vehicles
  - Documentation for stocks, bonds, mutual funds, and other investments
  - Life insurance policies
  - Estate-planning documents that you and your spouse prepared
  - Information about your respective retirement plans

You need these documents for two reasons. First, you need them to help determine the value of the assets that you and your spouse are dividing between yourselves. Second, after you've divided everything, you need the documents so that you can properly transfer the titles to you or your spouse, depending on who gets what. Without the titles to the assets you're taking away from your marriage being transferred to you, you will not be their legal owner.

- ✓ **Obtained copies of important documents.** Have on hand documents such as your family's tax returns for the past five years and your real estate tax bills for the most current year. Also obtain a record of all your bank accounts — the accounts that you and your spouse share as well as your individual accounts — including the types of accounts, the financial institutions where the accounts are located, and the account numbers.

- ✓ **Have begun thinking about your postdivorce financial needs.** Start figuring out how much money and which other assets you will need to live a financially secure life after your marriage ends. Consider what trade-offs you're willing to make with your spouse to ensure that your needs are met.

## Making It Official

Before your divorce can begin, you must take care of some preliminary divorce matters. For example, you must make certain that you meet the divorce requirements of the state where you want to get divorced. Also, you or your divorce attorney must file legal paperwork with the court to officially set your divorce in motion and you must decide whether you will file a no-fault or fault divorce, assuming fault divorces are permitted in the state where you're divorcing.



If you don't want to live with your spouse anymore, but you don't want to get divorced, either, you and your spouse can *separate*. You can separate temporarily while you decide what to do about your relationship or you can make your separation permanent and finalize it with a *legal separation agreement*, which addresses the same kind of issues you would address in a divorce. We discuss the pros and cons of separation in Chapter 4.

## Meeting the requirements

To get a divorce, you must meet certain minimum requirements set by your state. Although those requirements vary somewhat from state to state, the most common ones are

- ✓ **Residing in your state for a certain period of time.** A handful of states have no residency requirement — your obvious destination for a “quickie divorce” — but most states require that one or both of you be a resident for a minimum amount of time before you can file a petition for divorce or before your divorce can be granted. Six months is the most common residency requirement, but some states' requirements are weeks, months, or even a year. Some counties have their own residency requirements.
- ✓ **Getting divorced in the state where you live.** You must get divorced in the state you call your permanent home — and not in the state where you got married.
- ✓ **Being separated.** Before you can get a no-fault divorce, some states require that you live apart from your spouse for a certain period of time — six months to a year in most of these states, but as long as

two to three years in some states. The theory behind this requirement is that you and your spouse may have a change of heart and reconcile. See Chapter 4 for information about legalizing a formal separation.

## *Filing a divorce petition*

No matter what state you live in and regardless of whether you and your spouse agree that ending your marriage is for the best, your divorce officially begins when one of you files a divorce petition with the court in your area. If you and your spouse have already hired divorce attorneys, one of the attorneys files the divorce *petition*. (See the later section in this chapter, “Involving a divorce attorney,” as well as Chapters 13 and 14, for more information about working with a divorce attorney.) Otherwise, one of you can go to your local courthouse and file a divorce petition yourself.

After someone files a divorce petition, the nonfiling spouse is legally notified about the petition, which usually involves a sheriff or constable hand-delivering the notice, or the nonfiling spouse receiving the notice in the mail. If the nonfiling spouse disagrees with anything in the petition, such as the grounds for the divorce, the request by the filing spouse for sole custody of the couple’s children, and so on, he or she will file an *answer* with the court, stating his or her side of those issues.

## *Deciding whether to file a fault divorce*

Depending on the state you live in, if you initiated your divorce, you must decide whether to file a fault or a no-fault divorce. As of this writing, about 70 percent of all states allow couples to get either an old-fashioned fault divorce or a no-fault divorce, which is a kinder, simpler type of divorce.

When you file a *fault divorce*, you must provide a very specific reason, or *grounds*, for wanting to end your marriage. In other words, you must accuse your spouse of some sort of unacceptable behavior, such as adultery, physical abuse, mental cruelty, drunkenness, drug addiction, or insanity. Depending on your state, you may also be able to get a fault divorce if your spouse has been in prison for a minimum period of time or has deserted your marriage.

When you allege fault, you must also prove that the grounds actually exist. Proving fault may involve having a friend or relative who witnessed your spouse’s bad behavior testify to it, hiring a detective to document your spouse’s bad behavior on video, or something else. Although a fault divorce can provide the grist for a lurid soap opera, some spouses feel that the drama is worth it because if they can prove that what they allege about their partner is true, they may be able to get a better divorce settlement.

## Breaking up can be hard to do for same-sex married couples

Many married gay couples face a mountain of hurdles when their relationships go south and they decide to divorce. For example, some of them have difficulty finding attorneys to represent them who understand how to apply existing laws to the issues in their divorce. Also, because divorce-related laws aren't always clear when it comes to same-sex marriages, it's not unusual for married gay couples to have to resolve some of the issues in their divorce through litigation rather than negotiation.

Massachusetts has allowed homosexuals to marry since 2004, and California began allowing same-sex marriages in 2008 (but in November of that year, voters in the state passed Proposition 8, which rescinded the right of same-sex partners to marry). Same-sex spouses who married in Massachusetts or California but reside in one of the 43 states where the law doesn't recognize their marriage or where the law is silent on the issue of same-sex marriages

face other hurdles when their marriages hit the skids. Because their state of residence doesn't recognize their marriage, they must get divorced in the state where they were married, which means that they must meet that other state's divorce requirements, including living in the state for a certain period of time. (The residency requirement in Massachusetts is one year; in California it's six months.) This requirement poses economic not to mention logistical problems for many same sex couples who want to end their marriages. In fact, some of these couples have had to stay married. Others have taken legal action to try to force their home states to let them divorce there. To date, the results have been mixed, with a Rhode Island court prohibiting a lesbian couple who married in Massachusetts from divorcing in Rhode Island and a New York State court allowing a lesbian couple who married in Canada to divorce in New York. That ruling was the first of its kind.

Currently, all states recognize some form of *no-fault divorce*. If you opt for this kind of divorce, you don't have to prove that your spouse did anything to cause you to seek a divorce. Instead, all you really need to do is acknowledge that things "just didn't work out" between the two of you. Common grounds for obtaining a no-fault divorce include "incompatibility," "irretrievable breakdown," or "irreconcilable differences." Because you don't need to prove fault, this kind of divorce is usually less expensive, quicker to complete, and easier on spouses and their children than most fault divorces. As a result, no-fault divorces are much more frequent than fault divorces.



Fault used to play a major role in decisions about spousal support (or alimony), but many states no longer consider that factor. About half the states consider fault when dividing up a couple's property. In those states, fault has an impact on the final details of a couple's divorce, including the amount the spouse who's *not* at fault eventually receives in the divorce settlement. To find out whether your state permits fault divorces, call your local or state bar association or a divorce attorney in your area.

## Peering Into the Divorce Process

Although the ultimate goal of every divorce is to end a marriage, divorcing couples achieve that goal by heading down one of three paths. For example, some spouses work together to define the terms of their divorce because they want the process to be as quick, easy, and inexpensive as possible. They may or may not hire attorneys to help them. Other couples are unable or unwilling to cooperate with one another and as a result, their divorce goes down a path that is characterized by conflict, anger, and a big price tag. The most difficult path a divorce can go down is the one that ends with a divorce trial. This kind of divorce is emotionally draining, time consuming, and very expensive.



If you and your spouse have been married for a very brief amount of time, have no young children from your relationship, and have amassed little or no marital property and debt, your state may have an abbreviated divorce process for which you qualify. To find out whether your state has such a process and the criteria you must meet to use it, contact your state or local bar association or a family law attorney.

### *Deciding which path to take*

Just which path your divorce takes is up to you and your spouse. Your basic options include

- ✓ A cooperative divorce
- ✓ An uncooperative divorce
- ✓ A courtroom divorce

Sometimes a divorce that begins amicably can turn nasty and difficult. For example, initially you and your spouse may try to work out the terms of your divorce together on a friendly basis, but then one of you may become upset and the two of you stop trying to cooperate with one another. If this happens in your divorce and you and your spouse are working with attorneys, they may eventually succeed in negotiating a divorce agreement that the two of you are willing to live with; however, if your emotions are running high and you and your spouse are unwilling to compromise on one or more issues, your divorce may head to court, although the majority of divorces — even extremely contentious ones — get settled outside of court eventually. The following sections describe each divorce path in greater detail.

#### *A cooperative divorce*

A *cooperative divorce* is easiest on your pocketbook, your emotions, and on your young children. In this type of divorce, you or your spouse file a

no-fault divorce petition, and the two of you work out the terms of your divorce together. (Chapter 12 provides negotiating tips.) When you've decided everything, one of you files your final divorce decree. You can also achieve a cooperative divorce if you both hire attorneys to help with the negotiations but stay committed to keeping things friendly. (You and your spouse cannot share an attorney. You both need your own.)

One way to have a cooperative divorce is to end your marriage by using the *collaborative divorce process*. This process is a relatively new option for divorcing couples, and it's not currently available in all states. We provide an explanation of the collaborative divorce process later in this chapter.

After you and your spouse have a divorce agreement that both parties feel is fair (with or without the help of attorneys), the spouse who initiated your divorce by filing a divorce petition, or one of your attorneys if you're working with attorneys, files the agreement with the court. The spouse who initiated the divorce may have to make a brief court appearance. Soon after, your divorce becomes official. From start to finish, a cooperative divorce happens relatively quickly because you and your spouse work together toward the same goal and as a result, your divorce involves less bureaucratic red tape, fewer legal procedures, and less paperwork.

### ***An uncooperative divorce***

An *uncooperative divorce* occurs when you and your spouse can't agree on all the key issues in your divorce. For example, you want sole custody of your kids, but your spouse wants to share custody. Or you want to keep the house but your spouse wants to sell it. Usually the only chance spouses involved in this kind of divorce have to end their marriage is to hire attorneys to handle the negotiations and the legal paperwork for them. An uncooperative divorce tends to take longer than a cooperative divorce, costs a whole lot more, especially if it leads to a trial, and is harder on everyone's emotions.



You may be able to avoid a trial by resolving your differences through a dispute-resolution technique such as *mediation* (discussed in Chapter 15). In fact, in many states, you will not be able to get a court date until you have tried mediation.

### ***A courtroom divorce***

A *courtroom divorce* (see Chapter 16) is an extreme version of an uncooperative divorce and tends to be much more contentious, emotional, time-consuming, and expensive than a divorce decided outside of court because it involves a lot more legal paperwork and red tape and much more of your attorney's time. Your divorce goes to court when you and your spouse are unable to resolve all the terms of your divorce; either a family law judge or a jury decides how to handle all the outstanding issues.

Although taking your divorce to court may be unavoidable in your situation, it's risky because no matter how much time a judge or jury spends trying to understand your marriage, they can never have a complete grasp of its intricacies, the needs of your children, and so on. Also, although we like to think that all judges (and juries) decide legal issues with unbiased minds, the truth is that sometimes their own prejudices, preferences, and real-life experiences color their decisions. For example, maybe the judge's daughter is a single, divorced mom who struggles to make ends meet because her ex-spouse doesn't meet his support obligations, or maybe the judge has recently gone through a divorce and feels like he or she was "taken to the cleaners." As a result, neither you nor your spouse may be happy with the outcome of your trial. In fact, research shows that spouses who resolve the issues in their divorce through a trial are less likely to be happy with the final outcome of their divorce and less committed to making the terms of their divorce work than couples who work out the details of their divorce outside of court.

A courtroom divorce can exhaust you emotionally and financially, and it can create so much animosity between you and your spouse that years pass before it abates. If you and your spouse have young children together, this animosity can be a serious problem because your anger toward one another may seriously harm their short- and long-term emotional well-being. Also, don't forget that if you both want to be actively involved in their lives after your divorce, you will run into one another at their after-school games, recitals, graduations, weddings, and so on. The last thing you want is for your estrangement with your ex-spouse to overshadow or color the important events in your children's lives.



If your divorce ends with a trial, you're more apt to revisit the final terms of your divorce in your lawyer's offices and in court. Doing so not only takes money and time, but it also means that you never really put your divorce and your failed marriage behind you. Also, you can appeal the court's decision in your divorce, but appeals are hard to win. Plus, appealing means spending more money on an attorney and then, if you win your appeal, more money on a new trial. Also, a new trial may unleash emotions that you thought you had come to terms with. No one wins when you have to litigate your divorce, so do your best to settle without a trial. Sometimes swallowing your pride and giving up a little during your divorce negotiations is the wisest thing to do.

## *Involving a divorce attorney*

When most people think of getting divorced, they automatically assume that they need a divorce attorney's guidance from start to finish. That's the way people have handled divorce traditionally, and for many people, working hand in hand with an attorney is usually best. But you have other options, although it's almost always a good idea to consult an attorney at various stages throughout the divorce process.

## Hiring a CDP to help negotiate the financial stuff

A certified divorce planner (CDP) analyzes your family's finances and helps you develop a specific plan for resolving the financial issues in your divorce, such as property settlement, spousal support, and how much child support one spouse may pay the other above and beyond the minimum amount set by your state's child support guidelines. Also, the CDP may help you figure out a way to pay for your children's college educations, their summer camp, and other expenses that go beyond child support by taking into account your earnings potential, age, lifestyle needs, and so on. A good CDP considers not only what's best for you in

the immediate years after your divorce but also your financial needs in 5, 10, and 15 years.

You and your spouse can hire a CDP together if your divorce is amicable and you're both committed to working out an agreement that's fair, or you can each hire your own. For more information about how a planner can help you and for a referral to one in your area, contact the Institute for Divorce Financial Analysts, a national organization that certifies divorce planners. You can call the Institute at 800-875-1760 or visit its Web site at [www.institutedefa.com](http://www.institutedefa.com).

For example, you and your spouse may negotiate all the terms of your divorce and draft a divorce agreement with the help of Chapter 12, not attorneys. If you decide to do all the negotiating yourselves, it's a good idea for each of you to meet with a divorce attorney before you begin in order to get briefed on the divorce-related laws of your state and advised about the particular issues that relate to your divorce. After you and your spouse work out your divorce agreement, the attorneys should review your draft to make sure that you haven't overlooked anything important, that your interests are protected, and that you haven't unwittingly created the potential for future problems.

If you and your spouse can hardly stand being in the same room with each other or if you don't trust one another, you need attorneys to negotiate the details of your divorce agreement from start to finish and to prepare your final agreement. Similarly, if you're afraid of your spouse, have a hard time asserting yourself, or are unsure of your ability to negotiate a good settlement for yourself, don't go it alone — let an attorney handle your divorce. (See Chapter 13 for more information about hiring a helpful divorce attorney.)



If you want specific help working out the financial aspects of your divorce but don't want to pay attorney-level prices for the assistance, you can consider hiring a *certified divorce planner* (CDP), who's a CPA or a certified financial planner who specializes in helping couples resolve the financial aspects of their divorces. A CDP will help you not only get the best settlement possible under the circumstances but will also recommend how to manage and invest the assets you end up with in your divorce so you can maximize your return on their value in the future. A CDP isn't a substitute for an attorney but is

another player on your divorce team. In fact, CDPs and divorce attorneys often work hand in hand, especially when a couple owns a substantial amount of assets. Read the “Hiring a CDP to help you negotiate the financial stuff” sidebar in this chapter to find out more about the services that a CDP offers.

## ***Exploring alternative ways to reach an agreement***

Hiring attorneys to do the negotiating for you or turning your divorce over to a judge aren't the only ways to end up with a divorce agreement if you and your spouse don't want to do the negotiating on your own or if you're deadlocked on certain issues. Depending on the circumstances, you can also use mediation or the collaborative law process. Both options emphasize working things out in a civil manner and using and finding mutually acceptable solutions to the issues in your divorce.

### ***Getting to “yes” with mediation***

When you and your spouse just can't see eye to eye on some of the issues in your divorce, mediation may be able to help you move forward. Mediation relies on a trained facilitator, who may be a family law attorney, a marriage and family counselor, a psychologist, or someone else with knowledge of and understanding of the divorce laws in your state and of the ins and outs of the issues that must be resolved in a divorce. The facilitator helps create a safe environment for you and your spouse to discuss the sticky issues in your divorce, makes it easier for you to hear what the other is saying, and tries to keep your negotiations moving forward. The facilitator doesn't take sides or tell you or your spouse how to decide the issues in your divorce; instead, the facilitator helps you and your spouse identify solutions to the issues you're struggling with.

If you and your spouse are already working with attorneys but have reached a stalemate on certain issues, your attorneys may suggest giving mediation a try because it tends to be less stressful than a trial and a lot less expensive. If your mediation efforts are successful, the mediator puts everything you agreed to in writing and sends a copy to your attorney so he or she can review it. If mediation doesn't work, you and your spouse go back to the drawing board and continue working with your attorneys to figure out a resolution to your differences. You can also go to court and let a judge decide. Chapter 15 provides more information on mediation.

### ***Capitalizing on the collaborative law process***

The *collaborative law process* is a relatively new cooperative divorce option spouses can use to work out the terms of their divorce outside of court. This highly structured, future-focused process was the brainchild of an attorney who was worn out by the adversarial nature of litigated divorces and wanted

to find an easier way for attorneys to help their clients come to an agreement about the terms of their divorce. Texas was the first state to legalize the collaborative law process; presently, attorneys in nearly every state in the union who practice collaborative law.

Several aspects of the collaborative divorce process distinguish it from a traditional divorce. For example

- ✓ A divorce petition might not be filed with the court until after the couple has negotiated a final divorce agreement.
- ✓ Both spouses and their attorneys must sign a participation agreement before the divorce process can get underway. The agreement spells out the ground rules that all of them abide by during the process. Among other things, they commit to
  - Not involving the court. In fact, as part of the participation agreement, both attorneys pledge that if the collaborative process fails, they will withdraw from the case.
  - Freely sharing with one another all information related to the divorce. No one can withhold anything.
  - Treating one another with respect and courtesy through the divorce process.
  - Negotiating in good faith.
  - Keeping confidential everything about their negotiations.
  - Allowing both parents to maintain loving, involved relationships with their minor children postdivorce because doing so is in the children's best interest.

The collaborative law process employs a team approach. Rather than you and your spouse each hiring your own attorneys and adopting an adversarial *you-versus-me* approach to resolving the terms of your divorce, which tends to happen in most divorces, spouses and their attorneys are on the same team in a collaborative divorce. In fact, at a series of divorce settlement meetings, or team meetings, you and your spouse sit together at the same table and work out the details of your divorce together, using mutual understanding, problem-solving, and negotiation.

Although your attorneys will have been trained in the collaborative law process and will be by your sides at each meeting, they won't do the negotiating for you. That's not to say that your attorneys won't be active members of your team. But unlike a traditional divorce where attorneys take the lead in a couple's negotiations, they play supporting roles in a collaborative divorce, helping you and your spouse identify all the issues that must be resolved before your divorce can be final, helping you brainstorm possible options for deciding each issue, answering any questions you may have, and so on.

Before the start of your negotiations, you and your spouse will meet one-on-one with your respective attorneys at least once. Your attorneys will help you understand exactly how the process works and prepare you to actively participate in it; they will also have regular meetings with each of you one-on-one before and after each team meeting.

Other professionals are likely to be part of your team, to actively participate in your divorce negotiations and communicate regularly with your attorneys. These include

- ✔ Financial professionals. In many cases, the spouses hire a neutral financial professional to help inventory and value their marital assets and debts and figure out the best way to divide everything, prepare postdivorce budgets, suggest creative ways to resolve financial sticky issues, help each spouse plan for his or her financial future, and so on.
- ✔ Divorce coaches. In some states, each spouse may also hire a *divorce coach* (a mental health professional who has been trained in the collaborative divorce process). This person helps clients handle any emotional issues that may arise and interfere with their ability to negotiate effectively, communicate effectively with the other members of the divorce team, provides emotional support throughout the process, refer them to another mental health professional for ongoing counseling if necessary, and works with everyone on the team to brainstorm solutions to the issues in the couple's divorce.
- ✔ In other states, couples can agree to hire one divorce coach who works with both of them on a neutral basis. In some states, these neutral professionals may also help divorcing couples with minor children prepare a written parenting plan. The plan spells out how much time each of you will spend with your children, your individual and shared rights and responsibilities in regard to them, and how you will share expenses associated with your children, among other issues.
- ✔ Child specialists. When couples don't share a divorce coach, they may hire a neutral *child specialist* to be part of their team. This person helps ensure that the couple makes decisions that are in their children's best interest and assists in the preparation of a parenting plan.

If the collaborative process breaks down, your attorneys may suggest that you and your spouse try mediation. But because collaborative law attorneys have pledged not to take a divorce case to trial, if you refuse mediation or if you give mediation a try and it doesn't work, and you decide that your only option is to go to trial, your attorneys withdraw from your case. In that instance, you and your spouse have to hire new attorneys, which means that your divorce is back at square one.

The collaborative law process offers some important benefits compared to a traditional divorce:

- ✔ It tends to be less stressful for everyone involved.
- ✔ It's more apt to yield creative, "outside the box" solutions to the issues in your divorce — solutions that would not occur if you and your spouse let your attorneys work out the terms of your divorce or if you took your divorce to court.
- ✔ It encourages cooperation between you and your spouse and helps build a positive foundation from which to build a postdivorce relationship, which is especially important if you have young children together.
- ✔ It may cost less than a traditional divorce — especially one that ends in court.
- ✔ It's usually a faster way to reach an agreement on the terms of a divorce.

Assuming that your state recognizes the collaborative law process, you can find an attorney who uses this method by contacting your local or state bar association or by going online to find out whether your state has a collaborative law institute. If it does, the institute may provide referrals.

## *Understanding the Basic Issues in a Divorce*

Regardless of which kind of divorce you pursue and which path your divorce goes down, you must resolve certain issues before your divorce can be final. (If you get a legal separation before you divorce, you must work out these same issues; see Chapter 4.) The basic issues are

- ✔ **How you will divide up your marital property and debts (see Chapter 8):** Complex laws, including state property laws, federal tax laws, plus the numerous interpretations of those laws, can make deciding who gets what a complicated undertaking, especially if you and your spouse have managed to amass considerable assets. If you have debt from your marriage, you and your spouse must also decide how the debts will get paid. You may decide, for example, to sell some of your marital assets and pay off debts with the proceeds, or one of you may agree to assume all or most of the debt in exchange for more assets.
- ✔ **Whether one spouse will pay spousal support (or alimony) to the other (see Chapter 9):** If one of you will pay spousal support, you must also decide how much the support payments will be and how long they will continue. These days, a spouse rarely receives spousal support for life or until he or she remarries. Usually if spousal support is paid, the payments continue long enough to let the spouse acquire some job skills or to rebuild his or her career.

- ✔ **How you and your spouse will handle child custody, visitation, and child support if you and your spouse have minor children from your marriage (see Chapters 10 and 11):** Decisions related to custody and visitation are some of the most contentious and emotional in a divorce, especially when couples try to use their children as a means of getting back at one another. Although how much one spouse will have to pay the other in child support can also be a highly emotional issue, state child-support guidelines dictate the minimum amount of payment.

When deciding the issues in your divorce, certain state laws and guidelines provide a framework for your decision-making. In most instances however, these laws and guidelines also allow a considerable amount of flexibility in your decision-making, though they have some limits. When making decisions about the terms of your divorce, assuming that a family law judge is looking over your shoulder is best. What we mean is that whatever you decide should be fair to you and your spouse given the laws of your state and should reflect an appreciation of what a judge would probably decide if your divorce was to end in a trial.

## *So What's All This Going to Cost?*

Almost as soon as your divorce begins, one thing will become painfully clear: that divorce is all about dollars and cents. In fact, the thousands of dollars you probably spent on your wedding and honeymoon may be a mere drop in the bucket compared with what your divorce could end up costing you.

Ordinarily, both parties in a divorce pay their own legal and court costs; however, you can request that your spouse reimburse you for all or a portion of your divorce-related expenses. It never hurts to ask, especially if you feel you have a strong argument for why your spouse should pay. For example, your spouse makes a lot more money than you do or your marriage is ending because your spouse was unfaithful. Whether your spouse agrees to pay your legal and court costs depends on how amicable your divorce is, his or her own financial resources, and whether your spouse thinks your request is reasonable, among other things.

## *The deciding factors for cost*

Exactly how much you spend to end your marriage depends on a number of factors:

- ✔ **Whether your divorce is amicable and cooperative or bitter and contentious:** The more you and your spouse agree on, the less you have to spend on attorneys, legal fees, and court costs.

- ✔ **The cost of the attorney you hire to help with your divorce:** Chapter 13 reviews the key factors that influence how much you will spend on an attorney.
- ✔ **How many divorce decisions you and your spouse are able to work out together without the involvement of your attorneys:** The more issues in your divorce you can resolve without your attorneys' help, the less your divorce will cost.
- ✔ **Whether you and your spouse end up in a custody battle, which can be very expensive:** For example, in a custody battle, you may have to pay for the assistance of a social worker, a child psychologist, and other experts.
- ✔ **The amount and complexity of marital property and debts that you have to divide up:** Depending on the debts and assets involved, you may need to hire a real estate appraiser, art appraiser, CPA, pension expert, or other professionals to help determine a fair property settlement.
- ✔ **Whether you believe that your spouse is hiding any of your marital assets:** If you believe that your spouse is hiding assets, you will have to hire financial experts to try to determine what has happened to them, and that help doesn't come cheap.
- ✔ **Whether you and your spouse are willing to settle your divorce outside of court or whether one or both of you is determined to go to trial:** If you end up in divorce court, you can expect to pay substantially more to your attorney, not to mention the fees of any experts you may call to testify on your behalf, court fees, and a whole lot more.
- ✔ **The legal strategy of your attorney and your spouse's attorney:** If either of your attorneys employs an aggressive, adversarial strategy, the cost of your divorce is apt to skyrocket because your divorce will take up more of your attorney's time. Your attorney also is likely to file more legal motions and call more expert witnesses to testify, which adds more onto the price tag of your divorce. However, you and your spouse can control the strategy that your respective attorneys use by carefully screening potential attorneys to find ones who aren't attack dogs.

## *The least it will cost*

If your divorce is extremely simple — you and your spouse have little to negotiate, no minor children, no marital property, few debts, neither of you is asking for spousal support, and you're both willing to complete most, if not all, of the legal paperwork yourselves — you can get divorced for just a few hundred dollars, maybe even less if you don't use an attorney.

Even if you own some marital property or have some debt from your marriage, your divorce may cost you no more than a few thousand dollars if you and your spouse can work out the terms of your divorce together after an

upfront consultation with your individual attorneys. Your attorneys should also review your final agreement. Chapter 12 provides helpful information if you and your spouse want to do most of your negotiating.

## *The most it will cost*

Be prepared to spend a whole lot of money on your divorce if you and your spouse fight like cats and dogs, are unwilling to give and take, or if the issues in your divorce are complicated and the active involvement of your attorneys from start to finish is essential. In this case, you may be looking at legal bills in the five figures — or even more. For example, at the end of a prolonged child-support battle, your legal bills can easily be \$50,000 because your divorce will involve a lot of fact-finding, which causes your legal bills to skyrocket. If you and your spouse end up in court over the custody of your children, those bills can *triple!* Yikes!



The hourly rate of an experienced family law attorney ranges from \$150 to \$750 or more. If you hire an attorney, you have to pay a down payment, sometimes called a *retainer*, that's likely to be between \$500 and \$10,000, depending on the attorney's hourly rate.

## *Surviving the Emotional Roller Coaster*

Even if you know that getting divorced is the right thing for you and everyone else involved and even if your divorce is amicable, you will almost inevitably experience a range of emotions as you move through the divorce process, including shock, disappointment, regret, sadness, anger, depression, and fear, among other feelings. This mix of emotions should come as no surprise given that for better or worse you're ending an important relationship in your life (see Chapter 7).

Having an idea of what's ahead and putting an emotional support system in place can help you get through the tough times you're likely to experience. Your support system may include trusted friends and/or close relatives, your religious advisor, and a mental health professional.



Consulting a therapist as soon as you know that you're getting a divorce (if not before) is a good idea; the therapist can provide you with ongoing emotional support and advice. Alternatively, you may want to consult a therapist only when you're having a particularly difficult time with a specific problem.

Controlling your emotions so you can stay on an even emotional keel is critical when you're going through a divorce. If you don't keep your emotions under control, making wise decisions about matters that can affect your financial well-being and happiness and that of your children for years to

come can become difficult. Although letting your emotions take over and allowing yourself to express your anger and to say hurtful things to your spouse or trying to extract revenge from him or her because your marriage is ending may be tempting, in the end, that approach is apt to backfire and likely to hurt everyone involved, not just your spouse.



In addition to establishing a support system and getting therapy, here are some other things you can do to help yourself stay emotionally balanced before, during, and after your divorce:

- ✓ Keep a journal
- ✓ Exercise
- ✓ Take up meditation
- ✓ Begin practicing yoga
- ✓ Pursue a hobby you enjoy

Divorce can be hard on kids, too. Don't directly involve your children in your divorce — for instance, by fighting about the terms of your divorce with your spouse in front of them, by bad-mouthing your spouse to them, and so on. And don't involve them indirectly, either, by crying in front of them, by not doing the things that you've always done for your children while the terms of your divorce are being negotiated, and so on.

Although your divorce will certainly affect your children, your responsibility is to protect them as much as possible, to keep their lives as normal as you can, not to scare them, and to reassure them that you and their other parent will continue to love them after your divorce and that you and their other parent will continue to be involved in their lives. You do a grave injustice to your children if you don't give them the sense of security that every child needs, especially when his or her family life is falling apart and if you don't stay actively involved in their lives despite the distractions of your divorce. Doing everything you can to shield them from the emotions that you're feeling is critical.

Despite your best efforts to protect your children, they may begin to experience emotional problems during and after your divorce. Exactly how they express their problems depends on their ages and individual personalities; problems can range from bedwetting and temper tantrums to depression, problems in school, defiant behavior at home, among other behaviors. If you're unsure how to respond to your child, read some books about children and divorce, talk to your child's teacher or counselor, or consult a mental health professional. You may also want to consider scheduling time for your child with a child therapist. For more details on how to help your children cope with your divorce, see Chapters 6 and 21.