Divorce-Planning: What You Need To Know Now

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Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.[i]

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Tumultuous marriages often turn into tumultuous divorces. Yet many who find themselves in such marriages and resultant divorces are actually taken aback by their spouse's decision to end their marriage. Even those who assumed their spouse was contemplating a divorce are often dumbfounded to learn their other-half had been planning the financial part of their split for months - even years before filing for divorce.

The pre-planning of the financial facets of divorce is so common an occurrence today that it has a name -- *divorce-planning*. Divorce-planning is neither illegal nor immoral. It is unquestionably smart, and one who does not engage in such preparation will in all likelihood turn the painful process of divorce into a devastating one.

The Five Signs
Anyone claiming disbelief of their spouse's divorce-planning either missed or ignored one or more of the indicators of financial pre-planning going on right before their eyes. Though every marriage has its own distinct approach to financial management, there are five indisputable indicators that transcend nuptial uniqueness, and signal that your spouse is engaged in divorce-planning.

First: intensified irritability and/or noticeable evasion of questions concerning finances. Once divorce-planning is in motion there may be a noticeable reluctance to discuss the family budget, spending habits or the manner in which (and where) marital income or assets are invested or maintained. If your spouse has nothing to hide, then he/she should have nothing to fear in discussing your marital finances.

Second: paper account statements no longer arrive at the marital residence, and other financial documents, especially income tax returns and back-up documentation, are no longer accessible or locatable in the home. Thanks to on-line access to banks, credit cards, brokerage accounts, and the like, a divorce-planning spouse has the ability to receive financial information by email, or by logging into the particular account, or through an "app." A trusting spouse may not ask why, or even notice that paper statements are no longer being received in the mail, or that financial documents are no longer maintained in the marital residence. Online account access allows a divorce-planning spouse to hide a new bank account, credit line, or credit card from their spouse completely. Removing financial documents from the marital residence will delay the availability of such documents to the other spouse.[ii]

Third: passwords /"PIN" numbers change. It is recommended that everyone change passwords and "PIN" numbers often so as to avoid “hacking.” There should be no reluctance to share new passwords and/or “PIN” numbers between spouses. Discovering changes in passwords and/or “PIN” numbers of which you were not informed may indicate a desire to hide activity.

Fourth: requests to alter names on assets. New York and most states recognize a spouse’s marital interest in businesses, real estate, and other assets regardless of the title in which the asset is held. However, if one spouse’s name is removed from ownership of the asset, it will be significantly more difficult for the removed spouse to be apprised of transfers in ownership or the creation of liens against an asset, potentially decreasing the value of the asset in the divorce. If your spouse asks you to voluntarily remove your name from an asset -- or you discover that your name has fraudulently been removed from an asset -- divorce-planning is in progress.

Fifth: threats of retaliation. Spouses may joke on occasion about what would happen, or what they would do if their spouse divorced them. However, if a spouse makes veiled references about leaving their spouse destitute or taking their child(ren) away from them, such remarks must be taken seriously. A spouse threatening or trying to control the other is probably stalling in order to complete their divorce planning. Further, remarks such as these are often intended to intimidate the other spouse from preparing themselves for divorce.

The Game Plan
Proactive planning -- divorce planning – should begin at the earliest sign that divorce is on the horizon. Do what needs to be done for your financial protection. Consider, and effectuate as many the following recommendations as possible:

Finances, Privacy, and Asset Protection
Stop using the family computer. Back up all computers/devices with all data and pictures on a portable hard drive (or use a cloud-based backup). Purchase your own computer, password protect it and keep your new computer away from your home, in a secure location. Change ALL of your passwords and “PIN” numbers.

Open a new email account and use it exclusively for communication with your divorce attorney. Obtain a mailbox at a UPS Store or a P.O Box at a Post Office. Use that address for any and all personal mail/packages.

Make copies of all account statements, bank, brokerage, credit card, IRA, 401(k), pension and profit-sharing plans, and tax returns for the last three years. Learn everything you can about your family's finances, your spouse's income, and the cost of running your household and collect the paperwork to support that knowledge. This will give you a head start on gathering those documents; you will need them during the divorce action.

Put aside enough money for living expenses – approximately six months’ worth – and deposit the money into a separate account, in a bank where neither you nor your spouse has other accounts, and title the account in your name alone. Access and review the statements online only.

Update your Will and exclude your spouse[iii]; amend your Power of Attorney, Medical Power of Attorney, and any other estate planning documents. Change beneficiaries on your life insurance, IRA, and retirement accounts.[iv]

Open at least one credit card in your name only. As above, access and review the statements online only.

Obtain a new/additional cell phone, with a new phone number, on a carrier different from the one you currently use. View/access the statements/bills for your new phone on-line only. Add your attorney to your contacts under a pseudonym.

Consider what items in the marital residence have a particular meaning to you, perhaps a family heirloom, family photographs, or antiques. Determine which items you would be saddened to lose if your spouse removed them. Be prepared to remove these items when your attorney tells you. Take photographs and videos of the inside (and outside) of your home(s) clearly showing furniture, art, antiques, and your other belongings then in existence so that you can note in the event something “disappears.” If you have a safe deposit box, make an inventory of, and photograph its contents.

Put your passport (and those of your child or children) in a secure place, away from your home.

Managing Personal Expectations

Divorce-planning is not solely a mechanical/financial process. It is also time to take stock in yourself emotionally (and physically) and find the best professionals to guide you through what will be a difficult period in your life.

If you have not done so already, start seeing a psychologist to counsel you through your own transition issues. Join and attend appropriate support group meetings. If you do not have a therapist/psychologist or some other form of a counselor, start researching, and obtaining references for one for yourself and one for your children. Divorce often has a deep and lasting psychological effect on the children of the marriage, subtle though it may seem on the surface. As part of divorce- planning parents can and should take steps to reduce the psychological effects of divorce on their children. Start by seeing a counselor or therapist for yourself, and then lead into hiring a counselor/therapist for your children.

Perhaps the most important part of divorce-planning is the selection of an attorney. Do your research again. Hire a highly experienced divorce attorney, fund the retainer, and follow your attorney's advice. If your attorney advises it, meet with other leading divorce attorneys to conflict them out of the case.[v]

Last, but not least, be mindful and wary of social media and other pictures, texts, and emails. Anything you post or publish can be used as evidence in Court. Do not post anything that you would be embarrassed to see on the front page of a newspaper. And, do not start searching for your next love interest during the divorce-planning period. Stay off of any dating website.

Conclusion

Divorce -planning is not about hiding, dissipating, or wasting marital assets. It is about protecting yourself and your assets and making shrewd choices when your mind is clear, long before you are caught up in the whirlwind of divorce.

It requires logical preparation in the months leading up to a divorce. There is no blueprint for marriage, neither is there a blueprint for divorce. But diligent, pragmatic, and early preparation --- divorce-planning -- can start you off on a better footing, and ease the path ahead.

[i] Sun Tzu: *The Art of War* Divorce laws of all states provide that both spouses have the right to "discover" (obtain) virtually any financial document or piece of information about the other spouse and the marriage going back to the day the parties married, However, a bird in the hand is worth two in the bush -- it is better to hold onto these documents, have them in your possession than to risk the time and effort in trying to get them back.

[iii] See a Trust and Estate Attorney in your State. In some states excluding a spouse does not guarantee that he or she will not receive any monies from your estate.

iv Sometimes you cannot do this until you are officially divorced, but try to do whatever you can now. In addition, upon commencement of a divorce, it is likely that you will be restrained from modifying assets including changing beneficiaries on a life insurance policy. So make the change now.

[v] This is a highly controversial, and "hardball" move. It is an aggressive tactic. It is certainly part of the divorce-planning strategy but is often looked upon as sharp practice.