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SUMMER/FALL 2015

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Here’s some information and a handy checklist to help you set goals and think about options as you move forward with your divorce – and life.

By Henry Gornbein, Esq.

When you build a house, it all starts with the foundation. In divorce, the foundation is the initial complaint or document putting your spouse on notice that you want a divorce.

In some states and provinces, the parties must reside separately and apart for a year before a divorce can be filed. In others, the husband and wife can not only live together throughout the divorce – and commonly do – but they can even remain sexually intimate during the divorce process.

I have had many cases where

throughout the divorce process, the relationship is off and on again and again while the couple attempts to decide whether to proceed with their divorce. This can be very confusing, especially to children.

It’s best to check with a lawyer where you live for the legal requirements and ramifications relating to this issue.

Filing the Complaint

In some areas, the complaint will be a petition for the dissolution of a marriage: “In the Matter of Jane Smith and

John Smith”, for example. In others, the laws require that there be a plaintiff (the person filing for divorce) and a defendant (the person being sued for divorce): “Jane Smith, Plaintiff vs. John Smith, Defendant”.

The complaint should meet the legal requirements for a divorce in the state/province in which it is filed, but should not include a lot of information intended to inflame the divorce or embarrass the spouse. In most areas, divorce filings are public and your personal lives should be kept out of court as much as possible.

The goal is to try to handle the process with dignity, demonstrating as much respect to your spouse as possible. In some situations, this proves impossible and then you have total warfare with no winners except the lawyers, who will be charging a lot more money.

With the complaint comes a document called a summons. This paper states that you have been served with a complaint or petition requesting a divorce and gives the respondent or defendant so many days – typically 21 – to respond. It is summoning you to take action or be in default. If you are the defendant, this is the time to immediately contact a family law attorney, if you haven't already, to find out what your legal rights are and what you should do next.

Ex Parte Orders

In many cases, some original orders go along with the initial complaint or petition. These are called ex parte orders, entered on behalf of the plaintiff. Based on the complaint that has been filed, it's a request in the divorce petition or complaint for a specific purpose, with immediate relief that can be granted without a hearing. I typically use an asset injunction or restraining order: an order putting your spouse on notice that no money is to be removed from bank accounts, no assets are to be taken, and no insurance is to be changed. This maintains a level playing field as the divorce proceeds, making sure that neither spouse is taking advantage of the other by removing or transferring funds, liquidating retirement or money market accounts, or changing life or medical insurance beneficiaries.

Sometimes, one spouse starts transferring or disposing of property, or running up large credit-card debts. In a recent case, one of the parties tried to prepay his daughter's four-year college education – \$250,000 – and also tried to repay loans that he claimed were due to his father in the amount of \$75,000. An asset restraining order is intended to stop these practices and make sure

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that property doesn't disappear.

Last but not least, domestic violence is a factor in some divorces. In some areas, there will be an order regarding the protection of the victim spouse: a personal restraining order, a personal protection order, or some similar type of legal device. These are very important in cases where there has been a history of domestic violence or the threat of violence. You should discuss these issues with your lawyer at the initial meeting.

Interim Orders

Other possible orders include those issued on an interim basis regarding child custody. I only use these in cases where one parent is threatening to remove the children from the home, state, or country. In cases where the children have already been taken, an interim order can be needed to require the immediate return of the children.

To obtain an ex parte interim order, you must state in the divorce complaint or petition why it is imperative that an order be entered at once without a hearing and give examples.

In some cases, an interim order is put into place along with the original filing setting child support; a status quo regarding the payment of marital obligations such as the mortgage, utilities, and other expenses; or even the setting of spousal support in some instances. These orders can differ from place to place – even from lawyer to lawyer, depending upon the facts of

your divorce and the traditions, laws, and rules where you live and file for divorce.

Serving Papers

In many cases, divorce papers are delivered using a process server, a public official, or someone else who is legally able to serve the papers. I encourage the other party to accept the papers without the need for formal service. Why? Because being served with divorce papers – especially at work or in a public place – can be embarrassing. Getting served at home – especially if children are there – can be humiliating and upsetting to everyone.

To avoid this, I ask clients to ask their spouses if they will accept the papers by mail delivery to the home. Normally, a husband cannot serve his wife or vice versa. However, establishing an acceptance of service agreement in advance to sign for and acknowledge the papers eliminates the need for a process server.

In one case, my client was having an affair – but he had neglected to inform me of this fact. His wife was extremely angry, and her lawyer wanted to have him caught in the act and served at a motel where he had been meeting his girlfriend. This only added fuel to the fire and was not a good way to start the divorce.

If the other party has retained a lawyer, he or she can accept service on behalf of the other spouse. That lowers the level of acrimony and embarrassment, and sets a non-adversarial, cooperative tone from the outset.

Trolling

Where I practice, an issue known as “trolling” has reared its ugly head. In trolling, lawyers obtain a list of divorce filings from the courthouse where your divorce has been filed. They then send a letter informing your spouse that a divorce has been filed against him or her. The letter requests that your spouse contact the attorney for possible representation in the upcoming divorce

action. I find this tactic reprehensible for several reasons:

1. In some cases, papers may be filed, but service is being delayed for a special family event such as a birthday, wedding, or graduation; illness; or a long-planned vacation.
2. There could be minor children involved, and the spouse who is filing may want to meet with the other spouse prior to service, to discuss ways of moving forward in an amicable fashion as well as how to tell the children.
3. Sometimes, a spouse will file and then reconsider or suggest marriage counseling to his or her spouse. Then the other spouse gets the trolling letter in the mail and all bets are off.
4. When there is domestic violence, the filing and service must be very carefully handled. A trolling letter can have tragic consequences.
5. Finally, it makes lawyers look like bottom-feeders. Trolling letters are universally viewed with disgust by clients who receive them.

Answering the Complaint

Once a spouse is served with papers, the next step is for the defendant spouse to file a response or answer. In some situations, there may be a counterclaim or cross-complaint filed by the other spouse seeking a divorce as well. The strategies will differ depending upon your own situation, who your lawyer is, and where you live.

If the original papers are the divorce's foundation, then the final judgment or settlement agreement represents the rest of the house, so to speak. It should cover every relevant issue and provide the steps for you and your spouse to follow going forward.

I use the following checklist in my practice to help my clients set goals and know what may or may not be important in their divorce. Bear in mind that this is not necessarily inclusive and is meant only as a general guide; some of the points will not be relevant to every case and may not be applicable in some areas. The goal is just to get you

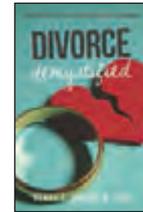
thinking about possible options as you move ahead with your divorce and the rest of your life.

First Steps Checklist

1. Counseling to save your marriage or to help build a support system as you go through the divorce.
2. Choosing a lawyer.
3. Filing for divorce.
4. The initial papers, including ex parte or temporary orders.
5. Child-related issues including custody and parenting time/visitation.
6. Child support.
7. Medical insurance and uninsured medical, dental, and other health-related expenses regarding your children.
8. Extracurricular activities for your children, including the associated costs.
9. College and private or parochial school expenses and issues.
10. Spousal support.
11. Medical insurance going forward for a spouse (in the US, this can be done through COBRA, a federal law that permits a former spouse to be kept on medical insurance for a maximum of three years if the other spouse is employed by a company with a minimum of 20 employees).
12. Discovery issues, or techniques for learning exactly what assets and liabilities are in your marital estate.
13. Property, including real estate holdings, personal property, investments, professional practices, and degrees.
14. Businesses of all sizes, ranging from small family businesses to larger corporate entities.
15. Cars, boats, leisure vehicles.
16. Collectibles.
17. Savings accounts, stocks, bonds, and other investments.
18. Retirement accounts, pensions, and other vehicles for future retirement.
19. Furniture and furnishings, including antiques.
20. Issues involving gifts and inheritances.
21. Debts such as home equity loans, mortgages, credit cards, debts to

- relatives, auto loans, or leases.
22. Tax issues.
23. Life insurance.
24. Lawyer and expert fees.
25. Security for a divorce settlement.

Every state/province has its own laws and quirks – that's why it's so important to talk to a lawyer where you live. The information provided here is general and will vary depending on your locale, the laws of your state/province, and the practices of your courts. ■



This article has been excerpted from Divorce Demystified (Momentum Books, 2014) by Henry S. Gornbein, Esq. A leading expert in family law, Gornbein deconstructs the divorce process and serves it up in small, manageable steps. Practicing family law in Michigan for more than 40 years, Gornbein has written frequently on divorce topics. Divorce Demystified is available at Amazon. www.lippittokeefe.com

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