

Dads in Divorce: A Father's Guide to the Rights and Realities of Divorce



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Understanding The Realities Of Divorce:

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Introduction

There was a time when custody hearings were little more than a formality. From the moment a couple said the word “divorce,” their children's future was all but mapped out.

That's because in the past, the courts tended to embrace the more traditional family unit – one where dad went off to work to support the household, while mom tended to the day-to-day needs of their kids. It only made sense then, to continue this parenting arrangement even after the marriage was over.

As a result, dads were relegated to visitation every other weekend and select holidays. The rest of the time, the kids stayed with mom and she retained the final word in how they were raised.

Fortunately, times are changing.

Although mothers continue to be the “official” primary caregiver in 5 out of 6 divorce cases, we're also seeing a cultural trend where more balanced custody arrangements are enjoying a slow but steady increase.

Judges are starting to move away from the old mindset of simply keeping the kids with mom and instead, consider each parent's relationship and contribution when making custody determinations.

Parents too, are getting in on the act, by mapping out their own custody arrangements rather than relying on the courts to make that determination. This proactive approach ensures that the arrangement fits the unique needs of the family as a whole, almost guaranteeing the court's approval.

The result is a new and more flexible custody arrangement that allows fathers to stay actively involved in their child's lives.

And that's good news.

Studies show that children who have equal access to both parents recover faster from the divorce and are less likely experience social, behavioral or developmental problems as a result.

Of course, that doesn't make dealing with divorce any easier and even the most amicable breakup can turn sour with so many emotions in play.

The solution then, is to be prepared and that's exactly why we've created this report.

We'll help you understand what lies ahead and more importantly, how to protect your rights during the process.

Keep in mind however, that every divorce case is unique and as these cultural trends continue to evolve, so will the laws that govern divorce.

The only way to ensure that your rights are protected is to consult with a licensed attorney experienced in family law matters, so if you're facing divorce, we urge you to contact our office as soon as possible.

Now, that said, let's start with a few basics...

Filing Your Divorce Petition

New Jersey allows both no-fault and at-fault divorces to be filed and the difference is quite simple: an at-fault divorce requires a specific reason for the dissolution, while a no-fault divorce doesn't. The latter gives couples a way to just walk away without pinpointing what caused the marriage to sour, also referred to as **irreconcilable differences**.

To file for a no-fault divorce, you must meet certain qualifications:

- you or your spouse must have lived in New Jersey for at least 12 consecutive months before filing your divorce petition;
- the irreconcilable differences have lasted for at least six months and you and your spouse agree these differences have permanently damaged the relationship; and
- both you and your spouse agree there is no chance for a reconciliation.

You can also claim separation as your basis for a no-fault divorce. The one year residency requirement still applies in this case and you'll also have to prove that you have lived apart for at least 18 months prior to filing.

If you decide to file an at-fault petition, you must claim at least one of the following grounds:

- adultery;
- extreme cruelty, mental or physical;
- habitual drug or alcohol addiction;
- confinement to a mental institution for at least 24 consecutive months;
- deviant sexual conduct;
- abandonment for at least 12 months;
- confinement to a penal institution for at least 18 months

The one-year residency requirement still applies, except where adultery is alleged. In these instances, the residency requirement is waived and you can file for divorce at any time. Adultery may affect child custody issues and may be a factor in determining alimony.

There's no specific waiting period before the divorce can be granted, so once your petition has been filed and the court renders its rulings, you're done.

Custody

Child custody issues need to be discussed with your divorce attorney. The laws in each state vary regarding custody. In New Jersey you need to know that child custody actually involves two separate issues. In New Jersey a parent may be awarded legal custody and / or physical custody. Legal custody means that you have a say in the important decisions of your minor child. For example, decisions regarding medical care, school issues etc... When most people think of custody they generally are referring to physical custody or the amount of time the court allows you to spend with your child. Both types of custody need to be discussed with your divorce attorney.

Parenting Time

Your parenting time is decided by the courts. Many factors are considered before a custody decision is decided. You may request sole physical custody, shared physical custody, full legal custody, shared legal custody. You need to speak with your attorney to determine what type of custody arrangement would be best for your family.

Visitation

A divorce can be a traumatic experience for a child. Continued contact with your child will ease the transition into your new family structure. A parent's responsibilities are forever. Working together with your former wife in the best interest of the child is paramount. Parenting time allows you to continue to be in your child's life. It will be best for your child if you and your former wife can agree to a parenting plan that should include specific visitation days and times. The idea is to allow for continued regular contact with both parents. Remember to include weekends, holidays, vacations and summer break in your request for parenting time. The more parenting time or visitation you get with your child the less you will probably pay in child support.

Domestic Violence

Domestic violence should not be tolerated. New Jersey domestic violence laws are gender neutral and apply to men and women equally. Domestic violence may include physical attacks, threats of bodily harm to you or your loved ones, damage to your personal property, verbal attacks or entry into your home. If you have experience domestic violence you need to bring these issues to the attention of your attorney.

Property Distribution

New Jersey is an equitable distribution state, meaning that the marital property is divided in a way that is "fair," but that may or may not be equal. Unlike community property laws, equitable distribution doesn't automatically grant half of everything you own to your spouse.

Deciding on who gets what then, becomes a question of need and fairness rather than just dividing the marital pie down the middle, and the court will typically award percentages of the total assets to each party, based on the determined need.

To make this determination, the court will consider several factors, including the length of the marriage, the earning potential of each spouse, current standards of

living, your age, your physical and emotional well-being and of course, any written agreements outlining property distribution (also known as pre or post-nuptial agreements).

Now, this isn't an all-inclusive list and in fact, the court can consider any factors it believes to be relevant to the case.

You'll want to have accurate values of all your assets for example, as well as a clear assessment of how any property division will affect your tax liabilities as well as your future earning potential.

Obviously, working out a property settlement with your spouse prior to filing is ideal, but if this isn't possible, then you'll at least want to know exactly how the split will affect your finances.

Financial Aspects of Divorce

In addition to dividing your assets, there are several other financial considerations that need to be made.

Divorce Fees

Divorces cost money. Most divorces can be settled for a reasonable fee. If you and your wife agreed before the marriage on a divorce financial agreement, your costs will be minimal. The more you and your wife can speak about the division of assets and agree, the less expensive the divorce will be.

If your divorce is complex, you will need to use more of an attorney's time and therefore it will be more expensive. For example, divorces that involve children, investments and an extensive list of co-mingled assets. Basic expenses include court costs and attorney fees, both of which may be split between the parties or billed to only one of the parties, depending upon the merits of the case and your individual circumstances.

In some very rare cases, you may also have to hire an attorney to represent your children during the proceedings -known as a Guardian Ad Litem -and this too, will incur a fee. Again, it is extremely rare that attorneys will need to hire a Guardian Ad Litem. Any doctors, psychiatrists, analysts or other experts will also add to your bill, so while you might be tempted to pull out all the stops, remember that this will affect the price of your divorce. So, the bottom line is, that the fewer assets you have the less expensive the divorce will be.

Taxes

Now, fees and court costs aren't the only expenses to consider in a divorce. Your taxes will also likely be affected, so keep that in mind as you make decisions about your assets.

Your filing status for example, will change and we're not just talking about going from "Married Filing Jointly" to "Single." Only one of you will be allowed to claim your children as dependents and take advantage of the more generous Head of Household status that offers bigger deductions.

The family home is another potential tax consideration. If it's decided that the home will be sold and the proceeds divided between the two parties, you each have two years to reinvest your money into another residence to avoid capital gains tax. This window applies to any gain over the \$250,000 per person/\$500,000 per married couple IRS exclusion.

But to qualify for this exclusion and the two-year window, the house must be your principal residence and at least one of you must have resided in the home for at least two of the last five years prior to the sale.

That means that a secondary residence or vacation cabin won't meet the use test and therefore, won't qualify for the exclusion. It also means that if one of you continue to live in the home after the divorce is final and then sell the home at a later date, this may change or limit your ability to qualify for the capital gains exclusion.

In addition, an asset's value and its cost basis aren't always the same thing, something to consider as you and your spouse start deciding who gets what. An investment account that has enjoyed considerable growth for example, could potentially incur both short and long-term capital gains taxes when ownership of the asset is transferred.

And one last note about taxes: if your spouse was in charge of filing income taxes during your marriage and you have reason to believe that she may not have done it correctly or worse, purposely hid assets, you could be on the hook for a big tax bill, complete with penalties and interest if you're audited down the road. In these instances, you have the right to request formal relief from the IRS to limit your liability.

That said, your spouse can also seek the same remedy if you were in charge of filing, so be very clear about who knew what and any outstanding taxes owed when going through your assets and liabilities.

Debt

Because New Jersey is an equitable distribution state, the courts typically treat debt the same way they treat assets: in the way it was acquired.

Debt is considered to be marital debt for the family. This includes debt that your name may not be on. For example, your wife has a credit card she uses to buy clothes for your kids. Even though her name is on the credit card this debt is considered to be marital debt. You'll also want to consider any joint accounts you currently have open. These should either be closed or, if that's not possible, ask your creditors to convert these to individual accounts so that you're no longer responsible for your spouse's accounts and vice versa.

Child Support

New Jersey considers both parents to be responsible for child support and will consider several factors when determining how much child support is needed. These factors include (but are not limited to) the specific needs of the child, the current standard of living, the financial circumstances of both parents, the age and health of both parents as well as the age and health of the child, the earning ability of both parents and any earning ability of the child.

The courts will also consider any child support agreement entered into by both parents, as long as it is in the best-interest of the child.

As a father, this means that you will almost certainly be ordered to pay some form of child support. In general, the more time you have with your child the less you will have to pay in child support. The judge works off of a formula to determine child support. The judge can deviate from the formula but you must have good cause for him to do so.

Just a couple of items to review that often arise in child support. First, you have no control as to how the child support is spent by your former spouse. As long as your child's basic needs are being met, you can not tell your ex wife how to spend child support money you sent to her.

Next, you still need to pay child support if your child is with you for a few weeks in the summer. You can NOT stop paying child support during this time. The few weeks you have your child in the summer should already be in calculation for support that is spread throughout the entire year, including the time in the summer you may have your child.

Alimony

Also often referred to as spousal support, alimony refers to scheduled financial support from one spouse to another after a divorce. This is separate from any property division and child support orders and is determined and awarded on a case by case basis.

Alimony looks at the future of both parties and their ability to maintain the lifestyle they've become accustomed to. If one spouse has a greater earning capacity than the other for example, the courts may award alimony to help balance the playing field.

Any payments received as alimony are considered taxable income to the recipient and likewise, are tax deductible to the payor.

There are currently four types of alimony that can be awarded in New Jersey:

- 1) Limited Duration** – This is the most common form of alimony and is designed to provide financial support for a specific period of time. This is most often awarded when the courts feel that temporary financial assistance is needed, but that the earning potential of the receiving party will eliminate the need for alimony payments in the future.
- 2) Permanent Alimony** – Permanent alimony is just what it says – permanent – meaning that the alimony payments will continue throughout the recipient's life. That means that 30 years down the road, you could conceivably still be making alimony payments to a woman you haven't seen or spoken to in three decades. It's no surprise then, that this form of alimony continues to be a source of heated debate. This type of alimony is typically only awarded in very long-term marriages and in cases where one spouse has a considerable financial advantage over the other.
- 3) Rehabilitative Alimony** – This form of alimony is intended to be temporary and is ordered when one spouse requires additional training or education before he or she will be able to earn an adequate living. The

intention is that the paying spouse helps the recipient spouse “get on his/her feet” and then the alimony payments will no longer be required.

- 4) **Reimbursement Alimony** – This form of alimony is also temporary and is designed to reimburse one spouse for sacrifices made during the marriage to support the other spouse's professional aspirations. If for example, one spouse carries the household while the other spouse goes to school, this is often done with the idea that both spouses will eventually reap the financial rewards of the extended education. This concept is no longer true if the couple divorces, so the court may choose to award reimbursement alimony as a means of reimbursing the spouse for that loss.

Now, in addition to these four types of alimony, you may also encounter what is called temporary or “**pendente lite**” alimony. This is a type of placeholder alimony, ensuring that basic needs and bills are covered during the divorce proceedings, with the intention that it will be replaced with one or more of the four types of alimony above.

Husband's can get alimony from their wife. The decision is based on income.

How Alimony is Determined

Unlike child support, alimony does not have a set of guidelines or a sliding scale used to determine how much will be paid. Instead, the courts consider a variety of factors, thirteen to be exact, as laid out in the New Jersey alimony statute (N.J.S.A. 2A-34-23(b)):

- The actual need and ability of the parties to pay;
- The duration of the marriage or civil union;
- The age, physical and emotional health of the parties;
- The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living;
- The earning capacities, educational levels, vocational skills and employability of the parties,
- The length of absence from the job market of the party seeking maintenance;

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- The parental responsibilities for the children;
- The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment and the opportunity for future acquisitions of capital assets and income;
- The history of the financial or non-financial contributions to the marriage or civil union by each party, including the contributions to the care and education of the children as well as the interruption of personal careers or educational opportunities;
- The equitable distribution of property ordered and any payouts on equitable distribution out of current income, to the extent that this consideration is reasonable and fair;
- The income available to either party through investment of assets held by that party;
- The tax consequences of any alimony award, including the designation of all or a portion of the payment as non-taxable; and
- Any other factors which the court deems relevant.

What this means is that the court is going to try to minimize the financial impact of the divorce for both parties, by using your combined incomes, earning potentials and marital assets to keep you both as close as possible to your current standard of living. And obviously, depending upon which side of the alimony fence you're on, you may or may not agree with this concept.

But contrary to popular belief, alimony is not intended to punish or penalize nor is it intended to enable one spouse to "live off the other" for the rest of their life. You do not get extra alimony if you are the cause of the divorce. Even permanent alimony may be changed if circumstances change in the future and both limited duration and permanent alimony will terminate if the recipient spouse remarries, regardless of financial circumstances.

The courts also considers the equitable distribution of property when determining alimony needs to ensure that there's no "double dipping" of assets.

If for example, any investments or retirement benefits are distributed as property between the spouses, those assets (and the income they will potentially generate in the future) will not count toward the payor's income level.

Under very specific circumstances, you may be able to change what you pay in alimony. You really need to speak with an attorney to see if your circumstances fit into the few exceptions.

So, now that you have a better idea of what to expect, let's talk about your rights and a few realities.

Domestic Violence

If you are in the middle of a difficult divorce you really need to be careful to not get caught up in any domestic violence issues. If you hurt your wife, and she chooses to get a TRO (temporary restraining order), the judge will most likely award temporary custody to her immediately. If you feel that she may make a false claim against you, you may want to live separately.

Remember that if you get back together with your wife, and she has a temporary restraining order that has been issued, you can not violate the restraining order. You must ask her to drop the restraining order for your protection.

Your Rights As A Father

As you can see, father's rights have come a long way over the past 20 to 30 years and continue to evolve.

You have the right to see your children... you have the right to make decisions regarding their upbringing... and you have right to the same considerations your wife receives in all matters surrounding the divorce.

Now, that said, there are still some realities that you need to come to terms with.

Gender is no longer a consideration in custody cases for example, but courts do still tend to give the mother primary custody in about 85 percent of the cases that go to litigation. This doesn't mean that the two of you can't share custody equally, just that the courts still tend to name mom as the primary custodian most of the time.

You have the right to ask for a visitation schedule that works for you. You may request a specific schedule, right down to the day and hour in fact. The reality is that sometimes, this schedule will likely need to be adjusted and the more flexible you are, the easier your life will be.

You have the right to not pay more than your fair share of child support and alimony, but you will most likely pay something. Research shows that women statistically incur more of a financial hardship after the divorce, you'll likely be asked to carry a larger portion of the financial support, unless your spouse makes considerably more than you do.

The thing to remember is that divorce is a process and it takes a little time to work out all the kinks. You may have to change your lifestyle for a while... you may have to adjust your work schedule or tighten your budget or put some of your professional or personal goals on hold.

It's not necessarily fair, but it is a reality of divorce and the sooner you come to terms with those realities, the faster you and your family can begin to heal and move forward.

Now, having talked about the things you *should do*, let's go over a few that you shouldn't.

Divorce Mistakes You Don't Want to Make

When it's obvious that the marriage is over, it's not unusual for the parties to start thinking about themselves as in, how to ensure they get the best settlement, how to prove they should keep the house and yes, how to ensure they keep custody of the kids.

And depending upon how hostile the breakup is, they may also be looking at ways to make the other party look bad.

That means you need to be very careful and very conscious of the decisions and choices you make during this time. Now, this is where a good attorney can really guide you, but in the meantime, let's go over some of the more common mistakes we see men make.

Start A New Relationship

First and foremost, **DO NOT** start a new relationship until your divorce is final. Bringing a new person into your family unit before the ink is even dry on the

divorce papers will not win you points with the judge... even if your wife is awful and even if you've been separated for years. It doesn't matter... it still looks bad on you.

Now, what if the relationship already exists?

That can be tricky. While you don't necessarily have to put the relationship on hold, it is a good idea to keep it low-key and out of the spotlight. After all, simply saying that you're "dating" during your divorce hearing isn't really that big of a deal. But saying that you're engaged? Or living together? That's another story altogether.

Also remember that your children may not be ready for you to have another person in your life... especially one that looks like she's going to replace their mom. Your best bet then, is to focus the majority of your energy on your kids and the changes to your family unit. Let them see that your main priority is their well-being... that you'll all get through this difficult time together and that no matter what, they come first in your book.

Giving them this sense of security will make it easier to introduce a new relationship down the road.

Allow Your Wife's Attorney to be the ONLY Attorney

You'd think this would be obvious, but you'd be surprised at how many men defer to their wife's attorney instead of hiring their own.

This often happens when the split is relatively amicable... when for example, both parties are just "done" and see no reason in dragging things out. With this lack of intense emotion, it can sometimes appear as if the divorce will be fairly easy and both parties will be able to agree to a reasonable settlement.

And with that mindset, the husband sees no reason to hire a separate attorney... after all, there's no reason to spend the extra money, right?

Unfortunately, that strategy rarely works. Because if and when a dispute does arise – and it almost always does - the attorney will have to take sides. And that side may not necessarily be yours.

For this reason, most attorneys will tell you up front that choosing to use the same attorney is a bad idea. They'll also likely give you a variety of reasons,

ranging from ethics to adequately protecting your interests. But just in case you haven't already heard it, we're telling you now.

Having your own attorney ensures that someone has your back and is looking out for *just you*. They'll make sure that all the income and assets are declared, for example. They'll know what to do if your spouse tries to suggest that you're not a good provider or a good father and therefore, shouldn't share in the custody of your kids.

They'll know how to downplay the new car you just bought or the new girl you've just started dating. In fact, they'll know how to handle all the things that you're not yet ready for and likely never saw coming... and isn't that the person you want in your corner if a problem does arise?

Make A Scene

Let's be honest: divorces can bring out the worst in the best people. It can make you lose your cool and blow your top.

We get it... you're angry. And we don't blame you.

But making a scene of any kind – whether you're throwing a fit at a restaurant or simply yelling insults outside of your ex wife's house is not a good plan, regardless of how many or how few people see it.

Your goal is to be as cordial and reasonable as possible during this time, no matter how she may choose to behave. If you're angry, be angry, but be angry privately. Don't give your ex anything she can use to suggest that your temper is out of control.

Move Out of the House

When the marriage dissolves, it's often the man that leaves, choosing to move out of the family home to avoid the awkwardness that follows a breakup. Unfortunately, this puts you at a disadvantage, even if you did it with the best intentions.

Courts consider where the children are currently living and will go to great lengths to avoid disrupting that arrangement. That means that if they're living in the family home with mom, it's quite possible that this will continue to be the arrangement after the divorce is granted.

It also gives her the upper-hand in negotiating assets, as you're already out of the house and that was your biggest bargaining chip.

The solution then (if possible) is to stay in the family home. Move into a separate bedroom if needed, or sleep on the couch, but stay as long as you can. It will be cheaper since you won't be supporting two households and it will give you some extra leverage if you need it down the road.

Play “Dirty Pool”

We've all heard about the celebrity divorce cases that dragged on for months and required private investigators to help sort out the truth. There were hidden assets, allegations of abuse or adultery and a general sense of “I'll get you before you get me.”

This is not how you want to approach your divorce. Don't hide anything and don't try to paint your ex in a bad light just to bolster your own case. If she's a good mom, then say that she's a good mom and if there are assets to be declared, then happily declare them all.

Going after the jugular at any cost just makes you look petty and ruthless in the eyes of the court. And that's never a good thing in a divorce.

Flash Your Money Around

Now, having talked about being honest and fair, let's look at the flip side of that for a moment. Besides the kids, one of the biggest issues in divorce is money. And unless your wife makes substantially more than you do, there's a good possibility that you'll continue to at least partially support her continued “lifestyle” because as we've already seen, alimony is alive and well in the state of New Jersey.

So, the question isn't necessarily *if you'll pay* but rather *how much*, and this is why it's important to be mindful of your money.

Buying big ticket items while going through a divorce is a quick way to alert the court to your generous income. In other words, if you've got money to throw around on cars, trips, expensive suits or other “luxury” items, then you've got money to pay in alimony.

And because New Jersey still uses the “permanent alimony” option, you could be paying a nice chunk of change for quite some time.

The solution then, is simple: don't flash your money around. Don't try to hide it of course, but don't show off how easy it is to spend either. Be frugal. Be conservative. And save any big ticket purchases for *after* the divorce is final.

Be Difficult

With emotions running hot, it's easy to lose your sense of perspective and forget about what's important. When this happens, you may find yourself more focused on revenge than on getting through the divorce - i.e., if she's being difficult with you, it only seems fair that you return the favor.

But being difficult isn't going to win you any brownie points with the court, even if she obviously deserved the treatment. Instead, be fair, be reasonable and be accommodating. You want the court to see you as even-tempered and rational, not obsessed with one-upping your ex.

Bad Mouth Your Ex

The woman you're divorcing is the mother of your children. She may be a good mother or a not-so-good mother just as she may or may not have been a good wife. But she is still, no matter what, the mother of your children.

And as such, she deserves that respect... at least where your kids are concerned.

It's one thing to tell the judge your worries about her parenting abilities or how difficult she was to live with; it's quite another to say those things to your kids. It not only looks bad on you, it also puts your children in the awkward position of being caught in the middle, creating stress they absolutely don't need.

Give Up

Even if you're the best guy in town and even if you've hired the best attorney in the world, divorce still isn't easy. There are painful emotions involved and no matter how agreeable the divorce might be, your world is still turning upside down.

Everything you've known up until now is about to change. You may be living somewhere else, you may be sharing custody of your children or the courts may decide to give your wife custody and limit your visits to weekends and holidays.

Needless to say, divorce can be grim. And it can do a number on your psyche.

The important thing is not to give up. You need to be strong, both for you and your kids. Even if things don't appear to be going in your favor now, that doesn't mean that the circumstances won't change down the road and there are always things you can do to work toward bettering the situation.

Maybe you need to earn more money or buy a bigger house so that your children have their own rooms. On the other hand, maybe you earn plenty but you do it by working too much and you need to find a way to spend more time at home.

Whatever the obstacle, you can overcome it. Just don't stop believing in your ability to succeed.

What To Do Next

We've covered quite a bit here, however we realize that you probably still have questions...

And finding the answers to those questions will help you make smart decisions about your future.

Requesting this report was a good start, but nothing can take the place of an experienced family law attorney. Choosing the right attorney is crucial to minimizing the stress and disruption that a divorce can cause and it's also the only way to truly protect your rights as a father.

We Can Help.

At the Law Offices of Anthony Carbone, P.C., we work hard to ensure your divorce is as fair and equitable as possible. Our firm encourages amicable resolutions to divorce disputes, but we're also ready to go to the mat for our clients when it's needed, resulting in less expense and less stress for you.

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Our firm is committed to providing experienced counsel during all aspects of your divorce, so that you and your family can move on to the next phase of your life.

Let us help you navigate this difficult time in your life. Call us today at (201) 963-6000 to schedule a free consultation.