

How to Get Divorced and Survive Financially

30 Strategies for Guarding Your Legal Rights and Financial Future

A Special Report on Intelligent Divorce

by Jeffrey C. McAdams, Esq.

McAdams Law

Divorce is unquestionably one of the most disturbing experiences any human being can ever have. The ending of a marriage is tragic enough. Even more devastating is the manner in which most divorces are handled once lawyers get involved.

Divorce tends to bring out the worst in people, and the legal process of ending a marriage more often than not fuels animosity. The fallout from a poorly managed divorce can have a crushing impact on both parties and their children, which can last a lifetime.

Divorcing intelligently is about coming out intact legally, financially and emotionally. It's possible to do, by avoiding the pitfalls and mistakes that commonly occur when most people get divorced. Sadly, some of these difficulties are the result of legal advice that escalates conflict, and complicates what could otherwise be a smoother transition to settlement and a new life.

To get divorced in New York State, certain requirements must be met. If you were married in New York and lived here as husband and wife, or if the cause occurred in this State, you can get divorced as long as either party has been a resident for one year. Alternatively, these conditions are satisfied if the cause of divorce occurred in New York, and *both* parties are residents at the time of filing, or *either* has lived here for two years continuously prior to court action. Once your divorce is finalized it is valid throughout the United States.

You also need "grounds" to get divorced in New York. Grounds are the reasons for divorce. In New York, there are six grounds. Of the six, only one does not involve a claim of fault against a husband or wife, and that is a voluntary separation agreement.

The remaining five grounds are: adultery, cruel and inhuman treatment, suing your spouse for separation, abandonment, or a prison term for one of the parties spanning three or more consecutive years after a couple is married. You should know in advance that the Courts make a strong effort to steer people away from disputes about fault. It's much more productive to work with your spouse voluntarily to settle.

In addition to grounds, the issues of maintenance and property division apply in every divorce. Maintenance is income you will either pay to or receive from your spouse to support the pre-divorce standard of living, and ease the transition to separate households as much as possible. Property division involves "fairly" allocating the assets you both owned through the marriage.

If you have children, there will be three additional issues to address. These are child support, custody and visitation. Child support is money paid for the care of children. Custody determines the children's living arrangements, and whether one or both parents will be making important life decisions for them. Visitation is the time the non-custodial parent is allowed to spend with the children.

The principles below cover strategies for helping you obtain the best possible outcome with these issues. The emphasis is on approaching your divorce in a way that is thoughtful, non-antagonistic and negotiable. This way of proceeding has helped many people take a painful and perplexing situation and achieve a result that's financially beneficial, protects children and retains personal dignity.

These ideas are not a substitute for solid legal advice and other professional help you need to navigate the divorce process well. They are methods to discuss with an experienced matrimonial practitioner, to determine the most favorable ways to resolve your particular legal and financial challenges.

If you apply these 30 strategies consistently, you can make your journey through divorce faster, easier and have a higher probability of getting the settlement package you want. Here they are.

1 – Each divorce is unique. Every marriage and family has its own distinct profile, and therefore every divorce is different. Your legal strategy has to be tailored to your individual circumstances and needs, and that takes time, thought and careful planning. What you envision that result to be should be built around a long-term lifestyle choice you hope to maintain.

Beware of misinformation. The divorce landscape is littered with it, including books by attorneys who advocate methods that heighten conflict and raise legal fees unnecessarily. Do not be swayed by family members, friends and associates who are unlikely to know what is truly right for you. They are not the ones who have to deal with your ex-spouse and children going forward. Only you can make vital decisions about your life. This is especially the case if any of them have been through a difficult divorce. Their negative experiences will invariably affect the advice they give you.

2 – Hire a matrimonial attorney to represent you. Matrimonial law has many complex facets, and divorce is usually a difficult process under even the best of circumstances. You want an attorney who is experienced in handling divorce cases, and who has a problem solving approach as opposed to an adversarial one. If an attorney's orientation is to turn your divorce into a war, you will ultimately be paying the bill for all the battles. It complicates an already tough situation, can easily make legal costs spiral out of control, and prolongs resolution. That reduces your quality of life.

If your goal is to achieve a fair, lasting settlement as quickly as possible, pick an attorney you feel can accomplish this outcome for you. You also want to attain the result with a

minimum of legal fees. If the lawyer is experienced in matrimonial law, is a good listener, and suggests negotiating in a reasonable, non-antagonistic way, these are good indications you've found the right representation.

Most importantly, don't try to be your own lawyer. If your spouse has hired a knowledgeable and seasoned legal professional to represent him or her, what reasonable chance of success can you expect as a non-attorney? More likely than not, you'll be decimated, and the consequences may affect you and your children for the rest of your lives. Borrow the money if you have to, but get adequate counsel.

A knowledgeable matrimonial practitioner can sometimes win major advantages solely with skillful handling of procedural issues. For example, McAdams Law represented a husband in a child support lawsuit that had already dragged on for seven years. He was arrested for being in arrears on child support payments. The firm proved he'd never received the Family Court papers, and thereby got the case dismissed and judgment voided. He was released from jail, and saved tens of thousands of dollars.

If you're anticipating divorce, set up a fund for living expenses and professional fees. You'll want to insure that you have money to live on and to pay costs until it's finalized. In the beginning stages, it can be unclear what your living arrangements will be, and what the total amount will be for legal and other professional fees. Your lawyer can assist you in making a good estimate.

Once your spouse knows you want a divorce and hires a lawyer, you may have limited or even no access to any joint funds for a while. Anticipate your financial needs for the worst-case scenario and set aside the money in an account only you have access to.

The most basic preliminary step in discussions with your attorney will be establishing what constitutes a good outcome for you. To do this, you'll need to create a written account of items to be negotiated between you and your spouse. Make three lists. The first category consists of things you absolutely need, and would be willing to fight for in Court if necessary. These are most important to you, and are required for your settlement agreement to be a workable deal long-term. The second list is of items you want, but could do without if you had to. Your third list includes things that can be viewed as extra perks or luxuries, and that you'd be willing to give to your spouse in negotiating for the things you really need.

Review and refine these lists with your lawyer.

3 – Get the best team of advisors you can. In addition to your lawyer, other experts can play an important role in achieving the result you want. An accountant who's experienced with matrimonial litigation can be essential for evaluating your spouse's income and assets, advising you on your own financial status, and handling the tax consequences of divorce. There are also divorce financial planners who assist with establishing budgets and assessing settlement packages.

When it comes to custody and visitation issues, a therapist who has a background and training in handling divorce cases can be crucial to working out a suitable arrangement for your children. You may also want a therapist with whom to discuss your own emotional issues.

Other experts may be needed to get the best possible settlement. For example, if a business is involved, an appraiser or valuation specialist may have to be called in. Good planning suggests that you address the need for all these professionals in advance. Ask your attorney what additional assistance may be required.

Put this team in place as soon as possible. They'll help you anticipate potential problems in advance, and minimize their impact. As your divorce moves forward, it may be harder to gain access to the data they need to help you most effectively.

In one divorce case, McAdams Law was retained by a woman who was initially receiving \$350 a month in child support under a prior settlement from her ex-spouse, for their ten-year-old daughter. When she discovered her former husband declared in excess of \$300,000 annual income in the USA, derived from his international commodities exchange business, she sued him in Manhattan's Family Court for upward modification of his child support obligation. After initiating this case she came to McAdams Law, and the firm represented her in moving forward.

The litigation went on for two years and McAdams Law used expert witnesses to challenge his "explanation" for why the company went out of business after he was sued. He then agreed to pay her legal fees, the child's private education through high school, college, and graduate school, and to increase his child support payments by a multiple of five. *Knowledgeable experts were crucial to achieving this outcome.*

To be uninformed or misinformed in divorce proceedings can be deadly. The outcome of your divorce will have a significant bearing on the quality of the rest of your life. Mismanaging any aspect of it could cripple your opportunity for a good future, along with your children's. Therefore, it pays to spend the time to become educated by asking good questions, preparing well and assembling the best team in your corner you can.

4 – Negotiate or litigate. The reality of divorce is either you come to terms with your spouse, or have a judge decide your future for you. You have more control over the process when you agree to work things out directly with your spouse, assisted by your lawyer.

Going to trial is risky and expensive; trying to predict the outcome is dangerous. If you do go to trial, expect the unexpected. No one can predict the outcome of even the most carefully prepared trial strategy with 100% accuracy. There are too many variables involved in most divorces to do so. The bottom line is that when you go to Court, you are turning over control of your life to a third party. The judge may or may not see things your way.

Also, don't expect the Court to make right what you feel is wrong. The Courts are overburdened. The judge's agenda is to encourage you to deal with your spouse and reach a settlement as quickly as possible. Your idea of what is fair may be entirely different from the judge's conception of it, so do not expect fairness. If you don't see the judge's decision as favorable you can appeal, but it may cost you a lot extra in legal fees, which is money you could otherwise use to live on.

Do a cost/benefit analysis especially with regard to monetary issues. Sometimes fighting over money can cost you more than you can ever hope to gain. If you factor in your legal fees, Court costs, expert witness fees, missed days from work, plus the fact that in the end you may be ordered to pay your spouse's legal bill, you can see it may be a losing battle even if you win. Carefully review with your attorney what you can reasonably hope to gain concerning any specific financial issues, and project the anticipated costs in advance. You may save yourself a small fortune.

5 – Have a cooling off period. Starting negotiations too early about long-term issues can doom your efforts to failure. Whether or not you initiated the divorce, you both need time to adjust to the reality of your relationship being over, and to begin the process of rebuilding your lives. Emotion clouds the detached frame of mind essential to good negotiation. The best initial strategy is working out a temporary arrangement that minimizes emotional and legal conflict.

Think carefully about the terms of any temporary agreement. Keep in mind that the Court will be reluctant to change any arrangement that appears to work. The deal you make now may be the one you have to live with. Be cautious about what you agree to.

A reasonable time frame for transition ranges from a few months to a year. Negotiating a separation agreement itself can take three or four months under the best of circumstances.

6 – Malice doesn't pay in divorce. No one really "wins" in a divorce. Being confrontational and vindictive takes a hard situation and makes it much worse. If you decide you're going to engage in war, you'll make it difficult if not impossible for your partner to be reasonable and negotiate with you. He or she is likely to respond in a similar way. Escalating conflict does nothing but enrich lawyers. Don't up the ante.

Also, don't automatically assume that your spouse is acting with intent to harm and ill will. If his or her attorney has a hardball, take-no-prisoner's approach, it may be you're your partner is going along with that advice. This is one of the dangers of legal maneuvering. It can destroy any remaining goodwill between you, and complicate your divorce needlessly. Be aware that the attorney may be the ruthless one, not your spouse. Therefore, don't impulsively respond in kind – speak with your own lawyer about the most appropriate strategy.

It doesn't help to focus on fault. As a practical matter, most judges conclude that both parties contributed to the destruction of the marriage. So while the law may allow a judge to consider extreme fault in determining maintenance and property division, that doesn't

means the judge will. The more important elements are earning potential, financial need, age and health of each partner and the children, and how long you were married.

Explosive outbursts of anger can ultimately be used as evidence against you in Court, especially in custody proceedings. It is a common tactic of lawyers to bait the other side with the intention of provoking a rage response. If you find yourself in this situation, the smartest strategy is to distance yourself from it. Let your attorney or a mediator handle negotiations and act as a buffer. A calm response is safer than an angry one, and no response is sometimes best of all.

Never alienate or emotionally poison your children against your spouse at any time, either during or after your divorce. The Courts have a very severe view of this kind of behavior. It's a mistake that can result in your partner winning sole custody, *even after it has been initially awarded to you*. Custody remains an open issue until children are of age to legally choose which parent to live with, or are fully grown.

Concentrate on your long-term objectives: to emerge as financially intact as you can, and to protect your children from additional trauma. Avoid provoking your spouse. If you want to save money and preserve your financial well-being, be willing to negotiate, be fair and be reasonable. Flexibility can achieve more than fighting.

If there is any winner in a divorce, it's the person who thinks before acting.

7 – Think parenting instead of custody. Both for legal strategy, and more crucially for the benefit of your children, focus on the quality of your parenting as opposed to custody. The Courts are ultimately concerned with what is in the best interests of the children. If you want to win sole or even joint custody, you'll need to convince the judge you are a capable parent. Too many parents focus on getting custody, and not enough on what constitutes good parenting both from the Court's and their children's perspective.

If you've been an attentive parent, your attorney will assist you in documenting it. On the other hand, if your spouse has genuinely performed most of the day-to-day parenting responsibilities, you will need to learn more parenting skills and prove to the Court that you can make a significant contribution.

Be an active parent. Earn the right to custody by being a good one, rather than through legal maneuvering and courtroom battles.

8 – Deal with secrets and sensitive issues in advance. Things you try to hide during divorce proceedings have a mysterious way of coming out at the worst possible time, like during a cross-examination by your spouse's attorney. If you've had an affair, are developing an emotional problem, engage in substance abuse, have undisclosed financial dealings, or any other potential legal landmine, discuss it with your attorney. This way you can develop the best strategy to deal with it in advance.

In some instances, the best strategy is to deal with the weak parts of your case openly. If

you appear to be hiding something and it's dragged out of you in Court, it can be more damaging. Presenting the problem in a forthright manner diffuses its impact, and contributes to an impression of trustworthiness and honesty, which can strengthen your case.

Be careful who you speak to and what you say. It's best to keep all information concerning your divorce confidential. Only share information with those who need to know, and who will directly assist you with achieving a favorable outcome. To do otherwise is to risk revealing information that can make its way back to your spouse and his or her attorney, and may be used against you in court. Your comments may be electronically recorded without your knowledge. Additionally, your spouse may have hired a private investigator to collect information about you, including anything you might have said in recent conversations.

For example, McAdams Law represented a father in his thirties who engaged in cross-dressing and taking feminine hormones. This issue manifested after the World Trade Center disaster. He'd escaped from Tower 2, then suffered posttraumatic stress and fell into a severe depression. His physical health had deteriorated as well; he developed a heart condition, and required a stent. Next, his wife threw him out. After that he went to live in a single room occupancy hotel, and began dating another woman. To compound matters, he lost his job.

His wife's lawyer demanded child support beyond his means and sought to severely curtail his parental rights. McAdams Law negotiated an agreement in which he would not to discuss his cross-dressing or hormones with the children, or to expose them to it in any way. The firm protected his share of the marital home, which he receives when his wife sells it or the children reach the age of twenty-one. Both spouses waived maintenance from each other, and child support payments were limited to the legal amounts he could afford to pay when he found a new job. This enabled him to get back on his feet and to maintain an important role in the lives of his children.

Attempting to hide damaging secrets in this case would surely have backfired.

9 – Good records are essential to a successful result. Your financial records are evidence in the economic valuation of your marriage. The best time to compile this information is before the subject of divorce is raised. If you suspect divorce is in your future, begin now to collect and organize your records. Evidence can easily vanish in a divorce situation, and facts become more difficult to obtain as it progresses. If your spouse deliberately removes, conceals, alters or destroys key documents that you have no other access to, it's much more difficult to reach resolution and closure successfully.

You must know your budget facts. You can't make a case for or against maintenance amounts that are not based on solid financial data. Get detailed information about specifically what it costs to run your household, and to take care of children if you have them. Make a record of all costs so that you can negotiate from a position of knowledge and strength.

Without good records and detailed knowledge of your financial situation, you could be in danger. For example, your spouse can run up debts you may be responsible for. If you don't collect the data, your attorney will have to subpoena the information. That process is costly, time consuming and exhausting. Worst of all, it is not infallible and critical facts may never be discovered.

You'll need the last three years of financial documentation. That includes: your tax returns, a personal balance sheet, your will and other estate-related documents, the deed to your house or condo (or subscription agreement and proprietary lease for a co-op), your mortgage, insurance policies, 401K, IRA, and pension, brokerage, credit and loan statements, car registrations, and a list of any other assets like art, jewelry, antiques, etc.

If you have a business, you'll also need to supply business and tax records, including any key documents. Your attorney will fill you in on whatever additional material is needed.

Review and make copies of cancelled checks. These can reveal financial information of which you were previously unaware, and may be critical later on.

Download all computer data to a disk and store it safely outside your home. E-mail and other computer files can have vital data essential to achieving a successful result. You may be surprised to discover what's there. If you don't know how to collect the data in electronic format, hire a computer technician to come to your home and office to do it for you. Then store it in a safe place only you have access to.

Take special care to document your spouse's income and assets. However, compiling this data does not include raiding his or her private papers. You're looking for financial information about the marriage to which you are entitled. It's not a good idea to be invasive and go through your partner's personal property. If you do and it's discovered, you'll only incite more rage. Sneakiness can backfire on you.

Write down everything you contributed to the marriage that had economic value, or in any way added to the financial stability of your marriage and family. For example, did you pay for or contribute to your spouse's professional training? Were you actively involved in helping your spouse manage a business? Did you host many important business dinners and meetings?

Put all this information into a binder, or an accordion file with labeled pockets. Taking the time to organize your information in this manner can reduce your legal fees, since this is something your attorney will otherwise have to do for you.

Keep your records in a filing cabinet or plastic container, where they'll be protected. Keep copies of all vital documents off premises, in case there's a fire or flood and your records are destroyed, or if for any reason you lose access to your home. Always protect against loss of your records, remembering that the cause can be accidental or deliberate interference by your spouse.

Collecting evidence is particularly important if you are claiming abuse. After your spouse retains legal counsel, the attorney will advise him or her to behave like a model citizen and parent. Keep a written record of all abusive incidents, and speak with your attorney about additional steps to take to document the harms suffered.

10 – Take photographs or make a video of all your possessions. Be sure to include a recent newspaper in the view to establish the date. Make a list that includes all items, along with the value of each one.

It's best to create several sets of this data: give one to your attorney, keep one in secure location only you have access to, and consider giving one to a trusted family member or friend for safe keeping. Only share information with your spouse through your attorney. Revealing in advance what you intend to show in court and how is not always to your advantage.

In addition to documenting all marital property, this strategy can help diffuse unreasonable claims. For example, if your spouse claims to need additional money for clothing and you can present a photo of an extensive wardrobe, it's evidence suggesting the request is unwarranted.

11 – Document parenting ability. Courts determine custody according to what is in the best interests of children. To win custody, you'll have to show the Court that you are the more capable and nurturing caretaker of your children. That takes preparation and planning.

To do this effectively, provide evidence of how much time you routinely spend attending to your children's needs on a day-to-day basis. A calendar is a good tool for this. For example, if you have a baby, do you change the diapers, handle all the feedings, etc? Demonstrate a record of time spent with your children, including your attendance to school events, recreational time, vacations, etc. Include especially time taken off from work to take care of a sick child, or extended periods away from your normal employment to be home with children.

Be an informed parent. For example, nothing is more ridiculous than trying to prove you are an adequate caretaker for your children, when you don't even have a handle on expenses.

Document your spouse's parenting capacity also. Since people are on their best behavior during custody proceedings, you'll need to reconstruct his or her history of parenting as accurately as you can. Ask your attorney about using the same procedure you're using to prove your own ability, or get recommendations as to the best approach. If you can show specific evidence that proves you are the more attentive parent, you give your lawyer a powerful tool for winning your case.

Consider hiring an independent custody advisor. Many judges appoint a custody

evaluator at the start of a custody case, and will often rely heavily on this expert's advice. Good strategy is called for in these circumstances. If you hire your own independent custody advisor to assist with developing a court strategy, you can be coached on the best approach to dealing with the evaluator the judge appoints, and have your expert review the reports provided to the Court for weak spots.

Attend every court hearing, even if you're not required to. It shows the judge you are dependable, conscientious and responsible. The positive impression you create can help sway the Court's decision in your favor. In custody proceedings, it gives the impression of a capable parent.

Keep in mind that court rulings are becoming more favorable to awarding custody to fathers than in years past.

12 – Hiding income and assets is not a good idea. Here's the bottom line: they're likely to be found. Then you'll look bad – to your spouse, your kids, and the judge. You could even go to jail. Your tax returns can be subpoenaed. If the income you're not telling your spouse about is on there, it will be easily discovered. If it's not on your returns, that's tax evasion and is a crime for which you can be fined and imprisoned.

Be completely clear about this: lying on Family Court or Supreme Court financial disclosure forms is perjury. Perjury is punishable by fines and/or imprisonment. The Court will consider it in ordering maintenance, support or distribution of property.

Your spouse's attorney may hire a forensic accountant to go over every item of your finances. This is a financial professional who investigates and reports on your financial background for court purposes. Every check you wrote, credit card you used and cash advance you made will be looked at, and that's just for starters. It's well known that husbands and wives attempt to hide money and property in divorce situations. And forensic professionals are aware of all the tricks people use.

Be forthcoming and upfront about your finances, and you'll gain the respect of the Court as someone who is cooperative and trustworthy. The ultimate financial impact of that positive impression is likely to be more valuable to you than any cash or assets you hide, especially if your deception is discovered.

McAdams Law once represented a woman whose husband was a cab driver. He received his pay in cash and claimed poverty. They had a daughter and he was obligated to pay child support. The wife claimed he sexually abused her younger sister, and obtained an order of protection commanding him to stay away from her and the daughter. He violated the order of protection and was arrested. The firm learned that he owned two cars and had bought a restaurant, and served papers on him while he was in jail. He ultimately agreed to pay substantially more in child support than he claimed to earn on his tax returns.

13 – Hire a financial professional to create your budget. You will have to produce a schedule of living expenses to arrive at an agreed upon figure for both temporary and

long-term maintenance. It's wise to have a financial professional assist you in generating this document. Otherwise, you may find that a miscalculation leaves you with insufficient funds to live on, and puts you at risk. The cost of retaining a financial professional is minimal in contrast to future economic devastation because you forecasted your needs inaccurately. Hire a professional with experience in divorce planning.

14 – Guard your credit. Each marital financial situation is different, and you will need to evaluate yours carefully. If you fear that your spouse will run up joint credit cards or otherwise incur debt, discuss with your attorney whether it is appropriate to have the accounts frozen or canceled. If the accounts are in your name, but you've had a card issued to your spouse, you will still be liable for any charges he or she makes.

Keep in mind that you don't want to provoke animosity, yet you also want to avoid risk of damaged credit and undue financial strain. Excessive credit card debts can destroy your finances. Once your divorce is finalized, you'll want to close all your joint accounts and notify each creditor in writing. You can then reapply for your own accounts if you want to. Get a copy of your credit report three months after your divorce is final and check it carefully. If you still see joint accounts, write the credit-reporting agency about correcting errors along with anything else that may need updating or investigation.

Once you move out, also remove your name from any utility bills.

15 – Revoke any powers of attorney on your *personal accounts*. If you don't, your spouse may empty them out. A power of attorney gives legal access. Check into canceling any that exist relating to your own bank, securities brokerage and other important accounts.

Additionally, to protect your privacy, have your personal mail sent to your own post office box or mailbox service. Speak to your attorney about transferring any maritally related mail there, and changing other addresses associated with your marriage. While you don't want to seem as if you're concealing assets and conducting hidden financial dealings, you still need to protect yourself and want to know about all crucial correspondence. This may have to be worked out between your respective attorneys.

16 – Update your will, health care directives and all other estate-related documents. If you die unexpectedly without a will, or if your spouse is named as sole beneficiary in your will, he or she will inherit all your assets unless you have children. If you have kids, there are situation-specific laws that determine what your spouse and children respectively receive.

If you don't have a will, hire a lawyer to prepare one now. If you do have one but haven't named a new beneficiary, have your attorney update it with all necessary changes.

Even if you have an updated will, your spouse can challenge it before the divorce is finalized. If you die, he or she is entitled to receive one third of the estate or \$50,000.00,

whichever is greater. However, you may still want to make changes so that whatever your spouse could receive is limited to these amounts. Again, if children are involved, different formulas may apply.

Similarly, any health care proxy or living will you have in force may need to be revised. These documents allow your spouse to make health care and medical decisions for you, if you are not able to yourself. Many people are not comfortable having these decisions made by spouses whom they are divorcing. If you aren't, appoint someone else.

These issues should be addressed immediately. Don't wait until you reach a final divorce settlement.

17 – Consider mediation and arbitration. These are alternatives to divorce litigation. Either option may cost substantially less than conventional divorce. That preserves your financial resources. If you want to accelerate resolution, one of them may be a better choice for you than going to court.

In mediation, you have an independent third party assisting you and your spouse in working out an agreement. You still have your lawyer advise you, and put the agreement into writing. Many people find mediation is far less emotionally draining than litigation. Another benefit is that mediated cases tend to be settled more quickly. Sometimes resolution can be accomplished in months, as opposed to the multi-year scenario for many litigated divorces.

Like mediation, arbitration is usually faster than full-fledged litigation. With arbitration, you agree to have your case decided by an arbitrator rather than a judge. The decision is binding, and can't be appealed. Even when arbitration is preferable to a lawsuit, it still leaves the final decision in the hands of a third person. This is another reason why it's advantageous to negotiate with your spouse if possible.

Because each divorce case has its own special circumstances, you'll need to consider these approaches carefully with your attorney to see if one of them is a better choice than a potential nasty, drawn out court battle.

18 – Don't leave your home until your attorney advises you to. Leaving your home too soon can have major repercussions. Your expenses immediately go up because now you'll have to maintain another home. Also, it's harder to guard your financial interest in the marital property, and other claims to it.

Once you're out of your apartment or house, you may not be able to regain access, and you lose some control over the property division aspect of your case. If your personal property is still there, you might not be able to get it for a long time, or you may never get it back.

From the standpoint of custody of your children, leaving home may be regarded as abandonment, and can severely damage your opportunity to win custody of your children.

Certainly there are circumstances in which is advisable to leave, such as if you are a victim of domestic violence. Yet even in this case, it may be a better strategy to get an order of protection, requiring your spouse to leave instead. Each case needs to be evaluated individually.

19 – Do not have sexual relations with your spouse while you are pursuing divorce. This happens with some frequency and is not as outrageous as it sounds. If the grounds for your divorce is adultery, having sex with your spouse after you learn of it can legally be considered as forgiving the infidelity.

It also destroys the ability to use “constructive abandonment” as grounds for divorce. Constructive abandonment means a spouse has refused sexual contact even though capable of having sex, with the partner having requested it continuously for over a year. It is often considered the gentlest of the fault grounds.

20 – Solve your problems or sacrifice your kids. If you suffer from mental illness or an addiction, are abusive, a workaholic, or want to destroy your spouse’s relationship with your kids, you need to get help and change these destructive life patterns. All of it will come out at trial, and probably cost you custody of your children, especially if your spouse doesn’t exhibit these behaviors. Be aware that if your spouse has these problems also and you fight over custody, you may lose your children to foster care.

Being promiscuous, particularly in the presence of your children will also hurt you. Of course, in some divorces one party has already established a serious relationship with someone else. However, in the absence of serious intent you are better off curtailing any recreational romantic liaisons. Cheating will cost you. If you feel your marriage is ending, be clear about it and make some decisions. Either get counseling and address your issues, or see an attorney about planning your divorce. If your spouse discovers your infidelity, it will be experienced as a betrayal and make your divorce brutal and bitter.

If your spouse suspects you’ve been unfaithful, his or her lawyer will likely hire a private investigator to collect evidence and prove it. There’s either a paper or electronic trail to almost any interaction nowadays. Credit card transactions, cell phone bills, e-mail – all are traceable, and can be subpoenaed. In fact, there are firms that specialize in capture of electronic evidence.

The legal name for cheating within a marriage is adultery, *which is a crime in New York State.*

Never threaten or be violent. If your spouse feels that he or she is in danger, or can supply specific evidence to the Court, you can be removed from your home under a restraining order, commanding you to keep your distance. It’s a crime if you violate it and you can be arrested.

If the nature of your relationship is such that you feel you might be provoked to violence,

it may be best for you to find other living accommodations. This is something you should address immediately with your attorney.

If you believe your spouse is endangering you, whether through physical violence, verbal threats or abuse, stalking or any other type of harassment, take immediate legal action to protect yourself and your children. Speak to your attorney about having your partner removed, securing your premises and obtaining an order of protection.

In an emergency, you can go to Family Court without an attorney, and get a temporary order of protection requiring your spouse to stay away from you, your home and your children. However, to obtain one you must claim that you or your family is in immediate danger.

While it's preferable to maintain a cordial relationship with your ex-spouse after the divorce, if he or she has these kinds of problems it may be time to go your separate ways, or at least minimize future involvement.

In one case McAdams Law was involved in, the firm represented a woman whose husband suffered from bipolar disorder, a form of depression. They had a long marriage and an adult daughter. The firm assisted in equitably dividing the marital property, which included three houses in Queens. The wife got title to one of the houses wholly in her name, and sold another house to get her half the value. In all other respects, they went their separate ways.

21 – Good negotiators are sensitive to the other party's needs. Divorce always provokes strong emotion, which tends to make people consider their own needs only. But nothing can be more detrimental to a successful negotiation. As difficult as it may be at times, you'll need to be as objective as you can and look at the situation from the perspective of your spouse. How is he or she likely to be feeling? If you were in the same position, facing similar demands, how might you react? What would you direct your attorney to do?

Clarity is essential to successful negotiation. Sometimes it's easier to be angry than it is to be depressed. However, anger and vindictiveness blocks your ability to clearly evaluate your options, and to plan effectively for the future. Let your actions be guided by your ultimate best interests, not emotions and feelings. In some ways, you're best off approaching your divorce as a business transaction. Making financial and other adjustments on both sides is part of the reality of divorce. Fighting leads to high legal fees and less money to live on.

Approaching interactions with your spouse this way gives you an edge. If you can successfully anticipate reactions, you can tailor a negotiating strategy that has the highest probability of success. It's not just a question of having your attorney do all your talking for you. Your attorney helps facilitate a successful resolution of the entire divorce process, but ultimately you must decide among the options and approaches your lawyer outlines for you.

When negotiating, focus on points of agreement first. You want to establish a common ground that serves as the foundation for productive discussion when it comes to the more difficult issues.

Thinking from this broader perspective always includes your children's reactions. How you act speaks volumes to them. Your choices and actions are eventually telegraphed back to them in some manner. Think about their response to everything you say and do concerning the divorce and your spouse. When they're older, they'll remember these things and it may affect your relationship with them in a major way.

Never use your kids as a bargaining chip. For example, after you've worked out custody and visitation, don't tell your spouse you'll give additional access to the children in exchange for some other benefit. There could be legal repercussions, and an adverse impact on your children. Have clear boundaries with your ex-spouse, especially when it comes to your kids.

22 – Don't depend on your prenup. The validity of a prenuptial agreement can be attacked. Two major issues are: a) whether you made full financial disclosure at the time the agreement was signed; b) whether your spouse had an opportunity to be adequately represented by his or her own lawyer. Certain changes in circumstances can also undermine it. Make sure you have all supporting financial documentation collected and in a secure place, like a safe deposit box only you have access to.

What you agreed to in your prenuptial agreement can have a bearing on estate planning considerations. When you update your will, have your lawyer carefully review your prenuptial agreement. You want to be sure any changes or amendments to the will are in accord with its provisions. Otherwise, if there is any conflict or ambiguity between the two documents and you die unexpectedly, the will may be open to challenge and your wishes may not be honored.

23 – Cap if you pay, open if you receive. If you pay maintenance, you want to negotiate a settlement that puts a limit on the amount and time you'll make payments. You want a reasonable agreement that is acceptable to your spouse, to minimize incidents of future conflict, yet you also want to be free and clear of the responsibility as soon as possible.

If you are to receive maintenance payments, you are best protected by having your agreement as open-ended as possible, to cover any future contingencies with an upward adjustment. Again, this is subject to negotiation, and it is not in your interests to alienate your spouse by attempting to force an arrangement on him or her that appears to be an unfair and onerous burden. You'll then very likely have difficulty collecting your payments, and can look forward to additional court visits and unnecessary venom between you.

There are various types of maintenance arrangements. Sometimes maintenance can be

capped and paid in a lump sum. In other instances, the Court will require the payments to accommodate specific circumstances. For example, the judge may want determine what amount is needed to assist your spouse in getting training and support to earn income independently. Courts try to protect a spouse from the economic devastation of ending a long-term marriage, or against loss of earning capacity due to the potential reoccurrence of an illness, such as cancer.

The timing of when spousal support obligations end can also vary. In some cases, payments stop when a spouse remarries, or moves in with a new partner.

Consider hiring a vocational expert to assess your spouse's earning potential. What your husband or wife is capable of earning will influence the maintenance agreement that is worked out between you. A vocational expert can assess skills, aptitudes and earning potential, and make a credible recommendation to help your attorney negotiate the best possible deal on maintenance for you.

The point of maintenance is to assist with financial transition. If your partner doesn't work presently but is capable of earning income, maintenance helps with moving from dependency to economic self-sufficiency. This is also the case if your spouse is underemployed, and can earn more than he or she is right now. The goal is for both parties to be independent and contribute to the new financial needs of two households.

The best approach is to maintain an attitude of helping your spouse adjust to the new reality of divorce. If you can afford it, it's worth investing some money to help your partner adapt better to new economic circumstances. This can include paying for a course of therapy, if adjusting to a new work ethic or situation is traumatic. Also, help your spouse establish his or her own credit if necessary.

For example, McAdams Law represented a wife with bipolar disorder. There were no children. The firm obtained a divorce settlement after a five-year marriage, in which the husband bought out her fifty percent interest in their marital home, and agreed to pay her maintenance until she finished her masters degree.

Each situation is unique. Whether you're paying or receiving, the rule is to anticipate future needs and have your attorney write an agreement that avoids either of you having to go back to court and litigate.

24 – Require payments towards your children's education now. Educational expenses are among the largest financial obligations parents have to sustain. Your children's education is too important to be subject to a future "promise to pay." Your settlement agreement should include specific allocations for education, with contributions beginning immediately, to avoid disagreements that may arise later due to changed circumstances or poor planning.

It may be best to explore the use of different types of accounts to accumulate these funds, such as a trust formed with the express purpose of providing for your children's

education. These accounts can be managed by a designated third party under specific instructions to handle the account in a preplanned way, thus minimizing the chance of future conflict between you and your ex. However, trusts can be complicated, and you should speak to your attorney about a referral to an estate-planning practitioner who can advise you.

In a case involving educational costs, McAdams law acted on behalf of a husband who owned a house and earned a large salary. His wife had a smaller salary, but owned valuable properties. The firm negotiated an arrangement in which the parties divided ownership of their properties, and reached an equitable agreement for the payment of their son's training and educational expenses. Although there were still outstanding issues to be resolved, the settlement ensured the child's education.

25 – Amend your lease. If you rent, contact your landlord about changing the name on your lease once your divorce is final. If you don't and you are staying in the apartment, your ex-spouse will have legal rights of access to it. On the other hand, if you're the one leaving the apartment, you don't want to be responsible for paying any rent not required by your settlement agreement. For example, if your spouse is sued by the landlord for non-payment, and your name is still on the lease, you could be named in the suit. A money judgment could then be entered against you for back rent due, without you even knowing it.

There is a recent issue in landlord-tenant litigation that has far more serious consequences than just being sued for unpaid rent, and that's blacklisting. Housing Court now sells the names of litigants in cases to background checking agencies. *That means if you're named in a lawsuit because your ex-spouse is being sued or evicted, you'll also be on the blacklist.* If you ever want to move to another apartment, your new landlord is very likely to find out about your being named in the case through a routine background check, and may not want you as a tenant. To get into a new apartment, you may have to pay a significant amount of rent in advance, or a higher security deposit.

You could be exposed to this after a divorce even though you may have followed the terms of your divorce settlement agreement precisely, and are not at fault in any way with regard to your spouse's apartment. If you had a rent-stabilized or rent-controlled apartment, your spouse will then probably move to a new location at a much higher rent, and may sue you to cover the additional cost. If you have children, not only does it raise issues as to the suitability of their living arrangements, but you can be more liable for additional child support payment based on their increased needs.

There's also the possibility your spouse may deliberately not pay the rent, to precipitate circumstances that result in a move to a better apartment, which you have to pay for.

An additional concern is the luxury decontrol provision of the rent stabilization code. If the apartment you shared while married is rent-stabilized, and the rent is currently over \$2000 a month, your spouse may lose rent-stabilized rights if the household income exceeds \$175,000. Here's how that might happen. Let's say your spouse makes \$80,000 a

year, and has a lover move in who makes \$100,000 annually. The combined household income is now \$180,000. If the lover stays two years, the landlord can have the apartment removed from rent-stabilization protection.

If your spouse breaks up with the lover, and is stuck with the higher rent and just one income, who do you suppose is the first person to be tapped for the difference? You. And the Court may legally enforce your former spouse's right to have you pay the increase, unfair though it may be. Child support can be based on the children's increased needs.

An experienced landlord tenant attorney can help you with these matters. The first issue to deal with will be whether or not the landlord will change the name on the lease. Your divorce settlement should be very clear and precise about changing the names on the lease to avoid your being exposed to the liability of being sued for your spouse's nonpayment of rent. Your settlement could stipulate that any additional rent or security deposit payments you incur as a result of nonpayment or being blacklisted is either subtracted from the maintenance you pay, or are considered as a credit towards it.

Regarding the loss of rent-stabilized status due to luxury decontrol, your attorney can negotiate a provision to your settlement agreement that says if your spouse jeopardizes the rent-stabilized status of the apartment by cohabiting with another occupant, that he or she is responsible for any increase in rent, or for the difference in rent at new residence.

No protective measure is foolproof. Even with this provision, the Court may still order you to pay for the cost of a new home at a higher rent, in the form of increased child support. However, you're still safer having it in your settlement agreement than not.

To learn more about blacklisting, see the McAdams Law Special Report, *How to Protect Yourself Against a Ruthless, Greedy Landlord* at: <http://www.mcadamslaw.net>

Strategy # 20, "Don't get blacklisted." covers the topic. You'll also find additional information about potential loss of rent-stabilized status in that Report.

26 – Consider work that permits a home office and flexible work hours. The reality of the current legal landscape is that in many respects Courts do not view or treat women and men the same. Some judges still feel a woman's place is in the home, exhibiting prejudice against working mothers or stay-at-home fathers. Successful professional women who work long hours are especially at risk in front of these judges, as are fathers who bring home less money than their wives. Expecting the Courts to be completely fair is somewhat naïve. Consequently, everything you do especially up until custody is awarded, needs to be carefully thought out as to its potential impact on the Court's decision.

Your goal is to convince the Court you can do a better job of nurturing and raising your children, and that you have a lifestyle that is stable and structured enough to do so. Working from home all or even part-time can help both mothers and fathers in this regard.

27 – Have a financial professional evaluate your settlement proposal. Many long-term factors have to be taken into consideration in analyzing whether the offer is a good one. A workable plan takes into consideration how financial needs change over time. The future impact of inflation on the cost of living is a factor few couples understand in a concrete way, and requires a computer generated financial analysis to effectively calculate and comprehend. Your divorce settlement must last a long time. For your own safety, you need a written, carefully projected, professionally produced financial plan.

Keep taxes in mind. Don't agree to any asset split arrangement until the after tax impact has been calculated. Your tax situation may be quite different from your spouse's. The goal in dividing income and assets is to see that they are *fairly*, though not necessarily *equally* distributed. That can only be determined once the tax implications for each party are carefully explored.

Also, be certain to insure your plan. If your ex-spouse dies prematurely or becomes disabled, it may cut off your settlement income. Make life and disability insurance part of the package. That way your financial security will be intact if your partner dies, or suffers a serious injury or illness.

28 – Create a log. Make a written record of the date, time and nature of all phone or other conversations with your spouse. Keep an account of all child support and other marital-related bill payments. With well-organized data, you're giving your attorney the tools with which to prove and win your case, in any contested issue either during or after your divorce. The better you document things for your attorney, the more likely you are to get the result you want.

Keep an ongoing calendar as a valuable historical record of how you spend time with your kids. In particular, maintain a visitation log, including a written record of when you are supposed to see and speak with your kids, and when you actually do. If your spouse isn't sticking to your visitation agreement, you'll have evidence to show the Court. This is especially important if you sense that your spouse is attempting to alienate you from your children from you.

If you believe that your spouse is emotionally poisoning your children against you, keep an incident log of specific comments and behaviors your child exhibits, and certainly save all relevant e-mails. Courts look very unfavorably on the parent who attempts to destroy a relationship any child has with the other parent.

In New York State, any party to a conversation may record it without disclosing it. Tape recording may be a necessary strategy if you sense that your spouse is attempting to turn your children against you. However, speak to your attorney before making tapes of this sort, as various legal restrictions and tactical considerations may apply. The judge may be uncomfortable in dealing with secretly taped conversations, and your spouse is likely to be enraged by it.

Also, get receipts from your spouse. You need a written record of all financial and property related transactions. So don't give him or her cash or any property, such as silverware or an expensive piece of furniture, without getting a receipt for it.

Keeping these ongoing accounts is especially important with regard to child support payments, which have severe consequences on default. If you don't pay child support you can even go to jail.

A father retained McAdams Law in a child support case in which he was still being billed by the Child Support Collection Agency, after his children had all exceeded the age of twenty-one. His driver's license, and a professional license and privileges were suspended by the agency. The firm stopped the child collection order, and had all licenses and privileges reinstated. The Court ruled that he did not owe his former spouse any more money.

29 – Never sign any agreement you don't understand completely. When you are asked to review any proposed agreement, photocopy it and then sit down with a highlighter and a ruler. Highlight anything you don't understand, then meet with your attorney and ask for an explanation. Insist the sections that are unclear or seem ambiguous be re-worded into plain English that is understandable to you. If necessary, ask your lawyer to draft and add language that includes specific examples of how an agreed upon item is supposed to work. If you leave room for other interpretations, it can work to your detriment in the future.

30 – Retain all important divorce documents. If your ex decides to go back to court to challenge your agreement, you'll need these papers to defend yourself and substantiate your position. Ask your attorney which papers to save, and what can be discarded. Shred anything you're told to throw away. Keep everything else indexed and organized.

The golden key to your future...

Surprisingly, it's not money. It's staying calm, and not allowing anger to derail reason. That doesn't mean you shouldn't have your feelings, just don't bring them to the negotiating table. If you can do that, the money issues will be resolved a lot more easily. You will be in a better position to get the best possible financial outcome, because you'll avoid fights that end up in the courtroom, and huge legal fees that deplete your financial future.

With good planning, you'll know exactly what to expect. You won't be caught by surprise, and can negotiate with your spouse in a calm, rational and mutually beneficial manner. This will allow both of you to move on and build healthy new lives. It's the path that leads to the best monetary outcome. Isn't that what's really in your best interests, and healthiest for your children long-term?

Think carefully about these principles. They've saved others from unnecessary heartache and pain, and can do the same for you. Your lawyer only acts on your behalf and at your direction. Your future is now in your hands.

If you need help with a divorce, custody or family law matter, or want a second opinion on your case, please call McAdams Law at 212-406-5145. Matrimonial and family law are two of the firm's main practice areas.

About Jeffrey C. McAdams, Esq.

Jeffrey C. McAdams, Esq. is a Matrimonial and Tenants' attorney practicing in New York City. He has practiced law for almost twenty years, focusing on defense and protection of individual rights. He also handles Appeals, Criminal Defense, Family Law and Real Estate matters. As a solo practitioner, he is a dedicated and zealous advocate for his clients.

Other Special Reports by Jeffrey C. McAdams, Esq.

How to Win Your Child Custody Case
20 Strategies to Win Custody and Protect Your Kids in the Process
A Special Report on Building a New Life for Your Children and You

<http://www.mcadamslaw.net/custodyreport.html>

How to Protect Yourself Against a Ruthless, Greedy Landlord
30 Strategies for Guarding Your Tenant Rights
An Emergency Special Report

<http://www.mcadamslaw.net/tenantrightsreport.html>

Disclaimer

This report: "How to Get Divorced and Survive Financially" (*hereafter*, the "Report") addresses New York State Domestic Relations Law. It is for informational purposes only.

This discussion cannot cover every contingency or configuration of circumstances. The Report is not "legal advice." Use it to prepare for meetings with your lawyer and as an orientation to divorce issues. The details of every case are different, so the results discussed herein do not predict similar outcomes for you even if you believe that your facts are the same. Consult an attorney before you try to implement strategies based on this Report. Domestic Relations Law is constantly changing, through legislation and judicial precedent interpreting those laws. The Report cannot reflect all subsequent legal developments, decisions, or settlements. Jeffrey C. McAdams, Esq. expressly disclaims liability for actions taken or not taken based solely on the Report. Prior results do not guarantee a similar outcome. The cases described herein are included for the purpose of illustrating the relevant principles only.

Contacting McAdams Law through the Internet is not necessarily secure; it may not be confidential. Accessing McAdams Law's site or the Report online does not create an attorney-client relationship between you and Jeffrey C. McAdams, Esq. Only an express agreement between Jeffrey C. McAdams and you creates the attorney-client relationship with him. Notwithstanding, Jeffrey C. McAdams attempts to answer questions spouses and parents send to McAdams Law by email; just understand that doing so does not make Jeffrey C. McAdams, Esq. your attorney.

McAdams Law and the Report have links to other resources on the Internet that may help you find useful information. Yet McAdams Law cannot endorse or take responsibility for third-party content on the Web. Human or mechanical errors and other factors are always possible.

If any part of this disclaimer is found not apply to you or if state provisions overrule any portion of it, the rest shall be deemed severable and shall remain valid and enforceable. New York State Law governs the terms of this Disclaimer, which may only be amended in writing.

The ideas, concepts and principles set forth in this Report are the work of Jeffrey C. McAdams, Esq. However, outside professional writing assistance was employed in preparing it, including services for structuring, drafting and editing this document.

This Report does not claim that all divorcing spouses engage in illegal or unethical practices it describes; those are isolated incidents. Nevertheless such problems occur. The Report attempts to explain situations and trends by showing the influences divorcing spouses and parents experience. It raises issues and principles as guidance for people contemplating or involved in divorce, to help avoid such pitfalls. And the Report is not a criticism of Courts or Court Personnel. It merely attempts to advise people of problems to watch out for. The lesson is to be vigilant and to fight for your rights!

Jeffrey C. McAdams, Esq.
McAdams Law
305 Broadway, Suite 610
New York, NY 10007
(212) 406-5145
Fax: (212) 619-0714
E-mail: j.mca@juno.com
Web: <http://mcadamslaw.net>

Copyright © 2008 by McAdams Law. All rights reserved. You may reproduce materials available at this site or on this report for your own personal use and for non-commercial distribution. All copies must include this copyright statement.