

Case 2: Ex-Wife Receives Tripled Child Support

Three years after they were divorced following their 19-year marriage, an ex-wife sued her former husband for increased child support for their two minor children and one child in college.

The husband ran his own architectural firm and drew \$75,000.00 annual salary. The ex-wife proved that he took another \$80,000.00 out of the company as a loan. However, this money was used to pay many of the daily living expenses of the ex-husband and his new wife.

The judge determined there was a dramatic increase in the ex-husband's income following the divorce. Consequently, he tripled the child support and ordered the ex-husband to pay the wife's legal fees.

Editor's Note: When ex-spouses hide their income, the court will not only increase support, but may also make the support retroactive, and, as the judge did in this case, he may require the husband to pay the wife's legal fees.

Untying the Knot After 25 Years of Marriage:

A Checklist for Divorce...

When a marriage lasting more than 25 years fails and the parties divorce, the effects can be devastating. Nonetheless, each person must attend immediately to the practicalities of divorce. Decisions that will impact the rest of one's life must be made. Not only a personal life must be restructured but an economic life as well.

A marriage of 25 years particularly in these times is effectively what the law considers a long-term marriage, and the practical issues to be addressed in restructuring one's life are many. Among those issues you should consider:

One: *Do I need a lawyer? Or can both my spouse and I use the same lawyer?*

In all but the very simplest of divorces, at least consulting with a lawyer is the best thing that can be done. Although it is frequently said that a husband and wife can use the same lawyer, in fact, the lawyer is bound by the canons of ethics not to represent both sides in a divorce. This only makes sense since a lawyer is an advocate who must get the most he or she can for the client, while at the same time giving the least amount to the other side.

If your divorce case involves substantial assets or difficult issues, having the advice of a lawyer who specializes in divorce is essential and, over the long run, will save you money. To find such a lawyer, contact your local Bar Association and do not be afraid to interview several lawyers. Ask for references from them including former clients whose cases have been handled successfully.

Two: *Ask lots of questions, learn the rules, and read.*

You should have a working knowledge of the divorce law that will divide your assets. These rules as they apply to your long-term marriage are not as simple as they may first appear.

Most states have adopted "equitable distribution" legislation providing for a division of marital property and assets. "Equitable" does not mean a 50/50, item-by-item split; rather, the focus is on a "fair" or "balanced" division of the assets. Many variables must be considered including the age of the spouses, the number of years the couple has been married, each spouse's financial contribution throughout the marriage, and the independent spouse's ability to earn a living.

The rules in many states revolve around when and how the property was acquired. Generally, anything acquired during marriage is considered marital property despite in whose name the property was titled. A business begun by your spouse during the marriage and built up through sweat equity is marital property, and part of the business or an equal amount in dollars may be given to you at the time of divorce. The fact that your name is not on the business does not prevent you from having an interest in that business.

Many other types of rights and property can be divided during a divorce. Retirement benefits, pension rights, profit sharing rights, and investments are all examples of assets to be divided. If one spouse is injured during the marriage, and a claim or lawsuit is made, that claim or lawsuit is marital property which can be divided in part with the spouse who is not injured.

How do you find out about these property rights? The answer is simple: Ask your lawyer as many questions as you need to, and read as many articles, books, and pamphlets that you can regarding your property rights.

Three: *Know how child support and maintenance is decided.*

When a long-term marriage fails, usually the children are grown. However, guidelines for child support are set forth in each state's statutes on divorce. Child support is set by a percentage of the paying spouse's net income; for example, 20% for one child, 25% for two children, and so forth. Child support payments generally terminate upon the child attaining 18 years of age or completing high school.

There are frequently no guideline amounts for maintenance in the state statutes on divorce. Rather, the party seeking maintenance must first show a need for the amount requested and then prove the other side has the ability to pay it. Usually, maintenance is paid for a set amount of time or until the dependent spouse remarries, whichever comes first.

If you are a spouse that has spent your entire life raising children and have never worked and have no marketable job skills or are elderly, you can request permanent maintenance if your job does not enable you to maintain the same lifestyle you had when you were married. You will, however, be required to prove that you cannot support yourself.

Four: *Know what you need to live on.*

Carefully prepare a written budget. Try to anticipate the needs and requirements of your family after a divorce. If you have had no experience in budgeting money or managing finances, there are many courses and books on budgeting and projecting your finances.

Five: *Find out what you and your spouse own in detail.*

It is always a good idea to know what you own and who you owe. Many spouses are in the dark about the family assets and liabilities, sometimes by choice, sometimes by the choice of the other party. Knowledge is power. The more you know about family finances the more you are protected in the event of a divorce or even the death of a spouse. Take the time periodically to fill out a financial statement. You can go to a local bank and obtain a form for a financial statement; then you and your spouse should sit down at least yearly and prepare one. The benefits are worth the time.

Six: *Make sure you can obtain health insurance.*

Many spouses after a long-term marriage have pre-existing medical conditions: diabetes, heart problems, liver problems, and a myriad of other health problems that could prevent

them from obtaining health insurance. Remember, once a divorce occurs, your spouse can no longer maintain you on his or her group health insurance plan because he or she no longer has an "insurable interest" in you. You will, therefore, have to obtain a policy on your own. There are savings provisions in the law that declare that following a divorce the insurance company that provided the group health insurance to you cannot deny a divorced spouse insurance based upon a pre-existing condition. The company must allow you to "spin-off" a separate policy at the same premium cost for a period of 18 months following the divorce. The acronym for the law is "COBRA," and you should learn its provisions. In addition, you should take the time to find out what benefits you may be entitled to under both Medicare and Medicaid. Contact the Social Security Administration and find out if you are eligible for Social Security payments and what those payments will be.

If you have been married more than 10 years and you have not worked and not contributed to Social Security, you may nonetheless be entitled to claim Social Security benefits arising from your spouse's payments into Social Security.

Seven: *Know how the current income tax laws affect your situation.*

The federal and state income tax laws now seriously impact what a spouse is given or gives up during a divorce. The rules are complex although not impossible for you to understand. You should keep in mind the following questions:

1. Is the settlement I am receiving either as property or maintenance payments taxable to me?
2. How much tax will I pay upon the settlement I receive or the maintenance I receive?
3. If I am to receive the house, real estate, or other assets in a divorce, will I be taxed when I sell or transfer those assets some time later; and if so, how much tax will I pay on them?
4. If there are still children who are minors or in college, who claims the income tax exemption for those children after a divorce?

Final Step: Don't be afraid to learn the rules of law regarding your case. Remember: You are responsible for your own case! Do not allow anyone, including your attorney, to make decisions for you. Be informed.

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