

Keeping Control During Divorce

by Lee Borden



Leisure

Most people going through divorce resolve that they're not going to lose control of themselves, their temper or their legal bill.

The good news is that most people keep these resolutions. They don't spend hours in court, they don't run up thousands of dollars in legal bills, and they're able to get through the pain and get on with their lives.

There's no question that some people do make mistakes in divorce – big mistakes. And unfortunately, because of the nature of divorce, we often have to live with those mistakes for years – sometimes even for the rest of our lives.

Here are the most common missteps and some ways to avoid them:

- 1. Giving up control of the divorce – usually to your lawyer.** Your lawyer is a professional; he or she is trained to represent your interests in court, and you need to listen carefully to the advice your lawyer gives you. But this is not your lawyer's divorce. It's yours, and you're the one who's going to have to live with the results.
- 2. Dividing up property without a thorough inventory.** I see it nearly every day. Before you begin negotiating, you must build a thorough inventory of what you own and what you owe.
- 3. Spending too much time and money letting lawyers gather information.** The legal term for this is "discovery," and it includes interrogatories, requests for the production of documents, requests for admissions and depositions. Lawyers love discovery. It turns little cases into big cases and keeps the lawyers thoroughly in control of your divorce. Better to gather the information some other way if you can. You and your spouse might be able to simply exchange the information you need. You could use mediation to help you share the information with each other. Before you even go to see the attorneys or mediators, you might consider using a financial preparation kit to help you calculate the after-tax value of your house and other real estate as well your vehicles, household belongings, stocks, bonds, IRAs, retirement plans, and other financial assets.
- 4. Letting your family or friends tell you what you need, and even sometimes what you should be feeling.** Remember, this is your divorce. No one, and I mean no one, should tell you how you should get through it, what you should be

saying, what you should be doing or what you should be feeling. Don't be afraid to rely on your own judgment.

- 5. Not paying enough attention to taxes.** I see this one all the time. People negotiate, reach agreement, and get divorced without thinking through the tax impact of the concessions they're making. It's not at all unusual for one of the spouses to get a nasty surprise several months – or years – after the divorce, when they realize for the first time that they're facing a big tax bill they didn't know about, such as capital gains on the sale of property. I see more of what I call "big dollar boners" in this area than in any other, so I've given a lot of thought to what makes it happen that way. What happens is that judges in most states don't pay much attention to tax, and so most lawyers don't pay much attention to tax, either.
- 6. Trying to win back your spouse by being generous.** This one makes me cry. Here's the scenario: the spouse who is the left one isn't ready for the marriage to end and decides that he or she can win back the leaver by "being nice." He or she lets the leaver have everything and agrees to far less than fairness would dictate, fantasizing that the leaver will realize what a wonderful person he or she is leaving and return to the marriage. I haven't yet seen this work. What tends to happen instead is that the leaver holds the left in contempt, takes what is offered and leaves. The left realizes his or her folly only much later when it's too late to reverse it. The knowledge that he or she has been taken advantage of makes the left one resent the leaver and the system, and further delays the left one's recovery from divorce. Yes, you read that right. It makes a bad situation worse, not just financially but emotionally as well.

Lee Borden is a lawyer and divorce mediator based in Birmingham, Alabama, who loves his work. His Web site, divorceinfo.com, includes other articles.

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