COLLAS CRILL

Ten practical tips for getting divorced

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1. Do not employ an aggressive advocate

We have all heard the one about “go and see xxx, they will get you everything…”. What is less often mentioned is that employing an aggressive, unrealistic lawyer who promises everything, is likely to be expensive and can be emotionally damaging to the future relationship with your soon to be ex.

At the outset, both parties have to be realistic as to the likely outcome. Divorce lawyers are not magicians. However creative they may be, they cannot create assets that do not exist. On divorce, all resources are finite and the job of trying to divide one household into two, in a way that is fair, and meets the immediate needs of the parties can be a very difficult exercise. Add into that equation the emotional difficulties of separation, and it soon becomes clear that employing an aggressive advocate is unlikely to be in your best interest.

In cases where there are young children, the reality is that the parties will need to retain some form of ongoing relationship. This can be extremely difficult when an already fragile relationship has been damaged beyond repair by aggressive litigation.

2. Be realistic

This advice speaks for itself. Any settlement must be fair and must provide for both parties. Adopting unrealistic aspirations at the outset is only likely to lead to prolonged litigation and unnecessary costs.

3. Not in front of the children

Issues relating to divorce and separation should be dealt with by the adults and not the children. The children need protection from the emotional difficulties you and your spouse may be experiencing. Do not involve the children and do not speak badly about your spouse to the children.

4. Keep the lines of communication open

Advocates charge by the hour, so the more work you instruct them to do, the higher your legal fees. The more you can discuss matters with your spouse, the less work is required of your advocate, the lower your legal fees and the more money is available for distribution between the two of you.

That said, if you are in a violent or abusive relationship, do not place yourself in danger by trying to discuss matters directly with your spouse.

5. How to get the best our of your advocate

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Prepare for your first meeting. If possible, provide your advocate with a brief summary of who is who and a list of the matrimonial assets and liabilities. If you have an idea of what you want, then tell your advocate at the outset.

Establish a clear method of communication with your advocate and raise any concerns when they arise rather than let them fester.

6. Listen to your advocate

We all have friends who have read the 'Reader's Digest Guide to Law'. They always know best and are often very quick to tell you that something very different happened in their case.

Beware the barrack room lawyer. You are paying your advocate to receive good advice. There may be very sound reasons why your friend's case is different to yours and if you do not understand why this might be, ask your advocate to explain. There is usually good reason for the different strategy or outcome, and of course every divorce is unique.

7. Do not issue an unreasonable behaviour petition unless there is no alternative

There are five ways of proving that your marriage has broken down irretrievably, namely adultery, unreasonable behaviour, two years' separation and consent, two years' desertion and five years' living apart. Generally the Court does not really care who divorces who or on what basis.

Without wishing to state the obvious, issuing a long and damning divorce petition on unreasonable behaviour setting out the many failings of your spouse is unlikely to help an already delicate situation.

If possible, try to look for alternative grounds for divorce such as two years' separation and consent.

If alternative grounds are not available and you have to go the unreasonable behaviour route, then follow the Law Society Protocol. Keep your allegations to a minimum and try to agree with your spouse the particulars to be included before the petition is issued.

8. Do not dispose of assets

A question that sometimes arises on divorce, usually at the first meeting, is "Shall I sell my valuable car/boat/ring to my brother for £1?".

This is not a good idea. Disposal of assets with a view to defeating a claim for financial provision on divorce is a very serious matter and the Court is likely to take a dim view of such conduct.

If the transfer is done in an effort to deplete the available assets, then injunction proceedings can be brought by the wronged party and appropriate orders made by way of costs.

If you have any doubt about your situation or if you suspect your spouse may be taking steps to dispose of assets, then you must seek immediate advice from your advocate.

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9. Do not argue unless you have to

This is common sense. Obviously the longer you argue, the more legal fees you are likely to incur and the smaller the resources left available to divide between you.

Clearly, the best way to resolve issues relating to children or finances is by agreement after you have taken legal advice. The terms of any settlement can then be recorded in a binding Court order.

10. Do not post anything on social networking sites about your divorce or children

This advice is often given but ignored. Anything you post can be copied, shared and may be used in evidence against you. The ultimate sin is to post anything to do with Court proceedings or information or pictures of children. Understandably, the Courts take a very dim view of such conduct and it may amount to contempt of court.

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