

# Ultimate Guide to DIVORCE

—  
in New Jersey



DIVORCE. FROM DISTRESSED TO DE-STRESSED.

# CONTENTS

---

Introduction .....	3
What to expect .....	4
Types of divorce.....	12
The documents you need.....	15
Finances .....	18
When children are involved.....	22
Divorce mistakes to avoid.....	26
If you know you're ready.....	31
If you're still deciding.....	33
References.....	34

# INTRODUCTION

Every relationship is different—including in divorce.

Yet no matter the reasons, divorce is a point of important financial and familial decisions that set you on your path for the future.

Like anything else in life, the divorce process won't move in a straight line, and neither will how you feel about it. By learning what to expect, you can prepare as best as possible and reduce the stress and cost many associate with divorce.

This guide aims to answer common questions and provide perspective, but it's intended to be educational—not as a substitute for an attorney. If you do want to get divorced, we highly recommend that your next step be talking with an experienced family law attorney.



## IN THIS GUIDE YOU'LL FIND OUT:

- ◆ What to expect in the process
- ◆ The types of divorce available to you
- ◆ How you can prepare
- ◆ What financials will be affected
- ◆ How child custody and support works
- ◆ Common mistakes to avoid

# WHAT TO EXPECT



# WHAT TO EXPECT



## What should my first steps be?

If you're beginning—or even thinking about—the divorce process, the first steps are to get your support system in place and your documentation together (we put together a checklist below for you).

For some people, it can be really difficult to tell friends or family that you're thinking about getting divorced—and that hesitancy makes perfect sense, especially if you aren't completely sure it's the right step. But divorce is an emotional process, and you'll benefit from having people you can turn to—and trust—as it progresses.

**Step #1:** Identify your support network and consider investing in yourself by finding a therapist or counselor.

**Step #2:** Begin your search for an attorney. Next, you'll want to begin the search for an attorney. Though there is nothing that prohibits you from doing so, the Court of New Jersey doesn't recommend that you represent yourself.<sup>1</sup> The court system can be confusing—there are strict rules and procedures that must be adhered to—and the court staff can't give legal advice, opinions, or recommendations.

# WHAT TO EXPECT



## What your attorney meeting will look like

At a bare minimum, we'd recommend meeting with an attorney at least once to make sure that you understand your own goals, possible paths, realistic outcomes, and the most basic aspects of how to navigate issues and the system. An attorney can help you decide how and when to file.

How you file determines how your divorce process will proceed, and just because an option fits your situation doesn't always mean it's the best approach. For instance, if your spouse cheated, you have the option to file under "adultery," but this filing option comes with certain requirements, including

that evidence such as dates, places, and names be brought before the court. Because of this, some people leaving a marriage due to adultery choose to file under "extreme acts of mental cruelty," which doesn't require the proof of infidelity, or even under "irreconcilable differences," which doesn't require you to testify in court.

### **A couple of quick words you'll hear often throughout the divorce process:**

- **Plaintiff:** the person who files the initial paperwork
- **Defendant:** the other spouse

# WHAT TO EXPECT



This language holds even in cases of “irreconcilable differences,” or mutual divorce.

Timing matters in many scenarios, so your attorney will help you plan when to file.

If your partner is the breadwinner and you’re what’s known as the supported spouse, you might not want to rush to file because filing acts as a cut-off date for shared finances. Conversely, the supporting spouse may want to file as soon as possible, especially if that person continues to accumulate options or shares, is receiving payments on a vested schedule, etc.

If safety is an issue, you might not want to file until a safety plan is in place. Other reasons to wait might include tax benefits from joint filings or needing health benefits for a period of time.

You may also want to work with your spouse on parsing through how you’ll address financial or parenting issues before filing, however, we advise speaking first to an attorney before saying anything to your spouse in most situations.



# WHAT TO EXPECT



## **What if you were told by your partner that divorce is likely, or even in process?**

Then you definitely want to meet with an attorney, especially if you're planning to try to talk with your spouse amicably about the issues. It's important that you are informed about your options before committing to anything, verbally or in writing.

Working toward a divorce agreement before filing is very common and makes the process less expensive, less stressful, and faster than going through everything in court. Rather than leaving the final decisions up to a judge, negotiating agreements and/or attending mediation can also give you more control over how things get decided before the court ever gets involved. An attorney can help guide you through this process.



# WHAT TO EXPECT



## How long will it take?

There's no universal answer to how long it takes to get divorced.

Even after you take the initial step of meeting with an attorney, the timeline varies greatly because it's a highly fact-sensitive and completely case-dependent process.



# WHAT TO EXPECT



## How much does it cost?

Much like time, the cost of divorce varies considerably and depends on the complexity of matters involved. It also depends on the behavior of both parties in producing documents, being transparent, negotiating issues, cooperating, following court orders, and more.

### **The most important cost-saver: compromise.**

This doesn't mean you need to be a doormat, but when decisions about how to allocate assets, earnings, and time with children must be decided in court, divorce becomes more costly. Likewise, the longer arguments drag out even if you aren't in the court arena, the more they cost.

It also helps if you don't treat your lawyer like a therapist. Yes, you'll need to talk through frustrations somewhere, but a lawyer's hourly rate is usually more than a therapist's and definitely not covered by insurance. Instead, your lawyer can help refer you to the right type of person for your situation, such as a therapist, coach, financial planner, realtor, or whoever can help you feel supported and secure throughout the process.

That said, some costs are unavoidable. The more complex a divorce—typically meaning the more complex the finances or child-centered questions are—the more there will be to cover.

# WHAT TO EXPECT



Additionally, there are always fees. Filing fees, copying fees, and courier fees are part of every case. Many divorce costs also include fees for appraisals, evaluations, transcripts, and more.

It may be tempting to think that not hiring a lawyer will save you on expenses, but representing oneself in court is difficult, and the outcome of a divorce has major financial and emotional implications. Trying to save upfront may cost you more down the line.



# TYPES OF DIVORCE

---

Not all divorces happen in a courtroom. Those that end up with the final decisions being made by a judge are known as litigated divorce. There are other kinds of divorce as well, including several kinds of mediated divorce.

# TYPES OF DIVORCE

**These options can help reduce the cost, time, and stress of your divorce:**



## ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR refers to a mediated divorce that happens outside the courtroom—though you'll want a lawyer for guidance. All told, there are four kinds of ADR. If a resolution is reached in this manner, the divorce is filed as "uncontested."



## NEGOTIATION

In negotiation, the couple comes to decisions on how they want to divide finances, properties, time with children, and anything else with the help of professionals. This approach is quite common, but note that for this and other forms of ADR your decisions about child custody and support must be guided by New Jersey's regulations around such matters. More specifically, there is a set formula for determining child support, and the courts in New Jersey tend to favor children having time with both parents. Fortunately, the legal professionals you work with will know these requirements and help you work out an agreement that's in accordance with them.



## MEDIATION


Another common form of ADR is mediation. A mediator is a trained and neutral third party who helps divorcing couples decide how they want to resolve matters of finances or children.

The mediator doesn't make decisions for the couple—it's up to them to come to an agreement—but the mediator does help guide them through the process. It's common for each spouse to also have independent legal counsel to help further inform their approach and decisions.

# TYPES OF DIVORCE


**These options can help reduce the cost, time, and stress of your divorce:**

## COLLABORATION



Like mediation, collaboration involves a neutral third party, but it also uses trained professionals in relevant fields, such as mental health or financial professionals, to help inform negotiations. Each side is also represented by a collaborative divorce attorney. The defining characteristic of collaborative divorce is that the parties—and their attorneys—sign an agreement not to litigate the merits of the divorce while in the collaboration process. If settlement discussions ultimately fall apart, the parties can go to court, but they must choose new attorneys to represent them and can't use the attorneys who signed the collaboration agreement.

## ARBITRATION



In arbitration, the couple is guided through the process—and each retains independent counsel—but the decisions are ultimately made by a neutral third party who acts in a capacity similar to a judge. The major difference between arbitration and court (besides the more relaxed rules in arbitration) is the ability for the parties to appeal the decisions if they aren't happy with the outcomes—appeals of arbitration awards are very limited.



# THE DOCUMENTS YOU NEED

---

As you prepare for a divorce, you'll want to start getting certain paperwork together. Your attorney can help you pull together this documentation, but getting a head start can save you time and keep expenses down.



# THE DOCUMENTS YOU NEED

1

## INCOME

- W-2s
- 1099s
- Schedule K-1
- Rental income
- Pension income
- Social security income
- IRA income
- 401k
- Tax-deductible expenses if self-employed or if you have rental income
- Interest and dividend income
- Income from sales of stocks or assets
- Cryptocurrency transactions
- Gambling income
- Prizes and awards
- Royalties
- Trust income

2

## JOINT ACCOUNTS

- Savings and checking accounts
- Stocks
- Credit cards
- Investment or brokerage accounts

3

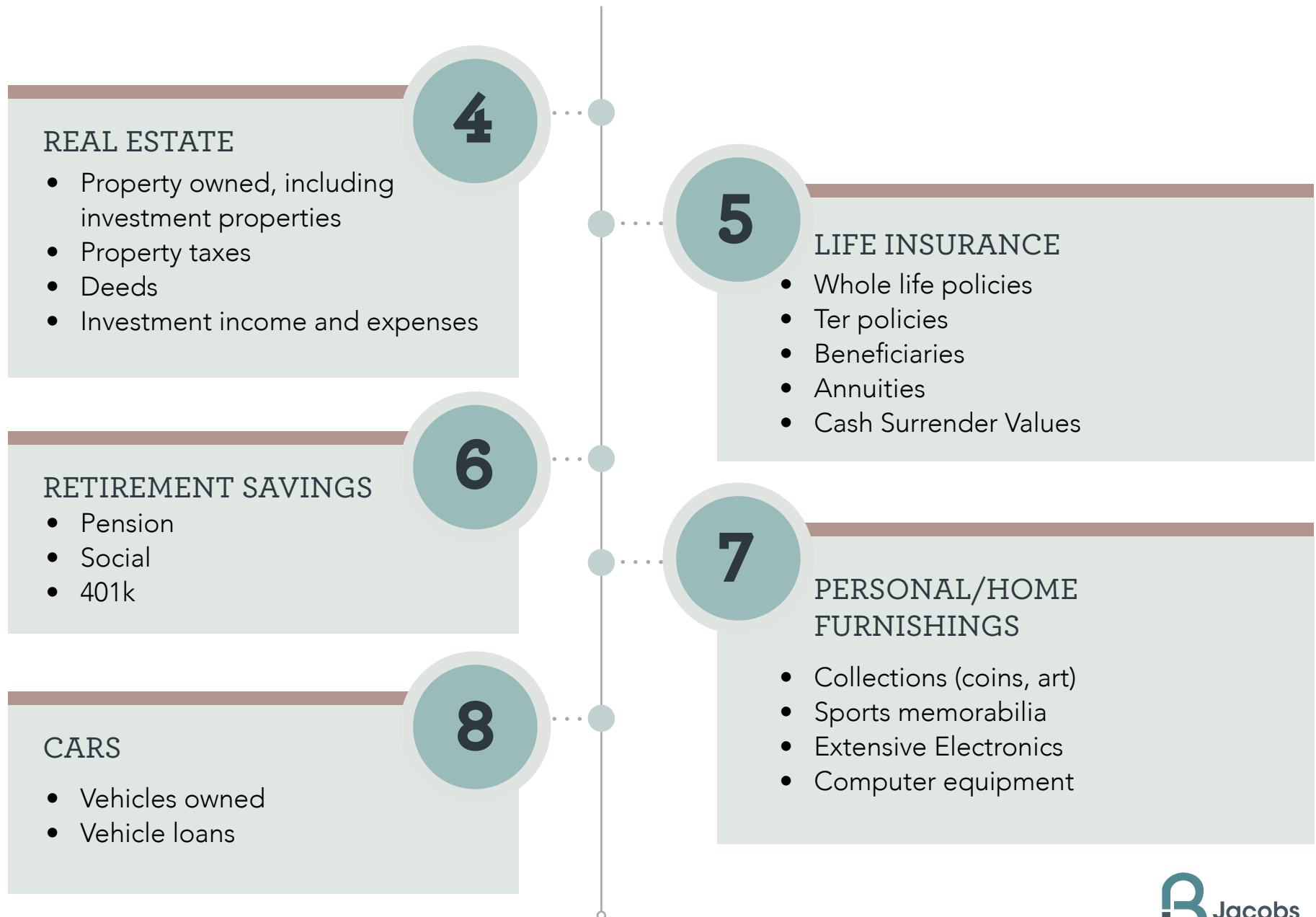
## DEBT

- |                 |                    |
|-----------------|--------------------|
| • Student loans | • Business         |
| • Credit card   | • Line of credit   |
| • Mortgage      | • Utility bills    |
| • Car loan      | • Home equity loan |
| • Medical       |                    |
| • Payday loans  |                    |



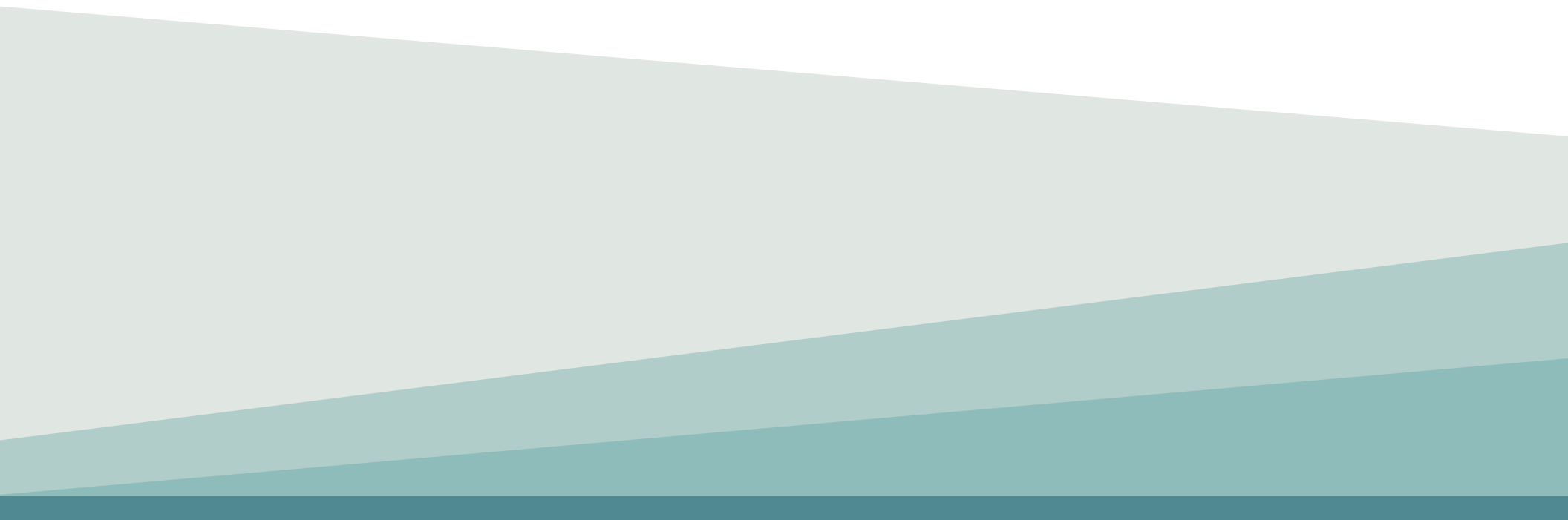


# THE DOCUMENTS YOU NEED





# FINANCES





## What happens to the house?

If you both own the house, and there aren't any current restraints imposed by the court on either of you, then both of you can stay there during the divorce process. If this applies to you, then neither party can order the other to leave. Whether or not you'll have to sell your home depends on a lot of factors, including how much it's worth, how much you may owe on mortgages or HELOCs, and whether you or your spouse can afford to live there after the divorce, among other things. One partner can also buy out the other if they're able to.

In terms of ownership, it can be hard to make conclusory statements about situations where one person made the down payment, invested pre-marital monies, or paid the mortgage. The court considers many, many details in these situations, and there isn't always a consistent outcome.

The same is true if one person owned the house prior to marriage. In this scenario, how long you've been married for will certainly be a factor in the court decision or mediation process.

The court has the ability to order that the house is sold, both after the divorce and sometimes during. In some situations, especially if you and your co-parent agree, you can wait to sell the house in order to keep kids in a nearby school. This takes some thought, though, because splitting home expenses for years after a divorce can be emotionally and financially challenging.



## What happens to our shared savings?

Joint savings count as shared assets. The state of New Jersey practices equitable distribution, which means assets are divided in a way that aims to account for inequalities after many factors are considered—and it isn't always the same as dividing assets equally. The important questions are what assets can be considered “joint” and what exceptions there are to that definition.



## What about 401K and retirement savings?

Money put toward retirement during the marriage may count as being a shared asset. However, there can certainly be exclusions. Qualified Domestic Relations Orders (QDROs), tax rules and consequences, as well as the Employee Retirement Income Security Act (ERISA) can all affect the outcome of this question.



## Will I owe alimony?

Many factors are considered in determining alimony, including:

- Length of the marriage
- Earning capacity
- Health
- Age
- The standard of living in the marriage

Alimony can also be determined so that it adjusts over time to account for how long it might take the supported spouse to reenter the workforce at a comparable rate. In other words, it might start off as one amount as a person returns to work but then decline after a few years to reflect their higher earning capacity as they gain present-day experience. Determining alimony is a very fact-sensitive outcome and involves a lot of analysis.



# WHEN CHILDREN ARE INVOLVED



# WHEN CHILDREN ARE INVOLVED



## How are custody decisions made?

New Jersey makes child custody decisions according to what the court determines is in the child's best interest. In general, the state believes that it's best for the child to have a relationship with both parents. As such, New Jersey courts tend to prefer joint legal custody and parenting time arrangements where children have access to and time with both parents.

Exceptions certainly apply, but expect some amount of parenting time to be granted to the non-custodial parent in almost every case. If the child is twelve or older, their preference of who to live with may be taken into consideration by either the court, custody evaluators, or other involved persons.



## WHEN CHILDREN ARE INVOLVED



Custody decisions also aren't set in stone. They can be challenged and revised after a divorce, especially if either parent finds that circumstances have changed.

Knowing that New Jersey generally prefers joint custody—and that these preferences will be reflected in the legal guidance of mediators if you use ADR—there are still a few things you can do to make sure that you have the documentation necessary in case custody is disputed. Mainly, you want to stay involved in your child's daily life, including with school, teachers, doctor's appointments, and more. You also want to make sure that when you communicate with your co-parent, you are doing so with civility and respect. Remember, those text messages, emails, and voicemails might one day be an exhibit in court!














## WHEN CHILDREN ARE INVOLVED

### Will I have to pay child support?

In New Jersey, both parents have financial responsibility for a child, regardless of custody decisions. Much like child custody, the state process for support will apply whether you choose to go to court or use ADR mediation, unless you and your co-parent can agree on other financial terms for supporting your child.

### **New Jersey's formula for deciding child support includes many factors, such as:**

-  Parents' incomes
-  Alimony paid or received
-  Children from previous relationships
-  Health insurance payments on behalf of children
-  Parenting time breakdown
-  Costs of childcare (in order to work)
-  Government benefits

In New Jersey, both parents have financial responsibility for a child, regardless of custody decisions. Much like child custody, the state process for support will apply whether you choose to go to court or use ADR mediation, unless you and your co-parent can agree on other financial terms for supporting your child.



# COMMON DIVORCE MISTAKES TO AVOID





## 1

### TELLING YOUR SPOUSE BEFORE PREPARING

Divorce can cause some unexpected reactions. It can make sense to get copies of financial documents before telling your spouse in case access to these documents becomes challenging. While some spouses understand that making things difficult can cost you both time and money, some are hurt and get upset and change passwords or hide documents. This low-impact step of making copies or saving documents into PDFs beforehand (especially if everything is electronically handled) can go a long way.

It's critical, however, that you don't just start to make changes to joint finances, such as by removing assets from joint accounts. It will cost you later in the divorce process. If you think this is necessary to protect your money from a vindictive spouse, it's essential that you meet with a lawyer quickly to understand your rights—and responsibilities—before you make those changes.

When the time does come for a conversation, know that how you present wanting a divorce can have a huge impact on how the other person responds—and how the process begins.



## 2

### LEAVING THE MARITAL HOME

Legally, both parties can stay in the marital home, no matter who owns it—unless there's an order which says one of you has to leave.

Because of the emotional intensity of sharing a home with someone you're divorcing, it may be mentally healthier to leave. It's important to consider what impact leaving could have and how that can affect your ultimate goals:

- Leaving your kids behind (since you want to show your continued involvement in their lives for custody disputes)
- Leaving your possessions in the house
- The cost of living elsewhere for a year or more



### 3

#### GETTING THE KIDS INVOLVED

Generally, the more amicable the divorce, the easier it is on children. In fact, research suggests that the fighting around the divorce tends to have more of a long-term impact on children than the divorce itself.<sup>2</sup> Not getting divorced because of children isn't always as helpful as we want to think—they'll feel the underlying tension. If you and your spouse also can't hold a civil conversation, consider the impact on the children of witnessing or hearing those unhappy moments.



### 3

#### ACTING TOO QUICKLY

Short-term emotions shouldn't be the way you make decisions or pick paths in this process. While everyone knows divorce can be uncomfortable and you want to get it over with quickly, the financial (and emotional) results will impact your life in the long term. Once a marital agreement is signed, it's official and can be very hard to change.



# IF YOU BELIEVE YOU'RE READY TO GET DIVORCED

---

Every situation is different, so there's no "right" way to get divorced. However you approach the process, legal advice and representation are extremely helpful. An experienced divorce attorney at **Jacobs Berger, LLC**, can guide you through the process—in court or through mediation.



## IF YOU'RE STILL THINKING ABOUT WHETHER DIVORCE IS RIGHT FOR YOU



Only you know what the best step is for you and your children. Sometimes a marriage can benefit from counseling or other options prior to going the route of divorce. Sometimes, it's helpful just to understand everything we've laid out above in just a little more detail, so you feel informed and able to weigh your choices. Sometimes, it's just helpful to talk about your goals, and here how those goals can be achieved in different ways.

However, if you have concerns related to cost, the time it takes, dealing with the response of others, or what will happen to your children, know that we've seen nearly every scenario there is. While divorce can seem daunting, all of these pieces are manageable, especially when you have an experienced team looking to take the stress off your shoulders by helping you plan for the long term.

If you have any questions on anything in this guide, our team is here to help.





## SCHEDULE A STRATEGIC PLANNING SESSION



973-710-4366

[info@jacobsberger.com](mailto:info@jacobsberger.com)

[WWW.JACOBSBERGER.COM](http://WWW.JACOBSBERGER.COM)

## REFERENCES



1. New Jersey Courts: Things to Think about Before You Try to Represent Yourself in Court
2. Department of Justice, Canada: Studies of High Conflict Divorce and Its Effects on Children