

New York Divorce Guide

What You Need to Know Before Hiring
a Divorce Lawyer in New York

~ SECOND EDITION ~



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Guide to New York Divorce

What You Need to Know Before Hiring a Divorce Lawyer in New York

By

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This book is designed for general information regarding divorce in New York. Other states may have different laws and statutes from those applicable in New York State. The information presented at this site should not be construed to be formal legal advice nor the formation of a lawyer/client relationship.

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Title Page

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Introduction

***Author's Note:** Due to popular demand, we're pleased to present the Second Edition of the Guide to New York Divorce: What You Need to Know Before Hiring a Divorce Lawyer in New York. We published the first edition in 2015 and are pleased that we've been able to help the hundreds of Long Islanders who have downloaded the book since then. This second edition has been updated to reflect changes in divorce law that have taken place since the first book was published. We've completely reviewed and edited each chapter to reflect those changes and added a new chapter (Chapter 11) to present a Case Study of a fictitious Long Island couple to illustrate how the law works and the concepts presented in the previous chapters in an average divorce in New York. We hope this helps crystalize the divorce process in New York in your mind.*

Speaking to your spouse about a divorce is not likely a conversation you ever imagined yourself having. But as we all find out sooner or later, we never know what life has in store for us. As a Long Island Divorce Attorney with 15 years of experience, I have seen husbands and wives enter my office with numerous emotions; complete disbelief, extreme anger, and at times, even joy. However one thing that stays the same with the majority of the clients I encounter is that each one is anxious. Most people will go their entire lives without dealing with the court system, but a divorce puts you in the position to stand in front of a judge to discuss personal matters.

I understand how complicated and scary this unknown process of divorce can be. My job as a Long Island Divorce Attorney is not only to fight for the rights of my clients in court, but to also fight for them outside of court, and attempt to make a stressful process even just a little less stressful. My intent behind publishing this book is exactly that. I hope to provide you with some general information on the divorce process and the laws it rests upon in the State of New York, so you are able to meet with divorce attorneys confidently, and begin your divorce prepared for the road that lies ahead.

Sincerely,

Robert E. Hornberger, Esq.

Chapter 1

How to Know if It's Time for a Divorce

So you are considering the possibility of ending your marriage and seeking the services of a Long Island divorce attorney. You could be at any of a number of stages in the divorce consideration process. Maybe you and your spouse have been having problems for a period of time now and you are unsure of what direction your relationship is headed. Or maybe you have alone been feeling differently about the relationship. Whatever the case may be, you now find yourself wondering if a divorce is the next step for you.



As with most difficult situations in life, you have to take the rose colored glasses off and look at the situation realistically. For most of us, our minds automatically jump to the worst possible outcome in any potentially stressful situation. That is not different here. A divorce is a stressful process during which negative feelings and emotions may be displayed on behalf of both you and your spouse.

While some people imagine getting back together after a divorce, that is usually difficult if you and your significant other have said hurtful things through the divorce process. Therefore, while I am unaware of the specific details surrounding your personal situation, it is important that before embarking on this journey you are sure a divorce is the

proper step, and the difficulties you and your spouse are facing are not just temporary bumps in the road.

There are a number of steps you can take to try to repair your relationship, after which you can be more positive about whether or not a divorce is the right decision.

Make Sure You Spend Time Together

Solo time with one another is an extremely important part of any marriage. Unfortunately, with everyone's busy daily schedules this often seems to be the first thing to be pushed aside. And once you are not spending time together, you lose your connection and it becomes easier and easier to avoid your

partner. This is especially true for couples with children. If you find that you and your spouse have had difficulty connecting lately, the solution may be as simple as planning a night out together once a week. Setting aside time for date nights with your significant other may help rekindle the romance and remind you both why you fell in love in the first place.

If you and your spouse have children, especially newborns or young babies, you may both find it difficult to leave the child at home with a relative or babysitter. While I am not a parenting expert, I know that most grandparents would love to spend a night watching their grandchild. Or even a close sibling would love the opportunity for more time with their niece or nephew. Talk to relatives or good friends who live close by and see if they would be willing to babysit for a few hours each week. That way, you and your spouse can enjoy each other's company while being sure that your child is in good hands.

If you do not have children, the only thing that needs to coincide is the schedule of both

you and your spouse. Take vacations from work at the same time, meet each other after work for dinner every Friday, or go to breakfast together every Sunday. It is as simple as setting aside a few hours each week to reconnect with your spouse. You may be pleasantly surprised what a little time spent together can accomplish.

Talk Openly and Honestly with Your Spouse

Talking about emotions seems to be one thing many people have trouble with in today's society. But setting aside some time for this perceived difficult task may help you and

your spouse move away from divorce and closer toward happiness. When something is bothering you, the best option is to talk about it. Holding something in because you are attempting to avoid confrontation can lead to more negative feelings and explosive fights when the issues eventually come to light.

“Holding something in because you are attempting to avoid confrontation can lead to more negative feelings and explosive fights when the issues eventually come to light.”

This is not time for the blame game, so when you are speaking to your spouse about something that has been upsetting you, make sure you express how you are feeling, and not just tell them how terrible they have been.

Speaking about yourself may allow your spouse to see that you are being genuine, and help them feel they are not being attacked.

Make Sure You are Taking Out Your Stresses in the Right Place

Life itself is stressful. Between work, the children, family pets, medical concerns and the like, it can be easy to take out your anxiety on the person closest to you. In most instances, that person tends to be your spouse. If your spouse is not the root of your anxieties and stress, than he or she should not be the one to feel the brunt of those emotions. Pay careful attention to direct your negative feelings at the source of your pain and not the people who are just trying to be there for you.

Marriage Counseling

Before you hire a divorce attorney, it may be in your best interest to consider marriage counseling. Marriage counseling is a form of therapy which allows you to work together with both the therapist and your spouse. At times, the therapist may request to speak to each of you individually. But the goal is always the same: recognize and resolve the conflicts in your relationship. The length of time you will undergo counseling depends on what brought you there in the first place. The resolution of one argument over an issue one of you feels strongly about may require only a few sessions, while years or months of

turmoil may require counseling for an extended period of time.

“Before you hire a divorce attorney, it may be in your best interest to consider marriage counseling.”

Your visions of marriage counseling may include you and your spouse sitting on the therapist’s couch divulging your innermost thoughts and feelings. While this may happen in some instances, it is not always the case. It is important to be aware that marriage counseling sessions can go by in silence, with neither one of you feeling comfortable enough to talk about personal problems to a complete stranger. Or, marriage counseling sessions can fuel fights and arguments. How the sessions go are completely up to you and your spouse. You both need to take it seriously and commit to discussing how you truly feel AND be willing to listen openly and honestly to what your spouse has to say. Your marriage counselor is there to provide a safe, comfortable environment and to help you open up, but they cannot force you or your spouse to cooperate. A good counselor can help and guide you to open up and protect you from overt negativity but they are not miracle

workers. It is up to you and your spouse to make marriage counseling work for you.

Temporary Separation

If you have tried spending time together and attended marriage counseling, both to no avail, the next option before a divorce could be a temporary separation. This is basically a trial divorce but without going through the legal motions. You and your spouse will live separately, keep conversation to a minimum, and go about your daily life as if you were no longer married. This gives you both time apart from each other to think clearly about your individual goals for the marriage. The idea of a temporary separation is scary, especially to the spouse that does not want a divorce. But setting guidelines and boundaries may help to make what seems like the end of your world a little less painful.

If a temporary separation is the route you and your spouse decide to travel, it is important to set ground rules. In terms of communication during a temporary separation, you and your spouse may decide to speak only once a week, or once a day if you have children together, but only about the children. You may even decide to not speak at all. Additionally, some couples may opt to set limitations in terms of the type of relationships they will get involved in if one spouse wishes to date. Arguably most important however is to ensure that the temporary separation has both a beginning and end date. Whether it be one month or six months, you and your partner must have a time frame in which a decision will be made about continuing or ending the relationship. It would not be fair to either of you to continue this type of situation indefinitely, because as you likely know, not knowing is much worse than knowing.

Chapter 2

Divorce or Legal Separation; Which Is Right for Me?

Now that you (or both you and your spouse) have officially decided that your relationship is beyond repair and a divorce is the only solution, there are additional concerns. You have likely been asked by friends and relatives if you are going to divorce or separate. Perhaps you had no idea there was a difference, or perhaps it has been the last thing on your mind. However, you should be aware of the benefits and disadvantages of both options so you can make an educated decision about whether a divorce or legal separation is right for you.



your spouse would likely enter into a Legal Separation Agreement. This is a binding agreement, signed by both parties in front of a notary, which will address all the same major

issues that would be addressed if you were to be granted a divorce.

A separation agreement is a strong legal document, and as such it is extremely

important to have the assistance of an experienced divorce attorney to draft it with your input. Once the agreement is drafted, signed by both you and your spouse, and notarized, it can be filed with the Nassau County clerk or Suffolk County clerk in the county in which you reside. Filing the agreement ensures that all obligations are on record with the court which will make the agreement easier to enforce in the event either you or your spouse decide not to abide by the agreement.

What is a Legal Separation?

As will be discussed later in this book, one way to be granted a divorce in the State of New York is via a conversion divorce. If utilized, parties seeking a conversion divorce are required to already have a Legal Separation agreement in place for at least one (1) year. After that one (1) year period, the parties can file for a divorce with the court pursuant to the terms in the separation agreement.

In order to become legally separated, you and

What are the Benefits of a Legal Separation?

There are a number of important benefits to a Legal Separation, including health benefits, tax benefits and religious implications.

Health Insurance. One of the most daunting things you may have heard about a divorce is the potential loss of the health insurance benefits to which you have become accustomed. In most instances the non-policy holder spouse will lose his or her health insurance coverage upon entry of the final judgment of divorce. This is extremely important to most people, especially those with existing medical conditions. Fortunately, a legal separation usually avoids this problem. Most health insurance policies continue to provide coverage to both spouses upon a legal separation, even if your spouse is the policy holder. However not all insurance policies are the same, so it is important to verify this with your spouse's insurance provider if you wish to maintain coverage.

Taxes. You can also continue to file joint income tax returns. As you are likely aware, filing joint income tax returns provides many benefits to a married couple. Married couples get a higher standard deduction, tax credits for children, and may not be required to pay federal estate taxes on the transfer of assets to a spouse. As a legally separated couple, you can continue to file joint income tax returns.

Social Security. Your marriage must last at least ten (10) years in order for either you or your spouse to qualify to receive a portion of

“Like anything else, a Legal Separation has its down sides as well.”

the other's Social Security payments. If this is a concern for either of you, a legal separation might allow the marriage to last for the requisite ten (10) year period to collect on your spouse's Social Security payments.

Religious. If you or your spouse is religious and your religion frowns upon divorce, you may opt to enter into a legal separation agreement for religious reasons.

What are the Down Sides of a Legal Separation?

Like anything else, a Legal Separation has its down sides as well. Although legally separated, you are still legally married. While you and your spouse no longer live together, and you may not even have contact with one another, there has been no judgment of divorce entered with the courts and therefore your marriage has not been dissolved. This has the potential to create problems either immediately or years down the road.

Support Implications. Even though your separation agreement may have established support payments, unless they are incorporated into a binding judgment, you or your spouse may wish (or need to) seek support which was not contemplated in your original agreement due to a change in circumstances at the time you convert your agreement to a divorce. Despite a waiver of spousal support in a separation agreement, a spouse can seek spousal support at the time of the divorce if the waiver of support is unconscionable or would otherwise result in the spouse becoming a public charge. An easy example would be a spouse suffering a major physical impairment or disability between the date of the legal separation agreement and the time of the divorce. It should also be noted that when it comes to child support your separation agreement may be revisited if there is a significant change in income, significant time has passed, or if your separation agreement does not adequately provide for the children's needs.

Remarriage. Because you are still legally married, you will be unable to remarry until a divorce has been finalized. At the time you enter into a separation agreement, remarriage is likely not even a thought on your mind. But life can change in the blink of an eye. You may find yourself in a new relationship two years later with a partner who wants to marry. You must first get divorced in order to move ahead with that relationship, which may present a problem if you fall out of touch with

“A divorce may have emotional benefits that far outweigh anything financial.”

your spouse or your spouse refuses to sign divorce papers in the future.

What is a Divorce?

A divorce, which is granted in Nassau County or Suffolk County court, is the legal

termination of a marriage in New York. Once the judgment of divorce is finalized, you are free to live your life as you had when you were single, except for any obligations the court may have imposed on you when it granted the divorce.

What are the Benefits of a Divorce?

Unlike a legal separation, a divorce rarely brings monetary benefits. However a divorce may have emotional benefits that far outweigh anything financial.

Divorce should not be a rash decision. If you are reading this, that generally means you and your spouse were unhappy in your marriage for some time. If you opt for a divorce the process itself may be time-consuming, but once it is over it is over. Of course, you both

must abide by the terms of the divorce, but the amount of contact you have with your ex-spouse can be minimal to non-existent, depending upon what you want (and if you have children together). You do not have to worry about having him or her agree to sign papers years down the road when you want to get married again.

If you have children, you may find that you become a better parent after your divorce. It is likely there were no time constraints on the days or hours you could spend with your kids during your marriage. You may have taken family time for granted without even realizing it. Now, especially if you are the non-custodial parent, you will have a visitation schedule. Knowing you only have three days to spend together will cause you to value and appreciate that time much more.

The biggest benefit of all: you will be happy. A divorce hurts of course but in the long run you will probably look back on your marriage and see how unhappy you were. This will not happen instantaneously, but eventually you will begin to feel like yourself again. You may even feel like a new, better person after your divorce as you realize how much of yourself you sacrificed for the relationship.

What are the Down Sides of a Divorce?

As you may have assumed, most of the downfalls of a divorce are all of the benefits of a legal separation. You or your spouse will lose health insurance coverage, you will no

longer be able to file joint income tax returns, and you may face being ineligible for your spouse's social security benefits.

Aside from those already mentioned, a divorce has the potential to be time-consuming, expensive, and exhausting.

You may see a side to your spouse that you never knew existed, and one that you wish you had not seen. Your spouse may try to convince you that you will walk away with nothing and that he or she will pay for nothing. However, the down side here is your spouse's negative attitude towards you, as it is likely that anything he or she says is exaggerated or completely false. If you have carefully considered your decision to get divorced, do not allow your spouse to bully you out of it for their own selfish reasons.

The Choice is Yours

The choice between a divorce and a legal separation is a purely personal one. No one, not even your divorce attorney, can tell you which is the right or wrong answer. After being informed about the differences between the two, you should sit down with your spouse and have a calm, informed conversation about which option is best for the both of you.

Chapter 3

What are the Grounds for Divorce in New York State?

Having tried to work out your relationship with your spouse and considered the pros and cons of divorce and legal separation, you have decided to seek the services of a Long Island Divorce Attorney in ending your relationship. You have not come to this decision lightly, but you know it is the best thing for you, your spouse and your children (if any) and you will all be happier and lead better lives apart than together.

If you have not yet been to see a divorce attorney, you may be wondering if there are any limitations on an action for divorce. When reviewing the specific circumstances of your relationship, you may wonder what will be important to your court case and what will be immaterial. Fortunately for you and the thousands of Long Island couples who get divorced each year, New York State permits couples to get divorced for seven (7) different, all unique, reasons. What this means for you is that the grounds that were appropriate for your friend or cousin may not be appropriate for you and your relationship. Accordingly, you will find a basis for divorce that fits your personal situation below.

Cruel & Inhuman Treatment

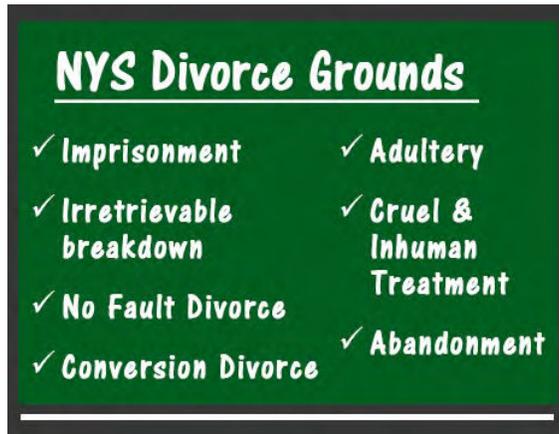
In New York, couples may get divorced if one spouse has subjected the other to cruel and inhuman treatment. These grounds include physical, emotional, or verbal abuse that

endangers the other's physical or mental well-being. If you feel you are in an abusive relationship and wish to file a complaint in a divorce action you MUST be aware of the five (5) year statute of limitations which applies in this

instance. This is simpler than it sounds; all this statute of limitations means is that the cause of action, in this case the abusive behavior, must have occurred within the last five (5) years for the case to be actionable. If it has been five (5) years and one (1) day since your spouse hit you or degraded you, you cannot file for divorce based upon cruel and inhuman treatment.

Abandonment for a Period of at Least One (1) Year

No one wants to be in relationship, let alone be married, to someone who has physically abandoned them. If your spouse has moved



out of the marital residence, or even locked you out of the marital residence, you can allege abandonment in your divorce complaint. However, physical relocation is not the only set of circumstances which may qualify as abandonment. Constructive abandonment occurs when your spouse refuses to engage in sexual relations with you.

You and your spouse may still be living together, but the marital relationship has ceased to exist as you had known it. However, all couples have bumps in the road and you and your spouse may go a week or a month without sexual relations or you or your spouse may move to a friend or relative's place for a month because you both need space. This does not qualify as abandonment; in order to assert this as the basis for a cause of action for divorce, the abandonment must have lasted at least one (1) year.

Imprisonment of the Defendant Spouse for Three (3) or More Consecutive Years during the Marriage

As unlikely as this may have seemed when you were first married, New York State prisons are full of inmates who were married at the time of their incarceration. Consider the following possible scenarios:

You and your spouse are happily married and then your spouse robs a bank and is sentenced to ten (10) years in jail. Or, your spouse is convicted of embezzlement from his company or some other white collar crime.

At the beginning, you vow to work through the inevitable difficulties facing you and make your relationship stronger than ever at the

time your spouse is released. While that sounds wonderful, we all know life happens and things are not always as easy as we assume. Four years into your spouse's 10-year sentence, you begin to have a change of heart and you no

longer want to be married to someone who is inevitably going to be a different person when you see them outside the prison walls in ten (10) years. You wonder what options you have other than to remain in a marriage in which you are not happy.

Well, if you have thought this through and are seeking the services of a Long Island Divorce Attorney, it may be of interest to you that imprisonment of the defendant spouse for three (3) or more consecutive years during the marriage is a ground for divorce in New York State. You do not have to make this decision immediately; once the initial three (3) consecutive years have passed, you can file for divorce at any time while your spouse is in

“Adultery – the typical scarlet letter that jumps to the front of everyone’s mind when someone says divorce ... is the hardest grounds to base a divorce upon.”

prison, and even for up to five (5) years after he or she is released.

Adultery

Adultery – the typical scarlet letter that jumps to the front of everyone’s mind when someone says divorce. However, this is not always the reason couples get divorced and frankly, it is the hardest grounds to base a divorce upon. In order to be granted a divorce based upon adultery, the plaintiff spouse must be able to prove that the defendant spouse committed adultery during the course of the marriage. Why is this so difficult to establish you ask? Well, to put it quite simply, you need evidence from a third party, which would likely be your spouse’s paramour, that adultery was committed. It is rare that this individual would be willing to take the stand in your divorce proceeding and testify to these actions.

Husband & Wife Live Separate & Apart for at Least 1 Year Pursuant to a Written Separation Agreement or Judgment of Separation (Conversion Divorce)

Obtaining a Conversion Divorce was the closest thing to a No-Fault divorce in New York State before it adopted the grounds of Irretrievable Breakdown. Couples would enter a Legal Separation agreement, wait at least one (1) year, and then submit papers to the court to obtain a final Judgment of Divorce.

Now, this situation is becoming less and less common. However, if you have a separation agreement that has been in effect for at least one (1) year and you and your spouse have lived separate and apart for that same time period, you should speak to your Long Island Divorce Attorney about a Conversion Divorce. To obtain a conversion divorce, you are not required to allege any of the above fault-based grounds for divorce; the divorce is based solely on the separation agreement itself.

Irretrievable breakdown (aka No Fault Divorce)

Long after most states had adopted No-Fault divorce statutes, New York still required one spouse to allege fault against the other in order to proceed with a divorce (absent cases of conversion divorce as stated above).

However, in 2010, New York became a no-fault divorce state. For couples who do not want to place blame on one another, this has become the most popular ground for divorce. A complaint for divorce in this instance does not need to say who did what or who did not do what. All that must be said is that the marital relationship has broken down to a point of no repair for at least six (6) months.

Now that you have been briefly informed of the various grounds for divorce in New York State, you will be better prepared for your initial meeting with a Long Island Divorce Attorney.

Chapter 4

How To Find the Right Divorce Lawyer

Give Yourself the Benefit of Having Options

Hiring a Long Island Divorce Attorney is not unlike hiring a staff member. Think back to when you applied for your job. Did your employer give you the job on the spot after having only interviewed one person? Most likely the answer to that question is no. The same should be true with selecting a divorce lawyer for your Nassau County or Suffolk County divorce.

Choosing a Long Island Divorce Lawyer may be one of the scariest job interviews in which you ever participate. Rather than being interviewed, however, in this job interview, you are on the other side of the table, as interviewer and not interviewee. No one said you have to hire the first attorney with whom you meet. In most instances, you have time to prepare to serve, or be served with divorce paperwork, which enables you to take time to



interview which includes interviewing multiple attorneys before selecting the right one for you.

With the Internet being so ingrained into our lives, we know that all it takes is a simple Google search to find many listings for Long Island Divorce Attorneys in Nassau County or Suffolk County who would be happy to handle your case. If you are not 100 percent satisfied with the first, or second attorney you meet with, do not be afraid to keep looking.

Make Sure Your Goals Align With Those of Your Long Island Divorce Attorney

During the initial meeting with your potential Long Island Divorce Attorney, you will fill him or her in on the facts and circumstances surrounding your marriage. You may enter the office with an idea of the outcome you want or you may require a bit more guidance.

Either way, you are under no obligation to retain an attorney you do not feel has your best interests in mind. While the attorney will get paid to do so, his or her job first and foremost is to protect your interests. If you feel the attorney you are interviewing is looking out for his or her own interests over your own, cross their name off the list.

issues in court, or, does he or she look to resolve issues through the process of negotiation and collaborative lawyering? The answers to these questions can have a direct impact on the time it takes to resolve your case, the final outcome, and how much it costs you to get there (both financially and emotionally).

“Because your Long Island Divorce Attorney will become a large part of your life for an undetermined amount of time, it is important to be sure that your personalities do not clash.”

Is It Important That You Like Your Long Island Divorce Attorney?

Just as each person has a different personality, so does each Long Island Divorce Attorney. A Divorce Attorney’s personality does not just include whether he or she is caring or has a good sense of humor, but encompasses how he or she handles court cases. Is the attorney you are speaking with aggressive for his or her clients in Nassau or Suffolk County Court, or do they seem to be someone who may easily capitulate to opposing counsel? Does the attorney prefer to file motions and litigate

Therefore, not only must you like the individual’s work ethic and style, but you must also like his or her personality. You may want a divorce attorney who is compassionate and caring and welcomes open conversation, or you may want a divorce lawyer who is curt and to the point that can have the matter resolved quickly. Because your Long Island Divorce Attorney will become a large part of your life for an undetermined amount of time, it is important to be sure that your personalities do not clash.

Be Realistic About Costs and Expenses

The realm of divorce is an area where the old saying “you get what you pay for” often holds true. You have likely seen television commercials or billboards advertising a \$99 divorce, or a \$150 settlement agreement you can print off the internet and have your spouse sign. These options may seem tempting, but remember, there is no such thing as a \$99 divorce, and those internet documents contain only boilerplate language which may not fit your situation or fulfill your wishes. Remember, you will have to live with the terms of your divorce for a long time. You do not want to make a mistake now that you will have to pay for the rest of your life.

With that being said, no one is telling you that in order to have a proper divorce you need to hire the same divorce attorney as a multi-millionaire. Divorces in Nassau County and Suffolk County, especially if they are litigated, are time consuming and expensive. Costs should be discussed at the initial meeting with any potential Long Island Divorce Attorney. Naturally, the longer an attorney has been practicing in the matrimonial field the higher their fees will be because their experience and expertise brings

you greater value. When “interviewing” potential attorneys, do not be afraid to inquire as to whether there is an associate in the office who may handle your case at a lower hourly rate. That way, you may be able to obtain the good legal reputation of the named partners at a slightly lower cost.

In any event, do not make the mistake of retaining an attorney that you

know, or feel, you may not be able to afford. If you wind up not being able to pay your fees or expenses, your attorney has the option to ask the court to relieve him or herself from your case. At this point, you will have to start over with finding a new attorney, and as any debt, the monies owed the original attorney will not be forgotten. In fact, a divorce attorney is under no obligation to transfer your file to either you or your new attorney until you have satisfied their legal fees. Additionally, your attorney may file suit against you to collect any outstanding fees owed. It is unlikely that you would enjoy dealing with that type of issue at the same time you are dealing with your divorce.

The bottom line: Be mindful of your budget while at the same time ensuring that your interests are properly protected.

“The bottom line: Be mindful of your budget while at the same time ensuring that your interests are properly protected.”

Get the Names of Respected Attorneys in Your Area

It is hard to blindly enter a Divorce Attorney's office in Nassau County or Suffolk County and know right away whether he or she is the right fit for you. While the Internet may be a helpful resource, there is nothing more comforting than knowing your attorney came highly recommended from someone you know and trust.

Friends & Relatives Can Help

Your friends and relatives are likely the people you have leaned on during your marriage turmoil and now that you have finally entered the beginning stages of a divorce. Naturally, who better than your friends or relatives to provide you with the names of a Divorce Attorney on Long Island? If you are lucky enough to have this type of support system, you should make good use of it. Do not feel that you can only ask one person and that you must hire the person they recommend. Keep in mind, not every attorney will be the proper fit for every individual getting divorced. Ask a few of your friends and relatives, and even ask them to ask their friends or co-workers for recommendations. Word of mouth is a powerful thing.

Other Professionals Can Recommend

The professional world runs off networking. Your dentist, doctor, or accountant may know a Long Island Divorce Attorney they feel

confident recommending. Of course, to discuss a personal issue such as a divorce with your healthcare professional would imply that you feel a level of comfort with that person. If you do, it never hurts to ask.

Contact Your Local Bar Association

Each county has a bar association which you can call for an attorney referral. All you have to do is Google the bar association for Nassau County or Suffolk County, find the phone number, and call and ask for the names and phone numbers of a Divorce Attorney in your area.

Familiarize Yourself with the Law

When you seek the services of a Long Island Divorce Attorney you are most importantly seeking legal advice. However, it does not hurt to gather some information on your own beforehand. You may have an idea of the outcome you would prefer in your case. Do some research to find out if this outcome is legally possible in Nassau or Suffolk County. If you are aware of this before you enter an attorney's office you can avoid the possibility of hiring a dishonest attorney who will only tell you what you want to hear, and not what the law states.

Chapter 5

What Are Your Child Custody Options?

One of the major issues that arise for most Long Island couples during divorce proceedings is that of child custody. For a family that is used to living together under one roof it may be difficult for either parent to imagine living separate and apart from their children. While this is an unfortunate outcome of most divorces, there are a variety of arrangements available to you and your spouse in order to make the transition as easy as possible.



How Do I Get Custody of My Children?

If you are looking to petition for child custody in Nassau County or Suffolk County on Long Island, New York, you must first be sure all jurisdictional requirements have been satisfied. The children must have resided within the State of New York for at least six months in order for a New York court to have jurisdiction over a child custody issue. Of course, this residency requirement is not an issue if your children have lived in New York for their entire lives. If, on the other hand, you

just moved to New York with your children, you will have to either wait six months to file for custody in New York, or file in the state where the children resided for the previous six months.

What Factors Do Courts Use to Determine Custody?

When one thinks of child custody, most people initially assume that the mother will be

granted full legal custody. However, there is no such presumption in New York, and that means that either parent can be granted custody.

New York courts follow what is known as the “best interests of the child” standard. Under this standard, the court will consider the child’s relationship with each parent, the parent’s relative age and health, the child’s relationships with other members of the parent’s family, and if the child would be separated from his or her siblings (this list is not exhaustive). Each child custody situation is different, and there are no black and white guidelines. Therefore, it is important to discuss the specifics of your case with your Long Island Divorce Attorney to learn what might be important in your case in Nassau County or Suffolk County court.

What are the Different Types of Custody Arrangements?

It is important to differentiate between Legal and Physical Child Custody. Legal Custody concerns the authority to make decisions on behalf of the child, while Physical Custody simply refers to where the child will live.

- **Sole Legal Custody:** in a Sole Legal Custody arrangement, one parent has the right to make all major decisions for the child. This includes decisions about education,

Types of Child Custody

- *Sole Legal Custody*
 - *Joint Legal Custody*
 - *Sole Physical Custody*
 - *Joint Physical Custody or Shared Custody*
-

healthcare, and religious instruction, amongst other things. This arrangement permits only one parent to have custody of the child. The non-custodial parent will often still have visitation rights, however, in extreme circumstances, the non-custodial parent may have no visitation privileges at all.

- **Joint Legal Custody:** if you and your spouse can communicate amicably, you may wish to opt for a joint legal custody arrangement. Under such terms, the parents act as a unit in deciding the above mentioned “major decisions” for each child. However, if both parents cannot reach an agreement, the action cannot be taken. Therefore, it is extremely important to be sure you have the type of relationship with your spouse that permits for open and honest communication about your children. Because each parent will at one point have physical custody of the children, the daily, routine decisions of the children’s lives are made by the parent who has physical custody of the child at that time.

- **Sole Physical Custody:** in a Sole Physical Custody arrangement, one parent is declared the “custodial parent” and the children reside primarily with him or her. The other parent, having been declared the non-custodial parent, will retain visitation rights with the children. While the non-custodial parent and children may miss each other, this type of arrangement fosters a feeling of stability in the child as he or she will continuously reside in the same house.

- **Joint Physical Custody or Shared Custody:** in a Joint Physical Custody arrangement, both parents are awarded physical custody of the children. Such an arrangement may be satisfied by having the children live with their mother for one month or week and then reside with their father for that same period of time. While this type of arrangement may be most appealing to the parents, you must consider how the constant back and forth movement may affect the children’s well-being and feelings of “home.”

Custody of your children, both legal and physical, is a sensitive matter in any divorce.

Before discussing the issue with your Long Island Divorce Attorney, you should attempt

to reach an agreement with your partner so you have an idea of which arrangement may work best for you.

What about Parenting Time and Holiday Schedules?

When you enter into a sole residential custody arrangement, the non-custodial parent will be awarded parenting time with the minor children. The right to parenting time is not one-size-fits-all, and the type and extent of the parenting time depends on the individual circumstances. If, for example, there have been instances of domestic violence or doubts about the safety of the children when

with the non-custodial parent, the non-custodial parent may be awarded only supervised time or no time at all. If the custodial and non-custodial parent cannot communicate amicably at all and there are concerns over tensions when dropping-off or picking up the children at the residence of either parent, the parents may agree to drop-off and pick-up the children at a neutral location, or direct a third party to be present when the change of custody for parenting time is taking place.

“The right to parenting time does not come in one-size-fits-all, and the type and extent of the parenting time depends on the individual circumstances.”

Holidays Can Be Stressful

Holidays, especially the winter season holidays, are a stressful time for most American families – where to go, what to eat, what to wear, and what gifts to purchase. However, if you are recently divorced or considering a divorce, the thought of not spending the holidays with your children can perhaps be the most stressful thought of all. Thankfully there are a variety of arrangements you and your partner can enter into to help avoid the last minute stress of where your children will spend Christmas, Hanukkah, or Thanksgiving.

Holiday Custody Suggestions

Because every family is different, the following are simply suggestions that I have seen work in the past, and are not meant to be a set of rules that you must follow. You and your spouse are free to create any agreement that works best for you and your children.

1. As the first option, you and your spouse may agree to follow the 12-month calendar with one parent having the children for the first holiday, the other parent having the children for the second holiday, and so-on and so-forth.

2. Or, if you want to ensure that you each get to spend each holiday with the children, you can alternative years, i.e., the children will spend Christmas with you in odd years and they will spend Christmas with your spouse in even years.

3. You may also decide to enter into a more personalized agreement; perhaps your favorite Holiday is Halloween, while you are indifferent to Christmas and your spouse enjoys Thanksgiving. You can agree that you will have the children on the days that mean the most to you.

4. If you and your spouse are having a difficult time coming to an agreement, you may consider the option of splitting each holiday evenly, with you enjoying five hours with the children and your spouse enjoying five hours with the children.

The most important thing to remember when trying to resolve a child custody issue is that child custody arrangements and battles impact your children the most. If possible, try to have such discussions outside the presence of your children, and do not be afraid to seek the advice of your Long Island Divorce Attorney; he or she may be able to suggest a child custody agreement you and your spouse had never considered.

Chapter 6

The Ins & Outs of Child Support on Long Island

The resolution of a Child Support agreement on Long Island is a tenuous topic that must be discussed during your divorce in Nassau County or Suffolk County. This chapter will provide you with a basic understanding of how child support is calculated in the State of New York and assist you and your spouse in reaching an agreement that works well for the both of you.

Does My Child Custody Arrangement Affect Child Support?

If you and your spouse have a Child Custody arrangement wherein one of you has Sole Residential Custody over your unemancipated child(ren), the Non-Custodial parent will be ordered by a Nassau County or Suffolk County Court to pay direct Child Support to the Custodial parent.

However, not all parents enter into these types of agreements. You and your spouse may be among the couples who elect to enter into a Joint Residential Custody arrangement, where your child(ren) is/are spending an equal amount of time with both parents. Many Long Island couples believe, incorrectly, that this alleviates the requirement of one parent paying Child Support to the other. In Joint Residential Custody arrangements, the wage-earning spouse, or the spouse with the higher income, is deemed the Non-Custodial parent for Child Support purposes. Therefore, the



“non-custodial” parent (the spouse with the higher annual income) will still be required to pay Child Support to the “Custodial Parent” (the spouse with the lower annual income) pursuant to the Child Support Standards Act of New York unless the parties opt for a different arrangement.

Keep in mind that Legal and Residential custody are not one in the same. Residential custody (where the child(ren) is/are living) will affect Child Support but Legal Custody (which parent is permitted to make major decisions on behalf of the child(ren)) will not.

What is the Child Support Standards Act?

The Child Support Standards Act is found in Article 4 of the New York Family Court Act. This statute sets forth guidelines which the courts must follow when calculating Child Support upon the final determination of your Action for Divorce. The amount of support the non-custodial parent is required to pay weekly or monthly does not depend upon the total number of children born of the marriage. Rather, the non-custodial parent is only required to pay child support for those children who are unemancipated at the time the judgment is entered. In New York, a parent is obligated to support his or her child(ren) until each child reaches the age of 21, at which time the child will be deemed emancipated. Therefore, a Non-Custodial parent who has one (1) unemancipated child of the marriage will be required to pay 17% of his or her annual adjusted gross income for child support, while the Non-Custodial parent of four (4) unemancipated children will be required to pay 31% of his or her adjusted gross annual income.

What is Adjusted Gross Income & How is it Calculated in New York?

You may be asking yourself, “What is adjusted gross annual income?” Well, the answer is simple – the government takes into account the fact that you have already paid certain taxes on your annual income when calculating a Child Support payment.

“In New York, a parent is obligated to support his or her child(ren) until each child reaches the age of 21, at which time the child will be deemed emancipated..”

Therefore, before determining the annual Child Support award, the courts will deduct a certain percentage from your income for FICA taxes (that is Social Security and Medicare) already paid, amongst other permissible deductions. So if you make \$100,000 per year, your child support will not be calculated on the full \$100,000.

After calculating the adjusted gross annual income of both you and your spouse, the two figures will be combined to determine the total combined parental income. From there, your individual adjusted gross income will be divided by the total combined parental income to determine what is called your “pro-rata” share (the same will be done for your spouse). Those numbers are important because your “pro-rata” share of the total combined parental income will equal your percentage of responsibility for unreimbursed medical, educational, and other extraordinary expenses on behalf of your unemancipated child(ren).

Under the Child Support Standards Act, the non-custodial spouse is required to pay child support based on a certain percentage of his or her income depending upon the number of unemancipated children of the marriage, as well as his or her “pro-rata” share of the other expenses mentioned above.

Are My Spouse and I Bound by the Child Support Standards Act?

If you and your spouse are amicable and desire to enter into a Child Support arrangement that avoids the application of the Child Support Standards Act, your best option is to do so and avoid court intervention. Your Nassau County or Suffolk County Divorce Attorney can assist you in drafting a Stipulation of Settlement or Separation Agreement. Your attorney will still be required to go through the motions of calculating Child Support based upon the statute in the agreement, but you and your spouse will have the option to “opt-out” or not accept these calculations as your Child Support payments. You will then be able to create a more personalized and individual Child Support arrangement that allows the Custodial parent to have enough funds to care for the children and the Non-Custodial parent to still be able to live on his or her own. If you choose to go this route, you will be asked to state specific reasons for why you are “opting-out” of the Child Support Standards Act. These can include anything from the financial

resources of the Custodial and Non-Custodial parent to the fact that one spouse has created a college fund for the children.

“If you have concerns that your spouse, as the Non-Custodial parent, will be late or fail to pay Child Support, it is important to discuss the Support Collection Unit with your Long Island Divorce Attorney.”

How is Child Support Collected in Nassau County and Suffolk County on Long Island?

If you enter into an Agreement with your spouse you will have the option of electing how Child Support is paid and received. These payments can be made directly to the custodial parent by mail, electronic funds transfer or any other delivery method which works for you. However, if you have concerns that your spouse, as the Non-Custodial parent, will be late or fail to pay Child Support, it is important to discuss the Support Collection Unit with your Long Island Divorce Attorney. Through the Support Collection Unit’s Child Support Enforcement Bureau you will find a

resource to assist in collecting and keeping track of all child support payments.

If you elect to receive Child Support payments through the Child Support Enforcement Bureau, you will be required to open an account to which payments will be sent. The Bureau will receive these payments directly from the Non-Custodial parent and forward the same to you. It will also keep track of any missed payments so you are well aware of any arrears due and owed. However, this still presents an opportunity for the Non-Custodial parent to fail to make payments, and the Child Support Enforcement Bureau has the authority to collect payments in other manners to avoid this. If a Non-Custodial parent is delinquent with their Child Support payments the funds can be levied from the parent's income, meaning the parent will never see the funds that are earmarked for Child Support. If the Non-Custodial parent is unemployed and receiving Unemployment Benefits, these can be withheld for Child Support as well as Income Tax Refunds or

anything won by playing the lottery.

Therefore, if any of my clients express unease about the Non-Custodial parent's ability, or willingness, to timely pay Child Support I always make sure to discuss the Child Support Enforcement Bureau with them.

While attempting to come to a child support agreement during your Long Island Divorce, you may feel like you are nickel and diming your spouse, or your spouse is nickel and diming you. However, it is important to remember that any money received or given as child support is exactly that – child support. I have seen many couples forget this notion and parents exclaim they do not want to give the custodial parent money to spend on his or herself. As you know, raising a child is expensive, and now that your child will be living in a one-parent household, that parent will need additional funds to support your child. Do not spite your child in attempts to anger your spouse, because in the end the only person you will hurt is your child.

Chapter 7

Do I Have to Pay Spousal Maintenance?

Spousal maintenance refers to the payments made by the higher earning spouse (sometimes called the payor spouse) to the lower earning spouse (sometimes called the payee spouse). It exists to ensure that both spouses are afforded an adequate standard of living during the pendency of and after a divorce proceeding. Spousal maintenance awards ordered during the pendency of the case, known as temporary spousal maintenance, often differ from those ordered at the entry of the final judgment of divorce.



Is Spousal Maintenance the Same Thing as Spousal Support?

You will likely be surprised to find that spousal maintenance is not in fact the same thing as spousal support. Spousal support is awarded to the lower earning spouse during the course of the marriage. This can be done by filing a petition in the Family Court in your county or can be agreed upon in a separation agreement which will be filed with the court and entered as a judgment of separation. However, spousal support will always terminate when a judgment of divorce is entered, so if you and your spouse are planning to convert the judgment of separation into a judgment of divorce this factor is of importance to you.

Temporary Spousal Maintenance

Temporary spousal maintenance is spousal maintenance which is awarded during the pendency of your Long Island Divorce. The Court will follow the temporary support calculator, which sets forth a precise formula to be used when determining the award. The Court will do two (2) calculations to determine the proper amount of temporary spousal maintenance in cases where the payor spouse is not also a noncustodial parent responsible for child support. First, twenty percent (20%) of the payee spouse's income will be subtracted from thirty percent (30%) of the payor spouse's income. Then, the payee spouse's income will be subtracted from forty percent (40%) of the total combined spousal

income. Keep in mind that child support payments will be added to the income of the payee spouse and deducted from the income of the payor spouse. Finally, the payee spouse will be awarded spousal maintenance based upon the lower of the two above calculations. However, the Court is not bound by this formula, and if it determines the award is too high or too low it can deviate from the guidelines and award an amount it deems appropriate.

For cases in which the payor is responsible for both spousal maintenance and child support, the formula is slightly different. First, twenty-five percent (25%) of the payee's income will be subtracted from twenty percent (20%) of the payor's income. Then, the sum of the payor's income and the payee's income will be multiplied by forty percent (40%), and the payee's income will be subtracted from the result. Finally, the payee spouse will be awarded the lower of the two amounts. This variation of the original formula gives a spouse who is responsible for both child support and spousal maintenance a slight break from meeting the full demands of both spousal maintenance and child support individually.

Keep in mind that the formulas above are based on the payor spouse's income unless his or her income is above \$178,000 per year. So, for example, if the higher earning spouse's income is \$250,000 per year, only

“For Post-Divorce Spousal Maintenance, courts are required to look at the parties’ pre-separation standard of living along with other factors including, among others:

- *The length of the marriage*
 - *The age and health of both parties*
 - *The ability of the payee spouse to become self-supporting*
 - *Whether the actions of one spouse inhibited the other from obtaining an education or valuable employment during the course of the marriage*
 - *Whether one spouse wasted marital assets to the detriment of the other spouse.”*
-

\$178,000 will be plugged into the formulas above for calculating temporary maintenance. However, courts have broad discretion to award amounts higher than the formulas yield, and can award an amount that it determines to be most appropriate for your and your spouse's circumstances.

Finally, temporary spousal maintenance awards are just that – temporary. Accordingly, they will terminate upon the entry of the final judgment of divorce. During the pendency of the proceeding, the purpose of these payments is to allow the payee spouse to continue making all payments he or she had been prior to the commencement of the action for divorce, including health insurance and carrying charges on the marital residence.

Post-Divorce Spousal Maintenance

Post-Divorce Spousal Maintenance is the payments that are awarded to be paid to one spouse by another for a specified period of time. The calculation of a post-divorce spousal maintenance award is based upon the same formulas as the temporary maintenance standard. The formula takes into account whether the payor spouse is also paying child support, and adjusts the maintenance amount accordingly.

Again, if the payor spouse is not also responsible for child support, the spousal maintenance will be the lesser amount of (1) thirty percent (30%) of the payor spouse's income minus twenty percent (20%) of the

“If you agree upon your maintenance obligation rather than have it imposed by the a Nassau County or Suffolk County Court, both you and your spouse will be happier in the long run due to the reduced amount of stress.”

payee spouse's income and (2) forty percent (40%) of the total combined spousal income minus the payee spouse's income. If the payor spouse is also paying child support, the payee spouse will be awarded the lower of (1) twenty percent (20%) of the payor's income minus twenty-five percent (25%) of the payee's income and (2) forty percent (40%) of the sum of the payor's income and the payee's income, minus the payee's income. Further, whether or not child support is also in play, the same \$178,000 cap on the payor's income will apply, meaning that a maximum of \$178,000 will be used to calculate the support, even if the payor spouse earns more.

The duration of post-divorce maintenance is calculated with another formula based on the length of the marriage. For marriages that lasted up to and including 15 years, maintenance is awarded for 15% to 30% of the length of the marriage. For marriages that lasted for more than 15 years up to and

including 20 years, maintenance is awarded for 30% to 40% of the length of the marriage. For marriages which lasted more than 20 years, the duration of the award is 35% to 50% of the length of the marriage.

However, it is important to remember that the court has discretion to adjust the duration, or award non-durational maintenance in appropriate cases. To make the determination of duration, the court will evaluate the parties' pre-separation standard of living along with other factors including, among other things, the age and health of both parties, the ability of the payee spouse to become self-supporting, whether the actions of one spouse inhibited the other from obtaining an education or valuable employment during the course of the marriage, and whether one spouse wasted marital assets to the detriment of the other spouse. The statute also provides the Court with a "catch-all" factor: anything else the Court may deem just and proper. This factor makes an award of spousal maintenance fact specific and permits the Court to inquire into the individual circumstances of your marriage.

Finally, remember that maintenance payments terminate upon the death of either spouse or the remarriage of the payee (recipient) spouse.

Can My Spouse and I Enter into An Agreement on Our Own?

Most Nassau and Suffolk County divorce proceedings settle with little to no court

intervention. This serves to save both spouses time and money, as well as eliminate the stress of having to see your spouse in court and testify during the litigation process. If your goal is to settle your divorce with your spouse, spousal maintenance is an important topic which should be discussed.

Do not be afraid to bring up the topic of spousal maintenance during settlement discussions with your spouse and respective Long Island Divorce Attorneys. You can agree to a maintenance award of a certain amount for a set term of years, or you can agree to a maintenance award for one amount until the happening of an event upon which the maintenance award will increase or decrease for a certain amount of years. Either way, if you agree upon your maintenance obligation rather than have it imposed by the Court, both you and your spouse will be happier in the long run due to the reduced amount of stress.

Agreements setting forth spousal maintenance payments generally include a clause setting forth what are known as "termination events." The name is pretty self-explanatory: the payor spouse's maintenance obligation will terminate upon the happening of any of the events listed. Most commonly included are the death of either party and the remarriage of the payee spouse. A third termination which has become more prevalent is the payee spouse's residence with an unrelated adult individual for a certain period of time. Some agreements set a thirty (30) day time period while some set a sixty (60) day time period.

Additionally, some agreements limit the residence to a person with whom the payee spouse is involved in a romantic relationship with, while others specifically state the maintenance payments will terminate whether or not the payee spouse is involved in a romantic relationship with the individual he or she currently resides with.

Agreements relating to spousal maintenance are also beneficial because they can set

parameters on the payor spouse's income, such as stating that a maintenance obligation will never be predicated on an income of less than \$150,000.00, or if the income of the payor spouse decreases by more than \$20,000.00, the parties will agree to an adjusted amount of maintenance. Therefore, if you can find a way to settle this issue with your spouse, you will find entering into an agreement on your own accord will have many benefits.

Chapter 8

How Does 'Equitable Distribution' Effect My Divorce?

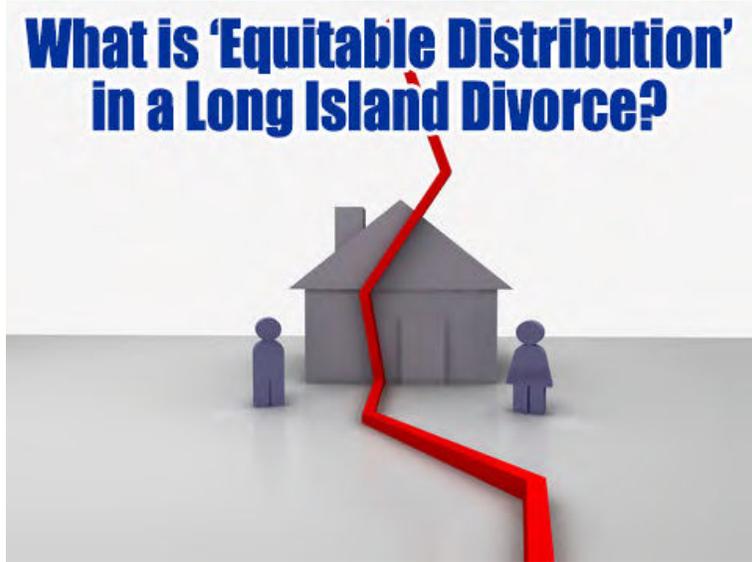
What is Equitable Distribution and Does it Play a Role in My Divorce?

As an experienced Long Island Divorce Attorney practicing in Suffolk County and Nassau County, I have seen many couples confused over the method of dividing marital property in the State of New York. Many people enter my office under the assumption that marital property will be distributed on an even (50/50) basis, but that is not the case. Unknown to most Long Islanders is the fact that New York is an Equitable

Distribution jurisdiction, which means that marital property will be divided "equitably" among you and your spouse. This is where the confusion sets in, because Equitable Distribution does not automatically entitle you to an "equal" distribution of property. Rather, each distribution is made on an individual, case-by-case basis to ensure distribution is fair and just.

What is Marital Property?

Marital property includes all property acquired and/or earned by either you or your spouse during the marriage. Naturally, separate property is that which was acquired before the marriage, but it also includes gifts,



inheritance, or legal settlements (such as personal injury) received by one spouse regardless of whether or not it was acquired during the marriage. Anything acquired in exchange for your separate property is also separate property, even if acquired during the marriage. As always, you and your spouse were/are free to make any agreement you wish regarding separate and marital property. This is where the existence of a pre-nuptial or post-nuptial agreement would be of importance: if you are a party to either one of these, it will supersede the application of Equitable Distribution and govern the distribution of your marital property.

The Definition of Marital Property Seems Too Simple, What are the Nuances?

If the above question ran through your mind, you were right to think of it. There are a few important points of which you should be aware if you believe a Nassau County or Suffolk County Court will be required to apply Equitable Distribution to your marital property.

First, earning a professional degree during the marriage, whether it is a bachelor's degree, medical license, or other professional degree, has an impact on Equitable Distribution on Long Island, New York. If you or your spouse obtained a professional degree or license during the marriage, the other is entitled to receive a percentage of the licensed or degreed spouse's "Enhanced Earning Capacity." The Enhanced Earning Capacity is the difference between the spouse's earning potential at the time of the marriage based upon his or her level of education and the spouse's earning potential based upon the education or license obtained during the marriage. This number is then multiplied by the number of years the degreed or licensed spouse could potentially receive the benefits of the degree or license, and a portion of that is attributed as marital property subject to equitable distribution.

Second, if you purchased the home that served as the marital residence prior to the marriage you may assume you are entitled to retain the residence or be credited for any amounts of separate property you invested. However, as the purchasing spouse, it is your

"If you purchased the home that served as the marital residence prior to the marriage you may assume you are entitled to retain the residence or be credited for any amounts of separate property you invested. However, as the purchasing spouse, it is your burden to prove you made a contribution of separate property to the purchase."

burden to prove you made a contribution of separate property to the purchase. It is important to obtain bank records or any other sort of proof from a financial institution showing a portion of the down payment on the marital residence was paid for with separate property. You will only be entitled to a separate property credit if you can prove the sums you contributed individually. If you cannot satisfy this burden, the entire value of the marital residence could be subject to Equitable Distribution.

Is Marital Debt Subject to Equitable Distribution As Well?

As this chapter briefly explained, marital assets are the property and earnings obtained during the marriage. What is a lesser-known fact is that marital debt and liabilities incurred during the marriage and up until the date of commencement of the Action for Divorce, are also subject to Equitable Distribution. That means that the \$5,000 shopping spree your spouse went on days before he or she filed for divorce may still be your responsibility. You are naturally wondering “How is that fair?” and you are right. It may not be “fair” per se, but Equitable Distribution looks at a marriage as a union, and therefore there is joint responsibility for all benefits and burdens, including debt and liabilities.

In order to avoid Equitable Distribution being used to distribute marital debt, you and your spouse can enter a Stipulation of Settlement with the help of your Nassau County or Suffolk County Divorce Attorney. These agreements generally contain an entire article devoted to marital debt and setting forth who is responsible for paying what and for which debts you will assume joint responsibility. All identifying information should be placed in the agreement, including the creditor, the amount owed, when the payments are to be made, and who will be making the payments. If you and your spouse do not have joint debt, a statement representing that fact will be placed in the agreement.

“It may not be “fair” per se, but Equitable Distribution looks at a marriage as a union, and therefore there is joint responsibility for all benefits and burdens, including debts and liabilities.”

What Factors Are Considered in Equitable Distribution?

Nassau County and Suffolk County Courts do not blindly employ Equitable Distribution on Long Island. Rather, certain factors set forth by the New York Domestic Relations Law are taken into consideration.

One factor is the income of you and your spouse both during the marriage and at the time the Action for Divorce is commenced. Therefore, it is important to keep a close account of your finances and to inform your Nassau County or Suffolk County Divorce Attorney of any changes in income from the time of the marriage to the commencement of the proceeding (including earning a professional degree or license).

Additionally, the health and age of both you and your spouse are important. This plays a role in the future earning capacity of both you and your spouse and may require one receive a larger “equitable share” of the marital assets

than the other. If you are facing the possibility of losing health insurance due to the divorce, it is important to inform your divorce attorney of this fact – especially, if you are suffering from an illness.

The purpose of Equitable Distribution is to ensure that the distribution of the marital assets is fair and just, therefore, if you are ill and set to lose insurance, you may be awarded a greater share of the marital assets than your healthy spouse.

You may also face the loss of pension benefits after your divorce. If your spouse is the holder of a pension plan, a divorce serves as an automatic revocation of your rights under this plan (so long as this is not inconsistent with standing federal law, so be sure to check with your Long Island Divorce Attorney regarding this issue).

Further, any extreme disregard for finances during the marriage (such as excessive gambling, spending, etc.) will also be taken into consideration in making the Equitable Distribution determination.

It is important to note that fault or misconduct on behalf of you or your partner is generally not taken into consideration when determining an Equitable Distribution of the assets.

Therefore, if either of you feel the other is “at fault” for the dissolution of your marriage, it is helpful to be aware that unless the underlying cause of the divorce is extreme, it will not be taken into consideration when determining what is fair and equitable.

Equitable distribution is likely not something you heard of before beginning your Long Island Divorce. Therefore, I tend to believe that this is one of the “scarier” issues in a divorce. People are frightened by the unknown, and equitable distribution is essentially unknown. This is where your Long Island Divorce Attorney will be extremely valuable. He or she will be able to guide you through the process, and ensure that you receive your share of any marital property to which you are entitled.

Chapter 9

What Other Options Do You Have to End Your Marriage?

Collaborative Divorce & Divorce Mediation May Be Better Ways to Divorce

As you are now aware from reading prior chapters in this book, a divorce on Long Island is a difficult and emotional task involving many legal implications for property, finances and children. The most common way to proceed with a divorce is for you and your spouse to hire independent Nassau or Suffolk County Divorce Attorneys and utilize the court system. This typically brings with it high court fees and legal costs as well as months upon months of stressful litigation. On the other hand, Divorce Mediation and Collaborative Divorce are becoming more popular as less stressful and less expensive methods of divorce for couples facing the termination of their marriages in Nassau County and Suffolk County, New York.



you and your spouse to control the divorce process. You will both hire one mediator who will serve as a neutral third party in monitoring the process.

What is the Divorce Mediation Process Like on Long Island?

In divorce mediation, you and your spouse will sit with the mediator, who will listen and take notes as you and your spouse discuss the main issues in your divorce. This may seem similar to the role of a judge during litigation, but rather than the mediator making a decision that will have a permanent effect on your relationship, the mediator will follow your

What is Divorce Mediation?

If you find yourself facing an impending divorce, you owe it to yourself and your family to inquire about divorce mediation before opting for a contested or uncontested divorce through the court system. The primary benefit of divorce mediation is that it allows

lead. You and your spouse will have any number of sessions with your mediator, depending upon how quickly you are able to resolve the main issues of your divorce. During these sessions you and your spouse will discuss all common issues including property distribution, spousal maintenance, child custody and visitation, and child support, as well as less common issues including division of a business started during the marriage or the valuation of your professional degree. Your mediator will listen to both you and your spouse in an attempt to reach an amicable resolution satisfactory to both of you.

Upon the conclusion of your mediation sessions, your mediator will draft a Stipulation of Settlement reflecting the agreements you have reached, you will review this agreement, and then the mediator will submit the agreement to the court. From there, the court will finalize your divorce and you will receive the final judgment within anywhere from three to eight months depending on whether you reside in Nassau County or Suffolk County.

As you can see, electing to utilize a divorce mediator completely avoids the use of the court system, except for filing paperwork. Additionally, because you and your spouse will only have to hire one divorce mediator, divorces finalized through the mediation

“Divorces finalized through the mediation process save couples thousands of dollars, and usually many months of back-and-forth as each of your attorneys tries to get the most for his or her client.”

process save couples thousands of dollars, and usually many months of back-and-forth as each of your attorneys tries to get the most for his or her client. As a Long Island Divorce Attorney and Mediator, I have assisted many couples in this process and can attest to its success in not only saving couples money and stress, but in fostering communication that can benefit the family in years

to come – especially if you have children together.

Divorce Mediation Works for Long Island Couples Who Can Communicate

However, before having your heart set on divorce mediation you must realize that the process requires you and your spouse to vocalize your wants and needs, and it will only work if you are able to discuss the situation calmly and rationally. You must both be comfortable discussing the divorce with the other. There will inevitably be times during the mediation process where you and

your spouse do not agree, but you both must be willing to understand each other and compromise. Therefore, while you should enter divorce mediation with a set of goals in mind, you must remain open minded to changing those goals. The divorce mediator will be there to assist in settling power imbalances if it seems that either you or your spouse are controlling the discussions, but he or she is not permitted to make a decision for you. If you feel that you and your spouse will be unable to find a happy medium, it is unlikely that divorce mediation will be successful for you. In that case, there are other options available to you outside Nassau County or Suffolk County courtrooms.

What is Collaborative Divorce?

If you want to avoid a large amount of Nassau County or Suffolk County court intervention, but do not believe you and your spouse can come to an agreement on your own terms, Collaborative Divorce presents a good alternative for you. Collaborative Divorce is a process by which you and your spouse can start the road to finalization of your Judgment of Divorce with little to no court intervention.

To begin, you and your spouse will both hire individual attorneys to represent you in the process (this is the main way Collaborative Divorce differs from divorce mediation, which was discussed above). Your lawyer will represent your interests while your spouse's lawyer will represent his or hers. You may think that the presence of two

“Collaborative divorce is a process by which you and your spouse can start the road to finalization of your Judgment of Divorce with little to no court intervention.”

lawyers both fighting for different clients will inevitably lead to court time, but before beginning the process each party involved will sign an agreement stating that no litigation will be commenced. If the Collaborative Divorce process is unsuccessful, the attorneys originally hired by you and your spouse will no longer represent you, and you will both have to hire new attorneys to move forward with litigation in your divorce.

You may be wondering why you would opt for a Collaborative Divorce and have to hire two Nassau County or Suffolk County Divorce Attorneys when you could utilize divorce mediation and only have to hire one. The answer is simple: if you and your spouse are not completely amicable or able to communicate in a productive manner, a mediator cannot look out for your own interests; he or she can only listen to what you and your spouse say. Your attorney hired to assist you in a Collaborative Divorce will be

able to look out for your own interests during settlement negotiations but you will still have control over the process by being directly involved.

Why Should I Utilize Divorce Mediation or Collaborative Divorce?

Your Long Island Divorce is one of the most life changing experiences you will ever experience. While the Nassau County and Suffolk County court systems are there to ensure your interests are protected if you and your spouse are unable to come to an agreement, your goal should be to avoid court intervention, and the costs (financial,

emotional and time) associated with it, if at all possible. Divorce mediation and Collaborative Divorce are two less costly and less stressful methods of divorce, but neither is any less thorough or legally binding.

Divorce mediation and Collaborative Divorce also allow you and your spouse to control the divorce process. In both of these methods you will not be bound by a judgment a Nassau County or Suffolk County judge mandates, rather, you and your spouse will mutually come to an agreement. No one likes to feel as though they have no control over a situation, and divorce mediation or Collaborative Divorce will ensure you do not have this sentiment during your Long Island Divorce.



Chapter 10

How Do I Move On & Enjoy a Healthy Life After My Long Island Divorce?

Aside from the loss of a loved one, divorce is likely to be one of the most emotional experiences you, or anyone on Long Island, will experience in your life. While you may attempt to prepare for the emotional pain that comes along with a divorce, you may not be prepared for the other myriad of emotions you will experience. There may be days you wake up happy, others where you will be angry, and others full of anxiety, for apparently no reason. The better equipped you are to handle this variety of emotions, the better you will feel overall and the happier you will be with your life after your divorce. At times you may want to crawl under the covers and never come out, and while that may be okay for a few hours after a rough day, it is not a conducive coping mechanism for a complete, healthy life. As a Long Island Divorce Attorney who has worked with many of the best mental health professionals counseling my clients, I have become familiar with numerous ways people handle these stresses, and the following are a few suggestions.



Confide in a Trusted Friend or Family Member

When you were younger, nothing felt better than talking to your closest friend or a parent about something that was deeply troubling you. Even at times when you may not have wanted to speak about the issue, you would be hard pressed to say you did not feel better after opening up to someone. It is part of being human. Getting our problems out in the open relieves our stress and often lets us see our issues from another perspective.

Regardless of whether or not a solution came of the discussion, the mere fact that someone cared and was there to listen always made things better. As we grow older and problems become more serious and private, it becomes harder to confide in people. However, that feeling of relief that comes from talking to a loved one is still the same. Pick up the phone and call your best friend or your mom. Even if they do not say anything on the other end, you will feel better to have said the words aloud.

One of the thoughts likely running through your head as you read this is “Well, I do not want to bother my friends every day.” As a friend myself, I know I would much rather have my friend confide in me over something that was bothering him than to know he was stressed and unhappy on a daily basis. True friends don’t want to see their friends suffer alone.

Seek Counseling

Not everyone has a solid support system or people with whom they feel comfortable sharing their most private matters. Or you may feel that your friends and family have biased opinions, or rather just give too many opinions. Or perhaps they just give advice you know is not in your best interests. Even when you have a solid support system, your friends and family are not professionals. As well-meaning as they may be, they are not trained

or equipped to properly help you deal with your issues in a healthy way that will enable you to move on to a happy, successful life. In these instances, there is nothing wrong with seeking counseling to discuss your divorce. You can rest assured that everything said in a counseling session is strictly confidential and nothing can be used against you during the divorce proceedings. A therapist may also be the best person to help you with coming to terms with as to why you are overjoyed one day but can barely get two feet out of bed the next.

“There is nothing wrong with seeking counseling to discuss your divorce.”

Eat Well

Remember the old saying “you are what you eat?” Well it is true. More often than not, during stressful times people turn to junk food for that quick “feel good” feeling: fast food, pizza, cakes, cookies, and other sweets or fried foods are the devil on your shoulder during emotional times. While these things certainly taste good, and provide a quick fix, they will not make you feel good over the long run. Everyone indulges now and again, but try to avoid letting your emotions control your otherwise healthy eating habits. You may not think this makes much of a difference, but your Long Island Divorce may last for a year or more, and after a year of fast food for every meal you will inevitably feel slow, tired, unmotivated and generally not so good about yourself.

Get Outside

The simple act of getting up and stepping outside can change your mood and your entire day. Find a park near your home that has a trail, or head down to the beach. Bring your dog, your iPod, a book, or your best friend and just get outside. Whether you walk for a few miles or sit under a tree, a little bit of fresh air can provide a new perspective and do wonders for your mind.

Spend Time with Family & Friends

We all have been there, that feeling where you would rather be alone than hold even the slightest conversation with anyone. It is OK and we all need alone time with our thoughts, however, we cannot let it become a pattern that isolates us from the world and our support system. Humans are naturally social animals. We need interaction with other people to be healthy. Once you begin to socialize, you will naturally start to feel better. Socializing and spending time with those you care about, and who care about you, allows you to stay busy and forget, at least for the time being, all the stresses with which you are dealing. Call your friends or your siblings and plan to get together for dinner one night, or plan a weekend trip to Manhattan or another city away from home. Besides giving you something to look forward to, it will inevitably hand you a few necessary laughs.

“We all need alone time with our thoughts, however, we cannot let it become a pattern that isolates us. We need interaction with other people to be healthy.”

Everyone has busy schedules, and that may make it hard to get together with your friends or family at the last minute. Therefore, it may help for you to schedule time each week for your family and friends. This way, when Friday rolls around and you need something to look forward to for the weekend you will be able to think of the Saturday night you have planned with your closest friends. You do not have to, and probably should not, spend the entire night talking about your divorce. Simply being in the presence of friends and loved ones will lift your mood and help you forget about your worries.

Exercise

If your daily routine already involves exercise you are well aware of that great post-workout high. Whatever your exercise of choice, whether it be running, biking, hitting the Stairmaster, or a fitness class, you are well aware of how all your other worries and cares seem to disappear while your feet are pounding the pavement or your spin instructor

is yelling out commands during that hour class. Do not forget that feeling. You likely have a lot of emotions bottled up inside, and exercise is a great release for all of those negative feelings.

If you do not currently have an exercise routine, think of starting one. Join the local gym or ask your friend to start taking you along on his or her daily workouts. Exercise is not only a good way to relieve stress, but it will add to your day and ensure that you get out of the house at some point. Because, as we all know, when we are upset or otherwise feeling down it is too easy to stay in bed all day and this can just increase our feelings of depression.

Keep Yourself Occupied

I have found one of the worst things people on Long Island going through a divorce can do is to stay home and isolated with nothing to do. There is nothing wrong with needing personal time away from the world, but do not let your mind consume you. Each day will be different; give yourself 20 minutes or an hour to grieve, and then move forward with the

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day. Find a hobby or join an organization or club. If you live in a house or an apartment complex that permits pets, adopt a small dog or cat. The animal will not only take up a good amount of your free time, but will also relieve stress and serve as a good source of company.

Ready to Move On with Your Life?

Your Long Island Divorce is not something to take lightly. The actions you take now will have far-reaching implications for you emotionally and financially. However, sometimes it is the only way to move on with your life. While it's difficult in the short term, in the big picture, it's a short period of discomfort to ensure you can lead a healthy productive life.

Chapter 11

Long Island Divorce Case Study / Example

While every divorce is unique in its own way, there are certainly issues that come up as a common theme in Long Island Divorce. The following hypothetical Long Island Divorce Case Study / Example raises and addresses some concerns that may be on your mind as you contemplate how your divorce might play out.

We present it here to demonstrate the concepts outlined in the preceding chapters. We hope this case study will help you to form a fuller understanding of how issues like equitable distribution, child custody and visitation, child support, and spousal maintenance will play out in court. Of course, as emphasized throughout this book, if you can settle these issues privately with your spouse or in divorce mediation, you will have more control, and save yourself significant time, expense, and stress in achieving your divorce from your spouse.

John and Jane

Let us consider John and Jane, who have been married for 10 years when they decided to divorce. Together they have two children, ages 6 and 8. John and Jane, both in their late

30s, have healthy and positive relationships with the children.

Their assets consist of their marital residence, which they purchased together during the marriage. The home is valued at approximately \$300,000, and John and Jane own it jointly subject to a mortgage in the amount of \$100,000. John and Jane have a joint bank account that contains \$40,000. John has a 401(k) account through his employer that also holds \$75,000. He started funding the 401(k) right after he and Jane got married. In addition, during the marriage, Jane's mother passed away and left to Jane an inheritance of \$100,000. Jane put this money in an investment account that is held in her name only.

John's income is \$100,000 per year, and Jane's income is \$50,000 per year. John works long hours and has a long commute to work. He is generally unable to pick up the children from school and after school activities because he has to work late. Jane, on the other hand, has flexible employment and is able to work from home some days. She is the one who puts the children on the bus in the morning and picks them up in the afternoon.

Since they decided to divorce, John moved out of the marital home and into a two-bedroom apartment about 10 minutes away. Jane remained in the marital home with the children.

Child Custody and Visitation

As discussed in Chapter 5, the primary consideration when determining child custody and visitation is the best interests of the child. In this case, a court would consider the fact that Jane is continuing to reside in the marital home with the children, and that if the children were to stay with Jane, they would remain in their bedrooms, continue to attend their school and activities, and have the least disruption to their day to day lives. For this reason, a court will likely determine that Jane should have physical custody of the children.

However, because John is a loving father and has positive relationships with both of his children, the court will decide that he will have visitation with his children. If John and Jane cannot decide on a visitation schedule, the court will decide that for them. For example, the court might grant John visitation with the children every other weekend, from Friday through Sunday. The court would also decide which holidays the children will spend with John. The court might, for example, decide that on years where the children visit with John on Thanksgiving, they spend

Christmas with Jane. On the other hand, the court might decide that Christmas day would be split so that one parent has the children on Christmas morning and the other has the children in time for Christmas dinner. The arrangement will depend fully on the family circumstances and what is best for the children.

Equitable Distribution

Because marital assets are those assets that were acquired by either spouse during the marriage, the marital assets in this case consist of the house, John's 401(k), and the joint bank account. These are the assets that will be subject to equitable distribution. It is important to note that Jane's inheritance is not an asset that is subject to equitable distribution, and she will not have to share this \$100,000 account with John, because an inheritance, even if acquired during the course of the marriage is that party's separate property (unless the inheritance is specifically left to both spouses jointly).

Because assets are split equitably rather than equally in equitable distribution, the court would determine the most fair and practical way to distribute the assets. Keep in mind that marital debt is also divided by using equitable distribution in New York. In this scenario, Jane will likely get to keep the house in the divorce because she lives there with the

children and this would be a fair and practical solution that would likely work out best for the family. Because Jane will be keeping this valuable asset and the \$200,000 in home equity, John may be entitled to a larger share of the other marital assets. He may take the entirety of his 401(k), all \$75,000, and not be required to share this with Jane to serve as an “off-set” and prevent requiring Jane to “purchase” John’s interest in the marital residence. He might also take a greater portion of the joint savings account, and less of the marital debt.

Child Support

Because John will be the noncustodial parent in our hypothetical, he will be required to pay child support to Jane, the custodial parent. Child support in New York is determined with a simple formula. For two children, the percentage of the noncustodial parent’s income to be paid as child support is 25%. John’s income is \$100,000 per year. However, child support figures are calculated on a party’s “adjusted gross income,” meaning his/her gross income less FICA (social security and Medicare) taxes actually paid by that party, so John’s child support obligation will be calculated on an adjusted gross income of \$92,350.00, for a total support obligation of \$23,087.50 per year. The court will determine whether he will make weekly, bi-weekly, or monthly payments.

John will be responsible for making child support payments until each child reaches the age of 21 so long as he continues to be the noncustodial parent and circumstances do not substantially change.

Spousal Maintenance

Because John is the spouse with the higher income, he will be responsible for paying spousal maintenance to Jane. As discussed in Chapter 7, spousal maintenance is determined by a formula provided by statute. Assuming that temporary maintenance was decided privately by John and Jane, we will calculate the amount and duration of post-divorce maintenance that John will have to pay to Jane.

As discussed, John will also be responsible for child support. If you recall, the formula for calculating spousal maintenance when the payor spouse will also be paying child support is the lesser amount of (1) twenty percent (20%) of the payor’s income minus twenty-five percent (25%) of the payee’s income and (2) forty percent (40%) of the sum of the payor’s income and the payee’s income, minus the payee’s income.

Although these calculations are based upon Adjusted Gross Income, just like Child Support, we’ll use the round number of Gross Income to make the calculations easy to understand.

This works out as follows:

For the first calculation, we take 20% of John's \$100,000 income (\$20,000) minus 25% of Jane's \$50,000 income (\$12,500), which is \$7,500 per year. For the second calculation, we take 40% of \$150,000, which is the sum of John's and Jane's incomes, which equals \$60,000. Then, we subtract Jane's \$50,000 income, giving us \$10,000 per year. The amount of \$7,500 is the lesser amount, so John will pay Jane \$7,500 per year in addition to his child support obligation.

The duration of the spousal maintenance will be a function of the length of the marriage. John and Jane were married for 10 years, and so the length of their marriage is under 15 years, and therefore the duration of spousal support will be 15-30 percent (15-30%) of the length of the marriage. In order to determine what the exact duration should be, a judge will consider factors such as standard of living, ability to become self-supporting, and whether the payee spouse had to limit her own career growth in order to allow the payor spouse to earn more. In this case, Jane may be

able to receive spousal maintenance for 2 years because of the standard of living she was accustomed to in a marriage with a combined income of \$150,000 per year. She can also use this time to reinvest herself in her career, and find ways to increase her income over the course of three years. Since Jane and John are relatively young (in their late 30s), the judge will be unlikely to award the full amount of 3 years of spousal maintenance.

This chapter offered a basic hypothetical Long Island divorce case in order to demonstrate the concepts in the preceding chapters. Hopefully it helped you to form a fuller understanding of how issues like child custody and visitation, equitable distribution, child support, and spousal maintenance will play out in court. Of course, as I have emphasized throughout this book, if you can find a way to settle these issues privately with your spouse or in divorce mediation, you will have more control over your results, and save yourself significant time, expense, and stress.

Conclusion

Thank you for downloading and reading the Second Edition of the *Guide to New York Divorce: What You Need to Know Before Hiring a Divorce Lawyer in New York*. We hope this second edition helps as many or more Long Islanders as the first edition we published in 2015. This second edition was updated to reflect changes in divorce law that have taken place since the first book was published and we expect to continue to update the book with new editions as changes in the law and how it's interpreted continue to evolve.

I hope that after reading this book you've gained a better appreciation for the divorce process in New York and take away everything I intended for you. You likely know more about divorce, child support, maintenance, and property division than you did prior to reading this book. However, I do not doubt that you still have a lot of questions about a variety of issues. But do not be afraid of that feeling, because it will stay with you for the majority of the divorce process. You may have a plan as to how you wish your divorce to proceed, but you can never know if your spouse will change his or her mind. You may even change your mind. And if that happens, my job is to help make sure you change your mind for the right reasons.

Divorce law in New York continues to change and evolve with the times as new laws are created and new precedents are set. We invite you to follow our blog on our website at <https://divorce-longisland.com/> where, every week, we publish an article on how New York divorce law affects people on Long Island. This is where you'll find the most up-to-date divorce law news and a discussion of how this may affect you or your family.

My firm is here to help you cope with the emotional and financial burdens of divorce. If you still have questions, or wish to schedule an appointment for a **complimentary** consultation at our offices in Melville, New York, please do not hesitate to call us at **631-923-1910**.

Sincerely,

Robert E. Hornberger, Esq.