

WHAT TO DO AND WHAT TO KNOW UPON SEPARATION

A Lot More Than You May Have Thought

by Steve Epstein

The Marital Home

Separation usually occurs when one party moves out of the marital home with no intent to return to the marriage. When that occurs, the spouse remaining has certain rights and protections, as does the spouse moving out. The remaining spouse has every right to change the locks and keys to all entrances and exits and/or any security or alarm system and passcodes. He or she can insist that the other spouse remain off the premises and the law of “domestic trespass” will protect that spouse if the other comes onto the property without permission.

The spouse who moved out has a right to gather his or her belongings from the house—clothing, accessories, personal care products, makeup, memorabilia, etc. This can occur in one of two ways: (1) if you and your spouse can work together, this can be accomplished together by walking through the house together and allowing the spouse moving out to gather his or her belongings; or (2) if this simply isn’t possible, the spouse who moved out can arrange to have a deputy sheriff accompany him or her to the marital home to retrieve his or her belongings. Note that the deputy sheriff will not referee a dispute as to which items can be removed from the marital home. If there is a dispute, the disputed item will likely remain in the marital home until further proceedings occur to determine where it belongs. Do not forget important papers like your Passport, social security card, birth certificate, car title, etc. as well as more sentimental items such as photographs, cards, letters, home videos, etc.

For the spouse moving out, there is a high likelihood you will never be able to enter the home again once you have retrieved your belongings. Therefore, before even moving out, you should make it your business, to the extent you are able, to document all existing property within the home. Use your cell phone to photograph or videotape each room in the house, showing each and every item of physical property, furniture,



electronics, kitchen items, china, crystal, silver, wall hangings, rugs, rare books, collections, sporting equipment, linens, jewelry, etc. Do not forget closets, the attic, and outdoor storage areas. Though you are leaving all of these items behind, you will ultimately be entitled to receive, typically, half the value of all such items and/or the actual items to help equalize the distribution of the marital estate.

Also, if there is one common computer used to document and account for household accounts and expenses, make a copy of the files that document those expenses so you will be on an equal footing with your ex-spouse when it comes time for the equitable distribution of property.

Once the immediate aftermath of the separation has passed, you and your spouse will need to decide whether the marital home will be placed on the market (which may be the only realistic alternative if your collective income is not enough to pay the monthly expenses of two residences). If the house is to be put on the market, you will need to cooperate with your spouse in locating and signing an agreement with a realtor and in placing parameters on the price range for the sale of the house. A well-written separation agreement can provide direction to the realtor regarding how to distribute the proceeds of the sale as between you and your spouse as part of a larger distribution of property.

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Utility Bills

What about the payment of the power, gas, water, and cable TV bills? Several practical considerations come into play. If you are the spouse leaving the marital home, true enough, continuing to make those payments will not directly benefit you. However, do you want to explain to the judge at a hearing on post-separation support, or temporary child support, that you let the power company turn off the power, or city turn off the water, because you refused to pay bills your spouse was unable to pay? If those bills are tied to your name, do you want to damage your own credit? Obviously, the goal is to get those bills into the sole and exclusive name of the spouse staying in the marital home as quickly as possible and to have financial responsibility for those bills pass to that spouse. But it may be unrealistic for that transition to happen in the first few weeks or even months following separation.

Mail and Address Changes

If you are the spouse leaving the marital home, make sure to immediately place a change of address request with the Post Office so that you are not relying on your spouse to provide any mail of yours (including bills and other important financial information) that is delivered to the marital home. You will also want to provide your change of address to your children's schools, doctors, and those associated with their camps and other activities.

Vehicles

Typically each spouse maintains possession of the vehicle they ordinarily use after they separate, no matter how each vehicle is actually titled. In equitable distribution, the vehicles will be valued and distributed, such that each spouse will have clean title to the vehicle they drive. Also, when you are gathering your belongings from the marital home, locate and retrieve any spare car keys such that it would not be possible for your spouse to access your vehicle post-separation.

If both of your vehicles are part of the same insurance policy, consider obtaining new and different insurance for your vehicle. If your spouse's

income is sufficient for him/her to pay for his/her own vehicle insurance, it's perfectly OK for you to stop paying the insurance on that vehicle.

Bank Accounts, Brokerage and Retirement Accounts, Credit Cards, and Loans

First and foremost, it is critical to establish the balance of every account of both spouses on the date of separation, because it is the date of separation account balances which will ultimately be used to equitably distribute marital property. Use your online accounts to create and save statements of each such account—including retirement, brokerage, IRA, and 401(k) accounts and all loans, in particular the mortgage on the marital home. To the extent necessary, call or visit financial institutions for which you do not have online access to do likewise.

Joint bank accounts may be accessed at any time by either account holder. In fact, either account holder may remove 100% of jointly held funds and close the account. It is therefore wise to get to the joint accounts before your ex-spouse does and move half of the funds to a personal account (since presumably half of those funds will be distributed to you in equitable distribution). You should not rely on any joint accounts post-separation to save or hold your money. Immediately redirect all direct deposits of your income into your personal account: income earned after the date of separation is almost always considered your property, rather than marital property.

Credit cards held jointly with your spouse are another opportunity for mischief and financial harm. The best practice post-separation is to remove yourself from all joint credit cards and create new credit card accounts with new credit cards, to which your spouse will not have access.

To the extent you have jointly held loans, such as a mortgage, you will need to decide who will be paying such obligations so that payments continue, the marital home is not placed in jeopardy, and your credit rating is not damaged. The same advice applies to installment contracts on furniture, jewelry, etc. Typically the spouse remaining

in the marital home will need to pay the mortgage while the spouse moving out is responsible for his or her own housing. The spouse paying the mortgage will usually receive credit in equitable distribution for the portion of the mortgage payment that is used to reduce the principal loan balance. The same general logic applies to car loans: typically the loan associated with the car you are driving is your responsibility to pay off post-separation, though credits for such payments may be part of negotiations in equitable distribution.

Record Keeping

At some point, it may be necessary to determine and confirm each and every expense you have incurred from the date of separation forward for both yourself and on behalf of your children. For that reason, it is advisable to begin to save every invoice and receipt, every credit card statement, and every cancelled check, and keep them well organized (digitally if possible) for ease of reference. In addition, as tedious as it may be, it can be a huge time saver and aggravation preventer to keep a current spreadsheet of all such expenses as they are incurred. The more detailed and organized you are about such expenses, the more likely it is to recover everything which would be permitted by the laws of child support, alimony, and equitable distribution.

Personal Income Taxes

Until you are officially divorced, you may continue to file joint tax returns with your spouse. Of course, whether you wish to do so is another question. Consult a tax advisor to determine the pros and cons of filing jointly versus filing separately. You will also need to reach agreement with your spouse regarding who will pay any income tax owed or what portion of a refund you will each receive. If your separation post-dates the submission of your returns and you are owed a refund, there will need to be agreement (or litigation over) the portion of the refund to which you each are entitled.

Passwords

Change all passwords to all accounts—social media, online banking, credit cards, frequent flyer and hotel points programs, Amazon and

online merchants, etc.—as quickly as possible. Though your ex-spouse may not know any of your passwords, better safe than sorry.

Social Media, E-Mail, & Texting

Establish a new e-mail account on Gmail, Yahoo, or another provider as quickly as possible. Use that account for all communications related to your impending divorce, including with your attorney.

Consider everything you post, every e-mail you send, and every text you send or receive as something which may be shown to the judge in some future Family Court proceeding. Therefore, be careful what you say, be careful what you post, and even be careful of the seemingly private conversations you have in text or online with friends and family. It is quite possible that your ex-spouse will be entitled to receive each and every one of those as part of the “discovery” process in your Family Court litigation. Most importantly, be especially careful in how you communicate with your ex-spouse. Nothing turns a judge against a family law litigant more than texts or e-mails from one ex-spouse to the other that are mean-spirited, bullying, harassing, or just plain foul. Therefore, as difficult as it may be, you must communicate politely and respectfully with your ex-spouse, even if that is not reciprocated. Better to let the judge see the dark side of your ex-spouse than your own.

Can you delete your posts, texts, and e-mails that relate in some way to your marriage or your children? Believe it or not, generally speaking, the answer is “no.” All parties to litigation have a duty to preserve electronically stored information (as well as hard copies of notes, letters, records, etc.) If you delete posts, texts, or e-mails, you will likely be required to confess that you have done so if litigation ensues. And if you have done so, the judge is entitled to conclude that you did so because the information deleted would have been harmful to you. As the old saying goes, “the cover up is worse than the crime.” Don't fret over the effect the existing posts, texts, or e-mails may have on you in Family Court litigation. But going forward, make sure you do not create any that will potentially cause you harm.

Dating

Yes, you may. Yes, you should. When you are ready. North Carolina law is very clear that intimate relations with a non-spouse that occur post-separation do not constitute adultery or other marital misconduct and do not impact alimony or other Family Court proceedings. The person you date also does not risk a lawsuit for alienation of affections or criminal conversation, because those claims require an existing marriage (without separation). So you may, without fear, sign up for Match, e-Harmony, or other dating sites. Beware, however, that your ex-spouse may be entitled to learn about your dating activities—including your posts on these sites—so use discretion and common sense.

An additional consideration to resuming a normal romantic life is your children. If you have young children who will be spending time with you, it is wise to keep your dating life a secret from them in the initial months following separation. Separation and living in two different households will be a difficult adjustment for them. Adding new romantic partners to that picture will make their adjustment significantly more complicated. Consider how you would feel if your ex-spouse began introducing the children to his or her romantic partners.

Beneficiaries

To the extent you own retirement accounts, IRAs, 401(k) plans, annuities, or life insurance policies, it is quite likely that you have named your spouse as one of, if not the exclusive, beneficiary. Presumably, now that you have embarked on the path toward divorce, you will want to change that. You need to contact each plan administrator, life insurance company, etc. and fill out the necessary paperwork to make those changes.

Child Support and Post-Separation Support

Though these topics are covered elsewhere, be aware that these obligations commence immediately upon separation—long before lawyers or judges are even involved. Typically the breadwinning spouse will need to begin making child support payments within the first month of separation to ensure that the children are being provided for in a manner consistent with the Child Support Guidelines. Similarly, a spouse considered a “supporting spouse” must begin making “post-separation support” (temporary alimony) payments to the “dependent spouse.” These terms are discussed in the section addressing alimony.

Therapy

The initial weeks and months following separation may prove to be the most difficult of your life. A good support network of family and friends will surely help you get through this period. That said, there are things you probably would be hesitant to discuss with family and friends, or to expose your weak or troubled emotional state. A good therapist can help you through these tough times and provide you with a safe outlet to openly discuss these thoughts and feelings. Most therapists have counseled a good number of clients through the post-separation time period and can provide you expert guidance on how to get through this difficult time. Though there is no guarantee that the therapist's notes and records will be protected from discovery during Family Court proceedings, that concern alone should not dissuade you from reaching out for this kind of assistance.

STEVE EPSTEIN advises clients and represents them in litigation regarding separation and divorce, child custody and support, alimony and post-separation support, and equitable distribution. His decision to migrate into this new practice area germinated from his own two-year odyssey through the family court justice system, which culminated in a positive outcome for Steve and his three children.