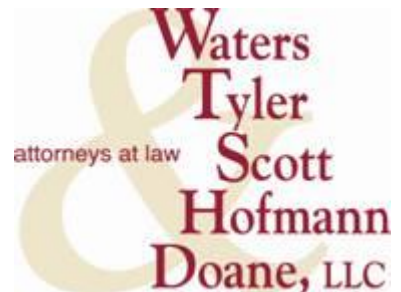


# SURVIVING DIVORCE

*A guide to help you get through an Indiana divorce*



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## **Introduction**

Divorce is an unfortunate fact of life in the United States. The oft-quoted statistic is that nearly 50% of all marriages end in divorce. Anyone who has been through a divorce will tell you that it is difficult. People regularly get bogged down in side issues that delay the divorce and increase expenses.

The purpose of this guide is to help you get through your divorce. There's no legal advice in here, however. Although divorce goes through the legal system, much of what is required to survive your divorce has nothing to do with the law. It has much more to do with understanding the process, understanding that emotions can be dangerous things, and keeping your eye on the finish line without getting distracted.

## **About us**

Waters, Tyler, Scott, Hofmann & Doane, LLC, is committed to providing honest, caring, affordable, quality family law services. We understand the emotional nature of family legal matters and realize how important it is that each client receives individual attention to his or her matter in a timely, cost-efficient manner. You need a family law attorney to help you navigate through the legal process and find the best possible outcome to difficult situations.

Our family law section handles all issues involved in a divorce or dissolution of marriage, including the determination of custody, visitation and support for minor children, as well as the division of marital property and alimony. We pride ourselves on our reputation in representing clients throughout southern Indiana.

Our two primary focuses are to insure that the best interests of the children are kept in the forefront of the proceedings and to attempt to resolve matters as expeditiously as possible, whether it is through a settlement agreement reached between the parties, a mediation agreement or at trial, if necessary.

When you choose us to handle your family law matter means you will receive the highest level of professionalism, honesty and ethical conduct. Our attorneys will provide you with forthright and aggressive representation while striving to give you personal attention and timely results.

## **Disclaimer**

Nothing in this guide should be interpreted as providing you with legal advice. The best source of legal advice is your own attorney. By providing this guide, we are not entering into an attorney-client relationship with you (or anyone else, for that matter). We cannot and will not provide legal advice to you or anyone unless and until a proper retainer agreement is executed.

## **Be certain you want to do this**

If you're reading this guide, it is because either you think you want to get divorced, or your spouse has told you he or she wants to get divorced. If it's your spouse who said something, then there may not be much you can do to prevent it. In fact, if your spouse is certain, then there is nothing at all you can do to prevent the divorce.

On the other hand, if you are thinking about divorce, think hard and think carefully. A divorce is a long, stressful, and expensive process. Even if the divorce is "amicable," it is still stressful. Researchers once compiled a list of stressful life events. Ranking first was the death of a spouse. At the bottom of the list were things like retirement or going on vacation (ranking 53<sup>rd</sup> and 54<sup>th</sup> respectively). Divorce ranked 9<sup>th</sup> on the list – higher than the death of a close friend.

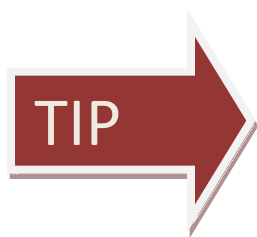
Unless you are completely certain, you should not pursue a divorce. Your personal finances will suffer. If you have children, they will suffer – a lot. In fact, the same researchers concluded that on the scale of stressful life events, having your parents divorced is ranked 10<sup>th</sup>. This is not a decision to make lightly.

If you are uncertain, speak with a mental health professional or your clergy person. Explore all possible alternatives thoroughly. Once you start the process, it is very difficult to put the genie back into the bottle. Even if you change your mind, your spouse might decide he or she wants to go through with it. In that case, you are stuck.

## **Being with the end in mind**

Steven Covey's book *The 7 Habits of Highly Effective People* recommends that you develop the habit of "beginning with the end in mind." In other words, think about where you want to be when everything is finished. This principle applies in divorces as well.

If you have children, you should think about a couple of things and maybe even discuss them with your spouse. What do you want your children to be like when they are 25? Do you want them healthy, happy and well-adjusted? If so, that will guide all of the decisions you must make in the divorce. When your children get married, where will you want to sit? In the front row with your former spouse (where you belong)? Or standing in the back of the church, maybe even not invited to the wedding? Where you want to be on that day will guide your decisions.



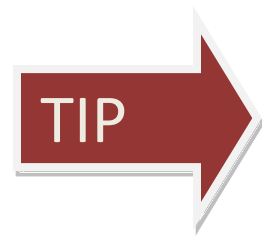
***If you have children, you should immediately take advantage of a free and confidential web-site, Up To Parents, at [www.uptoparents.org](http://www.uptoparents.org). Developed by a family law mediator and counselor, this web-site helps parents remember that their children need them during and after the divorce. Countless attorneys and mediators report that if both parents use this web-site and work through its***

***exercises, the divorce is much smoother, less stressful, and less expensive.***

Do you want to come out of the divorce with your dignity and your self-esteem intact? If so, you will want to remember that as you make decisions. You will want to ask yourself, “If I decide to do this, how will it affect my goal of having an amicable divorce?” If you want to emerge from the divorce ready to move forward with your life, you will make decisions that avoid needless conflict. On the other hand, if you want to emerge from divorce with a mountain of bills and a lifetime full of therapy, you will behave differently.

How much do you want to spend on your divorce? If money is no object, then hire a lawyer who will be glad to run up a large fee. If you’re like most people, keep in mind that the more you argue with your spouse, the more expensive your divorce will be.

The law in Indiana requires the court to divide the marital property and debt in a fair manner. Of course, what is “fair” is often in the eyes of the beholder or divorce court, the judge. Before you even speak with an attorney, spend some time thinking about what you think is fair. Perhaps you do not need half of the marital estate to survive. It might be possible that you feel you need more than half of the marital estate to survive.



***One of the first things you should do (before or after hiring an attorney) is to begin cutting expenses. Start tracking spending: every meal, every snack, every cup of coffee. We tend to spend more than we realize on small things. By tracking your spending, you will realize there are some places you can save money by cutting your spending. This is very important.***

In a divorce, you will go from running one household on the household income (yours and your spouse’s, for example) to running two households on the same amount of income. You do not need to be a Nobel Prize winner in economics to know that your budget will be very tight. If you can identify areas where you can reduce your spending, it will be very helpful.

At the same time, you should work as hard as you can to begin saving money for the proverbial rainy day. If you can save \$30 a week by drinking less expensive coffee, that can add up to \$1,560 a year that you socked away. That’s enough to pay for a brake job or repair the furnace when it goes out.

If you have credit card debt, though, work on paying it off as quickly as possible – before you begin saving. Credit card debt causes more headaches for people going through a divorce. If your credit cards require a minimum monthly payment of \$40, the odds are that you’re paying \$30 or \$35 of that \$40 in interest alone. If you must, investigate filing for bankruptcy protection. Be wary of the television ads you see that promise ways to help you pay off debt quickly. They can be quite expensive with hidden fees and costs. (Any company that can afford to run television ads has to be working for profit).

Work on getting your personal finances in shape. You will be glad you did.

## Understand what's going on

In almost every divorce, there are two parallel tracks that the divorce goes down. One track is the legal side of the divorce. The other track is the emotional side of the divorce. You should not be surprised if the divorce does not go down these two tracks at the same rate of speed. By knowing what lies ahead, you will be better prepared to understand what is happening in your case.

### ***The Legal Process***

The first step in a divorce is that someone must file a petition for dissolution of marriage. This petition is signed under oath. It is filed with the court, where it will be assigned to a judge and given a case number. The case number is very important: the clerk may have dozens of Smith divorces, but there is only one that has your case number. In Indiana, we use a uniform numbering system in all counties. A case number looks like this:

22C01-0909-DR-00123

For those who want to understand what the different parts are, here's a quick explanation. The first two numbers ("22") represents the county. Floyd County is 22<sup>nd</sup> in the alphabetical list of counties in Indiana. The C01 means the case was filed in the Circuit Court of the county. You case might have a different letter and two-digit number such as D01. The "D" means the case ended up in Superior Court, and the 1 means it's filed in Superior Court Number 1. Just remember that the letter and two digits after the first two numbers identify the court. The 0909 tells us the year and month the case was filed. In this example it is September of 2009. The "DR" makes it a domestic relations case. And finally, the 00123 tells us this was the 123<sup>rd</sup> domestic case filed in that the court in the year 2009.



TIP

***Keep track of your case number because if you need to call the court clerk, that office will need to know your case number. If do not have it, the staff may be able to look it up, but it will take time. When you get your case number (also called a "cause number"), please write it down and put it in your wallet or some other place where you write down important numbers.***



STEP  
ONE

Once the petition for dissolution of marriage is filed, a copy must be served on (in English, that means given to) your spouse. If you are on reasonably good terms with your spouse, it may be best for you to hand them the petition and summons in person. Having the petition served by certified mail may sometimes be rather cold and can send the wrong message. Having the petition and summons served by the county sheriff can be even more antagonizing. Whatever you do, ask your attorney to make sure the petition does not get served on his or her birthday, anniversary date, kids' birthdays, or Valentine's Day. Nothing gets a divorce off to a bad start like giving your spouse a reason to say, "She served me on our anniversary. What a coldhearted..." You may want to give your spouse a proverbial sharp stick in the eye because of what he or she

did in the past. Resist that temptation and take the high road. Make sure when it's all over, other people can say, "He never let the divorce get ugly. That takes strength and character." If your friends egg you on to really let your spouse "have it," just tell them you're taking the high road not because your spouse deserves it, but because that's the way you would want to be treated. They may shake their heads and think you're nuts, but secretly they will respect and admire you.

## STEP TWO

The next typical step in a divorce is to establish what the courts refer to as "provisional orders," and everyone else calls "temporary ground rules." These orders will address:

- Who has custody of the children
- What the parenting time arrangements are
- What child support should be paid
- What spousal support should be paid
- Who will live where while the divorce is pending
- Whether one side needs to pay the other's attorney's fees
- Anything else the parties need to work out while the divorce is pending

Most often, the parties and their attorneys are able to work out agreements on all of these issues. If so, the agreement is presented to the judge, who then enters an order requiring the parties to live by their agreement. If the parties cannot reach an agreement on one issue or another, then the court will decide those issues and enter the appropriate order.

## STEP THREE

The phase that follows the provisional orders is usually referred to as "discovery." For those who do not speak legalese, the phase is better described as "exchanging information." In order to fairly divide up the marital estate (both property and bills), the parties (and their attorneys) need to know what the property and bills are. Typically this involves making copies for both sides of income information (like tax returns, pay check stubs, and so on), bills, loan statements, bank statements, brokerage statements, retirement account statements, and lists of other assets. If property (like a small business) needs to be valued, appraisers can be hired to render opinions.

The attorneys also gather facts and evidence about any other factors that might affect the division of the marital estate. For example, if one spouse suffers from a disability that prevents them from working full time, that could affect the outcome of the case.

## STEP FOUR

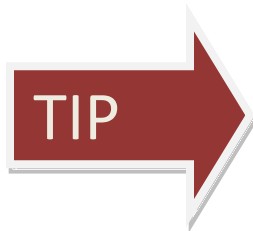
After the discovery phase is complete, the parties usually engage in negotiations to work toward a settlement of the case. At times, the parties and their attorneys may meet with a mediator. The mediator is a neutral third-party who

has been trained in ways to help parties find common ground and work toward an agreement.

Most cases settle with the parties reaching an agreement (with or without the help of a mediator). If the parties reach an agreement on all issues, the terms of their agreement are reduced to a written settlement agreement. This document is signed and presented to the court for approval. (The approval is pretty much a formality. As long as both parties agree their agreement is fair, the judge likely not to reject an agreement. If the judge does, that's a case the judge will have to decide after a trial. Judges prefer to spend time off the bench working on motions and opinions, so they have a good reason not to reject settlement agreements.) The parties will also sign a waiver of their right to a final hearing, which means no one would have to go to court and testify about the breakdown in the marriage.

### **Help your attorney**

There are a number of things you can do to help your divorce attorney. One of the most important is to always be truthful. Your lawyer has heard many things in the course of his or her career, and you are not going to shock your lawyer. Because Indiana is a “no fault” state, much of what has happened during the marriage may be irrelevant as to property division. Some incidents in the past may be relevant to custody issues. Nevertheless, complete disclosure of all facts can help prevent your attorney from being blind-sided and unable to effectively represent you.



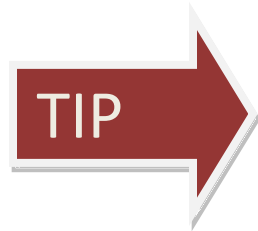
***Always be truthful with your attorney. Failure to tell him or her everything will only create problems including delays and costs. Your attorney should not be surprised by a revelation about you or your spouse.***

Another important way to help your attorney is by gathering information together at the start of your case. You should locate and make copies of the following:

- ✓ Bills (yours, your spouse's and joint bills)
- ✓ Tax returns, with all attachments, for the last three years
- ✓ Bank statements for the last six months
- ✓ Brokerage statements for the last six months
- ✓ Retirement account statements for the last six months
- ✓ Loan balances (mortgages, cars, etc.)
- ✓ A list of your major assets (anything worth \$500 or more)

## Watch out for emotions

A divorce is a very stressful time, and your emotions will make you feel like you are on a roller coaster. You should be aware of your emotional state, and try to avoid making important decisions while angry or depressed because of the divorce. There may be times when it is tempting to “give in” because you are tired of the battle or just “want to get it over with.” Many times, it is wise to concede for these reasons, but such a decision should not be made quickly or rashly.



***If you feel the slightest need to do so, seek professional assistance from a qualified mental health therapist. If the question even enters your mind, you probably need to meet with one. While your attorney may be a sympathetic ear, he or she does not have the qualifications to provide therapeutic counseling. Many health insurance programs cover a number of therapy sessions, so do not hesitate to look into the option. In addition, a number of churches, synagogues and mosques have counselors on staff who may be able to help as well.***

Emotional issues can manifest themselves in fights over personal property. A former trial judge (who now sits on the Indiana Court of Appeals) once said that nearly every divorce has a “Velvet Elvis”: a piece of property that is not worth much money, but the parties fight over it. The fight isn’t really over the item of property. The fight is over the hurt the parties feel as their relationship is ending. These fights can be very expensive in both emotions and attorney’s fees. If you can recognize that you’re fighting over the hurt and not actually over the property, you can save yourself money and avoid additional stress.

## Read the rules

Throughout your divorce and afterwards, there are many rules that will govern your case. The most important among these are parenting time (or visitation) guidelines and child support guidelines. Indiana’s parenting time guidelines and Indiana’s child support guidelines are available on our firm website.

By reading these rules, you will have a better understanding of how “judges think” and what is likely to happen in your case. Keep in mind, though, that the rules are not a substitute for good legal advice. Some judges, for example, are not big fans of the Indiana parenting time guidelines, and they have their own ideas about parenting schedules. Only a lawyer who regularly appears before that judge will know the judge’s preference.

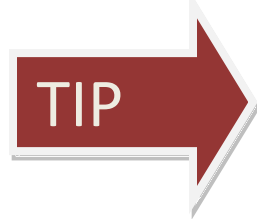
## Ask questions

Your attorney is the best resource you have available. Although you might not like the answers your attorney has, it is better to know up front than to be rudely surprised.

Keep in mind there are many gray areas in the law. Thus, you should not be upset if something does not turn out as predicted by your attorney. At best, your lawyer can only give you a good, solid

estimate about what is likely to happen in any given case. There are never any guarantees in the legal system, so if your attorney recommends that you compromise, you should listen to his or her advice.

The worst place you can get information about your case is from your co-workers, friends, family members, or “drinking buddies.” How something was resolved in one case will not necessarily be resolved the same way in your case. The facts in your friend’s case may be slightly different than yours – but that difference may be very important. In addition, laws change as the legislature amends statutes and courts develop new interpretations of those statutes. Also, two different judges may come up with two different results for the same set of facts.

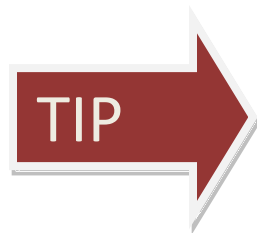


***Remember: just because your friend ended up with a certain child support order does not mean that you will end up with that same amount.***

### **Work well with your lawyer**

One of the best ways to survive your divorce is to work well with your attorney. There are a few ways you can do this that will help maintain smooth relations with your lawyer.

First, know what your lawyer can and cannot do for you. The legal system is not good at solving every problem that comes before it. For example, if your spouse is a jerk, no lawyer or judge can change that. Similarly, no lawyer or judge can make your co-parent be a better father or mother to your child. No lawyer can promise or guarantee a particular outcome. He or she can only give you advice and recommend a course of action. If your lawyer does make promises, be very careful. The lawyer is either doing something unethical to achieve that outcome, or the lawyer is insane.



***Understand that your lawyer cannot make your spouse or co-parent to do certain things. For example, your lawyer cannot “make” your co-parent return the kids. These sorts of “emergencies” often occur late in the day or on weekends when the courts are closed. The opposing attorney may not be available, so problems cannot be solved with a phone call. The best thing to do in a situation like this is to document the problem and call your lawyer the next business day.***

Keep in mind, however, that calling the police to document the problem is not always helpful. For one, the police are often busy dealing with criminal matters. In addition, children do not like the idea that someone “called the police” on their mother or father. Write it down in a calendar, journal or send an e-mail to the other parent that simply says, “On Friday, October 31<sup>st</sup>, you would not allow me to take the kids as we have agreed.” Do not call names, make threats, or otherwise do anything you wouldn’t want a judge to hear.

Another important point is to remember that your lawyer has many other cases. Sometimes, those cases require the lawyer’s immediate attention. Attorneys often have to assess which “fire”

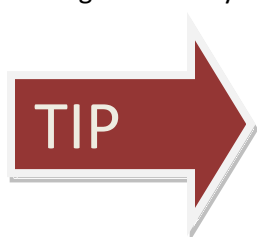
needs to be put out first, and although your situation may seem like a crisis, there could be another client with an even worse situation. No one likes having an unreasonable or overly demanding customer or client. If you are unreasonable in your demands, your attorney may choose to “fire” you and let you find another lawyer to handle your case. You should be aware that lawyers often see red flags in clients who are looking for their second or third attorneys.

Although it can be difficult, make every effort to pay your lawyer’s bill on time. Your attorney has his or her own bills to pay, and your payments are important. When clients do not pay their bill, the lawyer often will choose to spend time on clients who pay their bills. In addition, clients who do not pay their bills (or even make some sort of sincere effort) are telling their lawyers that they do not value the lawyer’s service. If you do not value your attorney’s work, you should hire another attorney. It is not fair to you, the attorney, or the attorney’s employees to have him or her keep working for you when you do not intend to pay the bill.

### **Keep your eye on the prize**

Family law cases are almost always complicated by emotions. Your spouse may do something that angers you, and it can be tempting to call your lawyer and demand that something be done to “make your spouse pay.”

One of the most important things you can do is to avoid buying into the mind games and other “button pushing” that goes on in divorces. Letting your spouse or ex-spouse push your buttons or play mind games with you distracts you from your ultimate goal.



***At the very beginning of your case, you should work with your attorney to figure out where you would like to be at the end. By keeping this goal in mind, you can resist the urge to go off on some side issue. Keeping focused on your goal will also help you keep your legal fees under control.***

### **If you have to go to court**

Unfortunately, too many family law cases require that parties make a trip to the courthouse. This is a nerve-wracking experience, but if you keep a few basic rules in mind, the process will be less painful.

First, dress appropriately. The courtroom is a formal place: judges wear robes, lawyers wear suits. You should plan on presenting yourself in a professional manner. Blue jeans, tee shirts, shorts, flip-flops, and other casual attire have no place in the courtroom.

Next, be aware of the decorum of the courtroom. Your attorney will tell you where to stand or where to sit. Many courts have parties gather at the front of the bench. Do not put your hands on or otherwise lean on the bench. Stand (or sit) quietly. Do not interrupt anyone who is speaking – speak only when asked a question. If you need to tell your lawyer something, either write a note or whisper in his or her ear.

When addressing the judge, call the judge “your honor.” Terms such as “sir” or “ma’am” are barely acceptable. “Your honor” is never going to irritate the judge.

If you are asked a question, answer the judge’s specific question – not what you think the judge wants or needs to hear. It will make the judge’s job much easier if you provide simple, direct answers. If you do not understand, it is okay to say so.

After the judge has made his or her decision, it is often appropriate to thank the judge at the conclusion of the hearing – even if the ruling goes against you. The odds are that you will appear before the judge again, and judges have a long memory of those who behave rudely or show disrespect to the court after a bad ruling. Thank the judge for his or her time and consideration, and quietly leave the courtroom with your attorney. Yelling, begging, pleading, or other disruptive behavior will not help your case in any way.

## **Conclusion**

This guide obviously does not cover every possible issue that may arise in your case. Nevertheless, if you remain aware of the emotional issues and can separate them from the “business” issues involving property division and parenting of the children, you will come out of your divorce more able to enjoy your life ahead.

Good Luck!

*Note: Thank you to fellow Indiana divorce lawyer, William L. Wilson, for his contribution to this guide.*