



PREPARING TO SEPARATE

Separating from your spouse or partner is a tough decision. It is an emotional decision. **You need a plan.** If you are moving from the marital home, it may not be easy to return later. It is best if you create your plan before you leave or ask your partner to leave. We hope this paper will assist you.

Separation does not have to lead to litigation. **You have options.** You and your partner may consider mediation. A mediator can guide you as you negotiate resolutions to the issues arising from the decision to separate.

Collaborative Divorce is another way to address separation without litigation. A collaborative law approach to separation and divorce is based on a transparent exchange of information and documentation. Both parties have lawyers, but the "collaborative team" works together to fashion a result that addresses the needs of both partners.

Before you leave:

- **Videotape and/or photograph the inside and outside of the house.** This will be helpful if there are questions later about the condition of the property at the time you separated. Even if you remain in the marital home, document the condition of your property on or close to the date of separation. If possible, videotape the condition of the home as you leave or immediately after your spouse has left.
- **Videotape and/or photograph all furniture and other personal property items** you are leaving in the home as well as the ones you are removing. This will be helpful if the existence of or condition of an item later becomes an issue. Also, this will help you in completing any property lists you may need to prepare.
- **Make a list of all personal property.** For each item, try to include information about when you acquired it, how much you paid for it and how much you now think it is worth. It will be much

easier to prepare a list while you are able to look at all the property rather than trying to reconstruct it from memory later.

- Items such as silverware, collectables, jewelry, electronics, etc. should be set out on a table or otherwise displayed so that they can be easily photographed.
- List and photograph items that you are removing from the home. If an item has **damage** or other factors that affect value, be sure to note or photograph them to avoid claims that you caused the problem after the date of separation.
- **Take important documents** such as tax returns, bank statements, investment account statements, receipts, etc. or make copies of them before you leave. Any document that shows the existence or value of an asset or details of a debt may be important. Scanned or photocopies of all important documents will be sufficient in most situations.
- Do not forget items that may be stored in your attic, basement, garage, outbuilding or shed.
- Inventory your **children's property**. Unless you and your spouse agree that certain items will be treated as belonging to the children and not counted as marital property, the children's items will have to be valued and distributed to one of you.
- Do not forget **Christmas decorations, scrap books and family photographs**. These may not have a great deal of monetary value, but they have significant sentimental value.
- Items that you leave in the home when you move out are still subject to being divided between you and your spouse. **The fact that you leave them behind is not a waiver of your rights.** However, if there are items that you definitely want to receive, you should try to take them with you when you leave.
- If your spouse remains in the former marital home with minor children, you should not take items which are necessary for the children. **You should try to create as little disruption to the children's lives as possible.**
- Make a backup of any computers you are not taking. Check with your automobile insurance agent. Be sure they have your new address and ask if your spouse can cancel your policy. Do not cancel your spouse's policy or drop your spouse from your policy without first discussing this with your attorney.
- Make appropriate plans for any pets or other animals. If your spouse has not been the person to care for animals you should take your pet when you leave. On the other hand, if your pet belongs to the children, the pet should stay with the children.

After you leave:

- You should not return to the marital home without the permission of your spouse.
- If your spouse indicates in any way that she or he does not want you to return, then you can be **arrested for trespassing** if you return without permission. If your spouse does not agree for you to return, you will need to obtain an Order from the court to allow you to return and obtain specific property or have property reviewed by appraisers.

Financial / Business considerations:

- You should not create additional significant debt before your departure or leave an opening where your spouse could create additional debt. If there is an equity line or line of credit loan from which your spouse can withdraw funds, you should contact the bank and discuss this with them. Many banks will convert the account to one which requires both parties' signatures before any new withdrawals. If possible, pay off and close out any credit card accounts prior to the separation. If you are not able to pay off the card, contact the company and determine whether there is anything that can be done to prevent additional charges. If your spouse routinely makes charges on any local accounts, you may want to contact the creditor and let them know that you are not responsible for his or her charges from this day forward. In other words, **review all opportunities your spouse would have to create any debt which would be in your name or secured by your property**. Take measures to minimize your risks or prevent this from happening. However, do not leave your spouse without the means to obtain necessary items.
- Check the names on all financial accounts, update addresses and be sure you know who has access to each account.
- Review life insurance policies
- If you and your spouse own a **business** together, your spouse will have equal access to it after your separation. Depending on the nature of the business and the nature of your spouse's involvement, this can create a significant problem. If you believe your spouse may take any inappropriate actions regarding company funds, records or other property, then you need to make the appropriate safeguards. If your spouse is the person primarily in charge of the business, then you need to make sure you obtain copies of business related documents which will be necessary for purposes of valuation of the business. **Neither you nor your spouse should take any actions which will diminish the value of the business.**
- Fill out a **change of address** form at the post office. Also notify all creditors whose bills you expect to pay. If your housing situation is temporary, you should obtain a post office box address until you have a more permanent physical address.
- Do not change any utility or other **services** to the former marital home without discussing this with your attorney. You should not leave your spouse in an overly difficult situation. If the services or utilities are in your name and you will not be the responsible party to pay them, you need to contact the provider and find out how to change it into your spouse's name.
- If you are providing the **health insurance**, do not cancel your spouse's coverage. If your spouse is providing the health insurance, you should contact the company and determine whether or not they will let you know if your spouse tries to cancel your coverage. Unless you can obtain your health insurance independent of your spouse, you may want to offer to pay your spouse for the continued coverage until the divorce.
- Be aware of all **outstanding bills** that will come due around the date of your departure or shortly thereafter. You need to either make provisions to get these bills paid or present them to your spouse and request payment.

Who should you listen to?

- Do not take legal or financial advice from your spouse during your separation.
- You and your spouse cannot be represented by the same attorney.
- Do not sign any legal documents unless you understand fully the legal effect of that document.
- Your friends will be sympathetic and they want to help you. However, your situation is unique and their experience may not be what is best for you. Let them console you, but get your legal advice from a lawyer.
- Be careful about websites that just sell legal forms. For the most part, these websites do not provide legal advice and the forms may not be guaranteed to comply with North Carolina law. If you want legal advice about separating from your spouse in North Carolina, **you need to talk to a lawyer licensed to practice in North Carolina.**

A few words about Social Media, Email & Computer Security

Facebook, Instagram, Twitter and other social media sites are great sources of information, connections and entertainment. Email and computers have greatly simplified our lives. However, **these resources have risks**. It is a bad idea to air dirty laundry or bad-mouth your spouse on these sites or via email.

Why?

- It's a permanent record. Once it's out there, you can't take it back.
- Things you say on Social Media sites CAN be used as evidence against you.
- Saying nasty things about the other parent can impact your custody case.
- Emails, texts and other written communications can be requested in pre-trial discovery and used as evidence.
- Although communications with your lawyer are confidential and privileged, if you include other people in the communication, it may no longer be confidential.
- If your spouse has passwords and login information to important sites such as online banking or credit card sites, you should change those passwords immediately when you decide to separate.
- Save your important documents in a cloud-based directory that is password protected.

Do you need an attorney?

The answer to this question depends on how complicated your situation is and how much you and your spouse agree or disagree. If you and your spouse have agreed how to divide your property and there are no complicated legal issues involved, our online separation agreement may be all that you need.

If you decide to represent yourself, Irvine Law Firm's **Advice by Phone** or **Advice by Email** offers an **affordable** and **convenient** way to obtain the professional advice you need and the **peace of mind** you want. Having your questions answered will give you the **confidence** you need to represent yourself.

We understand how difficult it is to decide when separation is right. We can help you consider your options and devise a plan. We are available for phone or email advice as needed. We can assist you with the drafting of a Separation Agreement. We can also help you obtain your final divorce. It all starts by preparing to separate.

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