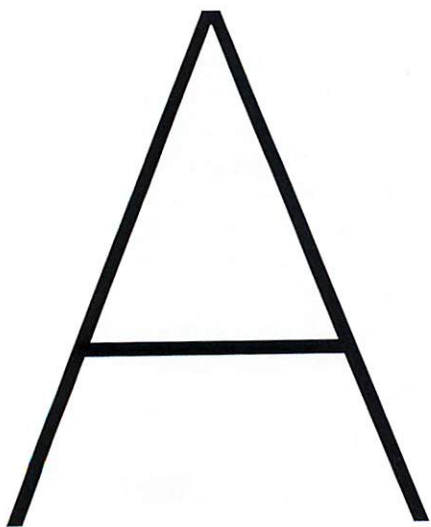


# A Civilized Divorce

How to dissolve  
your marriage  
with grace, class,  
and a lot of  
common sense

By Sam Margulies, Ph.D., J.D. Photographs by James Wojcik

*Text excerpted from A Man's Guide to a Civilized Divorce, published by Rodale Inc., 2004*



At the very beginning of a divorce, most men are flooded—flooded by their own emotions and flooded by the crosscurrents of advice they get from well-meaning but ignorant friends who counsel fighting. They're also flooded by disturbing images: being wiped out financially, losing contact with their children, and being humiliated by their wives. As a result, men tend to fall back on their instincts and assume that the best defense is a good offense. In divorce, however, everything you do by instinct is wrong.

The process does not have to be a vicious struggle, but you've got to shape your behavior in the present with an eye to the future. You're trying to build a new life in which you have a cooperative relationship with your ex—particularly around issues relating to the children. One of the keys to success is developing an effective way to deal with your wife.

You already know how to do this. You're going to communicate with your wife as you would a colleague. You will be cordial and respectful. You will not display intense emotions. In turn, you will not expect intimate communication. If you observe these rules, you will be able to preserve any residual goodwill and affection between the two of you. It's only when you lapse into personal attacks that you destroy whatever goodwill exists.

Over the past 25 years, I have mediated the divorces of thousands of couples, and with each passing year become more convinced that the typical lawyer-dominated adversarial divorce (and all the misery that goes with it) is unnecessary and avoidable. If you can grasp a few principles, there is no reason you can't recruit your wife to collaborate in negotiating a reasonable and survivable divorce for all family members.





THE BEGINNING SHAPES THE DIVORCE

Though the emotional and legal processes of divorce can take a year or two, the decisions that you make in the very beginning shape the nature and tone of the entire divorce. Act like an angry, vindictive, and vengeful victim, and you guarantee yourself an angry, vindictive, and vengeful divorce that will ruin your life. Act like a reasonably calm grown-up trying to navigate a difficult life passage, and you can probably do it well. You have a choice. You can act on your immediate feelings of fear, anger, betrayal, and loss. If you do so, you'll screw up your divorce. The better choice is to manage your feelings and act on your interests.

Want some incentive? Eighty percent of men remarry within 2 years. Whether that new relationship will succeed or not depends in large part on whether your divorce leaves you intact or a mess. A raging ex-wife poisoning your children against your new wife will turn that new marriage into a nightmare. You cannot afford to indulge your anger.

INITIATORS AND NONINITIATORS

Very few divorces begin when two married people wake up one morning, look at each other, and simultaneously announce that it is time to end the marriage. In most cases, one of the spouses reaches his or her pain threshold before the other and decides that divorce is the only way out. We call that person the initiator.

The other spouse may agree with the initiator and may have been on the verge of calling it quits as well. Or the other spouse may be completely blindsided by the announcement. The noninitiating spouse is often at a severe psychological disadvantage. The initiator has had lots of time, often years, to ruminate about the divorce and come to terms with its implications. The initiator knows that divorce requires some tough changes but accepts them because they are offset by some important gains, such as the end of a painful relationship and the chance to try again with someone new.

But for the noninitiator, who has not had time to accept the new situation, the divorce represents only loss. The distinction between initiator and noninitiator is critical because how the initiator behaves toward the noninitiator at the beginning of the divorce often determines the outcome. If the noninitiator is given time to adjust and figure things out before being pressured to make many important decisions, the outlook is good. But pressure her before she is ready, and she will seek rescue from a lawyer. That's when you begin to lose control.

The interesting thing is that the majority of divorces today are initiated by women. So there is a 60 to 70 percent chance that you are the rejected party, and you are the one who is in the greatest danger of causing an angry divorce.

HOW TO TELL YOUR WIFE THAT IT'S OVER

Assuming you're that rare guy who is the initiator, you need to tell your wife that you want a divorce with all the gentleness you would employ if you were telling someone that a loved one has died. Choose a time when the two of you are alone and unlikely to be interrupted. You are about to break some bad news that will, in all probability, evoke strong emotions. Determine in advance that you will not use strong language or an angry tone, regardless of her reaction.

- 1 Use "I" statements. You are reporting the state of your own feelings and are not characterizing hers. Try something like: "I have some difficult news to share with you. I have reached the conclusion that you and I need to divorce." Now be prepared for a response and listen when she talks to you. Her response may be anything from agreement to urgent denial.
- 2 Do not blame her for your decision.
- 3 Be clear that it is over.
- 4 Do not discuss proposals about the details of the divorce.
- 5 Do not retaliate if she attacks or criticizes you.
- 6 Reassure her that you want to work with her to achieve fairness and the best arrangement for all of you.
- 7 Tell her there is no hurry to resolve everything and that you will wait until she is ready.
- 8 Suggest or agree to divorce counseling.

WHAT TO DO WHEN YOUR WIFE TELLS YOU

How you react when your wife tells you that she wants to divorce will depend on whether or not you are surprised. Few men are genuinely surprised because on some level they've been aware that the marriage was at least strained and probably in trouble. You may be unaware of the degree to which your wife has moved away emotionally. If you are genuinely shocked, you'll need more time to come to terms with the news. Angry, vindictive blaming will accomplish nothing other than litigation. Maintain your dignity and ask...

- 1 That your wife give you reasonable time—a few months—to absorb the news and the implications of the divorce before you have to act.
- 2 That she not press you to negotiate or make important decisions about the divorce until you have had time to think about it.
- 3 That she allow reasonable time before she tells other people, with the exception of the few confidants in whom she has probably confided anyhow. You do not need other people asking about the divorce until you are ready to talk about it.

SHOULD I LITIGATE OR MEDIATE? This may be the most important decision you make

Fairly early in the divorce, you will be encouraged to find a lawyer to represent you. Although it is a good idea to have an orientation session with a lawyer to learn more about the law in your state, it is not necessary or desirable for you to retain the lawyer to represent you at this stage. First you need to know how the divorce system really operates. The myth promoted by movies and soap operas is that divorcing people have to have a trial before a judge. It may happen that way on television but not in real life. ■ About 99 percent of all divorces never involve a trial but are settled by negotiation before the trial. Negotiated settlement is the overwhelming norm, and unless you or your wife or one or both of your lawyers are a little crazy, it's the process by which your divorce will be resolved. So the only real questions are how long it will take and what it will cost you emotionally and financially. ■ In the conventional divorce, both spouses hire lawyers who fight and prepare for a trial that won't happen. Then in the 11th hour, the lawyers negotiate the settlement. The alternative to this costly charade is mediation. ■ Mediation is the product of a movement that began about 25 years ago when a number of reform-minded lawyers and some family therapists joined forces to create a modern alternative to adversarial divorce. If a couple is going to settle the case anyhow, why not help them to stay in control and negotiate their agreement at the beginning rather than at the end of a long process? Why not make it possible for them to have discussions they cannot have alone by providing the services of a trained, impartial professional who offers the leadership necessary for them to succeed? These questions gave birth to modern mediation. ■ Mediation changes the role of the lawyers from surrogates who are in charge of you to advisors who provide consultation as you need it. Mediation focuses on maintaining and improving the communication between divorcing spouses so that they can cooperate on issues involving children long after the divorce is over. ■ To mediate is a no-brainer. About 75 to 85 percent of couples who try it succeed, and those who do not have lost very little money or time. Seek mediation. If your wife resists, do all that you can to convince her to try it.



- 4 That she not discuss the divorce with the children until the two of you can do it together and at the proper time.
- 5 That she maintain an atmosphere of cordiality and respect in the house until the two of you separate.
- 6 That she go with you for several sessions with a divorce counselor to manage the feelings that you both are experiencing.
- 7 That when you are ready, the two of you will seek a good mediator to help you negotiate the divorce settlement so that you don't get lost in litigation. (See "Should I Litigate or Mediate?" on page 95.)

### SHOULD YOU STAY OR SHOULD YOU GO?

Although men are becoming primary residential parents more often than they did years ago, the number is still quite small—about 10 percent—and these are usually men with older children. Notwithstanding sexual equality, most wives end up providing the primary household for children, with the children spending alternate weekends and one or two nights during the week with their fathers. What this means is that in the majority of divorces with children, the man moves out sometime after the decision to divorce is made. Even when the marital home is to be sold, it is generally the man who moves first while the couple awaits a buyer for the house. So the question is whether you move sooner or later.

I believe it is better to move sooner. Living in the same house with a dead marriage is toxic for everyone, particularly the children. You do your kids no favor by hanging on to your place in the house in the face of a reality that you have to move. None of you can begin to heal until you are separated. It is an investment in the mental health of the entire family.

Unfortunately, lawyers and well-meaning but ignorant amateur advisors usually counsel men to stay in the house. Many argue that the husband will expose himself to accusations of abandonment if he leaves. But a simple letter from your wife that states that you are moving out by mutual consent removes that issue.

A second fear is that by moving you somehow forfeit your property rights in the house. This is also untrue. If you and your wife own the house together, you will continue to maintain your ownership interest after you leave, and the settlement will resolve when and how you get your equity in the house.

Many lawyers also advise clients not to move because they fear that it will weaken their negotiating position. Because the husband's continued presence in the house is an irritant to the wife, the very discomfort caused to the wife supposedly provides an incentive for her to make other concessions just to get him out. There may be a little truth to this strategy, but the damage that is done in the meantime is not worth it. Once it is clear that you are going to move, move as soon as you can arrange it.

You can obtain the cooperation of your wife by telling her that you want to move but that you need her help: "I think it would be a good idea for me to move, and I know that you think so too. But I am worried about two things, and I need your help to solve the problems. As soon as we begin to get a grip on these, I will move. First, I am worried about how I will get enough time with the children if I move out, and I need some reassurance from you about that. Second, I do not know where the money will come from to pay for this, and I need your help to figure out how we will pay for both households."

### STABILIZING THE FINANCES

If you have done your part in maintaining civility, you and your wife should be able to agree on a short-term strategy for managing money. In most middle-class families, divorce is a financial crisis because you are trying to make a transition to two households on income that has up until now supported just one.





## A map of U.S. divorce laws

No-fault divorce is a common thread in every state, but custody, property, and financial support matters differ. Here's an overview of the laws by state. Divorce laws change frequently, so consult your attorney for the latest information.

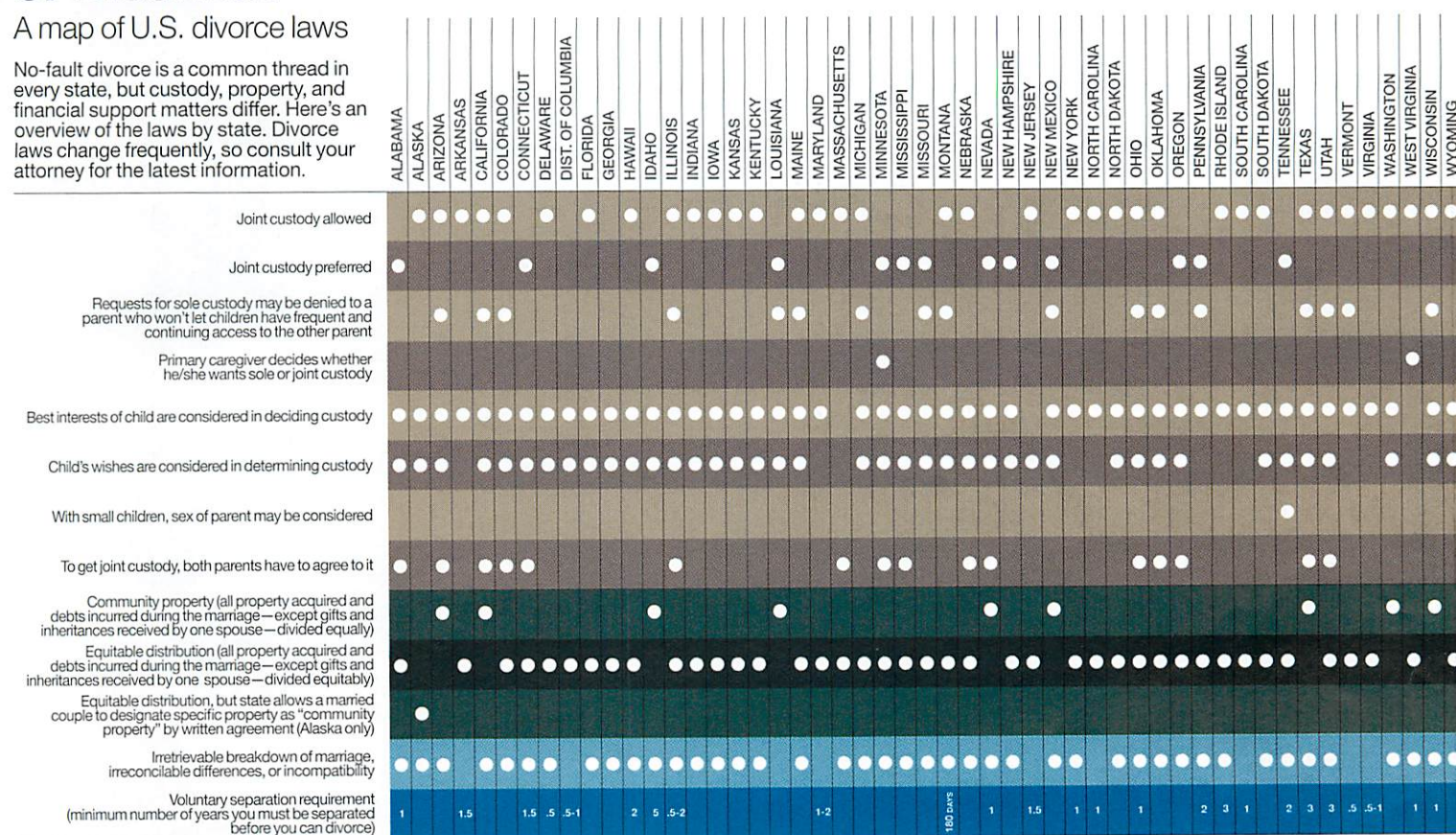


Chart adapted from *Divorce Yourself: The National No-Fault Divorce Kit*, by Daniel Sitarz (Nova Publishing, 2004; [novapublishing.com](http://novapublishing.com))

■ **CUSTODY** It's generally accepted by most experts that, after a divorce, it's in the best interests of your kids for them to spend a lot of time with both you and your ex. But that's not necessarily the law in every state ■ **PROPERTY DISTRIBUTION** ■ **FOUNDATIONS** Each state now allows some type of "no-fault" divorce, meaning that to get a divorce, neither spouse has to prove the other one did anything wrong. However, the definition of "no-fault" does vary from state to state

Many middle-class couples live on 105 percent of their net incomes in one house and now must sustain a 30 percent increase in total spending to pay for two homes. In time, the two of you will have to make difficult strategic decisions that may involve career changes, selling the house, and generally cutting back on spending. That will be the most demanding task of your settlement discussions and cannot be taken on in the beginning, when fear is high and feelings are raw. So what you need is a provisional plan that gets you separated quickly and one that you both agree is not permanent. It may seem daunting but with a little cooperation is possible.

## MAINTAINING CONTACT WITH YOUR CHILDREN

Modern couples, particularly two-career couples, cannot succeed in divorce unless they share responsibility for their children. What you want to avoid here is the sterile debate about what to call your custody arrangement. It really does not matter. From a mental-health perspective, the only things that really matter are that you both maintain robust relationships with the children and that you cooperate as parents. Accomplish that and your kids will be okay.

Like most couples, you and your wife will have the kids on alternate weekends. I suggest that your weekend visits with your children run from

Friday evening to Monday morning. Then if you also have at least one overnight with the kids during the week, you will have significant time with the children. I urge you to avoid abstract struggles over "equality." Chances are that your parenting arrangement in the divorce will resemble the arrangement you have had during the marriage. If you have had equal roles during the marriage, you will have equal roles in the divorce. And if you have had a more traditional arrangement, in which your wife was the primary caretaker, that will also probably continue.

On both money issues and child-related issues, your mediator can be extremely useful, and I encourage you to avail yourself of that service early in the process. It is unlikely that you and your wife can work these issues out without help.

## MINIMIZING YOUR RELIANCE ON THE COURTS

Generally, the more contact you have with the judicial system, the worse your divorce will turn out to be. In the early stages of the divorce, neither of you should file anything in court. Consult with lawyers, but don't let them talk you into filing for divorce. That's something you will do after you have negotiated your settlement. A good divorce is only possible if you and your wife stay in control. ■