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'Do-it-yourself' divorce can be a costly error

Recently, a number of companies have been trying to persuade people that they can save money by handling their divorce on their own. These companies sell packets of generic forms in books or on the Internet, claiming that they were developed by "expert" attorneys and that they're all you need.

Buyer beware!

These forms might be accepted by a divorce court, but they're *not* tailored to your specific situation and the companies do *not* provide legal advice to protect you. Countless people who have used these forms have made mistakes that have cost them far more than they would ever have spent on a lawyer.

The sad irony is that the people who use these forms tend to be couples who are splitting up on reasonably good terms. They think they're saving money – but the truth is that these types of uncontested divorces are the ones where attorney fees are low and where an attorney can provide the greatest "bang for the buck," because all of the attorney's time is spent protecting you rather

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CHILDREN AND THE LAW

Child support could be cut when child goes to college

A divorced father could be entitled to reduce the amount of his child support to reflect his ex-wife's lower expenses when the children spend most of the year away at college, a New Jersey appeals court recently decided.

The couple had two children. The parents agreed to joint custody, but the children lived mainly with the mother.

The parents also agreed that the father would pay child support while sharing the cost of college. After both children went off to college, the father asked the court reduce his support obligation. And the court agreed that a child going to college counts as a change in circumstances that could justify a reduction of child support payments.

However, the court said it all depends on the specific circumstances, since other expenses might increase as the cost of room and board at home decreases. And the court said that in many cases, it might be more appropriate for a parent to begin making direct payments to the student for some of his or her support needs, rather than paying the other parent.

As with most things, the law on this issue varies from state to state and from case to case.

Support orders shouldn't be used to equalize income

The purpose of a child support order is to support the children fairly, not to equalize the income of the two parents, according to the highest court in Massachusetts.

In this case, the parents never married, but they were living together when their daughter was born. Both parents' incomes exceeded the

levels to which the state's child-support guidelines automatically applied. After the couple separated, the mother filed a paternity action and asked for child support.

Even though the couple shared custody and had comparable standards of living, a judge applied an "income-equalization" formula and ordered that the father pay almost \$500 a week in support.

The father appealed, and the state Supreme Court sided with him.

A child support order should prevent a "gross disparity" between a non-custodial parent's standard of living and that of the child, the court said. But the law doesn't allow a judge to simply equalize the two parents' incomes.

Mother is required to sign child's passport papers

A mother can be ordered to sign documents so the father can obtain a passport for the couple's daughter, the Alaska Supreme Court recently decided.

The parents, who share custody, had difficulty cooperating in their daughter's upbringing. When the father wanted to visit relatives outside the country, he applied for a passport for the daughter so he could bring her along. Under federal law, both parents must consent in order to obtain a passport for a child under the age of 16.

When the mother refused to sign a consent form, the father sued, claiming it was in the daughter's best interests to obtain a passport.

The court agreed, noting that the daughter would benefit from the opportunity to travel abroad, including school exchange programs. To allow the mother to deny the child a passport without giving a good reason would harm the girl's interests, the court said.

After divorce, follow through and change beneficiaries

After all the stress of divorce, many spouses don't follow through and change the beneficiaries they've designated on all their retirement accounts, insurance policies, and other documents.

But this is a critical step. If you have any questions about what needs to be changed, we'd be happy to help you.

Here's a good example of what can go wrong: When a Florida couple got divorced, the husband was awarded a deferred compensation plan that he had opened during the marriage. At the time he opened it, he had named his wife as

the beneficiary who would be entitled to death benefits.

The husband never got around to changing the beneficiary, and he died unexpectedly a year later.

As a result, his ex-wife and his other heirs went to court over who was entitled to the money.

The result? The Florida Supreme Court decided that the ex-wife was entitled to the benefits. The husband could have changed the beneficiary designation at any time, the court said, and if he failed to do so, his other heirs were out of luck.



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'Do-it-yourself' divorce is a bad idea

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than fighting with the other side.

If you know someone who's thinking of a "do-it-yourself" divorce, ask them these questions:

- Do you know if you're entitled to a share of your spouse's pension, IRA or 401(k) plan? If so, do you understand the highly technical requirements you must comply with as to your spouse's employer or plan custodian? A "divorce kit" generally won't help you with this.
 - If you're splitting up property, are you aware of all the tax consequences? Many people have done it the wrong way, and been surprised later with a large and unnecessary capital gains or other tax bill. (A divorce kit won't give you tax advice, either.)
 - How can you be sure that your spouse doesn't have assets that he or she isn't telling you about?
 - If your spouse promises to pay you money, and doesn't follow through, how will you be protected? Or if your spouse promises to pay you money and later files for bankruptcy, how will you be protected?
 - Do you know how to re-title property in separate names in a way that provides legal safeguards?
 - Do you know every type of beneficiary designation that need to be changed?
- Are you entitled to a share of your spouse's stock options? Do you know how to divide them in a way that's legally effective?
 - Do you know what changes need to be made to your estate plan after the divorce?
 - Do you fully understand the effect of the divorce on Social Security, Medicare, Medicaid, health insurance, and other benefits?
 - If you have children, have you taken care of them in terms of visitation and support? Will they be fully protected if your circumstances change in the future, or if your spouse's circumstances change?
 - What if your children incur large expenses in the future, such as for medical problems or college tuition? Does your divorce agreement deal with this in detail?
 - What if your spouse agrees to pay child support, but dies unexpectedly? Have you provided for this, such as through a legally mandated life insurance policy?

If your head is spinning, it should be. Because the legal and financial implications of even the most simple, uncontested divorce can be profound.

You get what you pay for, and the legal consequences of doing a divorce on the cheap with an online kit can be very costly indeed.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!



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Military retirement pay continues to raise issues

Military retirement pay and disability benefits continue to be a big problem, as courts across the country give different answers as to how they should be treated after a divorce.

The military's rules for dividing retirement pay at divorce are very complex. While it's possible for an ex-spouse to be entitled to a share of retirement pay, the military also allows veterans who become eligible for disability benefits to substitute disability for retirement pay in certain cases – sometimes with a tax advantage for doing so.

The question then becomes whether an ex-spouse who was eligible for a share of retirement pay is also eligible for a share of the disability benefits – and if not, whether a military retiree must make up the difference.

In a recent case in Arizona, a disabled Vietnam vet was receiving monthly military disability benefits, but hadn't yet retired when he got divorced. His wife got half his future retirement in the divorce decree.

But he later became eligible for something called “combat-related special compensation,” which gave him tax-free benefits in exchange for a dollar-for-dollar reduction in his retirement pay. He opted for these benefits, which eliminated his ex-wife's share of his retirement.

The Arizona Court of Appeals said this was unfair, and the husband had to fully compensate the wife for the loss of the retirement benefits she was awarded in the divorce.

But in a similar case in Mississippi, a wife got 40% of her husband's military retirement pay for 10 years. When the husband elected disability benefits in place of a big chunk of his retirement pay, he reduced his monthly payments to her from \$571 to \$120.

The woman complained, but the Mississippi Supreme Court sided with the husband. According to that court, a law passed by Congress said that a state divorce judge couldn't order a redistribution of military disability benefits.



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