



Idaho

Divorce Guide



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No legal advice is given in this website. The following material is provided as a public courtesy and by way of suggestion. Providing the information or the reader relying upon the same does not form an attorney- client relationship nor does it constitute legal advice. Each legal matter is different and you should seek the legal advice of an attorney to specifically address your specific needs.

Planning for Divorce

Emotional Preparation.

According to the Life Events Scale, divorce and marital separation are the second and third most stressful events a person can experience. The death of a spouse or child is the only event more significant. A person going through a divorce has to make major life-changing decisions that have long term consequences. Sometimes a person going through a divorce mistakenly believes that “giving in” to the demands of a spouse is the best way out because they believe the stress is too great. Often, by not adequately dealing with the issues at the time of divorce, more stress is perpetuated in the future.

A person going through a divorce needs to take the steps necessary to make reasonable decisions that will benefit them now and in the future. Some individuals who could be of help include:

- An attorney who can provide you with legal information so you know what to expect and how to get organized for a pending divorce, even if it does not begin at that time.
- An ecclesiastical leader (bishop, pastor, or other church leader) who can help reconcile guilt for ending the marriage.
- A professional counselor.

Stress, guilty, anger and other emotions cannot be eliminated completely from a divorce, but if these emotions are kept in control, the better off you will be. However, these challenges can be substantially reduced by taking some or all of the steps discussed above.

Preparing for Separation.

a. Gather information & Documents.

You need to do what is necessary to protect and provide for yourself. If you have the chance to gather information and copy documents before you may lose access of the same, you will likely save money in legal expenses, decrease the time in completing the case and increase the amount of property awarded to you. However, sometimes gathering information before filing for divorce is not possible or prudent.

Some things you may want to consider would be:

i. ***Inventory of property.***

1. Knowing what the assets are and the value of the same is important.
2. Mr. Johnson and his staff can help determine the value of various assets, but the more information you have, the more accurate your values are likely to be.
3. You may want to take a number of photographs or video the various assets.

ii. ***Specific documents and information you may want to gather.***

1. Bank Account information and past statements if available.
2. Copies of invoices and statements for monthly expenses.
3. Statements of Pension/Retirement/401(k) accounts.

iii. ***Details on major assets.***

1. For example, for vehicles you may want to use websites such as Kelly Blue Book (kbb.com) or Edmunds.com to determine the value of vehicles, including what things to look for (such as year, model, mileage, options, etc.)
2. Copies of titles to vehicles, RVs, etc.
3. *Copies of documents that establish value or income.*
 - a. Past appraisals such as on your house.
 - b. Financial statements or loan applications.

OPTIONS WHEN PROCEEDING WITH A DIVORCE

Mediation

Mediation is the process in which the parties hire a trained mediator to lead discussions between the divorcing parties in an attempt to settle their issues outside of court. Mediation is used frequently in larger cities prior to filing for divorce. This process has not been used much in Idaho prior to filing for divorce, even though there many reasons for doing so. Mediation is a powerful and cost effective tool that should be considered by couples contemplating marital separation or divorce.

Many people I meet with as an attorney do not want to have an expensive drawn out divorce when they believe the parties have only a few minor disagreements. However, because of the difficulty in communicating with each other, settlement discussions between the couple often end in a heated argument. Mediation allows the communications between the parties to be controlled and the discussion kept on track. Mediation focuses on the present and future, not the past.

Some of the reasons to mediate, and to use us to mediate your matter, include:

- Cost Savings. It is estimated that the “divorce industry” generates \$50 billion each year and continues to increase. Mediation statistically saves substantial amounts of money.
- Better control.
 - Judges do not know your needs and your children’s needs as well as you do. Judges are also constrained by the law.
 - Beginning the mediation process early can give a couple the ability to control the pace of the matter. Once filed, the Court establishes various deadlines and requirements. These in turn push parties and attorneys to complete various tasks causing significant attorney fees to be incurred.
 - The parties have the ability to effectively control the communications between each other. Once you file for divorce, most communications go through the attorneys. This may cause a breakdown or delay in otherwise potentially productive communications .
 - You can control the costs. With mediation, you pay for what services you request as you go along. Once you file for divorce, your attorney has to do what is necessary to adequately represent you.

- Reduces impact on children. Children are benefited because parents who mediate more often have less conflict between them.
- Typically a quicker resolution.
- Avoids “War” perception. Filing for divorce is often perceived as a declaration of war. Attempting mediation is perceived as an effort to reach a mutually agreeable resolution.
- Transition is smoother. Because of the control the parties have, there is no abrupt decisions by the judge leaving one or both the parties stunned and required to make immediately and significant changes.
- Better Long Term Results. Voluntary settlement agreements lead to better long term results and both parties are more likely to abide by the same.
- There is Nothing to lose! Most judges in East Idaho require the parties to go through mediation. If you mediate early on, this step will have been completed.
- Issues can be narrowed. Even if the parties are unable resolve all matters, some issues can still be resolved, leaving to the court to resolve the issues the parties continue to disagree upon.
- Assistance of an experienced attorney. By using David A. Johnson to act as your mediator, you have an experienced, court tested attorney to provide options on what could be done and what generally works and doesn't work. If requested by the parties, he can even assist the parties in the preparation of the necessary paperwork for approval by the courts. As a mediator, Mr. Johnson is not an advocate for either party and can provide unbiased information.

Filing on Your Own

The State of Idaho has a court assistance program, which provides basic information and forms. The website for this program is <http://www.courtselfhelp.idaho.gov/> In East Idaho, there is also a Local Court Assistance Office which can help you review forms and point out mistakes. That office and its staff cannot give legal advice. Court personnel will not answer legal questions or help with paperwork. Local attorneys, including Mr. Johnson, donate time to this program to provide answers on a regular basis. If you decide to go it alone, contact the Court Clerk in your area to see what Court assistance resources are available in your area.

The State of Idaho self-help website states in part: “The materials and assistance you receive on this web site or in your local Court Assistance Office are no substitute for talking with a lawyer. Laws and court rules are very complex.” This is good advice. Visiting with Mr. Johnson or another qualified attorney to answer specific questions can help you make reasonable decisions, understand the nature of the issues involved and how to avoid pitfalls. Like a doctor’s visit, you would pay for the amount of services to desire.

Some companies sell forms. However, if you are filing on your own we recommend you use the State of Idaho’s forms which are free and likely more acceptable to the Courts.

[Hire an Attorney](#)

This is the most common method of starting a divorce. Even if you mediate, having your own attorney to specifically advise of your legal rights and to counsel is useful. Some cases need to be filed promptly to avoid problems, including protecting you, your children and/or property.

If a spouse is threatening to leave the state with the children or do other harmful actions, filing for divorce is essential for the necessary protection. Mediation may not work prior to filing for various reasons including a spouse’s inability to accept the divorce, significant emotional issues which would prohibit a fair resolution, etc.

When consulting with an attorney keep in mind that there is a difference between what is *possible* and what is *likely*. Attorneys often talk in “possibilities” and clients interpret the same as probabilities. Attorneys are advocates for their clients and look at what they can get.

Why hire Dave Johnson

Mr. Johnson is an experienced, competent and caring attorney who wants to look out for your best interest. He offers a many tools and options to getting your case effectively done. His office charges only \$50.00 for the first initial consultation (up to 30 minutes.)

Typical Divorce Case:

- ❖ Often the first step taken in the divorce process of getting a divorce is for the parties to separate, whether on a trial basis or as a part of the process of the parties going their separate ways. An attorney/mediator can help the parties with a working separation agreement that minimizes conflict during this time period. Parenting plans can be created that will help the parties work together for the benefit of the children, income divided, bills paid, etc.

❖ Filing a Complaint

In Idaho, a person has to be a resident of Idaho for six weeks before they can file for divorce. To be a resident, a person must not only reside in Idaho, but intends to continue to reside in Idaho. A person in the military or a person working out of the state can still be an Idaho resident

A Complaint (also known as a Petition) provides the Court with necessary information and identities what the person wants the Court to do. This document contains the basis or “grounds” for divorce, custody & visitation arrangements, property and debt division, and whether any spousal support is needed.

❖ Service

Once you file the complaint, your spouse has to be served with the papers. This can be done by:

- Acknowledge service by signing a document saying he received a copy of the Complaint and related documents.
- Acceptance of service by the spouse’s attorney.
- Personal Service done by a neutral adult. This is usually done by someone who does this for a living.
- If your spouse is hiding or cannot be found, service can be done by publishing the same in a newspaper.

Once served, your spouse will have 20 days from the date of service to file an answer with the court. Failure to do so would result in a “default” being taken and the judge will enter the divorce decree if the Complaint is compliant with Idaho Law. Default is automatic and the Plaintiff (person filing the complaint) is required to provide the necessary documents and proofs to the Court.

❖ Focus on Children Class

When a case involves children, the Court will require the parties to attend a parenting class to educate the parents on the impact divorce has on children and how to minimize the same. This class is a prerequisite to future hearings.

❖ Temporary Orders

Most Courts will automatically issue a Temporary Restraining Order and Preliminary Injunction which addresses some of the major problems that could arise. This Order contain provisions that prevent one party from harassing the other party, coming into the other party's residence without permission, hiding property, dropping insurance coverage, cutting off utilities, unnecessarily encumbering property or incurring debt, leaving the state with the children without the other parties' permission and other matters.

Because a trial can be a year or more away, there may be a "temporary hearing" (also called a motion) to establish:

- When and how the children will spend with each parent.
- Who should pay child support and how much.
- Who will have possession of the marital home and other properties.
- How division of both parties income should be and/or payment of debts and expenses. (You are still married during the divorce and all income is community property)
- The payment of attorney fees needed for representation.
- Spousal support or alimony

❖ Discovery

To prepare for trial or to have sufficient information to make informed decisions, "discovery" is often conducted. Discovery tools includes:

- Request for Production of Documents. This is a written request identifying documents that the other party has or controls access to requiring them to provide the requested documents.

- Requests for Admissions. These are requests that require the other side to admit or deny particular facts that shouldn't be disputed. This prevents surprises at trial. If the answering party denies something that is obvious, that party may have to pay the attorney fees incurred in proving that particular fact. This is to save time and money gathering evidence to back up facts that are either obvious or prove that documents are authentic.
- Interrogatories are a set of questions sent to the other side which the other party has to answer under oath. The answers to these questions can become part of the sworn testimony used in the case.
- Depositions are where someone is required to appear before the attorneys and answer questions under oath. The entire interview is recorded and transcribed exactly. Depositions are used to know exactly what the witness could testify to at trial. In some circumstances, they can be used to replace that person's testimony in Court (such as if they reside in a different state). Depositions are often used when a witness/party is unlikely to be honest at trial.
- Subpoena Duces Tecum is a tool which allows the production of documents from whoever has those records. This may include records from a financial institution, doctor, etc.

❖ Children's input

Where a child wants to live and with whom is important information for the Court to consider. At the same time, having a child testify in Court in a case between his or her parents is very dramatic to say the least. Also, having a child as a witness causes one or both parties to attempt to influence the child prior to the trial. While testifying in Court is an option, there are several other options a Court can use. Judges vary greatly between judges and even cases on how the wishes and testimony of a child is considered. Some of the things different judges have done includes:

- Allowing the child to testify the same as any other witness, including questioning from both attorney. This is usually a bad choice and disfavored by most judges. Some judges even have an absolute rule barring anyone calling a child to testify.
- Interview the children privately, sometimes with the attorneys in the back of the room but unable to ask questions.
- Interview by Family Court Services or similar agency. These are counselors who will interview the child and sometimes parties without the judge or attorneys present and simply report what is said. This method is commonly used for a simple way of getting from the child their basic desires.
- As part of a Child Custody Evaluation (See section below)
- Allow the parties and others to say what the child has stated. Even though hearsay, judges allow the same from both side. What weight the judge places on such statement is uncertain.

❖ **Custody Evaluations.**

Custody Evaluations are done by a mental health professional such as a psychologist trained to conduct these type of evaluations. This type of evaluation is done by extensive interviews of the parties and the children and often involves the administration of psychological tests to help determine various psychological characteristics and needs of the parties. Some judges almost always require them to be done and other judges find no substantial value in the same. They are often costly and their accuracy is dependent upon the ability of the evaluator and whether he or she is competent and impartial.

❖ **Trial.**

At trial, both parties present their side, starting with the Plaintiff. In a “regular trial” witnesses are called and examined by each attorney. Each attorney’s responsibility is to represent and advocate for their respective clients. Typically this means doing to do their best to “win” the case for his or her client. This typically creates a hostile environment, if it wasn’t high enough in conflict before. There is no jury possible in a divorce case.

Idaho has a procedure for an informal custody trial as an alternative form of conducting a trial. This often works when the parties are representing themselves or there is not much of factual dispute and the parties want to just tell his or her side and let the judge decides. Some of the characteristics of an informal trial are:

- Everyone has to agree to the procedure.
- Attorneys can be present but they can't ask questions. They can guide you on what areas to talk about and suggest to the Judge as to what to inquire into. They also help you be prepared for the trial.
- The rules are evidence as suspended. The judge is expected to filter out the unreliable information. Attorneys can't make objections.
- Documents are more easily presented to the court, particularly expert reports such as doctors' reports.
- At the end of the trial, the parties or attorneys are free to argue, but in many cases the parties don't think they are necessary.
- There is no right to appeal.

❖ Appeal.

A party not satisfied have a right to appeal. Careful consideration must be given before an appeal is filed. An appeal is not generally a chance for new trial, but usually reviewed for mistakes in the law or under an "abuse of discretion" standard. In other words, an appellate court generally does not second guess the lower court unless the decision is way out of line.

David Johnson is competent in helping you with all phases of a case and would be happy to assist you with yours.