

Understanding YOUR DIVORCE

*A Guide to Separation, Finances,
and the Legal Process in N.C.*



A RESOURCE FROM WARD BLACK LAW

www.wardblacklaw.com

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You Are Not Alone

If your marriage results in divorce, you may wrestle with feelings of failure and grief. The decisions that must be made once you or your spouse decide to separate can be overwhelming during a time that is already stressful.

It's normal to have lots of questions.

What does it mean to be legally separated? What will happen with my financial situation? What if my spouse and I can't agree on how we will split our belongings? Can we settle this outside of court? How long will it take before the divorce is finalized...and where do I even begin?

The good news is, you are not alone.

There have been many before you, and inevitably there will be many after you, who will travel down this same path. Remember that while everything seems unsettled now, things won't always be this way.

Our attorneys want to meet with you right where you are and guide you through the divorce process from start to finish.

We can assist you with:



When you have people you can trust walking alongside you and fighting in your corner during the divorce process, a season that would be otherwise completely overwhelming suddenly becomes a little bit easier.

What Legal Separation Really Means

You and your spouse have decided to take some time apart. That's legal separation, right? Not exactly. Being legally separated means you are living separate and apart, without the intent to resume the marriage. Contrary to popular belief, there are no legal documents involved, and you don't need to "file" for separation. However, you may wish to document your separation by an agreement that states your rights and responsibilities as a separated person. This can provide extra protection and certainty during an emotionally stressful time.

Let's look at a few examples of what legal separation is and isn't:



You and your spouse agree you want a divorce, so you decide to separate and live in different residences with no intent to resume the marriage. This is a legal separation.



You and your spouse are pursuing a divorce. You are separated and not sharing the same bed, but are living under the same roof for the time being. This is not legal separation.



You and your spouse have agreed to a divorce, and you have been separated, living in two different residences with no intent to reinstitute the marriage, for at least one year and one day. This is legal separation, and at this point, you are eligible to obtain a divorce.

Helpful Hint:

In order to legally separate, one or both individuals must want the separation, you must live in separate residences, and ultimately, you must make a sworn statement in the divorce complaint that you've lived separate and apart for a year. You don't need to "prove it" unless there is a dispute that you didn't actually separate. In that case, proof of residence would be helpful.

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Ward Black Law represented me in a family law matter and having used other attorneys in the past, I have to say they are the most professional and courteous firm I've ever worked with. From the time I walked in the front door, they made me feel like I was their most important client. The attention to detail and the effort put forth was amazing. Most importantly, they really cared about my situation and worked very hard being the advocate that I needed. I wish I would have found them years ago, and I would highly recommend Ward Black Law to anyone!

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FAMILY LAW CLIENT

Preparing to Separate

Once you know you and your spouse will be separating, time is of the essence when it comes to seeking legal help. You need to know what issues may arise and what your legal rights are; therefore, it's crucial you set up an initial consultation right away.

When preparing for separation, you need to know what you own, what you owe, and what you need.

It may be helpful to:

1. Gather any documentation you have about your spouse or from your spouse that helps support your case (i.e. emails, letters, texts, social media posts, receipts, or family photos).
2. Make a list of your regular marital expenses (mortgage, bills, debts, etc.).
3. Calculate your total household income: your income plus your spouse's income.
4. Gather tax information from the previous and current year.
5. Make a list of your insurance policies.
6. Write down all your investments.
7. Document the balance of your online accounts the day you decide to separate.
8. Take photos of items in the home; document their condition and whereabouts.

Creating a Game Plan

Getting into court can be a slow process, and it may take many months before the settlement of the marital estate is finalized. If you are a stay-at-home parent, or in a similar position that may leave you in financial hardship for an extended period of time, you'll need to plan accordingly for how you'll adjust to a new lifestyle. Creating a realistic game plan for how you'll handle your expenses both before, during, and after your divorce process can help you prepare for the years ahead.

Documenting Your Separation

It's extremely important to carefully document all aspects of your separation. The more documentation, the better chance you have of avoiding sticky situations with your spouse and his or her attorney. In any case, be sure not to sign any documentation sent to you from your spouse before first consulting with an attorney.

Separation Agreements

A separation agreement, after it has been signed by both you and your spouse in front of a notary, is a legal, binding contract that often cannot be broken. Before signing it, it's wise to meet with your attorney and make sure you know what your rights are, understand the terms of the agreement, and discuss how signing the agreement will affect your case.

Other Forms of Documentation

In addition to a separation agreement, you may also want to have documents of:



Proof of separate residences



Change of address form



Bills



Your lease

FREQUENTLY ASKED QUESTIONS

What if we stay in other bedrooms?

This is not a legal separation. You must live in separate residences.

Can we go on vacation together?

You can, but it is not wise. You should be careful not to give the impression that you are “together” if your intent is to live separate and apart.

What is abandonment?

Abandonment is when someone leaves the home without just cause or provocation.

Who should leave the house?

It depends. You could base that decision on who has the means to leave, who is most fit to maintain the home, safety, and other circumstances.

What if they don't leave?

You usually can't make the other person leave if they don't agree; however, there are legal options in court.

Can I change the locks?

If the other person establishes a residence elsewhere, you can change the locks. Your spouse may still have an ownership interest in the home, but they no longer have a right of occupancy once they have another residence. If they return against your consent, they can be charged with Domestic Criminal Trespass.

What constitutes reconciliation?

Parties reconcile when they resume living together. Occasional sexual encounters alone are not reconciliation.

Can I visit with an attorney before I separate?

Absolutely. You need to know your rights before you leave.

What are state residency requirements?

Either spouse must have lived in NC for six months before this state has jurisdiction over their marital issues.

How do I deal with destroyed or discarded belongings?

Always try to resolve these issues before you leave the home. The contents of the marital estate are figuratively frozen as of the date of separation, so even if your spouse later disposes of items, they can still be counted as part of the marital estate and credited against your spouse's share of the assets. You can also use a court action to stop wasting and destruction of marital property.

How is child custody and support handled during separation?

It is advisable to have a separation agreement that addresses child custody and child support prior to separating. This agreement may be modified and will not necessarily be the final agreement at divorce, but it can help prevent further turmoil for parents and children during separation.

Managing Finances

Yours, Mine, and Ours

Finances can be a big pain point in the divorce process, especially if you and your spouse are having trouble agreeing on how to split them. When addressing finances, it's helpful to understand how, during a divorce, they fit into two separate categories:

Equitable Distribution of Property

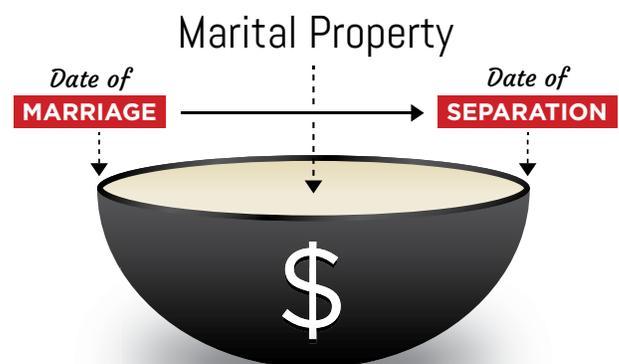
Equitable distribution (also known as property division) deals with the classification, valuation, and distribution of property which falls into the classes of marital, separate, or mixed.

There is also what is considered divisible property — anything that was earned during the marriage, but acquired during the separation. Appreciation and depreciation of marital property can also apply here.

Marital Property

Marital property is property that will be divided between you and your spouse, and it encompasses anything you've bought, earned, or owe since the date of your marriage until the date you and your spouse decided to separate.

***Even if things have been kept in separate names, they could still potentially be considered marital property.**



Examples of marital property may include:

1. Homes
2. Furniture
3. Vehicles
4. Bank Accounts
5. Stock Investments
6. Pensions
7. Retirement Benefits
8. Other Items

In the event you are unable to come to an agreement on how to divide your property,

the court can step in and divide your property in a way that is equitable, which means that they must make sure the division is equal or fair for both parties.

It's important you realize that while things can be split exactly 50/50, it's not always that black and white, as there are some circumstances where equal distribution may be deemed unfair. In that event, the court uses various factors to determine a just division, even if that division is unequal.

Real estate and personal items, whether they be tangible or intangible, can be equally distributed.

This Includes:

1. Home
2. Land
3. Rental Property
4. Vacation Home
5. Timeshares
6. Stocks
7. Retirement Benefits
8. Jewelry
9. Pets
10. Clothing
11. Boats
12. Other Items

Debt, such as your mortgage, car loans, student loans, and credit cards can also be equally distributed.

Take Note:

In the event that your credit card is in your name alone, you'll have to prove that the debt accumulated was for marital expenses, such as home or vehicle repairs, furniture, and groceries, and not on personal wants such as cosmetic surgery, getaways with someone other than your spouse, etc.

Separate Property

Separate property is property you owned before coming into the marriage, and at any time, property you inherited, or received as a gift from someone other than your spouse.

Common examples include:

1. Personal Gifts
2. Inheritances
3. Car Titles
4. A Bank Account
(which only includes money from before the marriage)

Mixed Property

Mixed property is property you bring into the marriage and actively enhance after the marriage. This is often a gray area.

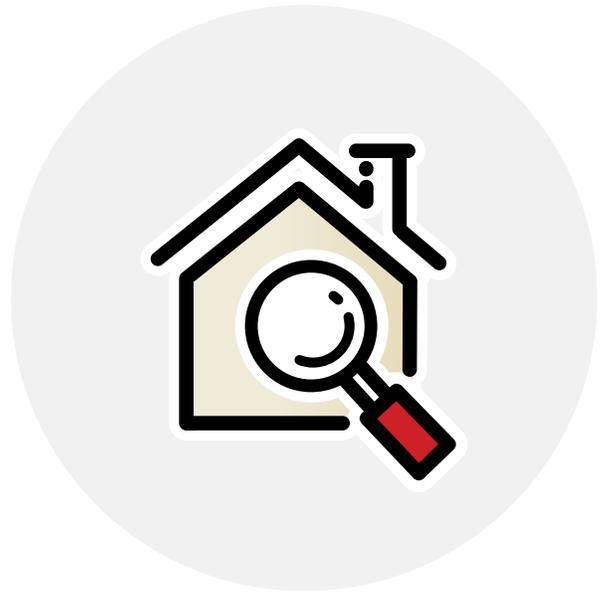
Examples of mixed property may include:

1. 401K
2. Stocks
3. Homes with mortgages paid during the marriage

For the Record

As mentioned earlier, the more you can document, the better — and that's especially true with finances. Here are some of the documents you may want to consider collecting as proof of marital and separate property:

- | | |
|--------------------|--------------|
| 1. Tax Returns | 4. Titles |
| 2. Bank Statements | 5. Contracts |
| 3. Receipts | |



Hints for Business Owners

In your case, it can be more challenging to determine the distribution of property. The following rules are a general guideline:

1. If you acquired your business during the marriage using joint funds, it falls into the marital property category.
2. If you owned the business prior to your marriage, it falls into the separate property category. However, if the business increases in value during the marriage, the marriage may gain an interest in the business.
3. The value of a business includes physical property, such as real estate, buildings, fixtures, and equipment; stocks of raw materials and finished products; customer lists; bank accounts; and accounts receivable. It can include goodwill, which is the value of the business or practice in excess of its tangible assets. Generally, you should hire a professional appraiser if you need to assess the value of a business.

Spousal Support

While the relevance of alimony in today's society has come under scrutiny in recent years, the state of North Carolina still awards this form of spousal support.

Do I qualify for alimony?

You're eligible to receive support if the court finds that you are dependent on your spouse (the supporting spouse). This means that you're unable to maintain the standard of living you've become accustomed to during your marriage without the financial support of the other. You and your spouse may choose to come to an agreement about alimony on your own terms, outside of court, as well.

Defining the terms:



Dependent spouse: One who is actually and substantially dependent on the other spouse or substantially in need of support from the other spouse.



Supporting spouse: One who primarily provides for the family financially.

Sexual Misconduct

Alimony is not fault based, but rather need based. A common exception to this rule is sexual misconduct. However, a dependent spouse is not automatically barred from receiving post-separation support if they committed sexual misconduct. If the spouses can't come to an agreement, a judge has discretion to award post-separation support.

Take Note:

Post-Separation Support

Because it may take a while before alimony is entered, you may be granted post-separation support. This is temporary support that provides the dependent spouse with money until alimony begins.

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Great Legal Help for Difficult Family Issues

Afi was a fantastic attorney for my divorce, separation, and child custody case. She always patiently explained the process and my options, but more importantly, she always took the time to listen to my concerns. Having Afi work with me took an extraordinary amount of stress off of my shoulders in an already difficult part of my life. I would highly recommend her to anyone.

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FAMILY LAW CLIENT

FREQUENTLY ASKED QUESTIONS

Does it matter whose name is on the property?

This isn't always the deciding factor as to whether or not property is marital or separate. When and how the property was acquired is very important. Real estate titles can be an exception. If you place a spouse's name on the deed of your house that you owned prior to the marriage, that is considered a gift to the marriage.

Do I have to give him/her 50% of my retirement/IRA?

Your spouse is entitled to 50% of all marital property, retirements and IRAs included. You can always agree to a different division of assets.

What about military retirement or other benefits?

Military retirement can be divided just like traditional retirement plans. The non-member spouse can be entitled to part of these retirement benefits if they are marital property.

Social security benefits?

The federal government provides for these benefits and North Carolina law can't change this. If you are married for 10 years or longer, you can be eligible for social security benefits based on your spouse's work history.

Assets brought into the marriage?

These assets are separate property.

Assets he/she put in his/her name after we were married?

It depends on the type of asset and if the intent is expressed to make these assets marital. The law presumes anything obtained during the marriage is marital property unless it was a gift from someone other than the spouse or an inheritance.

Inheritance from parents?

This is separate property.

Who owns money that belongs to the children?

It depends on how the money is titled, but typically the parents are the owners. For example, a 529 College Savings Plan for the benefit of the child would be a marital asset to be divided by the spouses.

Who pays for attorney fees?

You can agree to paying the other spouse's attorney

fees or request that a court have the spouse reimburse attorney fees for work done on the alimony portion of your case. You generally can't recover attorney fees for equitable distribution work.

Can he/she continue to pay my insurance?

Yes, this can be a benefit of spousal support. It's often a good idea to continue to insure your spouse until a settlement is reached. Under an NC law called the doctrine of necessities, a medical provider can hold you responsible for your spouse's medical bills.

Can I remove him/her from my insurance?

Yes, but you could be held responsible for their unpaid medical bills under the doctrine of necessities. It's often better to have the protection of insurance until the divorce or a settlement.

What about our debts before marriage and after separation?

The debts before marriage are the separate property of the spouse that incurred them. Debts after separation are generally separate property with some exceptions.

Do I get to keep my wedding rings?

This would depend on when you got the rings and the source of funds to purchase the rings. Property obtained prior to the date of marriage, for example the engagement ring, is separate. Property obtained after the date of marriage, typically the wedding rings, is marital.

How long/much can I receive alimony?

This depends on 16 factors found within the statute 50-16.3A.

Am I entitled to continue my standard of living during marriage?

That is the goal of alimony. The reality is that two households are more expensive than one and it may be difficult to make the same amount of income stretch to cover the same lifestyle in both homes.

Is there support for adult children?

Child support is for minor children or children who are still progressing toward high school graduation up until age 20. Anything beyond this obligation can be done by agreement only.

Walking Through the Divorce Process

We believe in treating every divorce case the way it should be treated – as its own unique case. We know there's no one-size-fits-all formula when it comes to getting you the compensation and closure you deserve.

That's why we spend ample time face-to-face getting to know you and your story. Through consultations and heart-to-heart conversations, we become an active partner for you.

The divorce process can at times seem long and confusing. Our goal is to make you aware of all the available options for pursuing your case to ensure you receive the most favorable outcome.



Before the Consultation

The most important thing you can do before your initial consultation is prepare. Be organized and ready to share openly and honestly about the details of your split — was there an affair? Irreconcilable differences? Emotional, physical, or substance abuse? Diagnosed mental illness?

To make the most of your time, it's helpful to:

1. Have a sense of what you own and what you owe
2. Have all your questions written down ahead of time
3. Complete your intake paperwork fully and bring printed copies with you
4. Bring existing court documents and any written agreements
5. Bring your prenuptial agreement, if applicable
6. Know what your goals are (Spousal support? Child custody? Fair split?)

During the Consultation

During your consultation you'll have a chance to meet with an attorney and learn more about North Carolina state laws and how they'll pertain to your unique case. This is also your chance to share the details of your story and discuss your goals.

You'll leave the consultation with a better understanding of:

1. Your rights
2. Your options
3. Possible next steps
4. Basic fees and costs

Basic Fees and Costs

Total fees may fluctuate due to the unique circumstances of your case. Upon an initial consultation, our attorneys will be able to provide you with an exact estimate.

DIVORCE AND MARITAL CLAIMS

(e.g. equitable distribution, alimony, post separation support)

PHASE 1:

Initiation of representation, drafting of pleadings, communications, discovery (*excluding depositions*), preparation of property and financial affidavits with accompanying documents, and attorney settlement negotiations

PHASE 2:

Preparation for mediation
(collaborative law: 4-way meeting preparation and 4-way meetings)

PRE-TRIAL COURT APPEARANCES:

Hearing preparation and motion hearings
(all court appearances, excluding equitable distribution pre-trial conferences)

TRIAL COURT APPEARANCES:

Trial preparation and trial appearance

ABSOLUTE DIVORCE:

"No-fault" divorce with no other marital claims

Take Note:

Concerning Marriage Equality

If you were married before June 26, 2015, when same-sex marriage was legalized in all 50 states, you'll need to bring documentation to the consultation that shows when and where you were married.

Understanding Your Options

When it comes to your case, it's important you realize you've got two options: handling it outside court or inside of court.

#1 Outside Court

Settling your case outside of court is a great option if you and your spouse are on speaking terms and can come to agreements that are mutually beneficial. When you choose to keep things outside the court, you typically handle it one of three ways:

→ Non-Negotiated Agreements

These agreements are ones that you and your spouse make on your own. For instance, you and your spouse would negotiate with each other to reach a settlement and your attorney will advise you throughout the process of negotiations with your spouse and draft an agreement in the end. This process may be ideal for you if you feel comfortable dealing with your spouse and just need someone to “coach” you through the process and convert your agreement into a legal document.

→ Negotiated Agreements

These agreements are made through an attorney negotiating on your behalf with your spouse or your spouse’s attorney. This process may be ideal for you if you feel you need an attorney to “do the talking” for you and be at your side throughout the process from negotiation to settlement documents.

→ Collaborative Law

In this scenario, both parties participating in a collaborative divorce process agree not to go to court, and their attorneys agree to stop representation in the event that either spouse decides to sue the other. With this option, both spouses benefit from professionals of various backgrounds working together. The spouses and attorneys meet in four-way settlement conferences. This process may be ideal for you if you feel strongly that court is not for you and you are committed to working through it with as little damage to each other as possible.

#2 Inside Court

If you decide to take your case to court, your attorney will fight to ensure the best possible outcome through litigating as aggressively as necessary to defend your lawsuit.

spouse's attorney, pursuing a favorable outcome for:

1. Child Custody and Support
2. Equitable Distribution
3. Alimony

Can I bring my spouse to my attorney

Take Note:

Please remember, according to state law, you may file a lawsuit for divorce only if you or your spouse has been a resident of the state for at least six months prior to filing for divorce, and you've been separated for one year.

FREQUENTLY ASKED QUESTIONS

appointment?

No, even if you and your spouse are "getting along" and believe you want the same things, your interests conflict and you need individual advice. Ethically, this is the best way for an attorney to meet your needs.

Can I bring my parents to my attorney appointment?

Yes, it is common to bring support in family law cases. We may need to ask your parents to step out briefly if you need to discuss a topic that you want to be kept confidential between you and the attorney.

Can I bring my kids to my attorney appointment?

We discourage bringing children, especially if they are the focus of the case. It's often difficult for parents to focus on the important information shared if they have to tend to their children at the same time.

How long will this take once the separation is over?

We aim to move through the process as quickly as possible, but much of this depends on the parties' willingness to move forward and the complexity of the case.

I don't know where my spouse is.

We can suggest ways to locate your spouse, and, if necessary, publish a legal notice in the newspaper.

My spouse filed in another county/state.

Can I get my case moved here?

It depends. Each situation is different, and we must look at whether or not that state has jurisdiction (the power to decide certain matters for certain people).

What if we don't live in the same country as we did when we got separated?

The primary consideration is whether or not you have been a resident of North Carolina for the past six months, not where you lived when you separated.

How much do I have to tell the attorney?

You must be thorough and honest. Our advice is based on the facts you provide. If you leave out something material, we can't advise you properly.

How do I get my maiden name back?

When you file for the divorce, you request your maiden name. You can also request the name change from the clerk of court once the divorce is complete if you didn't ask for it as part of the divorce.

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Best Family Lawyer...Period

Let me be completely clear...the mention of her name shut down my situation/case. Afi is very professional and was present in my time of need. I knew that it may be a difficult process to go through, but she reassured me that she would be there every step of the way. She was organized, courteous, and had it together! From my initial time meeting her, I knew she was the one. I was referred to her by another attorney that said she will not go down without a fight. I felt prepared and confident that things would be ok. Very professional!!

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FAMILY LAW CLIENT

Our Team Is On Your Side



Meet

Afi S. Johnson-Parris

Divorce and Family Law Attorney

Afi Johnson-Parris, an N.C. Board Certified Family Law Specialist, is a passionate ally for individuals walking through divorce. Specializing in divorce and other family law matters, she knows how stressful this time in your life can be, and she's prepared to make the process as easy as possible. Johnson-Parris has experience owning her own family law practice before joining our Ward Black Law team, and she has been named the top family law attorney in the state in 2017 by *Business North Carolina* magazine. A graduate of the University of Virginia School of Law, she is equipped to ensure that you receive a fair ruling for matters such as equitable distribution, child custody, alimony, and more.

Your Next Steps

Schedule a Consultation

At wit's end? Need guidance with divorce issues? You don't have to feel helpless or alone! Contact Ward Black Law and set up a consultation today. You'll sit down with one of our attorneys and get answers to some of your most pressing questions, advice

on what your legal rights are, and receive essential information concerning divorce law in North Carolina. You'll leave the consultation with a handful of practical, tailored strategies that can help you reach your objective goals, as well as options for your next steps.

How much will having an attorney cost me?

We offer both flat fees and traditional retainers, and if you choose to hire us, we'll provide you with an estimate for our firm's services.

What to consider bringing to the consultation:

Check Boxes

- | | | | |
|--------------------------|--|--------------------------|---|
| <input type="checkbox"/> | <i>Your divorce story, as well as anything that supports your claim.</i> | <input type="checkbox"/> | <i>A notebook and pen so that you can take notes of important items discussed.</i> |
| <input type="checkbox"/> | <i>A list of any questions you have pertaining to Ward Black Law or to your specific situation.</i> | <input type="checkbox"/> | <i>Any court documents that have been filed in your name.</i> |
| <input type="checkbox"/> | <i>An intake form, completed as much as possible. You will receive this form when you schedule a consultation.</i> | <input type="checkbox"/> | <i>Any papers you may have already received from your spouse or your spouse's attorney.</i> |



800.531.9191 wardblacklaw.com

208 W. Wendover Ave. | Greensboro, NC

