



# GUIDE TO PARTING WAYS DIVORCE

**The hardest part of getting a divorce can be the first step into the unknown. Here are some pointers so you can decide if it is time to speak with an attorney.**

## IT IS TIME TO LEAVE

1. Your partner is physically or emotionally abusive. No one deserves to live in an abusive relationship, including your children who witness that abuse. If you are experiencing abuse, call the police or speak with a family law attorney as soon as possible. You may also reach out to Fearless! Hudson Valley, Inc. at (845) 562-5340.
2. You feel happier when you are away from your spouse, and dread being with him/her. Everyone needs time away from their spouse every now and then, even in the healthiest of marriages, but it can be a sign of a problem when that need to be away from your spouse becomes more and more important.
3. You no longer care enough to argue. Disagreements in a relationship are inevitable, and arguing can be beneficial to work through those disagreements, as long it is done in a respectful, healthy way. It is a sign that communication has broken down when you stop caring enough about these disagreements to make an effort to resolve them. Difficulty communicating is often the warning sign that you'd be better off apart.

## STEPS TO TAKE BEFORE YOU LEAVE


1. Seek counseling, either as a couple or individually. Going through a divorce is painful, even when it is "simple". Counseling can be very helpful, to address an underlying problem in the relationship so you might avoid a divorce, or to help you cope with the stress of separating if divorce feels inevitable.
2. Get information about the financial state of the marriage. Gathering financial documentation is easier done while you are still living together, and will help your divorce attorney develop a full picture of the assets, liabilities and incomes earned in the marriage to aid in future negotiations.
3. Make a plan for how you will live separately. You should consider how you will pay your bills, whether you can afford to stay in your current residence, who will care for your children if an emergency arises while you are working, whether you will need to go back to school to update your skills, among a host of other factors.


## KEY QUESTIONS TO ASK YOUR DIVORCE ATTORNEY

1. How much will this cost, and how can I keep costs to a minimum?
2. How long will the divorce take?
3. What issues are there that may complicate my case, and what can I do to address those issues?

**Contact us**

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## CHILD SUPPORT

1. Child support is based upon a percentage of the combined incomes depending on the number of children you have (17% for one child, 25% for two children, 29% for three children, 31% for four children and 35% for five or more children). These percentages are applied to the combined income up to a statutory cap (currently \$163,000.00), but the court has discretion to include income over that cap where appropriate.
2. Child support is payable until the child turns 21 years old. Parties sometimes agree to continue paying until the child's 22nd birthday if he or she is in college. There is now a child support extension to age 26 for children with disabilities. Child support covers the general living expenses of the children, including extra-curricular activities unless you agree otherwise. The court will also direct the parties to share the cost of child care, unreimbursed/uninsured medical expenses, health insurance premiums for the children, and some pre-college expenses such as tutors and SAT exam fees.
3. Maintenance that is paid by one spouse to the other is deducted from the payor's income prior to calculating child support, along with FICA and Medicare taxes, child support paid for children from prior relationships, and a number of other expenses.

## SPOUSAL MAINTENANCE

1. Maintenance is determined using a multi-step formula based upon each parties' income, although the court retains the discretion to award a different amount if appropriate. A calculator is available through the [NYCourts.gov/divorce](http://NYCourts.gov/divorce) page, which is a good resource for information on a variety of divorce related topics.

## SPOUSAL MAINTENANCE CONTINUED

2. The duration of maintenance is based upon the length of the marriage. For marriages lasting up to 15 years, the duration of maintenance should be between 15% and 30% of the length of the marriage. For marriages lasting 15 to 20 years, the duration should be between 30% and 40% of the length of the marriage. For marriages lasting over 20 years, the duration should be between 35% and 50% of the length of the marriage. Again, this is subject to the court's discretion based upon a number of factors.
3. Following the Tax Cuts and Jobs Act of 2017, maintenance is no longer deductible from the payer's income for taxes, nor declarable as income by the recipient.

## DEBT AND DIVORCE

1. Mortgages are usually the biggest marital debt. If you want to remain in your home, and can afford to do so, discuss your refinance options with a mortgage broker, and your attorney, before entering into a divorce agreement.
2. Credit card debt in joint names is presumed to be marital and split evenly. Debt in one party's name that accrued during the marriage may also be marital debt. If you are concerned about marital credit card debt, gather these statements and other proof before speaking with an attorney.
3. Loans such as car loans are generally the responsibility of whoever is taking the car associated with the loan. Student Loans remain the obligation of whoever incurred them to fund their education. Loans for your children's education should be split between parties, in proportion to incomes.

