

Divorce

What to Ask (When You Don't Know What to Ask) in PA,



The Essential Guide

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Introduction

If you're reading this book, you're probably faced with one of two situations:

- You want a separation or divorce and want to know how to plan it without hurting your spouse or kids.
- Your spouse wants a separation or divorce, and now you're forced to find out how it all works.

Whatever your situation is, since you've probably never got divorced or separated before, you have questions and you need answers on how to do it the "right" way. And it's awkward to ask your friends or family questions, especially if you feel they'll be judgmental.

Like others who head into a separation or divorce, you're likely not seeking revenge. You just want to protect what's precious to you, your children. Yet, somehow in this foreign process, things can break down, and emotions can spiral quickly out of control. The more they do, the more it will cost you.

So you need to arm yourself with education on the inseparable legal, financial, and emotional aspects of divorce and separation. 'Divorce in PA, the Essential Guide' is designed to help you figure out what to ask when you don't know what to ask, and to look at things from all three angles.



You need to arm yourself with education on the inseparable legal, financial, and emotional aspects of divorce. 99

Your separation or divorce doesn't have to be a nasty legal and a financial nightmare. If you and your spouse realize this, you're more likely to head into your separation or divorce level-headed and on equal footing, enabling you to move forward with your lives that much sooner.

Read on to learn how to make your separation or divorce as healthy as possible, and minimize its impact on yourself, your children — and your wallet.

This guide can help you plan your separation or divorce, or learn how to respond to your spouse's wishes to get divorced. It's just a beginning. You don't want to travel this path alone — seek help from professionals who know the ins and outs of divorce and separation.

Best wishes for an empowering journey.

Cris M. Pastore, Esquire

President & Managing Attorney-Mediator



Chapter 1

How Do I Go About a Healthy Separation or Divorce?

How do I go about a healthy separation or divorce?

- Seek the advice of a competent professional who can help you to set realistic expectations and sort out your rights and options.
- 2. Assure your spouse that you are not out to hurt him/her or the kids (if kids are involved), and you have good faith intentions of reaching an amicable settlement as soon as is possible.
- 3. If you feel the need to move funds from a marital account, discuss your intentions with your spouse. Make sure your reasoning for this move is sound and makes sense to both

of you.

4. Make every effort to go about your business as quietly as possible without involving your children.

I am planning to divorce my spouse. What should I do first?

If you haven't already, seek the help of a therapist or coach to determine if you can salvage your marriage, or at least help you get to a place of acceptance that your marriage is over. Once you are certain the marriage is over, research divorce options, costs, and more. (Congratulations — reading this guide is a perfect place to start!)



Once you have a sense of the best path for you, recognize that you will likely be way ahead of your spouse when you break the news. Be prepared for a period of anger, shock, and disbelief, and allow time for your spouse to get on the same page in terms of understanding options and the separation or divorce process. This will go a long way toward making parting ways more amicable.

My spouse and I both want a divorce. What should we do first?

Before you file for divorce in PA, consider whether you are both amicable enough to mediate your divorce. This means instead of hiring divorce lawyers to go to court, you both agree to draft the terms of your marital settlement with the help of a divorce mediator.

If you haven't already, seek the help of a therapist or coach to determine if you can salvage your marriage, or at least help you get to a place of acceptance that your marriage is over. The option of divorce mediation is filed under the PA no fault divorce statute, meaning that in order to establish grounds for a divorce, you do not need to show fault, such as adultery, mental cruelty or physical abuse. If you and your spouse sign an affidavit of consent, you may obtain grounds for a divorce after the passage of a 90-day cooling off period. If, however, one spouse does not agree to the divorce, the couple must have lived separately for at least two-years from the date of filing before grounds for a divorce can be established.

My spouse just served me with divorce papers. What should I do?

Since you must file a time-sensitive response, you should consult a private divorce attorney as soon as possible to assist you. After the filing, you can complete your divorce by each of you hiring lawyers or, if your spouse agrees, through divorce mediation.

Because you may be in shock, denial, or outrage, you may also consider consulting with a divorce coach, who can help you process what's happening and begin preparing emotionally for divorce. This helps put you in the right frame of mind to speak with legal counsel.



Who do I need to help me with separation or divorce?

Separation or divorce is a legal, financial, and emotional process — and one of the biggest life transitions you may ever face. Therefore, when planning your separation or divorce, you'll want to take a holistic approach that assures your settlements will be fair and reasonable and your rights and interests are fully protected.

With the right team in place, you'll be able to breathe a sigh of relief at the end of the process. That team might include a:

- Mediator for financial and/or parenting issues.
- Divorce attorney to guide you on your legal rights.
- Therapist and/or coach to act as an objective confidant and partner to help you evaluate decisions and manage the roller coaster of emotions.
- Financial advisor to help you see various scenarios, both short and long term, so you can make sound decisions about money matters.
- Estate planner to help you make changes to your wills and trusts and life insurance policies.

When planning your divorce, you'll want to take a holistic approach that assures your settlements will be fair and reasonable and your rights and interests are fully protected.

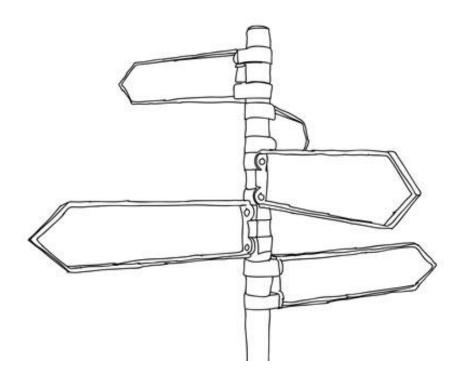


What mistakes do others make that I need to avoid?

There are five common pitfalls people fall into:

- 1. Accepting the advice of friends and family members as the gospel.
- 2. Interpreting what your divorce attorney tells you as a guarantee.
- 3. Making empty threats to their spouse.
- 4. Moving and shifting marital funds without informing their spouse.
- 5. Speaking too openly and too soon to minor children about separation, divorce and custody





Chapter 2

What are My Divorce Options?

What's the difference between a separation or divorce?

In a divorce, spouses sign a divorce agreement and file it with the required divorce paperwork in the county in which they are seeking the divorce. A divorce judge is assigned to issue a final divorce decree.

Similarly, in a separation agreement, the parties have a legally-binding agreement that settles their affairs, but they don't file a divorce decree with the court. Instead, they may each remain obligated under the separation agreement for an indefinite time period, subject to modifications. Couples may do this for emotional, financial, health insurance, tax and estate reasons. Dating is allowed as of the date of separation without financial consequences on their divorce case.

You should consult with a legal professional and/or divorce coach to review your situation and decide whether separation or divorce is best for you. If you decide divorce is the best path, then you have to decide how to go about it. The chart on the following page shows the options.

How Do We Legally Separate in PA?

Unlike several other states, Pennsylvania does not require you to go to court and request a judge to issue what is called a "separate maintenance decree" that officially declares your marriage over. Instead, spouses can obtain a separation agreement using a mediator or attorney. When using a mediator, make sure your agreement is legally-binding.



Four Paths to Separation and Divorce						
	Divorce Mediation	Collaborative Divorce	Court- Contested	Do-lt-Yourself		
Impact on Children	Parents make decisions with children's best interests in mind. Children not involved in process.	Generally attorneys are hired to represent you and find compromises. There can be conflicts.	Children may be asked to testify, and feel pressure to choose sides.	This is a questionable strategy. Success depends on how cooperative spouses are. It more likely to succeed when no children are involved.		
Legal Fees	Affordable – costs a small fraction of the amount of a court-contested divorce (less than \$10,000).	Expensive – attorneys' hourly rates (\$250-400), can add up to \$20,000 or more.	Very Expensive—costs \$30,000- \$40,000 and can easily go to upwards of \$100,000.	Low – no attorneys' hourly rates make this option inexpensive; however, not knowing legal rights can be costly in other ways.		
Speed	Fast – between 3 to 6 months	Slower – the logistics of attorneys' schedules can be tricky.	Slow – may take 2-4 years or more.	Fast – while one spouse may be happy with this, the other could feel "blind-sided".		
Emotional Impact	Minimal – mediation is an empowering and transformative experience, in peaceful, non- adversarial environment.	Hard to Say – While staying out of court can save the heartache of testifying against your spouse, you may still be working with a high level of mistrust.	Heavy – knowing someone is out to prove how bad a parent/spouse you are can have long-term emotional consequences.	Questionable – because it's done fast, a spouse may not be able to digest what is happening. This can turn into anger and resentment. It's usually only good for couples who have not been married long or have little assets together.		



Four Paths to Separation and Divorce							
	Divorce Mediation	Collaborative Divorce	Court- Contested	Do-lt-Yourself			
Communication with Spouse and Control Over the Process	High – you and your spouse work together to craft your own settlement at your own pace.	Some – while attorneys and other professionals handle your case, you are not discouraged from talking to your spouse. The pace is according to attorneys' schedules.	Low to None – you are advised not to talk with spouse as a "protective" measure – a judge decides your future.	Depends – Some couples can make it work, but sometimes one spouse quickly drafts the terms and pressures the other to sign.			
Public vs. Private	Private – sessions held in confidence.	Private – same as mediation.	Public – anyone can watch your divorce in a courtroom and there are public records.	Private – between you and your spouse.			
Level of Protection and Fairness	High – input from both spouses stands the test of time. Advice and guidance from professionals.	High – collaborating attorneys often know each other and have worked together before and can negotiate fair agreements.	Low – in court, someone wins and someone loses; the judge, who doesn't know you, decides your future, which is dependent on their caseload, mood.	Lowest – marital settlement agreement fraught with pitfalls and subject to challenge as an unenforceable document. No advice or guidance leads to high likelihood of issues arising. Spouses likely to lose important property rights.			



What Should I Look For in a Divorce Mediator?

A good divorce mediator, usually an attorney, will educate you and your spouse on the law and focus on empowering you to make informed decisions. A divorce mediation service should also offer guidance on complex financial matters, and parenting issues.

So look for a divorce mediation service that uses two types of mediators:

- A parenting mediator with a therapy background.
 This type of mediator can often be much better suited than an attorney to understand complex family dynamics and how they impact children.
- An attorney-mediator with a strong financial background. They can educate you on the law *and* analyze the complexities of investment-based assets, employee stock incentive awards, two-household budget projections, and home and business valuations. Also they are able to identify potential tax issues and pitfalls that may result from your divorce settlement. Finally, they can create a legally binding document —not just a memorandum of understanding, which may be further reviewed by a private attorney of your choice.



A good divorce mediator, usually an attorney, will educate you and your spouse on the law and focus on empowering you to make informed decisions. 99

A good divorce mediator keeps the playing field level.

You want a neutral *partner* (not just a third-party) who ensures that all rights and interests of both spouses are protected and who focuses on the preservation of the entire family unit after separation or divorce.



Shocking Cost of Legal Fees

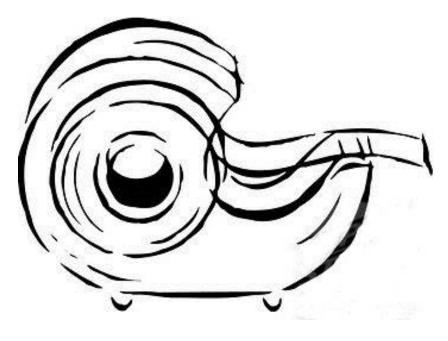


The added expense of living in two separate households may be obvious, but have you also budgeted for the cost of hiring a divorce lawyer to go to court?

Understand there are three aspects of a divorce case in PA:

- 1. Child custody (if you have children).
- 2. Support (child support, spousal support and alimony pendente lite (APL)).
- 3. Equitable distribution of marital property.

The court designates a hearing for each of these aspects, and each has their own multi-leveled hearing procedure. You would pay an attorney to attend at least 8 hearings.



Chapter 3

What are the Biggest Sticking Points?

Alimony in PA

How Are Alimony Payments Calculated in PA?

There is no formula to calculate post-divorce alimony in PA. It is a purely discretionary issue with the court.

However, the 17 factors of alimony are usually a starting point for discussion and negotiation between the spouses, if mediating, or, if litigating, their respective attorneys. They include:

- 1. The relative earnings and earning capacities of the parties.
- 2. The parties' ages and physical, mental and emotional conditions.
- The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- 4. The parties' expectancies and inheritances.
- 5. The duration of the marriage.

- 6. The contribution by one party to the education, training or increased earning power of the other party.
- 7. The extent to which a party's earning power, expenses or financial obligations will be affected by reason of serving as the custodian of a minor child.
- 8. The standard of living of the parties established during the marriage.
- 9. The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.



- 10. The relative assets and liabilities of the parties.
- 11. The property brought to the marriage by either party.
- 12. The contribution of a spouse as homemaker.
- 13. The parties' relative needs.
- 14. The marital misconduct of either of the parties during the marriage (with respect to the court's definition of abuse).
- 15. The federal, state and local tax ramifications of the alimony award.

- alimony lacks sufficient
 property, including, but not
 limited to, property
 distributed under Chapter 35
 (relating to property rights),
 to provide for the party's
 reasonable needs.
- 17. Whether the party seeking alimony is incapable of self-support through appropriate employment.

How Long Do I Have To Be Married to Get Alimony?

A general rule of thumb used by some Pennsylvania courts, is one year of alimony for every three years of marriage, although this is not a written law in the PA Divorce Code.

This is achieved most fairly when each party prepares their post-divorce expense budget. This documents what each recipient needs to live reasonably in a separate household and what the payor can afford. However, when going to court, alimony is ultimately at the court's discretion, and they evaluate each case on its own merits to decide whether to award alimony, as well as its sum and duration.

In divorce mediation, however, you and your spouse would discuss and decide, through the assistance and guidance of a divorce mediator, what is a fair and realistic alimony amount based on your post-divorce budgets. You have the opportunity to control what alimony, if any, will apply.



The Kids

How Do We Assure Support For Our Children?

Child support in PA is calculated based on the <u>Pennsylvania</u>

<u>State Support Guidelines</u>, and takes two main factors into account:

- 1. The relative net incomes of both spouses.
- 2. The physical custody schedule for the children on an annual calendar basis, whether agreed upon through mediation or court-ordered.

This will establish who the payor (one who pays) will be and who will receive payment on behalf of the children.

Once the payor is established, the child support tables specify the

amount of child support, which is based on the payor's percentage of the combined monthly net earnings of both spouses. Note that if the payor spends at least 40% or more of the annual overnight time with the children, this child support amount may be subject to a shared custody adjustment, giving the payor a discount from the amount due.

NOTE: Unless divorcing parties agree to deviate from the PA support guidelines, which is a rare occurrence, there is no room for negotiation of child support if you go to court. However, divorcing parties are afforded the opportunity to negotiate child support in private mediation.



How Can I Still Be a Good Parent?

Life does not have to fundamentally change for a child when their parents live separately. How is that possible in practice? The emotional baggage and logistics that often confound parents at the outset are of little or no concern to children.

Focus and act on what remains the same.

Preserve routine (from the children's perspective) even as you make new arrangements to maintain it. These incremental changes will evolve into a plan. Subsequent logistics will flow sensibly once your custody schedule is established.

If you need help, a parenting mediator can work through the issues with you. Research has shown that as little as 5 hours of mediation can have significant impact on family preservation.

What is Legal Custody?

Legal custody confers equal decision-making responsibility upon both parents irrespective of where the children live.

While primary physical custody is defined as more than 60% of annual overnight time, it has no bearing on legal custody.



An 11-year-long Divorce Mediation

study of 70-high-conflict divorce cases

found that with as little as 5 hours of mediation:

- Only 11% of the mediated cases went to a judge, as compared to 72% of the nonmediation group.
- Greater contact between non-residential parents and their children.
- Increased child-support compliance.
- Greater parental contact did not increase parental conflict.

On average private divorce mediation cases are settled in half the time of court cases.

Telling the Kids

When you break the news to your children, assure them of these 3 things:

- You did not cause Mommy and Daddy to break up. It was a grown-up decision.
- You are well-loved by both Mommy and Daddy; and they will always be their Mommy and Daddy.
- You will always be taken care of.



Marital Property in PA

Generally, marital property in PA is any property acquired by either spouse during the marriage, regardless of whose name the property is in.

However, marital property is subject to some exceptions as explained in Section 3501(a), Property Rights, of the PA Divorce Code.

The actual value of the marital property is measured: (1) as of the date of the parties' separation, or (2) if the parties are involved in court-contested litigation, as of trial date for the division of the property.

PA is an equitable distribution state meaning that, should spouses go to court, the Court retains discretion over how the marital property gets divided, whether 50/50, 60/40 or some other percentage. The court may refer to any one or all of 13 factors listed in the equitable distribution statute (Section 3502 of the PA Divorce Code) to determine what it deems to be a fair and equitable split of the marital property. In divorce mediation, however, you would decide with your spouse the fairest way to split marital property.





Do We Have to Sell the Home?

There are lots of questions surrounding the home — often the largest jointly owned asset. How do you share it? Do you have to sell it? If so, when?

Spouses who are separating or divorcing generally do one of two things:

- 1. Sell the marital home and move to different locations, or
- 2. One party buys out the other from their net-equity share of the home.

Ultimately, the decision to sell the home is always a personal one. However, if the timing is right, selling your home when you get divorced can be beneficial because it frees up cash. This can be used to pay legal fees, health insurance, job training, a down payment on another home and anything else you might need to get back on your feet again.





If you are considering selling your home, however, ask yourself 5 questions:

- 1. Is it a financial necessity to sell the house because both parties need to move?
- 2. Does it make better financial sense to refinance the home in your name in order to acquire it from your spouse in the divorce settlement?
- 3. Do you already have a clear plan for where you will move, and if so, will that address your financial needs?
- 4. Does the strength of the real estate market justify a sale of the home at the time of divorce?
- 5. If you have children, is it the right time to move them from the family home to a new location as they transition through divorce?

You also want to consider the added expenses of closing, moving, and fixing items necessary to address home inspection issues.

If you can't answer a solid "yes" to all five questions, then you may want to speak to a real estate professional. They can give you an approximate home value that helps you better weigh your options.

If you're interested in a buyout option, you'll need to hire an independent appraiser to value the home. This is used as part of the negotiations for the property settlement in the divorce proceedings.



If you decide to sell, you need to make sure the realtor you hire understands your situation. A realtor who works with divorcing clients should:

- Be attentive to both spouses, and impartial while representing their joint transaction. Spouses should meet with the realtor together, so they each get their questions answered and are on the same page.
- 2. To assure the realtor is up on the changes in the market, you want someone who is fully immersed, working full time in real estate.
- They should offer to help you find new housing that meets your needs.
- 4. For pricing, the realtor should show comparable properties that have sold within one year and one mile of the house.

- 5. They should not entice you into hiring them by allowing you to over-inflate the listing price. This is dangerous because it may raise unrealistic expectations by one or both spouses. It can also lead to disputes between spouses later on if the listing price needs to be lowered.
- 6. The realtor should correspond with both spouses and keep everyone in the loop.

When the home is sold, make sure the property settlement agreement has been given to the title company so they can divide the proceeds in accordance spousal agreement or court order. There's nothing worse than selling your home, and then receiving the wrong settlement amount. This just leads to arguments between spouses on how to correct it.





Chapter 4

How Do I Prepare for Divorce?

What Financial Plans Do I Need to Make?

Divorce in most cases is financially devastating to both parties. In 60% of divorce cases, both people experience future financial hardship, particularly when children are involved. And, for a court-contested divorce, you risk losing up to 75% of your net worth — so it's worth investing in an anger management course, coaching or counseling, to get you to a place where you can mediate outside of court.

It's also wise to establish your credit in your own name, especially if they have negatively impacted your credit history, since it allows you to sever ties from your spouse for financial decisions.

Two Recommended Financial Conversations

To create the best possible outcome for yourself and your children, you need to have candid and thorough conversations — prior to the divorce becoming final. The more realistic your financial plan, the easier it will be to move on with your life.

66 For a court-contested divorce, you risk losing up to 75% of your net worth. 99

How Should I Discuss Finances With My Children?

You can minimize your children's anxiety levels by resetting their financial expectations to appropriate levels. When you plan ahead for a smaller budget for vacations and other entertainment, you also have the opportunity to create equally enjoyable experiences at lower costs. Older children often respond better than expected when you share realistic information. If you have a 529 college funding plan, tell them that you're setting aside money for their education.

Your Financial Future

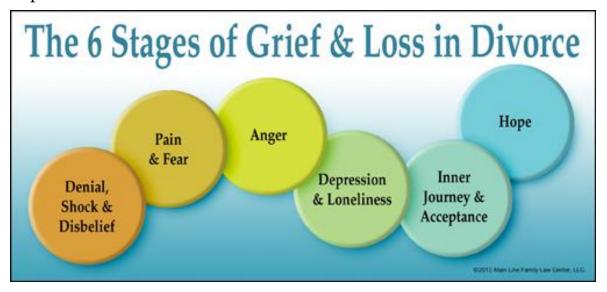
Sometimes, it's difficult to focus on your future when you're faced with such life-changing events. So remember to protect yourself by ensuring an appropriate and equitable distribution of your joint assets —including your retirement accounts. That way, you can continue to fund your 401K or Roth IRA individually, and secure your future retirement.





I Feel Awful. Am I The Only One?

It is common to feel sad, depressed, rejected, angry, or guilty at various points during the divorce process. That's because you are processing the loss of a marriage you thought would last forever and that failed to live up to your expectations.



It is important, however, to know that the stages of loss and grief in separation or divorce, which include anger and resentment, will pass. After healthy and appropriate processing, you will find your way to acceptance, and be able to take steps to rebuild your life. You cannot predict the amount of time that it will take, but those who seek support either in a group setting, or with a professional coach or counselor, often find the road to divorce-recovery that much easier.

There are three strategies we recommend for being your best through one of the toughest times of your life.



1. Build Your Circle of Support

One of the most powerful things you can do for yourself as you navigate through separation or divorce is to thoughtfully construct your circle of support. People may be generous in offering advice, but what kind of support do you really need?

When building your circle, consider all the kinds of support you need. Examples include:

- · Child care;
- Help with meals and running errands;
- Someone you can spend time with who can help you recalibrate a thought partner who is unattached to your choices and decisions.

The thought partner should be someone unattached to the choices you make, and who can help you think objectively about what will serve you best. Many people seek out a coach or therapist to serve in this role. Be selective about all the people you bring into your circle of support, and be sure that they provide what <u>you</u> need most — *not what they think you need most*.



Important discussions related to the marital settlement agreement should not be made on the fly. 99

2. Be Proactive

One of the most stressful aspects of separation and divorce is the loss of trust. Whereas you trusted each other fully in the past, now you feel suspicious about everything. What advantage is s/he trying to gain? What is s/he going to launch at me if I pick up the phone?

This is normal and often exacerbated when hiring lawyers to go to court.

While you were married, the implicit agreement was that you each made choices in the best interest of the family. In separation and divorce, especially in the court process, things do shift.

So, be proactive. Develop agreements about how and when discussions will happen. Important discussions related to the marital settlement agreement should not be made on the fly, or without ample opportunity for both people to prepare for the conversation.

A best-practice is to make a list of topics that need to be discussed and plan a schedule for the conversations. You can do this weekly, bi-weekly, or monthly, depending upon the pace of your process.



3. Love Your Kids More Than You Hate Your Ex

Kids know they are a product of both parents. This is a powerful reason why you should not bad-mouth your ex. *If you "hate" some part of your ex, then your kids think you must hate this same aspect in them.*

Kids of divorced parents can be happy and thrive as long as they receive love and feel stability. Love your kids enough to have conversations with your spouse in private, keeping them out of the middle.

Separate from your ex emotionally, but retain a level of civility that creates a calm and secure environment for your children. The kids do not *need* for you all to be together during a holiday. What they need and expect is simply to be loved.



Parting Ways

You are probably asking yourself several questions (or will be) about how to part ways with you ex.

1. What should I say when I see my former spouse?

Let your words be authentic and brief.

What you say may, of course, depend on whether you happen to bump into you ex in the supermarket or whether you're anticipating your daughter's graduation next month.

Try this. Ask yourself the question and listen for an answer. What do you hear?

Does it feel natural to say, "I don't know what to say to you"?

Or, if you haven't seen each other in a long time, you may genuinely want to ask, "How've you been?"

Still you may find you prefer this, "Hi, I'd really rather not talk now," or the ever-popular, "This is a little awkward. Let's keep this social."

Recognize that it's hard to plan ahead, and you may not know what to say until that moment. However difficult, try not to play psychological games with each other. This can help you feel better about yourself which is key to moving through this process with minimal battle scars.



2. Why did I take so long to make this decision?

Humans are hopeful by nature. Some of us keep rationalizing that things will get better while we ignore our gut feelings. Others want to see if a vacation or holiday will bring them closer again. "I'll just get through Xmas and then...." Or maybe things just weren't bad enough until now. Not to mention, you took a sacred marriage vow.

Be gentle with yourself. Saying things like, "What's wrong with me. Why didn't this work?" is not helpful now.

There's no need to add self-criticism to the pain. Show yourself compassion and kindness throughout the process because you will no doubt encounter judgment from others at some point.

66 Show yourself compassion and kindness throughout the process. 99



3. Will I ever get over this?

It's easy to say in two years you'll be past this, but in some ways, you may never get over your separation or divorce entirely. Your divorce might feel worse than the death of a loved one. That's because of all the internal questioning — "Why did my marriage fail?" "Am I not a good person?"

The lack of finality and your dreams being smashed make it all the more difficult to get past. You can come to settlement terms legally and financially, but emotionally? Your relationship with your ex lives on in you.

Picture a bucket of negative emotions — anger, resentment, shame, and more. As time passes, test which emotion is no longer in your bucket. As your bucket becomes emptier and you connect with your true self again, you will begin to feel a sense of hope. That means you are moving in a positive direction, and you can attract joy in your life once again.

About Main Line Family Law Center

The experts on healthy solutions for separation or divorce, Main Line Family Law Center provides personalized, compassionate support and guidance to the increasing number of couples seeking a positive way to end their marriage without spending away their life savings.

Would you like to speak with a legal professional regarding your plans for separation or divorce? **Schedule your free consultation for divorce mediation and/or divorce coaching, at**www.myhealthydivorce.com or call 610-764-7144.

We look forward to helping you.

