

Episode #11: Should You Talk to a Lawyer Before Filing for Divorce?

Brian: Good morning everyone. Today Jake and I are going to discuss whether you should talk to a lawyer before filing for divorce. Jake, do you have any initial thoughts on that?

Jake: Yeah, it's a straightforward topic, but it's important. I always tell people, it sounds obviously self-motivated to tell people that they should talk to a lawyer before filing for divorce, or they should really hire a lawyer before going through a divorce. Even if you think that's going to be simple. The overall thing that I tell people is, it sounds self interested for me to say that, but actually we'd make a lot of business and money off of people who have tried to do it themselves, which is totally understandable that you try to do it yourself and try to save money.

Then just a problem gets created and you end up being in a lawyer's office and the situation and is twice or three times more expensive than it would have been if you had hired a lawyer in the first place. I know it sounds like a bunch of lawyers saying "you should hire a lawyer" but that's the reality of the situation.

I see a lot of people coming in again, totally understandable, but have, try to do it themselves or have done it themselves and it's just a total mess. Then you're coming in and you're spending a lot of money on undoing what was done.

So that's the overall pitch that I give people. And then we can talk about details as to why that is the way it is, but that's the initial take I have on it. How about you?

Brian: Yeah, I agree. I think there's a couple of things to think about. There are a lot of states that you can get divorced yourself, especially if there's minimal issues.

in Texas you can, but it's really much more difficult. Other states have just a bunch of forms where you fill out and check some boxes and you go about it. And it's pretty easy to do. Not so much in Texas. Secondly, I do think it's specific to your complexity level. if you've got kids at all, I think it's worth it.

Got any kind of property issues at all, I think it's worth it. And it may be just as simple as sitting down with the lawyer for an hour and kind of walking through everything and understanding how things work and don't work. It doesn't mean you need to hire a lawyer ultimately or to spend a lot of money on a lawyer.

But I think it's worth doing. And just on a personal level, I had a business years ago that I kind of went against my own advice now, which is I went cheap on how I set it up. And it ended up being a mistake and costing me down the line, so I've learned my lesson personally.

So I'd advise myself the same thing. People listening to this podcast, it's worth at least talking to a lawyer initially.

Jake: Yeah, I think that's right. There are times I will say, and I always tell people that I'm not trying to turn anybody away, there are times though when I've had people come in and I'm just like "Look, there's no house owned together. You don't have any kids. Everybody has their own separate bank account. I'll talk you through it. Why don't you just do the forms yourself? and we're happy to review it, or if you want us to do it, we're happy to do it too."

At the end of the day, I want people satisfied and it's so simple that you paying us thousands of dollars to do something that you could have done yourself, then, I'll be honest with people and say "You may want to actually think about doing this yourself."

Some people just want a lawyer to review things and that's perfectly fine too. We get a lot of consults where people call in and say "I think I've done it right. I think I've filed things I'm supposed to." I think I have a decree and we'll say, set up a consultation and we'll go through it.

There could be stuff that you're missing, taxes or the way retirement's divided up, so it's always worth checking that. And then, sometimes I'm doing the consult and I'm like, look, I hear you say that you want to do this yourself, but check around with other lawyers. They will have to tell you the same thing.

If it's complex, it's going to be really inefficient if you're trying to do it yourself. And thinking just checking with the lawyer here and there may not be the best idea, because there's just a lot that can go wrong. And what you said to Brian is, I've had to hire lawyers in my life.

Our clients tell us it's not the most fun experience, a lot of the times, but I've decided that I think it probably saves me time and money to actually have a lawyer handle stuff that comes up here and there, I've personally gone through a divorce and I've had people ask me, did you represent yourselves?

Of course not, I would aggressively mess it up if I represented myself because it's an emotional and difficult time. And it's really hard to see the big picture if you're handling it yourself. People know that even when I went through a divorce, I had a lawyer.

So let's talk about, Brian, what are the types of things that people mess up? if they've come into you and they're wanting to do it themselves, so they don't talk to a lawyer before going through the divorce, what do you see?

Brian: Yeah, I think they are three categories that people deal with and can have problems with: one is children, another is property and the other is procedure. I'd say the kids stuff, it's a lot more complicated than most people expect it to be. And it's divided up into three categories and they're not the way I think most people would sit down and think about it if they were just sitting across the table from their spouse, they were going to divorce.

I think many parents who are going to split up, whether they're married or not, underestimate the specificity and the specifics about things they need to be thinking about both now and in the future. The most common one that people think they have an agreement on and don't is child support.

It's calculated in a way that's in this state that's very different from a lot of other States, and so it can be somewhat counterintuitive about that. We have a lot of people coming in and saying they want a 50/50 time split and nobody's going to pay child support. And they don't think about things like insurance or uninsured medicals, or what about Christmas or whatever or about if there's a dispute over private school versus public school.

Those are a lot of things that can cause problems. I think it's worth talking that through with the lawyer for a while. That probably takes 30 minutes on its own just to explain the way Texas is going to approach it. The fact is you have to, when you submit a court order to a judge, if you're doing it by yourself, it has to fit this proper format.

If it doesn't, the judges won't sign it and you'll be back where you started from. So that's the first issue that I deal with the most. What about the property side of things or any comments you have on the kid part of things?

Jake: I guess just dropping the kids. A lot of times, they're just not thinking about the future. Like you were saying that they'll come to something and they'll say "We're independent, I'm making an educational decision." So you go, okay, you both make independent decisions for the school. You can't both pick an elementary school for your kid, somebody is going to have to decide.

Have you thought about that? They likely haven't thought about that. Or they'll come with the possession schedule that makes sense at the time. I have lots of people come to me and they have a possession schedule where they try to split it 50/50, because they want to be fair.

They decide they want to do a 50/50 schedule, but then they'll split the week in half and then they'll split the weekend half and half. So someone will have Wednesday through Saturday and the other person has Sunday through Wednesday. You're going "Oh, okay. Have you thought about that? You'd never be able to have a weekend to yourself and your kids."

I've thought about that. Have you thought about holidays, how you do holidays? A common one is what split Christmas day in which makes sense. And people want to do that.

You gotta say, Hey, think about that, 10 years from now when you're remarried and you have kids with a new spouse. You can never do Christmas with your new spouses' family out of town. Just stuff like that doesn't come up. But then of course there's some people just make wild mistakes on it and just not understand it.

They've let one parent agree to no geographic restriction or something like that. There's just so much stuff and the stakes are so high. Then yeah, we see those then on property, it could be something, but as simple as we're just not thinking about how to do a special warranty deed for our house, for example. How to get someone's name out of the house or somebody doesn't realize that my spouse is getting the house, but I'm still on the note.

What do we do about that? People agree a lot of times on just aggressively bad property deals just cause they haven't run it by a lawyer and they just think "I trust my spouse" or

disagree to this because he or she would never do anything unfair. And sometimes the other spouse isn't trying to be unfair.

It's just people don't understand how property works and so they ended up doing an unfair deal for their other spouse unintentionally. Sometimes people don't think about the interaction between child support and property division. I always tell people the story I had, so many people did the divorce per se, and then they agreed that the wife would have custody of the four kids.

And they agree that the husband would get a hundred percent of the property, but he would pay 10,000 a month in child support or something like that. The problem is then the wife, within a few months of the divorce had done some pretty crazy stuff and we came in and got a restraining order and got custody of the children.

He had custody of the children so the child support went away. And it's just people aren't thinking about that whenever they divide it up like that. The horror stories can range. We dealt with a case where the parties clearly intended for the husband's business to be awarded to the husband, but really didn't adequately describe it in the divorce decree. A substantial amount of the the litigation afterwards of whether or not that a business, which is being very successful after the divorce, whether or not that business was actually divided up in the decree or not.

What's crazy is they're spending tens of thousands of dollars in attorney's fees and if somebody had just taken the divorce decree to a lawyer and said, this is what we're trying to do, the lawyer could have said "Y'all didn't really divide up the business the way you've described it here." He literally could have changed a sentence in the divorce decree, but instead it had resulted in thousands of dollars in litigation and really serious exposure for the husband on this business that he thought he had given to himself in the divorce decree.

It costs \$500 an hour to consult with us, they probably could have done it for half an hour, probably save themselves \$250 with the consult, and tens of thousands of dollars in attorney's fees. Those are the extreme horror stories, but they're out there. What about you, Brian? What are your horror stories?

Brian: Yeah, I got a call on a Thursday afternoon saying "I'm closing tomorrow on the house that I was awarded in the divorce, but the title company won't let me close because exactly what you mentioned there was no, there's no deeding, there's no decree." That's clear about that. You've got an ex spouse who may or may not want to cooperate with you. That's no fun.

They really run the gambit of things. I think tthe other thing that people find difficult and they need some guidance on it's just procedure. That can be as simple as how to walk through a divorce, especially since it's a little different these days with COVID-19. You used to just wander down to the courthouse and get in line and go see a judge.

They would talk to you or you'd go to the law library if you needed some help, but those things aren't really available much anymore. Then there's some other things that people need to do sometimes that are much more complicated. Whether that's trying to enforce a

child support order or some type of visitation arrangement or to modify things or something along those lines, those can be pretty complex legally.

They're set up with some real procedural hurdles that a lot of lawyers don't even get correct. So you wouldn't expect non-lawyers to get them correct. So that's the other category that's in place. So I do think those are worth talking to somebody about as well. It doesn't have to be our firm, but just somebody who's going to give you some decent guidance on it.

Jake: Yeah. I have a general philosophy, I know you do too Brian, that is if people are paying me money I want it to be a sound financial decision for them. I want it to make sense financially.

Like I bring something to the table, our lawyers bring something to the table, just like a real estate agent, selling or buying a house, brings something to the table. There are some things that just inevitably cost money, the pre-procedure, the filing fees, just getting through the legal system.

A lot of times, or most of the time, probably well, all the time, if you're paying us money, it's because we're going to be dealing with something with your kids, that's priceless. It really is a priceless endeavor or arguing with property.

If you're spending the money for Ray or Brian or whatever, lawyers to deal with something on your property, it should make financial sense. 99 out of a 100 times, it makes financial sense to have a lawyer dealing with your property issues. Like we were talking about, I've used lawyers. It's usually not anybody's favorite thing to do is to go hire a lawyer, but a lot of times it makes sense financially to do that. And certainly it makes sense for your kids.

Brian: Yeah, I agree.

Jake: All right. I think that's hopefully a good summary of this issue to everybody. And, we will talk to you guys again soon.

Brian: Alright. Take care. Bye.