

NYSUT Member Benefits Trust-endorsed Legal Service Plan PREVENTIVE LAW GUIDE



A newsletter designed to help guide you through the legality of reality

**Issue 93
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Tips to make divorce more tolerable

By Robert P. Santoriella, Esq.

Contemplating filing for divorce? Or has your spouse beaten you to the punch and already served you with a summons in an “Action for Divorce?”

There are some important factors to consider that can help make the experience far less time consuming, less costly and perhaps even limit some of the stress, anxiety and emotional drain that are so often prevalent in matters of this nature.

Once an action is commenced, whether you happen to be the plaintiff or defendant in the suit, it becomes important to determine whether you think that you and your spouse can mutually agree on how to resolve some of the bigger issues that may arise as your case moves forward through the court system.

If you and your spouse have children together, there are several relevant points that must be considered: custody, child support, college expenses, health insurance premiums, and related health care costs such as co-pays and unreimbursed medical expenses.

Issues involving your children are always paramount and the court will pay close attention to the facts as they relate to your children’s well-being with an eye towards what is in the “children’s best interests.”

From a legal standpoint, there are two types of custodial relationships that will need to be determined and incorporated into your divorce decree: “physical custody” and “legal custody” of all un-emancipated children under 18 years of age. The determination of either could be made by the court through a separate custody hearing or amicably through the mutual consent of you and your spouse.



Physical custody relates specifically to where and with which parent the child(ren) will reside. Legal custody is a term used to dictate which parent has the authority to make major decisions concerning the children’s well-being such as medical, educational and choice of religion.

Even in the most amicable separations, the children (especially younger ones) are going to reside with one parent more predominantly than the other; that predominant parent will be deemed to have physical custody of the children and be designated as the “custodial parent.”

Once it has been determined which party is designated to be the custodial parent, the court

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Welcome!

Welcome to the members of the **Hamburg TA, Bay Shore Classroom TA, Patchogue Medford CT and Hudson TA.** Hamburg TA members have legal services coverage under the Group Prepaid Legal Service Plan while the other groups have coverage under the Group Access Plan. We look forward to providing legal assistance and services to these groups.

Divorce tips...

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(or perhaps the parties themselves in the more amicable settings) will make a finding as to the monetary amount that the non-custodial parent will be required to pay to the custodial parent for child support.

This amount will usually be in accordance with the guidelines set forth in the Child Support Standards Act (CSSA). Under the CSSA, a defined percentage of the non-custodial parent's adjusted gross income (increasing proportionately with the amount of children you have) will be paid to the custodial parent as and for the support of the child(ren) of the marriage.

The court will often order this amount to be automatically garnished from the non-custodial parent's salary each pay period and be sent directly to the custodial parent through the county's child enforcement unit.

The child support obligation of the non-custodial parent remains in effect (unless custody is otherwise legally changed) until the child(ren) reaches 21 years of age or otherwise sooner becomes emancipated.

As a general rule, the parent who maintained health insurance (prior to the divorce) through their place of employment will need to continue to maintain that policy for the benefit of the child/children until they reach the age of 21 or earlier emancipate.

It is important to note that if you are covered by your spouse's health insurance during your marriage, you will no longer be eligible to be covered under that policy once the Judgment of Divorce is signed by the judge or referee.

The next area that needs to be explored is how the marital property will be divided. The first consideration should be whether either spouse is going to continue to reside in the marital residence or whether the home will be sold and the equity from the sale divided between the parties.

Conversely, if either party chooses to remain in possession of the marital residence and accordingly continues to live in the home, an agreement should be reached whereby the party remaining in the marital residence buys out the party moving out for a percentage of the then existing equity in the home.

Generally, this amount is 50% of the equity... but other considerations may be taken into account when arriving at a fair split. These can include the source of the original down payment made when the home was originally purchased or documented evidence

of ownership by one of the parties that predates the marriage.

In an uncontested divorce, you are merely asking the court to dissolve your marriage on the submission of paperwork and there are typically no court appearances required by the parties. It is important to note you may represent yourself during any divorce proceeding (called "appearing pro se"), but you may also hire an attorney to help negotiate the terms of any potential agreements with your spouse or your spouse's attorney should he or she choose to retain one.

If you and your spouse are unable to reach an agreement, either amicably on your own or even after

An important factor that will need to be decided and incorporated into the divorce is the party's responsibilities regarding health insurance coverage for the child(ren).

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Preventive Law Guide is not a substitute for individual legal advice from a lawyer. The information presented here is believed accurate, but laws vary between states and every legal situation is different. If you have any questions whether information presented here applies to you, contact a plan attorney. Don't guess when you can be sure. New York residents, call the NLO at 800-832-5182; all other residents, call 800-292-8063.

For information about this program or about contractual endorsement arrangements with providers of endorsed programs, please contact NYSUT Member Benefits at 800-626-8101 or visit memberbenefits.nysut.org. Agency fee payers to NYSUT are eligible to participate in NYSUT Member Benefits-endorsed programs.

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The big benefits of small claims

By Jacqueline Kelly, Esq.



Ladies and Gentlemen... allow me to introduce you to the wonderful world of Small Claims Court. You probably know that Small Claims Court exists and you may even be familiar with the basic fact that you cannot sue there for any amount larger than \$5,000.

What you may not realize, however, is how easy it is to navigate and how cost effective it is to litigate there. Small Claims Court is extremely user friendly and an inexpensive way to have your case heard.

The filing fee in Small Claims Court (SCC) is \$20 (or less, depending on the amount of your claim). You do not need to hire a process server as the Clerk of the Court sends the Defendant(s) notification of the case.

Many SCCs have both day and evening sessions so you may not even have to take time off from work. Appearing in SCC is also relatively easy and stress free. You bring your proof with you – photographs, invoices, payment records, receipts, etc. The only strict requirement in SCC is if estimates are involved – you

are required to produce two (2) independent estimates to establish your damages. You then simply tell your story and show your proof.

The most comprehensive and reliable information about Small Claims Court is contained in the New York State Unified Court System's packet entitled "A Guide to Small Claims in the NYS City, Town and Village Courts," which can be found at nycourts.gov.

The SCC is an informal and relaxed setting. You do not have to know the Rules of Evidence or the Rules of Civil Procedure. You just tell your story. Of course, the Defendant gets to tell his or her story too but there is no pressure to act like a lawyer.

You may even request to be heard by an Arbitrator rather than a Judge – so long as your opponent agrees as well. Having your claim

Arbitrated is efficient, quick and just as binding as a Judge's decision.

So the next time you find yourself monetarily damaged, don't let prohibitive litigation costs or fear of the unknown court system prevent you from seeking justice. Small Claims Court is a welcoming place for the legal do-it-yourselfers... and a yelling Judge Judy is nowhere in sight. ⚖️

The process of purchasing a home

By Daniel J. DeRosso, Esq.

Initial clarity in contract drafting can help to avoid misunderstandings and undue delays when it comes time to closing the transaction of purchasing a home.

Keep in mind that the standard contract of sale provides that all "fixtures" are included in the purchase. In this instance, a "fixture" is generally defined as something that is not moveable, not moveable without significant effort, an integral part of the premises, and is not personal property.

This can include electrical outlets; switches; hard-wired lights; wiring; plumbing lines; toilet bowls; tubs, showers & sinks; appliances; boilers & furnaces; kitchen cabinetry & hardware; and central air conditioning or through-the-wall air conditioning units.

If the seller wants to exclude one of these items, it must be stated in the contract. The most common exclusion would be a light fixture or chandelier; the seller would then represent that the excluded fixture would be replaced with a "builder's fixture" so as to not leave open wiring.

But what about wall-mounted plasma televisions, surround-sound systems, outdoor stainless steel barbeques hooked up to gas lines, sectional couches, pianos, pool tables, or window treatments? These are considered personal property and are not fixtures.

If in doubt, the contract should clearly state that these items are excluded. If the seller does not want to be bothered moving an item such as a piano, the contract should clearly state that it will be left in the home. ⚖️

Divorce...

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you have gone through the mediation process, you and your spouse would then face a contested divorce action.

This essentially means that your divorce issues require the assistance of a judge or referee to help bring about a fair and reasonable resolution. If you are proceeding through a contested divorce action, you still may represent yourself but it's more likely that you will find it necessary to have a lawyer assist you with the process.

A divorce could be relatively simple or become quite complicated as it may not just be the dissolution of

your marriage to your spouse. As indicated above, a divorce may have the resolution of important issues involving your children, property (both real and personal) and finances as one of its primary objectives.

While it is relatively quick and easy to get married, the divorce process can become long and difficult and may be further complicated by emotions that cloud the logic of the parties involved.

If you have any questions or concerns about this topic, please contact me at 718-923-0690, ext. 26 or feel free to make an appointment at any of our locations in Westchester County, Kings County or New York City. 



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