THE GUY’S GUIDE
TO DIVORCE (& CUSTODY)

THE GUY’S ATTORNEY
WHERE GOOD MEN FIND GREAT FAMILY LAW
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INTRODUCTION

I’m going to assume that you are considering a divorce, planning a divorce, thinking about a divorce, or have been served divorce papers from your wife. I’m also guessing that you’re feeling pretty overwhelmed, and maybe even confused, by the whole process.

There’s good news: You’re not alone.

Every year, thousands of men get a divorce. Unfortunately, most fall into the trap of not knowing their rights. You see, the media has done an excellent job of dispensing myths about guys when it comes to divorce. And many men have felt they had nowhere to turn.

Until now.

At The Guy’s Attorney, we specialize in working with men who are contemplating divorce or going through the divorce process.

Now, I’m a realist and a skeptic by nature; I need all the facts to determine the best routes for our clients to take. You need all the facts, too, which is why I wrote The Guy’s Guide to Divorce.

In the following pages, you’ll learn facts that will hopefully change your understanding of the divorce process. You might even be surprised, because some of them are rarely discussed. However, you can be sure that you won’t be misled or misinformed any longer: You have legal rights as a divorcing husband, and this guide will show you what they are.

I hope that you find The Guy’s Guide to Divorce a worthwhile read. If you decide you’d like to discuss any aspects of your own situation, feel free to call my office at 717-412-0244.

Best wishes to you,

John King
STOP!

Before you make another move, you need to realize that whatever you do from this point forward could affect the outcome of your divorce. Even if you think you’re making the right choices, without legal advice, you could be taking the wrong path.

For instance, many men who have thought they were doing the best things for themselves and their situation have made the following errors… and paid for them later:

- Harassing your spouse through email, text messages, phone calls, voice mails, etc.
- “Snatching” your children or taking them on long, unexpected trips without telling their mother.
- Using your parents or friends to harass your spouse.
- Stalking or harassing your spouse at her place of work.
- Trying to hide money by opening bank accounts or giving “loans” to friends and family members.
- Spreading rumors about your spouse.
- Trying to do everything yourself.
- Promising things to your spouse under the condition that she stop the divorce process.
- Hurting your spouse physically or mentally.
- Saying negative things about your spouse to your children.
- Putting negative posts or embarrassing pictures of your spouse on social media sites like Twitter and Facebook.

These type of actions are purely emotional, and will only lead to trouble as your divorce progresses.

Take my advice and consult with an attorney who will be candid about what you should and shouldn’t do. It can be very difficult to take the time and effort to analyze the situation and carefully determine your actions, but it will pay off in the end.
NEVER RETAIN A DIVORCE ATTORNEY BEFORE ASKING THESE 13 CRITICAL QUESTIONS

• How long have you been a divorce attorney?
• How long have you been focusing on the practice of family law?
• Is family law your only practice area?
• Do you consider yourself a specialist or a generalist?
• How long have you been practicing in the local area?
• Have you ever done any legal work for my wife and/or her family?
• How many divorces have you handled?
• Do you feel comfortable representing my type of divorce case?
• Do you have experience helping fathers gain custody of their children?
• How will you ensure my privacy during the divorce process?
• How do you handle your billing?
• How can I help control my legal expenses? What paperwork can I gather and organize?
• What exactly would you need from me to proceed?
Secret #1: You aren’t destined to lose everything in a divorce case just because you’re a guy.

You may have heard from well-meaning friends and family members that you’ll “lose everything you have” if you get a divorce. That’s absurd - although it once was more true than today. Generations ago, men who divorced their families did often lose a good deal of their property and wealth; this was because the majority of wives did not own property, did not have careers, or even an “earning capacity,” and did not have the ability to build their own bank/retirement accounts.

Obviously, this has changed dramatically.

Today, men are winning custody battles, child support issues and alimony struggles more than ever before, according to a survey conducted by the American Association of Matrimonial Lawyers. Judges are taking into consideration the complexities of men’s individual situations, and are applying those complexities into their decisions.

What this means for any divorcing guy is that he doesn’t have to picture his post-divorce life as living in a shack without income, a vehicle or money. In fact, he may not have to pay alimony, may receive custody of his children and may get child support. This is hardly “getting taken to the cleaners”.

This isn’t to say that all courts have become “gender neutral”, especially when children are concerned. But it isn’t a foregone conclusion that a divorcing dad will only get to see his kids on weekends and some holidays, nor is it a foregone conclusion that a financial debacle awaits the divorcing man.
Secret #2: Dads can become the custodial parent of their children.

Although the “Tender Years Doctrine” and/or the “Primary Caregiver Doctrine” was once used as a reason to give primary custody to women, the courts (and the statutes) are now much more considerate of dads as custodial parents. A number of variables can come into play, including the schedules of the parents, the location of parents’ homes and the age of the children.

Of course, it’s always best to focus on the best interest of the kids, especially because that is supposed to be the primary focus of the court. That can mean letting go of displays of anger toward the mother of your children. Many judges like to point out to fighting parents that they will be dealing with each other (because of the children) for many years to come.

Secret #3: Being your own “divorce lawyer” is a recipe for disaster.

Many of my clients come to me long after they should have sought the assistance of a family law attorney. Unfortunately, in many cases, they waited too long to get professional counsel.

Allow a divorce lawyer to help guide you through the process, rather than trying to take on a “do it yourself” mentality. (Men are notorious for wanting to solve every problem alone, but divorce is one area where this type of attitude can and does backfire.)

Secret #4: You aren’t going to be in divorce proceedings until the next millennium.

Divorces, like any other legal processes, take time. However, they don’t have to take up as many months and years as you might think. In fact, a no-fault divorce which is successfully negotiated can be granted in as few as 90 days in the state of Pennsylvania.

Of course, the length of different divorce proceedings will vary. If there are numerous assets, liabilities or children involved, it’s going to be more complicated. Yet it needn’t take up every minute of every day of your life for the foreseeable future.
Generally speaking, a good number of divorces can be completed in less than a year’s time. This is the reason I suggest getting an attorney who is well-experienced and who focuses in family law. You’ll be able to navigate your legal issues faster, and get to your post-divorce life more efficiently and with less emotional stress.

Secret #5: Your Judge/Divorce Master (if you go to court) isn’t going to throw the book at you because you’re a man.

On television shows, judges (who are actors reading from a script, after all!) frequently treat men in divorce proceedings as if the men are terrible human beings. So it’s no wonder that men going through a divorce are often terrified to go to court.

If you’re worried about court appearances, I assure you that you don’t need to be. Your attorney will prepare you beforehand and notify you of what to expect. You and your lawyer will have all your paperwork in hand, and will have a good understanding of your wife and her lawyer’s case, before ever stepping foot into a courtroom.

Know, too, that you may never go to court at all. It’s not a foregone conclusion for divorcing couples. A good family law attorney will not initially steer you toward litigation, but rather will make a concerted effort to determine if there is a possibility of an amicable resolution of the divorce action under terms that are favorable to you.
WHO GETS WHAT

The majority of Divorce Complaints filed in Pennsylvania are ultimately resolved by way of a Marital Settlement Agreement. A Marital Settlement Agreement (commonly referred to as an “MSA”) is a legal document containing terms that have been agreed to by the parties. This procedure is sometimes referred to as an “amicable resolution” of a Divorce Complaint. It is always desirable to amicably resolve a Divorce Complaint, if for no other reason than the savings in time, legal expenses and aggravation.

Sometimes, however, an “amicable resolution” of a Divorce Complaint is not possible. In other words, the parties are unable to reach an agreement on terms relating to “Who Gets What”. In those cases, the final resolution of “Who Gets What” is not resolved by agreement, but rather is imposed by the court system.

In most counties in Pennsylvania, including Cumberland, Dauphin, York and Perry, my reference to the court system really is a reference to the Divorce Master. The Court of Common Pleas in each of those counties has established a Divorce Master system to adjudicate those divorce actions which cannot be resolved amicably. The Divorce Master proceeding is very much like a trial - there is a court reporter, witnesses are placed under oath, and the PA Rules of Evidence are followed. The major difference is the determination is being made by a Divorce Master rather than by a Judge. In those cases where one or both parties believe the Divorce Master has erred, a procedure exists which allows for a review of those alleged errors by a Judge, but the reality requires a good understanding of the Divorce Master procedure.

The following is information which will help you understand what the PA court system (initially the Divorce Master) looks at in contested divorce actions when trying to determine “Who Gets What” at the end of a marriage.

The following is also the type of knowledge that an experienced Pennsylvania Family Law attorney utilizes when negotiating an amicable resolution of a divorce. An attorney’s knowledge of the law, and how it is applied in the County Court in which the client’s divorce action is pending, is critical to success.

PLEASE NOTE: This is a discussion relating to marital assets and debt. Many of my clients also have a great need to understand and determine
another financial issue that oftentimes arises in PA divorces: alimony. This discussion is not related to the alimony issue, but rather to tangible property, such as vehicles, furniture, cash accounts, retirement assets, real property and debt.

Equitable Division of Marital Property:

The General Rule: “…(T)he court shall equitably divide, distribute or assign...the marital property between the parties without regard to marital misconduct in such percentages and in such manner as the court deems just after considering all relevant factors.”

The preceding language is taken directly from Pennsylvania statute [23 Pa.C.S.A. 3502]. However, the underlining is not contained in the statute. I have added the underlining, because I believe that in order for you to understand “The General Rule”, you require further information regarding each of the underlined terms…”marital property”, “without regard to marital misconduct,” and “relevant factors”.

First, let’s talk about “Marital Property.”

Marital Property: This is oftentimes referred to as the “Marital Estate” in the legal discussions and proceedings relating to a PA divorce action. Another PA statute [23 Pa.C.S.A. 3501] defines what is (and also what is not) contained in the Marital Estate (marital property), as follows:

“(a) General Rule:....‘Marital Property’ means all property acquired by either party during the marriage and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3) as measured and determined under subsection (a.1). However, marital property does not include:

1. Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

2. Property excluded by valid agreement of the parties entered into before, during or after the marriage.

3. Property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such property.
(4) Property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the date of final separation.

(6) Veterans’ benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958 (Public Law 85-857, 72 Stat. 1229), as amended, except for those benefits received by a veteran where the veteran has waived a portion of his military retirement pay in order to receive veterans’ compensation.

(7) Property to the extent to which the property has been mortgaged or otherwise encumbered in good faith for value prior to the date of final separation.

(8) Any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received.

(a.1) Measuring and determining the increase in value of nonmarital property: The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

(b) Presumption: All real or personal property acquired by either party during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a).

I have provided the core of the statutory language relating to “marital property”, and you can easily determine that just defining what is and what is not contained can be a challenge. The starting point for my clients is the “Presumption” language contained in subparagraph (b). When
determining the Marital Estate, my client and I determine everything acquired during the marriage, and then establish what is excluded as allowed by subparagraph (a). We then determine if there are any nonmarital assets which have increased in value during the marriage, since those increases in value are defined as marital property.

Second, let’s talk about “Marital Misconduct.”

I commonly find myself discussing the issue of marital misconduct during the initial meeting with a new client. Marital misconduct has commonly been defined [see 23 Pa.C.S.A. 3301] as when the other spouse has:

1. Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years.
2. Committed adultery.
3. By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.
4. Knowingly entered into a bigamous marriage while a former marriage is still subsisting.
5. Offered such indignities to the innocent and injured spouse as to render that spouse’s condition intolerable and life burdensome.

The most commonly discussed forms of marital misconduct, in this office anyway, are adultery, indignities, and actions which my client believes are related to some form of mental illness. Sometimes the discussion involves the actions of the other spouse, and sometimes it involves the actions of my client. Regardless, it usually comes as somewhat of a surprise to learn that the laws, practices, and procedures relating to “Who Gets What” do not take issues of marital misconduct into account.

In other words, there is no general punishment factor which a divorcing person in Pennsylvania can depend upon, or need worry about, when the Court makes its ultimate determination of “Who Gets What.”
Finally, let’s talk about “Relevant Factors.”

Once again, the PA legislature [See 23 Pa.C.S.A. 3502 (a)] has defined the factors that the court must take into consideration when determining the equitable distribution of the Marital Estate. Another way to read that is the legislature is telling the Court what factors they should use in order to determine a fair distribution.

“The court may consider each marital asset or group of assets independently and apply a different percentage to each marital asset or group of assets. Factors which are relevant to the equitable division of marital property include the following:

1. The length of the marriage.
2. Any prior marriage of either party.
3. The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
4. The contribution by one party to the education, training or increased earning power of the other party.
5. The opportunity of each party for future acquisitions of capital assets and income.
6. The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
7. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
8. The value of the property set apart to each party.
9. The standard of living of the parties established during the marriage.
10. The economic circumstances of each party at the time the division of property is to become effective.
10.1 The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.”

A good Family Law attorney understands the factors and, more importantly, understands how the Divorce Master applies them. A properly presented case takes these factors into consideration, and focuses attention upon those factors most beneficial to the client’s case.

As you can see, Pennsylvania is not a “formula state.” To the contrary, the determination of the distribution of a Marital Estate in PA is “fluid.” For this reason alone, it is critical that a person be well informed, and well represented, when a divorce action is pending.
THE NEW PA CUSTODY LAW... FINALLY!

It has been "a long time coming," as the old song goes. After more than two decades, Pennsylvania's custody statute was overhauled on November 23, 2010. House Bill 1639 was passed unanimously by both the Pennsylvania House (191-0) and Senate (49-0). None of our elected officials wanted to be on the wrong side of this historic change in our custody laws.

Men in Pennsylvania historically suffered in Custody Court, due primarily to the fact that they were men. I am happy to report that today, Pennsylvania law has finally recognized a Father's equal rights to custody of his children.

Despite the existence of the new statute, which "says all the right things", it remains critical for a Father seeking custodial rights to proceed carefully and knowingly. A convincing case must still be made for the exercise of custodial rights.

It is vital that your attorney is well experienced in custody actions in the county in which your case will be heard. Although it is perfectly legal for a licensed attorney to represent your legal interests regardless of experience, the determination of custodial rights is not best left to a "dabbler" who has little or no understanding of the procedures to be followed, and the judges who may hear the case.

It is critical that your attorney fully understands the following: (1) the relevant facts of your case, (2) the most persuasive way to present those facts, and (3) the preferences of the judge.

Presumption in cases concerning primary physical custody:

This section of the new statute finally, for the first time in Pennsylvania legal history, specifically established an "equal footing" for each parent - at least so far as the legislature is concerned:

"In any action regarding the custody of the child between the parents of
the child, there shall be no presumption that custody should be awarded to a particular parent". [23 Pa.C.S.A. 5327]

"In making a determination [of custody], no party shall receive preference based upon gender in any award granted under this chapter". [23 Pa.C.S.A. 5328 (b)]

As you probably know, however, awards of custody in particular cases (such as yours) in the Commonwealth of Pennsylvania are not decided by the legislature - they are decided by the courts. A custody case that is not able to be amicably resolved will ultimately end in a trial. This trial is held before a Judge of the Court of Common Pleas in the county in which the action is filed.

Factors to consider when awarding custody:

Although it is true that our elected lawmakers do not decide particular custody cases, they have (by way of the new law) finally identified a specific list of factors which the court MUST take into consideration. While these factors are not listed in order of any particular preference, an experienced Family Law attorney will be able to focus upon those factors which are of greater importance in your particular case.

The 16 factors (paraphrased for clarity) are:

1. **Contact.** Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

2. **Abuse.** Present or past abuse by a party or household member and the continued risk of harm to the child or an abused party.

3. **Duties.** The parental duties performed by each party on behalf of the child.

4. **Stability.** The need for stability in the child's education, family life and community life.

5. **Family.** The availability of extended family.

6. **Siblings.** The child's sibling relationships.

7. **Preference.** The "well-reasoned" preference of the child. The weight given to this preference will depend on the maturity and judgment of the child.

8. **Alienation.** Attempts by a party to alienate the child. Reasonable safety measures to protect the child are not “alienation”.
9. **Relationship.** *The party better able to provide a loving, stable, consistent and nurturing relationship with the child.*

10. **Daily needs.** *The party better able to meet the “physical, emotional, developmental, educational and special” needs of the child.*

11. **Location.** *How far apart do the parties live from one another?*

12. **Child-care.** *The ability of each party to make appropriate child-care arrangements or to provide child-care themselves.*

13. **Conflict.** *The amount of conflict between the parties and the willingness and ability of each party to cooperate.*

14. **Substance abuse.** *The history of drug or alcohol abuse by a party or household member.*

15. **Condition.** *The mental and physical condition of a party and members of their household.*

16. **Best-interests "catch-all".** *Anything that is relevant to the "best interests" of a child can be raised, even if it does not fall under a "factor". However, gender is explicitly irrelevant to a custody decision, as noted above.*

As I stated previously, these factors are not listed in the statute in any particular order of preference. However, in my experience, I can safely state that some factors, if applicable in a particular case, are given great weight. As a practical matter, factors 2, 3, 6, 7 and 11 are often important. However, any factor(s) can be the key, depending on the facts of the particular case.

____________________________

Sometimes, a Father can feel like a "second-class citizen" in a child custody legal action. For too long, Fathers have accepted what they felt like was the best option...an alternating-weekend Dad.

The Guy’s Attorney recognizes that both parents play a vital role in the lives of their children, and that either parent may be the best choice for the role of Primary Custodian.
About the Guy’s Attorney

Looking for a law firm that truly “gets” guys and understands how best to protect a man’s rights?

Founded by John F. King, Esq. as a way to address the specific needs of men facing family law issues, The Guy’s Attorney focuses on the areas of divorce, custody, and support.

Divorce and custody issues are never easy. Worse yet, we know that sometimes men feel they experience gender bias. Good dads and husbands deserve strong representation in legal matters that sometimes leave them feeling like second-class citizens.

We strive to help men handle the emotional as well as the legal aspects of their circumstances. With more than 20 years in the field of family law for men, The Guy’s Attorney can make an enormous difference in your experience and the outcome of your case.

John F. King, Esq. is a BV® Distinguished™ Peer Review Rated by Martindale-Hubbell®, an indication that he meets high criteria for legal abilities and general ethical standards. Additionally, our clients consistently give the highest ratings for professional conduct, responsiveness and depth of knowledge.

If your divorce or custody proceedings are slanting unfairly toward your spouse, The Guy’s Attorney can help. Put our experience to work for you. We’ll see you through the confusing and often intimidating process of divorce, child custody and support proceedings.
WHAT CAN THE GUY’S ATTORNEY DO FOR YOU?

Not all family law practices offer a free initial consultation. But shouldn’t you know what to expect from your prospective attorney before you hire him or her?

At The Guy’s Attorney, we value this first conversation as much as you do. It’s an opportunity for us to . . .

- Review your case
- Identify the challenges you face
- Discuss what you can expect throughout the process
- And determine your next best moves

The consultation is provided at no cost, and naturally, there is no obligation.

CALL TODAY TO SCHEDULE YOUR FREE CONSULTATION

WHERE GOOD MEN FIND GREAT FAMILY LAW

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Free Consultation offer available only to individuals who have not had legal action initiated in their case.