



## Newsletter: Winter 2017



### Avoiding Financial Mistakes in Divorce

If you think that your spouse intends to divorce you, take steps to protect yourself. Make copies of all important financial documents, including savings, stock and insurance account statements and any information relating to your married lifestyle, including checking account, mortgage and home equity statements, charge card statements and your federal and state tax returns. If you fear your spouse may try to liquidate or change title to marital assets, provide written notification to the asset holder and seek a restraining order. Money in joint checking and brokerage accounts and the cash value of life insurance policies are also vulnerable. Protect assets in advance. Legal and forensic accounting costs to uncover and get back these assets can be prohibitively expensive.

#### Avoiding Contentious Litigation

Engaging in a “winner-takes-all” battle is a big mistake, leaving far less to live on post-divorce. Except in the most egregious cases, equitable distribution laws apply in divorce matters and the courts won’t punish a spouse financially for “being a bad person.”

If there are few valuable assets, both parties want to avoid a contentious divorce and are willing to work out joint custody and a fair settlement, mediation is a cost-effective alternative to litigation. You save thousands of dollars in legal fees, avoid emotional stress and benefit from the flexibility mediation affords.

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## Child Custody: Types of Child Custody in New York

In New York State, child custody and support are often the most disputed areas in divorce negotiations. In New York child custody matters, the court determines custody based on what it believes to be the best interests of the children. Neither parent has a preferred right to custody of their children, which means, for example, that the child's mother does not have a greater right to custody of the child than the legal father. Rather, it is the best interest of the child that takes precedence above all else. Rest assured, the New York State court system has stated that there is no inherent preference towards the mother receiving custody over the father, or vice versa.

Questions that custody arrangements answer typically consist of:

- With whom shall the child(ren) primarily reside?
- What constitutes an appropriate parenting/visitation schedule?
- How will major decisions affecting the children's welfare be made by the parents on a going-forward basis?

### Joint Custody

If both parents agree to a custody decision, a judge can make an order of "custody on consent," and there is usually no need for a formal hearing. However, if the parents cannot come to a consensus, a hearing will be held. Child custody matters in New York affect children under the age of 18. When the parents disagree about issues of child custody, the court will often appoint a law guardian, who will make an investigation and issue a recommendation regarding child custody and an appropriate visitation schedule.

### Joint Custody in New York State

In joint custody, both parents have legal custody with one parent designated as the primary residential parent. Joint legal custody means that both parents have the right to make major decisions for their children. These decisions include residence of the child, medical and dental treatment, education, child care, religious education, extra-curricular activities, summer camp and recreation.

Joint custody laws for New York State involve two distinct types of custody: joint physical custody and joint legal custody. Both types of custody convey different rights to both parents, depending on the court order. As with any custody hearing, the decision to award custody is based upon what is best for the child involved. Joint legal custody is a common court-ordered custody decision in New York State.

- Joint legal custody allows both parents to make major decisions regarding the child. Decisions regarding relocating to another state, schooling, religion and health care choices regarding the child's welfare are decided by both parents awarded joint legal custody.
- Joint physical custody involves a child living with each parent separately for a specified time. This usually involves a carefully planned schedule that allows both parents equal time with the child. When one parent is granted sole physical custody and both parents have joint legal custody, the child lives with the parent with sole physical custody. But, both parents retain the right to make major decisions together.
- Shared custody involves both parents sharing legal custody with each parent having specific periods of responsibility with the children. This arrangement gives both parents the right to make major decisions on an equal basis for their children.

### Sole Custody

If the parents are not awarded joint custody, one parent will have sole custody of the children. When a parent has "sole custody," it means that one parent makes all of the major decisions for the child. The New York court system however, does have a stated preference for the child to have a relationship with both parents. As such, visitations with the other parent are common.

Although representing the most "one-sided" of custodial determinations, the non-custodial parent is awarded specific visitation with the children. The visitation most frequently remains subject to the non-custodial parent's

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## Avoiding Financial Mistakes in Divorce

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### Consulting Financial Professionals

Work together with a financial planner or accountant to minimize the total taxes you and your ex-spouse will pay during the separation and post-divorce. Such professionals can also help you create an accurate, complete budget, which will avoid the need to have a court reconsider maintenance later on.

### Evaluating Settlement Proposals

When considering the fairness of a divorce settlement and whether it is workable, conduct a comprehensive and realistic analysis of your post-divorce lifestyle. Consider its future sufficiency and viability, remembering that inflation can hit hard.

Include assets, incomes, budgets, maintenance, child support, educational expenses, taxes, retirement goals, and investments in your analysis. Focus on the after-tax value of assets.

Avoid emotional attachments to assets. Concentrate on your true needs instead of unrealistic desires. Failing to give a payor spouse sufficient money to live on will likely result in payment default. Be fair, but verify everything. Get payments up front whenever possible and secure them with assets and insurance.

### Using the Right Professionals

Visitation and custody issues are best resolved working with a therapist. Accountants and financial planners are particularly skilled in addressing financial arrangements. Consult qualified professionals for emotional support and financial analysis instead of simply calling your attorney.

### Updating Estate Documents Post-Divorce

Failing to change your life insurance policy, IRA and will beneficiaries post-divorce means that your ex-spouse will inherit a marital share.

### Insuring the Divorce Settlement

Life and disability insurance can protect your divorce settlement payments and your family's security, should your ex-spouse die prematurely or become disabled.

### The Post-Divorce Financial Plan

Develop a post-divorce financial plan to help transition to a single's lifestyle. Recognize financial limitations, prioritize financial goals, and create realistic expectations and a plan for allocating financial resources.

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visitation/parenting time, as well as the non-custodial parent's rights to have access to all important information regarding the child(ren), such as their medical and educational information.

### Can Custody Change?

Once the court issues a custody order, it is possible to have this order altered. To have such an order changed, a parent must prove to the court that there has been a change in circumstances. Changes to health or finances are examples of changes in circumstances a judge may

consider. The judge will then make a determination of whether there is indeed a change in circumstances and whether it is in the best interest of the child to change the order.

If you or a loved one are currently dealing with a legal matter related to the arrangement, modification or enforcement of child custody in New York, seek the advice of an experienced attorney to ensure your legal rights are protected.

## Get Informed: An Overview of Driving While Intoxicated

Perhaps no area of criminal law is prosecuted more aggressively in New York State these days than offenses involving drunk driving. Moreover, the legislature has greatly increased the penalties for drunk driving in recent years. Someone accused of drunk driving whose penalty may have been only paying fines a few years ago may now face a real possibility of jail time. While the environment may be challenging, someone accused of drunk driving-related offenses is still innocent until proven otherwise. If you or a loved one has been accused of driving while under the influence of alcohol or drugs, it is crucial that you contact an experienced attorney at the earliest possible time.

### DWIs

DWI stands for Driving While Intoxicated, which is either a specific numerical BAC result of 0.08 or higher, or a general notion that an individual is intoxicated, proven by testimony and other evidence of the nature of the impairment. DUI stands for Driving Under the Influence, and is a general term in the United States. The term DUI is not commonly used in the legal system in New York State, however.

New York DWI cases can be brought under one of two theories: either violation of the DWI “*per se*” law (which is based only on alcohol level, not driving impairment), or under a traditional “common law” theory, where the prosecution must prove that the driver is intoxicated. Intoxication, for the purpose of Vehicle and Traffic Laws, is a condition where the motorist lacks the necessary physical and mental skills to operate a motor vehicle as a reasonable driver. New York DWI arrests based on the common law theory do not require any measurement of Blood Alcohol Content (BAC); they may be based upon the opinion of the arresting officer.

### Levels of Offenses

In New York State, there are varying levels of drunk driving offenses. The offenses are classified, according to levels of intoxication and impairment, as well as the accused’s prior criminal history of DWI-related offenses. As mentioned earlier, individuals are presumed intoxicated when their blood alcohol level measures at 0.08 or higher after a chemical test of their breath, commonly referred to as a “breathalyzer.” DWI cases can also be considered

what is known as “aggravated,” with harsher punishment and penalties, where the BAC is 0.18 or more, where there is a traffic accident, or any other attempt to evade police or flee the scene of a DWI accident.

A first-time DWI will be charged as a misdemeanor. A second DWI charge within 10 years of the date of a prior DWI conviction will be charged as a Class E Felony offense. Three or more DWI charges within 10 years of the prior date of two convictions will be charged as a Class D Felony offense. A DWI offense does not rise above a Class D felony offense, regardless of the number of prior offenses.

The lesser offense of Driving While Ability Impaired (DWAI) by alcohol, or VTL § 1192(1), is charged when a person has voluntarily consumed alcohol to the extent that his or her ability to drive a motor vehicle in a reasonable manner is impaired. Someone registering between a 0.05 and 0.07 blood alcohol content will likely be charged with DWAI. While DWAI is technically a traffic infraction and not a criminal offense *per se*, a conviction for DWAI carries with it a mandatory license suspension, substantial fines and penalties, as well as collateral consequences with regard to criminal records and enhanced penalties in the event of subsequent arrests.

### Contact an Attorney

The recent trend in New York is a continuous push by both the district attorney’s offices and judges for harsher penalties for DWI arrests. It also has been increasingly harder for criminal defense attorneys to enter into plea agreements for their clients for the lower charge of Driving While Ability Impaired by Alcohol. With so much at stake, now more than ever, it is crucial to speak to a skilled, experienced criminal attorney to ensure your rights are protected and that you receive the best defense possible.



## Establishing an Effective IEP



The goal of an Individualized Educational Program (IEP) is to design a course of action to meet the particular special education needs and related services of a student with a disability. A well-drafted IEP will include the student's present performance levels and establish specific goals, objectives, and related service recommendations for the student.

The IEP team is comprised of at least one of the child's teachers, a special education teacher, a school district representative, a parent, a school psychologist and a parent representative. If the child is over 14, he/she should also be present to discuss post-graduation transitional planning, if appropriate.

The IEP must include a description of the child's present educational performance, a statement of measurable annual goals and short-term objectives to assist the child in progressing through the school's general curriculum and meet any other needs resulting from his/her disability. It should also contain a statement of the special education and related services to be provided, an explanation of why the child is not in a general education setting if he/she will not be in an inclusive environment, and, for children over age 14, the IEP must include an outline of post-graduation transitional services.

The first step in establishing an IEP is careful consideration of the child's present academic achievement and functional performance levels to determine the child's needs. The child's reading, writing, spelling and math skills should be assessed through objective testing before he/she enters special education and at frequent intervals thereafter. Formal and informal educational

performance data such as teacher's evaluations, medical and psychological reports, and state, district and private assessments can serve as a guide. Once you understand your child's present levels, you can work on establishing clear, measurable and appropriate goals and objectives.

Next, the IEP committee will need to consider the child's requirements to achieve the goals. Each goal should include short-term measurable objectives that will help the student meet the annual goal. The IEP should clearly state how the school will address the child's needs and include means to measure the plan's effectiveness. The goals should indicate what the child will do, at what level or degree and a timeframe.

It is important to use "action" words that indicate the areas of need and how the child's disability affects his/her participation and progress in the general education curriculum. The IEP should also indicate the "direction" of achievement — for example, to increase, decrease or maintain attainment levels and contain time limits for goal achievement that enable you to monitor progress at regular intervals.

A well-written IEP will contain specific, realistic, relevant and measurable goals and objectives that target areas of academic achievement and functional performance, a clear description of the knowledge and skills to be taught and how the child's progress will be measured. With measurable goals that can be counted or observed, you and the other IEP team members can determine whether the services are sufficient and if the child is making acceptable progress.



Whether you need a New York divorce lawyer, a criminal defense lawyer, a school suspension lawyer, a child criminal lawyer, or a compassionate child custody attorney, the attorneys at Larry McCord and Associates are on your side. We understand just how frustrating the legal process can be, and we will lend our expertise and knowledge to guide you throughout the entire process. Having a lawyer is vital if you want the best chance of success at winning your case. If you try to represent yourself without any assistance, then you might run into costly mistakes that could be avoided with competent legal counsel on your side.

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