

How to Not Get Blindsided by a Divorce Filing

By Paul Nelson, Esq

Brittany *thought* she was in a good marriage. Wed to her college sweetheart, they both enjoyed successful careers, a large home in Huntington Beach and were proud parents of two boys. Imagine her shock when one morning someone showed up her office to serve her legal documents.

Her husband was suing her for divorce.

If you think Brittany's surprise was justified, you may be mistaken. Despite the vows married people take to maintain their union "til death do us part," the probability of divorce is high—especially in Orange County, which has one of the highest divorce rates in the country.

How high? high? The national divorce rate is 50 percent. In California, it's 60. And in O.C., the rate is more than 70. And if you're on your second or third marriage, the divorce rate is even higher.

Those who think their marriage is safe could be opening themselves up to danger should their spouse get the upper hand in divorce proceedings by making the first move. The best defense? A proactive strategy. In other words, you can hope for the best, but you should still prepare for the worst.

As in any battle—and, trust me, divorce is *war*—preparation is

key to victory. Before the Allies hit those Normandy beaches on D-Day, they spent months developing plans, considering invasion scenarios, amassing, and training an overwhelming invasion force. The Allied High Command also imposed a Cone of Silence over their planning sessions lest any details leak to the enemy, allowing them to prepare countermeasures. When contemplating divorce, it's helpful to adopt a similar strategy, laying groundwork for victory long before the first shots are ever fired. Specifically, this means:

- Retaining a divorce lawyer and determining where your greatest strengths and vulnerabilities lie.
- Identifying what assets are and aren't community property.
- Collecting all the records and documents needed to support your case.

There are also five reasons why you need to act immediately if you hope to get the best out of any divorce settlement:

1. Banks tend to destroy documents after seven years. Brokerage, title, and escrow companies have similar policies. You must obtain all the financial documents you can before they disappear.
2. Other documents, like credit card statements, corporate documents, property deeds, and even marriage licenses can be lost over time and hard to replace.
3. Starting early allows you the time to gather and build your case before the other side even knows there is another side.
4. Your legal team needs to know what they don't know.
 - a. They must determine if a prenup/postnup, if *any*, is valid.
 - b. Estate planning documents must be analyzed for a legal opinion; what is their upside and downside?
 - c. Titles need to be pulled to assess legal ownership.
 - d. Loan and escrow docs concerning real property must be reviewed to gauge community/separate property division.
5. Completing a diary on how much time you spend with your kids will build a stronger case demonstrating you *are* the primary caretaker.

Like an earthquake survival kit, a fire extinguisher, or flood insurance, let's hope your divorce plan is something you never have to use. But as firearms advocates are so fond of saying, "Better to have it and not need it than to need it and not have it."



PAUL NELSON

NELSON  KIRKMAN

FAMILY LAW ATTORNEYS  ADVISORS

4100 Newport Place Drive, Suite 250,
Newport Beach, California 92660

949-760-8888 ■ nelsonkirkman.com

High Stakes Divorce Lawyers