

# A YEAR AND A DAY

Divorce  
**without**  
Destruction



**Jaime H. Davis, JD**

North Carolina Board-Certified  
Family Law Specialist

**SPARK Publications**  
Charlotte, North Carolina



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# Preface

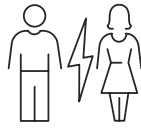
All too often when we think about divorce, we think of *The War of the Roses*—two spouses who will stop at nothing to “win,” even if it means destroying the other spouse in the process. But it doesn’t have to be that way. Divorce doesn’t have to be destructive.

In 2017, I decided to create a podcast to provide information and tips for getting through a separation and divorce without destroying family relationships or the family finances. Episodes include conversations with divorce-related professionals, such as psychologists, lawyers, and mediators, and cover topics relevant to separation and divorce.

In North Carolina, where I am licensed to practice law, spouses must be separated for a year and a day in order to file for divorce, hence the name of my podcast. That year is a critical time during which important decisions must be made (either by the spouses or the court) with respect to where the children will live, how the couple’s assets and debts will be divided, and how much child support and alimony will be paid.

In large part, this book is based upon episodes of the podcast. As you read the book, please keep in mind that while some of the information presented is universal, laws may differ in other states. If you are contemplating separation, before you take any action you should consult with a lawyer who is licensed in your state.

If you would like to listen to the podcast in its entirety, it is available through Apple podcasts and streaming through my website at [divorceistough.com/podcasts](http://divorceistough.com/podcasts).



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# Before You Separate

**M**arriages end for many reasons. Infidelity, financial stress, and even boredom can lead to a separation. When a potential client ends up in my office, most often one of two things has happened: they have decided a separation is in order or have just been told their spouse wants to separate. Either way, making the decision to separate can be life changing, and many myths and misconceptions surround the topic of separation and divorce, making the decision to separate even more difficult. The purpose of this book is to dispel some of those myths and provide tips and guidance for getting through your separation and divorce without destroying family relationships or the family finances.

## Have a Plan

If you think you might want to separate from your spouse, before ever broaching the subject with them, it is imperative to have a plan in place. First, make sure you have access to liquid assets and/or credit. Once your spouse is aware you are considering a separation, they may try to restrict your access to funds. It is not uncommon for the supporting spouse to try to starve out the dependent spouse or leverage the fact that the dependent spouse is in a weaker financial position. During the separation, your spouse might not voluntarily provide support, so you may be forced to seek the court's assistance. In such a case, you will need access to funds not only to pay for your living expenses but also to hire the team of professionals necessary to assist with your case.

If you don't already have a separate bank account, establish an account where you can deposit funds that your spouse cannot access. If you and your spouse have a jointly titled bank account, you can take some or all of those funds and deposit them into your separate bank account. Bear in mind this is not free money to you, and you will have to account for it later, but by depositing the funds into your separate account, you will be able to safeguard the money and have access to it in the event your spouse tries to cut you off financially.

If you don't have access to liquid cash, consider any credit that may be available to you, such as credit cards and home equity lines of credit. If you're employed and your paycheck is routinely deposited into an account

you hold with your spouse, consider changing your direct deposit so that the funds are deposited into your separate bank account. If you are living in North Carolina and have not yet separated from your spouse, these funds may still be considered marital property and subject to division by the court later, but having access to money now that your spouse can't control may help level the playing field.

Once you have secured access to funds and/or credit, begin securing your team of professionals. In addition to your divorce lawyer, this team is often comprised of a therapist, a CPA, and a financial planner, as well as any professionals you may need to value the marital assets in your case, such as business interests and real estate. If you and your spouse shared the same CPA and/or financial planner during the marriage, but the individual primarily communicated with your spouse, moving forward, you will likely want to find a new professional who is only looking out for your interests and has no allegiance to your spouse.

## **Gather Your Evidence**

In addition to making sure you have access to money, there are several steps you should consider taking prior to discussing separation with your spouse. First, gather documents that will be needed to determine family expenses. These documents often include:

- Five years of tax returns
- Three years of bank statements, including check registers or cancelled checks

- Three years of credit card statements
- Recent credit report
- Current balances on all outstanding debt
- Current pay stubs

Next, gather documents that will be needed to determine the distribution of your property. These documents typically include:

- Date of separation and current statements for any bank, brokerage, investment, or other financial accounts
- Date of separation and current statement for any retirement accounts, as well as a statement from the date of marriage if the retirement account existed before the date of marriage
- Appraisals for any real or personal property
- A copy of any homeowner's policy showing insurable value on the contents of any real property
- Five years of corporate tax returns, balance sheets, profit and loss statements, and shareholder agreements if one of the spouses owns a business
- Copies of all insurance policies

Once you have gathered your financial documents, make an inventory of the marital property. Your inventory should include:

- All financial accounts in both parties' names including account numbers and financial institutions
- All retirement accounts, including account numbers
- All insurance policies on life, health, disability, and real and personal property, including premiums and coverage



It is also a good idea to photograph or video the marital home and contents, as well as any secondary residence and its contents. If personal property begins to disappear, photographs and videos can be helpful to prove what property existed at the time of separation.

In addition, if you suspect that your spouse has had or is having an affair, be sure to collect documentation that may evidence the affair. Such documentation can include:

- Detailed cell phone records
- Emails if they can be obtained from a family computer that is used by both spouses and does not require a password unknown to you
- Investigation from a private detective
- Journals, diaries, and daily planners
- Credit card statements

If the phone bill is not detailed, contact the provider and request detailed billing. Also, do not use computer spyware to intercept email messages or attempt to guess the password of a password protected account. This is illegal.

## **Don't Just Leave**

There are a couple of reasons that a spouse should not “just leave” the residence if the spouse decides a separation is in order. The first reason is abandonment. Abandonment is a form of marital misconduct and occurs when one spouse brings the marital cohabitation to an end without justification, without consent, and without the intention of renewing the marital relationship.<sup>1</sup>

In most cases, judges understand that in order for a couple to be separated, someone has to leave the residence; thus, the issue of abandonment is not typically that big of a deal. Usually, the only form of marital misconduct that will bar a dependent spouse from receiving alimony is adultery.<sup>2</sup> How abandonment will affect your particular case, however, depends on the facts specific to your situation, so consult with a lawyer before deciding to separate or move out.


In certain extreme cases, the court may find that one spouse abandoned the other spouse in such an egregious manner that the first spouse should not be entitled to spousal support. For example, in one case<sup>3</sup>, the wife told the husband she wanted to move to a new house, and the husband told her he did not want to move. One day when the husband was at work, the wife moved anyway. When the wife moved, she put the husband's clothes on the front porch and in the front yard of their son's house. The husband learned that the wife moved when his friend called him at work out of state. When the husband was finally able to speak with his wife, she told him that she decided to move, she found someone else, and she did not want him anymore. Given these facts, the court found abandonment and denied the wife postseparation support.

Another case<sup>4</sup> in which the court found abandonment involved the following facts. The husband and wife went to Hawaii for a family vacation, and the wife decided to stay three extra days even though the family was supposed to return to North Carolina together. After the

family was home for ten days, the wife decided she was going back to Hawaii and purchased tickets using the husband's credit card. The wife told the husband, "I do not know how long I will be gone. If you are here when I get back, that is OK. If you are not here when I get back, then that's OK." The wife

then spent two months in Hawaii, continued to use the husband's credit card and even bought a car. Under this set of circumstances, the court found that the wife abandoned the husband. When the court considered the wife's abandonment and the economic factors of the case, it determined that an award of alimony was not appropriate.

Another reason you shouldn't just leave the marital residence is that once you move out of the house, you might not be able to get back in. If you make the decision to move from the marital residence and actually leave the house with your things still in it, you cannot go back to the marital residence to retrieve your personal belongings without the permission of your spouse. If you return to the residence without your spouse's permission or refuse to leave after they ask you to do so, your spouse might call the police, and you might face charges of domestic criminal trespass.<sup>5</sup>



**Abandonment is a form of marital misconduct and occurs when one spouse brings the marital cohabitation to an end without justification, without consent, and without the intention of renewing the marital relationship.**

## You Don't Need Papers

As a family law practitioner, one of the questions I am most often asked is whether a person needs “papers” to be “legally separated.” Contrary to popular belief, in North Carolina, in order to be “legally separated” spouses simply need to live in separate residences with the intent of at least one of the spouses that the separation be permanent. There is no requirement that a document be signed that declares the spouses separated; however, living in separate rooms of the same house or even in separate sides of a duplex is not sufficient. The parties must live under separate roofs.

## Couples Counseling



*The “Couples Counseling” section is based on episode 7 of the podcast with marriage and family therapist Caroline Landen. Thank you to Caroline for sharing her wisdom and insight.*

Before you make the decision to separate, have you considered couple counseling? In a relationship that isn't going so great, four communication styles may suggest the couple is close to a breakup. In his book *Why Marriages Succeed or Fail*, John Gottman, PhD, calls these communication styles the four horsemen of the apocalypse.<sup>6</sup> These styles are criticism, contempt, defensiveness, and stonewalling. Having these communication styles doesn't necessarily mean the relationship is doomed; it is when these styles become