

Before You Go:
7 Steps Before
Moving Out of
the Marital Residence



*“Leaving the home is a huge step.
It requires careful analysis. Rational
thought, not emotional impulse, will
lead to the best plan.”*

Lee Rosen
President of Rosen Law Firm



“MY MARRIAGE IS OVER.”

These words are heard on telephones, in offices, and across restaurant tables every day. The speaker could be anyone from any walk of life, but one thing is universal to everyone faced with the end of a marriage: there are things that must be considered before moving out of the marital residence.

While each divorce case is different, and legal advice must be tailored to the individual’s circumstances, there are certain steps that are useful for anyone in this situation. The following steps will allow a “leaving spouse” to understand the many issues – legal, financial, and emotional – that arise from the decision to move out. Considering these issues will help leaving spouses make the best decisions possible for all concerned.



STEP 1: DON'T LEAVE UNLESS ABSOLUTELY NECESSARY.

Ending a marriage causes trauma that reverberates through the lives of every family member. It's even more traumatic when the decision to leave is a matter of safety, such as in the case of domestic violence. In those exceptionally dangerous situations, safety must be the highest priority and everything else a distant second. In other situations, though, the leaving spouse must recognize that moving out will increase stress on the whole family financially, legally, and emotionally.

INCREASED FINANCIAL STRESS

Living together as a nuclear family – husband, wife, and children – is a remarkably efficient financial arrangement. Adults and children live under one roof and pool resources to provide the basic necessities of food and shelter, as well as luxuries like cable television, high-speed internet access, and private school tuition. For example, while there may be five televisions and three computers in one family's house, they all can share one internet and cable connection.

Once a spouse leaves the home, many of these efficiencies are lost. Two mortgages, two electricity bills, and two grocery bills appear where there had been only one. In families with children, moving out also means increased transportation costs and furnishing double the number of children's bedrooms, toys and supplies. Expenses increase dramatically while income remains the same; it can easily double the total cost of living, while the *standard* of living stays the same or diminishes.



INCREASED LEGAL STRESS

Moving out also creates a cascade of legal issues that can be lessened or avoided by staying in the residence. First, leaving the marital residence might be construed as “abandonment” of the other spouse, under the North Carolina General Statutes. Abandonment is marital misconduct and can have an adverse effect on the amount of spousal support (alimony) that is paid or received. Second, moving out instantly makes custody a pressing issue to be resolved.

Frequently, the first custody arrangement created becomes the status quo and can greatly impact the eventual permanent custody arrangement. The date a spouse moves out will likely be considered the date of separation of the parties. This innocuous-sounding term is actually an important legal conclusion that can significantly affect the value of marital assets and debts when the time comes to divide property. By remaining in the residence until all issues of alimony, custody, and property division have been resolved, one can avoid or minimize the potential legal fallout caused by moving out.



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INCREASED EMOTIONAL STRESS

Once someone has decided to end his or her marriage, it becomes very stressful to interact with the other spouse, and even if they try to avoid each other and sleep apart, interactions that occur throughout the day are rife with conflict. But it's a common misconception that moving out will lessen the emotional strain felt by the spouses. They may imagine that if they lived in different homes, some of the conflict would subside. The reality, however, is that the conflict and hostility is usually increased because of the impact that moving out has on financial and legal issues. Because money, parenting and property division become hot button issues that demand immediate resolution, moving out can create a raft of new problems rather than abate the conflict.

The bottom line is that leaving doesn't make it easier; it just makes it different.

STEP 2: FIGURE OUT THE FINANCES.

The leaving spouse must fully understand the family's financial situation before moving out. This means assessing income, documenting income, and creating a budget.

ASSESS INCOME

The first step is to assess the total amount of income of the spouses. If one or both people work at salaried positions, this is fairly straightforward. Assessing income can be more challenging, however, if the other spouse is self-employed without a set monthly income. Income from sources other than employment, such as trust funds, retirement accounts, government benefits, and royalties should also be assessed.

For several aspects of a divorce, including child support and alimony, it's imperative to know the income each spouse receives. Since it's easier to access the documents and income sources while both spouses still live together, this should be done thoroughly and without delay.

DOCUMENT INCOME

The leaving spouse should also gather income documentation. For salaried employees, this means photocopying pay stubs and tax returns. For the self-employed spouse, it includes additional documents such as bank account and credit card statements, business records, and loan applications. Determining the income of a self-employed person is not always simple, but having access to the appropriate documents can make it much easier. Once a spouse moves out, gaining access to those documents can diminish or even disappear.



CREATE A BUDGET

After income has been assessed and documented, the final step in figuring out the financial situation involves creating a budget. The budget should detail the income and expenses of the leaving spouse after he or she moves out. The same painstaking detail used in documenting income should be applied here in gathering bills, financial statements, and other documents that show the family's expenses. This budget can be critically important in determining how much alimony will eventually be paid or received. The laborious work of creating a thorough budget is well worth the effort, and proving the accuracy of the budget with documents is even more valuable in terms of preventing further conflict.

STEP 3: PREPARE FOR PARENTING APART.



As much as moving out affects each spouse, it has an even greater effect on the children. Frequently left in the dark until the last possible moment, children in these situations may wake up one morning to find that they are packing their things and moving to a new home they've never seen, causing them great distress and worry. The leaving parent needs to comfort the children in this transition, as well as prepare them for a possible battle over custody.

HELP THE CHILDREN COPE

The top parenting priority for the leaving spouse is to minimize the stress put on the children during the transition. There is no single right way to minimize the children's stress. However, it will depend on the age and maturity of the children, their relationship with their parents, and their temperament and coping skills. It's also beneficial to enlist the help of a mental health professional and a lawyer to make the transition as smooth as possible for the children, while not compromising any important legal issues which could only cause future conflict.

KEEP A PARENTING JOURNAL AND CALENDAR

In many divorces, the fight over custody is the most contentious part of it. Emotions are raw where children are concerned, and these raw emotions can cause disruptive and destructive behavior from one or both spouses toward the other. Because there are often few documents and verifiable facts with respect to custody, an expensive and hurtful battle of "he said, she said" can ensue.

Therefore, the leaving spouse should keep a parenting journal and calendar from the day he or she moves out. The calendar should detail where the children spend each overnight, including special trips, events, and vacations – with no editorializing. The journal should contain greater detail of significant events and behaviors, particularly any destructive behavior on the part of the other spouse involving parenting issues. A calendar and journal will provide details that might otherwise be forgotten and will present an accurate, real-time depiction of how the custody situation has been handled. This can be very useful information in negotiating custody arrangements or, if necessary, making a case before a judge.

SET THE RIGHT CUSTODY SCHEDULE IMMEDIATELY

It's important to enter into a desirable custody schedule as soon as possible after moving out. The initial schedule that a family follows can quickly become the "status quo." Once it does, unless it can be shown to be disadvantageous to the best interests of the children, it can be difficult to alter -- even in a custody trial at court. Because the children of divorce endure enough unavoidable turmoil, many Judges will leave the "status quo" custody schedule in place to create stability if the schedule works reasonably well. Of course, there are times when spouses negotiate or Judges rule that the status quo custody schedule should change, but that requires fighting uphill rather than on a level field. Entering into a custody schedule that is undesirable long-term is simply setting the family up for more problems.

STEP 4: ITEMIZE THE PROPERTY AND THE DEBT.

When it's time to divide the property, having an accurate list of assets and debts, along with the documents that support the list, will be indispensable. There are ways a lawyer can gather this information after the leaving spouse has moved out, but it's slower, more expensive, and less reliable than gathering the information before leaving.

ASSETS

The leaving spouse should itemize all of the assets on a spreadsheet, detailing the date the asset was purchased, the purchase price, and the estimated current value. For some assets, such as the home, this is fairly straightforward, while other assets will be more difficult to assess. It's unlikely that most people have kept records of the purchase date and price of every piece of furniture, collectible, and other home furnishing they own. It's important to make as complete an itemization as possible, however, remembering to also check the contents of any self-storage facilities or safety deposit boxes.

FOUR CATEGORIES OF ASSETS TO CONSIDER:

- Marital residence and other real estate.
- Intangible assets, such as financial and retirement accounts, stocks, bonds, etc.
- Business interests.
- Physical assets, such as furniture, artwork, vehicles, etc.

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DEBTS

The leaving spouse should also itemize debts on the spreadsheet, detailing the amount of principal owed, interest rate, creditor, and account numbers.

FIVE CATEGORIES OF DEBTS TO CONSIDER:

- Mortgages, equity loans and other debts secured by real estate.
- Auto loans and other debts secured by physical assets.
- Credit cards, including store-specific cards and gas cards.
- Student loans.
- Tax liabilities.



RECORDS

The leaving spouse should not only itemize the assets and debts, but also photocopy as many supporting records and documents as possible.

SOME OF THE RECORDS AND DOCUMENTS TO PHOTOCOPY:

- Tax returns.
- Pay stubs.
- Statements for all financial and retirement accounts.
- Statements for all loans and credit cards.
- Vehicle titles.
- Photographs of physical assets, such as china, crystal, artwork, furniture, computers, etc.

This can be a daunting task, but time spent photocopying supporting records and creating a thorough itemization will be a tremendous advantage. It's common for the leaving spouse to have limited access to the marital residence and its contents after moving out, which allows assets to disappear or be damaged. The itemization will also prevent additional unscrupulous and unethical behavior on the part of the other spouse, and it will save money by reducing the work to be done by a lawyer who bills for his or her time.

STEP 5: MARSHAL RESOURCES.

In the first days after moving out, it can be difficult to negotiate with the other spouse about anything. Feelings are hurt, and the likelihood of concessions is slim. The leaving spouse must gather all possible resources before leaving in order to avoid being at a disadvantage.

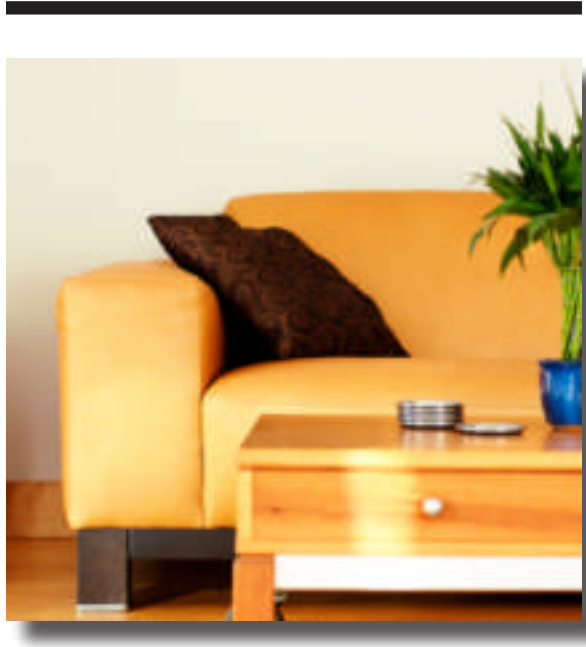
The primary resource, of course, is money. Divorces are expensive, and running low on money can put the leaving spouse at a strategic disadvantage, forcing him or her to make poor decisions. If the leaving spouse is the primary wage earner in the family, this is less likely. The wage earner controls where future paychecks are deposited and can manage cash flow easily. If the leaving spouse does not work outside the home, however, the logistics of amassing enough money to survive can be challenging – particularly if he or she is bringing the children along.

Bear in mind that the goal of marshaling resources should be to create and maintain a level playing field with the other spouse, not to leave him or her bereft. Judges take a dim view of a leaving spouse departing with more than a fair share of the furniture and available cash and credit. Decisions about what and how much to take can have dire legal consequences and should not be undertaken lightly. It's best to talk to an attorney to avoid making any damaging decisions.

SOME RESOURCES TO BE MARSHALED ARE:

- Earnings from paid employment.
- Furniture and children's toys and equipment.
- Available cash and liquid financial assets.
- Credit cards and lines of credit.





Even for someone with lots of disposable income, leaving the marital residence is not the time to increase one's standard of living. The leaving spouse should not make major purchases on expensive furniture, vacations, or vehicles. He or she should spend what is necessary and no more. Divorce puts a financial strain on everyone, and resources are best managed conservatively.

STEP 6: DON'T DATE!

This step is simple to follow, yet frequently ignored. The leaving spouse should not engage in any dating activities before moving out. There are a multitude of legal reasons for this, all of which should be discussed with an attorney. There are, however, three particularly critical problems associated with dating too soon: First, dating before moving out can have a profound negative impact on the alimony that is received or paid. Second, in some circumstances, dating can lead to a lawsuit (called Alienation of Affection and Criminal Conversation) by third parties seeking money damages. Third, adultery is still a criminal act in North Carolina, and while it's rarely prosecuted, it's not worth taking the chance.

STEP 7: ASSEMBLE THE TEAM.



After the leaving spouse has moved out, the situation can rapidly become stressful and difficult, so a leaving spouse will need trusted advisors to help him or her make the best decisions possible. The first advisor to consult is a divorce lawyer, preferably one who limits his or her entire practice to divorce law. An attorney can assist in creating a strategy and help add other advisors to the team. It's frequently desirable to have a mental health provider, and some law firms even have Life Transition Coaches on staff to help with emotional issues. In some instances, it may also be appropriate to hire a private investigator or an accountant. A knowledgeable divorce lawyer can help the leaving spouse decide which of these team members are needed and help choose the right ones for the particular situation.

CONCLUSION

Moving out of the marital residence is an important decision and should not be taken lightly or without preparation. The leaving spouse must understand the relevant issues involved in deciding to move out and make the best possible decisions. Above all, the key is to prepare, as noted in the Eastern proverb:

“Success depends upon previous preparation, and without such preparation there is sure to be failure.”



FURTHER READING



Alan Feigenbaum et al., *The Complete Guide to Protecting Your Financial Security When Getting a Divorce* (2004)

Brette McWhorter Sember, *The Divorce Organizer and Planner* (2004)

Diana Mercer and Marsha Kline Pruitt, *Your Divorce Advisor* (2001)

Gayle Rosenwald Smith, *Divorce and Money: Everything You Need to Know* (2004)

Nicholas Long and Rex L. Forehand, *Making Divorce Easier on Your Child: 50 Effective Ways to Help Children Adjust* (2002)

Risa J. Garon and Children of Separation and Divorce, Inc. *Talking to Your Children About Separation and Divorce: A Handbook for Parents* (1999)

Sam Marguiles, *Getting Divorced Without Ruining Your Life: A Reasoned, Practical Guide to the Legal, Emotional and Financial Ins and Outs of Negotiating a Divorce Settlement* (2001)

Violet Woodhouse and Dale Fetherling, *Divorce & Money: How to Make the Best Financial Decisions During Divorce* (2006)



ABOUT THIS BOOK

Rosen Law Firm helps divorcing families successfully navigate one of life's most difficult chapters. All too often, the divorce process becomes confrontational, chaotic, and vindictive. Rosen Law Firm offers a structured approach that leads to certainty and finality. With our guidance, clients find the divorce process to be a time of reflection and goal-setting which allows them to learn and grow. Clients emerge from their inevitable sense of loss feeling confident they will find a fresh start while transitioning into a new phase of their lives.

Rosen Law Firm focuses on serving our clients' needs in a number of ways. Our multidisciplinary team combines its unique skills to provide a level of service that is almost impossible for any single professional to achieve. Our team is trained in and uses a variety of approaches for ending a marriage, including collaborative divorce, mediation, lawyer-led negotiation, and litigation in court when appropriate. This range of options allows our clients to choose the path to resolution that works best for their family's specific situation. The experience of divorce is frequently painful, discouraging, and filled with hostility. These feelings can be destructive to ongoing relationships between parents and their children. Recognizing this, we inspire our clients through our belief that divorce doesn't need to be a terrible experience. We provide hope as we work toward resolutions that maintain ties and dignity.

For its success in satisfying clients, even in the midst of divorce, Rosen Law Firm was awarded Metro Magazine's BEST DIVORCE LAW FIRM. Our focus on client service has also helped our firm grow into the largest of its kind in the state. Rosen Law Firm clients are regularly surveyed to ensure that our high standards of service are maintained and to determine what else we might do to improve. We are extremely proud of the trust placed in us by our clients, who regularly say they would refer us to a friend or family member.

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