



How To Settle Your Divorce The Right Way



SUBMITTED BY: JAY TURNBACH,
PARTNER WITH THE FIRM OF
HORN, TURNBACH & RYBAR, LLC

There are approximately 33,000 divorces a year in New Jersey. Of those cases, there are about 350 divorce trials each year. What does that mean to the divorcing spouse?

It means that the overwhelming likelihood is that your case, too, will settle without the need for a divorce trial. What does that mean for divorce attorneys? It means that the vast majority of them did not participate in even a single divorce trial last year. Ironically, every divorce attorney in New Jersey was paid to prepare those very same cases for trial, despite the fact that so few ever got there.

Knowing these things, the only reasonable course of action is to pursue a strategy designed to foster settlement without committing too many resources to preparing for a trial which is statistically unlikely to ever take place. With that in mind, here are some tips to working toward settlement of your divorce.

Use Your Attorney Wisely:

Attorneys provide both advice and advocacy. For settlement purposes, first and foremost, it's the advice you want. Work with your attorney to understand the options available in settling your case. Understand both your entitlements and your obligations. Then, tell the attorney your thoughts on settlement and ask "Am I being reasonable?" If the answer is "yes",

you are on the right track. If the answer is "no", reevaluate before you present your position to your spouse. If the answer is, "it depends upon certain information presently unknown to the lawyer," then work tirelessly to provide the lawyer that information and start with the question on reasonableness again. As for the advocacy, once you know what you want, and you have a well-founded belief that it is reasonable, have your attorney begin to advocate for it on your behalf.

Keep the Mental Edge in the Negotiations:

Don't start negotiating figures with your spouse until you understand your position. Your lawyer can help you learn about your obligations and entitlements. Once you make a declaration from which there is "no return," such as "I'm not accepting a penny less than X" or "my attorney says you need to pay me Y" or "I'm taking 'such and such'," you foreclose possible settlement avenues which don't involve X, Y or such and such. You may find that the embarrassment of having taken that position, or worse, having a judge intimate on the record that your position is unreasonable, completely destroys your ability to effectively participate in future negotiations. Here, the maxim "pride goeth before the fall" comes to mind. Instead, remain open minded and flexible in listening to and in evaluating options. Your attorney can help you reduce all economic proposals to comparable values so you can make an informed judgment. With considerations of taxes, the time value of money, the costs of litigation, the relative economic risks in the ownership of real estate, reliability of alimony payments, the dangers of pension deferrals and various other considerations in divorce settlements, exploring options beats ignoring options every time. Negotiation ultimatums may have a place before trial, but that place is almost always as a last resort.

Understand Your Home Economics:

Many, many people enter divorce in a state of economic difficulty. Indeed, if your financial problems didn't lead to the divorce, it's likely that the fact of divorce led to financial difficulties. Do not make the mistake of comparing your marital lifestyle to the proposed divorce settlement unless you are confident that your economic situation is strong, secure and unaffected by the interpersonal problems you and your spouse are having. Otherwise, you will be expecting the settlement to provide you the very financial stability that you didn't have at the end of your marriage (which is, in most instances, an unreasonable expectation). Instead, take divorce as an opportunity to match your lifestyle with your means. This may be easier said than done, but if you can eliminate the stress that comes with an outsized lifestyle, you will start your post-divorce life in better stead. If you are expecting the impossible from your divorce settlement, it will be impossible to settle your divorce.

Focus on the most important elements of your lifestyle and be prepared to make compromises on the others. If staying in the same school system is important, but

that increases your housing costs, be prepared to sacrifice on your entertainment budget. If you prefer travel, be prepared to sacrifice on your monthly housing expense. If you prefer long term security, expect to pinch pennies early on in your post-divorce life. If you are entrepreneurial, you may prefer capital (an alimony buyout figure, perhaps) as opposed to alimony. If your career goals dictate education, be prepared to budget tuition and sacrifice home location, or other creature comforts. Above all, work with your attorney to understand the reasonable range of values cases similar to yours result in, and don't expect your attorney to work miracles.

Work with Your Attorney to Prepare for Settlement:

Provide requested information as soon as possible, evaluate the local housing market if your attorney suggests that keeping the house may be unreasonable, and consider both your short term and long term goals and prioritize them. Use the upheaval divorce brings to your life to make positive changes. If you are short on goals or aspirations, or the divorce has sapped your ability to dream, aim toward a foundation that will give you the

most flexibility. Consider living within your means, expanding your social circles, gaining job skills and experience, and getting in the habit of putting aside some savings, both by way of an emergency fund and in the form of long term retirement savings.

All settlements are compromises, and virtually all divorces end in settlement. For the best results, the compromises on your end should be in areas which have the smallest impact on your goals. The only way for this to happen is for you to have a post-divorce destination in mind and for you to share that destination with your attorney. In other words – plan to settle.

Jay Turnbach, partner with the firm of Horn, Turnbach & Rybar, LLC, has 15 years experience handling family law matters in Ocean and Monmouth Counties. He is certified by the Supreme Court of New Jersey as a Certified Matrimonial Law Attorney. He is qualified as a divorce mediator pursuant to Rule 1:40 of the New Jersey Rules of Court. He is the president of the Jersey Shore Collaborative Law Group, chairman of the Family Law Committee of the Ocean County Bar Association, and an adjunct lecturer at Ocean County College teaching family law.

JAY TURNBACH, ESQ HORN, TURNBACH, & RYBAR, LLC

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229 Washington Street
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