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Tips to Survive the Executive Divorce

FOR EXECUTIVES, A DIVORCE CAN BE PAINFUL IN MORE ways than one. Here are 10 tips — gained from years of experience in the family law trenches — that can make that process more efficient and effective.

Tip No. 1: Follow court orders. This simple act will set the case up for success. Conversely, failure to follow the court's orders can kill the case. Courts frown on obstructive and malicious behavior. This means that a spouse should timely pay child support, follow injunctions and obey various other orders of the court. An executive may not be used to following orders, but it can be disastrous to flout the judge's.

Tip No. 2: Business interests owned by the spouses can be divided in Texas. A bad valuation can jeopardize the executive's interest in the company. So, it is important to hire competent counsel — and forensic experts — to

begin the valuation process. Though an executive's staff can be helpful in this process, the testifying experts should

have experience in court proceedings. Ideally, the attorney should educate

the executive about the entire property division process and the principles that underlie division of assets in Texas.

Tip No. 3: Gather information and documents early in the process. This may be the most important part of a divorce. Knowledge of the facts is power in a divorce proceeding. Having key documents at hand makes the process more efficient for the attorney, which translates into lower cost for the executive. This also educates the attorney

quickly about the size and nature of an estate and any child-related claims. This rule may be even more important for the busy executive because of time efficiency.

Tip No. 4: Utilize restraining orders to prevent waste. Many spouses feel powerless to prevent the other spouse from engaging in harmful activities during a divorce. Injunctions are standard in divorce proceedings and they should be used to prevent excessive spending or wasting assets, to prevent harassment, to prevent a spouse from hiding the children and to set up expectations during the divorce. Many counties have standing injunctive

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orders that immediately apply when a spouse files for divorce.

Tip No. 5: Know thy separate property. Many times, a spouse will contemplate divorce for many years. That same spouse often works hard to protect property from creditors. Executives frequently utilize asset protection devices, such as trusts or business entities, to exempt their properties from people who might sue them. But when an executive puts his or her separate property into such a trust or business entity, that decision can have the opposite of the intended effect. Rather than protecting the exec's separate property from someone who might sue in the future, such a move could convert separate property to community property. Thus, the other spouse has gained a windfall interest when he or she never would have before, but for the asset-protection device. A good family attorney and forensic accountant can give invaluable advice to cut off this problem.

Tip No. 6: Hire a board-certified lawyer with sufficient staff and resources. A busy executive needs

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- Execs facing a split from a spouse can protect themselves in a divorce by following some basic rules.
- The tendency to give orders instead of following them can be disastrous if an exec defies a judge's order.
- Mismanagement of separate property can have devastating consequences.
- Restraining orders can prevent waste of the community-property assets.

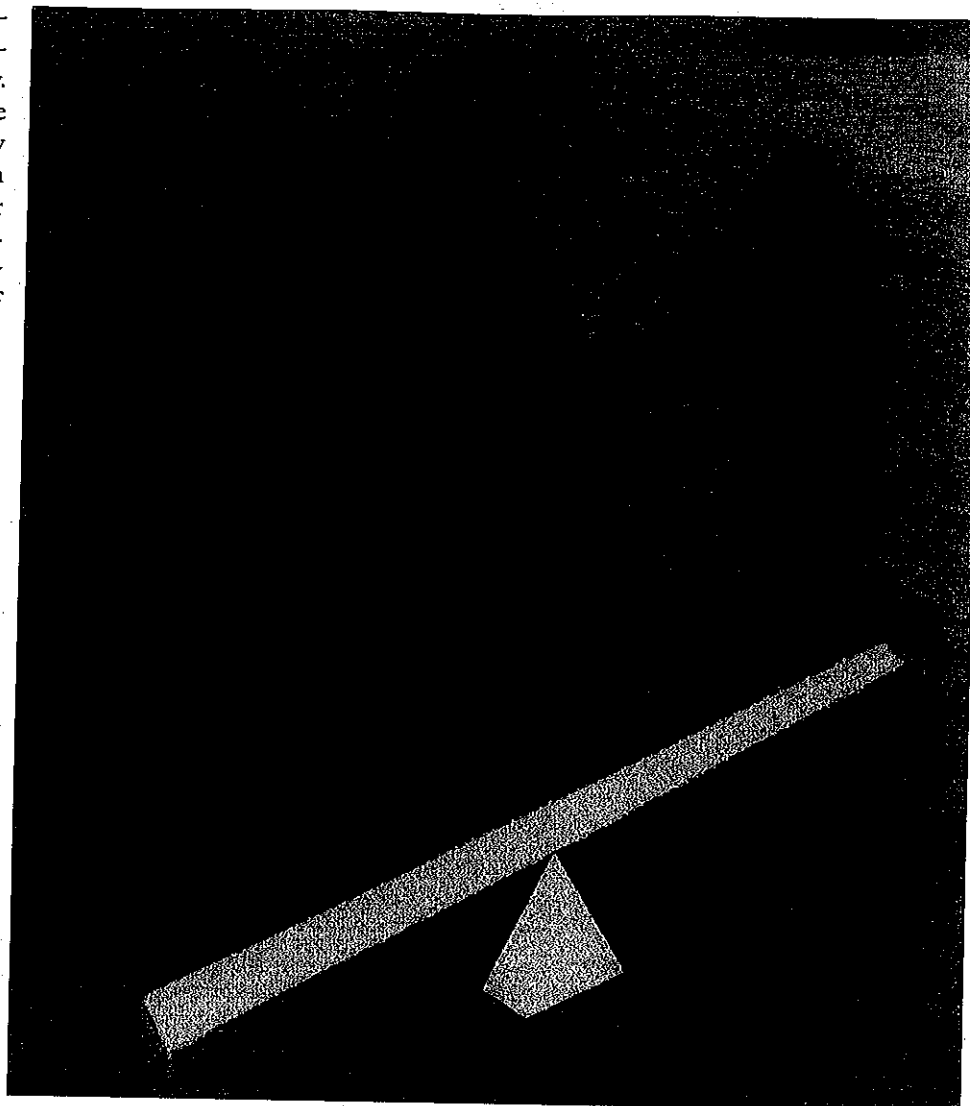
an excellent, experienced family law attorney. If the executive has a particularly large estate with arguments over separate or community property (or the value of the property), serious thought should go into hiring a good family law attorney with a reputation for a hard work ethic and great results. The same is true for a nasty custody battle. An executive wouldn't hire a cheap brain surgeon, so don't hire a cheap divorce lawyer.

Tip No. 7: Be clear about the objectives and then listen to the lawyer. Any person going through a stressful divorce will find it hard

to communicate. In divorce, the lawyer and client really should begin with the end in mind. With an ultimate goal in mind, the competent attorney can clarify if the goal is reasonable, the chances of success, the amount of work and fees it will take to achieve the goal, and the probable result if the case goes to a trial.

Tip No. 8: Fight the good fight, not the dumb fight. This is along the lines of Tip No. 7. Is the ultimate goal a reasonable goal with any chance of success? A good lawyer should give candid advice on the probability of success. When possible, a cost-benefit approach will help this appraisal. Conversely, always giving in to unreasonable demands is a terrible idea in a divorce. Appeasing unreasonable spouses is like feeding rats: They will always come back for more. Sometimes the bare-knuckles courtroom brawl is the best way to solve this problem.

Tip No. 9: Identify tax consequences on assets and fringe benefits. It used to be that known tax consequences could not be taken into consid-



eration when dividing assets in a divorce. Fortunately, the Texas Legislature recently changed that rule, and tax consequences are relevant. For instance, \$1 million in cash is not the same as \$1 million in a 401(k). Thus, they are no longer treated equally in a property division because of the tax consequences.

Tip No. 10: Set up a road map for the litigation. Every executive should have a solid strategic plan. In many ways, a divorce can have so many aspects that trying to manage it is like trying to manage a company. A good litigation plan will set clear goals. The litigation plan should address short-term goals (who gets to live in the house, how much money can I spend); final goals (preserving separate property, primary custody of kids, child support); and a post-divorce litigation plan, if relevant (how custody can later be changed, enforcing the divorce decree property division).

Though many other principles are in play during a divorce, follow these tips for a "successful" divorce.

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