

Divorce, what women need to know?

1. You have to understand your marriage regime, and if you don't, then find someone who can explain it properly to you. Are you married in or out of community of property? If you are married **in community of property**, you will by law be entitled to 50% of the communal estate and if you are married **out of community of property with the accrual system**, you are entitled to half of the difference of you and your spouse's accruals. If you are **married out of community of property without the accrual** prior to 1 November 1984, you will be entitled to ask for a redistribution of assets, which can entail that you may be able to claim 50% of the joint assets, but if you married **out of community of property without the accrual** after 1 November 1984 you will only have a claim for maintenance under certain circumstances.
2. You can under certain circumstances claim rehabilitative maintenance. Rehabilitative maintenance is where one spouse pays the other for a period of time, say for two years, so that the ex-spouse can study, for example, to get a job or search for employment. Rehabilitative maintenance can also be used in setting up house again, relocation costs, utility bills, etc.
3. Remember that you can lodge an application pending divorce to obtain maintenance while the divorce is in the process, you can also claim in such an application that your spouse makes a contribution to your legal expenses.
4. Obtain as much financial information on your spouse; make copies of all bank statements, credit card statements and the like as well as a schedule of all the assets and liabilities, sources of income etc.
5. Draft a detailed budget of your current monthly expenses and income. For you and your children. It may be worthwhile to cater for future expenses like. Secure the monthly maintenance with a cession of an insurance policy on your ex-spouses life in case he/she is disabled or dies.
6. Try to stay in the family house (if it's close to your school or work). There is a saying in our law, that possession is 9 tenths of the law. Remaining in the communal home will also stabilise the situation of the children, as it is proven the relocation can be a very traumatic experience for the children.
7. Remember that you shouldn't necessarily have to pay transfer duties for a property transferred to you during your divorce. You may have various options relating to the property that both of you own, for example by retaining it or selling it and divide the net profits.
8. See to it that your Divorce Settlement Agreement is drafted in such a way that that you can enforce a garnishing order on your ex-spouse's salary should he/she default on payments, in any event, non-payment of maintenance after divorce may result in a contempt of court application.
9. See to it that your Divorce Settlement Agreement is drafted to obtain a share of any assets that your spouse has hidden and what you are not aware of at the time of divorce in that event that you are married in community of property or out of community of property with the Accrual system.
10. Don't settle for less to get out, many women simply walk out due to the emotional pressure. Remember that divorce is always a business decision and the decisions that you make now will have an impact only years later in your life. Divorce is a legal process, it can be very frustrating and emotional draining that takes time and strategic planning. Don't change attorneys in the

process simply because of your own frustration, as they say, the battle of divorce is like a chess game.

11. Remember that your ex-spouse's assets also include shareholdings in companies, retirement funds, pension funds and even tax refunds.
12. Think with your head and not with your heart.
13. Remember to change your Will soon after the divorce.

For legal advice contact: info@divorceattorney.co.za

About the author:

Bertus Preller is a Divorce and Family Law Attorney in Cape Town and has more than 20 years experience in most sectors of the law and 13 years as a practicing attorney. He specializes in Family law and Divorce Law at Abrahams and Gross Attorneys Inc. in Cape Town. Bertus is also the Family Law expert on Health24.com and on the expert panel of Law24.com and is frequently quoted on Family Law issues in newspapers such as the Sunday Times and Business Times. His areas of expertise are Divorce Law, Family Law, Divorce Mediation, Parenting Plans, Parental Responsibilities and Rights, Custody (care and contact) of children, same sex marriages, unmarried father's rights, domestic violence matters, international divorce law, digital rights, media law and criminal law.