

# 7 THINGS NEWLY DIVORCED PEOPLE MUST DO

TO PROTECT ASSETS  
RECEIVED IN THEIR  
JUDGMENT



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## **Dedication**

This ebook is dedicated to helping newly divorced people collect, and protect, the assets received in their divorce.

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# About

## Mindy L. Hitchcock



Mindy L. Hitchcock is the founder of Lady4Justice PLLC, and a Michigan family law attorney with almost 30 years' experience, who is an expert in post-divorce issues. She knows all the pitfalls you face, and in this ebook she explains what you must do to protect the money and other assets you were awarded in your Judgment.

From protecting your social security benefits, securing property awards, getting your share of retirement benefits, and more, you will find it here. Learn the simple steps you *must* take now to protect your future, your assets, and your New Life.

**Knowledge is power.**



# 7 MUST-KNOW TIPS FOR THE NEWLY DIVORCED

1. First Things First.....4
2. Getting Your Name Changed.....6
3. File Your Liens to Protect Your Assets.....9
4. Get Your QDRO's Entered Now.....13
5. Get Your Will and Trust Revised.....18
6. Remove Your Ex From Retirement Accounts...21
7. Don't Remarry Too Soon.....24

# TIP 1

## First Things First



**Your divorce judgment** has been entered. It's finally over! Regardless of whether or not you wanted the divorce, no one enjoys the legal process involved. So there is a tendency to breath a sigh of relief, and want to put it all behind you. In many ways this is an excellent idea – after all, few very people you date will be interested in hearing about “What I Went Through in My Divorce.” Nevertheless, there are certain things you absolutely *must* do to protect your assets in your new life.

## 7 Things Newly Divorced People Must Do

Luckily, they're all pretty easy to do. So let's start at the beginning with some of the first steps you need to take, right after your Judgment is entered:

**Get certified copies of your Divorce Judgment.** The minute your divorce is entered, you should get at least 3 certified copies of your Judgment. But why? you ask. Isn't one enough? I can always make copies for anyone who needs one.

Yes, you can. But many institutions won't accept a copy. They want a certified copy, and will accept nothing else. For example, if you are getting your marital share of a defined benefit (pension) or defined contribution [401(k) or 403(b)] plan, many of the plan administrators will insist upon getting a certified copy. I'll talk more about getting your share of pensions and 401(k) plans later. For now, accept the fact that you are going to need them and save yourself a trip **back to the courthouse** later – the last place you want to go! Order copies from the court clerk the same day you get your Judgment. (**Note:** I said the court clerk, *not* the judge's clerk.)

You can also ask your lawyer to order the certified copies for you. Depending on the length of your Judgment, the cost is usually no more than \$50 per each. Later, you can thank yourself for being so smart and planning ahead.

# TIP 2

## Getting Your Name Changed



Many women want to change their name after a divorce. It's natural. After all, it is a symbolic declaration that you are no longer joined to the man you just divorced. Still, after years of hearing horror stories about the difficulties of implementing a name change, I always ask my

## 7 Things Newly Divorced People Must Do

clients to consider carefully if it is worth the trouble. And it will be trouble, I can guarantee you that. Many woman also decide to keep their married name, so that their name is not different from that of their children. My advice is always that, unless you have a strong reason to change it, the easiest thing to do is keep your name as it is.

That said, if you do decide to change your name, here is a little-known fact: In a divorce, you can legally change your name to *anything* you want it to be.\* You aren't stuck with simply restoring your maiden name. I've had clients who wanted to change their name to reflect their spiritual orientation, or cultural heritage. I even had a client who got married on Martin Luther King day, and her initials after marriage were KKK. Needless to say, she wanted to start fresh with a new name! So long as you are not doing it for any wrongful purpose, your options are wide open. So think carefully about the name you want, because in a divorce, you essentially get a free name change. (Otherwise, you would have to file a completely separate case to get a name change.) Make the most of it!

**\*MCLA 552.391: The circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her birth name, or the surname she legally bore prior to her marriage to the husband in the divorce action, or allow her to adopt another surname if the change is not sought with any fraudulent or evil intent.**



## 7 Things Newly Divorced People Must Do

**What if I'm told I can't change my name?** Not everyone has a problem with getting their name changed, but if they do, it is usually from the Secretary of State, or the Social Security Administration. I always tell my clients to stand firm, with their signed judgment in hand, and *insist*. If all else fails, ask the Secretary of State employee their name and tell them that your lawyer will have to subpoena them into court to explain to the judge why they refuse to obey his or her order. (*Note:* Quoting the above statute may help.) Federal employees cannot be subpoenaed into court, but there is a ruling that *requires* them to accept the name change. If you're having problems with Social Security, contact my office and we will email you a copy. You want to get this straight now, so you'll have no problem later when you file to **collect Social Security benefits on your ex's record.**



# TIP 3

## File A Lien To Protect Your Assets!



**A few years ago,** I represented a client, post-divorce, who had been married to a man who owned a very successful company. Her divorce lawyers were a local law firm claiming to specialize in representing women, and she was awarded a settlement of more than a million dollars. She paid them over \$100,000 for their services. When the case was over, they sent her a fancy, long letter with their good wishes and a list of things to do after the divorce. But one thing they forgot to tell her to do was to

## 7 Things Newly Divorced People Must Do

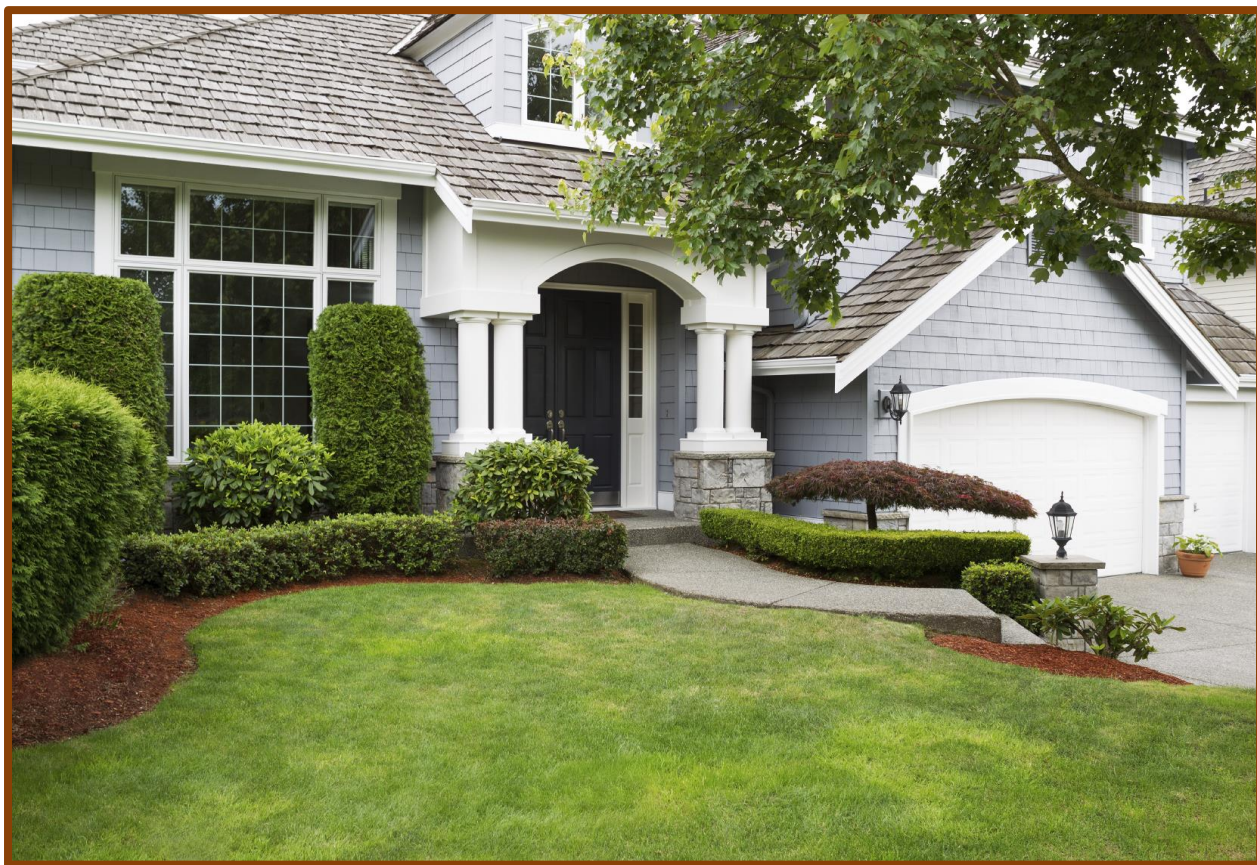
**make the liens effective** by filing a certified copy of the Judgment at the Register of Deeds for each piece of property in which she had been granted a lien.\* As a result, the ex-husband began selling off the properties to buyers who had no idea there was a lien on the property (such buyers are called "bona fide purchasers for value without notice"), and she was unprotected. Under Michigan law, these buyers would be entitled to keep the property, because they had paid for it and did not know there was a lien on the property. To say the least, this was very irresponsible of her high-paid lawyers, because she almost lost her entire property settlement due to their neglect. She assumed she was protected because it was in the judgment. Not to mention they actually sent her a letter listing things she needed to do after divorce, and **left this crucial detail out!** This understandably reinforced her belief that there was nothing else she had to do.

My client watched the properties online and tried to intervene when her ex sold the properties. He refused to give her the proceeds, claiming he owed his parents money. Fortunately, I was able to get her the money he owed her by filing a show cause against him, compelling him to pay her or

**\*In divorce judgments, parties who are awarded property are generally granted a lien on their spouse's assets to secure the award. But unless the lien is "perfected" by filing them at the Register of Deeds, it is not effective because others do not know it exists.**

## 7 Things Newly Divorced People Must Do

go to jail until he did. It worked, at the cost of additional attorney fees and stress. But such dramatic relief is unnecessary when you **file a certified copy of the judgment with the Register of Deeds for each and every piece of property in which you have a lien.** That's all you need to do. It's so simple. In this case, an ounce of prevention is truly worth a pound of cure.



**Liens to secure your interest in the marital home.** Sometimes, it is only the marital home that is involved. For example, if your husband wants to keep the marital home and there is equity in the home, then he must pay you your share.



## 7 Things Newly Divorced People Must Do

Your share is one/half the net equity (*"net equity"* is the value of the home minus the mortgage). If he needs to refinance to do this, a provision is put into the judgment securing your interest with a lien. **This should also be "perfected" by filing a copy of the judgment with the Register of Deeds.** That way, you can be sure that whenever he refinances you will get your share, because the mortgage company is legally responsible to make sure all known liens are honored.

The problem described in this chapter highlights a danger that every divorced spouse faces, once a case is over: It's not really over, since their property rights have been granted but not secured, and they probably don't realize it. And at this point, you're on your own, since **YOUR LAWYER IS RELIEVED FROM FURTHER OBLIGATION IN YOUR CASE ONCE THE JUDGMENT HAS BEEN ENTERED**, unless you retain them to continue. Thus, any loose ends, such as filing a lien to protect your interests, getting qualified domestic relations orders (QDRO's) implemented, and so forth, become your responsibility. Most people don't realize this, and so they lose. But you have solved that problem by reading this book. (And, of course, acting on it.) Knowing, you may decide to do it yourself, or you may choose to hire a lawyer to do it for you. The peace of mind is well worth it.



# Tip 4

## Get Your QDRO's Prepared Now!



There is an old legal maxim, "Those who sleep on their rights shall lose them." Or in the modern vernacular, "You snooze, you lose." That is particularly true when it comes to a spouse's right to receive pension or other retirement benefits, post-divorce. Fortunately, it isn't common. But when it happens, it is too late to do anything. So be forewarned.

## 7 Things Newly Divorced People Must Do

**“QDRO”** is an acronym for “qualified domestic relations order.” These are orders involving retirement accounts that are covered by the Employee Retirement Income Security Act of 1974 (ERISA). They are used in a divorce to disburse half the **marital portion** of retirement benefits to the other spouse - either **defined benefit** plans, which are pensions, or **defined contribution** plans, such as a 401(k) or 403(b). (The *“marital portion”* is the amount that was contributed from date of marriage to date of divorce.) Personally, if I were going to get half of someone's pension or 401(k) simply by getting an order entered, I'd be the first to go to the QDRO preparer and make sure it got done. It's already been earned, so make sure you receive your share.

Don't let  
money  
that  
has  
already  
been  
earned  
slip  
through  
your  
fingers!

## 7 Things Newly Divorced People Must Do

Inexplicably, some people wait to get their QDRO's entered. Not days, or months, but *years*. Some actually wait *ten years* or more. And that's where they run into trouble. Because there is a statute aimed at dealing with such procrastinators - not only in divorce, but for any judgment - which says that **a judgment is unenforceable after 10 years**. The statute is MCL 600.5809(3), which states that "the period of limitations is 10 years for an action founded upon a judgment or decree rendered in a court of record in this state."

This is known as a "**statute of limitation**," and there are statutes of limitation for contracts, tort claims, and adultery, among other things (the statute of limitations for adultery is only one year, by the way). Although it may seem unfair to the person trying to make a tardy claim, the point is that if someone has a claim, they need to act on it within a certain amount of time. The policy behind statutes of limitation is to promote the prompt resolution of claims, and penalize lazy claimants. Life is uncertain enough. People are entitled to feel secure in their life, that something they did in their 20's can't come back to haunt them in their 60's.

In one post-divorce case I had, a former spouse tried to get a QDRO entered, ten years after the divorce. I filed a response, citing the statute of limitations, and her motion was denied. She lost all of her benefits. In another case, a claimant came after 14 years, trying to enter a QDRO. I asked

## 7 Things Newly Divorced People Must Do

her lawyer, why did she wait so long? He said it was because her ex-husband (my client) refused to pay his half (\$250) of the QDRO fee, and she didn't want to pay it. So, to avoid paying \$250, she did nothing for 14 years, when thousands of dollars in pension benefits were at stake!

Don't let this be you. If you are awarded pension or other retirement benefits in a divorce that require a QDRO, act on it immediately! If your spouse doesn't pay his share and you are the one who is going to benefit, then pay it all. It's really not that much compared with what you will gain. Often people don't realize that some QDRO's can take a year or more to be entered and approved by



**Don't pass up once-in-a-lifetime benefits you are entitled to receive!**

## 7 Things Newly Divorced People Must Do

the Plan administrator. Don't be penny wise and pound foolish. Get it done today, and forget about the minimal cost you pay. The benefits you enjoy, often later in life when you most need them, will be well worth it. And remember: **If you lose it, your spouse gets to keep it all.** You will be regretting that loss for years to come.

**The Moral of the Story:**

**Don't let a few hundred dollars keep you from thousands. Act now!**



# Tip 5

## Get Your Will and Trust Revised



**It might seem redundant.** After all, didn't your Judgment specifically include language very similar to the following:

## 7 Things Newly Divorced People Must Do

**"IT IS ORDERED** that, pursuant to Section 2807(I) of the Estates and Protected Individuals Code, being Section 700.2807(I) of the Michigan Compiled Laws, any disposition or appointment of property made by either party to the other in a will or other "governing instrument" (as that term is defined in MCL 700.2806(d)), any disposition or appointment created by law or in a governing instrument to a "relative of the divorced individual's former spouse" (as that term is defined in MCL 700,2806(e)), any provision in a governing instrument conferring a general or non-general power of appointment on the other or on a relative of the divorced individual's former spouse, and any nomination in a governing instrument, nominating the other or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, trustee, conservator, agent, or guardian, is hereby revoked."

Well, of course it did! (Or should have.) The point is, you don't want your loved ones to have to dig up your judgment to prove to a probate judge or other official that the only Will you left is invalid, after your death. And if you left everything to your ex-spouse, you certainly don't want that Will to be enforced! Nor do you want to leave your loved ones hanging, dealing with an "intestate" (no Will) estate in probate court at the very moment when they are grieving your loss.

If you have a Living Trust, which is an excellent document designed to keep your estate completely out of probate court,

## 7 Things Newly Divorced People Must Do

it probably names your ex-spouse as co-Trustee, and says that the entire estate goes to him or her upon your death, and then to your beneficiaries. Naturally that isn't the disposition you want now. But if that is the only Trust you have, then your children or other beneficiaries will once again have to go to probate court to prove that your current Trust has been revoked, and deal with your intestate estate. In probate court, not only will they have to pay attorney fees and court costs, but the estate is also taxed based upon its value when the inventory is filed.

So **now is the time**, when you are just divorced, to get that new Trust prepared so your wishes will be honored, and your estate kept out of probate court after your death. Here I will make a shameless plug for Lady4Justice, where we specialize in preparing Wills and Living Trusts to protect your assets after divorce.

But no matter how you decide to do it, my final point is to do it now! Life goes on, people get busy, and before you know it, you have forgotten this essential point and your loved ones end up in an expensive mess. Which is NOT what you want for them.

# Tip 6

## Remove Your Ex from Your Retirement Accounts



Here is another thing you may remember from your divorce judgment:

## 7 Things Newly Divorced People Must Do

**“WARNING:** Retirement benefits, including but not limited to, qualified stock bonus, pension and profit sharing plans (including both defined benefit and defined contribution plans), 401K plans, and employee stock ownership plans (ESOP), as well as various life insurance policies provided by your employer, may be covered by the provisions of the Employee Retirement Income Security Act of 1974, commonly known as "ERISA." ERISA is a federal statute which preempts the provisions of this judgment. Accordingly, the terms of this judgment do NOT automatically change the beneficiary designations or alternate payee designations as to any such employer provided retirement benefits or life insurance. Therefore, regardless of the terms of this divorce, you **MUST** execute a proper change of beneficiary form with the administrator of the retirement benefits or the insurance policy to effectively remove your former spouse as a beneficiary or alternate payee consistent with the terms of this judgment. By the terms of this judgment, your divorce attorney's obligation for you terminates upon entry of the judgment. **Therefore, it is YOUR responsibility, and not your attorney's, to ensure that all such change of beneficiary or alternate payee forms are properly executed and submitted to the administrator of the retirement benefits or life insurance policy, Your failure to do so may result in the proceeds being paid to your former spouse upon your death.**”

There is a conflict between Michigan law and federal law on the question of retirement benefits. Michigan law says that a divorce judgment which revokes the other spouse's rights to receive retirement benefits is enough to



## 7 Things Newly Divorced People Must Do



**Unless you want to leave your former spouse a windfall when you die, be sure to remove her name from your retirement accounts.**

prevent them from later receiving any benefits from their ex-spouse's accounts. But Federal law says that ERISA controls, and so unless the participant (the spouse whose name is on the retirement account) specifically removes their ex-spouse's name as a beneficiary, the ex-spouse will get the proceeds when the participant dies.

Divorce cases are filed in state court. And Michigan courts follow state law unless a federal issue is involved. That should be enough to put your mind at ease, right? Well, maybe.

Nevertheless, unless you just want to take chances and hope that 1) the law won't change, 2) the employer won't go by ERISA anyway, and 3) if challenged, the state law judge deciding the case will follow Michigan law, I suggest that you take the time now to remove your ex-spouse's name from ALL of your retirement accounts. It's the only way you can really be sure.

# Tip 7

## Don't Remarry Too Soon!



Love is a wonderful thing, and even though their hopes for a happy marriage didn't work out the first time, many people are eager to try again. I always urge

## 7 Things Newly Divorced People Must Do

my clients to wait awhile before taking the plunge again. It is important to take time to heal, and learn the lessons you need to learn, to increase your chances of success in your next relationship. For example, when I first got divorced, I was sure that everything that went wrong was my husband's fault. As time went on, however, I began to see in my quiet reflection how I had participated in the breakdown of our relationship. I began to see that it takes two to make or break a marriage. That was a very powerful realization, because if it is all our spouse's fault, we are just a victim and there is nothing we can do. But if we acknowledge that we are also responsible, we *can* do something about that. We can change, or adjust our behavior to get a more satisfying result.

Despite my words of wisdom about waiting, some people do choose to marry again very quickly. There are many reasons for this. Some people may need the second income. Others may not be able to deal with being alone. Still others may fall madly in love. I remember doing a divorce for a client after a 30 year marriage. She confided to me that she felt she would never find love again. I encouraged her not to feel this way, reminding her that there is plenty of love in the world.

About a month later she wrote to me, ecstatic because she had met a gentleman from Venezuela. He was a kind, caring man, who told her she was beautiful and wanted her to

## **7 Things Newly Divorced People Must Do**

come and visit him in Venezuela. I was very happy for her, and encouraged her to enjoy the experience. A short time later, she wrote to tell me that she had married him. Concerned, I responded, "I said enjoy the experience, not marry the man!"

About a year later, my client wrote me again - this time to initiate divorce proceedings. It turned out that the man she had married was gay, and married her to get into the country. Once here, he brought his lover over, and they basically disappeared.

Another client I represented began taking medicine that greatly increased his libido. He began corresponding with a beautiful young Russian woman he met online, who claimed that she loved him. He went to Russia to visit her, where she convinced him to buy her a laptop, expensive coats, and other things most poor Russian girls don't have. As the divorce case went on, he was in such a rush to get to his new love that he agreed to almost everything his wife wanted, against my strong advice. All he cared about was getting his freedom, so that he could marry the ravishing brunette who was madly in love with him.

Divorce judgment in hand and considerably poorer, my client flew back to Russia to bring home his new bride. Much to his dismay, she seemed to have lost all interest in him, and his plans to live on love evaporated.

## 7 Things Newly Divorced People Must Do

**Moral of the stories:** If it's worth having, it's worth waiting for! A bit more time, and my clients would have known where these adoring new lovers were really coming from.

There are too many scammers out there these days, and some are very good at what they do. After divorce, a person can be hurting and vulnerable. The perfect target for someone with bad intentions.

Nevertheless, we are all adults, and we are going to do what we want. Consequently, if you are recently divorced with significant assets and meet that special someone you want to spend the rest of your life with, here is my next piece of advice: **Get a prenup!**

At Lady4Justice, we specialize in prenuptial agreements that will protect you from someone who loves your money more than you. Properly prepared and executed, prenups are an iron-clad insurance policy against conniving scoundrels!

The last thing anyone who has gone through a divorce needs is to be fooled by someone who only wants to get their hands on your money. Be kind to yourself. Look after your own feelings as zealously as you would look out for the well-being of your loved ones. This is a time when you need extra protection.



## 7 Things Newly Divorced People Must Do



# BEST ADVICE ON FINDING NEW LOVE:

✓ **Take Your Time:** Rome wasn't built in a day, and new relationships that are worth having don't happen overnight. Take time to find yourself again, to heal and learn the lessons from your divorce. You will be a better spouse the next time around, and greatly increase your chances of success.

✓ **Get a Prenup:** To really want to invest in a successful relationship, get a prenuptial agreement prepared by a qualified attorney. If the relationship is real, your new love will still be there when the ink dries. And if not, you will have saved yourself financial loss, and heartache you don't need. It's worth the cost! Because in the end, we all want to live **happily ever after.**

## 7 Things Newly Divorced People Must Do

# Have further questions?

Visit the Lady4Justice website, [www.lady4justice.com](http://www.lady4justice.com), or call us at (248) 355-5688 to schedule a complimentary phone consultation.



We wish you success as you begin your New Life!