



DONNELLAN & KNUSSMAN PLLC
ATTORNEYS AT LAW

Consumer's Guide to Divorce in New York State



WARNING AND DISCLAIMER

This guide is offered to clients and potential clients of **DONNELLAN & KNUSSMAN, PLLC** in an effort to provide information about the legal process in family court and/or matrimonial actions. It is based upon New York law. This guide is not intended to provide legal advice and does not create an attorney/client relationship between **DONNELLAN & KNUSSMAN, PLLC** and the reader. While the various jurisdictions have similar laws and processes related to child custody, this guide gives general information based upon New York family law only. If you have any questions or are seeking to retain an attorney to represent you in a custody matter, please call **DONNELLAN & KNUSSMAN, PLLC** for a free consultation with one of our attorneys. If your matter is not in New York State, please consult with an attorney licensed in your jurisdiction with significant experience in family law for specific legal advice regarding your child custody case.

If you read this guide and would like more information, visit our website at www.DKLawFirmNY.com or call 518-278-4059 to schedule an appointment.

Six Keys to a Successful Divorce

At **DONNELLAN & KNUSSMAN, PLLC**, we know that divorce is a unique and individual experience. Since every divorce is different, together we build and proactively share a personal “legal roadmap,” which is specifically and distinctively designed to address your individual circumstances. Our goal is always to settle your divorce issues as quickly and amicably as possible, however, if required, we will zealously represent you in trial in order to protect your rights.

While every divorce is unique, **DONNELLAN & KNUSSMAN, PLLC** believes six steps must be followed in order to maximize your chances to achieve a successful divorce in Upstate New York:

- 1. Hire an experienced Upstate New York matrimonial attorney.**
- 2. Choose the right process for your case.**
- 3. Determine what is really important.**
- 4. Be completely honest and up-front about your finances.**
- 5. Accept legal advice from your attorney, not family or friends.**
- 6. Always look at the financial “Big Picture”.**

1. Hire an experienced Upstate New York matrimonial attorney.



Often, the thought of getting a divorce is quite daunting, and even more so if you are concerned with legal costs.

Many couples believe they can share one attorney to manage a divorce. This idea might sound good because the concept implies lower legal costs, however, because you and your spouse have different viewpoints, legal interests and rights, sharing an attorney is a conflict of interest. From the very beginning of the divorce process, your spouse and you must understand that one attorney **cannot** represent both parties in the same legal matter.

In order to prevent any conflict of interest, only one party can be represented by one lawyer or law firm. Therefore, even in the case of an “uncontested divorce,” the lawyer will be established as one of the spouse’s counsel, and the other spouse will need to proceed on a self-represented basis or hire a lawyer himself or herself.

Understand that if your spouse hires a lawyer, you can either proceed on a self-represented basis or find your own lawyer. We advise that you hire a lawyer immediately! Otherwise, you will find yourself at a disadvantage. An attorney will know your legal rights and the procedural aspects of the case that a Judge will require. While some Courts may be helpful to unrepresented (or pro se) litigants, the Court will still require the pro se litigant to adhere to rules of evidence and procedural regulations and codes. As a lay person, it may be very difficult to juggle these procedural aspects as well as the legal issues in your matter.

In New York, marriage is an important legal institution that is not easily dissolved. To represent your interests, we believe you will need a family law firm in Upstate New York that practices exclusively in divorce, child custody and support, spousal support and other family law-related issues. Both experience and insight matter because the strategy and plan that lawyers devise can

make a significant difference in the outcome of a divorce. At **DONNELLAN & KNUSSMAN, PLLC** we always develop a unique stratagem and plan, which are **tailored specifically** to our clients' individual situations (needs, wants, concerns, and issues).

2. Choose the right process for your case.

Collaboration

Collaborative practice is another alternative of dispute resolution. In collaborative practice, you and your partner enter into an agreement with your team of professionals in which you commit to resolving your differences without taking one another to court or using threats to take one another to court. You agree that you are going to treat one another with respect and focus on your respective interests to come up with a resolution that best serves your particular family. The resolution is reached through a series of collaborative meetings with the professionals involved in the process. They take place in the office of one of the professionals, in an environment which is far less formal and far more comfortable than a court setting.



Collaborative Practice is a transparent process wherein there is no game-playing, trickery, or possibility of loopholes.

Your team of professionals includes your attorneys and, depending on the model of collaborative practice that your attorneys use, may also include a collaborative coach for each parent, a child specialist, and a financial specialist. The collaborative coach is a mental health professional who assists you through the collaborative process,

both outside of the collaborative meetings when emotionally charged issues arise, and during the collaborative meetings when discussions become difficult for you and you need a time-out or assistance communicating your thoughts and feelings. The child specialist is a child psychologist who may meet with your children and who gives suggestions to help you reach a resolution geared to the particular developmental and emotional needs of your children.

If you have financial issues that need to be addressed, you may use a financial specialist to review your finances and make suggestions. If you are able to use the collaborative process, you will likely end up with a parenting resolution which uniquely fits the needs and interests of your family. You will almost certainly end up with a better co-parenting relationship with your child's other parent than you would if you litigated your dispute.



Collaborative Practice affords you the privacy you and your family deserve, so that you do not have to air your dirty laundry in a court room full of complete strangers. Collaborative Practice allows you and the other parent to make decisions that best suit your family's needs unlike Court where a Judge who does not know you or your family will make these decisions.

The attorneys at **DONNELLAN & KNUSSMAN, PLLC** are trained as collaborative professionals and are able to assist you with your collaborative matter. Call **518-278-4059** to schedule a free initial consultation with one of our experienced collaborative attorneys.

Mediation

Mediation, under the right circumstances, can produce a resolution to your custody and parenting time dispute. This resolution may be more closely tailored to the specific needs of your child and your family than anything a judge can decide. Mediation is also far less expensive than litigation. Finally, mediation can resolve a dispute in such a way that it does



not completely destroy any chance of friendship or alliance between you and your child's other parent. These relationships will almost certainly be destroyed by an ugly custody battle.

Mediation is not appropriate in cases involving domestic violence, child abuse, substance abuse or other serious and complex issues. In mediation, you do not have your own advocate. The mediator's job is **not** to make the outcome fair; it is to provide information, help facilitate communication and keep you focused on the issues so that you and the other parent can reach a resolution. The mediator is supposed to screen for cases wherein mediation would be inappropriate, but this process is not failsafe.

If you think that mediation is appropriate for your situation, by all means, give it a try. If it does not work, you can always litigate. **DONNELLAN & KNUSSMAN, PLLC** has a trained, experienced mediator on site. You may call **518-278-4059** for a free consultation. It is important to note that if you hire an attorney or firm to mediate, and the mediation falls apart, neither you nor your spouse may use this same attorney or firm in the litigation process.

Litigation

Sometimes, despite our best efforts to resolve differences out of Court, it is necessary to go to trial. The attorneys at the Family Law Firm of **DONNELLAN & KNUSSMAN, PLLC** are trial tested, caring individuals with 50+ years of combined litigation experience. They have dedicated their lives and their law practices to providing outstanding legal representation. Our attorneys are experienced at helping people just like you.



The goal of our firm is to help you obtain a successful divorce in the most efficient manner possible. We will develop a comprehensive personal legal roadmap designed to address your unique legal issues. This comprehensive plan seeks to address all of your concerns including, but not limited to:

- Your finances – *support* and *property settlements* that acknowledge the numerous contributions you made to the marriage and provide you with your share of marital assets.

- Your children – *child support* and *parenting arrangements* that will place your child's welfare at the highest level of importance.
- Your future – **DONNELLAN & KNUSSMAN, PLLC** strives to ensure that you will have a secure future and will be well-equipped to start your new life.

You deserve a successful outcome for your divorce and the attorneys at **DONNELLAN & KNUSSMAN, PLLC** will fight for you every step of the way. We offer you our unique legal experience and expertise to help you focus on and achieve your goals. Contact us now at (518) 278-4059 and schedule a free legal consultation with one of our attorneys.

3. Determine what is really important.



In divorces where couples have a number of properties and assets, disagreements over ownership are not unusual. However, if these disputes become irrational and vengeance-based, the divorce can possibly take a very dangerous financial path. At **DONNELLAN & KNUSSMAN, PLLC**, we have seen clients who, despite their best efforts to compromise, spend thousands of dollars on trivial issues.

These negotiations can be extremely draining emotionally and financially. If the issue cannot be resolved, you will go to trial. At **DONNELLAN & KNUSSMAN, PLLC**, we routinely advise our clients in the manner we believe they will be most financially benefited, both short and long-term, however, if the item is ultimately important to you, we will zealously support your decision, both inside and outside the courtroom.

The marital home is often one of the most challenging issues in a divorce. Because the home is the focal point for the family, the thought of moving is generally very intimidating, especially when children are involved. Finding a new place to live can be daunting. Furthermore, the stress of ensuring that you can provide happiness for your family and



yourself in your new home can be overwhelming.

However, the most significant issue often overlooked during the divorce process is the expense associated with maintaining the marital home. Often, the spouse who has demanded the marital home as his or her primary “must have” in the divorce later realizes that he or she cannot afford to keep the home. The cost of the mortgage, utilities, taxes, and maintenance sometimes makes the home unaffordable.

DONNELLAN & KNUSSMAN, PLLC considers all financial issues when preparing a strategy for our clients. We will evaluate the costs and financial impact of demanding and receiving the marital home and help you determine if this is a possibility in your situation.

4. Be completely honest and up-front financially.

A divorce cannot be settled without disclosure of all important financial information and relevant details. Simply put, ALL financial details must be revealed by both spouses.



Recognizing that property division issues are only litigated once is important. The agreement between the parties must be right the first time because there is no “second chance.” An acceptable Statement of Net Worth filed with the court is the single most important document of a divorce proceeding. A Statement of Net Worth reflects honesty, credibility and a level of preparation. To ensure you project a positive image, you must disclose all income, including:

- Commission or bonuses, even if they are not consistent;
- Secondary income, even if paid in cash;
- All bank accounts, trust funds, or other sources of real or potential income;
- All property such as land, houses, rental units, etc.;
- Bank safe deposit box contents; and
- Anything else that does, or will potentially, generate income.

Any attempt to avoid identifying financial income or assets will be seen very negatively by the Court and can be used as leverage against you by opposing counsel. Based on our extensive experience in dealing with divorce cases, **DONNELLAN & KNUSSMAN, PLLC** asserts that the cost of disclosing all financial information is generally much less expensive than the cost of the Court's or opposing counsel's discovery of it.

Equally, disclosing all loans, liens, and money owed is important. This includes:

- Bank loans, personal loans, including money owed to family members;
- House mortgage, second house mortgage or home equity loan;
- Student loans for college or trade school;
- Business loans;
- Car loans or lease payments, including monthly payments; and
- Credit card debt.

5. Accept legal advice from your lawyer, not friends or family.

Leaning on friends and family during the period of divorce is common and certainly very healthy. **However**, unless your family and friends are New York family law attorneys who have full disclosure of the entire facts of the legal action, they are not qualified to provide legal advice.

The strategy, tactics and actions taken in any divorce in New York are unique to that divorce and may not be relevant from one case to another. No substitute exists for an experienced attorney, who can evaluate your specific situation and advise you on how to best protect your rights.

Consulting a therapist or counselor is also very common and a prudent way to help you cope with the emotional pain and stress of the divorce process. A positive state of mind is a viable means for you to approach the divorce process because that mentality allows you to focus on legal issues that must be negotiated.

6. Always look at the financial “big picture”.

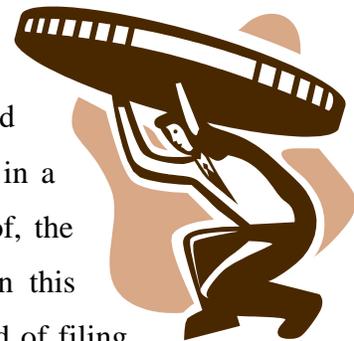
You should seek to understand the “financial big picture” associated with all decisions. For example, if, as part of the divorce, you take certain stock as part of the property division, capital gains taxes need to be considered if liquidation occurs. The cost of these taxes should be factored into the divorce settlement. You



should carefully review all available financial options. Spousal support and bankruptcy are two considerations often ignored.

Spousal support: Although the thought of paying spousal support may be distasteful, the long-term tax benefits can often be beneficial. Some spousal support, as a payment, is a tax offset, where other types of payments to your spouse, such as distributive award, are not. Retaining an experienced divorce attorney to advise you regarding tax advantages that might result in a spousal support agreement in an Upstate New York divorce is the best way to protect your rights and create a legal strategy that will provide the biggest advantage to you.

Bankruptcy: This is often a best option for divorcing couples who are carrying a heavy debt load. The US Congress has enacted bankruptcy rules to allow US citizens to have a “second chance.” While bankruptcy can be filed at any time, it often is in a couple’s best interest to file before, or at least at the beginning of, the divorce process. The key advantage to filing for bankruptcy in this manner is that filing jointly while couples still are married, instead of filing individually, will save them money. Be aware that the courts cannot discharge debts in bankruptcy that you agreed to be responsible for in divorce if the debt was jointly held. This approach may also simplify the process to implementing a plan to manage their debt which may be significantly reduced or eliminated.



May we provide more help?

Also, you need to be aware that if you are still married, even if in the process of divorce, if your spouse declares bankruptcy, and you do not, creditors can pursue you to collect the full debts. Also, in many cases, if you are in the process of a divorce and your spouse then files for bankruptcy, your divorce proceedings will be placed “on hold” until the bankruptcy proceedings are complete. The Court must know the assets of the divorcing couple in order to establish fair disposition. Until the bankruptcy process is finalized, your assets will be unclear.

DONNELLAN & KNUSSMAN, PLLC has provided you with six important “keys” which we believe will help you maximize your chances to achieve a successful divorce in Upstate New York. As a follow-up to noting these keys, we encourage you to go to our website and download our free Child Custody Survival Guide.



Website: www.DKLawFirmNY.com

Please Note!

*A guide book or website can only be useful to a certain point. If you have questions or need assistance, we encourage you to make an appointment with **DONNELLAN & KNUSSMAN, PLLC** so that we may evaluate your unique situation and provide you with the quality advice you deserve.*

Please call us at 518-278-4059 to schedule your free consultation.

About The Authors

Teresa G. Donnellan, Esq. is the managing partner of **DONNELLAN & KNUSSMAN, PLLC**. She is a graduate of Albany Law School and has been admitted to the New York State Bar since 1992. Attorney Donnellan has been a member of the Saratoga County and Warren County Attorney for Children panels throughout her career in the Capital District and currently serves as the Saratoga County Attorney for the Child Liaison.

SuperLawyers has recognized Teresa Donnellan as among the top 5% of attorneys in New York State in 2015 and 2016.



Attorney Donnellan is an active member of the community and is a member in good standing of:

- The American Bar Association;
- New York State Bar Association;
- Saratoga County Bar Association;
- Adirondack Women's Bar Association; and the
- Collaborative Divorce Association of the Capital District

She has been mentioned twice in the Saratoga Business Journal for her work with the Collaborative Divorce Association of the Capital District.

Amy J. Knussman, Esq. is a Partner with **DONNELLAN & KNUSSMAN, PLLC**. She is a graduate of Albany Law School and has been admitted to the New York State Bar since 2003. She focuses her practice in the areas of Matrimonial and Family Law and has been a member of the Saratoga County and Warren County Attorney for Children Panels since 2003.



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Amy Knussman has been mentioned twice in the *Saratoga Business Journal* for her work with the Collaborative Divorce Association of the Capital District. Attorney Knussman was the recipient of the Legal Project's 2012 Brigid Nolan Memorial Award. This award is presented to an attorney who, through his or her dedication and pro bono service with The Legal Project, has helped a victim of domestic violence to begin life anew.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.