

page 2

Wife doesn't refinance home;
husband forces her to sell

Child support increased by
inheritance, wealthy stepparent

Husband could renege on
promise to pay grown kids'
rent

page 3

Same-sex couples should
consider prenups

page 4

Mother can't stop child from
calling stepmother 'Mom'

Legal Matters[®]

Family Law
spring 2016

More spouses are living together while they're divorcing — but is this wise?

The first step in a divorce is usually for one member of the couple to “walk out.” But increasingly, divorcing spouses aren't walking out at all – they're staying put.

In fact, it's been estimated that as many as one-half of all separating couples today live together in the midst of their divorce proceedings. And some couples even live together temporarily *after* they're officially divorced.

Here's a look at some of the reasons for this trend, as well as the potential drawbacks.

The biggest reason for living together during divorce is economic – these are tough times for many people, and it can be difficult to suddenly have to afford two separate households, with separate payments for rent, mortgage, utilities, groceries, and other household expenses. Many couples decide to keep living together for a while so they'll have time to save up for when they have to start financially separate lives.

This is especially true in areas where the housing market isn't strong. For many couples, the best way to afford to live apart is to sell their house. But if the housing market is weak, a couple might decide to continue living in their home for a while in hopes that its value will go back up.

Some couples who are planning to get divorced continue living together for a time because of the children. In many cases, the spouse



©thinkstockphotos.com

who “walks out” may be the spouse who sees less of the kids, at least for a while, so some spouses refuse to leave for this reason. And some couples want to soften the blow for their children, and provide them with a more gradual transition while maintaining their home routines.

Some spouses might have a strategic reason for staying put. They might want to get the house in the divorce, and believe that they're more likely to be awarded the property if they're currently living in it. And they might think that by refusing to leave, they can put pressure

continued on page 3

Arnold & Smith[®]
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.CharlotteDivorceLawyerBlog.com

Wife doesn't refinance home; husband forces her to sell

It's common for one spouse in a divorce to keep the couple's home and assume the mortgage. Typically, the spouse keeping the home will refinance the mortgage in order to remove the other spouse's name, so the other spouse isn't jointly responsible for the debt.

But what happens if the spouse fails to refinance?

This happened in a recent case in New Jersey. An ex-wife was awarded the couple's home with the understanding that she would refinance it within nine months. She failed to do so – and then made several late mortgage payments.

Because the husband's name was still attached to the mortgage, his credit was damaged by the late payments, making it harder for him to get a mortgage on

his own new home.

The husband went to court, and a judge granted him a power of attorney to list and sell the home. The court even gave him permission to evict his ex-wife if necessary to complete a sale.

This may sound like an extreme solution. But it should be noted that the husband could suffer additional consequences from the wife's actions, beyond having trouble getting a mortgage. For instance, he could have trouble renting an apartment, because a landlord might be scared off by his credit rating. He also might find it difficult to buy or lease a car, and he might even have trouble getting a new job, because a lot of employers run credit checks on job applicants.



We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Child support increased by inheritance, wealthy stepparent

The amount of child support a parent has to pay is usually determined by his or her income, but two new cases from Pennsylvania show that other sources of wealth – such as receiving an inheritance or marrying someone rich – can have an effect.

In one case, a police officer who was originally ordered to pay \$1,458 a month to support his three small children was later ordered to pay \$2,267 a month, after a judge took into account the fact that he had received a \$600,000 inheritance.

The man argued that the inheritance wasn't "income." The court said this was true, but the money could be invested so as to produce income, and this could be counted in determining how much child support he had to pay.

The man also argued that he had a right to preserve the inheritance intact to allow him to work less. But the court said his legal obligation to support his children trumped his desire to have a "work-free lifestyle."

In the second case, a father's child support payments were more than doubled, from \$665 a month to \$1,365 a month, after a court considered the fact that the father had remarried and his new wife earned more than a million dollars a year.

In general, a stepparent has no legal obligation to support a stepchild, and so a stepparent's income can't be considered in determining child support. But the court said this case was different because the new wife essentially paid for all of the husband's personal and household expenses, allowing more of his own income to be freed up to take care of his children.

Husband could renege on promise to pay grown kids' rent

A divorcing couple in New York signed an agreement saying that the husband would pay their two adult children \$1,900 apiece each month to help cover their rent, until they turned 30 or began living with a significant other. The parents made this agreement because they thought it would help keep them on good terms with each other and make their divorce less contentious.

Later, the husband broke his promise – he gave each child a \$10,000 lump sum and told them they had nothing else coming. The wife then went to court to enforce the deal.

How much the children actually needed the cash is up for debate, since they both graduated from Ivy League universities and were gainfully employed. But a promise is a promise, right?

Not so fast.

In business, a contract isn't valid unless there's something called "consideration." That means that each side must give up something of value. A contract in which one side agrees to do something and the other side does nothing in return is not enforceable.

And a New York judge said that this concept is valid not only for business contracts, but also for family agreements. As a result, since neither the mother nor the children had promised anything in return for the rent payments, the husband didn't have to keep making them.

The moral of the story is that you should talk with your family lawyer about any written or unwritten agreements you make with your spouse in the context of a divorce. Even if you have a signed contract, it might not be worth the paper it's printed on.

More spouses are living together while they're divorcing

continued from page 1

on the other spouse to settle the divorce quickly or on more favorable terms, so the other spouse can get on with his or her life.

Of course, whether all this will work depends on the couple and how bad their relationship has become. In many cases, trying to live together can backfire dramatically.

For instance, if a divorcing couple's finances are difficult, chances are they fought a lot about money during the marriage. They might end up fighting even more if they're separating but living together.

Instead of just fighting over whether to make a home repair, for example, they might now also fight over who should pay how much toward the cost, with the spouse who doesn't want the repair refusing to contribute his or her portion. There could be other disputes over all sorts of shared household expenses, especially if one spouse earns significantly more than the other. In the end, the problems caused by these arguments could be more costly than simply living separately.

As for the children, divorce is likely to be distressing for them no matter what. Living together for a while may soften the blow, but it could also make it worse, by creating confusion and delaying their ability to fully adjust to a new family situation. This

is especially true if you're likely to fight with your spouse while you're living together.

Staying put for strategic reasons can backfire, too. While a spouse might cave in to the other spouse's demands in order to get him or her to leave, a spouse might also dig in and fight harder, making the divorce process longer and more expensive.

Living together also creates a number of logistical complexities. For instance, will the couple physically divide up the living space? Will each spouse have particular rooms as their own space, that the other person can't access? And what if one spouse decides to date someone else? Can he or she bring a date to the home?

Finally, you should know that if you're still living together, even if you're planning to divorce, you might not be considered "separated" in the eyes of the law – which could affect how a court ultimately divides up your property.

So if you're wondering, "Should I stay or should I go," the best bet is to talk to a family lawyer who will help you carefully consider all your options.



©thinkstockphotos.com

Same-sex couples should consider prenups

Now that the U.S. Supreme Court has legalized same-sex marriage throughout the country, a lot of gay couples who have lived together for many years are getting married. And while every engaged couple should at least give some thought to a prenuptial agreement, it's even more important for same-sex couples in this situation.

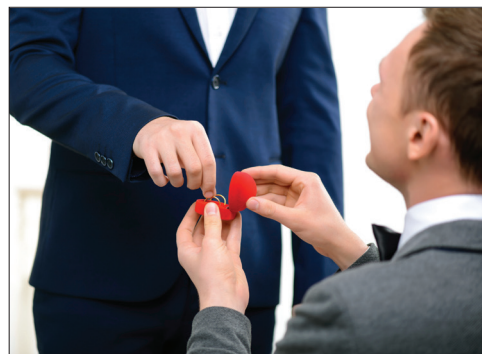
Here's why: When a couple gets divorced, and a judge divides their property, the judge will usually take into account the length of the marriage. A judge is more likely to divvy up assets that were acquired during the marriage than assets that a spouse owned before the wedding.

So if a couple were married for 20 years, the vast majority of their assets were probably acquired during the marriage, and the divorce agreement will reflect this fact.

But what if a gay couple were together for 20 years, but because same-sex marriage was illegal for so long, they were only married for three years? A judge might treat this as a "short-term" marriage, and allow a spouse who acquired a lot of property during the first 17 years to keep that all for himself or herself.

Of course, it's also possible that a judge might *not* do that – a judge might treat the entire 20-year partnership as though it were a long-term marriage. But there's no guarantee.

That's why gay couples in this situation who want their entire relationship to be treated as the equivalent of a marriage should consider signing a prenup to this effect.



©thinkstockphotos.com

Arnold & Smith^{PLLC}

ATTORNEYS AT LAW

The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.CharlotteDivorceLawyerBlog.com

LegalMatters | spring 2016

Mother can't stop child from calling stepmother 'Mom'

It's natural for parents to be concerned about a child's relationship with a stepparent. Of course, parents most often worry that a stepparent will have a negative influence on a child's life. But some parents worry that a stepparent will have too *positive* a relationship with a child, and as a result, will undermine their own relationship and authority.

This happened recently in New Jersey, where a child named Daniel developed a positive relationship with a woman named Lori after his father moved in with Lori and her three children. Lori, who had experience as a tutor, helped Daniel with his homework and generally looked after him while his father was away. Eventually, Daniel started calling her "Mom," which is what Lori's own children called her. The father began consulting with Lori on any

important child-rearing issues.

Daniel's mother responded by going to court, and demanding that the court order Daniel to stop calling Lori "Mom" and prohibit Lori from taking part in any discussions about how Daniel should be raised.

But the court refused to intervene.

According to the court, Daniel has a right to free speech under the First Amendment, and that means he can call Lori "Mom" if he wants to. A judge shouldn't micromanage the ways a child refers to adults in his or her life, the court said.

The court also ruled that it was unrealistic to expect Lori to play no role whatsoever in decisions about Daniel's upbringing. Lori has no parental rights over Daniel, but Daniel's father has every right to consult with Lori if he wants to. The court said it had no power to turn Lori into "the legal equivalent of a potted plant."

©thinkstockphotos.com

