

# The Rules of the Game

BY KELLY A. SCOTT



So, you are getting divorced. One of the first things you want to do is be sure you know the rules of the game in which you are now a player (even if you are an unwilling one). Most states have automatic orders, or rules that apply once a divorce has started. These rules dictate what you and your spouse cannot do while your divorce is ongoing, and they are binding court orders. If you are the one who started the divorce, the rules likely apply to you as soon as the writ, summons, or complaint is signed. If you are the other party, the rules likely apply to you from the time you are formally served with the action for divorce. The overarching theme of the rules is to maintain the status quo, at least as to the specific areas covered by the rules. There are typically rules that apply when there are minor children involved and others that apply to the financial aspects of a divorce.

If you have minor children, in some states the rules prohibit you or your spouse from permanently leaving the state with your children. In other states, the rules prohibit you from leaving the state with your minor children *for any reason* without consent or court order. You also are likely required to keep your spouse informed as to changes in your residence and to be sure that the children have contact with both parties that is consistent with the habits of the family.

Typically, the rules are more specific and encompassing as they pertain to the financial aspects of your divorce. Common rules prohibit:

- Selling, transferring, or otherwise disposing of assets without written agreement or court order unless done to pay usual or customary expenses or, sometimes, counsel fees;
- Changing the existing medical, homeowners', and/or life insurance policies;
- Encumbering assets;
- Changing the title of an asset or the manner in which an asset is held; and/or
- Unreasonably incurring additional debt.

To be clear, even in states that have rules, not all conduct is regulated. There are things that one party or the other might be permitted to do, even if it is not in conformity with the way the family lived before the divorce started. For example, the rules usually do not go so far as to mandate that parties continue to operate from joint accounts. It is quite common for parties to establish their own individual accounts once the divorce starts and to then deposit their pay into that individual account even if it previously was deposited into a joint account. Likewise, the rules do not require one party or the other to pay every expense for the family nor continue to provide access to credit or charge accounts. If one party regularly manages the family's investment accounts, he or she may be able to continue doing so, even if it requires the "selling" of assets. Furthermore, the rules do not supersede other court orders that may otherwise be in place regarding certain issues. If there has been a protective order of some kind issued, that protective order will control.

Finally, the rules may describe the mechanics or administrative tasks required of parties in a divorce. They may mandate that financial affidavits or statements be filed within a certain number of days or that the parties participate in a parenting education course.

If you live in a state that does not have rules of the game like the ones described in this article, you may nonetheless be able to seek court orders to regulate certain conduct of you and your spouse during the divorce process. Likewise, even when there are rules in place, if you think your case requires broader or other restrictions, you can likely seek same from the court through motions.

When they exist, it is important that you know and understand the rules in place during your divorce. The rules are court orders that must be followed as though a judge had explicitly decided in your specific case that certain conduct was prohibited. Failing to heed the rules can lead to consequences, including a finding of contempt, monetary sanction, or other penalty. If you have any question whatsoever about whether an action you are about to take will violate the rules of the game in your state, always check with your attorney first. **FA**



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