Ten Things to Consider before (or after) filing for divorce:

1. Property – who will get the property of the marriage? The general rule is that all property of the marriage is community property, i.e. if it was obtained during the marriage it is 50% owned by each spouse. Is there a business? A home or other real estate? If there was an inheritance or property owned prior to the marriage, that would be separate property. A judge, however, is not bound to award the property 50/50. The legal term of art is that a judge must make a "just and right" division of the marital estate. A judge's determination of what is just and right is highly discretionary. See #7, fault in breaking up the marriage.

2. Custody – these types of cases can be some of the more contentious cases in family law. The Court will make a ruling based on the "best interest test." What is in the best interest of the children is the legal standard by which all custody cases are analyzed. Because this legal standard as applied to custody is quite complex, it is best to discuss these issues with a qualified attorney who has experience in this area.

3. Visitation – the Texas Family Code sets forth in no uncertain terms what visitation terms are presumed to be in the best interest of the children. This is called the "Standard Possession Order." These terms are often negotiated to include more visitation (a custom possession order usually obtained by agreement), or visitation can be restricted by court order, where there is a perceived or actual danger to the child.

4. Temporary Restraining Order (TRO) – Is the other spouse wasting assets or is he/she abusing drugs or alcohol? There may be a reason to get an emergency TRO to prevent irreparable harm from taking place, to gain control over certain property or to prevent a spouse from exercising visitation until a temporary orders hearing can take place.

5. Child Support – The state has guidelines with regard to how much the non-custodial parent must pay for child support. If you are considering a divorce with children, it is important to gather financial information that can prove the non-custodial parent's income.

6. Health Insurance – The non-custodial parent will normally be required to pay for health insurance. That may be through a health insurance provider through their work or insurance that is obtained privately. If existing insurance is available through the custodial spouse's work, the non-custodial spouse will normally be required to reimburse the custodial spouse in the manner of additional child support.

7. Fault in the break up of the marriage – Texas is a "no-fault" jurisdiction. That means that a divorce will be granted whether or not there is fault in the marriage. However, a judge may consider fault in the marriage to influence his decision to award the wronged spouse a disproportionate share of the marital estate.

8. Retirement, pensions, 401K, deferred compensation – A qualified domestic relations order may be necessary to divide assets that will provide for a future benefit like retirement. Such orders are highly technical and must be drafted in concert with the plan administrator's requirements. This generally compels the plan administrator to make the non-earning spouse a co-participant in the plan and thus entitled to benefits "if, as, and when they occur."

9. Liabilities – are like property in reverse. Each spouse is entitled to not only 50% of the other's income, but also 50% of the other's debt. Again, if there is fault in the marriage, or one spouse is proven to be wasting assets as a spendthrift, the court can award the liabilities disproportionately to the spendthrift spouse. The "just and right" legal standard applies here too.

10. If you want your maiden name restored, this should be contained as a provision in the Final Decree of Divorce. Be sure to discuss this with your attorney.

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