



The Basics

Unhappily ever after: The 'nondivorce'

Potentially big legal fees, health-insurance needs and the expense of separate households cause some couples to stay under one roof even when their marriages are all but dead.

By [SmartMoney](#)

Breaking up is hard -- and expensive -- to do. That's why some couples choose to stay together, long after romance is dead, in a state of matrimony that can best be described as the "nondivorce."

Though the situation varies, a couple in a nondivorce usually remain living together under one roof, more like passionless roommates than spouses. There are no hard statistics, but some divorce experts say they're seeing more of this unromantic phenomenon, driven by three big financial factors: the high cost of legal fees in divorces, the expense of setting up two households and the difficulty in obtaining adequate health insurance, especially if one spouse has a pre-existing condition.

That's a shift from decades past, when couples stayed together because divorce carried a social stigma or was forbidden by religious teachings. But along with finances, there's another driving factor in today's not-quite-a-divorce arrangement: Many couples, turned off by their friends' bitter, rancorous breakups, would rather stay together than endure the messiness or inflict it upon their children.

"We've seen the fallout from divorce," says Debbie Mandel, a Lawrence, N.Y., stress-management specialist who often works with individuals in loveless marriages. "There's so much viciousness and then the draining of the pocketbooks to attorneys."

Making a 'pragmatic' decision

Spouses who decide to stick together are just "realistic people," Mandel says. Sometimes the arrangement allows parties to discreetly date other people while keeping up an illusion of marriage to children and the community. And finances, significantly, stay intact.

"They are really making pragmatic, businesslike decisions for their marriage," Mandel says.

Susan Goldfarb (not her married name) and her husband have been together for 26 years, but disagreements over their children's education strained their marriage about six years ago. The couple considered divorce but ultimately decided against it.

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"Neither of us makes that much money, and if we had to separate, it would be a hardship for us," says Goldfarb, of Westchester County, N.Y., who works in customer service while her husband teaches high school math.

The couple come from different socio-economic backgrounds and fought "like cats and dogs" when their daughter and son -- now 22 and 18, respectively -- were in high school, she says. Goldfarb grew up middle class and wanted the children to take college-prep courses and attend top-ranked private universities. Her husband, from a lower-income background, didn't see the need and insisted they take classes at the less-prestigious City University of New York.

Goldfarb decided divorce wasn't a good idea because split households would further the problem. "I didn't want him to influence the children," she says. "I felt if we were to stay married, I'd have more control. I could monitor what he was saying."

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Though the outcome was a compromise -- their daughter attended a city college but their son is enrolled in a private school outside Boston -- the battle wounds remain. Divorce, however, isn't in the picture.

"We do love each other -- it's just not as deep of a love that we had before," Goldfarb says. "We are really, really good friends. And we trust each other. We're probably both scared to find new partners."

At this point, the pair, both in their 50s, "are sticking together," she says. "It's not that severe of a case where we need to change our lives." (See "[Happy divorces.](#)")

Rich Gordon, the principal mediator at A Fair Way Mediation Center in San Diego, says some couples stick together because "the devil that you know is better than the devil you don't know." In his practice, he has seen couples from a nearby Navy base staying together so both spouses can still be covered under the military's medical and pension plan.

'Opening a Pandora's box'

Some couples have approached him to craft postnuptial or separation agreements, which divide assets while keeping the marriages technically intact. But it's not always easy to come up with an ideal legal solution.

"Psychologically, you are really opening a Pandora's box," Gordon says. Emotions run deep, even when a couple lead separate lives. Infidelity, in particular, can create bitterness. A couple wishing to stay married when the romance is gone should really think twice, for many reasons. "You are not leading a full life if you remain with someone with the title of marriage when there's nothing below the surface," Gordon says.

Legal action might be a better plan for a couple seriously considering divorce but isn't ready to take the final step. "There are a lot of people who aren't really positive yet, but they know they can't stand to be together or need space," says Brette Sember, a former divorce lawyer in Clarence, N.Y., and the author of "[The Divorce Organizer & Planner.](#)"

An initial step might be resolving child support, custody and spousal support in family court, which can be accomplished even if there's no divorce petition pending, she says. After that, the couple can decide what to do.

Judy Poller, who practices matrimonial law at Bryan Cave in New York, says some spouses decide to practice the nondivorce after they've looked into actual divorce and decided it was too onerous.

"I had a guy come in, who was married for 20-plus years, with two kids in high school. We spoke for quite a while, and I told him that his assets would be divided in half. He had a very nice lifestyle. His wife didn't work through the marriage. I told him my guesstimation of what his responsibilities would be, and his attitude was 'Well, I guess this is good enough for now,' " she says. "He figured he'd have his fun on the side and do what he wanted to do."

Some spouses, of course, practice the nondivorce in the eternal hope that the relationship will eventually work out. Lynn Johnson (whose name we've changed due to privacy concerns) lives in the Midwest and has been married for 29 years but estranged for the past six years, although she and her husband occasionally travel together "like brother and sister." The couple have two adult children, and she hopes that someday she'll be in a happy marriage. "In my mind, I am still married and hope and pray for a miracle," she says.

There's been no infidelity, drugs, alcohol or physical or verbal abuse -- just a falling out of love. For now, the two maintain separate households, and her husband pays the majority of the expenses, which she worries would change if they ever got a divorce. She describes her situation as "reasonable insanity." Though not happy, she's reluctant to dissolve the marriage because of finances, the effect it might have on their children and concern over breaking wedding vows.

"It is not how I dreamed my marriage would end up," Johnson says. "I guess one of my favorite sayings about my situation is 'I would rather bury him than divorce him,' because I fell in love with him when I was young, and I still love him today, but in a different way."

Choosing legal options

Typically, couples who practice the nondivorce hash things out, informally, on their own. Avoidance of legal fees, after all, is one of the reasons they're staying together. But here are some legal options to consider:

Resolve [child support, custody and spousal support issues](#) in family court. "You can go to family court without an attorney -- it's common -- and get these issues resolved while married," author Sember says.

Obtain a legal separation, which divides property and debt, and outlines custody and support issues while leaving the actual marriage intact. (This is sometimes referred to as the "Catholic divorce" for those with strict religious beliefs.) The parties can get creative in the separation agreement, according to divorce lawyer Poller. She once represented a wife who had advanced breast cancer; health costs would have been prohibitively expensive if the couple divorced. Under a separation agreement, the two divided their assets, outlined responsibilities for their children, and the husband agreed to keep his wife on his health plan and pay a penalty if he ever sought a divorce.

Consider a postnuptial agreement, which outlines the division of financial accounts and assets. The postnup, less respected than prenups by the courts, can't strip a spouse of his or her marital rights. Some states don't recognize postnups, although they are becoming more popular.

This article was reported and written by Colleen DeBaise of SmartMoney.

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