

Ep #17: How Smart Early Divorce Decisions Shape Your Future



Full Episode Transcript

With Your Host

Lauren Fair

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You're listening to *The Sensible Split* podcast, Episode 17.

Today, I'm talking about smart choices you can make early on to help minimize conflict and move you toward the outcome you want.

The Sensible Split is a podcast for smart but overwhelmed women in search of a roadmap to a successful separation and divorce. If you are looking for guidance in navigating the practical, legal, and emotional aspects of divorce with confidence, this is the show for you. Here's your host, Master Certified Life and Divorce Coach, Divorce Attorney, and Mediator, Lauren Fair.

Hello friends, how are you? Welcome back. I'm preparing to take a big family trip to Hawaii later this week. We've never been to Hawaii and I'm super excited. We're going to be staying at the Disney property on Oahu called Aulani. And if you're interested, I may share some highlights with you when I get back.

It's going to be the biggest trip we've ever taken as a whole family. There are nine of us going; my husband, our two little ones, my three step kids, and both grandmas. So, it's going to be a full house. I already have one stepchild out of the house, and the next in line is going into her senior year next year so we felt like time was running out to easily take a big trip all together. So, this is the year.

It is also an important summer for us because our 10th wedding anniversary is this month, so we wanted to have a big celebration for it. And for those of you who don't know, this is my 10th wedding anniversary with my second husband. We're going to be flying out on our actual anniversary date.

I'll be sharing some highlights on social media, I imagine, so if you don't follow me on social media yet head on over to Sensible Split Divorce on Instagram, and I'd love to share a bit of my trip with you.

Alright, so what I'm talking about today is the choices that people make, at the time that the marriage is breaking down and they're approaching the separation, that really set the dynamic between the spouses on a trajectory that may be more difficult than it would be otherwise.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

There are things that happen early on in that separation process that you have control over, that can, if not handled properly, put the case on a path to it being high conflict, long, expensive, and out of control. Divorce can already be expensive and challenging on a lot of fronts at times, but how smooth the process is or isn't is so very much affected by the decisions that each spouse is making early on in the process.

Lack of self-awareness, and not being intentional in your decisions about what you do and how you react to your spouse during this stage of the separation process, takes a challenging situation and amps it up to a degree that it doesn't have to go to. And we know the greater the conflict, the less control over important outcomes we have, the more expensive it is, the longer it takes, the more stressful a process it is, the more it negatively affects children.

And you might be thinking, "Well, Lauren. I'm not the problem here. It's my spouse who is already making problems," or likely to engage in bad behavior in this process at some point. I hear you. That's the case with many of my clients. So, if you anticipate bad behavior, let's decide in advance how you are going to react to that bad behavior, so as to not escalate or mishandle the conflict to your ultimate detriment.

Many of these critical choices that people are making early on, oftentimes before they've even had any kind of contact with a divorce professional, are setting them up to not have the smoothest divorce possible. When you understand what those issues are, and what those decisions are that are being made early on, that are impacting the process in this way, you get to decide whether you want to do something different.

Because you hear all the horror stories from your friends and family members, and maybe about how long and expensive and just terrible it was to go through the process from different people. And I just want you to know that although you do not have complete control over what your spouse does, you do have the ability to influence the dynamic between you and the divorce process overall. Absolutely.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

You are a huge factor in the level of conflict that happens for you, even if you are not the one initiating it. And so, even if you're not the primary driver of that conflict, the way that you respond or react to it can have a very significant effect on where the case goes. And it's not just a matter of cost and ugliness and length of the process, but what comes with those consequences oftentimes is very little control over the outcome.

I think I've shared with you before, I'm a fan of control whenever it can be had reasonably. Particularly when it comes to setting yourself up for success and your next chapter of life. So, the minute we start saying, "We'll just let the court decide everything," is the minute we start losing a lot of control over what that next chapter for us looks like, in terms of the resolution, of the financial issues, parenting issues, and also your emotional wellbeing in the meantime.

So, let's dive into those choices that you do have control over in the divorce process. The first one is threatening divorce or delivering the announcement of a decision to divorce when you're arguing, rather than in a strategic, intentional conversation.

Maybe you mean it, maybe you don't, when you threaten divorce in that context. Either way, threatening divorce during arguments can be problematic. If you want to talk to your spouse about the problems in the marriage, and the fact that you may be considering divorce, I'm not discouraging you from that.

To the contrary, if you're seriously considering divorce, you may very well want to have that conversation, to see if the two of you can get on the same page about trying to save the marriage before it's too late, if that's what you're interested in doing. But you want to have that conversation in as much of a grounded state as possible, and to have a really specific purpose of wanting to talk through your thoughts and feelings in a way that is collaborative and not threatening.

But the mistake I'm talking about wanting to avoid here is how these conversations often go, which is where you threaten divorce during a heated argument. And in these arguments you're throwing around divorce as a threat. This is never a good choice to make.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

And why is that? It's because when you start threatening divorce, number one, if you're doing it repeatedly as an empty threat, it loses its impact because you've said it so many times before. Why believe it this time? So, it's inflammatory and ineffective to actually create any positive change.

But more importantly here, if your spouse thinks it's not an empty threat, and particularly if you're piling on more threats like, "You're never going to get a penny from me. You're never going to see the kids," it's going to start creating fear in the mind of your spouse that you're going to do something that is going to prejudice them. Maybe you're yelling at each other while you're doing this, and so the likelihood is they're going to feel threatened.

So now you've created the situation where your spouse is concerned that you're going to go and file for divorce, and you're approaching this in such a hostile, threatening way that that creates fear in the mind of the listener to what you're saying, right? And listen, if you've done this, be kind to yourself. It's very easy to get into that dynamic when your marriage is breaking down.

But we just want to make a different decision going forward, so that it takes you closer to what your end goal will be in this process. So, if your spouse feels threatened, they're likely to act from a place of being afraid. That's just human nature. If someone feels threatened they are likely to take steps to do what they think is necessary to protect themselves. Okay?

The reality is, when you threaten divorce sometimes what you're actually trying to do is express some hurt to get your spouse's attention, to maybe test what the response would be. So, in some ways, it's a bit of a manipulation really. Like, "Let me threaten divorce and see what they do in response." This might be not totally conscious, that that's what someone's doing when they engage in that behavior, but oftentimes that's really what's underneath there.

You want to see if they still love you. You want to see if they're going to fight for you. But you're running the risk that they take it seriously and this starts the process off in an adversarial manner. Or maybe you do really mean it, you've already decided that you want the divorce, and this intentionally or unintentionally becomes your way of announcing your decision, right?

Ep #17: How Smart Early Divorce Decisions Shape Your Future

You yell it, or you know say it in the heat of an argument, and when you botch the delivery of the announcement, of your intention to divorce, this can set the transition on a path to be more difficult and more high conflict than it needs to be.

I love coaching clients on preparing for that announcement of the divorce decision conversation, because it can be so impactful to the trajectory of the process and my client's success in it. And so often, these conversations are had without any kind of prior planning, strategy, emotional grounding, or anything. They most often happen as part of some kind of argument that's happened between spouses. There's been some kind of trigger that's happened.

It's probably been building for a while, and then you just sort of snap and say, "I'm filing for divorce. I'm done with you. I'm hiring the best attorney in town. I'm going to be filing tomorrow." Whatever it is, right? "You're never going to see the kids again. I'm going to get the house. You're not getting anything, no spousal support."

So, it's normal to go there when you are so emotionally activated by whatever it is that just happened with your spouse, it's very common to kind of approach that conversation in a way that is aggressive. But making threats and telling your spouse you're going to take all of these actions that are going to put them at a disadvantage is likely to put them in a defensive position.

But maybe you didn't even threaten them. Maybe you just wanted to justify your decision by listing out all of the transgressions that your spouse has committed in the history of your relationship, that justify why this is the right decision for you.

"These are all the reasons I have to do this. Because you're a terrible husband. Because you didn't pick up your socks. Because you're a narcissist. Because you stepped out on me. Because you never bought me an anniversary gift," because whatever it is, right? "I should have listened to my father and never married you in the first place."

Ep #17: How Smart Early Divorce Decisions Shape Your Future

Things that may be true for you in that moment, but saying them does nothing other than make you feel good, justified and right. And it's good to feel good, justified and right in your decision. But I want to offer to you that you can feel that way without escalating the conflict by saying them to your spouse, as part of that conversation where you deliver the announcement that you've decided to divorce. Or frankly, at any other time in the process.

You've got to ask yourself in that situation: What am I looking to accomplish here? Do I think that this person's actually going to agree with me about all these reasons?

No, what they're probably going to do, is they're then going to whip out their list of all the transgressions that you've committed in the marriage. And what's going to happen next? It's going to turn into a giant argument that results in more hurt and more escalation of conflict, right? Again, when you're both feeling threatened, what happens next? It certainly doesn't set it up to go in the best way that it can.

So, when you are thinking about communicating to your spouse a decision to divorce, this is a critical time to strategize and determine: How can I approach this in a way that is measured, that is intentional, and that is in alignment with where I want this situation to end up? Versus what I just want to say at the moment because it will make me feel better to say all these things. Or "I have to explain to them why I'm doing this, because of how much they have done me wrong in this relationship."

You can say all those things, they're all valid, but let's say them to someone else other than your spouse. Or write them in a journal, knowing in your bones that you made the right decision, and you can feel justified by how you think about your decision without actually needing to justify it to your spouse. It's just not going to get you the result you want when you do that.

When approaching these critical conversations, you have to be clear on: Is this really just an announcement of a decision that you've already made? Or is this you wanting to talk about the fact that you're thinking about getting divorced, and maybe hoping it won't get to that point?

Ep #17: How Smart Early Divorce Decisions Shape Your Future

So, what are you looking for out of that conversation? And how could you actually approach that conversation in a way that would be more likely to result in a productive outcome? As opposed to one where you are just threatening something, that then is creating hostility, fear, and the risk of a costly divorce war, because they feel threatened that you're going to do something legally, probably, and they're going to be behind eight ball and they've got to get out in front of it.

They've got to hire a shark attorney. They've got to run to court, cut off communication with you, and do other things that they think they need to do to protect themselves. And now, we're sort of off to the races of everybody spending a lot of money, not talking to one another to resolve the issues, etc. And that's how oftentimes those nightmare cases start off, okay?

So, if you were thinking about throwing out there 'I want a divorce' or 'I'm thinking we need to get divorced,' something along those lines, I want to challenge you to stop yourself from doing that in a heated environment. Take some time to cool off and strategize as to how best you want to approach that conversation, based on what you're looking to get out of it. Because the likelihood is, yelling it in a heated fashion is not going to achieve whatever that goal is.

The second choice that can be made early on, that impacts the trajectory of the case, is blindsiding your spouse with legal documents. You know, the initial ones that you file with the court, for example. In California it's a petition and summons package. It's the documents that you file with the court to open a case. You just go and file those, and you say nothing to your spouse, and you have a process server show up and serve them.

Now, I want to add a footnote here, that there are some situations where that might be the right choice, based on financial or safety concerns, like financial safety or physical safety concerns. Okay? So, where there are physical safety or financial safety concerns that warrant that type of approach, then that might be an appropriate choice.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

This is always something that you're going to want to get professional advice on for your specific situation. Which is, of course, as you know, not what I'm doing today. You want to be able to have the right type of input, for your specific facts, to help you determine whether you need to blindsided your spouse with those documents. But in many, many cases, blindsiding your spouse with the initial documents that you filed for divorce is not necessary, and can set the case on a trajectory that ultimately you may not want.

And why is that? You just have to think about if the shoe were on the other foot, and you were just blindsided at your front door, at your home, or even worse at work. Someone shows up to your home or your work, and they are a stranger, and they serve you with divorce papers. Or maybe it's even a mutual friend that your spouse has enlisted to serve you, and you have no idea that that paperwork is coming.

How do you think that would impact you? And what would you likely do in response? Again, you would likely feel threatened, and from a place of feeling threatened you would take aggressive action. So, these initial papers, by the way, often say things that are really not super appropriate for a family court.

For example, the summons in California says on the top of it, "You are being sued." It's aggressive language. They have to do that, for reasons I don't want to spend a lot of time going into now. But it's kind of a result of fitting family court into a criminal and civil better-suited system. So, that kind of language scares people, and when we're scared we take steps to protect ourselves.

In many situations, a better approach is for your spouse to have a heads-up that they're likely to be served with divorce documents at a particular time. Or even better, arranging for some other way of them to be served than a stranger showing up at the door. And those options all depend on where you are, what jurisdiction you're in, what your particular facts are, and it's something to talk about with a qualified professional near you.

But oftentimes, having the ability to know in advance that you're about to be served with documents, or having some active participation in that happening, allows for transparency around the process, the less likelihood your spouse is

Ep #17: How Smart Early Divorce Decisions Shape Your Future

going to be shocked or taken aback and feeling like they need to have an aggressive response to the service of those initial documents, because they're not in a position of thinking that you've been out secretly taking some kind of action against them.

So, this is really an opportunity for you to be very strategic about what is the outcome here that you would like to have, what the things are that need to be done to ensure that you are adequately protected in your particular situation, while balancing the benefits of there being some transparency around the steps that you are taking to move forward with a divorce filing.

Alright, so the third choice that we want to really think about is when you're not being straightforward in your communication about the divorce. You're just not being clear with your spouse about what your intentions are. So, this is a little similar to the second choice, but it goes a little further.

Maybe you, at this point, aren't talking to your spouse at all, which in many situations does nothing to actually foster a resolution of the matter, and thinking that the attorneys are just going to handle it and you'll never have to talk to your spouse again. Which, particularly if you have children together, is not realistic. So, communication issues are so often reasons that marriages break down, and unless something is done to address those communication problems they are going to continue into the divorce process and live beyond the divorce process.

And if you've got a co-parenting relationship that you're entering into because you have children together, we want to really take an intentional look at what the communication is looking like between the two of you about the divorce.

Because if it's an appropriate situation for there to be transparency around what the intentions are and what the intended next steps are, like what you're intending to do in terms of moving forward with the process, and what you're asking for in terms of resolution, etc. The more that that can happen, the less likely there is to be a reaction from your spouse that is coming from a place of being in the dark.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

When you're in the dark, and you feel like your spouse is taking all of these actions secretly, whenever your brain doesn't know what's happening in that situation it likes to invent reasons, that oftentimes could be actually worse than what the real reasons are. I mean, I'm sure there are situations where maybe they are that bad, but a lot of the time they're not actually.

And when our brain doesn't have an understanding of what something that feels threatening is, it oftentimes sort of overestimates what is actually going on, in terms of the danger. It's better to have some communication than to not have it, and then have your mind running wild about what is actually happening.

Because, again, that leaves you feeling threatened. And from that place of feeling threatened, you take actions that escalate conflict. And conflict is very expensive in the divorce process. Also, it's very expensive to your peace of mind and your wellbeing going forward post-divorce.

The fourth choice that impacts the trajectory of this process is, on that note of conflict being expensive, is choosing an overly aggressive attorney right out of the gate, without considering all of your options first. So, that shark attorney that you think you need to have.

Maybe your friends and family are telling you, you need that shark attorney who just wants to litigate the heck out of your case and promises you all sorts of things, in terms of a resolution. Like, "We're just going to take them to the cleaners." Whatever that phrase is they use, right? "We're going to get you what you deserve." What does that mean?

Having a competent attorney who is knowledgeable, skilled and assertive, can be very useful to you. You want someone who understands family law, and is very competent in their knowledge and experience and not afraid to take an aggressive legal position. But that doesn't mean burning down the house. It doesn't mean being a jerk to everybody in the process just because they can be.

Why not? Because if your attorney is a jerk, the likelihood is the judges know that too. And there is not a functional working relationship that they have with

Ep #17: How Smart Early Divorce Decisions Shape Your Future

opposing counsel, which means less cooperation, longer delays, and more fees for you.

So, at first blush it feels like, “Oh, that would be really beneficial to me to have somebody who is as big of a jerk as my spouse is,” and in a lot of cases, that's not true whenever there is a lack of cooperation between attorneys, about benign issues for example; in case management things, benign things that don't affect the resolution of what the ultimate issues are resolved as, just things to move the case along.

We want to have a dynamic where there is some reasonable level of cooperation that has nothing to do with your underlying rights, or what the resolution of those substantive issues is. It just translates into more fees for you, and a longer process for you, if you hire somebody who's going to do nothing but create problems and not cooperate, on any basic level, with opposing counsel.

You want somebody who is knowledgeable, who is competent, but somebody who is focused on getting you the best resolution that you can get in a reasonable, professional, cooperative and collaborative manner. That's, oftentimes, likely to produce a better result as opposed to someone who's solely focused on scorched-earth litigation over settlement efforts.

Because really, scorched earth litigation tactics, which basically is just, “We're just going to go to court. We're just going to let the judge decide. We're going to make no efforts to settle anything. We're going to be super unreasonable in the process. We're going to bury them in paperwork,” all these things, right?

In family law, that's really not, for most people, a realistic approach. There are a lot of costs, monetary and otherwise, to doing that. Why is that? The fact is about 95%-ish of family law cases settle. It's just a question of where in the process that they settle. Very few actually end up in trial, and there are reasons for that.

The reasons are because it's extremely expensive, it takes a long time to get to trial... And where I'm located for example, it takes years at this point to get a

Ep #17: How Smart Early Divorce Decisions Shape Your Future

trial. So, all the while the family is largely going without much in the way of actual, practical solutions to their problems.

I mean you can get some temporary orders, but the meat and potatoes of the case, like who gets the house, what happens to the bank accounts, the retirements, what about the long-term parenting plan, what about the long-term spousal support orders, or child support orders and things like that, none of this gets resolved unless you reach a settlement. Or you have a trial, and a trial is a long way away.

So, you can always increase, or step up the aggressiveness of an approach, but it's really hard to go in the opposite direction. If the approach that you're expecting, or being told should be taken, is just a 'just forget them. We'll just go to trial,' when you're at the beginning of the case... You're hearing that already; you're thinking that already... I just want you to understand that you're probably in for a long process, an expensive one, and one over, again, you have a little control.

If you're focused on preparing a case for trial, it's important to know there's a lot of work that has to go into preparing a case well. There's a lot of legal work that has to be done to prepare for a trial. As a rule of thumb, I tend to look at: for every one hour of trial, you're probably looking at two to three hours outside of the courtroom preparation. And that's just in the immediate kind of lead-up to the trial.

There are a lot of other steps that have to happen before you even get to that point. So, you've got to think about: Do I want to pay for preparing this for trial? Knowing that eventually you're going to have to probably make some kind of a settlement effort anyway. Because most of the time, the court requires some sort of either mandatory mediation or settlement conference before they'll even give you a trial date.

Do you want to incur the expense of preparing for court when you might be able to resolve the case through some other alternative dispute resolution means? What I mean there is, through attorney-to-attorney negotiation, by mediation, by the collaborative process; something along those lines.

Ep #17: How Smart Early Divorce Decisions Shape Your Future

But when you're not throwing all your precious financial resources at meeting very specific legal requirements for the admission of evidence at trial, then you can direct your efforts at trying to see 'how can we get this done without spending all that money on all of those very technical things?'"

When the likelihood is, if you have counsel in particular, they're likely to be able to tell you what the range of possibilities is, in terms of a resolution that would be expected at trial. And that can help you attempt to negotiate a settlement.

So, instead consider looking at 'how could I set this up for an advantageous settlement?' And make that effort first. If that doesn't work, 'okay, then what do we need to do to prepare for trial?' Because you have those rare cases that are going to go to trial. And that's okay. If that's your only option, that's what the court is there for.

But is that the option that you want for yourself if another one could be available to you? Even if your spouse is a jerk. Even if you think that they're not going to agree to anything. I hear that a lot. A lot. It doesn't mean that settlement is impossible.

In sum, I want you to think carefully about all of these choices, and what it would be like for you to be on the receiving end of that type of action; being threatened with divorce, being blindsided by the filing of initial documents for divorce, being kept in the dark about what to do, about what your spouse's intentions are with respect to the divorce process, what the next steps are, what they want as a resolution, being attacked by a shark attorney; all these types of choices that we've talked about today.

Education and conflict management skill-building are your solutions, so you can do your part in making smart decisions, or managing how you react to poor decisions being made by your spouse, in a way that is designed to move you toward the outcome you want rather than jeopardize it.

All right, that's what I have for you this week. I'll see you next time.

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Ep #17: How Smart Early Divorce Decisions Shape Your Future

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