

# What evidence should be submitted divorce proceedings

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Divorce cases involving marital relations is indeed broken, child support and division of property, and many other aspects, the parties in the proof process, often inadequate, the evidence was not collected, or do not know where to start. But based on who advocated the principle of who proof of litigation, a party can not issue to their advantage in the proof of evidence period, often bear the adverse consequences, or the court's claims are not supported. Therefore, lawyers remind you: How to collect in divorce cases, the use of evidence, the parties should pay special attention to the problem.

## (A) evidence collection

According to "People's Republic of China Civil Procedure Law" Article 63 provides that a civil action has the following evidence: documentary evidence; evidence; audiovisual materials; witness testimony; statements of the parties; expert conclusions; inquest.

Party for the collection and use of evidence there is often misunderstanding. This is because the parties generally lack legal knowledge, easily taken out of context, one-sided understanding of the law. In addition, the affected community spread of erroneous assertion, will be less effective. If that is circulating in the community who should sue who suffer, the kids will multisection property, if the other party does not agree, certainly not the first court judgment from the court, as long as there is evidence of a third party to identify each other, will be able to get compensation and other views influence the direction of bias in the evidence, or even wasting the money, to do wrong things. Long Ji lawyers remind you, in terms of evidence collection and its use should note the following: 1, spend a lot of money, effort investigating extramarital sex is not necessarily needed.

In the third cause of divorce cases, the innocent party may not collect evidence at fault, but to collect evidence, they ask a person or company, please detective investigation, while ignoring the common property investigation and evidence collection and preservation work. In fact, if there is no innocent party in several cases "Marriage" 46 of these provisions, there is no bigamy, cohabitation, the parties spend too much energy and money to investigate the other party is no need for an extramarital affair. Because direct evidence of extramarital affairs behavior is difficult to achieve, and no amount of circumstantial evidence, the judge generally not easily identified. Even if the evidence collected extramarital sex, and can only apply for the innocent party as a reason multisection property, and filed for divorce inadequate compensation basis. And in the division of property, the innocent party of points balance is just a general amount of the judgment, does not cause a qualitative difference.

2, note that the burden of proof time.

Currently, the Beijing court can generally prescribed in strict accordance with the Supreme Court regarding the burden of proof period, giving a time limit for the plaintiff's burden of proof, the burden of proof if the plaintiff did not prove within the time limit, the

judge will certainly not take the initiative to inform you of the loss of evidence right now, but there are other experiences lawyers will promptly point out that the party embarrassment, and even lost the opportunity to division of property, which is very heartbreaking.

3, note the use of the right to petition the court to collect evidence.

In divorce cases, a large number of property must rely on the courts to collect evidence. For example, bank deposits, stocks and other financial statements, generally requires court inquiry or investigation by a court order issued by another lawyer to collect. Further appraisal report, such as price identification, paternity testing, etc., are required to entrust the courts, otherwise they do not unilaterally evidence to be recognized. Therefore, the right to apply for flexible use of the courts to obtain evidence is very important.

4, for child custody forensic techniques.

The presence of competition for most cases of child custody issues. As you hire an agent, lawyers generally do not consider long- economy for any reason you are a child custody fight, but only to consider how to achieve the client's objectives.

Fight for custody of the children here on the issue of evidence to draw your attention to the following points:

First, the evidence of both basic conditions. The couple's divorce case in basic conditions, such as the general wage gap, cultural education and other small, does not mean that there is no gap, such as the quality of direct dependents party ideology, it will directly affect the healthy growth of the next generation. Thus, obtaining evidence in this regard, it is more important.

Secondly, evidence of the basic conditions for both parents. In many cases, especially for preschool children, not with a spouse, but with one's parents. Therefore, the child's living environment in the past, and long-term views of parents with children and physical condition, and often affect the child custody is an important aspect.

Moreover, children living environmental forensics. Children deal with divorce cases raising issues of principle, is conducive to the healthy growth of children. If the divorce, but one party from the school close, or living area ripe for school children, life is most favorable, of course the possibility to obtain custody of the child will be greater.

Finally, the child's opinion is very important. Children aged 10 or over general meaning and consequences of divorce for both basic understanding, so under normal circumstances, the court will listen to the views of children aged 10 or over. Before the process of divorce or divorce, children do ideological work, so that the child is willing to raise them with the most favorable one.

(B) the use of evidence

1, the documentary evidence. Divorce, the documentary evidence have been widely used. For example: marriage license, certificate, guarantee, wills, promissory note, love letters and so on. Documentary evidence prone to problems are: content flawed, even major defects. In the application of documentary evidence, it should be noted submitted documentary evidence and other evidence to form a chain, along with reinforcing the fact to be proved, such probative force increases, the probability of court admissible will be enhanced.

2 , evidence. As the evidence of objectivity , not subjective factors and the impact of environmental litigation , therefore , has strong objectivity and authenticity. In litigation among judges evidence confirmed the contents more easily accepted. However , due to the physical evidence involved in marriage and family disputes itself is not too much, and the lack of awareness to save the party , resulting in fewer Litigating evidence. Currently, there is evidence common hair , photos, gifts and so on.

3 , audio-visual materials . From the evidence of science perspective, is the use of audio visual materials , videos , CD-ROMs , films , etc. to reflect the image and sound , as well as computer data stored evidence to prove the truth of the case . With the development of the times, as well as raise awareness Litigating , more and more evidence is adopted party audio-visual materials . For example , cell phone recording , MP3 recording, voice recorder recording. Features such evidence is:

( 1 ) evidence intuitive . Whether it is video or audio, or direct the parties are generally expressed in other witnesses, especially for parties readme divorce cases can often be identified as admission , once reflected in the sound recording or video material , if you want to overthrow the parties shall otherwise cite evidence to the contrary . The image of such evidence , intuitive better reflect the objective facts , therefore, such evidence of strong force .

( 2 ) evidence of time of uncertainty. In matrimonial cases , evidence is often not taken similar evidence makes objects known, or generally only take secret means , therefore , a party often say half an hour or more of time , nor can it be evidence of the contents of the presentation .

Stage ( 3 ) evidence of time. Generally only in proceedings before a formal talk with each other or divorce , to take such evidence . Moreover, the vast majority of audio-visual material evidence is collected around the other party . When the other party feel wary , such evidence is difficult to obtain .

( 4 ) Candid steal secretly recorded illegal recording of evidence and legal evidence confusing nature . Based on the evidence , " Regulations on Civil Evidence " section 68 , to infringe upon the legitimate rights and interests or in violation of the law prohibitions methods to obtain , can not serve as the basis for assessment of the facts . Thus , the evidence collected is legitimate , it is necessary to see whether a violation of the legitimate rights of others or violate the prohibitions of the law. Invasion of a third party such as residential photographic recording is infringement. But if the evidence in their own homes , there is no such problem. Another example is placed recording equipment in their own homes , does not constitute infringement. But if it is placed in the home of the third , do not have legitimacy. There are two intimate photographs acquired through illegal means in the third person does not have the legitimacy of the bedroom , but if it is both intimate photographs in public places acquired , it has legitimacy.

4 , the testimony of witnesses . Such witness testimony characteristics: First, the privacy of married life , the fact that the decision does not have a marriage and family life and social openness . Therefore , to understand the scope of insider -part episode of married life between the parties is often limited to family and friends , and the testimony of witnesses is often closely related to permit a party or parties closely with the parties , the testimony of the contents of a certain tendency , the relative probative force lower .

Second, the testimony of content is often subjective. Because each person's ethical concepts and social growth conditions vary, so each witness to the fact that understanding of marriage and family disputes are quite different. Third, more often than not from the testimony in person perception. As the exclusive sex between husband and wife, leading in many cases, the testimony of witnesses confirmed that the source of the content are a party, that party relayed to the witnesses. Paraphrased itself with strong emotion, to a certain extent influence the testimony of the truth, the formation of the so-called hearsay evidence. Such low probative force of the evidence, other types of evidence need to be reinforced confirmed.

5, the party's statement. Because marriage is especially the case evidence as to whether the couple affection no longer exists evidence more difficult, so many parties hope the above statement in court, to submit a written statement to the court after a court hearing or when. According to the "Regulations on the Supreme Court Civil Evidence", the parties stated facts of the case can not be used alone as the basis, therefore, need to pay attention to the party or attorney to collect, provide additional evidence reinforcement. 6, conclusions. Marriage cases, identification of common conclusions: Disability proof to prove the diagnosis, mental status certificate, paternity conclusion, housing price assessment reports. For proof of disability and hospital diagnosis proved to be shipped primarily in family violence cases. Mental state identification to prove, mainly in the party does not have full civil capacity or with limited civil human situation. The paternity test, mainly in the case of a party for the children and their kinship generate doubt. Beijing to do paternity testing agency in Beijing Red Cross Blood Center. Under normal circumstances, the courts need to commission identified, the agent can unilaterally appoint lawyers for appraisal. General results will come out in about two weeks, the accuracy was 99.99%. Identification of a high court concluded that the probability of a class of admissible evidence.

Report: Beijing Red Cross Blood Center Contact

(C) the role Zhuojian

In many cases, the innocent party to try to obtain the presence of the innocent party affair, the evidence extramarital sex, in order to get maximum comfort and psychological undivided interest in the property at the time of divorce. For this, the long economic advice lawyers parties: the evidence at the cost Zhuojian role in divorce proceedings, often with the expectations of the parties have a certain gap.

1, Zhuojian and spiritual compensation.

"Marriage Law" Article 46 provides that the following circumstances, lead to divorce, the innocent party is entitled to claim damages: bigamy; has a spouse living together with others; implementation of domestic violence; abuse, abandonment of family members the.

According to the law, only the innocent party has the above-mentioned statutory circumstances, the innocent party filed a request for compensation, the court will support. That is to say, "Marriage Law" provisions of Article 46 only applies to damages to the four cases, and did not reveal all the details plus terms. Judges are not at liberty to expand the scope of damages, or that only affair that extramarital sex, even if there is direct

evidence onto the bed , can not necessarily get the court for compensation for mental support .

2 , Zhuojian and cohabitation.

Caught rape, does not prove that the innocent party has a common-law relationship with a third party . Cohabitation and adultery is not a legal concept , cohabitation requirements within a certain period of two continuous , stable fact of living together . And adultery can occur within an hour .

In addition , third parties have a spouse and children of non- self , it is considered cohabitation between them , is a misunderstanding. With children, only two have proved amour , but not necessarily prove the fact of cohabitation can not necessarily get spiritual compensation .

3 , unto necessity .

Of course, the other party having an extramarital affair but can not get the spirit of the compensation case , does not mean that there is no need to collect evidence in this regard .

First, based on " a number of specific comments on the Supreme Court to hear divorce cases deal with the problem of the division of property " requirement , the court dealing with the case , the innocent party to adhere to principles of caring , the innocent party is in favor of the division of property of the statutory grounds ,

Under the cost forensics cost is not high, the evidence is still better.

Second, from a litigation strategy to consider if there is evidence unto the bed , it may seek more active in the proceedings , to the innocent party to exert more pressure on them to make more concessions in order to reach the property advantage of the extra points , so that their share of the pain from the property solace .

4 , unto the hire survey companies .

If homeowners are more difficult own evidence , or inconvenience , hire survey companies to come forward to investigate and collect evidence is a better choice. Some parties unto aim is not seeking to get care in the division of property , but to achieve psychological balance , demonstrating that the spouse at fault , and to seek spiritual comfort . In this case, the research firm hired to find a way Zhuojian also psychological balance .

5 , admissible evidence and the court thereof unto

( 1 ) pictures legally valid unto their own bed . If you break into their own bed, lifted the camera photographed in bed when conditions are more likely to photograph the court identified .

Caught in their own homes , residential does not belong to intrusion by others , do not constitute criminal liability. Zhuojian process and whether photographs taken by Zhuojian violated human rights , such as reputation , people look unto the purpose , scope and consequences of the spread . If the evidence is to the divorce proceedings to protect their legitimate rights and interests , even if the behavior of some excesses , but as long as subjectively not intentional conduct of others , such as personal insults , objectively and no pictures widespread deliberate propaganda, but only for the trial evidence, can not say unto the people being violated reputation, greater evidence of effective possibilities.

( 2 ) in residential or hotel bed unto others , take pictures legality is questionable. Because the way to legally obtain evidence , or even reflect the truth , the evidence obtained not only the courts can not be adopted , they may eat infringement lawsuit.

Citizens enjoy the right of reputation , personal dignity of citizens are protected by law , are not loyal to their own investigation and collection of evidence is acceptable, but their behavior should be in line with the law. If the infringement of personal rights of others in the investigation and evidence collection , and constitutes a moral damage to others , should bear civil liability.

( 3 ) the legality of parks and other public places in forensics .

Although less common in public places too intimate contact , but do not rule out the occurrence of the phenomenon of sex that some people in the field or park . If the behavior of the scope of access to public places , the perpetrator's behavior is narrowly lost privacy, it is generally believed that the behavior of people to give up the right to privacy , and therefore , the possibility of evidence being adopted by the court to take greater .

6 , property and confession unto the book division content.

Unto man once unto success , often forcing the use of environmental advantages innocent party to sign a confession like some similar things , and let the innocent party to sign on a good property distribution scheme proposed earlier . For the effectiveness of such agreement, due to lack of fairness, the basic principles of voluntary contract , the court finds that the possibility is unlikely .

What is the evidence cited in divorce cases ?

According to Article 64 , paragraph " a party of its own propositions have the responsibility to provide evidence " requirement " Civil Procedure Law of People's Republic of China , " you should be submitted at the time of the prosecution or the court responding to evidence or evidence necessary clues to prove or disprove their claims advocate . Otherwise, you might not be supported claims court will bear the consequences of losing . The following are the main evidence you should provide the court :

1, to provide marriage registration certificate. One missing , the other for divorce , should provide one unaccounted time away from home , family and friends do not know the whereabouts of proof. No registration that cohabit as husband and wife , the party filed for divorce, cohabitation should provide the age when unregistered reasons proof.

2, to provide the foundation of marriage status testimony of witnesses or other evidence . Free love , marriage or arranged marriage or traded . During the engagement or without twists and turns, the newlyweds or remarried.

3, to provide evidence emotional marriage , marriage is good or bad feelings or general , whether the separation and separation time , because other evidence .

4, to provide proof of the main reasons for divorce due to material and witnesses clues. If a party has physical defects , psychiatric hospitals above the county level should be provided , a certificate of psychiatric diagnosis , the specific time of illness. If a party has been sentenced or due to criminal detention for divorce , should provide the Court's judgments , Laogai locations. If a party due to third party interference caused by divorce , should provide a third party 's name , organization, address and other relevant documents.

5 , number of children and provide your name, gender , birth time is legitimate , illegitimate or adoptive or step- child of the evidence of health status , children , adult children live independently proof.

6 , if the woman is pregnant , the pregnancy should indicate the date , and to provide a certificate issued by the hospital diagnosis .

7, to provide pre-marital personal property of both the list of jointly owned property or property of other family members . The disputed property should provide origin of the property , the time and other evidence obtained , such as invoices.

8, to provide bilateral economic revenue expenditure proof material , with or without other burdens , the availability of credit and debt supporting materials , if any debt or liability shall provide IOU , the name of the debtor or creditor , such as proof of residence or work materials . If deposits, savings should provide the name , the date of opening the account , the deposit amount.

9 , provides housing situation proof. Public housing should provide the name of the unit of property rights , property rights owners should also provide a certificate .

10 , had previously sued for divorce , should indicate a withdrawal or mediation and good, or are not allowed to divorce judgment . And shall provide the original verdict, ruling or mediation original or a copy

How to collect evidence in divorce proceedings

#### 1 bank survey

Bank deposits issues involved in the divorce division of property , should pay attention to two issues: First, the court split an existing bank balance ; Second deposits during the proceedings or prosecution before the transfer shall indemnify the other lawsuit . Therefore, when the transfer of deposits from other banks , to investigate two aspects , namely the breakdown of deposits and access funds within a certain period of time.

Under normal circumstances, each case of bank deposits are not a party or a lawyer to apply directly to the bank inquiry , investigation order can only apply to the court by a lawyer or bank transfer directly apply to the court to take . The premise is that the court accepted the application must provide each specific bank name and bank account number . To this end , the parties and lawyers do is check each other's bank account. Collecting ways : ( 1 ) the party to stay at home passbooks and bank cards , these materials can be copied or reproduced ; ( 2 ) the other party to stay at home bank card credit card spending certificate ; ( 3 ) the other bank deposits and withdrawals certificate ; ( 4 ) other records in a notebook memo bank account.

Sometimes , you may only know the bank account, but do not know which specific savings in the bank and opened . In this case, the customer service hotline queries based on each bank's bank account . There are smart parties , but also to guess each other's banking password , then the phone will be able to find each other's bank balance . Based on this information the parties can decide whether to take the appropriate security measures , and specifically to the preservation of the amount .

#### 2 stock trading and financial account information survey

In general , capital stock in the account consists of two parts : one for the current market value of the stock . A stock funds in the account balance is . Disputes often arise in practice , due to the volatility of the stock market value greater appreciation not only

possible , it may appear derogatory situation , in which case the price of the standard to which the parties divided on the need for consultations . If the negotiation fails , the court will take a point in time ( averaged over a certain period ) to determine the price of the stock , sentenced to pay half of the price of the stock held by the other party to party .

For check stock trading information , cite specific securities account if the company best court may apply directly to the other side of the transfer of the securities company account information . If you can not give a specific company securities account , you must present the other side of the ID number to the China Securities Clearing Corporation Shanghai or Shenzhen, China Securities Clearing Corporation survey , but much more cumbersome formalities .

Due to the special nature of stock trading , the stock is now trading will entrust a third party custodian bank funds that are stock funds into or out of a third-party bank . For this purpose, the content of the survey also apply to the court in two parts , one for stocks trading on the bill ; one for the funds in the account statement .

### 3 Real Estate Information inquiry

Property disputes in a divorce case is now the most important division of property content. In most cases the spouse during the marriage relationship that continued to buy many homes , but there are still a lot of careless wife , if the family when purchasing multiple housing units , only know the cell name , the specific unit in which a few number of layers do not know, some even only know the approximate position. Making the survey adds up a lot of trouble . Of course , do not rule out some cases the spouse intentionally concealed the purchase of real estate related queries can refer to Chapter III of the book corresponds content rights.

Problems often encountered in practice , knowing that in a specific area, do not know the specific room number , I encountered a situation generally rely lawyer referral investigation of the other party by name and ID number to find the property company inquiry . Property companies often match . Query to a specific location , to raise local real estate management department check the registration of property rights . It should be noted that, where the address is the address of the house is not necessarily the name of property rights registration certificate , and some real estate management department finds that the name does not match , it will not provide access , even if the property owner 's name is the same. To do this , be sure to inquire about the property company clearly address on the registration certificate of title describes what . Property companies are not cooperating in the case , counsel may apply to the court or by a court order issued by investigating the direct investigation of the other houses in the district to purchase a specific address.

Under normal circumstances, a lawyer with a letter of introduction provides a detailed survey of the address and name of the property owner to the housing management department to obtain proof of property registration inquiries , so you can split the property rights advocates .

### 4 Insurance Information inquiry

With economic development , people 's life insurers increasingly leave . Family insurance generally involves two categories, one for property insurance , a life insurance . The two types of insurance, different insurance companies based there are a variety of insurance



products . In a divorce dispute , division of jointly owned property can be used as , in the kind of property insurance has paid insurance premiums and insurance payments have been received are jointly owned property ; in the life insurance types , only the premium has been paid as jointly owned property division . And insurance, due to the personal relationship with a specific , personal property should belong to one of the spouses does not belong to the couple's joint property.

For other inquiries insurance information , and to be informed of the receipt based on premiums , insurance contracts , policy documents, the insurance company visits and information . In general , the specific insurance company , with specific information on the identity of the parties can check insurance situation . And under normal circumstances , the parties and lawyers were unable to insurance company directly , you need to make with the people's court investigation directly to the people's court or the insurance company investigation. Insurance companies will reply or provide insurance contract , a copy of such form of payment certificates reply.

#### 5 queries wages

Division of property in a divorce , one party 's wages and can not be directly used as the basis for division of jointly owned property , the main reason is that divorce is the division of the couple 's joint property based on existing property . Therefore, the query each other's wages are often used as a measure of the other party should bear alimony .

In the query each other's wage income information , pay attention to the issue of the following three areas: ( 1 ) Most of the units are now in bank transfer payment of wages, wages and bank accounts with funds tend to be issued by the external unit wage than proved to be more. Thus , in addition to the other requirements of the units issued proof of income outside of wages , payment of wages should be required to provide bank account. ( 2 ) housing fund and other housing subsidies during the marital relationship continues to get also belong jointly owned property, wage income in the query , you can be required to provide housing subsidies and housing fund disbursement . ( 3 ) the resignation of the other economic compensation ( buyouts ) , and the resulting wage general sense is different, and who has a strict , close relationship , is one of the personal property of the child , not as a jointly owned property division .

In normal circumstances, the law firm 's lawyers issued a letter of introduction to a unit of inquiry investigating possible to obtain proof of wage income each other , but for the dissemination of the bank account of wages , housing and housing subsidies will be asking the court to retrieval . So, check each other's wage income situations , it is better to apply directly to the court order or request the court to issue a direct investigation retrieval . Sometimes, the other party may change in a short time several different units , you need to take these units eleven tune .

#### 6 . Equity information inquiry

Husband and wife in the company 's equity , the query above compared to some of the property of all kinds easier , but the assessed value is the most difficult category. In dealing with the financial , compliance, and objective account of the company as it is rare. And economic exchanges and convenient , there are still a lot of " shell companies " exist , these companies annual turnover staggering profits is not cheap , but the annual financial statements might be a loss. The fuzzy value of the company , as well as the "Company

Law " special protection of shareholders' equity ( shareholders' equity transfer only after the shareholders' meeting can be), to the spouse of one non-corporate shareholder activist brought great difficulties. In practice, I often suggest to the court for the parties on the other side of the equity be preserved in order to prevent the other party perform seemingly legitimate share transfer .

Ownership of information queries , lawyers with practicing certificate , contract law firm referral agency and the parties can go directly to the business sector , query concerning the opening of the application, the articles of association, annual reports , there is a notice of the court filing , You can also query the corporate balance sheet and income statement .

Divorce investigation and evidence collection costs and who is out ?

Ms. Wang and her husband after four years of marriage , the husband and the family nanny illicit relationship took place, gave birth to a baby sitter for his daughter , both of whom are still living together as husband and wife in a living cell . Ms. Wang Zeng Yi husband guilty of bigamy filed a complaint with the court, the court sentenced him guilty of bigamy . Ms. Wang think the feelings between them has broken, want to divorce her husband . Ms. Wang is the husband of bigamy investigation and evidence collection expenses of \$ 90,000 , her husband of bigamy cause great mental harm , Ms. Wang to claim compensation for mental damages and part of the investigation and evidence collection costs. Will Ms. Wang asked reasonable?

Qiao forensics divorce cases

In divorce cases , in the case of dowry , bride price , marriage between relatives of property and debts, and even bigamy and other mistresses , often for lack of evidence , leading to controversial cases . And is able to obtain sufficient valid evidence , whether the facts of the case , often have a decisive influence on the outcome of the case .

Seek legal custody of the child forensic techniques

In divorce cases, our agents , there is a fight for child custody issues 70% of the cases. Which also includes two types:

First: really love kids, and kids are willing to live with ;

Second: In order to get more real estate or property to the children as a bargaining chip . As lawyers , we do not consider for any reason you are fighting for custody of the child , we only consider how to achieve the client's objectives. Specific to fight child custody related legal provisions and principles , we have described in this site, then not repeat . We can only express their views about the forensics case .

Finally , the child's opinion is very important.

Divorce litigation procedure

Divorce proceedings are divided into three phases: the prosecution , trial, judgment .

First, the prosecution

Prosecute cases of divorce , the marriage relationship is the direction of the people according to the law court to dissolve the marriage relationship with each request. A party is a party to sue the plaintiff , the defendant is accused , after the proceedings began , the parties legally entitled to procedural rights , undertake litigation obligations.