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# NESTING:

Giving Children A Stable Home Life  
**IN THE MIDST OF CHAOS**

— Can It Work **for You?** —

By: Jeff J. Horn



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If you have kids, getting divorced is especially tough. In the back of your mind, there's always the thought that the separation will risk the well-being of the children. The key, perhaps, is to keep it as drama -free and amicable as possible. Keep it child-centric. But how? There's a custody / parenting arrangement called NESTING which could be the answer.

Nesting is a parenting system that separated or divorced parents use in order to keep children in their primary home and familiar surroundings. Rather than having the children going between two homes, nesting allows the children stay put while the parents alternate coming in and out of the home. Everyone wants to do right by their children in a divorce and exploring nesting may be a viable option. If you want to check out a Hollywood version of nesting, check out ABC's romantic comedy "Splitting Up Together." For you and your family, however, consider the arrangement's purpose, importance, and best results.

### ***What's the Purpose?***

A child centered approach to your separation or divorce, if shared by your spouse, will give everyone the best chance at a healthy future. This approach can include keeping the children in the marital home for a defined period.

### ***Some examples include the following:***

- A child about to graduate can stay in the family home amid the separation or divorce to ensure that the child remains in the school district and graduates with his or her class. This results in less disruption to the child's daily living during a difficult time.
- A special needs child is better suited to be in the family home as it is already set up to address the child's needs. Again, the goal and intended result is to have the least amount of disruption as possible.

Many children need to adjust to the idea that

their parents will separate or divorce and letting them do so in familiar surroundings may serve their best interests. Done right, nesting can ease the pain of the divorce and transition into two separate homes with new parenting schedules.

### ***A Change In Mindset – Permanent or Temporary?***

Nesting may also allow one or both spouses to explore whether the separation is permanent or if there is a reasonable prospect of reconciliation. Trial separation while leaving the children in the home allows a couple that has a chance of bouncing back to do so without experiencing massive economic changes. It is important to have a conversation with your spouse to determine where each of you sit on a scale of 1 to 10. 10 is that you absolutely want a divorce tomorrow and 1 is that you absolutely do not want the divorce. Share your number you're your spouse through a candid and honest conversation. This conversation is best held in a nurturing counseling environment rather than at a moment of pique.

### ***Budget***

Nesting can impact your budget both ways – spending more money than planned managing more than one living environment, or saving some money on housing during the beginning of your separation and divorce.

If you maintain the marital home and each parent needs to get a separate paid residence, the economics may weigh heavily against exploring nesting. If you already have a second home or you have nurturing friends and family who can house you on the cheap for a while, nesting may help the children and help your budget. As soon as you have to create two households, you lose efficiencies.

You may be in a leased property and it may simply not make sense to vacate or break your lease early. Keeping the leased property until the end of the term may be best for your



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budget and also give you time to figure out whether it is best for you to renew the lease or move on.

For homeowners, there are many decisions that need to be made during a separation or divorce. How much is the house worth? How much do we owe? How would we split up equity? Do we wait for the market of our credit to improve before we sell? You may want to wait out the market for a while since an improving market may result in a significant increase in your net sale proceeds. You may simply need time to figure out what your refinancing options are. Or, maybe you simply need to wait for a better selling season. In the northern United States, spring is viewed as the prime family home selling season. It is ideal to sell your home and close around the end of the school year so that you can be moved in and settled by the beginning of the next school year.

Keeping the home and alternatively occupying it with your spouse may remove some of the mistrust that arises out of many divorces.

### ***What results are you looking for?***

No matter how strained your communication may be with your spouse, if you are considering nesting, you must establish success criteria.

## ***Here are some suggestions:***

**1** Agree that each spouse will maintain the nesting relationship only to the extent that it makes the separation or divorce process easier on the children. If there is disagreement on this issue, utilize the services of a family counselor to assess the impact of nesting on the children.

**2** Agree that the expenses associated with the second or third home are family expenses and should be treated as such. Neither spouse should be disadvantaged by having to expend significant sums while the other may have a low or no cost second home option.

**3** While the impact of nesting on the children is primary, nesting should last only as long as it is productive and nurturing for the spouses making the critical decisions about whether separation is permanent and how to set up systems for coping with the start of a new life.

**4** Agree to establish a set of basic rules so that when the marital home is transitioned from one spouse to the other the dishwasher is emptied, the dishes are put away, the home is tidy, and the home is treated like a home. This is your home – not a hotel.

**5** If this is a trial separation for the spouses, the ground rules should include, at minimum, no introduction or visits of any new love or dating interests to the children.

**6** Remember this is not a trial separation for the children. It is not the time to triangulate or divide and conquer. Disparaging the other parent to the children during your time in the home may temporarily feel good, right, and justified, but will ultimately erode the benefits of nesting and build up resentment that the arrangement is designed to offset.

**7** If you are keeping the marital home so that the children can complete school and then plan to move, plan the move several months in advance of the end of the school year. If the move is to a new rental, let that prospective landlord know your plans. If you are selling, engage the realtor 4 to 5 months prior to the time you want to be closing and moving.

**8** Set a timeframe to conclude the nesting arrangement, or at least to review it. If you start off open-ended, agree to review the arrangement every three months and include your family counselor in that review process.



# THE BOLD SIDEBAR

with Attorney Jeff Horn

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>>> *Tips to Avoid Failure*

## 5 DON'Ts

**One.** DON'T forget the golden rule of all divorce parenting – children first, me second.

**Two.** DON'T involve third parties, dating interests, or love interests. If there is a new relationship, it must remain separate from the nesting arrangement.

**Three.** Once both of you are close to a 10 – meaning permanent separation and ultimately divorce – care must be taken to share this conclusion with the children. Do it together or share this information while your family counselor facilitates the conversation. Remember, nesting will contribute to the children fantasizing a reconciliation. Get help with channeling your children's thinking.

**Four.** DON'T be unrealistic with your timing. If one of you thinks the nesting will go on forever

and the other is thinking it will last for only a few months, you've only delayed the collision course at the intersection of the children's needs and each spouse's expectations. Remember Einstein's definition of relativity in terms of time. If you have 10 minutes with your lover and will not see him or her for three more years, the 10 minutes goes by in a flash. But if you put your hand in boiling water for 10 minutes it will seem like an eternity. Remember that each of you has a different sense of time during the divorce process.

**Five.** DON'T drain the bank. Money always follows time. If the financial cost of the nesting arrangement drains the family finances so that neither party has sufficient money to restart their separated life, nesting will result in conflict and could backfire.

# >>> Tips for Success

# 5DOs

**One.** Communicate. Perhaps more easily said than done. If you can communicate effectively you may end up going from nesting to reconciling. Clear lines of communication can make nesting an ideal start to a peaceful divorced life for you and your children.

**Two.** Get independent help. First in line is a family counselor. The counselor can suss out the situation, iron out nesting plans, and schedule productive meetings for the parents and children – both independently and together. When conflict arises, agree to use the help that was set up early on. Second in line is a financial counselor. Get some assistance in planning out a budget which maintains the marital home and covers the additional expenses created by each parent having a separate living arrangement. Discuss these plans with your divorce lawyer because arrangements made during a pending divorce can have long-term ripple effects on your final resolution, by way of agreement or litigation.

**Three.** Honor your plans. Agree to leave the house clean and uncluttered for the other spouse. Agree to turn over the home on a specific day. Do this to not only be true to the nesting arrangements, but to reinforce to your spouse that you will follow through with the terms of the divorce and build trust into an uncertain process.

***“Keep the children at the forefront. Keep your eyes and ears open to the children's experience”***

**Four.** Pivot. When circumstances change – and they always do during the divorce process – be willing to terminate or modify the nesting arrangement. A child may benefit from switching schools. A child may need to switch into a different program because of exceptional talents or special needs. Recognize nesting as a situational and circumstantial solution and once those circumstances and situations change, it will be time to adjust the arrangement.

**Five.** Keep the children at the forefront. Keep your eyes and ears open to the children's experience. They may find nesting confusing. Nesting may lead to misleading dreams – some are reconciliation fantasies, and some are the horrors of a difficult divorce. There are times when the children are ready for the separation to look and feel a bit more permanent. Nesting impedes that. Other children may have some difficulty in coping with the initial separation and divorce. No matter the experience, allow the children to ask questions and have conversations around how they feel about what's taking place – it will help in navigating them through the situation. In the end, as with most adults, the children have the right to get on with their lives and look towards a healthier future.

Separation and divorce may be part of your family's journey. Nesting can ease a part of that journey. It is a temporary device that, when managed well – with the proper help and communication skills – can serve your children well and show them a respectful and dignified way to solve big challenges. When the arrangement is used to further bitterness, get revenge against your spouse, or delay the inevitable, nesting will backfire and wind up costing you precious time, energy, respect, and money.★





# POT AND PARENTING

**By:** Jeff J. Horn

My law school Prof. H. Geoffrey Moulton, Jr. served as a law clerk for US Supreme Court Justice William Rehnquist. Among the topics we discussed in my criminal law class was the Supreme Court settling on the spelling of the word marijuana. It turns out that there was some debate on using the letter “h” instead of “j” among the Supreme Court justices. It never occurred to me then that legalization would be on the table 25 years later.

Now New Jersey and other states are legalizing marijuana and all spelling with the letter “J”. In family law, parental fitness is often challenged

on the grounds that one parent, caretaker or guardian of the children utilizes marijuana. Perhaps there is a history of marijuana usage --- arrests for possession or distribution. Or, maybe a parent is a highly functioning member of society but a daily marijuana user.

Yesterday, if I appeared in court with the client accused of marijuana use and that client tested positive for THC through urine analysis or hair follicle, the knee-jerk reaction of the court would be to pause that person parenting. That parent may be subject to random screenings and a pledge to not utilize marijuana or other illegal

drugs. The violation of that pledge or a so-called failed drug test would set that parent back.

The legislation moving through the New Jersey lawmaking process contains the language “legalizing marijuana like alcohol for adults.” If a parent stands before the court and tells the judge truthfully that he or she drinks two glasses of wine or four beers every single night and has been doing so throughout their tenure as a parent, the court is likely to not even bat an eye. Contrast that with a parent who stands before the court and truthfully states that he or she smokes marijuana joints every single day. Now, our leaders --- our most thoughtful civic citizens have declared that marijuana is the equivalent of alcohol – control it, regulate it and tax it. Prohibition never works, and the wrong people continue to make money, and our most dispossessed citizens get locked up.


Where does that leave the Family Court judge posed with an argument that – the other parent is a druggie, and he or she smokes marijuana every day. I would argue that accusation has lost its power and grip over the question of what is parental fitness. Historically, society has looked at the marijuana user as someone on the wrong side and headed for a life fraught with trouble

which results in inevitable addiction to even more dangerous drugs. It was always called a gateway drug.

Merely utilizing marijuana will no longer be evidence of a lack of parental fitness. There must be more, perhaps much more. The parent arguing against custody and parenting time for the marijuana user will need to make a strong case. Tie the marijuana use closely to lousy behavior which impacts the children. If marijuana use and bad parenting are not tied together, the marijuana usage issue should now hold a very diminished position in the analysis of the best interest of the children.

Renowned addiction expert, Dr. Gabor Maté looks at addiction in reverse asking why we punish people in pain? If people utilize marijuana or alcohol to manage pain or trauma in their life, does that translate to bad parenting? Should we take children away from parents that have pain, trauma and obstacles in their life? Resting decisions on charges of marijuana use and work failed drug test has always been an easy tripwire.

***Marijuana users are bad parents.  
That argument is dead.★***



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