

## **Dissolution of Marriage**

Divorce is a trying time for both of the parties as well as their children, parents, brothers, sisters, co-workers and just about everyone else close to the divorcing couple. It is during this emotional and exhausting time some of the hardest choices any person ever makes during their lifetime have to be made. This is especially true if it is the first marriage, a long-term marriage, real estate is involved or children need to be considered. Unfortunately, the divorcing couple is often not able to intelligently communicate with each other during the early days of this tumultuous time.

Lawyers are often the punch line to a joke or your experience with one has been at a bad time. It is no different in a divorce situation. In this way, lawyers are like policeman, they are a necessary evil that you tolerate but when you need one, they are your best friend.

Lawyers have many clients. All clients want their file handled first and now. To the client, their file is the most important one their lawyer has. The lawyer has a different view. Lawyers are paid to zealously represent their clients within the bonds of the law. Most people joke about it but lawyers have strict ethical rules they must follow. Why would a lawyer go against the code of ethics over a typical divorce file that might bring in \$2,000.00, if you can collect your fee, and risk his livelihood forever? Fees are determined by the complexity of the case, the assets, debts, children and agreements between the parties. I spent over \$100,000.00 going to law school. One file is not going to cause me to throw that away and the vast majority of lawyers think this way.

Regardless which side you represent in a divorce case (Dissolution of Marriage), much of the work is the same. The person that files the divorce lawsuit is the Petitioner (Plaintiff). The party being sued is the Respondent (Defendant). The person filing the case has to pay the filing fee, usually around \$200.00, to the Court. The Respondent has to pay an Appearance fee when they enter the case. This fee is around \$100.00. Fees vary by County and they increase as you get nearer a large city.

The Respondent has to get served with the filing papers or they may enter their Appearance voluntarily. The service of process (filing papers) or the entry of an Appearance gives the Court personal jurisdiction over that party. Once that is accomplished, the case can move forward. Everything in this article assumes there is not a Pre-Nuptial or Post-Nuptial Agreement.

We now have both parties before the Court. In this example, I will be representing the Petitioner, who is the wife. The Respondent, husband has hired an attorney. The first step is to serve Discovery requests on the other side. I would also advise my client to put together all documents she has concerning assets, bank accounts, real estate, tax returns for three years, five recent pay stubs, debts, credit card statements, vehicles and vehicle loan documentation, school costs for children, life insurance documentation, pension fund info, medical insurance info, medical bills and information about non-typical personal items like gun collections, jewelry, art, coin or stamp collections and anything else the parties own worth over \$500.00. If the client can provide this information, it will help keep the fees down for completing Discovery.

The first item to settle is child custody. This will often tell an attorney how much of a fight this case will be if the parties want to fight over custody. Typically, there are only two options, mom or dad. Child support is governed by statutory guidelines unless there is a large difference in the parties' income or if the income is very strong. The Court can set the support at any amount but has to set forth reasons for going outside of the guidelines. Both issues of custody and support can be determined by the Court after a hearing but they are usually handled by agreement after negotiations.

Now the attorneys negotiate the distribution of property. A married couple generally has non-marital property, property one party had before the marriage and has continued to keep it separate or property one owns by way of inheritance. Pensions may also come into play as non-marital property. Some of a pension can be marital and some can be non-marital. If a party had a pension before the marriage, that part is non-marital. The part that accumulates during the marriage may be marital property. Usually, the marital home commands the most attention during the negotiations. If the wife is going to have custody of the children, she may want to stay in the marital home to avoid moving the children to another school. The least disruption to the children's lives, the better for all concerned.

Debts must also be negotiated during this negotiation period. The entity that is owed the debt is not a party to the divorce. The Court does not have jurisdiction over the creditors; therefore, the rights of the creditor cannot be determined by the Court. The parties are getting divorced, not the creditor. The creditor does not care about the divorce, they just want their money. In the real world, creditors are often affected by the divorce. The parties have been operating one household on their current income. Once the divorce is commenced, the parties will be running two households on the same income.

Vehicles are usually easy to distribute. Assuming each party has a car they drive predominately, the vehicles are split up along these lines. If the vehicle has a loan on it, the person taking the vehicle takes the loan. The obligations on student loans usually go to the person who borrowed the money.

After the issues of child custody, child support, property settlement and debt distribution have been settled, the issue of maintenance comes up. This used to be known as alimony. In the modern world of today, where both parties work, maintenance is a non-issue. It is waived by both parties. The waiver is permanent and non-modifiable, meaning you can never seek maintenance once it is waived regardless of a change in the circumstances.

Maintenance does come up in cases where one of the parties has foregone a career in order to maintain the family house and raise the parties' children. In those cases, the stay-at-home party may be entitled to maintenance. The length of the maintenance owed by one party to the other is an issue to be negotiated or decided by the Court. In the case of a long-term marriage where it is unlikely the stay-at-home party will ever be able to secure employment that would maintain the

life style the party has become accustomed to, permanent maintenance will likely be the outcome. This is especially true where the working party has a substantial income, partially made possible by the efforts of the stay-at-home party.

In a situation where one party has a greater income than the other, temporary maintenance, sometimes called rehabilitative maintenance, may be ordered or agreed to. The length is typically three years, giving the receiving party time to improve their job or education and therefore their income.

If the parties agree to all issues, a Property Settlement Agreement will be drafted for both parties to review and sign before a Notary. A short prove-up hearing will be scheduled before the Court. At that hearing, the Divorce will be granted. Grounds will have to be established if a no-fault divorce is not sought.

If children are involved, the entry of the Judgment for Dissolution, which grants the divorce, does not end the parties' life together. They still have children to raise and will interact with each other for a considerable period of time if not the rest of their lives.

Many peripheral issues have not been dealt with in this article. Does the wife want her maiden name back? With kids, this means the mother and kids will have different last names. This could be an issue at school and while traveling by airplane. College education expenses were not dealt with. In a divorce situation a parent can be ordered by the Court to pay for college expenses. The Court cannot order married people to pay the college expenses of their children Medical bills, medical insurance and general education expenses were not dealt with.

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