



### **General Information of Divorces:**

Like all lawsuits, a divorce requires the filing of a complaint by one party--the plaintiff--against another party--the defendant. The defendant typically files an answer and counterclaim against the plaintiff. This makes the divorce "contested." Upon filing, the case is assigned to a judge and magistrate who will decide the issues in case.

The first step in most cases is the issuance of a "temporary order." A temporary order or "T. O." is an order that is issued by a magistrate pertaining to issues of child custody, child support, visitation, spousal support, and payment of marital obligations. The temporary order is issued approximately 5 or 6 weeks after the filing of the case and will be in effect as long as the case is pending.

A pretrial conference will usually be scheduled before a judge within the first few months. The conference is held in the courtroom and gives the attorneys an opportunity to present the issues to the judge with the parties present. The judge comments upon the issues and attempts to move the case toward resolution or trial.

Beginning early in the case, the lawyers will engage in a process known as discovery. Discovery is the stage where the relevant facts are uncovered through a variety of techniques including oral depositions, written interrogatories, requests for production of documents, subpoenas, request for admissions, and inspections. The information obtained is necessary for the informed resolution or trial of the case.

Divorce cases contain three major categories of issues: the allocation of parental rights and responsibilities (custody), division of marital property, and spousal support.

The allocation of parental rights and responsibilities involves question of custody. The custody of a child may be given to one parent (a sole residential parent) or to both parents through a shared parenting plan. Child support, which is determined by a statutory formula, must be calculated. Visitation rights (in the case of a sole residential parent) must be addressed. The health insurance needs of the child will also be provided for, along with the designation of which parent receives the tax dependency exemption and child credit.

The division of property requires the proper categorization of all property owned by either of the parties as marital or separate property. Property must be valued, which may require the use of appraisers or accountants, and all liabilities must be determined. A balance sheet is ultimately prepared that suggests the proposed distribution of property.

Spousal support involves many factors such as the length of the marriage, the physical and mental health of the parties, the assets and liabilities of the parties, and the ages of the parties. Vocational experts may be required to provide expert testimony on the employability of a party. Ultimately the case either will be settled by agreement or will be tried before a judge. There are no juries in divorce cases. In the case of a trial, the judge hears all the evidence and testimony of witnesses and issues a written decision that is appealable by either party.

**Grounds for Divorce in Ohio:**

**What are the grounds for divorce in Ohio?**

A divorce may be granted in Ohio using either "Fault" or "No-Fault" grounds.

Fault grounds include:

1. adultery;
2. imprisonment;
3. willful desertion for one year;
4. cruel and inhuman treatment;
5. bigamy;
6. habitual intemperance;
7. final divorce outside of Ohio that does not release spouse from obligations of marriage in Ohio;
8. fraud;
9. neglect.

No-Fault grounds include:

1. incompatibility, unless denied by the other spouse;
2. living separate and apart without cohabitation and without interruption for one year.

Of these, the "No-Fault" ground is the most straightforward and easiest to prove.

## **Annulment**

In a divorce, the court declares the marriage contract broken; in an annulment, the court says that there never was a marriage. Annulment is much more difficult to prove -- and is much rarer -- than divorce. If you want to go this route, you will definitely need to speak to an attorney. Of course, if you want an annulment for religious reasons, you'll need to consult with your priest, minister, or rabbi as well.

## **Documentation**

You'll need to provide your lawyer with the following documentation in order to proceed with your dissolution. Start gathering everything together as soon as possible so that you can find out what might be missing and submit any requests for duplicates.

## **Personal Data**

- Full addresses and phone numbers of both parties.
- Full names, birth dates, and addresses of all children of the marriage, their school and grade.
- Information about any prior marriage of either spouse, including a certified copy of the divorce decree.
- A copy of any domestic contracts (e.g. a prenuptial agreement).
- Information about any previous legal proceedings between the spouses or involving any of the children.
- Dates and particulars about any previous separations, attempts at reconciliation, or marriage counseling.

## **Financial Data**

- Your previous year's income tax return, and any related data from the IRS.
- Information about your current income, e.g. a current pay slip.
- A list of substantial assets and liabilities of both spouses.

## **Preparing for a Divorce:**

As you begin the divorce process, sit down and identify the issues that are likely to be at play in your divorce. Make a list of your assets, and think about the other issues that may be contested. Then establish your priorities, both in terms of what you really want to keep and what you can live without. Doing so will serve to prepare you and your attorney for getting you what you want without spending unnecessary time and money in the process.

While some people believe that one spouse can get everything while the other is left with nothing through the process of divorce, the reality is that the division of assets, rights, and responsibilities is likely to be fairly similar for both parties. As a result, it is important for people facing a divorce to establish clear priorities, and figure out what is really important to them.

An attorney should be able to negotiate a fair and reasonable settlement for you if an agreement can be reached, or in the alternative get a fair and reasonable result from the court. However, the particular terms of "fair and reasonable" agreements and judgments can vary greatly.

One way to look at a divorce is to say that each asset held by the spouses, whether jointly or individually, is a card, and all of the cards must be placed on the table face up to be divided. Through the divorce process, each spouse takes certain cards, and there are any number of ways that these cards can be allocated.

By deciding which issues are the most important to you and clearly identifying your priorities for your attorney, you greatly increase your chances of getting what you really want from your divorce.

### **Identify Your Priorities**

- ✓ The first step in identifying your priorities is to recognize the issues that are likely to be in play. If you have children, the care and custody of the children are likely to be substantial factors in your divorce. Even if one parent is willing to concede custody of the children, there will undoubtedly be child-related issues in your divorce. These may include a visitation schedule for the non-custodial parent, division of school vacations, the amount of child support to be paid, the division of educational expenses, and the decision making process for child activities such as sports and summer camps, among many others.
- ✓ The division of assets is likely to be another key component to any divorce. While the division may be governed by a prenuptial agreement if one exists, it includes dividing major items such as real estate, bank accounts, stocks, pensions, and other retirement plans.

Here is an area where establishing priorities is crucial.

Are you concerned more by current cash flow than future savings? If so, you may want to sacrifice some retirement dollars in a negotiation in order to take more cash today.

Perhaps your main objective is to remain in the marital home. In many divorces, the home is the major asset of the parties. This means that whichever spouse stays in the home is likely going to have to offset keeping that asset by giving the other spouse a

larger share of the remaining assets. Is this a trade off you are comfortable with? Or would you be better off by selling the home and dividing the proceeds?

### Health Insurance and Taxation

Other issues that will be dealt with in your divorce include health insurance and taxation. For example, is your health insurance provided through your spouse's employer? If so, will that coverage continue to be available to you in the future? Will there be an additional cost for your coverage, and will you be asked to cover that cost?

These are key questions to ask prior to negotiating a settlement. If, for example, you need to have health insurance provided for you (and for your children if you have any) through your spouse's employer, and you want your spouse to pay for it, this may be something you can negotiate as part of a settlement agreement. However, if this is a priority for you, you need to make sure your attorney knows that, so that this is part of any offer of settlement.

With respect to taxes, is it important to you to take any dependency exemptions that you and your spouse may be eligible for? If it is not, you may be able to use this issue as a carrot to obtain something else that is more important to you.

Why is it important to make your priorities clear? For several reasons. By recognizing that you are not going to take everything, you go into the process with realistic expectations, and you are more prepared for your life after the divorce.

### Give and Take

While you may have the greatest divorce attorney in the world, he or she is not going to be able to get you everything. You are going to have to give and take. Whether you settle or litigate your case, this is the reality. However, if you make your priorities clear to your attorney, he or she should be able to either make an offer of settlement to your spouse or make a case to the court that both gives you what you want most, and is reasonable.

Being reasonable is crucial, because it forces your spouse and his or her attorney to seriously consider your offer. In the alternative it informs the court that you are attempting to resolve this matter fairly, and it provides the court with a resolution it can adopt.

Having a clear idea of what you want most may also help to minimize the amount of attorneys' fees you pay. For example, if your attorney knows from the outset that you are interested in staying in the marital home and retaining stocks, but you are not so concerned with retirement dollars, then the attorney should be able to structure a proposal that addresses your concerns while making it palatable for your spouse by offering them a larger chunk of your lower priority, here retirement assets.

This does two things. First, it gets straight to the point of what you want, without spending time and money debating the numerous paths that your divorce could take. Secondly, it gives your spouse an idea of your priorities and what you are offering to them. This should either lead to an agreement that you both can live with, or else let you know that you cannot reach an agreement because you both are determined to keep the same things.

Either way, you streamline the process by knowing what each party's positions are, and then either negotiating or preparing for litigation.

### **Handling Post-Divorce Stress: Child Custody Issues:**

If you have children, chances are that your divorce did not bring an end to the turmoil between you and your former spouse.

As children grow, their interests and needs change, so problems arise over changes in custody and visitation. Even parents who work together experience at least one or two major post divorce crises involving children.

After deciding custody cases, one judge lectures parents about the probabilities of a change in custody after divorce because even "permanent" custody orders are only temporary. Sometimes children initiate the change when they enter their teen years, and add to the confusion by changing their minds. They ask to move back, just when you thought you got (or got rid of) them.

Tips on handling custody issues:

- Do not ask children to decide where they want to live or what their visitation schedule should be.
- Do consider the children's needs and interests.
- Speak to your former spouse directly, not through the children.
- When you reach an impasse, speak to a mediator, preferably one with plenty of experience in resolving custody and visitation issues.
- Ask the other parent before you incur large expenses for the children.
- Do not make plans for the children which overlap their time with the other parent.
- Be flexible, and maintain your sense of humor