

DISSOLUTION OF MARRIAGE

Dissolution of marriage (divorce) is a traumatic event in any family. This brochure attempts to explain the basic legal concepts that apply to dissolution of marriage. Hopefully, this information will alleviate some of the anxiety you feel about the proceedings.

1. **Action for Dissolution:** You or your spouse begin the proceedings by petitioning the court for dissolution. Actually, you will ask the court not only to dissolve the marriage, but also to distribute between the two of you the rights and responsibilities you had as a couple. Twenty days after a process server hand-delivers a copy of the petition to your spouse, he or she must answer the petition, admitting or denying your allegations about custody and property distribution. Normally, your spouse will retain an attorney; but even if they do not, we will not represent both of you. Your best interests will be our primary concern.

2. **Residency Requirement:** Prior to filing out the petition for dissolution, you or your spouse must have permanently resided in Florida for at least six months.

3. **Separation:** Although you need not be separated while the divorce is pending, you may do so without being charged with desertion. There is no "legal separation" in lieu of divorce. In some extraordinary case, you might be able to obtain support without petitioning for divorce, or your spouse is almost certain to counter-petition for dissolution of marriage.

4. **Grounds for Dissolution:** Florida has "no fault" divorce to the extent that you no longer need to prove adultery, mental cruelty, etc. As long as one spouse believes that the marriage is irretrievably broken (i.e., that it cannot be saved), the court will grant the divorce. However, if you have children and believe there is a possibility for reconciliation, the court may order both of you to attend counseling and will order you to attend a course entitled "Divorce: A Child's View".

5. **Extramarital Relationships:** Although Florida is "no fault," it is possible that adulterous relationships can affect support awards, the asset distribution, or custody awards. You must be totally frank with us about your own and your spouse's involvements so that we can assess the possible effect. Furthermore, it is ill advised to begin dating until your marriage is officially dissolved by the court, so as to avoid potential problems.

6. **Custody:** The public policy of Florida is to order shared parental responsibility of minor children in almost all cases. The court may then decide which parent should provide the primary physical residence. Although the court accords the father equal consideration in deciding which parent will provide the primary physical residence, the parent who has been the primary caretaker of a young child is usually designated for this responsibility. Typically, the other parent will have the opportunity to maintain frequent and continuing contact with the children. Conferring on all major decisions affecting the children after the divorce is a basic principle of shared parental responsibility. If truly extenuating circumstances exist, one parent may be awarded sole parental responsibility, but the other will still receive some form of visitation privileges.

7. **Child Support:** The Legislature has established child support guidelines, a copy of which is contained in this booklet. Each parent then contributes his and her share of the total amount the legislature or the court deems necessary to support a child at your combined incomes. The non-residential parent's support payment shall be deducted from his or her paycheck by his or her employer and sent through the Central Governmental Depository. The court can require support for a normal, healthy child only until 18 years of age (or until graduation from high school, but not beyond age 19). To provide for a child's college education, the parents may agree to include this in a marital settlement agreement. The court will not order either parent to support an "adult" child.

8. **Marital Assets:** In general, all assets and liabilities acquired during the marriage belong to both spouses. Depending on your ability to prove what you brought into the marriage, the court may return some property to you outright. The court may also return gifts from third parties, inheritances, and certain other assets to you or give you a larger share of a joint asset due to your extraordinary contribution.

9. **Equitable Distribution:** Florida is not a community property state. The court will distribute the marital assets to the spouses in shares that the court finds fair under all the circumstances.

10. **Permanent Alimony:** A spouse who has lost the capacity for self-support during a long marriage may receive alimony until he or she remarries or the other spouse dies. The paying spouse must have the ability to make these payments.

11. **Rehabilitative Alimony:** A spouse whose earning ability has diminished during the marriage, but who has the potential for self-support, may receive alimony for a designated period of time in order to become re-established in the work force.

12. **Lump Sum Alimony:** Lump sum alimony is a legal term that may or may not have any relationship to the traditional concept of "alimony." It can be used to even the property distribution, give one spouse an extra share, or provide for support.

13. **Change of Name:** A woman may ask the court to restore her former name. You should notify us of your desire before we file the initial pleading.

14. **Attorney's Fees and Costs:** Even though your spouse may have superior financial ability and may be ordered to pay all or part of your attorney's fees and the costs of litigation (filing fees, court reporters, copies, etc.), your contract makes you ultimately responsible to us. Fees will vary depending on the difficulty of the issues involved. We are proponents of value-billing and flat fees.

15. **Final Judgment:** Eventually, the court will dissolve the marriage, award custody, apportion the assets and liabilities, and provide for payment of support, if necessary. If you and your spouse reach an agreement on all of these issues, the court will, most likely, adopt your agreement. If not, the court will conduct a non-jury trial, where testimony and documentary evidence are submitted by the attorneys. The court will then decide for you.

16. **Discovery:** No attorney can properly advise you as to settlement offers or the probable outcome in court without uncovering the total financial picture. This is primarily done by requesting all financial documents from your spouse and following up with questions at a deposition. Your spouse's attorney will require the same from you. The court will also require you to fill out a financial affidavit under oath that identifies all of your sources of income and expenses.

17. **Temporary Relief:** If your spouse has been physically abusive to you or the children, threatens to hide or dissipate assets, or refuses to give you reasonable support, the court may enter a temporary order designed to alleviate these problems until a final judgment can be entered. However, you must testify at a hearing before the judge will determine your need for temporary relief.

18. **Duration of Proceedings:** Many factors, such as amount of discovery required and you and your spouse's willingness to cooperate with discovery requests, affect the time needed to obtain a final judgment. As such, the duration of the proceedings may take as little as three months or more than one year. An average contested divorce takes approximately six to 12 months.

19. **Our Professional Services:** We utilize our knowledge, experience, and research skills to obtain the best possible result for you. One service we cannot provide, however, is to go back and rewrite your life and marriage. We are restricted by the facts you bring us. We are also not psychologists, so if your emotional problems exceed our expertise, we will recommend a counselor. Neither are we tax experts or accountants. If your financial picture is complex, you may need to retain one of these experts to work on your case, too. Outside the circle of these professionals, every confidence you disclose to us will not be repeated without your permission.

20. **General Suggestions:** Divorces are as unique as the marriages that created them. Do not expect the same outcome a friend had in court. Also, do not allow your emotions to rule your head. Not standing up for yourself now will cause you to be very resentful later. On the other hand, don't use the proceedings as an instrument of revenge for a long list of marital ills. This approach may provide short-term satisfaction, but may blind you to long-term gains. This is especially true regarding your children. Cooperating with each other for the children's welfare, and not poisoning them against your spouse, is a must if your children are to survive this ordeal.