

Divorce in Florida



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CAN YOUR MARRIAGE BE SAVED?

Are you sure your marriage cannot be saved? Before you take any legal steps to end your marriage, you may consider possible ways to save it. You may wish to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi or other qualified person. Many social and religious organizations offer counseling services at reasonable rates. Your attorney may refer you to someone who can counsel you, individually, or you together with your spouse. Some counseling services are free and some services are offered on a sliding scale basis related to your ability to pay.

GENERAL

The official term for divorce in Florida is "dissolution of marriage."

Florida is one of the many states that has abolished fault as a ground for divorce. The only requirement to dissolve your marriage is to prove that your marriage is "irretrievably broken." Either spouse can file for the dissolution of marriage. You must prove that a marriage exists, one party has been a Florida resident for six months immediately preceding the filing of the petition, and the marriage is irretrievably broken. Fault, however, may be considered under certain circumstances in the award of alimony, equitable distribution of marital assets and liabilities, and determination of parental responsibility.

Each divorce case is unique and, therefore, results vary from case to case. In each case, the issues are different, which can include the division of property and possessions, responsibility for support, and parental responsibility and time-sharing with children.

The divorce process can be highly emotional and traumatic for the parties as well as the children. Marriage partners often do not know their legal rights and obligations. Court clerks and judges can answer some of your basic questions but are prohibited from giving you legal advice. Only your lawyer can provide legal advice. Statutory requirements and court rules must be strictly followed or you may lose certain rights permanently. The Florida Bar recommends you obtain the services of an attorney concerning legal questions which include discussions regarding your rights in a divorce, your children's rights, your property rights, and your responsibilities resulting from the marriage. A knowledgeable lawyer can analyze

your unique situation and help you make decisions in your best interest and that of your family.

There are two ways of getting a divorce, or dissolution, in Florida. The usual way is called a "Regular Dissolution of Marriage." The second method is the "Simplified Dissolution of Marriage."

REGULAR DISSOLUTION OF MARRIAGE

The regular dissolution process begins with a petition for dissolution of marriage, filed with the circuit court, in the county where you last lived together as husband and wife or in the county where either party resides. Either the husband or wife may file for dissolution of marriage and the petitioner must allege that the marriage is irretrievably broken. The petition sets out what the person wants from the court. The other spouse must file an answer within 20 days of being served, addressing the matters in the initial petition and, if he or she wishes, including a counter-petition for dissolution of marriage raising any additional issues the answering party requests the court to address.

Court rules governing divorces require that each party provide certain financial documents and a completed financial affidavit to the other party within 45 days of the service of the petition or several days before any temporary hearing. Failure to provide this information can result in the court dismissing the case or not considering that party's requests. The parties or the court can modify these requirements except for the filing of a financial affidavit, which is mandatory in all cases in which financial relief is sought. A child support guidelines worksheet must also be filed with the court at or before any hearing on child support. This requirement may not be waived by the parties or the court.

Some couples agree on property, parental responsibility, and other post-divorce arrangements before or soon after the original petition is filed. They then enter into a written agreement signed by both parties that is presented to the court. Other couples may disagree on some issues, but eventually work out their differences, and also appear for a final hearing with a suggested settlement they ask the court to accept and incorporate into a final judgment. In such uncontested cases, a divorce can become final in a matter of a few weeks.

Mediation is a procedure to assist you and your spouse in working out an arrangement for reaching agreement

without a protracted process or a trial. Its purpose is not to save a marriage, but to help divorcing couples reach a solution and arrive at agreeable terms for handling the break-up of the marriage. Many counties have public or court-connected mediation services available. Some counties require couples to attempt mediation before a trial can be set.

Finally, some couples cannot agree on much of anything and a trial with each side presenting its case is required. The judge makes the final decision on contested issues.

Coming to an agreement rather than leaving decisions up to a judge empowers parties to create terms with which they are more likely to comply.

SIMPLIFIED DISSOLUTION OF MARRIAGE

Certain couples are eligible to dissolve their marriage by way of a simplified procedure. This type of dissolution was designed so the services of an attorney may not be necessary. Couples are responsible, however, for filing all necessary documents correctly, and both parties are required to appear before a judge together when the final dissolution is granted. You can, however, retain an attorney to represent you even in an uncontested matter. The cost for such services is generally much less than in a contested case. You can further reduce your attorney's fees if you ensure that you and your spouse have reached an agreement on all issues which will reduce the work needed by a lawyer.

Not everyone can use this simplified procedure. A husband and wife can use the simplified dissolution of marriage only if all the following requirements are met: (a) they both agree to the use of this form of dissolution proceeding; (b) they have no minor (under 18) or dependent children; (c) they have no adopted children under the age of 18; (d) the wife is not pregnant; (e) at least one of the parties has lived in Florida for the past six months; (f) the parties have agreed on the division of all of their property (assets) and obligations (debts); (g) neither party is seeking alimony; and (h) both parties agree that the marriage is irretrievably broken. If you cannot meet all of the above requirements, you will have to follow the procedure of the regular dissolution of marriage process.

There are substantial differences between a simplified and a regular dissolution of marriage. In a regular

dissolution, each spouse has the right to examine and cross-examine the other as a witness. Each spouse also has the ability to obtain documents concerning the other's income, expenses, assets and liabilities before a trial or settlement. With a simplified dissolution, financial information may be requested by either party but disclosing financial information is not required.

If the husband and wife seek a dissolution and prefer to use the simplified form of dissolution, they should both contact the clerk of the circuit court in their county and obtain a copy of the booklet titled "Simplified Dissolution Information" for more detailed information and forms.

DOMESTIC VIOLENCE

You may go to court yourself (without an attorney) to petition for an injunction to protect yourself against domestic violence (assault or battery by your spouse whether you are separated or not, or your former spouse), repeat violence, or sexual violence. If you feel you are the victim of domestic violence, repeat violence, or sexual violence, you should contact the office of the clerk of the circuit court in your county or the local domestic violence shelter for information and assistance.

PROPERTY DIVISION

One of the most difficult and complex areas of divorce is the division of marital assets and debts. Marital property may include cars, houses, retirement benefits (pensions and 401k plans), business interests, cash, stocks, bonds, bank accounts, personal property, and other things of value. Debts, also called liabilities, include mortgages, car loans, credit card accounts, and other amounts of money you and your spouse owe to third parties. Generally, any asset or liability acquired during the marriage is considered marital and subject to distribution. The parties may also have assets or liabilities that are considered non-marital and should be awarded to only one party.

Florida statutes and case law provide for an "equitable distribution" of marital assets and liabilities. Marital property should be divided fairly or equitably (not necessarily equally) between the parties, regardless of how title is held. A court decides equitable distribution before considering alimony. Equitable distribution is based on a long list of factors the court is required to consider.

Factors to be considered by the court include the

contribution of each spouse to the marriage; the duration of the marriage; and the economic circumstances of each spouse. The court should approve your agreement if the court finds it to be reasonable. If you and your spouse cannot agree, the court will divide the assets and liabilities during trial.

ALIMONY

After equitable distribution, the court may consider an alimony award. The court may grant alimony to either the husband or the wife. Rehabilitative alimony may be for a limited period of time to assist in redeveloping skills and financial independence. Parties requesting rehabilitative alimony must have a plan for their rehabilitation such as the cost of going to school to improve skills and marketability. Bridge-the-gap alimony allows a party to make the transition from married to single life which may include the need to obtain a vehicle and/or money to find a place to live. Permanent alimony continues until the receiving spouse's remarriage or the death of either party. The court can also order alimony for a certain period of time, which is called durational alimony. Rehabilitative, permanent, and durational alimony generally are paid periodically (i.e., monthly or semi-monthly); bridge-the-gap alimony can be paid in a lump sum at one time, or may be paid over a very short period of time. The court may also order lump-sum alimony where one party pays to the other party a lump-sum payment of money or property. Although adultery does not mandate or bar an award of alimony, the court may consider the circumstances of adultery in determining alimony.

In awarding alimony, the court considers factors such as the parties' prior standard of living; length of the marriage; age and physical and emotional condition of both spouses; each spouse's financial resources and income-producing capacity of the assets they receive; the time necessary to acquire sufficient education or training to find appropriate employment; and the services rendered in homemaking, child rearing, and education and career building of the other spouse. The court may consider any other factor necessary to do equity and justice between the husband and wife.

You have the right to obtain information about your spouse's income and assets through the use of discovery procedures. Discovery includes exchange of documents and answers to written or oral questions.

TAXES

There are very important tax considerations in any divorce, including the dependency deduction for children, taxability and deductibility of child support and alimony in their various forms, and effects of property transfers. Knowing the tax consequences of your settlement agreement is important prior to finalizing your divorce. It may be too late after the signing of a final judgment to correct mistakes that have been made. You may want to obtain the services of an accountant in conjunction with your attorney to become better informed about this part of the dissolution process.

SHARED PARENTAL RESPONSIBILITY FOR CHILDREN

It is the public policy of Florida to ensure each minor child has frequent and continuing contact with both parents after the parents have separated or divorced and to encourage parents to share the rights and responsibilities of child rearing. The court gives both parties the same consideration in determining parental responsibility and time-sharing, regardless of the child's age or gender.

In most cases, parental responsibility for a minor child will be shared by both parents so that each retains full parental rights and responsibilities with respect to their child. Shared parenting requires both parents to confer so that major decisions affecting the welfare of the child will be determined jointly. You and your spouse may agree, or the court may order, that one parent have the ultimate responsibility over specific aspects of the child's welfare, such as education, religion, or medical and dental needs. The court will determine any or all of these matters if the parties cannot agree.

In very rare cases, the court can order sole parental responsibility to one parent. To do so, the court must determine that shared parental responsibility would cause harm to the child.

In determining parental responsibility, the court will approve or devise its own a parenting plan that includes responsibility for the daily tasks of child rearing, the time-sharing schedule, and decision-making authority relating to health care, school, and related activities. The plan will also specify any technology that will be used for parent-child communication. The parents may agree on a parenting plan and submit it to the court for approval or

the court will determine these issues. The statute includes a list of factors for the court to consider in making these decisions.

The courts use the Best Interests of the Child Standard when considering parental issues.

Florida law requires both parties to attend a parenting course prior to entering a final divorce. Some courts require children of parents going through divorce to attend a class specifically designed for them. Consult your county clerk's office for information on courses offered.

CHILD SUPPORT

You and your spouse each have a responsibility to support your children in accordance with their needs and your income. Child support may be by direct payment or by indirect benefits, such as mortgage payments, insurance, or payment of medical and dental expenses. Ordinarily, the obligation to support your child ends when that child reaches age 18, marries, is emancipated, joins the armed forces, or dies.

Some of the issues concerning child support which must be considered include: (a) the amount of support; (b) the method of payment; (c) ways to assure payments are made; (d) when child support may be increased or decreased; and (e) who claims the dependency deduction for tax purposes. Other questions may need to be answered, depending on the circumstances of your case. Guidelines for the amount of support apply to all cases and are based on the income of the parents and the number of children with adjustments for substantial overnight contact.

If you have a problem getting support payments from your spouse or former spouse, or the time-sharing plan is not being followed, you should bring this matter to the attention of the court. It is not legal to withhold time sharing or child support payments because either parent fails to pay court ordered child support or violates the time-sharing schedule in the parenting plan.

APPEALS

If you feel the judge's decision was incorrect, you may appeal that decision, provided that certain procedural steps are followed. An appellate court does not, however, often reverse a trial judge's decision because the

judge has broad discretion in divorce cases. If the trial judge makes an error of law or has abused his or her discretion, the appellate court may reverse the decision. Your appeal success will be limited if your only reason for appeal is displeasure with the judge's decision. You need to determine whether to appeal the final judgment quickly because an appeal must be filed within 30 days of filing of the final judgment.

WHERE TO GET LEGAL HELP?

A good place to begin is with your own lawyer who can give you a quick review of your legal rights and advise you how to proceed. Your lawyer may refer you to a family law attorney if he does not handle dissolution of marriage cases.

If, however, your family lawyer has been retained by your spouse, then that same lawyer cannot also represent you. In fact, if the lawyer has been your family lawyer there may be a conflict of interest and the lawyer cannot represent either of you. Do not attempt to consult with your spouse's attorney to receive legal advice. It is unethical for an attorney to represent both parties in a dissolution action and to give legal advice to both husband and wife.

HOW TO SELECT A LAWYER

If you do not have a lawyer, a lawyer referral service, usually operated by a local bar association, can put you in touch with a lawyer who handles such cases.

Many areas in Florida have lawyer referral services listed under "Attorney" or "Information and Referral Services" in the yellow pages of the telephone book. If you do not have a lawyer referral service in your city, The Florida Bar's Statewide Lawyer Referral Service can locate a lawyer for you. You can call the statewide service, toll-free, at (800) 342-8011 or you can view the Attorney Search section on The Florida Bar Family Law Section's homepage at www.familylawfla.org.

If you are looking for an attorney to represent you in a divorce -or any other legal matter- The Florida Bar has developed another consumer pamphlet, "How To Find A Lawyer in Florida," which may be helpful. See below for instructions on ordering this and other consumer pamphlets.

ATTORNEYS' FEES AND COSTS

The fees and costs for dissolution of marriage cases widely vary. The more complex and/or the more contested the issues, the more the dissolution will cost. At an initial meeting, your attorney should be able to provide an estimate of the total cost of a dissolution based on the information you provide.

Your lawyer will expect you to pay a fee and the costs of litigation in accordance with the agreement you make. Sometimes the court will order your spouse to pay part or all of your fee and costs, but such awards are unpredictable and cannot be relied upon. You are primarily responsible for the payment of your legal fees.

In a divorce, it is illegal for an attorney to work on a contingency fee basis; that is, where the lawyer's fee is based upon a percentage of the amount awarded to the client.

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