

What You Should Know About Divorce

Introduction

Beyond the considerable emotional pain, the end of a marriage is legally complex. This pamphlet reviews alternatives to divorce and failing these, the procedures for obtaining a divorce. Consult a lawyer if your marriage is ending. You will need sound professional advice to determine child custody, financial support, and make a fair division of the property of the marriage.

Alternatives to Divorce

Depending on your circumstances, you may wish to consider alternatives to divorce—marriage counseling, annulment or separation.

Many couples try counseling from a marriage counselor, social worker or psychotherapist as an alternative to divorce. Such counselors are trained to help couples resolve differences. The counselor may be able to help you and your spouse learn communication skills and a better understanding of one another to prevent your marriage from failing. Marriage counseling can be useful when couples find their problems have begun to affect their compatibility with each other. Counseling may also keep a relationship with your spouse from worsening even if divorce is unavoidable.

An annulment is a court ruling that a marriage was never legally valid. A marriage can only be annulled if there was a serious defect at the time of the marriage ceremony. In most states, marriages can be annulled if one of the parties was under age at the time of the marriage, if a spouse could not consummate the marriage, if consent was obtained fraudulently, or if the marriage was bigamous or incestuous. People also may seek annulments for religious reasons or because marriage caused a party to lose spousal support from an earlier marriage. Issues of child custody or property division may also be addressed by the court as part of the proceeding.

If you and your spouse separate, it is best to enter into a separation agreement or obtain a court order of separation. A separation agreement is a contract between you and your spouse that can provide for spousal support, child custody, visitation rights, and a division of the property acquired during the marriage. The agreement can be enforced by courts if a party does not comply. If the parties later divorce, it may be included in the divorce judgment.

If the parties cannot agree to a separation agreement, your lawyer may recommend that you obtain a court ordered separation. This requires a lawsuit. In some states, you must prove certain grounds similar to those for divorce. The court may decide issues of child custody, visitation rights, support and property division as part of the separation agreement, the annulment, or as we shall see, in divorce.

Grounds for Divorce

Common grounds for a fault divorce are adultery, bigamy, cruelty, desertion, incest and insanity. In addition, many states have adopted “no fault” divorce laws that allow divorce without showing that one spouse was at fault. In no fault states, a divorce can frequently be obtained because of incompatibility or irreconcilable differences or if spouses live apart for a period of time—often a year.

In certain circumstances, a fault divorce may offer a better legal strategy for you. Your lawyer can guide you on the best way to proceed.

Divorce Procedure

Divorces may be uncontested or contested. An uncontested divorce can be granted when the parties agree on all issues such as child custody, support and property division. It may involve the filing of papers at the courthouse and, perhaps, a brief appearance before a judge.

A contested divorce, where the parties cannot agree to terms, resembles a standard lawsuit with a trial before a judge.

In some states, mediation is part of divorce procedure for spouses who cannot agree on the terms of a divorce. Mediators are used in place of judges to resolve disputes on matters like child custody, visitation, and property settlements. You and your spouse can meet with the mediator to discuss the issues and work out an agreement acceptable to both of you. Lawyers and judges are usually not present during mediation sessions and formal legal procedures do not apply. A judge will decide the issues if you are unable to resolve

them through mediation.

After the judge grants a divorce, you may have to wait a short period before remarrying. The waiting period ranges from one day to one year after the judge's approval of the divorce depending on the state.

Child Custody and Visitation

Child custody can be given exclusively to one spouse, or you can share joint custody. In most cases, one parent has sole custody and the children live with that parent. The other parent usually has visitation rights taking the children on weekends, holidays, or vacations. In certain circumstances, the parties may agree or the court may order joint physical custody where the children spend time living with both parents on a regular basis. Frequently, spouses share responsibility for important decisions affecting their children, such as choosing schools and medical treatment.

If you are unable to agree on custody, the court will award it based on considerations such as parental fitness, the preferences of the children, and their age and sex. A party who later wants a change in custody must show that conditions have changed and that a new arrangement is in the best interest of the children.

Spousal and Child Support

Spousal support is called alimony or maintenance in some states. Either you or your spouse may be entitled to spousal support depending on your income and property, your standard of living, your financial needs, and the circumstances leading to the divorce. If you and your spouse are unable to agree on support, a judge will decide who should pay it, how much is to be paid, and how long it will continue. The judge may award spousal support until the receiving spouse is self supporting or until death or remarriage.

You and your spouse are both responsible for the support of your children. If you cannot agree on child support, the court will apportion the responsibility based on custody, your incomes, financial resources and other obligations.

In some cases, you and your spouse may go back to the court in later years to ask the judge to increase or reduce the spousal or child support. However, you must be able to show that there has been a change in financial resources or needs.

Dividing Property and Debts

States have their own provisions for dividing property at divorce. Many divide only property acquired during the marriage; some states include property which a spouse owned before the marriage or received as a gift during the marriage. If you and your spouse are unable to agree on who gets what, the court will divide the property based on various factors. The court may consider the contributions of each spouse to the property, the contributions of each spouse to child care and homemaking, the financial resources and needs of each spouse, and the income and career potential of each spouse. Your lawyer can help you obtain a fair division of property and help you avoid overlooking valuable assets such as pension rights.

You and your spouse can assign responsibility for your debts in a separation agreement. If you are unable to agree on a division of responsibility, the court will probably apportion them in accordance with the same kinds of considerations used to divide the property of your marriage. Your lawyer can help you obtain compensation from spouses for failure to pay debts that are their responsibility.

Tax Considerations

A divorce has important tax consequences. Custody can affect your taxes, including your right to claim head of household status, dependent exemptions, and child care credit. Support payments may be taxable or deductible. The property division may also affect your taxes. Your lawyer can advise you about the tax aspects of divorce.

Your Lawyer

You should consult a lawyer if your marriage seems to be ending. Your lawyer can advise you about your rights to custody, property and support. Your lawyer can also prepare a separation agreement, assure that timely steps are taken to obtain a divorce and advise you when unexpected problems arise. Your lawyer can also seek protection if your spouse threatens to assault or harass you, take your children in violation of custody or visitation rights, or hide property belonging to the marriage.

Conclusion

Divorce is emotionally and financially complex. It is important to see a lawyer to protect your rights and your future. Your lawyer may help you to save your marriage by referring you to a marriage counselor. If divorce is unavoidable, your lawyer can help you take the steps to end the marriage and advise you about obtaining custody of your children, support and a fair division of property.

ALTERNATIVES

- A. Counseling
- B. Divorce
- C. Mediation
- D. Separation

CARING FOR CHILDREN

- A. Custody
- B. Decision making
- C. Support
- D. Visitation

GROUND FOR FAULT DIVORCE

- A. Adultery
- B. Bigamy
- C. Cruelty
- D. Desertion
- E. Drug addiction/ Alcoholism
- F. Felony
- G. Fraud
- H. Impotence
- I. Insanity

GROUND FOR NO FAULT DIVORCE

- A. Breakdown of marriage
- B. Consent of spouses
- C. Living separate and apart

FINANCIAL ARRANGEMENTS

- A. Amount and duration
- B. Child support
- C. Health insurance
- D. Spousal support

SEPARATION AGREEMENT

- A. Child custody
- B. Child support
- C. Division of property
- D. Divorce
- E. Inheritance rights
- F. Life insurance
- G. Medical and dental expenses
- H. Payment of debts
- I. Pension rights
- J. Right to live apart
- K. Spousal support

TAXATION

- A. Child support
- B. Division of property
- C. Spousal support

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.