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## The Divorce Process

A basic guide to the legal process behind ending your marriage.

### Part I -- Temporary orders and filing the divorce papers

No two divorces are exactly alike. Every marital breakup has unique legal, financial, and/or parenting issues that require their own resolution strategies. But every divorce undergoes the same general journey from initiation to closure. Whether you and your spouse make this journey cheaper and faster is up to you, but the destination is always the same: from shared to separate lives.

Here's a basic primer of how the divorce process works in the United States and Canada. Bear in mind, however, that I'm not a legal professional. You'll want to speak to a family lawyer to find out how the options vary in your state or province, as well as how your own situation affects the process.

#### Temporary orders and filing the divorce papers

One of the first things you and your spouse have to do after you separate is to get a "temporary order" or agreement. This is extremely important, because it could set the precedent for your final divorce settlement. A temporary order/agreement establishes quick decisions about the children, property, bank accounts, and other issues that may be important between the separation and the final outcome. For example, if one spouse moves out of the home and the other has no income, how will the latter feed the kids and pay the bills? For more information about temporary orders, [click here](#).

You should hire a divorce lawyer and/or mediator, and financial advisor, as soon as possible. You'll set your temporary order/agreement in a brief, relatively informal hearing before a judge -- so prepare a complete list of what you want to request in advance. Among items you can request: temporary custody and visitation arrangements; a restraining order so your spouse won't contact you; child or spousal support; and/or who gets the car and house.

Next, you or your spouse files a petition, application, or complaint for divorce with your local family court. The person who files, or plaintiff, serves a Summons upon the other spouse stating that they want a divorce and what they are seeking in terms of property, child custody, support, etc. The other spouse, or defendant, must answer the Summons and, if they wish, can make their own claim.

Check [DivorceMagazine.com](#) for information on the grounds for divorce in your state or province. Most states and all Canadian provinces, however, don't require fault as a prerequisite -- so you don't have to justify filing by accusing your spouse of wrongdoing.

### Part II -- Preparing for discovery

#### Collecting information and discovery

Once you've hired your divorce lawyer, you must gather all relevant information for your lawyer's perusal:

- Full names, addresses, phone numbers, and Social Security or Social Insurance numbers of you, your spouse, and your children;
- The date of marriage, date of cohabitation, county or region where the wedding occurred, the wife's maiden name, and any information about prior marriages of either spouse (including the names and prior names of ex-spouses);
- A copy of your premarital agreement (or other domestic contract) and information about any prior legal proceedings, separations, or marital counseling during the marriage;

- All available financial data, including: income-tax returns from the past several years; a recent pay slip; the major assets and liabilities of both you and your spouse; budget worksheets; insurance policies; credit-card statements; wills; and any credit or mortgage applications.

Unless you create a separation agreement, your lawyer will use this as a starting point for the discovery process. The lawyer gets as much specific information about the marriage as possible, to work out the financial and children's issues fairly. Most of discovery involves financial matters, for which your lawyer needs specific, accurate details. From the value of items you bought during the marriage to stocks, pensions, and revenue from a business, you and your professionals (e.g. lawyers, mediators, financial planners, accountants, appraisers, etc.) have to retrieve documentation of every dollar value -- including that of premarital assets. For articles on preparing for a deposition and separation agreement, [click here](#).

### **Contested vs. uncontested divorce**

There are two general types of divorce. If you and your spouse can't agree on the divorce terms -- or if one of you doesn't want the divorce -- it's a contested divorce, and a judge will decide the outcome if you can't come to agreement on your own. In an uncontested divorce, both of you agree on how to divide your assets and debts, who gets custody and pays child support, and whether one spouse needs to pay spousal support to the other. Obviously, an uncontested divorce will be faster and simpler. But even a divorce that starts with major disagreements can be worked out if you choose to make it that way, and the majority of cases do settle.

If you're in the United States, ask your lawyer if you're eligible for a "summary" divorce. This is a simpler and faster divorce process which involves less paperwork, fewer court appearances, and less time in negotiation. However, this will only work if your marriage was relatively short and if you have no children, little property, and no intention to seek spousal support. In Canada, the closest would be an uncontested divorce or a joint application.

### **Part III -- Litigation and negotiation**

#### **Motions**

If you need to readjust certain arrangements during the divorce process -- such as custody, visitation, or support -- you can initiate this by filing a motion with the court. Next, a short hearing takes place in which the lawyers representing you and your spouse present their cases before the judge. In most cases, only the lawyers are permitted to speak; however, if you are going the Do-It-Yourself route in your divorce (a path that's only recommended for very simple divorce cases), you will be able to represent yourself in this hearing. Once the judge makes a decision on the matter, the regular process continues as before.

#### **Litigation or negotiation?**

If your divorce is contested, you and your spouse must decide how to resolve your divorce. Will you fight it out through adversarial litigation, or can you set aside personal feelings long enough to negotiate outside of court? If you want to avoid the "divorce from hell", Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation, and Collaborative Divorce, have become popular means of settling divorce in a cooperative environment with reduced stress and expense. Some states have made mediation compulsory in the divorce process.

#### **Trial**

If you and your spouse just can't agree, then your case goes to trial. Divorce trials can take many months or even years, and they're never pleasant.

Generally, you and your spouse each tell your respective side of the story before the judge (and the public). You take the stand, and your own lawyer asks you questions that prompt you to explain your

side -- and then your spouse's lawyer has the option of cross-examining you or challenging the validity of your perspective. The same goes for both sides' witnesses (both personal and professional): each of you duking it out through conflicting testimony and attempts to make your respective case look more believable. Finally, the judge -- a stranger who only knows you through what he or she has seen in court -- weighs all the evidence and makes all the final decisions.

## **Part IV -- The issues you need to deal with and the Judgment**

### **The issues**

#### **Money and property:**

Who gets what? What items and accounts legitimately belong to you? Who should keep the marital home? Who gets which car? How about the cottage? The family business? The pets?

Many states classify property owned by the spouses as "marital" or "separate" -- the latter meaning that the property belonged to one spouse before marriage or was a gift to one spouse. The goal of property division is "equitable distribution" -- meaning an even division of assets and debts. If you negotiate asset division with your spouse directly, be clear about which items are high priorities to you and which ones you would be willing to let go.

The more financially complicated your divorce, the longer this will take, and you'll likely need an accountant, a business valuator, a Certified Divorce Financial Analyst, a Financial Divorce Specialist, or a financial planner to make sense of all the assets involved. For helpful articles on financial planning, [click here](#).

#### **Child and spousal support:**

Often referred to as "alimony" or "maintenance", spousal support is a monthly amount of money that a financially advantaged divorcee can be ordered (or agree) to pay their ex-spouse, to help maintain a lifestyle to which the latter has become accustomed. Ask your lawyer whether you're eligible for spousal support -- and if so, don't be afraid to take it. The purpose of spousal support is not to punish your ex but to maintain your lifestyle.

Child support is what a non-custodial parent regularly pays to the custodial parent in order to support the children from the marriage. This way, both parents can financially contribute to bringing up the children, even if one isn't present on a regular basis. For helpful articles on child support, [click here](#).

#### **Child custody and visitation:**

One of the most important decisions is where and with whom the children will live. Is joint custody in their best interests, or should they live with one parent full-time with regular visits with the other? Unless your spouse is abusive, both of you should work together to create an agreement in which you both get a fair share in raising your children. Custody battles in court are usually full of character slurs and accusations that are emotionally traumatic for you -- and more so for the children. For helpful articles on child custody, [click here](#).

### **The waiting period**

There is usually a set minimum waiting period between the divorce petition and the final decree. Even if your process is very quick, the waiting period must elapse before the judge officially grants the divorce. Lengths vary between states, but the average waiting period is about six months.

### **The divorce judgment**

After all the issues have been decided (either by you and your spouse or by a judge), a court clerk reviews all the papers and sends them to the judge. When the judge signs a document that officially ends the marriage (a Divorce Judgment Order or a Divorce Decree), you are legally divorced -- and free to remarry if you choose.

The divorce process is complicated, and this brief summary doesn't touch on what an emotional rollercoaster ride a divorce is. It's a wrenching experience that can cost a lot of money and upset your lifestyle in profound ways; it can also damage your children's psychological growth if you and your spouse don't consider their well being and act in a way that supports an amicable divorce. But once it's done, you're free to start over -- so the sooner you get to the end, the better for all involved. Talk to the necessary divorce professionals (family lawyers, divorce mediators, Certified Divorce Financial Analysts, accountants, therapists, etc.) to find out how to make your divorce process as quick and painless as possible.