

WHAT CAN I EXPECT?

OVERVIEW OF DIVORCE PROCESS & FREQUENTLY ASKED QUESTIONS



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Introduction

This purpose of this booklet is to help reduce the stress of the divorce process by answering some frequently asked questions. During your initial consultation, an attorney with Dietz and Overmann PLLC, will take personal and financial information from you and discuss your general legal rights based upon that information. The attorney will also provide you with information about how your divorce will proceed through the legal system. Sometimes, though, it is difficult to retain all of this information. Once you leave our office, you may forget the answers to some questions, or you may think of additional ones. This booklet may help address those questions, and we encourage you to read it throughout your divorce process.

The Court Process — How do I File for a Divorce?

In the Commonwealth of Kentucky, a divorce decree (or more accurately, a Decree of Dissolution of Marriage) is most commonly granted on the basis of irreconcilable differences. Unlike other states, a party filing for divorce in Kentucky does not have to prove grounds for divorce, such as adultery.

You must be a Kentucky resident for at least 180 days prior to filing a Petition for Dissolution of Marriage. The filing of the Petition is necessary in order to initiate court proceedings. The Petition is a legal complaint that makes allegations of fact, and also contains statistical information including the date of marriage, the date of separation, the number of minor children born of the marriage and their dates of birth, and the relief sought. The relief sought, sometimes referred to as the "prayer", asks the court to dissolve the marriage and may also ask the court to award maintenance, child support, or resolve other matters between parties.

The Petition must be filed in the county where you reside, and the official hearing of your divorce will depend on the system utilized by that county. In some counties, the Family Court Judge will hear your case. In counties without a Family Court, your case will be referred to a Domestic Relations Commissioner.

You must sign the Petition in front of a Notary Public for the purpose of acknowledgment that the facts alleged in the Petition are true. The Petition is then filed with the Clerk of the appropriate court, and you must pay a filing fee. This fee will vary from county to county, but averages about \$170.00. If you are in a county with a Domestic Relations Commissioner, there may be an additional fee. After the Petition is filed, it must be delivered, or "served" upon your spouse. Typically, this is done by the County Sheriff's office, or sometimes by certified mail. You must pay a fee for the county Sheriff's office to serve the Petition, which is typically about \$40.00 or certified mail service at approximately \$10.30. After being served with the Petition, your spouse has twenty days to file a legal document with the court known as a Response, which will deny or admit the allegations contained in the Petition. If your spouse fails to file a Response within this time period; it may be possible that you will be granted a divorce by default.

The Petition and Response are types of court documents generally referred to as "pleadings." After the Petition and Response are filed, it may be necessary to file other pleadings such as Temporary Motions. For instance, if you have any minor children, your attorney may file a Motion of Temporary Custody, a Motion for Temporary Child Support, and a Motion for Reimbursement of Medical Expenses. If you are currently cohabitating with your spouse and need him/her to leave the home in order to maintain peace or personal safety, a Motion for Exclusive Use of the Marital Residence may be filed. It should be kept in mind that the relief sought through Motions is temporary in nature due to the fact the divorce is not final.

Once the divorce becomes final, the permanent relief will be outlined in either an Order of the Court or a Property Settlement Agreement. The appropriate document will depend on whether the divorce is contested or uncontested. A contested divorce essentially means that you will have a hearing in front of a judge or other official who will issue a final Order that determines the issues involved in your case, including custody, support, maintenance, property division, and debt division. However, if you and your spouse are able to agree to these matters, the divorce may be uncontested. In that case, you and your spouse will sign a "Property Settlement Agreement" resolving all of the applicable issues. In addition, any issues that were previously addressed by Temporary Motions will be resolved in the final Order or Settlement Agreement.

The Discovery Process

Regardless of whether your divorce is contested or uncontested, in most cases it is necessary to conduct discovery. In a divorce proceeding, discovery consists of collecting information from your spouse regarding matters such as income, assets, and debts. This is an important part of the divorce, as your lawyer cannot make a recommendation to you as to what you should accept in a settlement, or cannot make an appropriate argument to the court, if your lawyer does not have sufficient information regarding the marriage.

Typically, discovery is conducted by submitting "Interrogatories" and a "Request for Production of Documents" to your spouse. Interrogatories are written questions that your spouse must answer. As for the requested documents, these usually include tax returns, copies of insurance policies, and paycheck stubs or statements. Your spouse usually has thirty days to submit his/her answers and the requested documents.

Next, the discovery process may proceed to depositions. A deposition is a proceeding in which a party is served with a notice to be present on a certain date and time in order to respond to various questions, under oath. Depositions are usually conducted in the office of one of party's lawyers, with a court reporter being present. Depositions may also be taken of expert witnesses such as accountants and evaluators with regard to the value of certain assets. In the process of a deposition, virtually any relevant question may be asked and any relevant information or document may be requested.

It is also possible that the discovery process can be informal in that you and your spouse have already come to an agreement as to a division of debts and assets. In that case, you may only be seeking your lawyer's advice regarding whether the terms you both have agreed upon are

fair. If so, the applicable documents may be produced without the formal procedures outlined above.

Child Support — How Much Will I Get, Or How Much Will I Pay?

Child support varies from case to case and is based upon the income of the parties. In order to calculate the amount of child support that must be paid from one parent to the other parent it is first necessary to determine the percentage contributed by each parents to the monthly gross income of the family. That percentage is then multiplied by an amount reflected in the Kentucky Child Support Guidelines. These Guidelines are issued every two years by the Kentucky General Assembly, and include estimates of the amount that a family should pay for the support of a certain number of children based on the family's total monthly gross income. In some cases the amount of the child support payment may be subject to certain adjustments due to other child support payments that the parent is obligated to make. Typically, child support payments must be made until the child is eighteen years old or is emancipated from his/her parents. Sometimes, the Court will deviate from the child support guidelines for different circumstances (i.e. amount of time each parent cares for the children).

It is recommended that child support payments go through the Centralized Collection Unit in Lexington, Kentucky. The service is recommended because it protects both parties; i.e., there will be documentation that the payments were made, and the recipient parents will receive the payments on a reliable basis. The child support office typically maintains an accounting of all payments made for a period of one year beyond the date that the payments ultimately terminate. In addition, it may be possible to have child support payments be automatically deducted from a parent's paycheck and sent directly to the appropriate office.

Custody

The determination of which parent will have custody of minor children is sometimes the most difficult part of a divorce. The standard for custody in Kentucky is the best interest of the child. In applying this standard, the law requires that the following factors be taken into consideration:

- a) The wishes of the child's parent or parents as to custody.
- b) The wishes of the child as to his/her custodian.
- c) The interaction and interrelationships of the child with his parents, his siblings, and any other person who may significantly affect the child's best interest.
- d) The child's adjustments to his home, school, and community.
- e) The mental and physical health of all individuals involved.
- f) Information, records, and evidence of domestic violence.

There are two types of legal custody in Kentucky: joint legal custody and sole legal custody. Legal custody is the decision making authority for decisions regarding the child(ren). Joint legal custody means that the parents together make major decisions concerning the children, such as education, religious upbringing, and medical decisions. However, joint legal custody does not necessarily mean that the children will equally split their living time with each parent. Sole custody, on the other hand, means that just one parent makes all decisions concerning the child, while the other parent only has parenting time.

If the parties cannot reach agreement regarding custody, sometimes the court will order an individual known as a custodial evaluator to interview all of the parties and conduct psychological tests on them, including the children. Based on these interviews and tests, the evaluator will prepare a recommendation to the Judge. Once the recommendation is received, the parties can enter into an Agreed Order pursuant to the terms of the recommendation, or they can opt to have a hearing on the matter if such an agreement is not made.

Additionally, if the parties cannot reach an agreement, a Guardian ad Litem (GAL) may be appointed to represent the best interests of the child(ren). He/She will speak with the child(ren), parents and any other necessary person and usually renders a report to the court making recommendations. The GAL will also participate during the hearing as a representative of the child(ren).

Mediation

Many courts are now utilizing a process known as mediation. In this process, both parties are referred to a neutral mediator who has been trained to work with the parties and assist them in reaching a mutual resolution to their disputes. Typically, the parties meet with the mediator and first agree upon the "rules" they will follow for the mediation. Thereafter, the parties try to come to a resolution of the disputes through a process of "give and take." The mediator is not there to legally advise either party, but acts only as a referee to guide the parties to a resolution. Virtually any matter can be sent to mediation, and this is often a less expensive means for resolving many problems that would otherwise require hours with your lawyer in court. Typically, the parties are directed to equally share in the cost of this process.

Parenting Time

Because it is common for both parents to hold full-time jobs and children are frequently involved in extracurricular activities, it is important for divorced parents to work amicably together in order to set up a parenting time that is workable for both parties and beneficial to the children.

Ideally, the parties will enter into a specific parenting time schedule. A parenting time schedule will also include a specific arrangement for holidays. However, all parenting time schedules can be modified by mutual agreement of the parties. A "spirit of cooperation" is encouraged because each parent never knows when he or she may need to alter the schedule for a valid reason such as a family reunion, wedding, or other meaningful event.

Maintenance

Maintenance, or what was once called "alimony," is financial support paid by one former spouse to another. Kentucky law outlines certain qualifications that must be met before a court may order an award of maintenance. Such an award may be made to either spouse if the court finds that the spouse seeking the maintenance award (a) lacks sufficient property, including marital property, apportioned to her/him pursuant to the divorce, to provide for his/her reasonable needs; and (b) is unable to support himself/herself through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the spouse is not required to seek employment outside the home.

Unlike the Child Support Guidelines, there is no set schedule for maintenance in Kentucky. Instead, if the above conditions are met, the Court is to consider the following factors in determining the amount of maintenance and how long it should be paid:

- a) The financial resources of the spouse seeking maintenance, including marital property apportioned to the spouse, as well as the spouse's ability to meet his/her needs independently, including the extent to which a provision for support of a child living with the spouse includes a sum for that spouse as custodian.
- b) The time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment.
- c) The standard of living established during the marriage.
- d) The duration of the marriage.
- e) The age, and the physical and emotional condition, of the spouse seeking maintenance.
- f) The ability of the spouse from whom maintenance is sought to meet his/her needs while also meeting the maintenance obligations.

Division of Property – What do I get to keep?

The assets of the marriage are awarded after first making a determination of what property is "marital property." All property owned by the parties is characterized as either separate property (owned by one party prior to marriage or gained by a party during the marriage as a gift or inheritance), or marital property (accumulated by the parties during the marriage). Typically, a party must prove that certain property should be classified as separate property; otherwise, everything is classified as marital property. Once the marital property is determined, the court will apportion that property between the parties in "just amounts." Marital property may include assets such as pension plans, stocks, bonds, homes, time-shares, athletic tickets, stock options, automobiles, furniture, pets, business interests, and personal items.

At your initial consultation, you should receive a spreadsheet for purposes of listing all of your home furnishings. A good approach is to videotape all of the contents of the home before either party starts taking things with him or her. This should include the contents of the basement, attic, and garage, because nearly every item in the house will have some value.

You should also become educated about your property. Simply put, you should make copies of everything possible, such as tax returns, stocks, pension information, and other written documentation regarding assets in which you or your spouse have an interest. One important asset to consider is your spouse's pension plan, which your attorney will discuss with you. Under federal law, most pensions are subject to division in divorce proceedings. The list of property and the documentation of assets are necessary and you can save attorney fees and costs by obtaining and creating them yourself.

Division of Debts— What do I get stuck with paying?

The same rules apply to debts that also apply to marital assets. Simply put, if the debt was incurred prior to the marriage, then the debt follows the individual. Otherwise, debts acquired during the marriage are apportioned between the parties. Usually, once the marital property is divided, if a debt is attached to a certain asset, then the debt follows the asset. For instance, if you are awarded the treadmill with a debt due and owing to the store from which it was purchased, then that party takes the debt along with the asset.

Domestic Violence

If at any time during the divorce process you find yourself in a dangerous situation with your spouse, regardless of your gender, or you feel that your children have been placed in a dangerous situation, you have the option of filing for an Emergency Protective Order in the county where you reside.

The process begins by going to the office of the District Court Clerk and meeting with one of the clerks who will fill out a Petition for Emergency Protective Order. The clerk will ask you to state the facts in writing which led up to you seeking the Order. There must have been either physical- contact that has caused harm to you or your children, or a threat of physical harm against you or your children. Otherwise, the Judge will not sign the Order. Alleging such facts is a serious matter and under no circumstances should such an Order be sought as a means to punish your spouse.

The clerk will then have you swear to the facts and sign the Petition. At some point during that day, the clerk will take the Petition to the Judge for review. If the Judge agrees an Order of Protection is needed, he/she will sign one immediately. Once signed, the Sheriff will serve your spouse with the Order. The document will require the spouse to stay away from you, your residence, and your children until the time of the listed court date for a hearing on the matter, which usually scheduled to be held within 7-14 days.

At the hearing, the Judge will hear both sides and make a ruling as to whether there is a finding of domestic violence and for how long the Order should stay in effect. It should also be noted that if there is a finding of domestic violence, the spouse against whom the finding is made is not allowed under federal law to carry a handgun. This may affect certain people with regard to their jobs and recreational activities.

In most instances the local police can receive a Petition for a Domestic Violence Order if it is needed after the clerk's office's regular business hours; however, when possible, you should go to the clerk's office to initiate the Petition.

Collaborative Family Law

"Collaborative Law" is a type of Alternative Dispute Resolution method. It is a fairly new idea in Northern Kentucky and focuses on resolving divorce issues.

In a Collaborative Family Law action, each party is still represented by his/her own attorney, each of whom has been specially trained in the collaborative hearing process.

Both parties and their counsel sign a Collaborative Law Participation Agreement. The parties are agreeing to reach a settlement without court intervention. The attorneys and parties contract not to litigate the case in court.

There are no motions and no hearings. Instead there are four-way meetings set up in attorney offices. All parties then begin to immediately work towards resolution.

FOR MORE INFORMATION VISIT: www.nkydivorce.com

Frequently Asked Questions

1. *When can I get my child support changed?*

Whenever a calculation of the child support results in a change of 15% (increase or decrease) from the original amount, the support can be changed.

2. *How much will my legal fees be for this divorce?*

This is difficult to answer because the amount of legal fees will depend primarily on the complexity of the divorce. For example, if the parties must litigate issues such as custody or maintenance, obviously this will result in more legal fees. After the initial consultation, you will sign a contract for our services, and this will include an agreement regarding your payment for our legal services. While it may not be possible to quote an estimate, your attorney may be able to predict certain expenses that must be incurred such as expert testimony.

3. *How long will the legal process last?*

As with the legal fees, the duration of a divorce will also depend on its complexity and the court's schedule. For example, if there is a custodial evaluation, that process can take several months to be completed. Your attorney will keep you advised of the applicable time lines during the divorce process.

4. *What should I do if I don't receive my child support payments?*

The very first thing you should do is to telephone the county child support office and determine whether or not payment was made. It is possible that events such as holidays or computer glitches may cause child support disbursements to run late. If that is not the case, ask the clerk to provide you with an updated printout of your account, and then contact your attorney. It may be necessary for your attorney to file a Motion with the Court to compel payment.

5. *When is my divorce final?*

Your divorce is not final until you receive the Decree of Dissolution. In an uncontested divorce, this usually occurs between seven to ten days after you and/or your spouse attend a court hearing on the divorce or sign paperwork to complete the divorce without a hearing. However, receipt of the Decree can take much longer if you are waiting on a decision from a Judge regarding certain issues in a contested divorce.

6. *What happens if my spouse doesn't show up for visitation or parenting time?*

Unfortunately, there is no law that compels someone to visit with his or her children. If your spouse is more than thirty minutes late without calling first to make arrangements, it is reasonable to presume that the visitation is waived unless it is otherwise ordered by the court. If the spouse fails to show up repeatedly for visitation, then it would be advisable to document these incidents and then consult your attorney.

7. *What happens if my spouse does not return the children from a visit?*

First, don't jump to conclusions. Call your spouse and find out if there is a reasonable explanation as to why the children are late.

You should then contact your attorney as soon as possible so that he/she can file the appropriate Motion with the Court. If it is not during business hours, it has been a reasonable amount of time since you were able to contact the other parent, and you have a reasonable belief the other parent has absconded with the child, call your local police department and file a report.

Suggested Reading

Children

My Parents Are Getting Divorced: A Handbook for Kids. Published by the American Bar Association, Family Law Section, 750 N. Lake Shore Drive, Chicago, IL 60611; 1-800-285- 2221. PC 513-1100-1804. \$12.95

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