

Divorce and Judicial Separation

Divorce is the dissolution of the legal contract of marriage. Judicial Separation is a legal decision regarding responsibilities within a marriage.

GROUND FOR DIVORCE

In order to obtain a divorce, you must have “grounds,” or a reason the Court accepts to justify ending your marriage. Most divorces are granted on the grounds of “irreconcilable differences.” This term means that the couple has, over time, come to have such a disagreement over how their married lives should be led that, though they have tried to put their marriage back together, it is no longer possible. Usually testimony from either one or the other of the couple saying so is sufficient grounds for a Court. In some cases it may be possible for the one who does not want the divorce to persuade a Judge to order the couple to counseling, particularly if they have not previously tried marriage counseling. However, the Courts have largely come to the conclusion that if one of the couple wants to end a marriage badly enough, there is not much point in making them stay married. Under Maine law issues of dividing property and awarding spousal and/or child support don’t depend upon finding one or the other person at fault, so most couples choose “irreconcilable differences” rather than one of the more contentious grounds, such as extreme cruelty or adultery.

DO-IT-YOURSELF DIVORCE

The term “pro se” is Latin for “for self,” and is used to denote when a person pursues legal action without a lawyer. If there are no children, no real estate, and neither party requires support from the other, it may be reasonable to handle your divorce yourself. If any one of these conditions exists, however, or if one spouse has retained a lawyer, it is wise for the other spouse to have legal representation, too.

SHARING A LAWYER

A single lawyer may not represent both parties to a divorce. This is because even if the parties agree on each issue involved, their “legal” positions are opposed - what one person gains (in property or custody) the other loses. While the law will allow a divorce case to go forward when one person has an attorney and the other does not, the person without the attorney probably will not know all the laws that pertain to his/her interests and how to apply them. So, it bears repeating: in general, if your soon-to-be-ex-spouse has an attorney, you should have one, too.

RESIDENCE REQUIREMENTS

In order to file for a divorce in the State of Maine, one party or the other must be a resident. This requirement is generally satisfied by having resided in this state for the past 6 months. If the marriage took place in another state, or if you want to modify a divorce or support judgment handed down by the court of a different state, an attorney licensed in Maine can assist you. It will require more complicated legal steps to move the issue from the original state, and in this case, even if you expect the divorce to be uncontested and uncomplicated, you should strongly consider hiring an attorney to help negotiate the case between states.

COSTS

Your attorney will not be able to tell you ahead of time exactly how much your divorce will cost. Basically it depends on two things: the lawyer’s hourly rate and the amount of time the lawyer spends on your case. While the hourly rate is set, the amount of time is not under your or your attorney’s control: your spouse and his/her lawyer may take actions to speed up the process, or slow it down. Generally, 1) the longer a divorce case goes on, the more expensive it becomes; and 2) a divorce which goes to trial costs more than an uncontested divorce where the parties agree on all issues. Often a divorce which starts out as uncontested becomes more difficult and “contested” when the parties get down to the specifics of support and property division. What you *can* find out ahead of time is your lawyer’s hourly rate, the retainer fee (a sum of money paid at the beginning to cover expenses and some amount of the attorney’s time), method of billing, and whether or not he /she is willing to set a fixed fee.

You will also have to pay a filing fee to the District Court. And you will have to pay to legally notify your spouse by having the divorce papers delivered, or “served.” The papers must be hand-delivered directly to your spouse by an authorized person, usually a sheriff. For this, the sheriff is paid a fee that will vary depending on how hard it is to find your spouse, and how far the sheriff has to travel to serve the papers.

WHEN PAPERS ARE SERVED

If your spouse initiates the legal process and you are the one “served” the divorce papers, you are required to file an answer within 20 days. If you do not respond on time and in the proper form, you may jeopardize your rights in matters of property division, support awards, and parental rights and responsibilities. If you choose not to file an answer, but do wish to testify at Court about custody, alimony, child support, division of property, or lawyer’s fees, you must file a written “appearance” - a letter to the court clerk identifying your case, stating your desire to testify, and providing your address so that you may be notified of proceedings. You should consult an attorney before making this decision.

THE FAMILY DIVISION

In Maine, your case will be handled by the Family Division of the District Court. After the papers are filed, a date will be set for you and your spouse to meet with a Family Magistrate. You, your spouse, and your respective attorneys (if any) will meet with the magistrate to work out agreements regarding the issues. The magistrate also may schedule an interim hearing to decide these issues on a temporary basis, before the final divorce agreements are worked out. If you and your spouse are in agreement, the magistrate can grant your final divorce. If either party requests that a judge, rather than a magistrate, decide interim parental rights issues, then all issues will be handled by a judge. Contested divorces must be decided by a judge.

MEDIATION

By law, domestic matters start with mediation. Basically, this means sitting at a table with your spouse and a person known as a mediator to try to settle

your case without going through a trial. The mediator has no power to make any decision in your case, but is there to help you and your spouse reach agreements. You and your spouse may each have a lawyer at this meeting to assist you, but it is not required. The only requirement of mediation is that both parties mediate “in good faith,” meaning that when you attend mediation you must be willing to listen to the other party and do your best to reach an agreement over your differences. Nothing you say in mediation can be used against you in court. The mediators generally destroy their notes after mediation is complete.

TEMPORARY ORDERS

In the State of Maine you must wait a minimum of 60 days after serving your spouse before you can get divorced. During this period - which may extend for a much longer time if the parties cannot reach agreement on the issues involved in the divorce - you may need to have the Court issue an order which sets forth the rights of the parties pending final divorce. Very often these rights involve the care of the children, visitation rights, support for the children or for a spouse, who will be allowed to live in the marital home, who has possession of certain kinds of property (cars for example), and various other issues. Your lawyer will ordinarily ask the Court to make a temporary decision about how these matters are to be handled until the divorce proceeding has ended, and you will have to attend a court hearing in order to have the Court issue an “order” which will set forth your rights. State law requires that you attend mediation before the Court issues an order, and very often these matters can be settled at mediation. If that is so, your lawyer will draft an agreement, or a proposed order for a Judge’s signature. Both you and your spouse will review and approve that order and the Court will enter it. That order will then set forth your rights until such time as you have a final divorce hearing or until another such motion is brought and decided by the Court. If you are served with a child support motion you must attend court on the day scheduled for the hearing or the court will automatically grant your spouse’s request for support.

MAJOR ISSUES IN DIVORCE

There are four major issues which are found in divorce cases. Not all of these issues are found in every case.

1) Parental Rights and Responsibilities - Maine no longer uses the word “custody” to describe the relationship of divorced children to their parents. However, because people commonly still use this term we have used it here. The legal term is “parental rights and responsibilities.” These rights and responsibilities include where children will live, what contact they will have with the parent they don’t live with, questions about education, religious upbringing, medical and dental care, travel boundaries, and so on. The Court makes decisions on these matters based on what the judge decides are “the best interests” of the children. This is a complicated and difficult matter. Often the Court hears testimony from professionals such as psychologists, psychiatrists, social workers, teachers and others who have had an opportunity to observe the children. Sometimes the Court appoints a specially trained person, known as a Guardian Ad Litem, to go out and interview people who may have information that will help the Guardian make a recommendation to the Court. The children themselves may have an opportunity to participate in this procedure both by being interviewed by the Guardian Ad Litem or by the Judge or by testifying in Court. Generally, the wishes of teenage children are seriously taken into consideration. There is no age, however, at which dependant children may legally “decide for themselves” which parent they will live with - the court will decide. But the decision is never final. It is always possible to go back to Court, if circumstances have changed, to ask the Court for a new decision.

2) Child Support - Child support is set by the Court based on written guidelines. Since the guidelines may be unfair in certain situations, each party has the opportunity to show why the application of the guidelines should not be used in a particular case. In Maine, child support ends at age 18 unless the child has not graduated from high school. In that case it ends when the child graduates, or turns 19, whichever comes first. Parents may agree to continue support to a later age, or to provide for college education. These agreements can be included in the Court order.

3) Spousal Support - Maine does not use the term

“alimony.” Support paid by one spouse to the other is called “spousal support.” It may be paid by the husband to a former wife or by a wife to a former husband. It is not child support. It is tax deductible to the person who pays it and must be included in the income (for tax purposes) of the person who receives it. It is set by a Court based on need, ability to pay and other factors. It is more often found in marriages which have existed for longer periods of time, but it may be appropriate even in short marriages. The Judge has the power to make the support open ended or to limit it to a stated period. Spousal support generally ends when either of the parties dies or when the party receiving the support remarries (if the other party then asks the court to stop the payments). It sometimes ends when the person receiving it begins to live with another person in a relationship which is the equivalent to that of a marriage.

4) Property - Maine is what is known as an “equitable distribution” state. The Courts of Maine have the power to divide marital property in a way that seems fair to the court. Marital property is property acquired during the marriage with some specific exceptions. “Non-marital” property is property which one spouse or the other brought into the marriage, was given during the marriage or inherited during the marriage. Non-marital property is not divided. Important: this area is quite complicated. If property division is an issue in your case you should see a lawyer. There are special rules for earnings or income from non-marital property, and the increase in value in some kinds of non-marital property, as well as property that was at one point owned by one of the spouses, and later transferred to joint ownership. You should not assume without first contacting an attorney that a piece of non-marital property belongs entirely to the person who first received it. Unlike with support judgments, once your divorce has become final, property division cannot be changed.

ENFORCEMENT OF ORDERS

If one spouse does not live up to the obligations under a temporary order or under a divorce judgment, he/she may be “in contempt of court.” The Court has the power to impose a fine, to imprison the person in contempt, and/or to make other orders. Also, if you are not being paid child support, the State of Maine Department of Human Services can help you collect it by various means, including revoking the driver’s license of the person

who owes the support. Contact the Department of Human Services, Support Enforcement Division, for more information about this program. You may also choose to hire a private attorney to enforce the order or the judgment.

CHANGING SUPPORT AWARDS

Spousal and child support payments are generally subject to change if circumstances have changed. However, in order to accomplish this change, you must return to Court. This will generally require hiring a lawyer to bring a motion to make such a change.

JUDICIAL SEPARATIONS

Judicial separation involves staying married to your spouse, but having a Court set forth in an order what your legal rights and obligations are to one another. See an attorney for further information about these proceedings.

For referral to an appropriate attorney call
1-800-860-1460

or use the
Client Referral Request Form
found in the Lawyer Referral section of the
Maine State Bar Association website.

www.mainebar.org

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