

A. TERMINATION OF MARRIAGE

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A. TERMINATION OF MARRIAGE

Ohio residents have the option of terminating their marriage through dissolution (Ohio Revised Code §3105.61) which requires advance mutual agreement, or through divorce (Ohio Revised Code §3105.01) which may be contested or uncontested. In rare circumstances, parties may qualify for annulment of marriage (Ohio Revised Code §3105.31).

There are many aspects involved in terminating a marriage. The Court must divide the parties' property and debts, and if appropriate, award spousal support (formerly "alimony"). If there are children, the Court must allocate parental rights and responsibilities and determine responsibility for child support and health care needs. It is the Court's responsibility to ask questions to ensure orders are made that require the parties to appropriately meet their statutory duties to family members.

In order to make a fair property distribution the parties must fully disclose the value of all assets no matter whose name they are in. This includes things like real estate, bank accounts, pension and profit sharing plans, pending insurance claims, lawsuits and personal property. The Court must also be informed of all outstanding debts. This includes mortgages, car loans, credit cards, department store and credit card charges, unpaid medical and hospital bills and other bills. Property and debt are divided consistent with the guidelines set forth in Ohio Revised Code §3105.171.

The Court must also be informed about all sources of income. Both parties must reveal their income to each other and verify that income with documentation. This is necessary for the Court to fashion appropriate child and spousal support orders. Child support is established consistent with the Ohio Child Support Guidelines in Ohio Revised Code §3119.01-3119.24. Spousal support is determined according to the considerations set forth in Ohio Revised Code §3105.18.

When there are minor children, the Court must ensure there is a written plan as to how the parents will share parenting time as well as the duties and costs of raising the children. In cases where the parties have been successful in working together on parenting issues a “shared parenting” plan may be appropriate. Alternatively, it may be in the child’s best interest if one parent is designated the residential parent and legal custodian and a specific parenting schedule is created. Parenting determinations are guided by the best interest of the child and the legal considerations set forth in Ohio Revised Code §3109.04.

B. DISSOLUTION OF MARRIAGE

The law allows husbands and wives to jointly ask the Court to terminate their marriage without stating the reasons why they want to end their marriage. In order to obtain a dissolution the parties must agree on all aspects of property division, parenting and support filing the petition for dissolution. They must have been residents of the state of Ohio for six months before filing. The parties must file a petition for dissolution, a waiver of service of process (sometimes included as a paragraph within the petition), and a separation agreement.

The “separation agreement” is a written agreement signed by the parties that states how assets and debts are to be divided and how parenting and support issues are to be handled. Additional forms are required when there are minor children.

Dissolutions must be granted within a limited time frame. A hearing must be scheduled on the petition between 30 and 90 days after filing. Both parties (“Petitioners”) must attend the hearing and bring a copy of the separation agreement, and a judgment entry for the Judge to sign. The judgment entry, also known as a “decree”, is the legal document that terminates the marriage and makes the separation agreement a court order.

Before the Court adopts the separation agreement it must decide that it is fair, just and equitable to both parties. To do this the Court may ask questions about aspects of the agreement such as the value of assets and debts each party will be awarded. The parties must present the Court with information sufficient to allow the Court to make this determination.

C. DIVORCE

If spouses do not agree on whether to divorce or how to handle property, parenting and support issues, one spouse may file a Complaint for Divorce. The person filing the Complaint (the “Plaintiff”) must have lived in Ohio for six months before filing and, generally, in Cuyahoga County for 90 days. The person being sued for divorce (the

“Defendant”) has 28 days after being served with the Complaint to file an Answer if he or she intends to contest the divorce. If the Defendant wants the divorce to be awarded to him or her, the Defendant may counter sue by filing a Counterclaim with the Answer.

Under Ohio Revised Code §3105.01 a divorce may be granted for the following reasons:

Either party had a husband or wife living at the time of the marriage from which the divorce is sought:

Willful absence of the other spouse for one year

Adultery

Extreme cruelty

Fraudulent contract

Any gross neglect of duty

Habitual drunkenness

Imprisonment of the other spouse in a state or federal correctional institution at the time of filing the complaint

Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party

Living separate and apart from your spouse without cohabitation for one or more years

Incompatibility, unless denied by either party.

If the Defendant fails to file an Answer after being served with the Complaint, an “uncontested” trial will be scheduled. The Plaintiff must testify about the grounds alleged for the divorce, and bring a witness to corroborate his or her testimony. The Plaintiff must also provide evidence about the value of assets, debts, support, and the parenting needs of any minor children. Generally, assets and debts will be divided and parenting and support issues decided according to the Plaintiff’s request. This process takes about two months.

If the Defendant files an Answer, or an Answer and Counterclaim, the case is considered “contested”. One or more hearings, called “pretrials”, will be scheduled to determine what actions must be taken before trial and to narrow the issues to be heard. At “trial” the Court will hear evidence on all issues the parties have been unable to resolve by agreement. "Contested" cases can be very time-consuming and expensive. Often, the parties eventually reach agreement on some or all issues. If the parties can “settle” all issues they will sign a “separation agreement” or an “in-court agreement” which states the terms of the settlement which the Court will order into effect.

D. LEGAL SEPARATION

A legal separation is an alternative for parties who wish to live separately and formalize their legal duties to one another without getting divorced.

The process and length of time to obtain a legal separation is very similar to divorce. The same issues (division of assets and debts, allocation of parental rights and responsibilities, spousal support and child support) must be addressed. The difference is the parties who obtain a legal separation remain legally married. This may have consequences for retention of health insurance and for religious reasons. The granting of a legal separation does not preclude a party from filing for divorce at a later date. In that case, the Court will grant the divorce but the terms of the legal separation will remain intact.

E. ANNULMENT

A legal annulment is an alternative to divorce in very limited circumstances. The procedure is similar to a divorce. A Defendant may or may not contest a Complaint for annulment. To qualify for an annulment a party must have “grounds” and must file the Complaint within the time periods prescribed by Ohio Revised Code §3105.32. The grounds for annulment are listed in Ohio Revised Code §3105.31.

This information is only a general summary of the various means of terminating ones marriage. It does not constitute legal advise. There are exceptions to these general definitions. Because the law is complicated, you need to consult with us for a thorough evaluation of your situation.