

Divorce can be a very traumatic experience that affects many people's lives. The moment when you are served with the divorce papers can be most difficult and confusing, especially if you do not expect it to happen. What does divorce entail? Where do you start? How is it going to affect you and your children? These are questions that might be going through your head as you begin this difficult process.

A divorce, simply, is when two people decide not to be married to each other any longer. Some people might make this decision overnight and for others this is a major decision that takes a lot of time and consideration. There are several steps that need to be taken in the divorce process. Below I will describe a simple outline of the process of dissolution of marriage. Of course, many more steps may need to be taken depending on the complexity of your situation. Those are details that should be discussed more fully with your attorney.

Dissolution of Marriage/Divorce

"Dissolution of Marriage" and "Divorce" mean the same thing ~ the legal termination of a valid marriage. These terms are used interchangeably. Before 1971, in Florida there were nine statutory grounds for divorce. Essentially one of the spouses needed to prove the other's "fault" ~ be it adultery, mental or physical abuse, or other acts by the spouse. In 1971, the Florida Legislature enacted the *Dissolution of Marriage Act*, making it no longer necessary to find fault for dissolution of marriage. Now, there are two mutually exclusive grounds for dissolution of marriage in Florida: where the marriage is "irretrievably broken," or where one of the parties has been "adjudicated mentally incapacitated" for at least three years. Either spouse may end the marriage whenever he or she believes that the marriage is irretrievably broken regardless of who was responsible. At the hearing for

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the dissolution the judge will still need to determine that the marriage is broken, but he will not inquire into the circumstances and will be satisfied with "I no longer love my spouse and want to be separated." When one party denies that the marriage is broken or when there are minor children of a marriage, a judge may order counseling, postpone (continue) the action for three months to allow parties to reconcile, grant the divorce, or take other action that may be in the best interest of the parties and the children. Many judges will not order counseling if one of the parties is strongly opposed to it. But, when there are children involved, the counseling could be very beneficial to teach parents how to behave appropriately to minimize the traumatic experience for their children.

When and how do you start? What is involved?

When you, or you and your spouse together, decide that staying together is no longer possible, this is the appropriate time to consult with an attorney. The attorney will explain to you the process of divorce, what to expect, what difficulties might arise, what precautions you might want to take, and will generally help you better prepare for your future.

On average, dissolution of marriage can take four to eight months to complete, but in some instances it can take several years. Except in unusual situations, a dissolution action cannot be completed in less than 20 days.

Pleading Stage

The first stage of the process is called the Pleading

Stage. Your attorney will file a formal document called a "petition" with the court on your behalf. The petition tells the court what you want to achieve and alleges the grounds for your dissolution. The party who files the *Petition for Disso-*

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lution of Marriage is called the “Petitioner” and the party who responds is called the “Respondent.” The *petition* and the *summons* are the papers “served” on the responding party by the sheriff or other process server. The summons states that the party is now subject to a court’s jurisdiction, and that the respondent has 20 days to respond to the petition or their right to be heard on the case will be cut off, which means that the responding party has 20 days to either agree to the dissolution, or file a counterpetition. If a counterpetition is filed, then the petitioner has 20 days to answer the counterpetition. If you have been served with the Petition for Dissolution of Marriage, you should contact a lawyer right away because you only have 20 days to respond. The pleading stage usually takes about a month to complete.

Discovery Stage

The next step in the dissolution process is called Discovery. Discovery is a process that allows you to gather information about the other party that is necessary to complete your divorce. There are several tools that allow you to gather that information: oral and written depositions, interrogatories, requests for production, requests for admissions, and requests for mental or physical examinations. Be prepared for the whole stage to take several months to complete.

Final Hearing Stage

After all of the pleadings are filed and all needed documents are obtained, your attorney should have enough information about your case to present it to the judge. The judge will schedule a *case management conference*, a meeting where the attorneys will decide on the last necessary matters and agree on the date for the Final Hearing.

If you plan to end your marriage in a divorce it does not necessarily mean that you will go to trial or will heavily debate your case. A large percentage of the family law cases settle outside of court by a mutually acceptable agreement.

In most Florida jurisdictions it is a requirement to try to resolve your settlement disagreements outside of the court. Your settlement negotiations might start early, even prior to filing your Petition for Dissolution of Marriage. If both you and your spouse enter into a voluntary settlement agreement and submit it to the

judge, the agreement can be incorporated into your Final Judgment. If the parties settle, a final hearing can be avoided.

With the settlement agreement, the petitioner will need to prove that he or she has resided in Florida for the six months preceding the filing of the Petition for Dissolution of Marriage. This can be done by presenting a valid Florida driver’s license, a Florida voter’s registration card, or the testimony or affidavit of a third party.

Final Judgment Stage

After the final hearing and after the judge has ruled, one of the attorneys, usually the prevailing party, will draft the final judgment, will get it approved by the other party, and will send it to the judge for entry of the final judgment. If the opposing party makes no objections, the judgment is signed by the judge, filed in the clerk’s office, and copies are sent to each party or their attorneys.

Name Change

The wife is entitled to change her name during the divorce. The name could be restored to a maiden name or could be changed to any new name desired. Also, if the wife wishes to continue to use her former husband’s name, she can.

Enforcement/Modification of Final Judgment

Even after the final judgment is entered, it does not mean that your case is over. One of the parties might appeal the judge’s final ruling. There also might be a support or visitation hearing to enforce the final judgment. A dissolution action is never complete until there are no more obligations between the parties.

Either party can petition the court to enforce or modify the final judgment by filing a motion or a supplemental petition. If one of the spouses refuses to abide by the final order, he or she may be held in contempt of court.

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