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DIVORCE

CAN YOUR MARRIAGE BE SAVED?

Before you take any legal steps to end your marriage, you should make sure that you have tried all possible ways to save it. Do you want professional help in working out ways to save your marriage? Many communities and social and religious organizations offer counseling services either free or on a sliding fee scale. Or you may wish to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi or other qualified person. Your attorney may also refer you to someone who can counsel you and your spouse.

GENERAL

The official term for divorce in Florida is "dissolution of marriage."

Florida is one of the many states that has abolished fault as a ground for divorce. This law lessens the potential harm to the husband, wife, and their children caused by the process of divorce. All that is required is that the marriage be "irretrievably broken." Either spouse can file for the dissolution of marriage. All that has to be proved is that a marriage exists, one party has been a Florida resident for six months immediately preceding the filing of the petition, and the marriage is irretrievably broken. (There is another, little-used ground: the incompetence of one's spouse for at least three years preceding the petition for dissolution). Fault, however, may be considered under certain circumstances in the award of alimony, equitable distribution of marital assets and liabilities, and determination of custody.

Each divorce case is unique and therefore results vary. Even though fault is not an issue in granting the dissolution, the division of property and possessions, responsibility for support, and custody of children may become contested matters.

The divorce process is highly emotional and traumatic for everyone it touches. Marriage partners often do not know their legal rights and obligations. Court clerks and judges can answer some of your basic questions but are prohibited from giving legal advice. Only your lawyer is allowed to do that. Statutory requirements and court rules must be strictly followed or you may lose certain rights forever. It is recommended that you obtain the services of an attorney concerning legal questions, your rights in a divorce, your children's rights, your property rights, your responsibilities resulting from the marriage or tax consequences. A knowledgeable lawyer can analyze your unique situation and can help you to make decisions in the best interest of you and your family.

There are two ways of getting a divorce, or dissolution, in Florida. The usual way is called a "Regular Dissolution of Marriage." The second method is the "Simplified Dissolution of Marriage."

REGULAR DISSOLUTION OF MARRIAGE

The regular dissolution process begins with a petition for dissolution of marriage, filed with the circuit court by the husband or wife, which states that the marriage is irretrievably broken and sets out what the person wants from the court. The other partner must file an answer within 20 days, addressing the matters within the initial petition and raising any additional issues the answering party desires the court to address.

Court rules governing divorces require that each party provide certain financial documents and a completed financial affidavit to the other party within 45 days of the service of the petition or before any temporary relief hearing. Failure to provide this information can result in the court dismissing the case or not considering that party's requests. The parties or the court can modify these requirements except for the filing of a financial affidavit, which is mandatory in all cases in which financial relief is sought. A child support guideline worksheet must also be filed with the court at or before any hearing on child support. This requirement may not be waived by the parties or the court.

Some couples agree on property settlements, child custody, and other post-divorce arrangements before or soon after the original petition is filed. They then enter into a written agreement signed by both parties that is presented to the court. Other couples disagree on some issues, work out their differences, and also appear for a final hearing with a suggested settlement which is accepted by the judge. In such uncontested cases, a divorce can become final in a matter of a few weeks.

Mediation is a procedure to assist you and your spouse in working out an arrangement for reaching agreement without a protracted process or a trial. Its purpose is not to save a marriage, but to help divorcing couples reach a solution to their problems and arrive at agreeable terms for handling their dissolution. Many counties have mediation services available. Some counties require couples to attempt mediation before a trial can be set.

Finally, some couples cannot agree on much of anything and a trial-with each side presenting its case-is required. The judge makes the final decision on contested issues.

Reaching a settlement, whether by direct negotiations or mediation, usually requires compromise by both parties. Attorneys have learned it is unrealistic to expect both partners to be "happy" with their divorce. The experience can be emotionally devastating. The financial upheaval of supporting two households instead of one causes hardship for the entire family. The parties, however, can take steps to make the process easier for themselves and their children.

SIMPLIFIED DISSOLUTION OF MARRIAGE

Certain Florida couples are eligible to dissolve their marriage by way of a simplified procedure. These dissolutions are "do-it-yourself" and were designed so the services of an attorney may not be necessary. Couples are responsible, however, for filing all necessary documents correctly, and both parties are required to appear before a judge together when the final dissolution is granted. If you desire the services of an attorney for this dissolution process, usually it can be completed relatively inexpensively.

Not everyone can use this procedure. A husband and wife can use the simplified dissolution of marriage only if: (a) they both agree to the use of this form of dissolution proceeding; (b) they have no minor (under 18) or dependent children; (c) they have no adopted children under the age of 18; (d) the wife is not

pregnant; (e) at least one of the parties has lived in Florida for the past six months; (f) the parties have agreed on the division of all of their property (assets) and obligations (debts); and (g) both parties agree that the marriage is irretrievably broken and want to end their marriage because of serious permanent differences. Couples wanting to use the simplified process must meet all these conditions. If not, they must use the regular dissolution of marriage process.

There are substantial differences between a simplified and a regular dissolution of marriage. In a regular dissolution, each spouse has the right to examine and cross-examine the other as a witness, and to obtain documents concerning the other's income, expenses, assets and liabilities before having a trial or settlement of the case. With a simplified dissolution, financial information may be requested but it is not required to be given.

If the husband and wife agree on a dissolution, and prefer to use the simplified form of dissolution, they should both contact the clerk of the circuit court in their area and obtain a copy of the booklet titled "Simplified Dissolution Information" for more detailed information and forms.

DOMESTIC VIOLENCE

You may go to court yourself (without an attorney) to petition for an injunction to protect yourself against domestic violence (assault or battery by your spouse whether you are separated or not, or your former spouse), repeat violence, or sexual violence. If you feel you are the victim of such domestic violence, repeat violence, or sexual violence, you should contact the office of the clerk of the circuit court in your county or the local domestic violence shelter for information and assistance.

PROPERTY DIVISION

One of the most difficult and complex areas of divorce is the division of marital assets and liabilities (debts). Marital property may include cars, houses, retirement benefits (pensions), business interests, cash, stocks, bonds, bank accounts, personal property, and other things of value. Liabilities include mortgages, car loans, credit card accounts, and other debts. Generally, any asset or liability acquired during the marriage is considered marital and subject to distribution.

Florida statutes and case law provides for an "equitable distribution" of marital assets and liabilities. In essence, the marital property should be divided fairly or equitably (not necessarily equally) between the parties regardless of how the title is held. This is based on a long list of factors.

Equitable distribution is done first before alimony is considered.

There is no fixed way to determine how you or the court should divide the property, or debts. Factors to be considered by the court include the contribution of each spouse to the marriage; the duration of the marriage; and the economic circumstances of each spouse. If you and your spouse can agree, and if your agreement is reasonable, it will be approved by the court. If you cannot agree, the court will divide the assets and liabilities after a trial.

ALIMONY

After equitable distribution has been made, the court may consider the award of alimony. The court may grant alimony to either the husband or the wife. Rehabilitative alimony may be for a limited period of time to assist in redeveloping skills and financial independence. Permanent alimony continues until the receiving spouse's remarriage or the death of either party. Rehabilitative and permanent alimony generally are paid periodically (i.e., monthly or semi-monthly). The court may grant some combination of the two. The court

may also order lump-sum alimony where one party pays to the other party a lump-sum payment of money or property. Although adultery does not mandate or bar an award of alimony, the court may consider the circumstances of that adultery in determining an award of alimony.

In awarding alimony, the court considers factors such as the parties' prior standard of living; length of the marriage; age and physical and emotional condition of both spouses; each spouse's financial resources and income-producing capacity of the assets they receive; the time necessary to acquire sufficient education or training to find appropriate employment; and the services rendered in homemaking, child rearing, and education and career building of the other spouse. The court may consider any other factor necessary to do equity and justice between the husband and wife.

You have the right to find out about all your spouse's income and assets through the use of discovery procedures which your attorney will explain to you.

TAXES

There are very important tax considerations to be aware of in any divorce, including the dependency deduction for children, taxability and deductibility of child support and alimony in their various forms, and effects of property transfers. It is important to find out how these laws affect you before you get divorced. Afterwards, it may be too late to correct mistakes that have been made. This may require the services of an accountant in conjunction with your attorney.

SHARED PARENTAL RESPONSIBILITY FOR CHILDREN

Custody and Visitation

It is the public policy of Florida to ensure each minor child has frequent and continuing contact with both parents after the parents have separated or divorced, and to encourage parents to share the rights and responsibilities of child rearing. The father is given the same consideration as the mother in determining custody regardless of their child's age or sex.

In most cases, parental responsibility for a minor child will be shared by both parents so that each retains full parental rights and responsibilities with respect to their child. This requires both parents to confer so that major decisions affecting the welfare of the child will be determined jointly.

You and your spouse may agree, or the court may order, that one parent have the ultimate responsibility over specific aspects of the child's welfare, such as education, religion, or and medical and dental needs. If the parents have a substantial conflict over any of these areas the court will decide on responsibility for them. The court can order varying types of shared parenting arrangements depending on the evidence presented. The court may designate one parent's home as the primary residence and afford the other parent frequent and continuing contact, or, the court may order rotating custody in which the time spent with each parent is equal.

In rare cases, the court can order sole parental responsibility and custody to one parent. To do so, the court must determine that shared parental responsibility would be detrimental to the child.

In considering issues between parents and their children, the best interest of the child is the primary consideration by the courts.

The Florida Bar has developed a consumer pamphlet entitled "Shared Parenting After Divorce," which discusses the subject. For instructions on ordering, see the back cover of this pamphlet.

Florida law requires both parties to attend a parenting course prior to entering a final divorce. Consult your county clerk's office for information on courses offered.

CHILD SUPPORT

You and your spouse each have a responsibility to support your children in accordance with their needs and your financial abilities. Child support may be by direct payment or by indirect benefits, such as mortgage payments, insurance, or payment of medical and dental expenses. Ordinarily, the obligation to support your child ends when that child reaches 18, marries, or becomes financially independent.

Some of the issues concerning child support which must be considered include: (a) the amount of support; (b) the method of payment; (c) ways to assure payments are made; (d) when child support may be increased or decreased; and (e) who claims the dependency deduction for tax purposes. Other questions may need to be answered, depending on the circumstances of your case. Guidelines for the amount of support apply to all cases and are based on the income of the parents and the number of children with adjustments for substantial overnight contact.

If you have a problem getting support payments from your spouse or former spouse, or visitation and access to your child is denied, you should bring this matter to the attention of the court. It is not legal to withhold visitation or child support payments because either parent fails to pay court ordered child support or violates court ordered visitation.

APPEALS

If you feel the judge's decision was incorrect, you may appeal that decision, provided that certain procedural steps are taken. An appellate court does not, however, often reverse a trial judge's decision because the judge has broad discretion in divorce cases. Just because you do not like the judge's decision is not a reason for an appeal. If the trial judge makes an error of law, or has abused his discretion, the decision may be reversed. Because an appeal must be filed within 30 days of rendition of the final judgment, you need to address this issue quickly with your attorney.

ATTORNEYS' FEES AND COSTS

Divorce does not have to be expensive. The more complex your affairs and the more contested the issues, the more the dissolution will cost. At an initial meeting, your attorney should be able to provide an estimate of the total cost of a dissolution based on the information you provide. To a large extent the cost will depend on how contested the matter becomes.

One lawyer cannot represent both parties. Your lawyer will expect you to pay a fee and the costs of litigation in accordance with the agreement you make. Sometimes the court will order your spouse to pay part or all of your fee and costs, but such awards are unpredictable and cannot be relied upon. You are primarily responsible for the payment of your legal fees.

In a divorce, it is illegal for an attorney to work on a contingency fee basis; that is, where the lawyer's fee is based upon a percentage of the amount awarded to the client.