

DIVORCE IN MARYLAND



ANDREWS LAW CENTER 2011

This handout provides a basic overview of the terms and concepts involved with divorce in Maryland.

RESIDENCY REQUIREMENT

One of the parties must have lived in Maryland for 1 year prior to filing for divorce if the grounds for divorce occurred outside the state.

GROUND FOR DIVORCE

- adultery;
- desertion, if for 1 year without interruption;
- conviction of a felony or misdemeanor, if the guilty spouse is sentenced to serve at least 3 years;
- Voluntary separation, where the parties have voluntarily lived separate and apart, without interruption, without sexual intercourse, for at least 1 year with the intent to end the marriage, and there is no reasonable expectation of reconciliation;
- 2-year separation, where parties have lived separate and apart, without interruption, without sexual intercourse, for at least 2 years with no reasonable expectation of reconciliation;
- insanity, if the insane spouse is confined for at least 3 years;
- cruelty of treatment; and
- excessively vicious conduct.

If you allege adultery as a ground for divorce, you must be able to prove that: (1) your spouse committed the act of adultery; *or* (2) he or she had disposition and opportunity. Disposition is when your spouse and someone of the opposite sex acted romantically towards each other. Opportunity is a specific chance to have sexual intercourse with that person.

LIMITED DIVORCE

When the court decrees a limited divorce, it means that the divorce is not permanent, does not permit remarriage, and does not terminate property claims. This should be considered a separation, and is not a final divorce. There are four grounds for a limited divorce in Maryland: cruelty, excessively vicious conduct, desertion, and voluntary separation. **Remember that a limited divorce does not end your marriage.**

FILING A DIVORCE PETITION

You must file in the county in which you live, or in which the defendant lives or works. You can obtain the appropriate forms online at: <http://www.courts.state.md.us/family/forms/divorce.html>.

The filing fee is \$135 in Prince George's County and is \$105 in Montgomery County.

SERVICE

"Service" or "service of process" is making sure the other party gets a copy of the papers you are filing. If you file for divorce, the other party must be properly "served." When you file your divorce papers, the court will issue a Writ of Summons. Make sure the Writ of Summons is attached to a copy of the divorce petition. These papers must be served on the other side along with any other papers you have filed.

Service can be made in 3 ways: (1) by sheriff; (2) by private process; or (3) by certified mail using a friend or relative or other adult. You cannot serve the other party yourself. Whichever method you choose, proof that the other side was served must be filed with the court. A person can be served at home, at work, or anywhere else the person happens to be.

PROPERTY DIVISION

If the parties cannot decide over the distribution of property, the court will determine which property is marital property and the value of the marital property. Marital property does not include property acquired before marriage or property acquired separately. Next, the court will transfer any ownership interest in property and/or grant a monetary award. The court will consider several factors when dividing marital property, including, the contributions of each party, the duration of the marriage, and the economic circumstances of each party.

Marital property includes military retirement pay. If a court awards the non-military spouse a share of military retirement pay, The Military Retirement Pay, Continued Benefits, and the Uniform Services Former Spouses' Protection Act (USFSPA) provides that the parties must have been married at least 10 years while the military member was active duty in order for the former spouse to receive direct payments.

USFSPA permits former spouses to continue receiving commissary, exchange, and health care benefits after a divorce if the parties were married for 20 years while the military member was active duty. If the military member was active duty for 20 years, but the parties were only married for 15 years of the active duty service period, the former spouse is entitled to full military medical benefits for one year following the divorce.

ALIMONY

Factors the court will consider in awarding alimony include:

- The ability of the party seeking alimony to be wholly or partially self-supporting;
- The time necessary for the party seeking alimony to gain sufficient education and gainful employment;
- The parties' established standard of living;
- The duration of marriage;
- The circumstances that contributed to the estrangement of the parties;
- The financial resources of each party; and
- The contributions of each party.

CHILD CUSTODY AND VISITATION

If the parents cannot agree over who should have custody, the court will decide custody based on the best interests of the child. Factors the court will consider include:

- Which party is the primary caregiver;
- The mental and physical fitness of the parties seeking custody;
- The child's preference;
- Whether there is a custody agreement in place;
- Who is able to maintain family relationships;
- The parties financial resources; and
- The parties residences in relation to the child's family, school, etc.

The court will grant custody either solely to one parent or jointly to both parents. "Sole custody" is made up of legal and physical custody. "Legal custody" is the right and obligation to make long-term decisions regarding a child's education, religious training, discipline, medical care and other significant matters affecting the child's welfare. "Physical custody" is the physical care of the child and the right to make decisions regarding the child's everyday needs. "Joint custody" can include joint legal custody, shared physical custody, or a combination of both.

CHILD SUPPORT

Child support is based on the parents' actual or imputed income and the support obligation is shared by the parents in proportion to their income. Child Support in Maryland is handled by county Child Support Enforcement Agencies. For more information contact 1-800-332-6347, or visit the state website at: www.dhr.state.md.us/csea.

DO YOU NEED A LAWYER?

Our attorneys can provide you with valuable legal assistance and advice, but cannot represent you in state court. If you have children, significant assets (a home, retirement account, etc), or you and your spouse cannot come to an agreement over an important issue, you will most likely need a lawyer. Our attorneys can advise you on whether or not you should seek legal representation.

For lawyer referrals, contact (301) 952-1440 (Prince George's County) or (301) 279-9100 (Montgomery County). There are consultation fees associated with these lawyer referral services.