

## DIVORCE IN WASHINGTON, D.C.



### ANDREWS LAW CENTER 2011

This handout provides a basic overview of the terms and concepts involved with divorce in Washington, D.C.

#### RESIDENCY REQUIREMENT

One of the parties must have lived in Washington, D.C. for 6 months prior to filing for divorce.

#### GROUND FOR DIVORCE

There are only two grounds for divorce in Washington, D.C.: (1) where the parties have mutually and voluntarily lived separate and apart without cohabitation for 6 months, or (2) where the parties have lived separate and apart without cohabitation for 1 year.

#### LEGAL SEPARATION

Legal separation may be granted where (1) both parties have mutually and voluntarily lived separate and apart without cohabitation for 6 months, or (2) where the parties have lived separate and apart for 1 year.

#### FILING A DIVORCE PETITION

You must file for divorce at the D.C. Family Court. You can obtain the appropriate forms online at: [http://www.dcbart.org/for\\_the\\_public/legal\\_information/family/family\\_court\\_forms/index.cfm](http://www.dcbart.org/for_the_public/legal_information/family/family_court_forms/index.cfm).

The filing fee is \$80.

#### 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."

Service can be made by personal service (hand-delivery) or by certified mail. You cannot personally serve the other party yourself. Whichever method

you choose, proof that the other side was served must be filed with the court.

#### PROPERTY DIVISION

Washington, D.C. is an "equitable distribution" jurisdiction. If the parties cannot agree over the distribution of property, each spouse retains his or her separate property (acquired before the marriage or acquired during the marriage by gift or inheritance). All other property shall be divided equitably and reasonably, based on certain factors, including:

- The duration of the marriage;
- The contribution of each spouse;
- The occupation and income of each spouse;
- The assets and debts of each spouse; and
- The circumstances that contributed to the estrangement of the parties.

In Washington, D.C., military retirement pay is considered a marital asset and a share of it may be awarded to the non-military spouse. 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

The Court may order either party to pay alimony to the other if it seems just and proper. Factors the court will consider in awarding alimony include:

- The ability of the party seeking alimony to be wholly or partly 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:

- The mental and physical fitness of all individuals involved;
- The child's preference;
- The willingness of the parties to share custody;
- The demands of parental employment;
- The parties financial resources;
- The child's relationship with his or her parents, siblings, or other persons who may affect the child's best interests; and
- The geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule.

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 a formula set forth by the Child Support Guidelines. Variations are allowed based on several factors, including:

- The child's needs are exceptional;
- The non-custodial parent's income is substantially less than the custodial parent's income; and
- A property settlement between the parties provides resources for the child above the minimum support requirements.

### **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 (202) 296-7845 (there is a \$39.95 initial consultation fee).