

WHEN YOUR FUTURE DEPENDS ON IT - CALL US AT (630) 355-5222

WHAT IS DISSOLUTION OF MARRIAGE?

A dissolution of marriage (formerly called divorce) is a court proceeding that terminates a marriage, divides marital property between the husband and wife and provides for maintenance, child custody and child support.

MUST I LIVE IN ILLINOIS TO OBTAIN A DISSOLUTION OF MARRIAGE?

Either the husband or wife must reside in the State of Illinois when suit is filed and for 90 days prior to the date the court enters a judgment of dissolution of marriage or legal separation.

WHAT ARE GROUNDS FOR DISSOLUTION OF MARRIAGE?

The grounds for dissolution of marriage in Illinois are any one of the following:

- Extreme physical (2 acts) or mental cruelty
- Desertion (one year or more)
- Adultery
- Impotence at time of marriage
- Prior existing marriage
- Habitual drunkenness or drug use (2 years or more)
- Attempt to take spouse's life
- Conviction of a felony
- Infection of spouse with venereal disease

Beginning July 1, 1984, an additional basis for obtaining a dissolution is the so-called "no-fault" separation. The spouses must have lived separate and apart continuously for a period in excess of two years and irreconcilable differences must have caused an irretrievable breakdown of the marriage. The court must further determine that efforts of reconciliation have failed, and that future attempts at reconciliation would be impracticable and not in the best interests of the family. The court can grant a no-fault dissolution after a six-month separation of the parties if agreed to upon written stipulation.

WHAT HAPPENS IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE?

An action for dissolution is similar to other lawsuits. A petition alleging the reasons (grounds) for the dissolution is filed with the court by one spouse (who is called the plaintiff/petitioner). The petition is served on the other spouse (who is called the defendant/respondent) who must file an answer to the petitioner with the court within thirty days. If defendant/respondent cannot be found, notice of the suit is published in the local newspaper. If the defendant/respondent fails to answer within thirty days, the dissolution may proceed by default without the defendant/respondent having an opportunity to protect his or her rights.

If the defendant/respondent is in default, or if the parties have agreed to the terms of support, custody, and property division, a brief court hearing is held in which the plaintiff/petitioner testifies. If the dissolution is contested, the question of grounds is tried first and the defendant/respondent can offer proof in opposition to the dissolution.

If the judge finds that the plaintiff/petitioner has grounds for dissolution, a separate trial

is held to determine any unresolved questions of support, custody, or property division. If the parties reach an agreement on these issues, the second trial is not required. The agreement is submitted to the court for approval and then becomes part of the dissolution judgment.

WHAT IS MARITAL PROPERTY?

All property acquired during the marriage, including the house, bank accounts, insurance, and furnishings is considered marital property, regardless of which spouse holds title. All marital property is subject to division by the court though the division isn't necessarily equal. Certain exceptions, such as gifts or inheritance received individually by either spouse or property owned prior to marriage, are considered non-marital if they are kept separate from the marital property. The non-marital property is assigned to the spouse who owns it.

WHAT IS A LEGAL SEPARATION?

It is a court action for maintenance or child support brought by the party in need who is living physically separate and apart from the other spouse without fault. A judgment of legal separation does not require the same proof of marital misconduct as a dissolution, does not result in the termination of the marriage, and does not provide for the division of property. A judgment in this form does not allow either party to remarry until a dissolution is obtained.

WHO SUPPORTS THE CHILDREN?

Each party owes a duty to support the children even after a dissolution. The non-custodial parent usually will be required to pay certain sums of money to their custodial parent to be used to support the children. A parent's duty of support terminates when a child reaches 18. However, when a child is in school or is disabled the court may order parents to provide support beyond age 18. The court can also order child support from the estate of a deceased parent and can require the parents to pay for college expenses.

WHO PAYS THE ATTORNEY'S FEES AND COURT COSTS?

The dissolution order may contain provisions concerning payment of attorney's fees and costs. The court may order each party to pay his or her own attorney's fees and costs or may order one party to pay all or part of the spouse's fees and costs. The decision of the court is based on the respective financial resources and needs of the parties. Each of the parties is responsible for any fee arrangement made with his or her own attorney. It is advisable that the client discuss fees with the attorney at the outset of the case, including questions of hourly rates, court costs, the fee responsibility of the other spouse, and the effect of reconciliation or termination of the attorney's services.

HOW MAY A PERSON PROTECT PROPERTY OR CHILDREN DURING A PROCEEDING FOR DISSOLUTION?

After a petition for dissolution has been filed with the court, a court may order either party to pay temporary maintenance or child support until the proceedings are completed. Additionally, under appropriate circumstances, a court may grant a temporary restraining order or injunction prohibiting either or both parties from concealing or disposing of property, from abusing the other party, or from removing the children from the home or the state. To obtain these temporary orders, the party must file a petition with the court with an affidavit reciting the facts necessitating the temporary relief.

Before or after a petition for dissolution has been filed, a separate petition for order of protection from domestic violence may be filed and an order of protection served on the other spouse.

WHAT IS AN ORDER OF PROTECTION FOR DOMESTIC VIOLENCE?

With or without the filing of a petition for dissolution, an abused party may apply to the court for an order of protection for herself or himself, on behalf of a minor child, or on behalf of a physically or mentally handicapped person. Upon a finding of abuse, the court shall have the power to order the defendant from striking or harassing the plaintiff or family members, to grant possession of the household, to prohibit the defendant from taking or destroying personal property, and other relief. The order shall be valid for a fixed time not to exceed two years.

WHAT IF ONE SPOUSE REFUSES TO COMPLY WITH THE PROVISIONS OF A DISSOLUTION JUDGMENT?

Like any other judicial order, a judgment for dissolution will be enforced by the court. Persons who willfully refuse to comply may be sent to jail for contempt of court or fined. With regard to maintenance and child support an order of withholding may be obtained and direct payments received from the employer.

MAY A WIFE USE HER FORMER NAME AFTER A DISSOLUTION?

If a wife wants to resume her maiden name or former name, the court will restore that name in the dissolution judgment. If, however, the wife wants to continue using her married name, she may do so.