A BRIEF INTRODUCTION INTO DIVORCE LAW:
THE BASICS OF OHIO DIVORCE LAW
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How can a marriage be terminated in Ohio?

There are two primary ways to terminate a marriage: Dissolution or Divorce. In a dissolution, the court is not asked to make any decision for the parties. Instead, the parties must come to a complete agreement on all issues including the division of assets and debts, and the allocation of parental rights, child support and spousal support. The document that incorporates these agreements is called a Separation Agreement. If the parties agree that they will have shared parenting of their children, a second document, called a Shared Parenting Plan, is prepared. If the parties agree that one party will be designated the sole residential parent, the custody terms are incorporated into the Separation Agreement. Upon the parties reaching these written agreements, a Petition for Dissolution is filed with the court and a hearing is scheduled between 30 and 90 days from the date of filing. Both parties must be present for this hearing but it is very brief and perfunctory.

The second method of terminating a marriage is a divorce. In a divorce, one party files a Complaint for Divorce against the other party. Grounds for the divorce must be stated however, for the most part, the alleged grounds have little consequence to the proceeding. Once a Complaint for Divorce is filed, the court can issue an order for temporary custody, child support, and spousal support. In most divorce proceedings, there are several instances when the attorneys must appear in court to give a status report on the case. Ultimately, any issue that cannot be resolved between the parties will be decided by a magistrate or a judge after a trial is conducted, with both parties testifying. In some divorce cases, the number of hearings are minimal. In other cases where there is high conflict and ongoing issues that require court intervention, there may be many hearings. There is a wide range in the time frame that a divorce may take from beginning to end, depending on the court calendar, the number of issues in dispute and particularly whether custody is in dispute but it would not be uncommon for the process to take approximately 1 year. There is nothing to prevent people from coming to a settlement while a divorce is pending. In fact, in most cases the court will continue to encourage the parties to attempt to reach settlement and often, settlements are reached moments before a trial is set to begin.

There is a third method for terminating a marriage called an annulment but these are granted only in highly unusual situations such as when one party was still married to another party at the time of the marriage or there was a failure of consummation of the marriage.

What is a legal separation?

It is not uncommon for married couples to separate and often they do so without any legal intervention. This type of temporary arrangement is not a "legal separation". In other cases, people may choose to separate with the assistance of attorneys. In those instances, the parties may not feel the need to place any agreements in writing but instead have enough trust in one another that they can rely on the oral agreements that have been reached. In other situations, people may want to place their agreements in writing so that these terms could be upheld by a court if necessary. Even this type of situation is not a "legal separation."

A legal separation is a rarely used proceeding where the parties divide all their assets, determine custody and support just as they would have done in a divorce action, but a court actually issues a Legal Separation Decree which means that the parties still remain married and are not free to marry someone else. This type of proceeding is seen in instances where the parties may have a religious conviction against divorce or where there are certain benefits of remaining married such as the ability to have medical insurance through the spouse, that compels a couple to remain married.

What makes up "the law" in divorce cases?

Each state has its own laws concerning divorce. This is why it would not be helpful to talk with an attorney licensed in Kentucky if you reside in Ohio. Although each Ohio county may have difference procedures that are used in a divorce action as well as different philosophies on particular legal issues, all Ohio counties are governed by Ohio law.

As with most areas of the law, a case can be determined based on a statute or by case law precedent. For example, there is an Ohio law that sets forth a child support worksheet that must be used initially by a court in determining child support. The Ohio statute allows a court to deviate from that formula and a court may rely on prior cases to determine whether a deviation is appropriate in any particular case. Another example is the spousal support statute. The spousal support statute states the factors that a court is to consider in determining spousal support but the statute does not tell a court how much is to be awarded or for how long.

It can be very frustrating to the people going through a divorce or dissolution process to find that their attorneys cannot tell them definitively what a court would do on a particular issue. If you think about it, this is why lawyers are needed. There may be a wide range of discretion for a court to make a decision on any given issue and it is up to the attorneys to advocate for one's own client.

In some cases, the judge or magistrate assigned to your case may be willing to discuss the facts with the attorneys to give some framework as to how an issue may be treated by the court. Other magistrates and judges are disinclined to do so. Even so, when an

opinion is stated, it is almost always with a disclaimer that until the actual trial is held and all of the facts are made known, a judge cannot predict what he or she might do.

How is child custody determined?

In Ohio, the husband and wife may be awarded shared parenting or alternatively, one of the two parties will be designated the residential parent and legal custodian of the children. People often assume that shared parenting means that the children spend equal amounts of time with both parents. This is inaccurate. The difference between shared parenting and sole custody is the manner in which decisions for the children will be made. In a shared parenting plan, parents normally are required to consult with one another about major issues concerning the children including their education, medical treatment and religious upbringing whereas in a sole custody designation, the custodial parent generally is permitted to make those decisions unilaterally. There can however be shared parenting plans that are written creatively where one parent is permitted to make the final decision in certain areas and there can be sole custody arrangements where the parents are required to consult with one another. These would be the exceptions rather than the norm.

For the most part, shared parenting is favored in Ohio. The reason for this stems from the largely held belief that children fair better after divorce if both parents are involved in raising them. Most shared parenting plans will set forth a procedure where if a conflict arises, the parties are required to participate in mediation before asking the court to intervene in their affairs. Again, the goal is to encourage both parents to try to work together, rather than using the court system when it comes to matters affecting their children.

There certainly are cases where shared parenting is not appropriate. For example, if one parent has a history of demonstrating poor judgment relating to the children or where there is a history of domestic violence between the parties, it may be improper for the parties to attempt to co-parent their children.

Whether in a shared parenting plan or a sole custody order, a parenting schedule must be adopted. This would include a weekly schedule as well as an allocation of holidays and vacations. Each county has a standard parenting schedule that is often used as a default order by the court but the court is always free to deviate from the standard order.

In the past decade more and more families have decided to equally share in their parenting time with the children. Some families alternate weekly. Other families may adopt a schedule where the children reside with one parent on Mondays and Tuesdays, with the other parent on Wednesdays and Thursdays and then alternating a three day weekend. It would be unusual that a court would interfere in any schedule that the parents have agreed upon. It would be less common for a court to require the parents to equally divide the time with the children if the court is asked to make this decision.

As a child gets older, the child's wishes are given more weight in determining how the child will spend his or her time. There is no magic age at which time a child's wishes will be honored but the older and more mature the child is, the more deference will be given.

Can a parent be ordered to pay child support if there is shared parenting?

The fact that the parties have shared parenting does not mean that child support will not be ordered. Whether child support is appropriate will depend on the time allocation of the parents, the income disparity between them and how expenses for the child will be addressed by their parenting agreement. If one parent earns significantly more than the other parent and even if the child will be spending equal amounts of time with each parent, it would not be uncommon for child support to be ordered.

How long does child support last?

Child support generally is paid until the child's graduation or 18th birthday, whichever is later. There is an exception for a handicapped child. There are also rules limiting the length of child support if a child is more than 19 and still in high school.

Are parents required to pay for college?

In Ohio, the court cannot order a parent to pay for a child's college education but if a parent voluntarily agrees to do so in a legal document, the court will enforce this.

Can child support or custody agreements ever be changed?

Every order concerning a child is subject to modification. There are certain rules about the circumstances in which various orders can be modified but the law recognizes that circumstances concerning children change and that it is impossible to predict those circumstances at the time of the divorce. This is the reason that any order relating to a child is subject to modification.

How is spousal support determined?

Ohio law sets forth several factors that are to be considered by a court in determining whether spousal support is appropriate. The most significant of these factors are: the length of the marriage, the ages of the parties, the disparity in their earning capacity, their health and contributions made during the marriage to the advancement of the other party's career. This is not however an exhaustive list and a court can consider any relevant factor. Spousal support is probably the most difficult issue for attorneys to predict for a client because there is so much discretion permitted. Spousal support almost always terminates upon the recipient's remarriage and may terminate upon the recipient's cohabitation. Spousal support may be subject to future modification or may be foreclosed from modification. The issue of modifiability is one that is either agreed to

in a settlement or determined by the court at the time of issuance of the order. Unless agreed otherwise, spousal support is tax deductible by the payor and is taxable income to the payee. Child support is not taxable income or tax deductible.

How is property and debt divided?

For the most part, assets and debts acquired during the marriage are divided equally amongst the parties. There are exceptions. For example, if one party commits gross financial misconduct the debt associated with that misconduct may not be considered a marital debt. Or, if one party will be leaving the marriage with a disproportionate amount of separate property, the court may find it fair to give more than 50% of the marital property to the less fortunate spouse.

While it may seem simple to divide everything down the middle, there are often issues of valuing an asset. For example, if one party owns a business, a determination must be made as to the value of that business in order for the value to be divided and the terms of payment must be decided. Or, consider the circumstance when the parties both agree on the value of their home but each wants to stay in the home. These are ultimately decisions that must be made by the parties or the court.

Unlike spousal support and child support, a property division is not subject to modification except in very rare circumstances such as where there has been fraud.

Is pre-marital or inherited property considered marital property that is divided?

As long as tracing can be done, in most cases a party will be awarded any property that was owned prior to the marriage or was acquired during the marriage by inheritance or gift. This does not mean however that one's separate property cannot be considered when determining child support and spousal support or the possible disproportionate award of marital property. The burden is always on the party asserting a separate property right to prove that it is indeed separate property. If you are currently married, you should think about how you might maintain your separate property so that it is protected in a divorce settlement.

If people want to stay out of court, how do they come to a settlement?

There are a few ways that people can come to an out of court agreement. Some couples can effectively reach their own agreement by negotiating between themselves. In these instances they may or may not have consulted with attorneys about their rights and obligations. When people have come to their own agreements, they may prepare a "do-it-yourself" dissolution packet or hire attorneys to draft the documents. Under no circumstance can one attorney represent both parties. This is a violation of the legal professional code. It is permitted however for one party to be represented and the other party to go without representation.

Divorce mediation and collaborative law can be used to reach resolution. There are divorce attorneys who are trained as mediators and there are counselors and psychologists who are trained as mediators. The choice of which type of mediator is most appropriate often depends on the issues in dispute. The goal of mediation is to allow the parties to negotiate between themselves with the assistance of a trained, neutral mediator. In some cases, the parties' attorneys may be present during the mediation sessions. In other instances, only the parties and the mediator meet together. In any instance however, the parties are encouraged to have an attorney to consult with and are given the opportunity for such consultation before being asked to make a final decision. Often times people are attracted to the idea of mediation as a cost-saving mechanism and in other instances, the parties choose mediation because they simply prefer to do their own negotiating and to use attorneys as little as possible.

Collaborative law is another approach that can be used by parties who want to stay out of court. The goal of collaborative law is to allow each party to be represented by an attorney who has been trained in this model where the parties and their counsel work "collaboratively" rather than as adversaries. In a collaborative law case, almost all of the work is done with husband, wife and both attorneys meeting together. A contract is signed where all four persons commit to resolving the case without court intervention. If either party withdraws from the process and chooses to litigate, neither collaborative attorney is permitted to represent the client. The goal in a collaborative case is to attempt to preserve respect and cooperation between two parties to serve the best interests of the children, whether they are minors or adults. Even when there are no children, collaborate law provides a vehicle for parties to work cooperatively with one another to find a resolution to their legal issues.

Within the collaborative practice, mental health professionals and financial planning professionals are often used. This promotes efficiency so that experts in a particular area can work with a couple on specialized issues and, hopefully, may produce cost-savings as well. For more information on collaborative law locally, go to www.collaborativelaw.com.

In some cases, people don't want to be involved in the negotiations and would prefer not even sitting in a room with their spouse. In these situations, each party can hire their own attorney and the attorneys will conduct the negotiations while keeping their own client informed.

How should I select an attorney?

Personal recommendations from someone who has used an attorney or another professional who is familiar with an attorney's work is the best source of information. With the internet, you will be able to look at various websites and probably get a fairly good idea of an attorney's background and experience. It may be appropriate to speak with more than one attorney, even if by telephone, because you should be able to get a feel for how comfortable you are in talking with an attorney. Like any other professional,

attorneys have different personalities and strengths and you want to find one with whom you are compatible. It is recommended that you retain an attorney whose practice is largely, if not exclusively, in the area of family law.

How are attorneys paid?

Almost all family law attorneys will charge an hourly fee and a retainer fee. The purpose of the retainer fee is a pre-payment for a certain number of hours that the attorney will be engaged. The retainer fee should be placed in an attorney's trust account so that the funds are not accessed by the attorney until they are earned. At the conclusion of the case, if there are funds left over from the retainer fee that have not been earned, an attorney should promptly refund those funds to you. Hourly rates and retainer fees vary significantly and are largely based on the attorney's experience and type of practice. There will be variations in how often an attorney issues billing statements and how detailed those billing statements are. There are also differences in what an attorney will require if and when a retainer fee is exhausted. These are all areas that you should discuss with an attorney before making a hiring decision.

This provides a general summary, but it must be noted that each case is unique and you should always consult with an attorney to discuss the specific facts of your own situation.