

General Facts, Questions and Answers in Florida by Carol A. Lawson, Esquire.

1. What is required to obtain a divorce in Florida?

Answer: One of the parties must be able to show that they lived in Florida for (6) months preceding the filing for dissolution of marriage. Marriage must be irretrievably broken.

Caveat: Different Rules apply for U.S. military personnel with regards to residency consult an attorney.

2. What types of divorces are there?

Answer:

1. Uncontested: everything is agreed to by the parties; including child support, custody visitation, property division, health insurance, child care expenses, Life insurance, division of debts, alimony, uncovered medical expenses and all other issues.
2. Contested: one or more of the issues listed above cannot be resolved by the parties. The Court will have to decide these issues at trial, without a jury.

3. How much will it cost?

Answer: The cost depends on the type of divorce. Uncontested divorces are less expensive, the lawyer knows in general how much time he will devote to the case, and preparing the paperwork. Most lawyers will handle these cases for a flat fee. The lawyer prepares:

1. A Marital Settlement Agreement pursuant to the parties' specifications.
2. Financial Affidavits.
3. An Answer and Waiver (for the non-client)
4. Petition for Dissolution of Marriage.
5. A QDRO or Quit Claim Deed or any other paper work necessary.

Only one party (the Petitioner) needs to appear at the hearing. The hearing must be 20 days out from the filing of the paper work and maybe set on the UMC (Uniform Motion Colander) and usually last about five to seven minutes.

In Contested Divorces: the attorney charges an upfront retainer, which he bills against at his hourly rate, since these cases are generally charged by the hour. The lawyer cannot estimate what the total fees will be since the lawyer does not know if the parties will end up settling or will litigate every issue and require experts, investigations, testing etc. The lawyer keeps track of their time and bills by the hour.

4. Do I have to go to Mediation?

Answer: Uncontested – No
Contested – Yes

The Court will require Mediation before you can try the cases depending on the county you may be forced to mediation before the Court will hear any of your motions.

5. If I leave my house, am I abandoning my claim?

Answer: No, If you leave your house you are not legally abandoning anything or giving up any rights by doing this. You should discuss this course of action prior to leaving with your attorney.

6. What is common in this situation?

Answer: While every case is unique, there are issues common to many divorces. If the parties own a home, real estate, mutual Funds, IRA's pensions, 401k's or other assets that were acquired during the marriage, in general they are considered marital property and are often divided equally. IF the property was owned by one of the parties prior to marriage it is considered non-marital and generally the Court will not award a portion of it to the other spouse. There are exceptions to every rule – i.e. commingled funds, the value of the property increases during the marriage due to the efforts of the other spouse. Consult with an attorney regarding your own individual circumstances.

7. What happens if we don't agree as to the value of the property?

Answer: Expert appraisers may be needed to give opinions about value.

8. I committed adultery, can he/she use it against me?

Answer: Generally speaking infidelity during the course of the marriage can only be taken into account by a Judge if there is evidence that the offending party spent marital funds on the third party or the behavior in some way harmed the children.

9. What do most people fight over?

Answer: The children, significant amounts of money are spent on lawyers simply because people cannot agree to the issues involving the children, or get along for the few minutes required to exchange the children for visitation.

10. What can the Court do about this?

Answer: Judges will layout in great detail the terms of visitation, insurance expenses, childcare expenses, and even exchanges of the children. Third parties such as sheriffs or family members may be asked to assist in the exchange of the

children. Supervised visitation under a third party maybe ordered where one party proves to the Court that they are unsafe for the child to be alone with.

11. Can I move out of State? I have custody.

Answer: It depends. The Florida Supreme Court outlined in Mize the factors for the Court to consider with regards to relocations. These factors have since been codified into the Florida Statutes.

12. Who will make all the medical treatment decisions?

Answer: In general, Florida utilizes a concept called shared parental responsibility. Each party has equal say regarding education, health, religion, discipline etc. If the parties can't agree the court will decide for them.

13. Do I have to attend a parenting class?

Answer: Most circuits require you to attend one and file your certificate of completion prior to granting your dissolution.

14. How much child support do I have to pay or will I receive?

Answer: This area is governed by Florida Statue and based upon the incomes of the parties. The parents combined net income (after allowable deductions from the gross income) is used in combination with the number of children under a statuary formula. The paying parties portion of childcare, day care and health insurance expenses are added unto basic guideline amount, unless the Court ordered them paid separately.

15. Can the Court alter the guideline amount.

Answer: Yes under certain circumstance. The party is under-employed, becomes unemployed, the parties agree to the change etc.

16. Can I get child support retroactive to the date of separation?

Answer: The Court can order child support retroactive to the date of the parties' separation to a maximum for 24 months prior to filing.

17. He won't pay his child support what can I do ?

Answer: Go to Court. The Court can order an income deduction order (take the money out of his check); Suspend his driver's license; hold him in contempt and Order a purge; order jail time usually 5 months and 29 days.

18. Can I get Alimony?

Answer: The Court must determine a need for assistance on the party requesting alimony and the ability of the other party to pay, along with other factors such as age of the parties, length of marriage, education of the parties, contributions to the marriage of the parties, , if there are mutual children of the parties and other relevant factors.

19. Can he/she be ordered to pay my attorney's fees?

Answer: The Judge may award attorney fees and costs if he or she finds need on the part of the party requesting attorney fees and the ability on the part of the other party to pay attorney's fees.

20. What is Mediation?

Answer: The process where the parties and their attorneys met with a neutral third party (mutually selected by the attorneys) to discuss the contested issues. The mediator will meet with the parties together and separately if necessary to see if a compromise can be reached the Mediator will reduce it to writing and have the parties sign. This will become a Marital Settlement Agreement and once signed it is legally binding upon the parties.

21. Can I wipe out my child support, alimony and Court order Attorney's fees in bankruptcy?

Answer: No, in general. There are some exceptions.

22. May I wipe out a property settlement in bankruptcy?

Answer: In some circumstances yes you can.

23. Do I really need a lawyer?

Answer: Depending on your circumstances yes. In general people have a lot at stake – financially and emotionally, and the laws are complicated and complex, not to mention their rules followed by the courts. To represent yourself you will need to learn in a very short period of time what competent family law attorneys have spent years learning. You wouldn't try to perform your own surgery, don't try to represent yourself either.

24. Attorney's cost too much, I'll just hire a paralegal.

Answer: You get what you pay for. Paralegals cannot give you any legal advice they can just prepare documents.

25. What cost are involved?

Answer: Generally the costs you will incur in addition to attorney fees are: filing fee, service of process fee, deposition fee, Court reporter fees, certified copy of judgment fee and recording fee for Final Judgment