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Divorce In Florida Pamphlet

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CAN YOUR MARRIAGE BE SAVED?

Are you sure your marriage cannot be saved? Before you take any legal steps to end your marriage, you may consider possible ways to save it. You may wish to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi or other professional. Many social and religious organizations offer counseling services at reasonable rates. Your family law attorney may refer you to someone who can counsel you individually or together with your spouse. Some counseling services are free, and some services are offered on a sliding-scale basis related to your ability to pay.

DOMESTIC VIOLENCE

If you feel you are the victim of domestic violence, repeat violence or sexual violence, you can seek help from local law enforcement authorities and also can ask the civil court to enter an injunction (sometimes called a "restraining order").

You may go to civil court yourself (without an attorney) to petition for an injunction to protect yourself against domestic violence (assault or battery by your spouse whether you are separated or not, or your former spouse), repeat violence or sexual violence.

You may retain the services of a Florida family law attorney to represent you in the domestic violence civil action if you so choose. You cannot request that the other party pay for the attorney's fees, suit money or costs incurred on your behalf in the domestic violence proceeding, meaning you will be solely responsible to pay for those fees and costs. There may be local legal aid programs and organizations that can provide

legal assistance for free or at a reduced rate. You should contact the office of the clerk of the circuit court in your county or a local domestic violence shelter for information.

OVERVIEW

A divorce is called a "dissolution of marriage" in Florida.

Florida is one of the many states that have abolished fault as a ground for dissolution of marriage. The only requirement to dissolve a marriage is for one of the parties to prove that the marriage is "irretrievably broken." Either spouse can file for the dissolution of marriage. You must prove that a marriage exists, one party has been a Florida resident for six months immediately preceding the filing of the petition, and the marriage is irretrievably broken. The reason for the irretrievable breakdown, however, may be considered under certain limited circumstances in the determination of alimony, equitable distribution of marital assets and debts, and the development of the parenting plan.

The parties, facts, and circumstances in each case are unique; therefore, outcomes can differ from case to case. Outcomes in a dissolution of marriage include, among other things, the division of assets and debts, awards of spousal support, awards of child support, and decisions on parental responsibility and/or time-sharing schedules. There is no "one-size-fits-all" or "standard" dissolution of marriage in Florida.

The dissolution of marriage process can be highly emotional and traumatic for couples as well as their children. Spouses often do not know their legal rights and obligations. Court clerks and judges can answer some basic questions but cannot give legal advice. Only a Florida family law attorney can provide legal advice. Statutory requirements and court rules must be strictly followed or you may lose certain rights permanently. The Florida Bar recommends you obtain the services of Florida family law attorney concerning legal questions, which include discussions regarding your rights and responsibilities in a dissolution of marriage. A knowledgeable attorney can analyze your unique situation and help you make decisions in your and your children's best interests.

COLLABORATIVE LAW

Those who wish to dissolve their marriage in an amicable manner with the assistance of trained professionals may wish to explore the collaborative dissolution process.

The collaborative practice of law is a voluntary dispute resolution process that can begin at any time before or after a party files a petition for dissolution of marriage with a court. In the collaborative practice of law, both parties and their attorneys sign a collaborative participation agreement that describes the nature and scope of the matter; the parties voluntarily disclose all relevant and material information; the parties use good faith efforts to negotiate; and the parties may engage joint neutral mental health and financial professionals to assist with their negotiations.

The goal of the collaborative process is for the parties to enter into a written settlement agreement that addresses all issues, which may include a parenting plan, division of their assets and debts, alimony, child support, and attorney's fees and costs. Should the collaborative process be unsuccessful in whole or in part, the parties must discharge the attorneys and other professionals and begin a contested dissolution proceeding through the court.

If you would like more information about the collaborative practice of family law, you should search for a collaboratively trained family law attorney near you.

DISSOLUTION PROCEEDINGS THROUGH THE COURT

There are two ways of filing in a Florida court for a dissolution of marriage. The most common way is called a "Regular Dissolution of Marriage." The second method is the "Simplified Dissolution of Marriage."

REGULAR DISSOLUTION OF MARRIAGE

Beginning the court proceeding:

The regular dissolution process begins with a petition for dissolution of marriage, filed with the circuit court in the county where you and your spouse last lived together or in a county where either party resides. Either spouse may file for a dissolution of marriage. The petitioner must allege that the marriage is irretrievably broken. The petition sets out what the petitioner wants from the court. The other spouse must file an answer within 20 days of being served, addressing the matters in the initial petition, and can choose to include a counter-petition for dissolution of marriage raising any additional issues that spouse requests the court to address.

Automatic financial disclosure:

Court rules governing a dissolution of marriage require that each party provide certain financial documents and a completed financial affidavit to the other party within 45 days of the service of the petition or several days before any temporary hearing. Failure to provide this information can result in the court dismissing the case or not considering that party's requests. The parties or the court can modify these requirements except for the filing of a financial affidavit, which is mandatory in all cases in which financial relief is sought. A child-support guidelines worksheet also must be filed with the court at or before any hearing on child support. This requirement may not be waived by the parties or the court.

Mediation:

Mediation is a procedure to assist you and your spouse in working out an arrangement for reaching an agreement without a protracted process or a trial. Its purpose is not to save a marriage but to help divorcing spouses reach a solution and arrive at agreeable terms for handling the break-up of the marriage. Many counties have public or court-connected mediation services available. Some counties require spouses to attempt mediation before a final hearing (also known as "trial") can be set.

Formalizing settlement terms:

Some spouses agree on some or all of the issues before or after the petition is filed. Issues may include the division of property, a parenting plan, spousal support, child support or attorney's fees. Parties who have reached an understanding as to their desired outcome(s) enter into a written agreement that is signed by both parties and then presented to the court. Parties who do not yet have a written agreement but have reached an understanding may also appear for a final hearing with a suggested settlement that they ask the court to accept and incorporate into a final judgment. In such uncontested cases, a dissolution of marriage can become final in a short amount of time.

Reaching an agreement empowers parties to create terms with which they are more likely to comply rather than leaving decisions up to a judge.

Contested final hearing:

Finally, some spouses cannot agree on all issues, so a final hearing (or "trial") is required. Each party will present evidence and testimony to the judge during the final hearing, and then the judge makes the final decision on the contested issues.

SIMPLIFIED DISSOLUTION OF MARRIAGE

Brief overview:

Certain couples are eligible to dissolve their marriage by way of a simplified procedure. This type of dissolution was designed so the services of an attorney might not be necessary. Spouses are responsible, however, for filing all necessary documents correctly, and both parties are required to appear before a judge together when the final dissolution is granted.

Cost-saving measures:

You can retain an attorney to represent you even in an uncontested matter. The cost for such services is generally much less than in a contested case. You can further reduce your attorney's fees if you ensure that you and your spouse have reached an agreement on all issues that will reduce the attorney's work.

Eligibility requirements for simplified dissolution:

Not everyone can use the simplified procedure. Couples can use the simplified dissolution of marriage only if all the following requirements are met:

- Both parties agree to the use of this form of dissolution proceeding.
- They have no minor (under 18) or dependent children.
- They have no adopted children under the age of 18.
- Neither party is pregnant.
- At least one of the parties has lived in Florida for the past six months.
- The parties have agreed on the division of all of their property (assets) and obligations (debts).
- Neither party is seeking alimony.
- Both parties agree that the marriage is irretrievably broken.

If you and your spouse cannot meet all of the above requirements, you will have to follow the procedure of the regular dissolution of marriage

process.

Differences between regular and simplified dissolution proceedings:

There are substantial differences between a simplified and a regular dissolution of marriage. In a regular dissolution, each spouse has the right to examine and cross-examine the other as a witness. Each spouse also has the ability to obtain documents concerning the other's income, expenses, assets and debts before a trial or settlement. With a simplified dissolution, financial information may be requested by either party, but disclosing financial information is not required.

Obtaining the forms for simplified dissolution proceedings:

If spouses seek a dissolution and prefer to use the simplified form of dissolution, they should both contact the clerk of the circuit court in their county and obtain a copy of the booklet titled "Simplified Dissolution Information" for more detailed information and forms.

PARENTING PLAN CONSIDERATIONS

It is the public policy of Florida to ensure that each minor child has frequent and continuing contact with both parents after the parents have separated or the marriage is dissolved and to encourage parents to share the rights and responsibilities, and joys, of child-rearing. The court gives both parties the same consideration in determining parental responsibility and time-sharing, regardless of the child's age or gender.

In most cases, parental responsibility for a minor child will be shared by both parents so that each retains full parental rights and responsibilities with respect to their child. Shared parenting requires both parents to confer so that major decisions affecting the welfare of the child will be determined jointly. You and your spouse may agree, or the court may order, that one parent have the ultimate responsibility over specific aspects of the child's welfare, such as education, religion or medical and dental needs. The court will determine any or all of these matters if the parties cannot agree.

In very rare cases, the court can order sole parental responsibility to one parent. To do so, the court must determine that shared parental responsibility would be detrimental to the child.

In determining parental responsibility, the court will approve or devise its own Parenting Plan, which includes responsibility for the daily tasks of child-rearing, the time-sharing schedule, and decision-making authority relating to health care, school and related activities. The Plan also will specify any technology that will be used for parent-child communication. The parents may agree on a Parenting Plan and submit it to the court for approval, or the court will determine these issues. The statute includes a list of factors for the court to consider in making these decisions.

The courts use the best-interests-of-the-child standard when considering parental issues.

Florida law requires both parties to attend a parenting course before entering a final dissolution of marriage. Some courts require children of parents going through dissolution of marriage to attend a class specifically designed for them. Consult your county clerk's office for information on courses offered.

DIVISION OF ASSETS AND DEBTS

One of the most difficult and complex areas of dissolution of marriage is the division of assets and debts. Assets may include cars, houses, retirement benefits (pensions and 401(k) plans), business interests, cash, stocks, bonds, bank accounts, personal property and other things of value. Debts (also called "liabilities") include mortgages, car loans, credit card accounts and other amounts of money you and your spouse owe to third parties.

There are two types of assets and debts in Florida – nonmarital and marital. Generally, any asset or debt acquired during the marriage is considered marital and subject to distribution. The parties also may have assets or debts that are considered nonmarital and should be awarded to only one party.

Florida statutes and case law provide for an "equitable distribution" of marital assets and debts. Although the court must begin with the presumption that all marital assets and debts are to be divided equally (50 percent each) between the parties, the court may distribute the marital estate fairly or equitably (not necessarily equally) between the parties, regardless of how title is held. A court decides equitable distribution before considering alimony. Equitable distribution is based on a long list of factors the court is required to consider.

Factors to be considered by the court include the contribution of each spouse to the marriage; the duration of the marriage; and the economic circumstances of each spouse. The court should approve your agreement if the court finds it to be reasonable. If you and your spouse cannot agree, the court will divide the assets and debts during trial.

ALIMONY

After equitable distribution, the court may consider an alimony award. The court may grant alimony to either spouse. For the court to award alimony, the requesting spouse must demonstrate a need for alimony and the ability of the other party to pay. Once the requesting spouse has established a need and an ability to pay, the court must determine all relevant factors to determine the property type and amount of alimony to award.

For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

Bridge-the-gap alimony may be awarded to help a spouse make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a spouse with legitimate, identifiable short-term needs. There are limits as to the length and conditions of a bridge-the-gap alimony award.

Rehabilitative alimony may be awarded to assist a spouse in establishing the capacity for self-support through either the redevelopment of previous skills or credentials, or the acquisition of education, training or work experience necessary to develop appropriate employment skills or credentials. The court must articulate a specific rehabilitative plan to award alimony so both parties clearly understand the expectations placed on the alimony recipient.

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a spouse with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. There are limitations as to the length and modifiability of a durational alimony award.

Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a spouse who lacks the financial ability to meet the needs and necessities of life following a dissolution of marriage. There are limitations as to when a court may award permanent periodic alimony, particularly for marriages of short or moderate duration.

The factors the court considers when determining the type and amount of the alimony award include, but are not limited to:

- The parties' prior standard of living.
- Length of the marriage.
- Age and physical and emotional condition of both spouses.
- Each spouse's financial resources and income-producing capacity of the assets they receive.
- The time necessary to acquire sufficient education or training to find appropriate employment.
- The services rendered in homemaking, child-rearing, and the education and career-building of the other spouse.

The court may consider any other factor necessary to do equity and justice between the spouses.

You have the right to obtain information about your spouse's income and assets through the use of discovery procedures. Discovery includes the exchange of documents and answers to written or oral questions.

TAX CONSIDERATIONS

There are important tax considerations in any dissolution of marriage, including the dependency deduction for children, taxability and deductibility of child support and alimony in their various forms, and effects of property transfers. Know the tax consequences of your settlement agreement before finalizing your dissolution of marriage. It may be too late after the signing of a marital settlement agreement or entry of a final judgment to correct mistakes that have been made. You may want to obtain the services of an accountant in conjunction with your attorney to become better informed about this part of the dissolution process.

CHILD SUPPORT

You and your spouse each have a responsibility to financially support your children in accordance with your income and their needs. Child support may be by direct payment or by indirect benefits, such as mortgage payments, insurance, or payment of medical and dental expenses. Ordinarily, the obligation to support your child ends when that child reaches age 18, marries, is emancipated, joins the armed forces or dies.

Some of the issues concerning child support that must be considered include:

- The amount of support.
- The method of payment.
- Ways to ensure payments are made.
- When child support may be increased or decreased.
- Who claims the dependency deduction for tax purposes.

Other questions may need to be answered, depending on the circumstances of your case. Guidelines for the amount of support apply to all cases and are based on the income of the parents and the number of children, with adjustments for substantial overnight contact.

If you have a problem receiving support payments from your spouse or former spouse, or the time-sharing plan is not being followed, you should bring this matter to the attention of the court. It is not legal to withhold time-sharing or child-support payments because either parent fails to pay court-ordered child support or violates the time-sharing schedule in the parenting plan.

RESTORATION OF FORMER NAME

Florida law permits the court to restore the former name of a spouse in a Final Judgment of Dissolution of Marriage. A spouse who desires restoration of a name must request it, normally within the original petition or a counter-petition for dissolution of marriage. The court can restore the spouse only to the name from immediately prior to the marriage. A spouse who wishes to change a name to anything other than the prior name normally has to take additional steps.

ATTORNEYS' FEES AND COSTS

The fees and costs for dissolution of marriage cases vary widely. The more complex and the more contested the issues, the more the dissolution will cost. At an initial meeting, your attorney may be able to provide an estimate of the total cost of a dissolution based on the information you provide; however, keep in mind that your attorney has no way to predict the future and that estimates are precisely that – estimates. The final cost of your dissolution of marriage will depend on many variables that are unpredictable.

Your attorney will expect you to pay a fee and the costs of litigation in accordance with the agreement you make. Sometimes the court will order your spouse to pay part or all of your fee and costs, but such awards are unpredictable and cannot be relied upon. You are primarily responsible for the payment of your legal fees.

In a dissolution of marriage, it is illegal for an attorney to work on a contingency fee basis (that is, where the attorney's fee is based upon a percentage of the amount awarded to the client).

APPEALS

If you feel the judge's decision was incorrect, you may appeal that decision, provided that certain procedural steps are followed. An appellate court does not, however, often reverse a trial judge's decision, because the judge has broad discretion in dissolution of marriage cases. If the trial judge makes an error of law or there is an abuse of discretion, the appellate court may reverse the decision. The success of your appeal will be limited if your only reason for appeal is displeasure with the judge's decision. You must decide quickly whether to appeal the final judgment, because an appeal must be filed within 30 days from the date that the order you are appealing is filed in the lower tribunal or court, or 30 days from the date that an order on a motion tolling the time to appeal is filed.

WHERE TO GET LEGAL HELP

A good place to begin is with your own attorney, who can give you a quick review of your legal rights and advise you how to proceed. If your attorney does not handle dissolution of marriage cases, you might be referred to a family law attorney.

If, however, your preferred attorney has been retained by your spouse, then that same attorney cannot also represent you. In fact, if the attorney has been your family attorney, there may be a conflict of interest meaning the attorney cannot represent either of you. Do not attempt to consult with your spouse's attorney to receive legal advice. It is unethical for an attorney to represent both parties in a dissolution action and to give legal advice to both spouses.

HOW TO SELECT AN ATTORNEY

If you do not have an attorney, an attorney referral service, usually operated by a local bar association, can put you in touch with an attorney who handles such cases.

Many areas in Florida have attorney referral services listed under "Attorney" or "Information and Referral Services" in the yellow pages of the telephone book. If you do not have an attorney referral service in your city, The Florida Bar's Statewide Attorney Referral Service can locate a attorney for you. You can call the statewide service, toll-free, at (800) 342-8011 or you can view the Attorney Search section on The Florida Bar Family Law Section's homepage at www.familylawfla.org.

If you are looking for an attorney to represent you in a dissolution of marriage - or any other legal matter - The Florida Bar has developed a consumer pamphlet "How To Find A Lawyer in Florida," which may be helpful. For instructions on ordering this and other consumer pamphlets, go to: <http://www.floridabar.org/consumerpamphlets>.

The material in this pamphlet has been based on, and some of it has been taken directly from, Florida statutes in effect at the time it was written and represents general legal advice. Since the law is continually changing, some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

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