



Divorce FAQ

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FAQ

What is "Dissolution of Marriage?"

"Dissolution of marriage" is what divorce is called in Florida law. We use the more common word "divorce" in these questions but the correct legal term is "dissolution of marriage."

Can my spouse and I share the same lawyer in our divorce?

No. One lawyer should not represent both spouses in a divorce. You have different interests in the case and those cannot be protected by the same person; the lawyer would have what is known as a "conflict of interest."

You do not have to have a lawyer to file for a divorce. Neither spouse may be represented by a lawyer, one spouse may have a lawyer and one may represent him or herself, or both may have lawyers.

What is mediation?

Mediation is a way to help people come to an agreement so that they can avoid spending time and money fighting in court. The mediator is a neutral expert in the law who looks at the strengths and weaknesses of both sides' cases and helps them come to an agreement to settle the case, if possible. Some counties in Florida make you attend mediation before you can schedule a trial (with an exception for cases involving domestic violence). Mediation is designed to resolve cases with less time, expense, and emotional cost than long court battles.

What can I expect at mediation?

Typically, you and your spouse, your lawyers (if you have them), and the mediator, will all meet together and the mediator will introduce him/herself and explain how things will go. After the meeting with everyone in the same room you and your spouse will move into separate rooms and the mediator will spend time alone with each one of you asking questions and discussing the strengths and weaknesses of the case. The mediator will meet first with the one who filed the first petition for dissolution and they will begin negotiations by making an offer to settle the case. The mediator will try to help the two sides reach an agreement about the things that they did not agree upon before the mediation: this may mean going back and forth between the rooms many times.

If mediation is successful, spouses might be able to agree on some or all of the issues, enter into a written agreement, and submit a suggested settlement to the court. Once the agreement is made and signed after mediation it is a binding contract. The parties cannot change their minds and complain that they want things changed about which they agreed and signed at the mediation: those matters are settled and they are bound by their agreement.

If you cannot reach an agreement through mediation, it is called an "impasse." If you can come to an agreement not only can the divorce become final much more quickly than if it were contested, but parties may be more likely to comply with the terms they agreed to than if a judge ordered them to do something without agreement.

Helpful hint: Mediation can take quite some time so it is a good idea to bring a book to read or something quiet to do while the mediator is out of the room.

When does mediation happen?

Mediation can take place before or after the discovery process. Discovery is the part of a contested lawsuit when each party is allowed to find out information that the other party has about the case. In discovery both sides will have to reveal details about their finances, produce documents upon request, and respond under oath to questions from the other side.

Who pays for mediation? Each party will pay for half the cost of the mediation unless you negotiate another way of dividing the cost. Often one party ends up paying more or all of the cost of the mediation as part of the negotiated settlement. ■

Can I bring a family member to mediation? ■

You do not have a right to bring another family member with you to the mediation, but you can if you get permission from the other side. If your spouse agrees, but the mediator thinks after some time that the person is becoming unhelpful or getting in the way of an agreement being reached they can make them leave.

How do I change my name? ■

You may ask that your name be changed back to what it was before you were married. You do this in your petition or counter-petition for dissolution of marriage. The judge can order this change in the Final Judgment of Dissolution of Marriage.

How is property divided? ■

In a divorce assets and debts must be divided. Assets are things you own that have value (e.g. bank accounts, pensions, cars, personal property), and debts are moneys that you owe (e.g. mortgage, loans, credit cards). In Florida property and debts are divided by "equitable distribution," which means fair division. Some things may be considered non-marital, separate property, and would not be divided because they belong to one spouse only (e.g. one spouse owned something before the marriage).

Spouses can agree how to divide their property or if they cannot come to an agreement themselves, or through mediation, the court will make a decision about how the property will be divided. Although the court begins with a presumption that property will be divided equally, it will take many factors into consideration including how long you were married, what each spouse contributed to the marriage, if a spouse wasted marital assets, and if a spouse helped the other's education or career by interrupting his/her own.

What are the different kinds of alimony in Florida? ■

Either party can be ordered to pay alimony and they can be ordered to pay a lump sum, periodic payments, or both. There are several different kinds of alimony that the court can order in Florida.

- **Bridge-the gap:** is for a limited period of time, cannot be modified, and is meant to help a person transition from being married to being single.
- **Rehabilitative:** designed to help a person become self-sufficient by either re-developing previous skills or credentials, or gaining new ones. This is only awarded with a specific defined rehabilitative plan and can be modified or ended when there is a substantial change in circumstances, the plan is completed, or the recipient fails to comply with the plan.
- **Durational:** awarded when periodic is not appropriate. It is meant to provide economic help for a set period of time after a marriage of short or moderate duration or after a marriage of long duration if there is no need for longer support. The amount can be changed based upon a substantial change in circumstances but the length can only be changed under exceptional circumstances and cannot last longer than the marriage itself.
- **Permanent:** awarded when the court finds that no other form is fair and reasonable under the circumstances. It is supposed to provide for the needs and necessities of life for a party who cannot meet his or her needs after the dissolution. There are limits upon when the court can award permanent alimony depending upon the length of the marriage.

What different things will a court consider when deciding about alimony? ■

The court first has to decide if one party has a need for alimony and the other party has the ability to pay, and then will determine the appropriate amount. Some of the things that the court takes into consideration are:

- The standard of living established during the marriage.
- The duration of the marriage.
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the

time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibilities each party will have with regard to any minor children they have in common.
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- Any other factor necessary to do equity and justice between the parties.

The judge can also order a party to buy life insurance to secure the alimony.

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