

Ohio Divorce 101:
Your Road Map
to
Ending a Marriage in Ohio

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Preface and Disclaimers

Ending a marriage is one of the hardest decisions that most people will face in life. The practice of family law can be an emotional drain on even the most seasoned attorney.

As a party to a divorce, allowing your emotions to cloud your judgment is one of the most dangerous obstacles that you face in this arena.

This guide is no substitute for a lawyer. This is not a “self-help” manual.

The information included in this reference should not be considered a “how to.” Suggestions in this booklet may not be appropriate for your particular situation.

Hiring a lawyer for a divorce is money well spent. If you attempt to use this informational publication to “do it yourself,” you are setting yourself up for a legal outcome that many times cannot be fixed.

This booklet is intended to give you general information about the process of ending a marriage and the various tools that may be used in cases where agreement is not possible.

I am publishing this booklet as a tool to share with my clients and my prospective clients for educational purposes. No attorney-client relationship is intended. If you rely on this booklet without retaining my services, or the services of another attorney, you do so at your own peril.

I am not your lawyer until we have reached an agreement regarding payment of fees, your required payment has been made, and our agreement has been reduced to writing and signed.

Table of Contents

Dissolution of Marriage	5
Uncontested Divorce	9
Contested Divorce	12
Legal Separation.....	15
Annulment	17
Fault vs. No-Fault Grounds for Divorce.....	19
Planning and Preparation	21
Assets and Property Division	22
Debts and Financial Obligations	23
Student Loans	24
Legal Requirements for Filing	25
Retirement Funds and Pension Accounts	27
Separate Property.....	28
Temporary Orders	30
Injunctions and Restraining Orders	32
Credit During and After Divorce	33
Discovery.....	34
Social Media	35
Life Insurance	36
Bankruptcy.....	37
Taxes.....	38
Spousal Support	39
Health Insurance.....	41
Minor Children and Divorce	42
Sole Legal Custody vs. Shared Parenting.....	45
Parenting Time	47

Child Support.....	49
Guardian ad Litem	51
Revisiting Child Issues.....	52
All Out Warfare	53
Collaborative Divorce.....	54
Mediation.....	55
Pre-Trials and Status Conferences	56
Evidentiary Hearings.....	58
Your Final Hearing (Uncontested Divorce or Dissolution of Marriage)	59
The Divorce Trial	61
Name Changes.....	63
Medical and School Records	64
Relocating with Children	65
Contempt.....	66
Wills, Powers of Attorney and Life Insurance	67
Dealing With Your Ex-Spouse.....	68
Erie County.....	70
Lorain County	72
Legal Fees, Court Costs and Other Expenses	74
Unbundled Services.....	77
Full Representation.....	79
My Spouse Lives in Another State - Now What?.....	81
I Don't Know Where My Spouse Lives - Can I get a Divorce?.	82
In Closing.....	83

Dissolution of Marriage

We have two legal “procedures” to end a marriage in Ohio. Both end up in the same place – a Decree or a Journal Entry that declares that the parties involved are no longer legally married.

A dissolution of marriage can only be filed when the parties involved agree on absolutely everything concerning ending their marriage. When I say absolutely everything, that is exactly what I mean. If you can’t decide who gets custody of the family dog or who keeps the kitchen table, then dissolution is not for you (yet).

A dissolution of marriage begins when a potential client tells me that he or she wishes to end the marriage and that they and their spouse are in agreement.

A lengthy document called a Separation Agreement must be drafted. The Separation Agreement covers every aspect of ending the marriage. It states how assets (property) will be divided, how debts will be paid and who is responsible, and whether or not there will be spousal support paid (and how much and how long) to one party.

The Separation Agreement may also cover the child-related issues, or there may be another document called a Shared Parenting Plan that covers everything from where the children will live to what holidays they spend with each parent to the parents’ plans for the religious upbringing and education of their children.

My client brings the information regarding their agreement to me and I draft the documents. Once my client is satisfied that the documents really do reflect his or her wishes, then we forward the documents to the other party for review.

Although this is generally a cooperative process, each party is making decisions that will potentially impact him for many years. For this reason, even though there is no “fighting,” I still recommend that another attorney be involved, even if it is only to review all of the documents and to advise the other party of the agreements’ impact on their rights and their responsibilities.

When one party decides not to hire his or her own lawyer, I ask that party to sign a Waiver of Representation to show that I have explained to the party that I do not represent both parties, and that he or she understands that facts and agrees to allow me to file the paperwork with that understanding in place.

In addition to the Separation Agreement and Shared Parenting Plan, there are other documents that must be prepared, reviewed, signed and filed. These additional documents include financial disclosures, affidavits regarding child custody and documents concerning parenting classes that must be attended by parties with minor children.

Finally, there is a Petition for Dissolution that tells the court that both parties are, jointly, asking the court to dissolve their marriage. There is no “Plaintiff” or “Defendant” in a dissolution of marriage. Instead, both of the parties are known to the court as “petitioners.”

Once all of the documents are signed and notarized, multiple copies are prepared for filing with the Court.

After the paperwork is filed, you will receive notice of your final hearing date.

A final hearing date is scheduled, usually 45 - 90 days later. Both parties must attend the final hearing in the case of a dissolution of marriage.

There will never be a trial in a dissolution of marriage case. When your attorney files for dissolution of marriage with the court, there are no

additional hearings (although both parties must attend the parenting seminar if they have minor children).

If parties self-file a dissolution of marriage, the court may require a them to meet with a magistrate to review the paperwork for completeness before scheduling a final hearing.

Your lawyer will prepare a Decree of Dissolution prior to the final hearing. The Decree will become the court order that ends your marriage by adopting the terms of your Separation Agreement and Shared Parenting Plan.

Recap:

Dissolution of marriage is possible in Ohio only when

- 1) both parties agree on all aspects of the financial settlement and on all child related issues, AND
- 2) both parties are able and willing to testify at the final hearing.

PROS:

- Dissolution of marriage is often substantially less expensive than a contested divorce.
- Instead of paying two lawyers to attend multiple hearings where little is accomplished, one lawyer can draft the documents for the other to review with the other party.
- Working with your soon-to-be-ex spouse to come up with an agreement that you both feel is fair sets the tone for a smoother post-divorce relationship - especially where children are involved.

- A dissolution of marriage can be accomplished in a relatively short period of time.

CONS:

- Both parties must be able to attend the final hearing. If the other party moves, or gets cold feet and does not show up, the final hearing in your dissolution of marriage cannot take place. The hearing must be rescheduled or, the action must be converted to an action for divorce, both of which result in additional legal fees and court costs.
- Both parties must be willing to cooperate by sharing financial information and by compromising.

MY OPINION:

Although a dissolution of marriage is what many of my potential clients ask for when they want a low-cost, low-drama way to end their marriage, this is not generally the procedure that I prefer to use. I prefer to use the procedure in the next chapter, “Uncontested Divorce,” for reasons that are contained there. Each case, however, is different, and a dissolution of marriage action may be the right path for you.

Uncontested Divorce

A divorce case can start as an uncontested case or as contested case. “Contested” means that the parties are **not** in TOTAL AGREEMENT. When the divorcing couple disagrees about any detail of their divorce issues, the case becomes “contested.”

The vast majority of “contested” divorces filed eventually end up at an “uncontested” final hearing at which the court adopts the agreement that the parties have reached.

When parties are in total agreement on the terms of their separation from the very beginning, I prefer to file the case as an uncontested divorce. Several of the documents have different names, and the parties have different labels, but from a practical standpoint, the case proceeds very similarly to a dissolution of marriage.

Instead of a Separation Agreement, I prepare an Agreed Judgment Entry / Decree of Divorce that outlines all of the terms of the financial settlement. If the parties have agreed upon Shared Parenting, I also prepare a Shared Parenting Plan and a Decree of Shared Parenting.

Just as in a dissolution of marriage, the unrepresented spouse (if applicable) signs a Waiver of Representation and both parties sign a Waiver of Service of Summons, which avoids any issues about having to have someone served with the action by certified mail, sheriff or process server.

Rather than a Petition for Dissolution, this type of case begins with a Complaint for Divorce. The person filing is known as the Plaintiff and the spouse is known as the Defendant. These are merely labels. The term “Defendant” does not mean that anyone did anything “wrong.”

As in a dissolution of marriage, an uncontested divorce case can generally proceed straight to a final hearing in 45-90 days without first having a pre-trial hearing. However, just as with a dissolution of marriage with minor children, the parents will each need to attend a seminar for divorcing parents.

Aside from the names of the documents and the labels for the divorcing parties, the biggest difference is in the requirements for the final hearing. The final hearing may proceed with both parties present. However, only the Plaintiff is required to appear. It is important to note that if the Defendant is not going to be present for any reason, then the Plaintiff will need to bring a Witness to the final hearing, or the Court cannot grant the divorce.

Recap:

Uncontested divorce is possible in Ohio only when both parties agree on all aspects of the financial settlement and on all child related issues.

PROS:

- An uncontested divorce is often substantially less expensive than a contested divorce.
- Instead of paying two lawyers to attend multiple hearings where little is accomplished, one lawyer can draft the documents for the other to review with the other party.
- Working with your soon-to-be-ex spouse to come up with an agreement that you both feel is fair sets the tone for a smoother post-divorce relationship - especially where children are involved.
- An uncontested divorce can be accomplished in a relatively short period of time.

- An uncontested divorce is possible even when one party has moved far away.

CONS:

- If both parties are unable or unwilling to attend the final hearing, then the Plaintiff must bring a Witness.
- Both parties must be willing to cooperate by voluntarily sharing financial information and by compromising.

MY OPINION:

- Where two parties are in total agreement, uncontested divorce is the way to go. Unless the parties are uncomfortable with the “labels” of Plaintiff and Defendant, this option has all of the benefits of a dissolution of marriage without the complicating factor that both parties must show up for the final hearing.

Contested Divorce

A contested divorce occurs any time the parties are not in total agreement. The disagreement may be over something as simple as who keeps the family dog, or something much more complex such as dividing the equity in the family home, child custody issues or spousal support.

A contested divorce significantly increases both the financial pressures and the stress levels involved in ending a marriage. Legal fees alone can mount into the tens of thousands of dollars. Other costs may include court reporters for depositions, appraisals of property, copying costs for records, private investigators, forensic accountants, Guardians *ad Litem*, child custody evaluations, additional court costs, and parenting coordinators.

A contested divorce can take upwards of a year to get to trial, and after trial, it may be a significant wait for your Judge or Magistrate to prepare a decision on the case. All the while, you are still married.

The ugliest, most bitterly fought divorce that I have been involved in began over five and a half years ago. The case has gone to the court of Appeals twice. The parties are still married and custody is still not finalized. I would estimate the total spent by both parties in attorney fees, court costs and expert evaluations to be well upwards of fifty thousand dollars.

While not every divorce with contested issues is going to turn into this type of heated fight, the “typical” contested divorce will still amount to legal fees for the preparation and review of discovery requests, three to six court appearances, communication with the other attorney involved to attempt to negotiate issues, and travel time . You can expect the “simplest” of contested divorces to cost in excess of \$5,000.00, and your initial retainer will reflect that.

There is a movement toward “collaborative divorce,” in which the parties jointly hire experts to evaluate the worth of assets and other issues. This subject will be discussed more fully in a later chapter.

The good news is that 90% of the cases that are filed as contested divorces end up settling and going to an uncontested final hearing. This may be because both parties get tired of fighting, or it may be because the magistrate and judge involved in the case have imparted some guidance on how they would expect a case like yours to proceed.

Sometimes we file a contested divorce just to get the ball rolling when the other party is hard to reach, takes an unreasonable (not supported by law) position without consulting with an attorney, or just doesn’t want the divorce. In many of those cases we are able to resolve the case quickly. The fact that a case is uncontested when it is filed does not necessarily mean that it will not be quickly resolved, but the possibility is there.

PROS:

- A contested divorce may be the only way to obtain a settlement that is fair to you and in the best interest of your children if your spouse refuses to negotiate a fair settlement.

CONS:

- A contested divorce is time consuming. At minimum, you should expect the process to take six months. In the worst-case scenario, it can take several years for a hotly-contested divorce to run to completion. In Ohio, we cannot “bifurcate” the proceeding, meaning you cannot get divorced and then continue to fight out the property and child issues. The court must deal with all issues.
- A contested divorce is expensive. Consider the fact that for each contested issue there are two lawyers sitting in a courtroom for each hearing and then each of them are banging out letters and

pleadings, and reviewing the same documents. Few possessions are really worth fighting over. Legal fees quickly wipe out the value of the contested asset.

- A Contested Divorce increases the stress load on everyone involved (including your lawyer). You suffer from worry about the future and about your finances. Your children suffer from the stress that they are exposed to between you and your spouse even if you do your best not to talk negatively about the situation.

MY OPINION:

Fighting a contested divorce from the date of filing to trial (and beyond) is one of the hardest things you will ever do. There are going to be days when you aren't going to like me because I'm going to tell you what you need to hear instead of what is going to make you feel good. Fighting for "principles" is expensive, and unless the stakes are high, or the true best interests of your children are involved, it's probably not worth it to take your case to trial.

Legal Separation

Legal separation is just like a divorce...except you're still married. Every legal separation that I personally have been involved with has ended up in divorce within 12 months.

Legal Separation is not just a physical separation to see if you want to get divorced. It is a complete financial separation. It is just as expensive and takes just as long as a divorce.

There are several reasons why someone might choose a legal separation instead of a divorce:

1) Health insurance benefits

This is less an issue in 2017 than previously, as currently health insurance companies are prohibited from rejecting someone's application based upon pre-existing conditions. However, where one spouse has a medical condition that requires expensive treatment and the other spouse has a health insurance policy that has excellent coverage, the two may choose to stay legally married so that the spouse with the medical condition does not have to worry about the cost of treatment.

2) Religious reasons

Some people choose legal separation because they do not believe in divorce, but they have reasons to financially separate to protect their assets. As long as neither party wants to remarry, this can be a solution.

CAUTIONS:

There are pitfalls involved with Legal Separation. This guide is not to be an exhaustive treatise on divorce / separation law.

One situation has arisen in my practice is the issue of children born after a legal separation. Specifically, when someone other than the husband (still married) fathers a child. Under Ohio law when a child is born during a marriage, the husband is presumed to be the natural father. That means that even if husband and wife are legally separated and haven't seen each other in months or years, husband has the burden of proving that he is not the father in order to avoid having to pay child support. In this day of DNA technology, that isn't so difficult, but it is still a situation that can be stressful and expensive.

MY OPINION:

Legal separation has its place in the "toolbox," but its uses are very limited. This is not a tool for "trial separation."

Annulment

Annulment isn't, technically, ending a marriage. Rather, it is having the court declare that the marriage wasn't a marriage at all. The legal standard for an annulment may be different from the religious requirements to have a marriage annulled by the Church. You should check with clergy to see if your legal annulment will fulfill any church requirements.

The circumstances under which the court can grant an annulment are called "grounds." If grounds exist, then you may qualify for an annulment.

In Ohio, the "grounds" for annulment are:

- Husband or Wife was already legally married and the other (first) spouse is still alive.
- Husband or Wife was under the legal age for marriage at the time of the marriage and they did not live together in a husband-wife relationship after the legal age was attained. This ground must be asserted (used) within two years after attaining the legal age for marriage.
- Husband or Wife had been legally declared incompetent at the time of the marriage. If the "incompetent" spouse is later declared competent and the couple continues to live together after that time, then the grounds cannot be asserted.
- Husband or Wife obtained consent for the marriage by fraudulent means. One example would be if the woman told the man that she was pregnant and he was the father, and she was not pregnant or another man was the father. Again, this ground must be asserted within 2 years of discovery of the fraudulent facts.

- A “shotgun” wedding, where one spouse or the other was forced to consent under threat of violence or duress (also a 2-year requirement)
- The final grounds is that the marriage was never consummated, meaning that you and your spouse did not have physical relations at any time after the marriage ceremony. This “grounds” also must be asserted within 2 years following the date of the marriage ceremony.

Annulment not only terminates the marriage; it means that the marriage is legally treated as if it never existed.

Under these grounds the marriage may also be “void” or “voidable.”

Because the grounds for an annulment generally come up early in a marriage, the cost is often less than a divorce because there is not as much work for the attorney to do. However, if the existence of the “grounds” is contested by the “guilty” party, this will add time and expense.

Fault vs. No-Fault Grounds for Divorce

One of the most emotionally difficult parts of my job is telling a spouse who has been cheated on or otherwise wronged that in the eyes of the law, it really makes no difference.

The wronged spouse is often shocked to find that the court will not punish the wrongdoing spouse for the affair, abuse, or other harmful act by awarding the good and faithful spouse extra money.

Many years ago, a spouse who wanted a divorce would have to prove that “fault” grounds existed. I call these the “dirty laundry grounds.” Fault grounds include adultery, habitual drunkenness, imprisonment, extreme cruelty, and other “nasty” accusations.

No-fault grounds in Ohio include incompatibility and living separate and apart without cohabitation (marital relations) for a year.

In other words, if both spouses want a divorce, or if they have been living away from each other for more than a year, then neither spouse has to prove (or even tell) the court their private business. In my experience, citing a specific “fault” grounds for a divorce is a good way to turn up the heat and ensure that the case drags out as long as possible, causing further emotional damage to both people along the way. If Spouse A wants a divorce and Spouse B does not, we can state that fault grounds exist and that we will specify them later. Generally, though, when the spouse who does not want a divorce has time to come to terms with the fact that the marriage is ending, few people force the issue of proving grounds.

“Fault” grounds entitle a spouse to a fair and equitable divorce. “Fault” grounds do NOT entitle the wronged spouse to a better financial settlement, more assets, more spousal support or any kind of financial award for pain and suffering.

If the “fault” grounds are something that can affect the children in a harmful way, such as habitual drunkenness, then the situation might affect visitation and custody, but in all but the most uncommon circumstances, the “fault” will not impact the financial settlement.

Planning and Preparation

Divorce represents a major transition in life. Before beginning the divorce process, you will need to gather information so that your attorney can advise you as to what kind of a financial settlement you can expect and so that she can provide the court with the information and documentation that are required by the local rules.

Documents that you will need to assemble include tax returns, pay stubs, credit card statements, titles to automobiles, copies of real estate deeds, and any documents that show that property you are claiming as separate, non-marital property are yours by operation of pre-marital acquisition, or post-marital gift or inheritance.

Although your situation may suggest that you should receive temporary spousal support or child support during the divorce process, it may take several months for those orders to come through in order for you to have an income stream. You will need to plan ahead for your necessary expenses.

Keeping in mind that the court will not order your spouse to vacate the marital home unless there is domestic violence, you will need to decide whether you and/or your children will need to move or whether you can all get along until other arrangements are made.

Divorce planning may also include exploring whether or not you should consider filing for bankruptcy if there are significant marital debts and you have inadequate income to pay your share of them.

Assets and Property Division

Many of my clients are surprised to learn that they can (and often will!) be held responsible for debt that is only in the other spouse's name. Likewise, many individuals strongly resent having to give up one-half of the retirement savings that came from the hard hours they put in at a job.

The general rule in Ohio is that a financial settlement is equal, or in some cases "equitable" where it is fair to award one spouse more of an asset or a debt in exchange for something else. For example, a spouse who is keeping all of his retirement may end up paying more of the marital debt.

When we are talking about assets and debts, we use the terms "marital" and "separate."

Marital assets are anything of value acquired during the marriage (except for certain exceptions) without regard to whose name is on the title or the deed.

Marital debts, likewise, are any debt that came to be during the marriage, regardless of whose name is on the mortgage, credit card or loan.

Separate property is property that was owned by one of the spouses before the marriage or that was inherited by or gifted to just one of the spouses during the marriage. If marital income is used to improve that property or to pay the mortgage, the separate property may become marital property. If you are planning to become married, please talk to a lawyer to see how you can protect your "separate" property interests.

Debts and Financial Obligations

Potential divorce clients are frequently surprised to learn that all debt accumulated during a marriage, regardless of whose name appears on the credit card statement, is potentially marital debt. Even student loan debt, if additional funds were borrowed for living expenses, can possibly be designated “marital” and attributed partly to the spouse who didn’t borrow the money, but who benefited from the proceeds.

We need to look at debts both during and after the period that the divorce is pending. If there are temporary orders issued in the divorce case, the court will typically order each party to pay the minimum payments on some of the credit cards (this depends on the parties’ relative incomes and expenses). The reason behind this is that we would like to see both parties get through the divorce process with the least possible impact on their credit scores.

When there is simply not enough money to pay the debts, it is sometimes advantageous to put one or both spouses through a bankruptcy immediately before or even during the divorce process. While this may delay the final hearing on your divorce for 3-4 months, it can make a huge difference to have a “fresh start” financially if you are already struggling to pay the bills.

In the final divorce settlement, sometimes each spouse is ordered to pay one-half of the debt. Other times, there are assets (like equity in a home or a paid-for automobile) that are offset against the debt. For example, if there is \$50,000 in credit card debt and \$50,000 in equity in the home, the person keeping the home might also be ordered to pay the credit cards off, because it is a net financial “wash.” The general rule is that marital debts and assets are split 50/50, but if an arrangement is “equitable” (fair to both) even though it is not quite equal, the court will generally approve the agreement.

Student Loans

Student loans are usually the responsibility of the person who borrowed the money. That makes sense because they are the person who has the advantage of the education that the loans paid for.

There is, however, an exception to that general rule: excess funds borrowed for living expenses may be marital debt. The reason for this is that both parties benefitted from those funds. Whether the funds in excess of tuition and fees were spent on gasoline, food, or vacation, it is money that the couple was able to spend without someone earning it. A good argument can be made that it should be treated just like credit card debt.

Unlike credit card debt, student loans cannot be discharged in bankruptcy, so if you have significant unpaid student loans and a portion was used for living expenses, be sure to tell your attorney of this so that can be considered in the overall financial settlement.

Legal Requirements for Filing

To file for divorce in Ohio, the party filing the divorce action must have been a resident of the State of Ohio for six months and a resident of the county in which he or she is filing for 90 days before filing the case.

Many Ohio courts will not grant a divorce while the wife is pregnant, although the Ohio Revised Code does not specifically address the issue. Other courts will grant a divorce during pregnancy if the alleged biological father will testify in court that he is the baby's father.

In order for a divorce to take place, the other party must be legally served with the divorce or must sign a "waiver of service" document. If you can't find your spouse, you can have him or her served by publication in a newspaper or by posting a notice in public buildings. The fee for this service varies greatly from county to county.

There is a "deposit for court costs" that will be paid at the time that the divorce is filed. If the divorce is complicated, that deposit may not cover all of the costs, and you may receive a bill from the Clerk of Courts for additional money after the divorce is final.

If you are unable to pay the court costs, you can file an "affidavit of indigency" and ask the court to waive or reduce the deposit for court costs.

The local rules of each county's common pleas court will generally list the documents that they require. Some courts prefer their own documents and others list the Ohio Supreme Court's Uniform Domestic Relations forms.

Some documents must be notarized. Other forms require additional documents to be attached, such as pay stubs and tax returns.

Multiple copies must be made of each form. Generally there is one copy for the clerk's file, one for the judge's file, one for service, one for the child support agency and one or more for your records.

Each county has preferences for which forms should be stapled together and how the forms are grouped. If you do not prepare the documents according to the rules, the clerk may reject your filing.

Retirement Funds and Pension Accounts

Division of retirement assets is one of the most painful conversations that I have with many clients who have worked for many years to build up a nest egg. When I have to tell them that money is subject to 50/50 division even though the other spouse chose not to save for retirement, or stayed home to take care of the home and did not contribute to the marital income, it is a hard pill for the client to swallow.

The law doesn't look at the monetary contribution of each spouse to the marriage when we are dividing the assets. The reasoning behind this is that every dollar invested in retirement savings was a dollar that was not available to the household to use for expenses, so both spouses should benefit from it.

Dividing retirement funds often requires that a special legal document, (often called a QDRO -Qualified Domestic Relations Order) be drafted and submitted to the retirement plan to divide the orders. Many lawyers don't like to draft these documents because they require very specific knowledge and wording, and so they will send them to a firm that specializes in preparing them, with the cost to be shared by the parties.

Sometimes the parties will agree to "offset" the retirement savings against another debt or asset in order to avoid the complications of dealing with the retirement asset.

Discovery in a divorce case should virtually always include valuation of the retirement assets. These can often be worth a great deal of money and should not be overlooked.

Separate Property

The general rule is that all assets and all debts accumulated during the marriage are marital. Separate property is property that should be considered the property of just one spouse because it was owned by that spouse before marriage or it was an inheritance or gift to just that spouse during the marriage.

For example, Spouse A has a home that he owned before the marriage.

Scenario 1: The house is completely paid for - there is no mortgage - and the home is also in good structural condition. Husband and Wife live in the home during their 10 year marriage. They don't add improvements. They don't borrow money against the home. They just live there and pay the property taxes out of their joint incomes. Husband should be able to claim this home as his separate property.

Scenario 2: The house is valued at \$100,000 at the time of the marriage and is completely paid for. Husband and Wife live in the home during the 10 year marriage and add an addition to the home that cost \$50,000. They paid for this addition out of joint savings. At the time of the divorce, the house is valued at exactly \$150,000 and the couple decides to sell for \$150,000. There is a good argument that Husband should receive \$125,000 and Wife should receive \$25,000 (less costs of the sale divided between the two).

Scenario 3: The house has a mortgage when the couple marries, but the husband put down \$20,00 of his own money as a down payment. Husband and wife pay the mortgage out of their joint earnings. Due to fluctuations in the housing market, the house is worth less now than when they were married. 10 years ago they took out a home equity loan and used the proceeds to pay off debt. There is some equity in the home - roughly \$50,000. The most likely scenario here is that there is no good separate property argument. Due to the market fluctuations and the

refinance, the parties will most likely share the equity in this home, although there is an argument that the husband should receive something for his down payment.

Separate Property is not just property that is titled in one spouse's name. It is property that didn't use marital resources to build up equity.

If a wife has investments before marriage that increase significantly in value during the marriage WITHOUT use of marital earnings to increase the value (i.e. stock bought and held, or a home purchased and improved with proceeds of stock owned prior to marriage), then that would entitle the wife to a separate property claim.

The more you mix separate funds with marital funds, the weaker the separate property argument becomes.

Temporary Orders

Divorces can take many months. During that time, children must be cared for and bills must be paid. With this in mind, the Court will sometimes issue a lengthy court order referred to as a “Temporary Order” that lists who will pay each bill, where the child(ren) will live during the divorce, how visitation will be handled, how much child support and spousal support will be paid, and who will have the use of important assets like cars.

When the divorce complaint is filed, the filing spouse will typically file a request for temporary orders, which tells the court how he or she thinks the financial obligations should be divided during the divorce. With this document there may be additional documents required, including pay stubs, tax returns and affidavits that detail your income, expenses and property.

When your spouse is served with the divorce papers, he or she will be given fourteen (14) days to file a counter proposal for temporary orders.

Some counties will issue temporary orders based upon the requests and affidavits filed by the parties without a need to attend a hearing. In other counties, both parties will appear at a hearing on those issues.

You should not assume that the temporary orders are predictive of what your final orders will look like. The purpose of the temporary orders is to keep both parties “afloat” financially during the divorce. The purpose of the final decree is to divide the assets fairly and to provide for the children. Although the final order sometimes looks much like the temporary order, they are often quite different.

If the temporary orders make it impossible for you to pay your bills, or if there is some other reason to modify the temporary orders, the party with

a problem can file a motion asking the court to reconsider the temporary orders. There will typically be a hearing on such a motion.

Injunctions and Restraining Orders

In addition to temporary orders regarding financial matters, there is often another order known as an injunction or temporary restraining order in a divorce matter.

It is very important that you read this order carefully, as it details what you are allowed to do and not allowed to do during your divorce.

Typical items on such an order are an order not to harass or annoy the other party. Each party may also be prohibited opening new credit lines or selling property.

This order is NOT a protection order. It does not prevent your spouse from contacting you or from coming to the house, announced or unannounced. This order does not give the police authority to arrest the other person, however, if the injunctions are disobeyed, your attorney can bring it to the court's attention, and if more orders or different orders need to be made in order to keep the peace, the judge or magistrate can address the situation.

Credit During and After Divorce

Although a Decree of Divorce (or Dissolution) will not directly impact on your credit score, Divorce can still have a devastating effect on your credit. When a couple who was already struggling financially with the expenses of one household suddenly must make that income cover all of the expenses of two households, often there is simply not enough money to go around.

In a contested divorce, each party will be ordered to pay certain expenses while the divorce is pending, which can be a year or more. If your estranged spouse is ordered to pay the joint Visa bill, it can hurt your credit score if he fails to do so. I recommend subscribing to a credit monitoring service so that you can see if important payments are being missed, as you will want to minimize the harm to your credit rating so that you will be able to rebuild your life after the divorce.

During the divorce, you may not be allowed to use the credit cards that you had balances on while you were divorced. You may be forbidden to open new lines of credit. This is so that it is easier to see what debts are marital and what debts each spouse should be held responsible for later.

Joint credit lines must be closed or refinanced in the name of just one spouse. With large debts, such as mortgages and vehicles, the spouse keeping the property may be ordered to refinance it or to sell it within several months' time so that the spouse who isn't keeping the property isn't tied to the marital loan.

Remember, though, that the bank isn't a party to your divorce. Even though the judge ordered your spouse to pay off the joint credit card debt, if he fails to do so the bank can still sue you and potentially garnish your wages. If that happens, you must file a court action against your spouse to try to recover the money that it cost you.

Discovery

Discovery is a name for the process by which the parties to the divorce exchange information. In divorce, both parties are expected to be transparent and make full disclosure of assets and debts to the other party.

Your attorneys may engage in formal discovery, which may include demands for documents, interrogatories (written questions) or depositions (questioning under oath by an attorney with a court reporter present). In other cases, the parties may engage in informal discovery, in which each voluntarily supplies the other with whatever information is needed.

Records can be demanded from employers and financial institutions, and where child custody is in question, even medical and mental health records can be acquired by the other side.

You should keep careful financial records if you are planning a divorce, and during the entire divorce process.

Computer records, emails, and even social media accounts can be demanded as part of discovery. You should be extraordinarily careful about what you share with others when you are planning to divorce, as that information can become evidence in your divorce case.

Social Media

Many of us spend a lot of time on Facebook. We share photos of our families and our activities. We complain about the things that are bothering us and we vent about how we've been wronged. We post photos of the little gifts we've purchased for ourselves and sometimes we get tagged in some mighty unflattering photos taken by other people.

When you are going through a divorce, social media is not your friend. While deleting past posts is inadvisable (there are possible issues concerning destruction of evidence), you can avoid causing yourself further problems - just don't go there.

Facebook posts are being used as evidence in more and more cases. They are used to cast doubt on your credibility, your parenting ability, your financial need and your character in general. My best advice is to simply stay off Facebook, Instagram, Twitter and any other social media platform during your divorce. Instead, phone a friend - take a walk on the beach - play Chutes and Ladders with your kids.

Even if your profile is private, you may have "double agents" on your friend list. Don't assume that anything is private from your estranged spouse. Even if your friends and followers are 100% loyal to you, your Facebook page and all of your likes and follows can be demanded by the other side in a discovery demand. Every unflattering thing you post or that is posted to your wall by others can be used against you in court.

Life Insurance

Life insurance comes up in multiple ways during a divorce. First, any life insurance policies that have a cash value are assets that are subject to division, just like a bank account.

If your spouse is the beneficiary of a life insurance policy when the divorce is filed, you should not change beneficiaries without the court's permission.

Finally, if you have a spousal support obligation or a child support obligation, sometimes the court will order you to maintain a life insurance policy in an amount equal or greater to your total support obligation so that your family will be provided for in case of your death.

Bankruptcy

Divorce and bankruptcy often go hand in hand. As I mentioned before, when a couple is already struggling to pay the expenses for one household, the financial woes are multiplied when the money has to stretch to pay the bills for two households. Sometimes this means that the couple needs to file bankruptcy.

If a bankruptcy petition is filed during the divorce, the court will put a stay on the divorce proceedings until the bankruptcy case runs its course in the case of a Chapter 7 bankruptcy, or until a Chapter 13 plan is confirmed.

If the couple is still cooperating, it is often advantageous to file a joint Chapter 7 bankruptcy before the divorce is filed, or just after the temporary orders are entered.

As a divorce lawyer, I prefer to avoid putting divorcing couples into Chapter 13 plans if at all possible.

Bankruptcy can be useful when one party wants to stay in the home but doesn't have sufficient credit to refinance. By putting the couple through a Chapter 7 bankruptcy if they are eligible, the obligation of the spouse who is leaving the home can be discharged and the court may not require the spouse retaining the home to refinance.

If you are contemplating both divorce and bankruptcy, it is useful to consult with an attorney who is familiar with both types of cases.

Taxes

There are many tax issues that must be sorted out during your divorce. Until the divorce is final, you are still married and unless the court orders otherwise, you will need to file your income taxes in the way that produces the largest total refund or the smallest total underpayment. The court and your lawyer may offer you guidance as to how you and your spouse should coordinate your final tax return(s) as a married couple.

If your tax returns from during your marriage are audited, you may have a joint obligation on any additional taxes, penalties and interest. Tax debts, too, are generally considered marital debts, regardless of whose underpayment resulted in the tax bill that is due. The reason for this is that it is presumed that the underpaid taxes went into paying household expenses, and that both spouses benefited from the money.

The tax exemptions for children are awarded to one parent or the other, or to the parents in alternating years in the final divorce decree.

Spousal support, if paid, is a tax deduction for the person paying it and taxable income for the person who is receiving it.

Because child tax credit, earned income credit and other tax issues can have a huge financial impact on your post-divorce life, you should discuss the potential impact of your tax-related divorce decisions with your tax preparer or accountant before entering into an agreement as to how these issues will be handled.

Spousal Support

Spousal support is sometimes referred to as "alimony." Spousal support is one of the most emotional issues that I encounter in a divorce. The spouse who is seeking support is often living on much less income than their estranged spouse. The spouse who is seeking support may have stayed home to raise a family and may have given up on a career or educational opportunities. The lower earning spouse may have health difficulties or other difficulties that make finding suitable employment difficult. The court will weigh many factors when considering an award of spousal support.

Although there is no state wide formula for spousal support like there is for child support, several counties have general guidelines that they follow that give the parties some guidance as to whether or not spousal support is appropriate in their case, and what a range might look like.

As I mentioned earlier, spousal support paid is a tax deduction for the person who paid it and is income for the person who received it.

If there is also child support to be paid, the spousal support should be considered in the child support calculation.

Sometimes spousal support is part of a property settlement, in which case it is called a "distributive" award. Sometimes this type of spousal support can be lost if the paying spouse files bankruptcy.

Other types of spousal support are rehabilitative support, where the spouse receiving support needs additional help while they are training for a job, or maintenance support, where the obligation is considered to be needed long term.

It is difficult to take the motions out of spousal support because it prolongs financial entanglement. Sometimes the parties agree that the

higher earning party will forfeit some assets or take on some additional debts instead of or “in lieu” of paying spousal support. If the parties agree and the arrangement is fair, the court will generally allow this.

Health Insurance

Although the temporary restraining order or injunctive order issued at the beginning of the divorce case will prohibit the spouse who carries the medical insurance from dropping the spouse and other family members from the health insurance during the divorce, the health coverage for the spouse will typically end as of the date of the divorce or as of the last day of the month that the divorce was final. This means that the spouse who is the dependant on the insurance plan must make other arrangements for health insurance. If your employer offers health insurance, a divorce is considered a “qualifying event” and you should not have to wait for the open enrollment period to get coverage. The same is currently true for “marketplace” health insurance plans.

One or both parents may be ordered to cover health insurance for the children if the coverage is available affordably.

If neither parent has affordable health insurance available, the child(ren) will receive coverage through the State of Ohio, and the child support obligor will pay “cash medical support” to the state to help offset the medicaid cost, while the child support recipient may receive less support to pay part of the obligation.

Your divorce decree or shared parenting plan should also address who will be responsible for the health care costs that are not covered by the plan, including deductibles, copays, coinsurance, eyeglasses, and other medical needs.

Minor Children and Divorce

When a divorcing couple has minor children, the case become considerably more complicated. In addition to dividing debts and assets, the couple must make many decisions regarding their children.

- Will the parents share parental rights and responsibilities, or will one parent have custody and the other parent have visitation?
- How will the parties divide the children’s time between two households?
- How will holidays be divided?
- How much child support should be paid?
- Who will pay for medical expenses?
- What school district will educate the children?

A divorce decree or parenting plan is required to deal with all of these issues and more.

A divorce with children requires significantly more paperwork than one without children. This will necessarily drive up the costs.

The “prime directive” in child issues is “the best interest of the child.” The court weighs and considers many factors in determining what living arrangements, especially, are in the children’s best interest.

Because the court cannot see much more than a glimpse of what the parties are like in the courtroom, a guardian *ad litem* is sometimes appointed by the court to investigate the child’s best interests. The

guardian makes recommendations to the court as to what he or she believes is going to be in the best interest of the children.

Most courts offer free or low-cost mediation services for parents who can communicate with each other but are having trouble agreeing.

When you have children involved in your divorce, each parent is required to take a seminar for divorcing parents. This is not to be confused with a parenting class that might be required in the case of child abuse or neglect. Rather, this class gives an overview to how the court determines child issues and how to be a good parent to a child whose parents are going through a divorce.

It is important to bear in mind that as difficult as the divorce is for you, it may be much more difficult for your child. He or she may be fearful about moving to a new place, or a new school. He or she may blame himself or herself for the breakup of the marriage.

Whenever it is possible, parents should try to carry on traditions with the children and make new ones as well. Although the “Standard” parenting plan may have the parents alternating holidays, if one parent’s family always celebrates on Christmas Eve and the other parent’s family always celebrates on Christmas Day, there is nothing in most court orders that would prevent the parents from working together to make sure that the children can spend time with both families.

In most cases, your parenting plan outlines a “minimum” amount of time that the non-residential parent spends with the child(ren). Unless there is an abuse or neglect situation with special orders, it is not a problem for the non-residential parent to have additional time with the children as long as both parents can come to an agreement.

Use “the best interest of the children” to guide what is the best plan. If it’s Mom’s weekend with the kids, but she is cleaning the house and Dad is camping, perhaps they can trade weekends or make some other arrangement?

Parents spend many thousands of dollars fighting over even small details in court. Because the court retains jurisdiction over child issues until the children are emancipated, the court case can re-enter the court even after the decree is finalized.

Sole Legal Custody vs. Shared Parenting

There are many variations on child custody. In general, we have Sole Legal Custody and Shared Parenting.

In a sole legal custody arrangement, one parent is the decision maker. The custodial parent has the legal right to determine health care issues, educational issues, religious issues and other important issues affecting the children without asking the other parent's opinion. The non-custodial parent receives "visitation," "parenting time" or "companionship time," all which mean time with the child(ren).

When the parents have a high-conflict relationship, or where one parent is relatively un-involved with the children, sole legal custody is often the solution that best fits the situation.

Shared parenting is an arrangement where both parents have equal legal authority. They are ordered to share decision making where it pertains to their children. The "old" term for this kind of a parenting plan is "joint custody."

Shared parenting means 50/50 legal custody, but it does not necessarily mean 50/50 time with the children. In fact, that is a rather rare arrangement. Unless both parents live in the same school system, a 50/50 arrangement, whether it is week on / week off or some form of alternating days is too complex and puts stress on the children. For this reason, the court's standard visitation plan with some modifications to suit the family's needs is generally a part of a Shared Parenting Plan.

In a Shared Parenting Plan, each parent is considered the residential parent when the child is with him or her. One parent is the "Residential Parent for School District Purposes," which means that unless the parents come to another agreement, the child(ren) will attend school in that parent's school district. The "Residential Parent for School District

Purposes” has no greater legal power or legal rights than the other parent. Both parents are “custodial parents.”

Parenting Time

Parenting time is extraordinarily important in maintaining and building the parent/child relationship. The best parenting plans are designed to optimize the time the child spends with the parent.

The age of the children and distance between the parents' residences are two of the major factors that will drive what a parenting schedule will look like. Younger children may not be prepared to spend extended times with the other parent, and long distances to drive may make every other weekend visits impractical and unenjoyable for parent and child alike.

Each county has a "standard" parenting time order that many lawyers use as a starting point for parenting time discussions. Some counties have both a "local" and a "distance" parenting plan.

It is important for the "residential" parent to remember that the parenting time order is a "minimum" time order. The "best" parenting plan is one that allows each parent to spend the maximum "quality" time with each parent, regardless of whose weekend the order states it is.

I frequently tell a story from when my own divorce was "fresh" some 20+ years ago. It was "my" weekend to be with my son, but I was planning to clean the house. My ex-husband had planned a camping trip, and he wanted to take our son with him. When I considered what was in my then 7-year-old son's "best interest," it was clear that spending time camping with his dad's family was going to enrich his life a lot more than cleaning his bedroom. Although we generally followed a schedule, we were flexible about visitation, and I'm glad that we were.

I tell my divorcing clients that my goal for them is to be able to throw the parenting plan into the drawer with the unused yellow pages directory to be brought out as a "tie breaker" when both parents have awesome plans for the same period of time.

Sometimes a parent has issues, including substance abuse, anger management, or serious mental health issues that pose a risk to the child(ren). It is extraordinarily rare for a court to order no contact at all between a parent and child. In most cases where a parent poses a potential risk, some form of supervised parenting time is appropriate. Sometimes parenting time is supervised informally by a mutual friend or a trusted family member. Other times, a supervised visitation center may be utilized.

Child Support

Ohio has a computational formula that is used to figure child support. Each parent's income is entered into a worksheet that also takes into account work-related expenses, child care expenses, health insurance expenses and certain tax obligations. After a rather complex computation, a child support figure is determined and divided between the two parents.

Although typically one parent will be paying child support to the other parent, that figure is not considered to be the total figure for raising the child(ren). Rather, it is a proportional amount of what the state considers to be the incremental expense of raising a child.

The court will not require the parent receiving the support to account for the money. In addition to the food and clothing your child requires, the support also helps to pay for heat, electricity, safe transportation and a living space large enough for the whole family.

The person who is ordered to pay the child support is called the Obligor. If the Obligor is employed, the court will issue a court order that requires his or her employer to withhold the money directly from the paycheck and the money will be sent to Columbus, where the money is deposited into the bank account of the residential parent (Obligee) or is put onto a plastic debit card that can be used to pay expenses.

In addition to the child support, there is a fee called "poundage," which helps to pay the expenses of the agency that collects, reports and distributes this money.

Child support is not tax deductible for the Obligor, and the Obligee does not have to report it as income.

If you fall behind on your child support payments, you are in “arrears,” and you can be held in contempt of court. You can be jailed for failure to pay child support and your driver license can be suspended. When you begin making current child support payments again, the child support enforcement agency will add on an additional amount to help pay off the arrears.

If you are voluntarily unemployed or underemployed, the court may enter an “imputed” income into the worksheet for you even if you don’t make any money. That is because it is not fair to shoulder one parent with the entire financial responsibility of raising a child.

Being in arrears on child support does not excuse the residential parent from ensuring that visitation happens. The court will not support a decision to withhold visitation because the other parent is behind on child support payments.

If you are the child support obligor and your employment situation changes, you should contact the child support enforcement agency immediately so that the order can be adjusted if appropriate before you get desperately far behind.

Guardian ad Litem

When divorcing parents cannot agree on what custody and parenting time provisions, and especially where allegations of neglect or abuse of the child(ren) or substance abuse or violence are alleged of the parent, the court may order that a guardian *ad litem* be appointed for the children.

The guardian *ad litem* (GAL) is a lawyer or a specially-trained lay person who will review school and medical records, interview people with knowledge of the home situation and the children's attachment to each parent, visit each parent's home, and ultimately make recommendations to the court as to what custody and parenting arrangements are in the children's best interest.

When a GAL is ordered in a private custody matter such as a divorce or a post-divorce motion, the parties must pay the expense of the investigation. Generally there is an initial deposit paid by one or both parties, which may or may not be sufficient to complete the investigation. Additional GAL fees owed will be allocated between the parties in the final decree or decision.

Revisiting Child Issues

Sometimes a parenting plan just doesn't work. When that is the case, either party may make a Motion to Modify the parenting provisions that need to be addressed. You will need to bear in mind that you cannot just ask for a modification because it is inconvenient to follow the order or because you just cannot get along with an ex-spouse.

In order for the court to grant a Motion to Modify, they must find a change in circumstances has occurred. Sometimes this is a move out of the local area. Other times the "change" is something more dramatic, such as a living situation that has become potentially harmful to the child.

If your parenting plan is not working, discuss your options with your attorney before engaging in "self help" and disregarding your parenting orders. Failure to obey the order without an extremely good reason could result in your being held in contempt of court.

All Out Warfare

In a “best case” scenario, an uncontested divorce or dissolution can be completed in a few months with a fairly minimal bill for legal fees.

In a “worst case” scenario, a divorce can drag out 18 months or more until trial with an additional period of time afterward until the judge or magistrate issues a decision.

In a “worst case” scenario, where there are also depositions, Guardian Ad Litem fees, a child custody evaluation, forensic accounting investigations, multiple court appearances and a 3 to 5 day trial, legal fees, expenses and court costs can mount to many thousands of dollars.

In the interim, mom and dad may be alienating the children against the other parent, depleting the now-divided marital assets to fight each other, and causing irreparable damage to their ability to communicate and co-parent.

Every divorce lawyer has a horror story that he or she can share as a cautionary tale about how destructive, time consuming and expensive divorce can get.

There are no winners when it comes to divorce. Everyone loses. The “end game” is to keep the losses to a minimum.

Collaborative Divorce

Collaborative Divorce is a developing area with much potential. In a collaborative divorce, although each party has his or own attorney, the parties freely exchange information and share the expense of accountants, custody evaluators and any other experts or professionals who may be needed in crafting a final settlement that is fair to all concerned.

Collaborative divorce often involves “round table” discussions with both parties and both attorneys. Because the exchange of information is freer in a collaborative divorce than in the litigation process, the collaborative divorce attorneys may not be able to represent you in a contested final hearing if the negotiations should ultimately fail.

For this reason, although collaborative divorce can substantially cut the total aggregated costs in a contested divorce, it may not be the best option for divorcing parties who are not motivated to compromise in order to come to a fair and equitable solution.

Mediation

Sometimes a divorcing couple is still communicating well, but they cannot quite reach an agreement on one or more aspects of their financial settlement or child issues. In this case, mediation is an option. Mediation is rarely a waste of time or resources, even if the parties do not reach a full agreement.

A mediator is someone who has received specialized training in helping parties to agree to negotiate an agreement.

Often, both sides will initially come together to talk with the mediator about their disagreements and then the mediator will talk with each side alone to see where compromise might be possible. The mediator will generally find out which items are most important to each side and may suggest creative arrangements where each party can come away feeling that he or she has 1) been heard and 2) is getting a fair deal.

Many courts have mediation services that are available to divorcing couples at low cost or no cost. Some of these court mediators will only address child issues, while other will also work with parties on property issues.

If mediation is successful, the mediator will help the parties to put their agreement in writing for the court.

If, however, mediation fails, the court will not be advised of the content of the mediation talks. The court will only be advised that the parties could not reach an agreement.

Pre-Trial Hearings and Status Conferences

Pre-Trial Hearings and Status Conferences are mandatory meetings with the magistrate assigned to your case. These titles are applied to almost any meeting held prior to trial. Depending on the number of contested issues, there may be as many as four or five of these meetings.

Some courts may require the parties to be at the courthouse for each one of these meetings, and some courts may allow the attorneys to appear without their client so long as the client can be reached by telephone.

In most cases, if there are two attorneys, the attorneys will go into a conference room with the magistrate and each attorney will update the magistrate on the progress of negotiations and ask for any additional orders that may be needed. If there is only one party who is represented by an attorney, the attorney and the unrepresented spouse will meet together with the magistrate.

In some courts, the pre-trial hearings are held in the courtroom in front of the magistrate. Where this is the case, both parties and both attorneys will be seated in the courtroom and the magistrate will hear from each attorney. A court reporter will be present and a record will be made of the hearing. Sometimes, the magistrate will also ask the divorcing parties if they have any questions or additional information for the court.

In either case, based upon the information exchanged, the court will either set the case for an additional meeting or will set the case for a trial and issue a trial order.

Although clients sometimes feel like these pretrial hearings and status conferences are a big waste of time and money, they serve several valuable functions:

- 1) intermediate hearings give the attorneys time, with the clients present (usually) to discuss possible compromises in the case. A lot of settlement progress is made in the hallways and staircases in our courthouses.

- 2) intermediate hearings give the attorneys or parties an opportunity to ask the court for guidance on what their “general” policy is on a contested issue. Although a judge or magistrate cannot actually tell you how they will rule in your case once they hear the actual evidence on the case, they might say give guidance about how they have resolved similar issues in the past. These conversations are often very helpful in settlement negotiations.

Evidentiary Hearings

There may be issues that need an evidentiary hearing even before the case goes to trial in your divorce. Examples of issues where an attorney would present evidence prior to the final divorce hearing include:

- Temporary spousal support (some counties)
- Temporary custody (especially where one party has received temporary custody based upon an emergency custody filing)
- Show Cause (Contempt) where one party is not following the orders issued by the court.
- Motion to Modify where one party disagrees with an interim order issued by the court.

These evidentiary hearings run up attorney fees and court costs. Unless the issue is very important, attempting to resolve the issue without a hearing will save much time, money and frustration.

Your Final Hearing

(Uncontested Divorce or Dissolution of Marriage)

Although final uncontested hearings vary somewhat from courtroom to courtroom, most follow somewhat the same format:

The parties will be sworn in by the bailiff (sometimes by the court reporter).

Either the presiding official (judge in some counties and magistrate in others) or the attorneys will ask the plaintiff a series of questions about the marriage, the parties' children and the contents of the financial settlement and the parenting plan.

You will be asked if you have reviewed the contents of the documents and if you understand all of the terms of the agreement. You will be asked if the settlement is fair to both of you. You will be asked if parenting provisions are in the best interest of your minor children. If you are female, you will be asked if you are currently pregnant.

If your lawyer asked the questions, the judge may have some follow-up questions.

Next, if the defendant is present, the judge will hear from the defendant. The same types of questions will be asked.

If this is an uncontested divorce, as opposed to a dissolution of marriage and the defendant is not in the courtroom, the plaintiff's witness will be called. The purpose of the witness is to provide testimony to the court that the plaintiff is trustworthy and that the court can rely on the testimony that the plaintiff has given. The witness is not expected to give testimony about the breakup of the marriage.

If you have asked for a former name to be restored, you will be asked about that on the record as well.

You will be asked if you want the judge to adopt the terms of your settlement and make them part of a Decree of Divorce or a Decree of Dissolution and grant your divorce or dissolution.

Your divorce may be final that day, but don't make any immediate plans to remarry. The divorce is not final until the judge signs the decree and the clerk of courts journalizes it. If your final hearing is conducted by a magistrate, your final divorce date may not be the same as your hearing date, as the judge may not be present or available to sign the decree for several days.

There may be multiple uncontested hearings scheduled for the same time slot as yours. These hearings typically go quickly (10 - 15 minutes) and as there is no deeply personal information being revealed, there is no reason to feel self-conscious or embarrassed.

The Contested Divorce Trial

Even when a divorce case starts out as uncontested, the vast majority (90%+) end in an uncontested hearing, as the parties tend to resolve their differences or come up with creative compromises.

If you are absolutely unable to come to an agreement on your settlement, the court will order a trial date. If this should happen, you should be prepared to pay an additional retainer to your lawyer, because preparing for a trial is very time intensive.

You will need to forward a list of potential witnesses to your lawyer who can testify about the facts of your case. For example, if the \$10,000 that you received from your mother was a loan and not a gift, you may need mom to testify to that fact. If you are claiming that your spouse has a drug or alcohol problem, you may need witnesses who can testify about the time that he or she drove the children home from the soccer game while under the influence.

Witness lists must be exchanged prior to the trial (timetables vary from court to court) and exhibits must be exchanged and filed with the clerk or courts by a deadline if you want to use them at your trial.

A divorce trial can last two to three days, and you may spend a significant time waiting in the hallway (and paying your lawyer to sit, too) if the court has an emergency case that comes up during your trial window.

You and your lawyer will be seated at one table and your spouse and his or her attorney will be seated at another table. Your witnesses will be in the hallway.

The plaintiff goes first. His lawyer will give an opening statement about the case and then his lawyer will call witnesses who can testify about

each and every fact that he needs to present in order to convince the judge or magistrate that the plaintiff's position is the correct one.

The defendant's attorney gets to cross-examine every single witness. This can be very intimidating.

Witnesses don't always say what you expect them to say. Some will crack under pressure and say something completely different than what they told your attorney previously.

Once the plaintiff is finished calling witnesses, the defense will begin the process all over again.

You can expect to pay your lawyer for at least 1 - 2 days of trial preparation plus clerical costs for photocopying and filing all of your exhibits and witness lists. You can expect to pay for several days of attorney time at your trial and quite often for your attorney to file additional trial briefs or written closing statements.

Trials to fight over household goods or low-value assets are simply not economically feasible.

Name Changes

Divorcing women sometimes wish to have their maiden name or a previous name restored. Others want to keep their married name, as it is the name shared by their children.

Whether or not to have a previous name restored is entirely the woman's decision. The husband she is divorcing does not get a say in the matter. The name is not his property.

It is a very simple matter to change your name during the divorce process. It simply requires mention of restoration of the prior legal name in the divorce decree. There is no additional fee for this service.

Should you decide after the divorce is final that you want to change your name, it will require a filing in the probate court in the county where you live. There are additional fees and expenses associated with this in a probate proceeding.

Medical and School Records

Unless there is reason to order otherwise, most divorce decrees will state that both parents have the right to review the medical and school records for the children. In some instances, the court may place responsibility on the residential parent to provide the non-residential parent with information, but more commonly the non-residential parent simply has the right to access the information or to arrange for the school to copy him or her on important mailings.

Relocating with Children

If you are not yet divorced and there are no court orders in place, either parent can legally move with the children to another residence, county or even state. However, the parent “left behind” may seek a court order that orders the parent who left to return with the children.

If you are planning a move out of state with your children before you are divorced, keep in mind that the state that you are moving away from will remain the child(ren)’s home state for six months. During that time, your spouse can initiate a divorce action in your home state and you will have to return there to litigate the matter. You must wait to file in your new state until you have established residency, which typically takes six months.

If you are a residential parent who is already divorced, pay close attention to your divorce decree or shared parenting plan. Typically, you must make a filing with the court that granted your divorce as soon as you plan a long-distance move. Your child’s other parent must be served with notice and they have an opportunity to file a Motion asking for reallocation of parental rights and responsibilities based on your proposed move.

Contempt

When someone disobeys a court order, the court may find him or her in “contempt.” Where the court finds contempt, there is generally a “purge,” or a penalty that is appropriate for the type of contempt that was committed.

For example, if the residential parent denies parenting time, the court may order extra parenting time for the parent who was shorted as a “purge.” Likewise, a parent who fails to pay child support and is found in contempt may be ordered to pay the arrears (back support) within a certain period of time.

Failure to purge contempt can result in fines or even jail time. Court orders are not mere suggestions. They are orders of the court that have consequences.

If you are found in contempt, you may also be required to pay the other party’s attorney fees and filing costs in addition to your own attorney’s fees.

Wills, Powers of Attorney and Life Insurance

You should not make any changes to your Will or life insurance during your divorce. Changing these documents may be a violation of a temporary injunction. Talk to your attorney before making changes.

After your divorce, you will need to make changes to your important documents. However, you will need to obey any orders that are in place regarding these documents.

Generally, a provision naming your ex-spouse as a beneficiary of your Will becomes void as a result of your divorce. However, as some court orders require your ex-spouse to be maintained as beneficiary on your life insurance to ensure that child support or spousal support provisions are fully paid, you may not be able to keep your former spouse from collecting on your life insurance in the event of your death.

I recommend having a complete set of estate planning and durable power of attorney documents prepared as soon as possible after your divorce. Take your divorce decree with you to your consultation on these matters to ensure that your estate planning attorney knows of any divorce-related provisions that will affect your estate.

If you have a living will or medical power of attorney that names your spouse, you may generally change that designation at any time in the divorce process or following your final hearing. You should, however, always consult with your attorney before making any changes in documents that affect your finances to ensure that you are in compliance with the court's orders.

Communicating With Your Ex-Spouse

If you have no children together, or if your children are grown, you may have little necessity to communicate with your former spouse on a regular basis. If, however, you have minor children, you will need to continue to communicate in order to co-parent.

As will be discussed in your Seminar for Divorcing Parents, it is harmful to put your children in the middle of your parenting discussions. You will need to find some way to communicate with your ex-spouse.

I will briefly share several tools that my clients have found useful:

1) The Planner Method - buy an inexpensive calendar or planner each year. The residential parent should put all of the important dates on the calendar, such as parent-teacher conference, school programs, and sporting events and practices. The calendar should clearly indicate which house the child will be sleeping at each night. Where practical, pick-up and drop-off times can be listed, too.

If the planner has room for pockets, report cards and A+ assignments, or other items the child wants to share with the out of possession parent can be put into the planner pocket.

Blank pages in the front or back of the planner can be used to transmit information about medications and doctor appointments or to let the other parent know what happened if there is a new cut, scratch or bruise.

2) Google

Google has wonderful tools available. You can create a new gmail account to communicate with your co-parent about your child. You can make a Google calendar to document all of the dates described in the

planner method. You can share the calendar with the other parent and with the child.

When you receive medical or educational documents, you can upload them to Google docs and share them with the other parent. These tools are free and if your child is tech savvy, he or she can use them too.

3) Our Family Wizard

This is a cloud-based family communication hub. It has a message center, a place for important documents and contact information. There is a shared calendar and even a place to document expenses that the parties have been ordered to share.

If your case is extremely sensitive, your attorney or guardian ad litem can also be granted access to see the communications and review the calendar. The system documents who has seen each message and when, and the contents can be subpoenaed for court use if necessary.

If you and your co-parent are able to communicate without fighting, that's wonderful, but it's still a great idea to get agreements outside of the court order in writing so that there is no confusion when the time to exercise the agreement actually comes. That way, when you forgo Christmas Eve in exchange for Easter Sunday, you have something to back you up if the other parent decides, instead, to follow the visitation schedule and cheat you out of the benefit of your bargain.

Erie County

Erie County's domestic relations division docket is heard primarily by the court's two magistrates. As in Lorain County, an uncontested divorce or dissolution filed by an attorney will be scheduled for a final hearing without need for a pre-trial.

Erie County requires somewhat more documentation to be filed at the onset than does Lorain County, but this actually serves to streamline the process in several ways.

In a contested divorce case, Erie County parties will typically submit a request for temporary orders. As these requests are accompanied by payroll information, tax returns and financial affidavits that detail each party's household expenses, the court will then issue temporary orders based on the parties' submitted information without first having a hearing.

A Judgment Entry of Injunctions will also issue, which restricts financial dealings by the parties and forbids either one from engaging in inappropriate or threatening behavior toward the other while the divorce is pending.

When the temporary orders are issued, the court will also set a date for at least a pre-trial hearing, where both parties and their attorneys will discuss the issues that need to be settled and whether additional orders are necessary.

There may be multiple pre-trial hearings while the parties work toward settling the case.

The same magistrate who conducted the pre-trial hearings will generally act as the hearing officer conducting the trial if the parties are not able to reach a settlement.

If one or both of the parties disagree with the magistrate's decision, then the judge will consider the issues.

Lorain County

Lorain County has three judges who preside over the Domestic Relations division. Each of those judges also have magistrates who will be the officers of the court who hear the preliminary issues in each case.

When the parties have reached full agreement and the case is filed as a dissolution of marriage or as an uncontested divorce by an attorney, the parties only need to attend a final hearing, usually heard by the judge assigned to the case and, if minor children are involved, a seminar for divorcing parents.

If the case is filed as a contested divorce, without a signed decree or separation agreement, the case is set for case management conference to determine the issues that need to be resolved. There may also be a hearing set on temporary orders. These are presided over by the magistrate in most cases, but may be presided over by the judge assigned to the case.

If the parties have not resolved the case, there will be one or more pre-trial status conferences, also held in front of the magistrate. You will be required to be at the courthouse for some of these conferences. At other times, only your attorney will need to appear.

If the parties have reached an impasse on one or more issues after the case has been pending for a number of months, your case will be set for a final pre-trial in front of the magistrate and a settlement conference in front of the judge.

Prior to the settlement conference, each attorney will need to submit a settlement conference statement to the judge which outlines that party's position on all matters that are still contested - the places where there is no agreement. The judge will often discuss how he or she generally

decides these issues which may guide the attorneys in final settlement negotiations.

If the parties absolutely cannot reach an agreement, the case will go to trial in front of the judge. Each side will call witnesses (who will be cross examined by the other side) and present evidence, and the judge will make the final ruling as to how the property and debts are divided and what orders regarding the children are appropriate.

Taking a divorce case to trial in Lorain County or any other county is a lengthy and expensive process to be avoided if at all possible.

Legal Fees, Court Costs and Other Expenses

LEGAL FEES:

As lawyers, we have one product to sell: time. If I give my time away to one person, I have less time that I can sell to another person. I have an hourly rate with a minimum charge for each task that I work on for your case. See your fee agreement for your hourly rate and the minimum billing increment.

Tips to save money on legal fees: work on improving communication with your estranged spouse. The less talking you do with your spouse, the more talking I have to do. Instead of a “free” conversation between you and your spouse, the 5 minute question you’re afraid to ask looks like this:

Plaintiff → Plaintiff’s Lawyer → Defendant’s Lawyer → Defendant

Defendant → Defendant’s Lawyer → Plaintiff’s Lawyer → Plaintiff

That conversation represents four “minimum” bills for each side. If you’re talking about two \$200/hour lawyers with 15 minute minimum bills, that’s $\$50 \times 4 \times 2 = \400 to figure out where the drop-off point is for Sunday night’s parenting exchange.

Most lawyers have assistants and relaying your question through the assistant may save you a significant amount of time.

Although I may like you, I wouldn’t ask you to work for free, and I expect to be paid for my time, too. If your question is not urgent, consider saving up multiple questions for a single email or phone call, or write down your questions to ask at our next meeting.

RETAINERS:

When lawyers ask for a retainer, that is a “deposit” toward future time. It is NOT a quote or even an estimate for what I think your divorce is going to cost. When I take on a case, I have no good way to predict how much of my time it will take. I ask for enough money in advance to make sure that I can get through what I suspect will be the bare minimum the case will require if everything goes smoothly. When you hire me, you agree to “replenish” that retainer when it is close to used up. This is how I am able to write my paycheck for the work that I did. If you will not replenish the retainer, I will withdraw from your case. That doesn’t mean that I don’t think you are a good person or that your case is “too hard,” - it just means that I need my paycheck in order to pay my bills.

If you do a lot of the legwork yourself, you may get some money back. The size of the total bill for your divorce representation depends on several factors: 1) how much work are you willing to do? 2) how willing are you to compromise, and 3) how willing is your spouse to compromise?

COURT COSTS:

When your case is filed, the lawyer who is filing the initial documents writes a check. We sometimes call those the “court costs,” but the better term is “deposit toward court costs.” Like a retainer, this is the bare minimum that the court feels it will take to finish up your case. Each status conference and pretrial hearing adds additional costs. Each time there is a court reporter present, there are additional costs. It is very common for you to receive a bill for additional court costs at the end of your case.

OTHER EXPENSES:

Like retainers and court costs, Guardian ad litem (GAL) deposits are minimums, as well. The GAL may request the deposit be replenished during the case and you will likely receive a bill for additional GAL fees after the case is finished as well.

COPYING, MAILING, LEGAL RESEARCH

If you hire The Burley Law Office for your divorce case, you will receive itemized invoices. These will show time expended for in-court and out-of-court legal work, phone calls and correspondence and paralegal or law clerk time spent on tasks for your case. There may also be expenses for postage, legal research (some services charge us a per-search fee), copying, court reporters for depositions, and any number of other out of pocket expenses. When you hire a lawyer, you agree to pay all of these expenses as well.

Unbundled Services

Unbundled legal services are a relatively new topic in divorce law. Instead of hiring a lawyer who meets with you, writes your pleading documents, meets with you to sign the documents, then copies the documents, drives the documents to the clerks' office, schedules the hearing, notifies you of the hearing date, meet with you prior to the hearing date to tell you what to expect, and then attends the hearing, you decide what you need and you pay for it.

Typical “unbundled” arrangements might be drafting all of the documents for a dissolution of marriage or an uncontested divorce. Typically, you would receive detailed copying and filing instructions with these documents customized for your county, and then you would file the documents yourself.

For a fee, you can meet with the attorney to discuss additional developments during the case or to ask for advice on an issue you didn't think of before. For people with a limited budget, unbundled services can save you a lot of money if you are willing to do much of the “leg work” yourself.

If your case is contested, an unbundled arrangement can allow you to pick and choose which parts of the litigation you use an attorney for. You can decide whether to use your attorney for advice and drafting documents, or if your county allows “limited appearances,” you might also be able to have an attorney present with you for one or more of pretrials and the final hearing. You determine your budget, and you and your attorney decide on a price for each step. My office does not offer unbundled arrangements on contested cases due to the vast number of things that can go wrong.

Full Representation

Most typically, a client hires a lawyer to represent them from the beginning of a matter until the end. Although the lawyer generally requires a retainer, this is not a “flat fee.” Signing a fee agreement or an engagement letter is a lot like writing a blank check to your law firm. A lawyer who is engaged to represent you will use their independent judgment to decide how much research, discovery time, and negotiation time is spent in your case. If the other lawyer (opposing counsel) files a lot of Motions or spends a lot of time on the phone or writing lengthy emails, your lawyer will spend lots of time responding to them.

If you will not communicate or cooperate with your lawyer, if you are abusive to your lawyer or her staff, or if you conduct yourself in a way that makes it difficult or even unethical to continue to represent you, your lawyer may, and in some cases **MUST** withdraw from your case.

A lawyer/client relationship is not like a typical employee / employer relationship. Although you may instruct your lawyer to do something, he or she is not necessarily required to act on your wishes.

For example, if your court order states that you will make your visitation exchanges at the gas station on the corner of Main Street and Meadow Lane, and you want to change the exchange point to McDonald’s, you might demand that I tell the other attorney that you will be at McDonald’s with the child and that if the other parent wants them, they will be there too. If you are my client and you make that demand, I’m likely to tell you to find another lawyer, because I have made an ethical decision not to demand that someone else act in a way that is contrary to a court order. I may request that the other side meet at McDonald’s, but I will not give an ultimatum.

By hiring me, you are trusting me to act in your best interest while at the same time upholding my professional and ethical standards. Sometimes

that means that I will need to make decisions that you may not agree with.

The one place that you are in charge is where it comes to compromising on your case. I cannot bind you to an agreement without your approval. If this means that we go to trial on an issue that I believe that you should settle on, then that is your right, so long as you are willing to pay the additional money that it will cost to exercise that right.

Full representation does not mean that you are forbidden to communicate with your spouse on your own. If your spouse has an attorney, I cannot talk to your spouse about your case without the other attorney's involvement, but you can still pick up the phone and discuss your case with the other party.

Full representation means that I will be copied on everything that is filed on your case and that I am the "go to" person for the court to contact for scheduling and other issues. It also means that the other attorney must contact me instead of contacting you.

My Spouse Lives in Another State - Now What?

An out of state spouse can make things much more complicated, but it doesn't have to. An out of state spouse presents some challenges in getting good "service" in a divorce action, but if your spouse also wants to be divorced and they are willing to sign a waiver of service form, those issues can be avoided entirely.

If your spouse is not willing to sign a waiver or to pick up a certified letter, then you may have to pay to have the divorce action served by a process server, but if you know where your spouse lives or works the expense and bother should be relatively minor.

If you and your spouse have already divided your property and are in agreement on how to handle parenting issues, often the matter can be as simple as forwarding papers to the out of state spouse to sign and return to be filed in Ohio.

If your spouse has moved out of state and it has been less than six months since the move, the divorce must be filed here in Ohio. If he or she has been in the new state for six months or more, the divorce can be filed there, in which case you might have to travel to the other state if you are not in agreement with your spouse's wishes.

If you and your spouse are not attempting to reconcile, I believe that it is generally best to file the divorce action here before they file it in the new state.

I Don't Know Where My Spouse Lives - Can I get a Divorce?

You can get a divorce even if you do not know where your spouse lives, but it may be substantially more time consuming and expensive than if you know, or can find, an address where your spouse can be served with the paperwork.

If you have no idea where your spouse is living now, you are expected to make a reasonable effort to find him or her. This may mean contacting friends and family. It may mean paying for an internet search, or even hiring a private investigator. The good news is that the internet makes “most” people pretty easy to track down.

If all reasonable efforts fail, the Ohio Rules of Civil Procedure allow you to “serve” the absent spouse by posting legal notice in the newspaper. Under certain conditions, you may be able “serve” them by asking the clerk of courts to post a notice in certain public places.

The cost and procedure for service by publication varies from county to county. You will be required to pay an additional fee and to submit an affidavit to the court that explains the methods that you used to try to locate your spouse.

A divorce impacts important legal rights. If it is possible to find your spouse, the court will require you to do so. If you know where your spouse is, but you are afraid for them to know where you are, talk to your lawyer about ways that you can protect your location.

In Closing

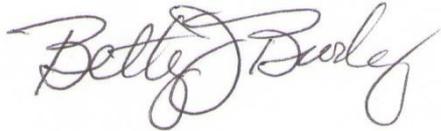
I hope that you have found this guide helpful. As I stated in the beginning, there is no such animal as an “easy divorce.” Each case has its own challenges.

If you are interested in hiring my services, I am happy to provide a free initial consultation in my office, or by phone or an online service such as Skype, Zoom or Facetime.

If you have already hired me, THANK YOU for trusting me to guide you through this difficult time. While I am always happy to answer your questions, referring to this booklet may save you money if you have a simple question.

Divorce is difficult. It is my intention that by providing you with general information, you will have the confidence to make the tough choice as to whether you can do this alone or whether you need a lawyer, and what questions you have that need to be answered.

If this booklet has been helpful to you, I would love to hear from you at

A handwritten signature in cursive script that reads "Betty Burley". The signature is written in black ink and is positioned to the right of the contact information.

burleylaw@gmail.com.



The Burley Law Office

Attorney Betty Burley

Prior to becoming a lawyer, Betty Burley spent many years as an administrator, a licensed optician and a busy wife and mother. Having been through a divorce a custody battle, and the death of a spouse, Betty brings her own real-life experience and insight to her client's cases

When Betty isn't working on a case, she enjoys running, cooking and spending time at Cedar Point Amusement Park with her family.

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