

# DIVORCE

## INTRODUCTION

The topic of divorce law in the State of New Jersey is a very complex matter. I plan to provide you with a very informal and brief overview of both the process of divorce and the substantive law applicable to the issues raised within the divorce context. You will have nothing more than a broad idea as to the topic of divorce after reading this document. To fully explain all matters to you in a way that you could understand, it would take weeks or even months of education. Therefore, if you are contemplating filing a divorce action, it is absolutely critical that you contact an attorney experienced in divorce matters.

I will discuss both the procedural and substantive aspects of divorce. When I talk about the procedural aspects, I essentially mean the scheduling of the process. Substantive aspects means the legal standards applicable to each of the issues raised in the case. Before discussing these matters, let me first describe grounds for divorce.

## THE PROCEDURAL ASPECTS OF DIVORCE

Before beginning our discussion on the procedural aspects of divorce, it is important to recognize that the ultimate objective in any divorce case is reaching a fair and reasonable resolution of all disputes pending between the parties. The resolution is memorialized in a written form called a Judgment or Property Settlement Agreement. It is essentially a written contract between the parties defining all of their rights and obligations after they are divorced. If either party fails to comply with the Judgment or Property Settlement Agreement, the offended party may go to Court seeking an enforcement or performance of the same.

Keeping this in mind, it is important to remember that you are free to settle your differences with your spouse at any time, even before the filing of a lawsuit for divorce. Please keep this in mind whenever you consider pursuing a divorce action. It is also possible to break off from the Court proceedings at any time and settle your case. Therefore, when reviewing the following pages, remember that you are free to stop litigation at any time and settle your case through negotiation and compromise. Not only will the Court system and the attorneys appreciate this fact, but you will probably save yourself a tremendous amount of time, aggravation and money.

The first thing that you must do, if you are unable to reach a settlement, is to file a lawsuit for divorce. The lawsuit is a very simple document. It identifies the parties to the lawsuit (the names and addresses of the husband and wife), the names and addresses of any children, the date and location of your marriage, whether any previous Court proceedings have occurred between the parties, and the reasons (grounds) for the divorce. Attached hereto as **Schedule A** is a listing of the grounds for divorce recognized in the State of New Jersey. The Complaint for Divorce is usually

several pages long and is filed with the Clerk of the Court. When filing the Complaint for Divorce, you must pay the Clerk of the Court a filing fee.

After filing the Complaint for Divorce, the same is returned to your attorney. Thereafter, your attorney is free to mail a copy of the lawsuit to your spouse. However, this may not be an effective way to notify them of the proceeding unless they file a written Answer with the Court. Generally, however, you should serve your spouse with the lawsuit through the County Sheriff. This costs a very nominal amount of money and the fee is calculated on a mileage basis. Given the volume of lawsuits in any County, it may take several weeks for the suit to be served upon your spouse. Of course, if your spouse has retained an attorney, the attorney may accept service of the lawsuit for divorce.

Once the lawsuit has been served upon your spouse, they have thirty-five days to file an Answer. This period of time can be expanded by consent of the parties or the Court. Assuming that no Answer is filed in the case, you must then file a document with the Court known as a Request to Enter Default. In effect, you are preventing your spouse from contesting the grounds for divorce. Thereafter, you must file an additional document with the Court known as a Notice of Equitable Distribution. This Notice contains your proposals for resolving all property issues between you and your spouse. Thereafter, the Court will hold a hearing over your proposal for settlement. Your spouse may participate in this component of the case. A Final Judgment will then be issued declaring you divorced and resolving all collateral issues.

Let's assume that your spouse files an Answer to the lawsuit. The case is now considered joined like two hands coming together. In effect, both teams are now on the playing field. Once the matter is joined, the following general rules apply. From the date of filing the Answer until a trial, you must generally wait approximately one year in most New Jersey Court systems, and perhaps longer. But please don't fret. Most cases tend to settle long before the matter ever proceeds to trial.

After the Answer is filed, we then move through the process of discovery. The process of discovery involves the exchange of certain written questions, the exchange of documents, and the holding of depositions so that the attorneys may learn about the case. Your attorney is much like a doctor without an x-ray when you first come to his or her office. Before they can operate, they must have the x-rays and lab reports for their review. The process of discovery permits the attorneys to gather as much information as possible about the case before making a recommendation to you. If necessary, as part of the process of discovery, real estate will be appraised, the bank will issue a mortgage pay-off statement, pensions will be valued, and other important assets will be identified and valued.

For discovery purposes, it is important that you gather and provide your attorney with copies of the following documents: Social Security statement, credit card statements, checkbook register, cancelled checks, credit/loan applications, and your resume or curriculum vitae.

It is also important to go through the process of discovery for the following reason. While you should remain optimistic that you will be able to settle your case, you should always proceed with caution and accept the fact that a trial or Motion application may be necessary. As such, you must be aware of the fact that the Rules of Evidence apply to every proceeding in the case. As such, discovery assumes an even more important status. In effect, once a party provides you with answers to your discovery demands, and swears to the authenticity of the same, they cannot change their answers at a later time. This not only helps you better prepare your case, but it creates an opportunity to question their credibility or truthfulness at a later time.

The process of discovery will generally take several months. The Court requires that all litigants memorialize their proposed schedule of discovery within a Court Order known as a Case Management Order (CMO). This is a scheduling Order that will define the exchange of discovery materials. The Case Management Order is prepared and filed a few weeks after the Answer is filed.

The most important document within the discovery process is known as a Case Information Statement (CIS). This is a financial disclosure statement that each party must fill out and file within twenty days of filing their initial lawsuit papers. The person who prepares the Case Information Statement swears to its authenticity. As a review of the document indicates, it is a comprehensive financial disclosure statement that is most useful when attempting to litigate or settle your case. You disclose all assets and liabilities, all monthly debts, your income and other relevant information pertaining to your existence as husband and wife.

Let's assume that we have completed the process of discovery. We are satisfied that we have identified all issues between the parties. The values of all assets have been revealed. All debts have been reviewed. However, despite all of this discovery, the parties are still unable to settle their case. Have no fear. As part of the Case Management Order that we have previously filed with the Court, the Court has established a date to attend a non-binding arbitration hearing known as a Matrimonial Early Settlement Panel (MESP). The Panel consists of two neutral attorneys who possess expertise in the area of matrimonial law. They volunteer their time in an attempt to help you settle your case. Approximately one week before your MESP date, your attorney will submit a Memorandum to the Panelists, outlining the important issues of the case. Your attorney will also submit your Case Information Statement to the Panel. On the date of the Panel, you will come to the Courthouse and wait in the hallway. Your attorney will enter the Panel room with your spouse's attorney. The Panelists will then entertain the arguments and discussions of the attorneys and make a recommendation as to a fair settlement of the case. Many cases settle at the date of the Panel. Frequently, the parties are free to slightly adjust the Panel's recommendation so that the case will settle. Given the fact that you are present in the Courthouse, if you are able to reach an agreement after a bit of adjustment, you can be divorced on that date.

Let's assume that you have gone through discovery, attended the Panel, and are still unable to settle the case. Again, there is no reason to give up all hope. Your attorney can request another

Panel hearing. Furthermore, one of the Judges will be happy to sponsor a Settlement Conference in an attempt to assist you in resolving the case.

Let's assume that you have been unable to settle the case after meeting with the Judge and going through Panels. You must then wait for a trial date. Again, in most Counties we are waiting approximately one year for a trial in a case. Most people are willing to make concessions as part of their settlement when they realize how long they have to wait. Additionally, much greater expense is involved with attorney's fees and other professional's fees when you wait for a trial and actually conduct the same. But again, the decision is ultimately yours.

If, pending the lawsuit, any issues must be brought to the attention of the Court for more immediate relief, you are free to do this by way of a Motion hearing. At any time after filing the lawsuit, you may file a Notice of Motion with the Clerk of the Court seeking immediate Court attention to any important issue. Therefore, even though you may not go to trial or settle your case for a year or even more, you are free to have a Judge review certain issues, such as child custody and support, pending a trial or settlement.

### SUBSTANTIVE LAW

Having now reviewed the overall procedure and scheduling involved with divorce cases, I would now like to discuss the law applicable to the issues raised within a divorce case.

### CUSTODY

Custody is the most difficult of all issues in a divorce case. There are two concepts of custody important for your consideration. These are described as "legal custody" and "physical custody". Physical custody means the right to have a child with you on a day to day basis. Generally speaking, one of the parents will receive physical custody. The second kind of custody is known as legal custody. This is the right to have an equal say in the larger life decisions of the children. Generally speaking, both parties have a right to be involved in major medical or educational decisions. Both parties may receive copies of the report cards and attend parent/teacher conferences.

Again, in a typical case, the parties remain in joint legal custody with one of the parents receiving physical custody. Generally speaking, a parent will not be able to enjoy either legal custody or physical custody if they have engaged in abusive conduct towards the child, if a substance abuse issue exists, or some other important matter directly impacting upon the best interests of the child.

Where the parties are unable to agree as to custody, most Counties require the parties to attend the Custody & Visitation Mediation Program. At the beginning of the case, the parties will

either agree as to a temporary arrangement for custody or a Motion application can be brought before the Court for an initial and temporary determination. Pending a final agreement or trial in the matter, the issue of custody will then be referred to the Custody & Visitation Mediation Program. If the parties can reach an acceptable agreement through mediation, that issue is then settled. If they are not able to reach an agreement through mediation, the parties can then retain a forensic psychologist to perform an evaluation and make recommendations to the parties and the Court. Ultimately, if the matter cannot be resolved through mediation or through a careful consideration of expert recommendation, the issue must proceed to trial.

### PARENTING TIME

Generally speaking, parenting time (aka “visitation”) is reasonable and liberal unless the party seeking parenting time has been abusive or neglectful. It is recommended that the parties enter into a very specific program of parenting time. This would generally include alternating weekend parenting time, phone or physical contact during the week and specific arrangements for holidays. For example, you would enjoy Thanksgiving one year with your children and your spouse would enjoy it the next. In Burlington County we employ a presumptive Holiday/Special Occasion Parenting Time Schedule, a copy of which is attached hereto as **Schedule B**.

### CHILD SUPPORT

Child support is based upon a method of analysis contained in the New Jersey Court Rules. Essentially, child support in the State of New Jersey is based upon an income shared concept. Each party is responsible to contribute a portion of their take-home income to the well-being of the children. Attached hereto as **Schedule C** are copies of both a sole and shared Child Support Guidelines Worksheets. The Worksheet is self-explanatory. As to the recommended amount of child support, this schedule can be provided to your attention.

If either party experiences a change of circumstance, such as a change of employment or a serious health condition that prevents them from gainful employ, the child support may be adjusted. Also, the matter of child support must be reviewed if any of the children begin to attend college.

### MEDICAL INSURANCE

Whichever party has medical insurance will generally be required to maintain the same until the children are emancipated. Unreimbursed medical expenses are paid for based upon a standard described in the Child Support Guidelines.

### LIFE INSURANCE

Each party should be required to maintain some form of life insurance. If your spouse dies,

you still need money to support the kids. Generally, depending upon your age, a term life insurance policy with a face amount of \$100,000.00 may be purchased for a nominal premium of a few hundred dollars a year.

### TAX ISSUES

There are many important tax issues that may result from the dissolution of a marriage. First, the parties must decide whether to remain married through the balance of a particular calendar year for purposes of filing one last joint return. If they choose to file separately, they must reach agreements as to how to share tax benefits incidental to home ownership, the right to claim children for tax-related purposes, as well as any carry-forward capital gains/losses, deductions or other tax considerations from prior years. Also, they may not have filed all returns during the pendency of the marriage and this important issue must be addressed. There are dozens of other potential tax issues which must be discussed as part of any comprehensive analysis of a matrimonial estate.

### ALIMONY

In the State of New Jersey, alimony is determined based upon a series of statutory factors. This includes the length of your marriage, your health condition, your earning ability, your spouse's earning ability, your spouse's ability to pay, your needs, the distribution of your assets and liabilities, the lifestyle established during the marriage and other important factors.

Unfortunately, there is no mathematical formula for an award of alimony. Some jurisdictions are employing a Guideline approach similar to that utilized by New Jersey with regard to child support. This methodology suggests that twenty-five percent of the differential in income between husband and wife represents a presumptive starting point with regard to any alimony discussion. New Jersey does not employ such a philosophy.

Any discussion of alimony is highly fact specific. It is impossible to offer any generalizations concerning the same.

There are also different types of alimony available, including permanent, limited duration, rehabilitative and re-distributive.

### EQUITABLE DISTRIBUTION

The last substantive topic that I would like to discuss would be the matter of the distribution of assets and liabilities. The rule of law utilized in the State of New Jersey to distribute your assets and liabilities is described as "equitable distribution". The Court will distribute assets and liabilities according to what is fair and equitable in a case. Generally speaking, assets are divided in half. This includes any equity maintained in the home, pensions accrued during the marriage, bank accounts,

stocks, other investments, vehicles, etc. However, depending upon the facts of your case, the distribution can be slightly different. Again, without knowing the particulars of your case, it is impossible to tell you how your assets will be distributed. However, rest assured that you will be entitled to a large portion of everything that you and your spouse own.

With regard to debts, again, these will be divided according to what is fair in your particular case. For example, if you have \$10,000.00 of credit card debts, and your spouse was the primary wage-earner during the marriage, it is very likely that a Court will make your spouse pay a larger amount of that debt. However, any specific analysis depends on the particular facts of your case. But rest assured that a fair distribution of all your bills will occur.

### ATTORNEY'S FEES

Generally speaking, litigants in the State of New Jersey pay their own attorney's fees and costs of suit. There are exceptions, including the pursuit of foreclosure actions and matrimonial cases. In matrimonial actions, a dependent spouse may receive an award of attorney's fees from the bread winner. Much of this depends on the peculiarities of the case. For example, if your spouse earns the money, you stayed at home to raise a family and during the course of the litigation you behaved in a fair and good faith manner, it is likely that the Court will award you some portion of attorney's fees at the conclusion of your case. The Court may also require your spouse to provide your attorney's retainer.

### CONCLUSION

Thank you for your interest in the process of divorce. I hope that this informational booklet has proven useful. Again, this informational booklet is not meant as a substitute for competent legal counsel. You may call the Bar Association in your County, and for a reduced fee you can receive a consultation with an experienced attorney. Please take my advice and see an attorney before taking any action related to a resolution of your marital estate. Good luck.