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Overview of Divorce

The dissolution of a marriage can be a traumatic experience. An experienced family law attorney is well aware of the emotional involvement of the parties and, although not a mental health specialist, will attempt to relieve your anxiety. Knowledge of the process and realization that many acts, factors and events are beyond the control of the parties has been found to assist the parties through the process.

To provide some information, the following material is provided to provide superficial information and is not intended to address all questions that you may have. Because of the complexity of the law and process, it is necessary for you to consult with an attorney familiar with family law to assist you since minor differences in facts, from one situation to another, may significantly effect the best method or procedure in addressing your situation.

It is necessary for you to provide full information to a family law attorney to allow the attorney to address the issue. Since there is a relationship between the client and the attorney which prevents disclosure by the attorney of the information provided by the client, you must be completely candid.

Resolution of Issues in Divorce Cases

A problem which regularly confront attorneys is introduced by the client with a statement similar to “My neighbor paid only....” or “My friend received....” All issues are resolved in one of two ways: 1. the parties agree and settle; or, 2. a decision is made by a judge.

There is no action which is more personal to the parties than Divorce since it involves the separation of the lives and memories of the parties, the division of the assets accumulated during the marriage, the assignment of debt, and, the welfare of the children. Although a family law attorney can assist the client in providing informed opinion as to potential resolution of your matter if decided by a judge, the attorney is not in position to explain by “your brother’s first cousin was successful in resolving the matter as it was settled between the cousin and spouse.”

It must be stressed that although you will be counseled and advised throughout the case, the final decisions regarding your case must and will be made by you. For you to receive a fair resolution, you must be aware of the assets of the marriage, its debts, your rights and the law. Should you have any questions, you must not enter into an agreement.

Remember that we are here to advise and inform you and to assist you in your decision making. With knowledge and cooperation we will do our best to provide you with the information to attempt to obtain the best possible results on your behalf.

Termination of the Marriage

A marriage may be terminated in one of three manners: annulment; judgment of separate maintenance; or, divorce.

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An annulment may be granted by the court upon a finding that the marriage was void or voidable. Grounds include incapacity to enter into the contract of marriage, including insanity, under age or married. At the time the incapacity to marry is discovered, for the marriage to be annulled the parties must not continue to cohabite.

A judgment of separate maintenance is mistakenly referred to as a “legal separation”. It is seldom done but the procedure is similar to a divorce except neither party may remarry. The judgment may be entered only upon agreement of acquiesce of the parties since, should either party request a divorce, the court must grant the divorce.

A judgment of divorce is the most common of the methods of terminating a marriage. It is discussed below. Additional information on either the annulment or the judgment of separate maintenance will be provided upon contact with the firm.

Grounds for Divorce

Michigan is known as a “no fault” divorce state. It is not necessary for either party to allege or prove fault in the breakdown of the marriage for the court to grant the divorce. The only ground for divorce in Michigan is that:

There has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

Although it is not necessary to prove fault to obtain a divorce, fault may be a factor in resolving issues of division of property, spousal support, custody and parenting time. For this reason you should be prepared to discuss the indiscretions of the parties with your attorney.

Divorce Procedure

The initial filing of a divorce case may include the preparation of a Summons, Complaint, Verified Statement, Ex Parte Orders and Injunctions and a Record of Divorce.

The **Summons** notifies the other spouse that a suit has been started. After he or she received the Summons, the spouse must respond within the prescribed time period or a default may be entered.

The **Complaint** included information as to the reason for the filing including the basis for filing in the particular county and includes the names of the parties; date of the marriage; the names and birthdays of children (if any); the wife’s and the husband’s names before marriage; the date of separation (if applicable); that there has been a marriage breakdown; a statement about property; whether the wife is pregnant; and the relief requested. The Complaint includes information as to previous filing of cases between the parties, involving the family and information concerning other actions involving the custody of the children.

If there are minor children at the time of the filing, a **Verified Statement** must be prepared and filed with the court which provides the Friend of the Court with information concerning residency of the parties and children, employment of the parties, health insurance and the interest

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of the State of Michigan if public assistance has been requested. The height, weight, eye and hair color of the parties is provided with social security number and driver license number of the parties to identify each. The social security number of each minor child is requested.

The **Record of Divorce** is a form prepared for statistical purposes of the Michigan Department of Health includes the birth state of each party and the number of marriages of each.

Ex Parte Orders and Injunctions may be necessary to protect the interests of the filing party, the children and property. An ex parte order may be obtained to either maintain the status quo or request temporary custody, support, etc. A Mutual Property Order (a form of injunction) can usually be obtained to prevent either party from disposing of property by destruction or sale. Because of the variety and purpose of these orders, a further explanation will be available upon retention of this firm. Although most counties will liberally allow initial orders, if the spouse objects, the court will require a hearing to determine if the orders are appropriate.

The **plaintiff** is the party who starts the lawsuit and the **defendant** is the person against whom the suit is filed. The divorce is resolved by the family division of the circuit court. The office of the **Friend of the Court** has been created to assist the court in matter necessary to the fair and complete administration of justice in family matters. The Friend of the Court makes recommendations for spousal support, child support, custody, and parenting time. The Friend of the Court also collects and distributes the spousal and child support payments. The court may use the Friend of the Court for other miscellaneous duties, including conducting hearings and supervising conferences between the attorneys.

A divorce may not be granted in less than 60 days when there are no minor children and 180 days when there are minor children. From time to time the court may allow the six month period to be shortened.

While Your Divorce Is Pending

This period is usually spent in identifying and resolving the issues between the parties. We attempt to find the net worth of the parties and the general financial status of the family. Complete financial data is usually requested and the court will assist the parties in their efforts to obtain information from the other party and any individual or organization which may be able to provide the information.

As necessary, we may suggest the use of appraisers, actuaries (if pensions are involved), accountants, or behavioral professionals (with your prior consent). At all times you will be asked to assess your goals and together we will attempt to attain the resolution which you seek. This will not be done hastily, and you will be given an opportunity to study the proposed settlement alternatives.

Alternative to trial by the court are available and will be discussed in detail with you. Usually the court will order mediation by a mediator agreed upon by the attorneys. Should mediation fail to resolve the issues, arbitration may be suggested, and, with your approval an arbitrator may be appointed to hear and resolve the issues in the case.

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If settlement is reached, the parties will be asked to either sign a settlement agreement or appear before the court and place the settlement on the record. A settlement which is knowingly and freely agreed by the parties and which appears to be fair and reasonable will be approved by the court. Upon approval by the court, the settlement become final and binding on the parties and is incorporated in the judgment entered in the matter in disposition of the case.

Judgment

The judgment is the most important document you will receive. It will set forth the disposition of such issues as spousal support, custody, child support, parenting time, insurance, property settlement, and other matters. If a settlement has been reached, you will be directed and you must carefully read and examine this judgment and have us explain it to you before you approve it. You must not agree to anything unless you fully understand the agreement.

Divorce Issues

Child Custody

This issue is by far the most emotional and traumatic part of most divorce cases. There are two types of custody, legal and physical. **Legal custody** is the decision-making part of raising the child (including medical and educational). **Physical custody** is where the child lives. Sole or joint custody is possible for both of these types of custody. The basis for determining child custody is “the best interests of the child.” Due to the extensive nature of custody disputes and the laws involved, this matter will be discussed in depth by us, however as an overview, the following is provided.

The legislature as directed the court to address each item of the Child Custody Act in determining custody. The factors are:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the education and rising of the child in its religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of the medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.

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- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

When there are custody disputes, the parents must be advised about joint custody:

(1) At the request of either parent, the court shall consider an award of joint custody, and shall state why joint custody may or may not be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

- (a) The factors enumerated above.
- (b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

(3) That if the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

(4) During the time the child resides with a parent, that parent shall decide all routine matters concerning the child.

(5) If there is a dispute regarding residence, the court shall state the basis for a residency award on the record in writing.

(6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate

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housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

(7) As used in this section, “joint custody” means an order of the court in which one or both of the following is specified:

- (a) That the child shall reside alternately for specific periods with each of the parents.
- (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

Child custody orders are modifiable however require a **change in circumstances**. The requesting party is required to carry the burden of proof by clear and convincing evidence that there is a compelling reason to change custody.

Parenting Time

Parenting time is generally granted to the non custodial parent. The court will encourage the parties to agree as to the terms of the parenting time, however, if the parties are unable to agree, the court will order a parenting time schedule, adopted by the court, which will serve to set forth the minimum time. The judgment will set forth the parenting time schedule however the parties can agree to modify the times and dates without modifying the written order.

Parenting time rights may be enforced through the Friend of the Court or by the party’s attorney.

Child Support

The amount of child support is based upon the needs of the children and the ability of the parents to provide. Child support is based mainly on the Child Support Formula Manual (the “Guidelines”). It is a formula relating to income. Child support is neither taxable to the recipient nor deductible by the payer.

Child support is usually ordered until the child attains the age of 18 years or until the child graduates from high school so long as the minor child has not yet reached 19 years and 6 months and regularly attends high school full time with a reasonable expectation of completing sufficient credits to graduate from high school while residing full time with the payee of support or at an institution. The enforcement of payments is available through the Friend of the Court or by the party’s attorney. Child support is modifiable as the circumstances change.

Nonpayment of court-ordered support may lead to a contempt of court citation, resulting in a jail term or a suspension of the delinquent parent’s occupational or driver’s license.

If there is an arrearage of child support payments, medical expenses, etc., at the time of the judgment, the judgment of divorce must contain a provision preserving this arrearage. The same holds true for any monies owing under any temporary order. To preserve a temporary order, the

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judgment of divorce must preserve the arrearage. If it does not, the temporary order is canceled.

Every child support order paid through the Friend of the Court now provides for the immediate and automatic withholding of child support payments from any source of the payer's income unless the court orders otherwise or approves an agreement by the parties.

Support of the children includes providing for their need for medical care. The custodial and non custodial parent will be responsible, in proportion to their income, for uninsured medical expense. Additionally, the non custodial parent may be responsible for assistance in payment of child care expenses, incurred by the custodial parent, to allow the parent to work.

Spousal Support

Spousal support, also called alimony, is a sum of money paid by one spouse to another spouse for support. The relevant factors the court considers in awarding spousal support are:

1. The past relations and conduct of the parties.
2. The length of the marriage.
3. The ability of the parties to work.
4. The source of and amount of property awarded to the parties.
5. The age of the parties.
6. The ability of the parties to pay alimony.
7. The present situation of the parties.
8. The needs of the parties.
9. The health of the parties.
10. The prior standard of living of the parties and whether either is responsible for the support of others.
11. General principles of equity.

Spousal support can be awarded after trial or can be agreed by the parties in settlement of the case. It may be limited to a specific amount and duration and/or it may be conditioned upon events such as the remarriage of the party receiving the support. When limitations are placed in the judgment regarding modification, specific language is necessary to try and ensure that the court will honor these limitations.

Spousal support which is awarded or agreed to be without limitation or condition is generally modifiable at any time. It may be increased, decreased, or canceled. The modification will be based upon a showing of a change in circumstances that warrants a modification.

Spousal support is usually taxable to the recipient and is deductible by the payer. Additionally, spousal support is usually not dischargeable in bankruptcy. It is important that you are aware of the consequences, including the tax ramifications, and should discuss them with

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your attorney and your accountant.

Spousal support is usually paid through the office of the Friend of the Court. This enables a party to obtain an accurate record of these payments. It also makes it easier to request assistance from the Friend of the Court if payments are not forthcoming or a spouse denies receiving payments.

Property Disposition

The parties usually arrive at a settlement of all their property rights after negotiation or mediation. If settlement is not reached, the matter will be decided by the court after the trial is concluded. If your property includes retirement or pension plans, we will explain the division of the asset by use of a domestic relations order.

Property settlements in judgments may be enforced by execution, garnishment, show cause proceedings, etc.

In determining property issues, the court will usually consider the following:

1. the length of the marriage
2. the contributions of the parties to the marital estate
3. the ages of the parties
4. the health of the parties
5. the life status of the parties
6. the necessities and circumstances of the parties
7. the earning abilities of the parties
8. the past relations and conduct of the parties
9. general principles of equity

Generally, property of the marriage is divided equally, however, factors including fault can be considered in awarding a disproportionate amount of the property to either party.

Attorney Fees

Attorney fees are governed by the Michigan Rules of Professional Conduct. Attorney fees are based on a number of factors, including:

1. The experience, reputation, or abilities that contributed to the services rendered;
2. Difficulty in or special skill required to render the services or the novelty of the question involved;
3. Time limitations imposed by the Client or by the circumstances; and,
4. Preclusion of other employment because of the representation in the matter.

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We will tell you what our hourly rate is, which can be helpful in assessing the amount of fees due. You will also be responsible for disbursements made on your behalf by your attorney for such items as court costs, filing fees, service of pleadings, appraisals, expert witness fees, and other expenses incurred by us for the purpose of representing you in you case. You will be charged for consultations, correspondence, telephone calls, office and research work, court time, filing, and hearings.

If your spouse is ordered to contribute to your attorney’s fees, you will be given credit for the amount your spouse pays.

Miscellaneous

Matters may arise after the case is concluded for which counsel should be retained. These matters may be for the enforcement of child support, spousal support, parenting time, or property provisions.

A consideration should be made to pursue a personal injury action for physical and/or emotional injury inflicted upon you by your spouse that occurred during the marriage. Such action must be either pursued or abandoned before the entry of a judgment in your divorce action.

Conclusion

Many divorce cases end in a reconciliation of the parties. If there is a chance to save your marriage, we will be pleased to recommend marriage counselors to you and assist you in every possible way to effect reconciliation. If, on the other hand, you believe the marriage is over, we will do our utmost to obtain a judgment of divorce that is satisfactory to you.

This summary is intended to serve as an overview of divorce. The law is constantly changing and it is imperative that you obtain updated information from an attorney.

We have substantial experience and expertise in the field of family law and are aware of the pressures and the personal difficulties faced by you involved in the divorce process. We will attempt to ease these pressures and work toward eliminating the cause and effect of these problems. If you have any questions, please call or arrange for an appointment.