

Divorce Terminology

by Rebecca Berlin

A divorce may be one of the most complex legal processes that a person encounters in his or her lifetime. For many people it is their first (and hopefully last) contact with the legal system. Knowing some of the basic terminology involved in divorce can help.

Petition for Divorce. This is the document that the person who wants a divorce files with the court asking for a divorce. It might also be called Petition for Dissolution of Marriage. A petition sets out the relief that the person wants the court to grant (in this case a divorce) as well as the legal grounds for the relief and any factual support.

Temporary Order. This is also sometimes called an Interim Order. It is a court order that is not permanent. It will last only until a hearing, or a final order is issued, or until some other specified event occurs. An example of a temporary order is a temporary custody order, which will specify which parent has custody of the children pending a final custody determination. A temporary support order is an order that provides for one of the parties to a divorce to pay support to the other party either for that party or for the children or both. A temporary restraining order might be issued to prevent one of the parties to a divorce from disposing of property. The key thing with any temporary order or interim order is that the order is not permanent.

Community Property. In community property states, property that is acquired by the husband and wife during their marriage belongs to both. Property that was owned by either spouse prior to the marriage is their separate property. However, if separate property becomes commingled with community property it can become community property. For example, where husband and wife combine bank accounts when they get married the amount each had in the accounts before they were married will cease to be separate property. A spouse can acquire separate property during their marriage if the property is given to that spouse as a gift or inheritance.

Equitable Distribution. Many states require the equitable distribution of property acquired during the marriage. This means that property and debts should be divided fairly, not equally. Several factors may be used to determine what is fair including the length of the marriage and earning capacity of the parties.

Spousal Support. This is sometimes called Alimony or Separate Maintenance Payments. If the court determines that one spouse has a legal obligation to provide for the support of the other spouse, it can order that alimony be paid to the spouse to whom support is owed.

Child Support. Parents have a legal obligation to support their children. In a divorce, the non-custodial parent will be ordered to pay child support to the custodial parent. If there is joint custody, the parent who has primary physical custody will receive child support from the other parent. Each state has child support guidelines that are used to determine the amount of child support.

Custody. When used in the context of child custody, this refers to the person who will have responsibility for the child. Sometimes a court will award sole custody to one of the parents. Many courts now award Joint Custody to both parents. Sometimes joint custody refers to the fact that both parents continue to have an equal say in the upbringing of the child, even though one parent is awarded primary physical custody. When a parent has primary physical custody the child will live with that parent and have visitation with the other parent. Sometimes joint custody refers not only to the fact that both parents continue to have an equal say in the upbringing of the child, but also to the fact that the child is to spend roughly equal periods of time in each parents' household.

When used to refer to property, custody means the care of and control over property, but not ownership. For example, when the divorce is filed husband moves out of the house taking only the bare necessities. Wife may have custody of husband's golf clubs because they are still in the garage, but she does not have ownership of them and should not sell them at her upcoming garage sale.

Visitation. When one parent has primary physical custody of children of the marriage, the other parent is granted the right to visit the child on a regular basis. A visitation schedule is usually spelled out to avoid disagreements between the parents as to when visitation should take place.