

What Happens in a Divorce?

by Chris Hinson

The necessary steps in obtaining a divorce will depend on the particular situation of the parties getting the divorce. A divorce where the parties have been married for a relatively short period of time, have no children, and little property or debts should be less involved than a divorce where the parties have been married for a long period of time, where there are minor children, or where there is significant property or debt to divide. The divorce process should be simpler in cases where both parties want and agree to the divorce. If one party is blind-sided by receiving divorce papers they might respond by doing whatever they can to prolong the process. Finally, the more the parties can agree on between themselves the smoother and quicker their divorce. If the couple is bogged down in fighting and disagreements over anything and everything, the process will be slower.

Filing a petition.

The first step in the divorce process is filing a petition. Even where both spouses agree that they want to get divorced, one of them will have to be the one to file a petition with the court asking for the divorce. The petition will state the grounds for the divorce. The grounds for divorce vary depending on the jurisdiction. All jurisdictions allow for some type of no-fault grounds such as "irreconcilable differences", but only a few states still consider fault grounds for divorce, such as adultery or abandonment. Your lawyer can tell you whether fault grounds are available in your state, and if so, whether or not it makes sense to file for divorce on fault grounds.

Temporary Orders.

If one spouse depends on the other for financial support or will have custody of the children, that spouse needs to ask the court for temporary orders for support and custody. For example, if a stay at home mom files for divorce, she will need financial support from her husband to continue paying the household bills. She will also need a temporary custody order and a temporary child support order for the kids. A temporary order is usually granted within a few days and will remain in effect until a full court hearing. If the party seeking the temporary order is the same party who files the petition, they should file them at the same time. If the party seeking the temporary order

did not file the petition, they should file their request for the temporary order as soon as possible.

Service of Process.

The party who files for divorce also needs to file proof of service of process. This is a document that shows that a copy of the divorce petition was given to the other party. Service of process can be either very dignified or very undignified or anywhere in between. If the parties mutually agree on the divorce, it is best for the party who files the complaint to arrange for service of process to the other party's attorney. Having a process server visit one's spouse at his or her place of employment to serve papers falls into the undignified category.

Response.

The party who receives service of process will then need to file a response to the petition. If a divorce was sought on fault grounds and the responding party wants to dispute those grounds, he or she will need to address it in the response. The responding party may choose to dispute the facts that are alleged to be the grounds for divorce or he or she may choose to assert a defense to the grounds. If there is disagreement as to property division, support, custody, or any other issue, this should be set out in the response.

Negotiation.

If the parties don't agree on all the issues, they will need to try to negotiate their differences. The court may schedule settlement conferences that attempt to move the parties toward a final resolution of the issues. If the parties disagree on child custody and visitation, the court may also order mediation, evaluation of the children and parents by a social worker or other court employee and that a lawyer or guardian ad litem be appointed to represent the children. Other issues that may need to be negotiated are the property division and any spousal support.

Trial.

Any issues the parties absolutely cannot resolve between themselves will have to be decided at a trial. However, going to trial will take longer, cost more money, and have less predictable results so it is probably best to avoid going to trial if possible.

Order of Dissolution.

The order of dissolution ends the marriage and spells out how the property and debts are to be divided, custody, support and any other

issues. When the parties negotiate their own resolution to all of the issues, they will draft the order of dissolution and submit it to the court. If the order of dissolution complies with legal requirements and both parties entered into it knowingly and willingly, then the judge will approve it. Otherwise the court will issue an Order of Dissolution at the end of the trial.