

DIVORCE IN NEW HAMPSHIRE

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WHAT IS A DIVORCE?

Divorce is the termination of a marriage. It can be granted by a court on "fault" or "no-fault" grounds. A fault divorce is based on proof that the marriage broke down as a result of bad conduct such as extreme cruelty, adultery, or other specific fault grounds. In a no-fault divorce, the divorce is based on "irreconcilable differences" which have caused the "irremediable breakdown" of a marriage.

WHAT IS A LEGAL SEPARATION?

A legal separation is a court action by which spouses remain married but live apart. It is identical to a divorce action, except the parties remain married. A legal separation decree determines support and custody of children, visitation, alimony, and the division of property and debts. Either spouse can ask for a legal separation on any of the grounds for a divorce. A legal separation is not required before obtaining a divorce.

WHAT IS AN ANNULMENT?

An annulment is a proceeding which concludes that the parties were actually never married. It is rarely used and can be granted only when the marriage was illegal from the beginning, such as when the marriage was prohibited by law or when either party was already married to someone else.

WHO CAN GET A NEW HAMPSHIRE DIVORCE?

A New Hampshire court can only grant a divorce in a marriage which has a connection with New Hampshire. If both spouses reside in-state, the court will permit a divorce action regardless of the length of residence. That is also the case if the person filing for divorce lives in this state and the other spouse is served with the initial papers in-state. If one spouse lives in the state and the other lives out of state and cannot be served in New Hampshire, there is a one year residency requirement.

HOW IS A DIVORCE CASE BEGUN?

To begin a divorce action a document alleging the marriage and grounds for divorce is filed with the court. The court then opens a file and returns the papers to the party initiating the action. The documents are then provided to the other party. A person served with divorce papers files an "Appearance" with the court on or before the date noted on the initial divorce papers. An "Appearance" is a document filed with the court to indicate that the spouse served chooses to participate in the proceeding, either through an attorney or by representing him or herself. Filing the "Appearance" form assures that the other party will receive notice of all future

hearing dates and receipt of all future court documents. The party served the papers may file an "Answer". Parties also can together file a joint petition for divorce.

WHAT IS AN UNCONTESTED DIVORCE?

A divorce is uncontested when the parties voluntarily agree on the terms for the divorce. The issues addressed by the terms of such an agreement customarily include: parenting responsibility for the children, child support payments, alimony, division of property, and division of debts. In an uncontested divorce, the parties must submit their agreement in proper written form to the court for its review and approval. Each party must also submit a financial affidavit, disclosing under oath all income, assets, and debts. If approved, the terms of the agreement become a court order, and a full hearing is not necessary. The divorce is effective upon court approval.

WHAT IS THE COURT PROCESS?

The usual first step in the court process is referred to as the "First Appearance." That is an instructional session for the parties conducted by the Court. It is not a hearing. No decisions are made, and you do not need a lawyer.

These days, because of the reduced funding for the Courts, the next process is usually mediation. A neutral party is appointed by the court to meet with the parties to the divorce, and an attempt is made to try to resolve the issues by agreement. Resolving contested issues by agreement is quicker and less costly than having issues resolved at a hearing.

Alternatively, either spouse can request that the court schedule a temporary hearing to issue temporary orders. The issues which can be addressed at a temporary hearing include: interim parental responsibility for the children; support payments for children and/or spouse; continuation of life and medical insurance coverage; temporary use and possession of the marital home; furnishing, automobiles and other property; restraining orders preventing one spouse from interfering with the peace or liberty of the other spouse; responsibility for payment of bills. The parties can enter into a temporary agreement on such issues, and the court can approve it. Alternatively, each side can give a presentation to the court, and the court will decide the temporary orders. Temporary orders remain in effect until changed by agreement of the parties which is approved by the court, or until further court order.

WHAT FINANCIAL DISCLOSURES ARE REQUIRED?

No later than 45 days after the service of a Petition for Divorce, or 10 days before a temporary hearing, each party must provide the other party with extensive financial documentation. This includes tax returns, recent paystubs, health insurance, investments, retirement, bank accounts, and credit cards.

HOW IS THE DIVORCE DECREE DECIDED?

If the parties voluntarily enter into written agreement setting out the final terms of the divorce, a formal final hearing is not necessary. However, if the parties cannot agree, the contested issues will be left for the court to decide after a final hearing.

The final hearing is conducted in the courtroom before a Marital Master or Judge, who hears and decides the case. Divorce matters are not heard by a jury. At the final hearing each party offers evidence for his or her case, such as testimony of the parties, testimony of witnesses, testimony of accountants or appraisers, testimony of the guardian ad litem, as well as non-testimonial evidence such as financial records, business records, etc. All witnesses are subject to examination and cross-examination by both sides. Each party is again required to submit, under oath, an up-to-date financial affidavit. Each party makes its written recommendation to the court as to what the court should order.

After the hearing, the court will let the parties know its decision by mail. There is no waiting period for the divorce to become effective. The appeal of any final divorce decree can only be made to the New Hampshire Supreme Court.

HOW IS PARENTAL RESPONSIBILITY DECIDED?

The law mandates that divorced parents make every reasonable effort to co-parent their children harmoniously.

Parental responsibility is in two forms in a divorce: decision-making and residential. The first involves participation in parental decisions. The second involves the physical presence of the child. Joint decision making responsibility is presumed by the court to be in the child's best interests, unless proven otherwise. Residential responsibility refers to the child's actual living arrangements. Unless the parties can agree, the parental responsibility of a child is determined by the court, after consideration of the evidence, based on the child's best interests.

When there is a disagreement on issues affecting a child, the parties may hire a guardian ad litem to represent the interests of the child. This person speaks to the parties and others having relevant information, and submits a report making a recommendation on parental responsibilities to assist the court in determining what is in the child's best interests. The court

may consider the child's preferences, if the court concludes that the child is capable of mature judgment in that regard. After the final residential responsibility determination, unless the parties mutually agree to a change of custody, the court will not change physical custody unless the evidence establishes a strong possibility that the child will be harmed if the present living arrangements were to continue.

HOW IS CHILD SUPPORT DETERMINED?

Child support is calculated according to a formula set out by law, called the Child Support Guidelines. A non-custodial parent's child support obligation will depend upon the parties' gross income and the number of children. In exceptional circumstances the court may permit variation from the Child Support Guidelines. Otherwise, the child support amount must conform to the Child Support Guidelines.

In the event of a future substantial change in the financial circumstances of the parties, a child support obligation can be modified. Additionally, after three years, a child support order can be brought forward for review. In both cases, unless there is a written agreement on a new support amount to be paid, a modification requires filing a motion with the court.

It is preferred but not required that child support be collected through an automatic deduction from the obligated spouse's wages. Child support can also be paid, with or without wage assignment, through the Child Support Enforcement Unit of the New Hampshire Division of Human Services. Delinquent child support can result in the seizure of an income tax refund or the loss of a motor vehicle license in New Hampshire. A party's failure to pay child support should be brought to the court's attention by the filing of a Motion for Contempt.

WHEN AND HOW IS ALIMONY ORDERED?

Alimony is an award of money for the support of an ex-spouse. Generally speaking, the court will order that periodic alimony be paid if the relative income situations of the spouses after the divorce would otherwise be unfair. Alimony may be awarded as a temporary or final order to either spouse for a limited time or permanently. Alimony awards are based on the parties' relative needs and abilities to pay. In deciding whether to award alimony, the court considers the general circumstances including: length of the marriage, age, health, general finances, each party's earning capacity, each party's contributions to the marriage, the opportunity of each spouse to acquire property in the future, among other considerations. The court may take fault grounds into consideration in determining alimony. An alimony award may be established or modified after the divorce if the court decides that it is justified because of an unforeseen substantial change in the

financial circumstances of the parties.

HOW IS PROPERTY DIVIDED?

All property (and debts) in which either spouse has any interest at the time of the divorce is considered the property of the marriage, and must be distributed in the divorce action. For this purpose, the court will require that each party make a complete and accurate financial disclosure under oath. The marital property to be divided includes real estate, personal property, retirement interests, bank accounts, savings plans, stock options, vested inheritances. The distribution of the marital property can be determined by agreement between the parties, or, if the parties cannot agree, by court order after a hearing.

The marital property is to be divided fairly. The law presumes that an equal division of the marital property between the parties is a fair division, although the court may conclude otherwise under the particular facts of the case. To determine what constitutes a fair division of the marital property, the court may consider a wide range of factors, including: each spouse's contribution as homemaker or wage-earner; the length of the marriage; the age, health, skills and employability of each party; each party's opportunity to acquire property in the future; the custodial parent's need to remain in the home or care for children; whether property was obtained by gift or inheritance; expected pension or retirement rights; tax consequences; contributions by each spouse to the other spouse's education or career. The court may also take fault grounds into consideration in deciding a fair property distribution.

A property settlement is final and cannot be changed because of a subsequent change in financial or other circumstances. Only a property settlement that resulted from fraud, misrepresentation or a mutual mistake will be considered for modification by the court.

CAN BOTH PARTIES HAVE THE SAME LAWYER?

A lawyer can only represent one party in a divorce proceeding. It would be a conflict of interest for a lawyer to represent the opposing interests of both parties in the same proceeding.

This material reflects the law in effect in December, 2012. Due to the changing nature of this area of law, this material should not be construed as legal advice nor should it be used as a final authoritative legal source.

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