



What To Expect: Divorce

General

A divorce is a painful and difficult experience. If you understand the functions and limitations of the legal system, the process becomes more tolerable. This edition of our "What to Expect" series should provide you with a greater understanding of the process to help you get through your divorce with realistic ideas and goals.

Legal Limitations

Florida's divorce system is based on the principle of "no-fault," meaning that a divorce will be granted if either party believes that the marriage is over. Generally, the causes of the failure of the marriage are not an issue in court. All that matters is that the marriage needs to be ended.

It is impossible for any court to heal the emotional wounds created by your divorce. You must understand that the legal system is not a tool for punishment of your spouse. The courtroom is no place for revenge. The court must decide your case on the basis of its unique facts. In most cases, the law does not permit the court to compensate either of you for the other's misconduct.

Please do your best to keep emotions under control. Your feelings of anger, pain, and/or betrayal are understandable, but expressing them inappropriately in court may interfere with your ability to provide the court with the information the court needs.

The Goal

The Goal in a dissolution of marriage depends on your circumstances. If children are involved, you will have continued contact with your spouse after the dissolution is granted. If children are not involved, you may or may not care about future contact. Either way, it is best for each side to walk away from the marriage on agreeable terms.

The best way to conclude your case is to settle it. Through compromise and cooperation, a settlement can lead to greater mutual satisfaction and lessened animosity between you and your spouse. In most cases, negotiations toward settlement can be more productive and far less expensive than a trial. Attorneys cost money, but the true expense is in litigation.

Mediation is a requirement in most dissolution cases. See the "What to Expect . . . Mediation" guide to better understand this tool.

If negotiations fail and you must try your case, the court will make rulings that will permanently affect you, your spouse, and your children. The court's rulings must be made exclusively upon the limited evidence that is presented in court, and nothing else. Because the court is restricted in what the court can and cannot do, a settlement can offer a wider range of options.

Variations

Every divorce is different. Your results may be very different from your neighbor's, friend's, or relative's. You cannot rely upon what happened in their cases and assume that your results will be the same. Cases that seem similar may, in fact, be very different and will be treated differently under the law. For this reason, you should look to your lawyer for your legal advice and information. Your friends and relatives usually do not have a grasp of the law and your case, and accepting their advice may hinder you in the long run.

Finances

Unless you settle your case, the court must allocate the income and assets accumulated during the marriage. The law is that you and your spouse were financial partners during the marriage and are presumed entitled to share in both the assets and income the partnership made.

For most people, life-styles change after a divorce. Since divorces do not create property or income, the court must divide the marital resources between two separate households. It costs more to run two households than one. If you or your spouse has not been employed during the marriage, it may be necessary to seek employment.

In considering a settlement, you should consider whether you can afford the attorney's fees to fully litigate your case. Fees and costs in contested cases can be quite high. Usually, a settlement prior to trial reduces the expenses considerably, an important consideration if you come to the divorce with limited resources.

What are we really arguing about?

A divorce generally involves four *major* issues:

1. child custody/visitation,
2. child support,
3. alimony, and
4. a division of property/debts.

The court may also be asked to enter an order (called an injunction) prohibiting or requiring certain actions. After the case is concluded, the court may later be asked to modify custody and/or support. You need to understand each of these aspects of your case.

Child Custody

Most parents will share parental responsibility for their children after the divorce. In doing so, you must communicate and confer with each other in making decisions that will affect your children.

Usually, the court will give one parent primary residential care (custody) of the children. Unless there is a good reason, the court will grant the other parent frequent visitation. In determining primary custody, the court will give great weight to the issue of which of you is more likely to encourage the children to visit the other.

The court decides custody solely on what is best for the children. Often, one of the parties is hurt by the court's decision, especially if that party sees the decision in a "win/lose" light. In truth, there can be no loser if the children's welfare is protected.

In virtually all custody contests, the court will direct both parties to participate in mediation to resolve that issue. A mediator is an unbiased third party who can often assist the parties in reaching agreement upon what is best for the children. An agreement on custody will certainly make your case easier and help your children immeasurably in dealing with your divorce.

Child Support

Aside from continuing to love your children and seeing them often, you have no higher obligation as a parent than to continue supporting your children after the divorce. Child support is more important than any other debt or financial obligation. Both parents are required to support the children but the non-residential parent will be directed to pay his/her portion of the support to the other. This does not mean that the residential parent is not contributing to the support. Florida has adopted guidelines for child support that the court is required to follow. Your friends and relatives may have been involved in divorces years ago or in other states and receive or pay lower support than our guidelines provide. The child support in your case will be based upon your income, your spouse's income, and the needs of your children under the guidelines established by the State, unless you and your former spouse agree to a higher amount. An agreement that yields a lower amount than the guidelines provide will be closely scrutinized by the court.

Alimony

The court finds it necessary to award alimony, or spousal support, in many cases. As with child support, the court will consider two factors: one party's need and the other's ability to pay. Both of these factors must be proven in court by the requesting spouse. Alimony *may* be awarded to either a husband or wife and, depending on the length of the marriage and other factors, the alimony may be permanent or for only a short duration.

Property Division

Under Florida law, the court must try to make an "equitable distribution" of marital property and debts. "Equitable" does not always mean "equal," although that is the starting point. Many factors, including child support, custody, and alimony awards, can cause the court to make an unequal (but still equitable) division of property. The court will not generally divide the property and debts that arise outside the marriage as these are considered separate property.

Injunctions

If needed, the court can order you or your spouse to do, or not do, certain things. The court may order a party not to telephone the other, not to come to the other's place of business, not to interfere in the other's activities, and the like.

Attorney's Fees

The court can order one party to pay some or all of the other's attorney's fees. The court does this to assure that both parties have equal access to competent counsel. The court does not award fees in every case; the court

must first find that one party has a greater ability to pay than the other. You can never be certain that the court will award fees. For this reason, and because of the great drain that fees can be on marital assets, everyone (parties and attorneys alike) should make every effort to resolve a divorce case as economically as possible.

Going Forward

There are some rather clear cut rules that apply to every divorce. Pay heed to these rules and your divorce will be easier and less painful for all involved.

Have Reasonable Expectations. You will certainly be disappointed if you expect to “win” on every issue. Rarely is either party happy about every ruling in a case. Even the best rulings leave both parties somewhat dissatisfied. Encourage your attorney to give you a realistic projection of the outcome of your case.

Keep Communication Open With Your Spouse/Ex-Spouse. As long as you have children, you and your (ex-)spouse will have to work together. Your children will suffer to the degree that you and your former spouse cannot cooperate and communicate.

Get Professional Help To Deal With Your Emotions. If you have trouble with the hostility, anger, or depression that often occurs in divorces, don't hesitate to get counseling to help you through it. Use professional help to deal with your hostility. Don't use the court, your attorney, or the system to vent your anger; that would be counterproductive. A good counselor can help you, and your children, get through this difficult time. Our office can recommend counselors upon request.

Encourage And Support Visitation. If you are the custodial parent, you have a duty to encourage visitation. You must do more than just stay out of the way or leave the choice to the children. Encourage your children to see your former spouse frequently and to enjoy the contact. Never use support or visitation as a lever or bargaining chip in dealing with the other parent.

Give Your Children A Chance. The way you and your spouse handle your divorce will have an enormous impact upon your children. If you argue and fight, their problems and pain will be magnified. By acting civilly, you can help them through one of the most difficult events of their lives.

Whether you select Luke Law, LLC to represent you or another attorney, you owe it to yourself to be prepared.

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