

Dissolution of Marriage (Divorce) in Washington State

Family law has many dimensions and is influenced by legal as well as social and economic factors. Laws affecting relationships may change as traditions and attitudes evolve. Because these laws are complex and subject to change, this pamphlet is intended to provide general information only; it is not a substitute for legal advice.

Ending a marriage may be a particularly upsetting event, involving many uncertainties and emotions. If divorce or separation is unavoidable or in your best interest, a lawyer can guide you in protecting your rights. This pamphlet discusses areas of concern and attempts to answer frequently asked questions.

Ending a Marriage

Various procedures may be used to end a marriage that breaks down, including annulment, separation and dissolution.

Annulment is a court-ordered dissolution of an invalid marriage. Technically called a "Decree of Invalidation," it nullifies a marriage from its inception and is granted in situations where no valid marriage exists because of some legal defect.

A **separation** may be formalized with a legal contract, or a "Decree of Legal Separation," or both. A legal separation may be preferred to a dissolution for religious, economic or other reasons. A couple may decide to live apart while attempting to save a faltering relationship, or the separation may be an interim step toward termination of the marriage. There is no legal requirement for actual separation before dissolving a marriage.

Oral or written understandings concerning property disposition, arrangements for children, maintenance, or other agreements made while separated may become part of a dissolution proceeding.

If a marriage falls apart and is considered "irretrievably broken," one or both partners may seek a **dissolution** of the relationship. This court proceeding legally terminates a marriage, and makes provisions for the parenting of minor children, family support, and division of property and liabilities.

In Washington, a spouse does not have to prove wrongdoing to obtain a divorce (now legally called a "**dissolution of marriage**"). This no-fault system is intended to help spouses settle matters without unnecessary bitterness or resentment.

Residency Requirements

You need only to reside in Washington on the date that your petition for dissolution of marriage is filed.

Legal Procedures

Ending a marriage involves many legal considerations. Technically, an attorney is not required for the process, but a lawyer's skill and experience can be helpful to a person contemplating separation or divorce. A lawyer's advice may be especially beneficial in cases that are contested or that involve children and property settlements.

To start a dissolution proceeding, one spouse (called the "petitioner") must file with the court a summons and "petition" for dissolution of marriage.

This document is then served on the other spouse (known as the "respondent"), usually by having copies delivered to him or her. Although there is no major legal significance as to whether the husband or wife files the petition, there may be emotional or procedural advantages.

The purpose of the summons is to command the responding spouse to reply to the petition. Basic facts about the marriage are contained in the petition, which also specifies what the petitioning spouse wants in the way of a parenting plan, property division and support.

Once served, and depending on the recipient's location (whether in-state or elsewhere), the responding spouse has from 20 to 60 days to reply in writing to the petition. This reply, called a "response," may include a "counter-petition," and states the respondent's position on children, property and support.

In many situations, the next step is to arrange temporary orders to guide the conduct of the parties. Either spouse may obtain temporary orders. Typically, the requests cover such subjects as residential arrangements for the children and child support, spousal maintenance, occupancy of the family home, payment of bills, and other concerns for protecting people or preserving property. If the spouses cannot agree on the temporary orders, a court hearing with a judge or court commissioner will be held to establish necessary requirements.

To settle any immediate problems in a dissolution action, a "show cause" proceeding may be requested by either spouse. This proceeding is initiated by obtaining a court order that requires your spouse to show cause why you should not be granted the relief you are requesting. At the same time, the court can also immediately restrain your spouse from harassing you, entering your home, taking children out of state, disposing of property, or incurring any unusual debts.

Other restraints may also be imposed in exceptional circumstances. A hearing is held (usually about two weeks after the show cause order is issued) to decide most requests. Attendance by spouses is recommended, but not usually required if both parties are represented by attorneys.

All issues must be settled in order to finish a case. If terms cannot be negotiated between spouses, a trial will be held to decide any disputes. If spouses agree on a settlement and no aspect of the dissolution is contested, the case does not have to go to trial.

The final stage occurs when the court signs a "Decree of Dissolution of Marriage." Settlements negotiated between spouses are presented in writing for approval by the court and signature by the judge. If the case requires a trial, the judge's decision is recorded in writing and signed by the judge who conducts the trial. A marriage is not dissolved until the judge signs the decree.

Waiting Period

The waiting period for a dissolution of marriage in Washington state is three months. This means the summons and petition must be filed with the court and served upon the other spouse for more than 90 days before the judge signs the decree. This is a minimum period and is intended to allow time for a reconciliation between parties. The process could take much longer if any aspect of a dissolution is contested and the parties have difficulty reaching an agreement.

During the waiting period, temporary orders may be issued that provide a temporary parenting plan for minor children, provide protection or support money, or otherwise control the conduct of the parties. Property settlement may be negotiated during this period or may, in fact, be arranged before filing the petition for dissolution.

Name Change

At the wife's request, her maiden name or a former name can be restored as part of the dissolution

decree. The request should be included in the petition.

Parenting Plan

Washington law requires a parenting plan in any proceeding for annulment, legal separation or marital dissolution where minor children are involved. The terms "child custody" and "visitation" are no longer used in Washington dissolution law. Instead, the parents by agreement (or the court in the event of a dispute) must develop a parenting plan.

The parents may make an agreed parenting plan, or each parent may propose opposing plans. The court considers the best interests of the children in determining how to provide for the children. Every parenting plan must contain at least the following elements:

- a schedule for residential care;
- allocation of responsibility for parental decision making; and
- provisions for the resolution of future disputes between the parents with respect to parenting decisions.

The law includes provisions for the protection of children from parental abuse or neglect, from continued exposure to domestic violence, from the abusive use of parental conflict, and from other types of conduct which the court finds to be adverse to the child's best interests.

Child Support

Both parents have a duty to support their children. Child support is based on the Washington Child Support Schedule which takes into consideration the total cost of providing a home for the children and of taking care of them in all ways, and for each parent's respective share of that cost, in accord with their incomes.

Child support is subject to periodic modification to meet changes in the needs of the children, as well as changes in each parent's ability to pay. Child support payments are usually required until a child is 18 years old, or graduates from high school, whichever occurs last, although circumstances may affect the duration of the support obligation. For example, if a child under the age of 18 gets married or otherwise becomes emancipated or self-supporting, the court may terminate the parental obligation for the support.

Post-secondary support may also be required for a dependent child's college or vocational education expenses, or for a handicapped child. Support may be required as long as the child remains dependent.

Spousal Support

Spousal maintenance may be awarded where there is need on the part of one spouse and ability to pay by the other.

Once called "alimony," spousal support is now referred to as "maintenance." It will not be awarded or withheld as punishment for marital misconduct. The duration and amount depend upon the facts and circumstances of each case.

In determining the need for maintenance, and the appropriate duration and amount, the court will consider:

- financial resources of each party;

- work experience and earning prospects of each spouse, including consideration for the time required for one spouse to obtain training for becoming employed or self-supporting;
- age and physical and emotional conditions of each party;
- the duration of the marriage;
- the standard of living established during the marriage.

Division of Property

There is no fixed method for determining how property should be divided. In Washington, all assets — real and personal, tangible and intangible — are available for distribution. As a community-property state, Washington laws provide for "just and equitable" division of property acquired during a marriage; it does not necessarily require an equal division. Under some circumstances, the court may also apportion separate (or individual) property.

If the husband and wife negotiate an agreement, the court will probably approve it. If no settlement is reached, the court will decide how to divide the property. Property settlement agreements are binding and generally cannot be modified.

Property division is generally made without regard to marital misconduct; instead, a court considers:

- nature and extent of community property;
- nature and extent of separate property;
- how long the parties were married;
- financial position of each party: whether each spouse is employed and self-supporting; entitlements to social security and profit-sharing plans;
- who is going to pay the bills; and
- special circumstances.

A special provision of Washington law requires the court to consider whether a parent should be allowed to continue living in the family home so the children do not have to be moved.

Division of Bills and Debts

All liabilities must also be divided when dissolving a marriage. Consideration is given to the type of debt and the circumstances under which it arose. Factors influencing the property division are also applied when dividing obligations.

Most credit and charge account agreements provide for joint liability for any charges added to joint accounts. Therefore, creditors should be instructed (in writing) to remove your name from or, alternatively, close all joint accounts. If you wish to maintain credit with certain creditors, separate accounts should be opened.

Court Orders

Like any judicial order, a judgment for dissolution will be enforced by the court. Various legal remedies are available. Persons who willfully refuse to comply with court orders may be held in contempt and jailed or fined.

Child-support orders will be enforced by way of mandatory payroll deduction. This will be paid to the Washington State Child Support Registry from the inception of the order, unless the court finds that there is good cause to believe that the support will be voluntarily paid directly to the other parent on a timely basis. Mandatory payroll deduction also is available as a means of collecting support in

cases where the original order did not provide for that method of collection, if the obligated parent has fallen behind in support payments.

Parents who are not receiving court-ordered support should contact their local Division of Child Support or a private attorney.

Tax Consequences

Property settlements and family support arrangements can have serious tax consequences to one or both spouses. Tax-filing status will be affected by a decree of dissolution, annulment or legal separation. Legal or accountant's fees incurred for tax planning and advice in connection with a marital proceeding may be partially deductible.

Service of an Attorney

Washington law does not require that the services of an attorney be used in dissolution proceedings. However, ending a marriage involves serious and complex legal and financial considerations. Along with serving as your advocate and negotiator, a lawyer knows the process to follow and which papers to file. Your attorney can advise you of your legal rights and obligations, can help reach settlement on disputes, and can represent you in enforcing your rights.

Among alternatives to having a lawyer represent each spouse are self-help guidebooks and mediation with the help of a trained professional. The costs — and consequences — of each option can vary significantly, so spouses should carefully consider the possibilities before proceeding.

Deciding which approach to follow and selecting a lawyer are personal matters. Each party has the right to use an attorney, so if one person elects not to, the other still can.