

DIVORCE PROCESS OVERVIEW

A divorce proceeding in Maine is started by one spouse who files the initial paperwork and is then known as the “Plaintiff”. The other spouse, known as the “Defendant”, must be served with a copy of all of the initial documents. It generally makes no difference legally who is the Plaintiff and who is the Defendant. The Defendant has 20 days to respond to the initial papers. A divorce cannot be finalized in Maine until at least 60 days from the time the Defendant is served.

While the divorce is pending, the judge may issue temporary orders relating to some or all of the issues in the case.

A divorce case results in a final “judgment” or “decree”. Generally, issues dealt with by the judgment include child custody, visitation, support, and a division of assets and debts. Usually spouses decide to agree on the contents of the judgment, but if no agreement is reached, the issues will be decided by a judge following a trial. It is the management of these issues which usually require the advice and support of a lawyer. An attorney can protect and represent your interests and rights as well as assure fairness and proper assessment of the specific issues in your case.

Grounds for Divorce

Maine law provides for nine specific reasons why a divorce may be awarded, including various fault grounds. However, nearly every divorce case in Maine ends with a “no fault” judgment on the basis of irreconcilable marital differences.

Automatic Injunction

When the initial divorce papers are served on the Defendant, an injunction automatically goes into effect. This immediately prohibits either party from concealing, destroying, or transferring property. It also forbids the other party or any minor children from being removed from health insurance coverage.

Child Custody and Visitation

One of the most important issues in any divorce deals with the care of minor children, including where they will primarily reside, the schedule of spending time with each parent, child support, and how child-related decisions will be shared between the parents.

These and other related issues are described by the law under the heading of “parental rights and responsibilities”. The law states that the parties and the court are to be guided by what is in the best interests of the children.

These determinations usually require an analysis of which parent is better able to provide for the needs of the children, while at the same time considering the history of custodial responsibilities, who has been the primary custodial parent in the past, the history of contact between the child and parents, and which parent would be most likely to promote

and provide open, frequent and continuing contact between the children and the other parent.

Child Support

The amount of child support that a parent will pay is determined by application of the Maine Child Support Guidelines which are based on the needs of the child, the number of children who must be supported, and the ability of each parent to pay support. Each parent's income is figured into the equation for determining child support along with expenses for child care related to work and the cost of health insurance for the children.

Before calculating child support, the court may allow deductions from a parent's income based upon factors outlined in the law. The court will order health insurance to be maintained by either or both parents if it is available at a reasonable cost through employment, and the court will order most uninsured healthcare costs to be shared between the parents.

Alimony

The primary purpose of an award of alimony (technically referred to as "spousal support") is to assist one of the parties in maintaining the standard of living enjoyed during the marriage and to help that party in making a transition to being self-supporting.

Issues that must be considered in any award of alimony include the duration of the marriage, the need of the party receiving alimony, the financial resources of the other party, the standard of living during the marriage, the ability of each party to earn an income, differing levels of education, etc.

The current State of Maine law gives very broad discretion to a judge in awarding spousal support, which makes it very hard to make accurate predictions in this area.

Marital Property/Equitable Distribution

"Marital Property" consists of everything that either party to a marriage acquired during the time of marriage, regardless of who earned or paid for the asset or in whose name it is titled or registered. Marital property does not include assets acquired by way of gift or inheritance as long as the asset has not been "co-mingled" with marital property or jointly held assets.

Once all of the non-marital property has been set apart to the spouse who owns it, the law says that all marital property is to be divided in an equitable manner. "Equitable" doesn't always mean "equal"; it means what is fair to both spouses based upon the length of the marriage, the work history and job prospects of each party, the health of each spouse, the source of specific assets, and many other issues.

Mediation

Maine law requires that parties to a divorce attend mediation in an effort to work-out a negotiated settlement to all of the issues involved in the case. Mediation is a process in which a trained neutral third party works with the parties and their attorneys in an effort to reach a negotiated settlement. The parties are required to attend mediation before any contested hearing is scheduled.

Future Modifications

Certain aspects of a divorce judgment such as custody and child support are never final; they can be modified on the basis of a substantial change of circumstances until the child reaches the age of 18. However, the goal of providing a stable home for a minor child means that courts will usually require a very significant change or some other compelling reason to order a change of custody.

Sometimes an award of alimony will specifically provide that its term cannot be shortened or extended and that the amount of alimony paid during the term provided cannot be increased or decreased. Otherwise, an award of alimony can be modified on the basis of a significant change of circumstances.

Summary

A divorce proceeding is a dramatic and emotional life change for all parties involved. By its nature, it is a difficult process, but the level of difficulty and trauma for all parties can be minimized. Through the support and counsel of a caring and qualified attorney, the divorce process can be navigated with confidence and trust.

If you have questions or specific needs, or wish to schedule a meeting, please feel free to contact John Howard at Holman & Howard, 846-6061, jhoward@holmanhoward.com.