

Terminating Your Marriage: How the Process Starts

Q: I want to end my marriage, but my husband and I cannot agree on terms, so I am planning to go to court to obtain a divorce. What can I expect?

A: You, your husband, and the court will review and value all of your debts and assets, including marital and separate property. The court will divide and assign the assets and debts to you and your husband, and may award spousal support. If you have minor children, the court will decide where the children will live, how visitation and vacations will be shared, how you and your husband will handle decision-making involving the children, how you will support them financially, and who will claim them as dependants for tax purposes.

Q: What do I need to do first?

A: You may formally ask the court to end your marriage by filing a document called a “complaint.”

Q: What is a complaint?

A: It is essentially a request you make to the court that your marriage be terminated. You must have been an Ohio resident for at least six months immediately before filing the complaint. In addition to asking the court to end your marriage, you also may ask for spousal support, child support, child custody, certain property, and attorney fees and expenses, depending on your circumstances. Once you have filed the complaint, you, as the initiating party of the divorce, will be called the “plaintiff” and your husband, as the responding party, will be called the “defendant.”

Q: What happens once I file the complaint?

A: The clerk of courts will prepare and issue a “summons” to notify your husband (the defendant) that a complaint has been filed and that he must file a response with the court (called an “answer”) after he receives the complaint and the summons.

Q: What would my husband include in his answer to my complaint?

A: In the answer, your husband responds to your complaint by admitting or denying each statement contained in the complaint. Your husband may also file a “counterclaim.” In the counterclaim, your husband also may ask the court to end your marriage, and perhaps to award him certain items such as spousal support, child support, child custody, certain property, and attorney fees and expenses.

Q: While I am going through the divorce process, how do I handle matters with my husband?

A: You or your husband may ask the court to issue “temporary orders” to deal with immediate issues and help control the parties’ conduct while the divorce case is pending.

The issues that are typically addressed in temporary orders include: (1) spousal support; (2) use of

the marital residence and automobiles; (3) debt maintenance; (4) health insurance; (5) custody/parenting time; and (6) child support. Generally, the court tries to maintain status quo as much as practical while the divorce is pending. Either of you may also file a motion for a restraining order asking the court to keep the other person from doing certain things, including harassing the person who filed the motion; selling, encumbering, or disposing of assets; changing beneficiaries; and withdrawing, encumbering, and disposing of funds.

Q: What is the process for granting temporary orders?

A: A court may hold a temporary order/status conference with you and your husband or may grant temporary orders based on “affidavits” (statements sworn to be true) that you and your husband have filed. During the conference, a judge or magistrate may address the following: (1) you and your husband’s special needs; (2) the need for temporary order affidavits and time frames for filing them; (3) narrowing the issues of disagreement between you and your husband; (4) determining how you and your husband will exchange information (known as “discovery”) about the case; (5) exploring the need for experts; and (6) any other issues raised by you, your husband or the court. Often, the judge or magistrate will make the temporary orders effective from the date the temporary orders motion was filed to account for the time lapse. Temporary orders may be modified, and they do not necessarily indicate how the final divorce will be decided.

6/15/2014

This “Law You Can Use” column was provided by the Ohio State Bar Association (OSBA). It was prepared by Allison K. Tracey, an attorney with the Columbus law firm of Collins & Slagle Co., LPA.

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