

Divorce and Dissolution: What's the Difference?

Q: In what ways can a marriage be ended?

A: Marriages may be legally ended in one of two ways--divorce or dissolution of marriage. In order to obtain a divorce, one party must allege that his or her spouse has been at fault under one of the statutory grounds. The only true "no fault" grounds for divorce permitted by Ohio is "living separate and apart for one year without interruption and without cohabitation" and incompatibility not denied by either party.

Q: What are "fault grounds?"

A: Fault grounds are legally "acceptable" reasons why one spouse decides to bring the other to court to ask for a divorce. These fault grounds, by law, include adultery, willful absence for more than one year, extreme cruelty, habitual drunkenness, gross neglect of duty, fraudulent contract, imprisonment in a state or federal penal institution, and procuring a divorce outside this state if the Ohio spouse is still bound to the marriage. A divorce cannot be granted, however, unless the testimony of the complaining party is supported by a witness.

Q: What happens in a divorce proceeding?

A: The divorce proceeding begins with the filing of a complaint. Following this, divorce "papers" are served to the other party, but the divorce cannot be granted for at least six weeks after the other party is legally notified. This six-week time period is a cooling-off time that allows the parties to carefully reconsider the termination of their marriage.

A party to a divorce may request the court to grant temporary orders to be in effect while the case is pending. The goal in issuing temporary orders is to preserve the family's status quo, both financially and as to responsibilities to any minor or handicapped children. In many cases, there is insufficient income to support separate households. Temporary orders include those for designation of residential parent and allocation of the parental rights and responsibilities of minor children, child support, spousal support, and payment of attorney fees and litigation expenses.

A party also may be ordered to refrain from physically and verbally harassing the other, and to keep marital assets intact so that the court can divide them as part of its final orders.

Throughout the divorce process, hearings may take place to determine the merits of temporary requests or to make a party comply with the court's temporary orders.

While a divorce case is going on, each party has the right to find out about all property, marital or not, owned by either or both parties. Professionals are often brought in to determine the value of assets such as real estate, businesses, and pension plans. These professionals can be brought into court through the use of subpoenas.

In Ohio, there are no jury divorce trials. Divorce cases are either settled by agreement of the parties or tried before a trial judge or magistrate. If a case is settled, the agreement becomes the court's order. One or both of the parties may obtain the divorce without lengthy testimony about the grounds for the divorce, and it may not be necessary for more than one party to appear at the final hearing.

If a divorce case is contested all the way through a trial, and one or both parties are unhappy with the court's decision, an appeal may be filed with the court of appeals. A three-judge panel will review the court's decision.

Q: What is a dissolution of marriage, and how is it different from a divorce?

A: A dissolution of marriage process may eliminate much of the divorce process and expense. Unlike a divorce, fault grounds are not at issue. Dissolution is often thought of as no-fault divorce.

A dissolution petition is not filed with the court until the parties have reached an agreement on all the issues that must be addressed in a divorce matter. Designation of a residential parent, parental rights, visitation, child support, spousal support, division of property, payment of debts, and payment of attorney fees must be considered in either case.

While the parties are negotiating, there is no subpoena power available, so the parties must voluntarily trade information. Professionals can, however, be hired to evaluate property, etc.

When an agreement is reached and filed with the court, a hearing must take place within 30 to 90 days. Both parties must appear and testify that they are satisfied with the agreement; that they have made full disclosure of all assets and liabilities; that they have voluntarily signed the agreement; and that they both want the marriage dissolved. The court must also approve the parties' agreement.

Because there is no court involvement until an agreement is reached, all the temporary orders and possible hearings that might occur in a divorce case are avoided. The end result of both a divorce and a dissolution of marriage is the same: the marriage is terminated.

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