



OHIO STATE BAR ASSOCIATION

## LAW FACTS

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### Divorce, Dissolution and Separation

Ohio law provides three ways for a husband and wife to end or alter their marital relationship: legal separation, divorce and dissolution of marriage. (A fourth way—annulment—will not be discussed here.) To obtain a dissolution or divorce, you must live in Ohio for at least six months before filing. The law does *not* require persons seeking a legal separation to live in Ohio for any particular length of time before filing. The terms *visitation* and *companionship* describe the rights of non-parents, such as grandparents. *Parenting time* refers to the time parents spend with their children.

#### What is a legal separation?

A legal separation does not legally end a marriage but allows the court to issue orders concerning property division, spousal support, allocation of parental rights and responsibilities (including parenting time and child support). The parties remain married, but live separately. When a court grants a legal separation, each party must follow the court's specific orders. The legal steps are nearly the same as for a divorce.

#### What is a dissolution of marriage?

A dissolution of marriage is an action where the parties mutually agree to terminate their marriage. Neither party has to prove grounds to end a marriage by dissolution. A dissolution petition is jointly filed after the husband and wife have signed a separation agreement regarding all property, spousal support and any child-related issues. After filing the petition, the parties must wait at least 30 days before the court will hear their case, which must be heard within 90 days of filing. At the hearing, the court will review the separation agreement, ask about the assets and liabilities and any parenting issues, and determine whether the parties understand and are satisfied with the settlement. If the court is satisfied that the parties agree and desire to end their marriage, the court will grant a dissolution and make the separation agreement a court order.

#### What is a divorce?

Divorce is a civil lawsuit to end a marriage. The parties ask the court to make the final decisions concerning property division, spousal support and matters regarding the children.

One spouse, the *plaintiff*, files a *complaint* with the clerk of court to start a divorce. In the complaint, plaintiff must claim and eventually prove the appropriate statutory grounds for divorce. Discuss the statutory grounds and facts with your attorney.

The clerk of court "serves" upon the other spouse, the *defendant*, a copy of the complaint and a summons. Service is generally made by certified mail or personal delivery. If the defendant's residence is unknown, a legal notice will be published in a newspaper. This publication method of service is effective for obtaining a divorce decree but generally is *not* effective for obtaining orders about matters such as spousal or child support. The defendant has 28 days after service of the complaint and summons to file an answer to respond to the complaint. The defendant may file a counterclaim requesting a divorce, stating the grounds the defendant believes apply. The plaintiff files a reply in response to the counterclaim.

Most divorce cases are eventually settled by agreement. A proposed divorce decree is prepared, signed by the parties and submitted to the court for approval. After a short hearing, the agreement is approved by the judge and becomes a court order.

If the parties cannot resolve all of their disputed issues, evidence is presented in a contested trial. The court will review the parties' evidence and make its decision based on Ohio law.

#### How is property divided after a marriage is ended?

Ohio statutes define marital and separate property.

**Marital property** is property acquired during the marriage, including real estate, personal property, intangible property (such as stocks and bonds, bank accounts) and retirement plans, regardless of legal title. Marital property also may include increases in the value of separate property due to either spouse's labor or contribution of marital money to the increase in the property's value.

**Separate property** includes all real, personal and intangible property from an inheritance; property owned before the marriage; income or appreciation on separate property that did *not* come from a marital contribution of either party during the marriage; a gift after the marriage date if proved to be made to only one spouse; and an award for personal injury (except any part of the award that compensates for lost wages occurring during the marriage, or medical bills from the injury paid with marital funds).

By applying statutory laws and appropriate case law, the court determines how long the marriage has lasted and what it considers to be marital property. Marital property is to be divided equally, unless the court explains in writing why an equal division would not be fair. In making the award, the court must apply the eight specific factors listed in the statute and any other factor it finds relevant and equitable.

The court also has the authority to make a *distributive award* from separate property of either party to the other to achieve a fair result. When a party has engaged in financial misconduct such as hiding property, dissipating money or funds, or disposing of funds fraudulently, the court may make an award out of the separate property of the offending spouse, or make a greater award of marital property to compensate the other party.

#### What is spousal support?

Changes in Ohio law have substituted the term *spousal support* for what once was called alimony. Courts award spousal support, if reasonable and appropriate, but only after a property division. The court may consider 13 specific factors in making an award. Some of these factors are the ages, earning ability and health of the parties, the length of the marriage and the standard of living during the marriage. The court also may consider any other relevant factors.

#### How are parental rights and responsibilities allocated?

Formerly, Ohio courts granted custody of the children to one party or the other. Now, the court allocates the parental rights and responsibilities between the parents based on the best interests of the minor children who are not yet age 18 or have not graduated from high school. Shared parenting allocates these rights and responsibilities by requiring shared decision-making, although not necessarily equal time-sharing. If a plan for the children's care is submitted by one or both parents, the court may adopt the plan and grant shared parenting. If the court finds the proposed plan is not in the children's best interest, it can request amendment of the plan or deny shared parenting. If no plan is submitted, the court cannot award shared parenting and will allocate the parental responsibilities between the parents, naming one parent as the **sole** residential parent and legal custodian and granting the other parent appropriate parenting time rights.

If a parent asks, the court must talk with a child privately about his or her wishes concerning parenting arrangements. The court also may (or, if a parent asks, must) appoint a guardian ad litem for the child, who will investigate the child's circumstances and report to the court. The court takes into consideration, but is not bound by, the child's wishes and concerns and the guardian ad litem's recommendation.

Other factors taken into account include the child's mental, emotional and psychological development; the child's interaction with parents, siblings and other significant persons; and the child's adjustment to school, community and home. The court also may consider factors such as a parent's ability to serve as a custodial parent, if support has been paid, if parenting time has been denied or if any abuse has occurred. If one of the parents intends to leave the state permanently, the court also may consider this factor. Some courts provide mediation services to help the parties resolve parenting issues themselves.

#### **How are parenting time rights determined?**

In every case involving children, the court orders a specific schedule for parenting time. The primary consideration is the best interests of the children. Ohio statutes provide many factors to be considered in making the determination. Each Ohio county must also have a standard parenting time order, which can be changed on a case-by-case basis when in the best interests of the children. In appropriate cases and only if the court finds it is in the children's best interest, the court also may award companionship/visitation rights to persons other than the parents.

A more thorough discussion of parenting time rights can be found in an Ohio State Bar Association brochure titled, "What you should know about . . . Sharing Parental Responsibilities after Separation."

#### **What are temporary orders?**

The court may issue temporary orders while the case is pending and before the final decision. The person seeking temporary orders files a motion with the court, which can provide for: use of the marital residence or a vehicle, allocation of parental rights, child support, spousal support and the responsibility to pay debts (such as house or rental payments and charge accounts). These temporary orders may be very different from the court's final decree of divorce.

Courts may grant restraining orders to restrict or prohibit one or both of the spouses or others from certain behaviors and activities, such as harassing or abusing a spouse, transferring or disposing of marital funds or assets and moving the children to another state.

All temporary orders and restraining orders may be modified by the court on formal request, by written motion. Temporary orders, unless modified, usually remain in effect and are enforceable from the time the court approves the order until the final decree becomes effective.

#### **How is child support determined?**

Ohio law requires child support to be calculated under child support guidelines. The law sets basic support schedules that must be used to determine the amount of child support, based on the number of children and the combined gross income of the parents, as well as other factors and/or credits. The support schedules are based on the average cost of raising children in households across a wide income range.

To determine the appropriate amount of child support, the court calculates both parents' gross incomes and then combines them. Any spousal support paid is added to the recipient's income and deducted from the payor's income to arrive at gross income. The total is then used to locate the child support amount on a basic chart provided in the support statutes.

Costs of medical insurance and necessary child care are factored in, and the resulting child support obligation is divided according to the percentages of each party's income to their total combined annual income.

The amount of child support determined by these calculations is presumed appropriate. The court has discretion to deviate from the basic support tables when the calculated child support is inequitable and not in the children's best interest. The court also issues orders for healthcare insurance and payment of uninsured healthcare expenses for the children. Child support must be paid through Ohio Child Support Payment Central, usually by means of wage withholding. See the Ohio State Bar Association LawFacts pamphlet titled, "Child Support" for more information.

#### **What are my responsibilities as a client?**

Because your attorney will present your requests to the court, you have responsibilities as a client. Rely on your attorney's experience to guide you through the process and do what your attorney asks you to do.

Clearly communicate to your attorney your wishes and priorities. Do not force your attorney to guess. Work with your attorney to decide where to be flexible and where to stand firm.

Be open and truthful with your attorney. If evidence later establishes that you have been untruthful or have lied to the court, the court may penalize you. Your communications with your attorney are confidential. Your attorney will not reveal embarrassing or harmful information you may have disclosed, but by knowing all the facts, your attorney can help you plan how best to correct or minimize harmful information. Surprises in court will leave you and your attorney at a disadvantage in resolving your legal matter.

#### **What are my responsibilities as a party?**

You have asked the court for certain help or relief, so you have responsibilities to the court as a party to a legal action. The court addresses and resolves your problems by issuing court orders. Even if you do not agree with the court's orders, you must comply or the court may penalize you. You will also put your case at a disadvantage and the final resolution may be delayed. If you believe certain orders are unfair, you can discuss with your attorney possible ways to have the court make modifications, but until orders are formally changed, you must follow the orders.

#### **The checklist**

Also discuss these topics with your attorney: tax implications, shared parenting, premarital agreements, mediation of disputes, short-term and long-term debts, guardian ad litem, pension and retirement plans, depositions, expert witnesses and costs, and attorney fees.

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