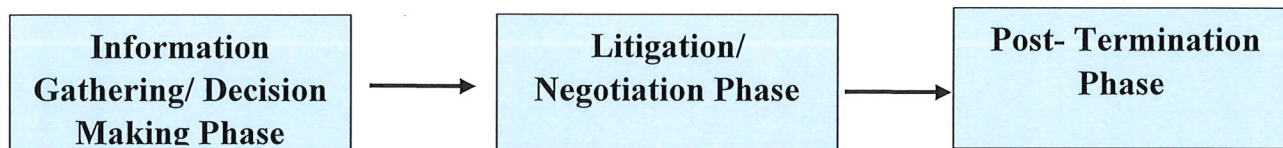




What You Need to Know about the Divorce Process

Terminating your marriage can be a long and complicated process. For many, this process is their first experience in a legal proceeding, and because of that they feel overwhelmed with the complexities of our court system. There is no “one size fits all” approach to divorce. Every case differs, depending on the termination method you choose, the specific facts of the case, and the county in which you file. Despite these differences, there is a general process that each case goes through and knowing the process may help to ease your mind as you move forward in your decision making.

There are three major phases to a marriage termination. **First** is the “before” phase, where you make decisions, consult with an attorney, and begin gathering the necessary paperwork to formally begin the process. The **second** phase is the longest and is where most of the work is done to terminate your marriage. In this stage, you will begin filing court papers, negotiate with your spouse and their attorney, attend hearings, and receive court orders. If you selected a negotiated dissolution or the collaborative process, at this stage you will attend settlement conferences with your attorney and the only time you will appear in court will be the final grounds hearing. By the end of this phase, your marriage will be officially terminated by the court. The process will then move into the **third** phase, during which you will complete all of the necessary paperwork to split retirement accounts, change beneficiary designations, revisit your estate plan, and complete other tasks necessary to transition your life from married status to an individual status. Below is a more in-depth discussion of the steps you will take in terminating your marriage.





Information Gathering and Decision Making



Step 1: The Decision to Terminate your Marriage

The decision to end your marriage is one of the most difficult decisions you will make in your life. You should consider all possible consequences that it may have on you and your family. A discussion with your spouse may even be necessary. During this time, it is important to remember that no one but you can make this decision. It is certainly helpful to seek advice from the people in your life—friends and other family members, but remember that this should be an individual, independent decision.

Step 2: The Consultation and Fact Gathering

Once you have made the decision to terminate your marriage, the next step is to consult with an attorney. When seeking an attorney, it is important to find the person who not only has experience in domestic relations, but who will work well with you. Often people will hire the first attorney that they meet with. Your choice of attorney is one of the most important decisions you will make. He or she is the one representing you in negotiations and in court. You want someone who you trust to represent your wishes and your best interest in these settings. Take the time to get to know the attorney before you hire them. Making sure you feel comfortable at the beginning and are on the same page with your attorney will save you frustration in the long run. During this process you will be faced with many decisions regarding strategy, allocation of resources, and settlement negotiations, all of which affect the expense and may determine final orders. Your attorney will guide you in these decisions.

When you have decided on the right attorney, together you will decide which method of termination will be best for you. In general, there are two paths: the “contested” path and the “amicable” path. The contested path is what most people think of when they hear the word “divorce.” Generally this path is often right for couples who are not likely to agree on the division of assets or other issues. This path focuses more on litigation and arguing in front of the court. The amicable path includes collaborative divorce, uncontested divorces, and dissolutions. This is ideal for couples who agree on most issues or at the very least feel they are in a good enough place to negotiate without court oversight, or for couples who have little assets. Negotiation between the parties is the driving force of this path. In consultation with your attorney, it is important to develop a plan that both you and your attorney will adhere to as you move through the process. It is possible to change plans, but it is typically not cost nor time effective to “change horses mid-stream.” You should make sure that your attorney understands what is important to you from the very beginning of the case.

No matter which path you select, the next step is gathering important documents and information. In any termination, it is important to identify all of the assets you and your spouse have, where they are, and the value they may have. As such, during this period, is important to beginning gathering past bank statements, recent tax filings, investment statements, business documents, mortgage documents, automobile titles, and any other documents regarding the property that you and your spouse have accumulated. It is also important to take account of your expenses, especially relating to your children. Gathering information on your health insurance, retirement benefits, and your child care expenses is also necessary. Your attorney will use all of the documents and information that you provide when he or she begins drafting the necessary documents to begin the termination process.



Litigation and Negotiation

Step 3: Initiating the Process

Once you and your attorney have gathered all of the relevant facts, your attorney will begin the process of terminating your marriage. This initial step will be different depending on which method you have chosen.

If you have chosen a contested method such as divorce, legal separation or annulment, the process will begin with your attorney drafting the complaint for divorce, the accompanying affidavits and the request for temporary orders if you are seeking child support, spousal support, or custody. Once these documents have been completed and signed by you, your attorney will file them with the court and request that service be made on your spouse. Although it has many technical requirements, generally “Service” means that your spouse will receive official copies of the documents from the court.

In the amicable path, filing does not take place until the end of negotiations, once all parties agree on all issues. The process begins when an initial conference is scheduled. You and your attorney and your spouse and their attorney will be present, and often there will be a third party professional if the situation calls for it. This may be a mediator, a financial expert, parenting specialist, or family relations specialist, depending on the facts of your case. At this initial conference, all parties will agree on an agenda for moving forward to resolve the remaining issues and the rules by which negotiation will occur.

Step 4: Interim Orders

Interim orders govern your relationship with your spouse during the time between the beginning of the process and the end of the marriage. They may cover parenting time, support

payments, health insurance coverage, and even living arrangements. How these orders come about differ depending on which method you have chosen.

In the contested process, the court grants the interim orders. In some situations, one side may ask the court to do so without the other party being present (*ex-parte*). If this is the case, the court will issue temporary orders and only hold a hearing if one party requests it. If an *ex-parte* request is not made, in jurisdictions that utilize the 75(N) process, the court will issue interim orders according to the first party to request them. The second party has 14 days to file a counter motion and the court will make the final decision based on filings only. In either case, if a party is not satisfied they may request a hearing. The court will only issue interim orders on issues not agreed upon by the parties. For example, if the parties agree on parenting time, they may submit that plan to the court for its approval. Once the court issues these orders, they are binding on all parties and the court enforces them.

In the amicable process, there are no temporary court orders. The interim rules are more akin to contracts between the parties. They are rules that the parties have negotiated and agreed on at the beginning of the process. Since they are not court orders, the court cannot enforce these agreements, instead, parties must be self-policing with the assistance and cooperation of their attorneys.

Step 5: Discovery/ Negotiation

The discovery and negotiation phase is where most of the work is done in termination proceedings. Contrary to what television shows portray, most cases settle and never go to a full trial. In domestic relations court, it is extremely rare that a case would go to a full trial on all issues.

Under the contested method, your attorney will use discovery tools such as subpoenas, interrogatories, request for production of documents, and request for admissions to ask the other side and third parties for information related to your case. The Ohio Rules of Civil Procedure govern these tools and require certain formalities. If parties do not want to produce information, the court may hold hearings to determine if the information must be given. A party may also be held in contempt if they refuse to comply with proper discovery requests. Your attorney will use the information that he or she has gathered in negotiations with the other side and as evidence in hearings in front of the court.

In the amicable method, there is no court power to compel discovery of information, as such, all discovery is given over to the other side voluntarily. The attorneys will request the information they need through less formal methods than in the contested path. Again your attorney will use the information he or she has gathered to negotiate with the other side during settlement conferences or during other conversations throughout the process. Through this process, all issues will be worked out before filing any paperwork with the court.

Step 6: Trial/ Hearings

The number of court appearances depends on which method that you choose. There are more court appearances in the contested path. There may be small hearings on separate issues such as the discovery requests discussed above. There will also likely be status conferences for your attorney to attend. As mentioned above, it is extremely rare that a divorce would go to the trial day for the court to decide all of the issues. Usually there has been some issue agreed upon in advance. However, because every case is different each trial will look different. Trials may last anywhere from one hour to several days. Your attorney will submit evidence in your favor, he or she may call witnesses to testify, and may even call expert witnesses to take the stand. At the end, the judge or magistrate will make the final decision based upon what he or she has seen in court and in the motions and affidavits submitted to support them. Decisions made by magistrates may be appealed to the judge and judges' decisions may be appealed to the appellate court or even the Supreme Court of Ohio.

As mentioned above, there are no interim court hearings in the amicable method since all of the necessary paperwork is not filed until the end of the negotiation process when all issues are agreed upon by the parties. Your attorney will submit your agreements to the court who will then approve your agreement.

Step 7: Final Grounds Hearing

Regardless of the method you choose, there will be a final hearing in front of the court. This is the very last court appearance (or in the amicable path, the only court appearance). This is a very short hearing lasting as little as 15 minutes during which the court will ascertain that you understand that your marriage is ending. The hearing serves as last check by the court to make sure that all parties are in agreement with the termination and that they are doing so knowingly, voluntarily, and without coercion.

Step 8: Official Termination

Your marriage is not officially terminated until the court files your Decree of Divorce/ Decree of Dissolution with the Clerk of Courts. The decree will not be issued by the court until after the final hearing and after it has had a chance to review all of the documents and record the decree with the Clerk of Courts. The decree is the most important document moving forward. It governs the legal relationship between you and your former spouse. It incorporates all of the agreements and court orders that have arisen including property division, support payments and parenting time.



Post Termination

Step 9: Finish Tasks from Final Decree

The decree may contain a number of things to be done. It may require you or your former spouse to transfer assets. It is important to make sure you understand your obligations under this document. Some find it helpful to create a “to do” list to make sure that they have done all they are required to do. Your list should be generated, or at the very least reviewed, by your attorney. Remember that once the court has issued the decree, they are no longer actively overseeing the process. If your former spouse fails to perform under the terms of the decree, you should seek the advice of your attorney. It may require the filing of a post-decree action to ensure compliance with the decree terms.

You will also need to undertake the steps necessary to transfer property and split your retirement benefits so that your former spouse will receive the benefits that he or she is entitled to upon your retirement, and vice versa. You may have to sign a Quit Claim Deed, a Qualified Domestic Relations Order (QDRO), Division of Property Order (DOPO), or a Letter of Instruction (LOI). It is vital that you complete these soon after your divorce is finalized. Your attorney will be able to assist you in this matter.

Step 10: Change Important Documents to Reflect Single Status

Receiving your decree of divorce or dissolution does not automatically change all of your important financial and personal accounts. Now that you are no longer married, you need to complete the process of separating your life from your former spouse. The following is a list of changes that you will need to consider when moving forward from your marriage termination:

- *Beneficiary designations such as life insurance:* You should make sure that you name a new beneficiary in your life insurance plans to make sure that it reflects your most current wishes.
- *Health insurance:* You should take the steps necessary to ensure that your health insurance coverage complies with the terms of the decree. If you were on your spouse’s health insurance plan, you will need to select a plan of your own as soon as possible after your termination is finalized. Many plans require payment within 30 days and waiting too long may lead to a lapse in coverage or even a denial.
- *Estate Plan:* Prior to your divorce, your spouse was likely the beneficiary of your estate and the trustee of your trust. Now is the time to sit down with a qualified

attorney to change that plan and determine which vehicles such as a will, revocable or irrevocable trusts, pay on death or transfer on designations, and other tools will be best to avoid probate, ensure that your assets benefit only those who you intend, and to minimize the tax burden on those you leave behind.

- *Medical and Financial Power of Attorneys:* Spouses often name each other to be their medical and financial power of attorneys. This means that they grant each other the power to make medical and financial decisions for one another. Now that you are no longer married, you will want to revoke these documents as soon as possible, and have new ones put in place to protect yourself if you become unable to make decisions for yourself. If you do have these documents, it is important to discuss your concerns and wishes with an experienced attorney to meet your needs.
- *Consult with a Tax professional:* It is also important to meet with a tax professional to make sure that you understand the taxable nature of support payments that you pay or receive, the possible consequences of receiving property, and what your after tax income will be, especially if you do not have traditional W2 employment.
- *Restoration to Former name:* If you are changing your name, do not forget to contact that Social Security Administration and Bureau of Motor Vehicles to begin the name change procedure.

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