

Legal Rights in Marriage & Divorce in Maryland

Seventh Edition



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Legal Rights in Marriage & Divorce in Maryland

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PREFACE

This pamphlet is intended as a quick reference to the basic laws governing marriage and divorce in Maryland. Its purpose is to inform people of their legal rights and responsibilities and to aid them in determining appropriate next steps. As this is a general guide, it should not be used as a substitute for the advice and assistance of professional counselors and attorneys trained to deal with the unique problems of individuals. Rather, this book may suggest questions which you should pose to your lawyer and those which you may expect him or her to ask you.

Note: The state legislature can and does revise domestic relations laws annually. Users of this guide should watch the newspapers between January and April for reports of major changes in statutes covering marital relationships.

TABLE OF CONTENTS

<i>Introduction</i>	5
<i>Chapter One: Unlawful Marriages</i>	7
<i>Chapter Two: Marital Agreements</i>	9
<i>Chapter Three: Limited Divorces</i>	12
<i>Chapter Four: Absolute Divorces</i>	14
<i>Chapter Five: Out of State Divorces</i>	20
<i>Chapter Six: Child Custody and Visitation</i>	21
<i>Chapter Seven: Child Support</i>	26
<i>Chapter Eight: Division of Property</i>	30
<i>Chapter Nine: Alimony</i>	34
<i>Chapter Ten: Enforcing Orders</i>	37
<i>Chapter Eleven: Domestic Violence</i>	39
<i>Chapter Twelve: Court Procedures</i>	41
<i>Chapter Thirteen: Working with a Lawyer</i>	44
<i>Chapter Fourteen: Handling Your Case without a Lawyer</i>	47
<i>Conclusion</i>	49

INTRODUCTION

Divorce proceedings are among the most difficult matters that come before the courts. The parties to a divorce proceeding often experience great emotional difficulties that can be compounded by unfamiliarity with the law and the courts.

This booklet is designed to help by summarizing the legal issues and processes associated with divorce in Maryland. However, laws change constantly and this booklet should not be relied on for legal advice, nor as a substitute for an attorney. It should, nevertheless, be a helpful companion as you make your way through the divorce process.

Dissolving Your Marriage

The courts generally regard married persons as parties to a contract. The marriage contract can only be entered into or dissolved by conforming to laws designed to protect the state's interest in preserving the unity and stability of the family.

Before the courts can dissolve your relationship, you must be legally married. The requirements for a legal marriage differ depending on the state in which you were married. In most states, however, a legal marriage requires a license and a ceremony.

On the other hand, even in the case of unlawful marriages, the courts have some powers. This is especially true in the case of unlawful marriages involving children. *See Chapter One, Unlawful Marriages.*

In dissolving your marriage, the court can make the following determinations:

- Who, if anyone, was at fault in the breakup of the marriage (*See Chapters Three & Four, Limited and Absolute Divorces*);
- Who should have custody of any minor children (*See Chapter Six, Child Custody and Visitation*);
- What visitation arrangements should be made for any minor children (*See Chapter Six, Child Custody and Visitation*);
- How much each spouse must pay towards the support of any minor children (*See Chapter Seven, Child Support*);
- Who should get what property, including pensions (*See Chapter Eight, Division of Property*); and,
- If one spouse should be required to support the other spouse during and after the divorce. (*See Chapter Nine, Alimony*).

You should keep in mind that the court is not equipped to deal with the emotional fall-out of a divorce or separation. If you are in need of counseling, please see the section on *Counseling Services* below.

Alternative Dispute Resolution Options

Mediation

The divorce litigation process can be time consuming and expensive. As such, there is an increasing trend towards consultations with mediators. These mediators attempt to referee the discussions of the parties and encourage the parties to resolve their differences through mediation sessions rather than litigation. Many counties and Baltimore City now require the parties to attend one or more mediation sessions, at the expense of the parties, to address custody and child support issues. Mediation should not be required in the event there is a history of domestic violence, and you should make the court aware of this history if you do not want to engage in mediation.

If mediation is successful, a separation agreement is then drawn up by the mediator. Each party should have the agreement reviewed by independent counsel. You and your spouse CANNOT use the same attorney to review the agreement.

Collaborative Law

There is also a growing trend to deal with dissolution of marriage through a process called Collaborative Law. In the collaborative process, each party has his and her own attorney, possibly along with other people, such as a financial advisor, a counselor, or a coach. The Collaborative Process creates an atmosphere where the participants and their attorneys agree to make good faith attempts to reach a settlement without going to court. The parties work together to arrive at a mutually satisfactory agreement on how the marriage will be dissolved and the issues settled. The attorneys are specially trained, and part of the arrangement is that if the parties are not able to settle the issues of the marriage, these attorneys are prohibited from representing the parties in court. Note, this can be a very expensive approach to divorce, but there are now pro bono (free) or sliding scale services being offered throughout the state.

Counseling Services

Those interested in professional counseling services might seek the recommendations of friends, clergy, or an attorney. You should carefully investigate any counseling agency with respect to the types of services offered, the training of counselors, and costs.

Advice and information about agencies that can help is available free and confidentially from trained social workers at the Information and Referral Service of the Health and Welfare Council of Central Maryland, Inc. (First Call For Help). Dial 211 In addition, names of psychiatrists are available from the local medical society.

If you are involved in a violent or potentially abusive situation, you should not seek counseling. Call the police and get yourself and your children to a safe place. See Chapter 11, Domestic Violence.

CHAPTER ONE
UNLAWFUL MARRIAGES

Annulments

When a marriage is **void** or **voidable**, the court may grant an annulment declaring the marriage to be invalid, i.e., declaring that the marriage never existed.

A marriage is **void** if at the time of the ceremony:

- Either party was legally married to someone else;
- The parties are related by birth or marriage within impermissible degrees, such as parents, grandparents, children, or grandchildren or their spouse or spouse's children, a brother or sister or their children, an aunt or uncle, a stepparent or step-child, or a spouse's parent, grandparent, or grandchild; or,
- Either party was legally insane or otherwise mentally incompetent to enter the marriage contract.

A void marriage is always invalid. Either of the parties to the marriage or a third person can bring an action to declare the marriage void at any time.

A marriage is **voidable** if at the time of the ceremony:

- Either party was under the age of 18, except:
 - The underage party was at least 16 years of age with parental consent; or
 - The underage party had parental consent and a physician's certification of pregnancy.
- Either party was physically incapable of intercourse;
- Consent was procured by fraud, duress or force;
- Either party lacked understanding to consent; or,
- The marriage ceremony was performed by someone without legal authority to perform it.

A voidable marriage is valid until a court declares it to be invalid, and only the victimized party may challenge the validity of the marriage. How long the couple has been married is immaterial. However, the marriage cannot be annulled if the parties continue to live together after the reason for the marriage being voidable no longer exists.

An annulment must be sought in the state where the parties live, not where they were married. Although it is not necessary to have lived in the state for a specific period, an action for annulment should be filed within a reasonable time after the grounds are known to the party seeking the decree.

Annulments are not granted without clear proof that the marriage is invalid. The court's decision to annul a marriage means that no marriage came into being; however, the court decree will protect the property rights of the parties and provide for the support of the

children. The decree may also award alimony. Furthermore, children are not made illegitimate by the granting of an annulment.

Common Law Marriages

A “common law” marriage, a relationship in which a couple lives together but has not participated in a lawful ceremony, cannot be created in Maryland. A couple cannot acquire marital rights and responsibilities by living together for a particular period of time. Legal action is not required to dissolve such a relationship.

However, Maryland does recognize as valid, common law marriages created in other states if the legal requirements of those states have been met. As a result, legal action is necessary to dissolve legal “common law” marriages created in other states and foreign countries in compliance with their licensing and ceremonial regulations. The courts can determine the rights of parties now living in Maryland.

As long as a couple lives together as husband and wife, the question of validity of their marriage is unlikely to arise. However, for purposes of inheritance or to receive the benefits of pension plans or social security, a valid marriage is required. Should a couple have questions as to whether a marriage is valid, they should consult an attorney.

CHAPTER TWO ***MARITAL AGREEMENTS***

Pre-nuptial Contracts

Agreements between persons about to marry made prior to the time a ceremony is performed and in anticipation of marriage are usually called pre-nuptial contracts. Through such contracts, the parties may agree on a multitude of issues, including:

- Property rights in property acquired before or during the marriage;
- Inheritance rights, including special provisions for children by a previous marriage or for any children born of the upcoming marriage; or,
- Alimony issues and/or monetary awards.

Generally, valid pre-nuptial contracts remain enforceable after divorce. However, the contract must usually be in writing and signed by both parties. Verification of a signature by a notary public, although not required, would further validate the document in later court proceedings.

In addition, both parties should be represented by independent counsel. Even if the parties choose to draft their own contract, it is a good idea to consult with a lawyer on the type of language that should be used in the document.

A couple may not validly contract before marriage to divorce afterward. Nor will a written promise to marry be enforced, unless the woman is pregnant. In Maryland, there is also no legal action for alienation of affections.

Separation Agreements

A couple with little hope of reconciliation may privately enter into an oral or written agreement to live apart. This is typically called a marital settlement agreement, voluntary separation agreement, or property settlement agreement. When the ground for divorce is separation, a valid separation agreement may be used as evidence to obtain the divorce.

A separation agreement should provide for the following:

- The care, custody and support of the children;
- The amount of support one spouse will contribute to the other;
- Provisions for the continuation of health insurance benefits; and,
- The division of property while the husband and wife are living apart, including what will happen to the property upon divorce.

Such a separation agreement does not terminate the contract of marriage nor does it free the parties to remarry. In addition, the parties are not free to have sexual relations with another person, as this constitutes adultery.

Revoking a Settlement Agreement

The separation agreement can be revoked by a second agreement in writing or simply by the parties living together again as husband and wife. Living together does not automatically revoke the agreement; it is only evidence of an intention to revoke it.

Enforcing a Settlement Agreement

If one party violates a settlement agreement, the other may bring a lawsuit for violation of the agreement, alleging a breach of contract. To ensure enforceability in the family courts, however, the parties should have the separation agreement incorporated, but not merged, into the divorce judgment. This allows the party seeking to enforce any part of the agreement to use the contempt powers of the court for enforcement purposes.

While the court will generally honor the parties' agreements as set forth in the separation agreement, the court may modify provisions affecting the care, custody, education, maintenance and support of the children in order to protect their best interests.

Legal Advice

When a couple decides to separate, it is time to consult a lawyer. This is particularly true where the parties own property and/or have children together. Even when no divorce is contemplated, a thorough understanding of their legal rights and responsibilities can be equally important.

A later section of this booklet will suggest how to find an attorney. *See Chapter 13, Working with a Lawyer.* But first, you should read the following material on legal alternatives to determine what kind of services you might want an attorney to provide.

Negotiating Your Marital Settlement Agreement

Although parties can draw up a separation agreement without the assistance of lawyers, it is often risky to do so. Without knowledge of their legal rights, parties can draw up an agreement that can create problems in the future or fail to address all of the issues between them.

If you have any question about your rights, you should consult your own attorney to determine whether your agreement is reasonable and fair. Do not rely on the advice of your spouse's attorney.

A negotiated settlement can preclude a contested divorce hearing, but the agreement will still be examined by the court prior to the granting of a divorce judgment and may become part of the judgment. While a separation (settlement) agreement greatly simplifies the court's involvement, it does not eliminate it.

When only one party is represented by counsel, the party who is not represented by counsel should seek the advice of an attorney prior to finalizing the agreement. There are instances where provisions of an agreement or the entire agreement might be voidable or unenforceable.

CHAPTER THREE **LIMITED DIVORCES**

General Overview

A limited divorce is a legal action in which the court supervises a couple's separation. It is generally designated for individuals who do not yet have grounds for absolute divorce, need financial relief and are unable to settle their differences privately.

The proceedings determine which party is at fault, if either, and may grant support to one spouse based on need. The limited divorce can also resolve questions of child custody, child support, health insurance coverage, and division of personal property. If spousal support is not required and there is no personal property to divide, there is generally no need for a limited divorce. A person can file for custody and child support without filing for a limited divorce.

During a limited divorce, the parties live apart, although in 2006 the Court of Appeals in Maryland ruled that there may be limited instances where the parties can file for divorce despite living under the same roof. If this is your situation, you should consult with an attorney about the likelihood of success in your case. In any case, the parties remain legally married. Although the parties are still married, neither has the right to have sexual relations with the other spouse. In addition, neither spouse may remarry, and sexual relations with another person during a limited divorce constitutes adultery.

The spouses may still inherit property from one another, and any property they own as husband and wife (for example, a house owned as tenants by the entireties) retains its form of ownership.

Grounds for a Limited Divorce

To obtain a limited divorce, a spouse must first prove at least one of four grounds. These grounds include the following:

- cruelty of treatment of the complaining spouse or a minor child of the complaining party
- excessively vicious conduct to the complaining party or a minor child of the complaining party
- desertion
- mutual and voluntary separation

The more frequently used ground is **desertion**. There are two types of desertion, **actual** and **constructive**.

Actual desertion is where one party unjustifiably abandons the other or actually ejects the other spouse from the home. **Constructive desertion** is where one party is forced to leave the home because of the misconduct of the other.

There is no specified amount of time needed to prove desertion or separation in a limited divorce. Any reasonable time period will justify the action.

Also, a spouse may obtain a limited divorce where one spouse engages in **cruelty of treatment** or **excessively vicious conduct** toward the other spouse or a minor child of the party who is filing for a limited divorce. A victimized spouse who leaves the marital home because of abuse also has a legal action for a limited divorce on the grounds of constructive desertion, as well as a justifiable defense to an abusing spouse's claim of desertion.

CHAPTER FOUR ABSOLUTE DIVORCES

General Overview

An absolute divorce dissolves the marriage. Once a judgment of absolute divorce is entered, the parties are free to remarry.

After an absolute divorce, one party can no longer inherit property from the other, and any property owned by them jointly as husband and wife automatically becomes property held in common (each owns one-half).

In addition, the judgment may provide for sole or joint custody of the children, payment of alimony and child support, and the disposition of personal property. The court may also make an equitable distribution of all the parties' assets, including ordering the sale of jointly held property and dividing of the proceeds, changing title to certain jointly owned property, and awarding a portion of one party's pension to the other party. *See Chapter Eight, Division of Property.*

Finally, a spouse may ask the court to order that he or she resume his or her birth name. These requests are almost always granted, and having it done at this point is much less expensive than having to go back to court at a later time to seek a name change.

Grounds for an Absolute Divorce

To obtain an absolute divorce, a spouse must first prove that at least one ground for absolute divorce exists. You may indicate that more than one ground exists. There are eight grounds for absolute divorce in Maryland. Some of the grounds require that you wait one year before you file for divorce. Others do not require any waiting period. The judiciary has a preference for a "no fault" ground of divorce when it can make that determination. The following is a brief description of each ground.

Adultery

Adultery is voluntary sexual intimacy between a married person and a person other than the offender's spouse. It is a fault ground for divorce, and there is no waiting period for getting a divorce. If a party pleads and proves adultery, the divorce will be granted immediately.

To prove adultery, one need not show actual intercourse. Evidence that the offending spouse had the disposition and opportunity for extra-marital intercourse will suffice. Additionally, if one spouse has a child and the other spouse is not the natural parent of that child, this is usually sufficient to sustain a claim of adultery.

An attorney can determine whether your facts meet the legal requirements for proving adultery. Evidence must include the testimony of a corroborating third party. It is not

sufficient for the spouse committing adultery to simply admit the adultery. Traditionally, adultery has been considered to mean sexual intercourse. However, with the advent of same-sex marriage, there is a growing understanding that intercourse may not be the only act that will prove adultery. There is not a definite answer to this question, but an Attorney General Advisory Opinion letter issued in 2015 suggests that adultery is a ground that can be used in same sex divorces, and sexual intercourse will not be required to be proven. This may be judge or magistrate dependent until the Court or the Legislature makes it clear.

Adultery may be a factor in determining the right to alimony. It may also be a factor in awarding custody of the children, but only if the court determines that the adulterous behavior had a detrimental effect on the children.

Desertion

As in the limited divorce, desertion may be actual or constructive. In actual desertion, the deserting spouse leaves the home without cause. In constructive desertion, the person who leaves is justified and is therefore regarded as the deserted spouse.

To establish actual desertion, the spouse seeking the divorce must prove the following:

- The deserting spouse intended to terminate the marriage relation;
- Cohabitation has ended;
- The deserter's leaving was unjustified;
- The parties are beyond any reasonable hope of reconciliation;
- The deserted spouse did not consent to the desertion; and,
- The desertion has continued uninterrupted for 12 months.

A lawyer can best help determine whether these elements are present.

Constructive desertion also requires proof of the above elements. The justification for constructive desertion that arises most frequently closely resembles cruelty. If the cruelty or intolerable conduct by one spouse causes the other spouse to leave the home, the spouse remaining in the home could be adjudged to have constructively deserted the spouse who leaves.

In cases involving constructive desertion, the court will take into account the following factors:

- The nature and duration of the misconduct;
- The length of time the deserting spouse endured the misconduct; and
- What attempts the deserting spouse made to try to save the marriage.

Generally, the court will grant a divorce on the grounds of constructive desertion if remaining in the home would result in the loss of self-respect or put the deserting spouse or the deserting spouse's children in danger of either physical or mental harm.

If you are considering leaving the home, before you leave, make sure you consider the following:

- Does your spouse's conduct warrant your leaving? If not, he or she may be able to sue you for actual desertion. You should consult your lawyer *before* leaving the home. (Of course if your safety is at risk, leave and seek help immediately)
- Will your own conduct prevent you from getting a divorce on grounds involving "fault" – adultery or desertion?

If your spouse has left the home without cause, remember the following:

- Once your spouse has left, you must not have sexual relations with your spouse. A single act of intercourse or a night spent together under the same roof will interrupt the 12-month continuous desertion requirement and will also violate the requirement of no cohabitation.
- You must not consent to your spouse's desertion. If you consent, it is not desertion but rather voluntary separation, a ground for divorce not involving "fault." There is a difference between consenting and giving in to something you cannot avoid; giving in to and accepting the desertion will probably not be considered consent.
- You must not be guilty of any misconduct that would justify the desertion.

Like adultery, desertion is a fault ground for divorce, and therefore may be a factor in the award of alimony and custody. However, this ground requires that you be separate and apart for 12 months prior to filing.

Mutual Consent to Divorce

As of October 1, 2015, spouses who do not have children born of the marriage or adopted by the parties may file for divorce if certain requirements are met. The parties must prepare and give to the court a signed agreement that resolves the issues of alimony and marital property distribution. The parties must both appear for the hearing, and neither party may have asked the court to set aside the agreement. Essentially, the intent of this new ground for divorce is to allow parties who have come to an agreement about all issues and who do not have children together to get a divorce without having to wait the one year before they can file for a divorce.

There are some issues with the implementation of this ground by the courts. Different jurisdictions (Counties) have interpreted this ground to mean that a corroborating witness is no longer required. Other jurisdictions are still requiring that a live witness come to court the day of the hearing, along with both parties. Until it is settled whether a witness is required, it is best have someone at the hearing who can do corroborating testimony (probably about the parties being married, residing in Maryland).

Separation

Since 2011, there is only one separation ground for divorce in Maryland. You must merely live separate and apart with no sexual relations for one year prior to filing for divorce using this ground. This ground for divorce requires that the couple have lived apart in separate homes without sexual intimacy continuously for one year. No agreement to separate is necessary, and neither party needs to prove or claim “fault.” The party seeking the divorce only has to show that there has been no cohabitation between the parties for at least one year.

As a basis for separation, the parties may draft a written separation agreement that includes a statement of their mutual desire to separate, but Maryland law does not require a written separation agreement in order to divorce. Nor is there anything called a legal separation in Maryland. The separation occurs by the above acts.

Cruelty of Treatment

Generally, cruelty is limited to conduct which threatens or inflicts bodily harm. Mental cruelty may also be recognized as a form of vicious cruelty of treatment, but it usually must be coupled with other abuse or misconduct which endangers the life, person or health of the spouse or a minor child of the complaining party or causes reasonable apprehension of bodily harm.

Like the other fault grounds, cruelty of treatment may be a factor in awarding alimony or custody. In addition, there is no waiting period, so a party may file for divorce immediately, and may still be living under the same roof when the person files.

Excessively Vicious Conduct

Excessively vicious conduct is a term used to describe extreme acts of domestic violence. The acts may have been committed against the complaining party or the minor child of the complaining party. This ground usually applies in a case where there has been a pattern of or on-going abuse. However, one incident of violence may be sufficient, if it is severe.

Like the other fault grounds, excessively vicious conduct may be a factor in awarding alimony or custody. In addition, there is no waiting period, so a party may file for divorce immediately, and may still be living under the same roof when the person files.

Conviction of a Crime

A jail sentence of over three years, or an indeterminate sentence imposed on the spouse and imprisonment for 12 months following criminal conviction, is a ground for divorce. The spouse must have served 12 months of the sentence prior to the other spouse filing.

Insanity

Permanent and incurable insanity is a ground for divorce. For insanity to be considered permanently incurable, a person must have been confined in a mental institution, hospital, or other institution for at least three years, and at least two physicians competent in psychiatry must testify that the insanity is permanently incurable.

The above information is meant to be only an introduction to the grounds for divorce provided for by Maryland law. If you are considering a divorce, your lawyer will help you decide which grounds fit your particular situation.

Additional Requirements & Considerations

Residency

As of October 1, 2015 one of the parties to the divorce must be a resident of Maryland for at least six months before filing a suit for divorce, unless the grounds for divorce occurred in Maryland or the divorce is based on insanity. Prior to this new change, the requirement was one year. In the case of insanity, one of the parties must have resided in Maryland for at least two years.

Waiting Period

Except where the ground for divorce is adultery, cruelty of treatment, excessively vicious conduct, or mutual consent to divorce (if no children between the parties) there must be a time lapse of at least 12 months between the commission of the offending act or the separation and the filing of suit for an absolute divorce. Additionally, for the grounds of desertion, cruelty of treatment, and harshness of conduct there must be an allegation that there is no hope of reconciliation between the parties.

Defenses to an Absolute Divorce

In the case of fault divorces, such as adultery, desertion, cruelty or excessively vicious conduct, an offending spouse may allege the defenses of condonation and recrimination.

Condonation: The offending spouse claims that the other spouse forgave their bad conduct.

Recrimination: The offending spouse claims that the other spouse also engaged in behavior rising to the level of a fault ground.

These defenses are not an absolute bar to the divorce, but the court may consider them in determining whether to award the absolute divorce.

In the case of no-fault grounds for absolute divorce, such as separation, a spouse may allege that the two cohabitated or engaged in sexual relations during the separation, or that the two never intended to end the marriage.

Costs and Attorneys fees

The court can order one party to pay the fee for the other party's lawyer and for all costs closely related to bringing or enforcing an action for divorce. Such an award would depend on the financial circumstances of the parties and the justification for bringing the action. The party seeking the award of attorney's fees must ask for it in his or her papers filed with the court.

CHAPTER FIVE
OUT OF STATE DIVORCES

If a person who lives in Maryland wants to take advantage of the divorce laws of another state or country, he or she should consult an attorney in Maryland concerning the legal consequences of such a strategy.

Maryland will recognize as valid out-of-state divorces that meet the requirements of the court granting the divorce judgment. However, this judgment may be open to challenge if the party obtaining the divorce did not establish bona fide residence in the awarding state or the awarding court did not have jurisdiction over both parties or over the children, if custody is determined by the judgment.

A divorce obtained in another country may be a valid termination of the marriage contract, but a party may find it difficult to have the terms enforced in Maryland. A party should consult with an attorney to discuss any issues regarding a divorce from outside the United States.

CHAPTER SIX

CHILD CUSTODY AND VISITATION

General Overview

Under Maryland law, unless a court has ordered otherwise, the parents of a minor child are the child's "joint natural guardians". This means that they are jointly and severally responsible for the child's support, care, welfare, and education.

If the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents. The standard the court applies in determining custody is the **best interest of the child**. Until the court makes a determination, neither parent is presumed to have any right to custody that is superior to the right of the other parent. This means that absent court order, either parent may have and keep the child and is not violating any law. The decision as to who will have custody of the children can be settled informally by agreement of the parties. However, the court need not respect every agreement reached by the parents, and the court may modify an agreement if the court determines that it is in the child's best interest to do so.

The term "custody" includes two different types of rights and responsibilities, "legal" and "physical."

Legal custody (decision-making) carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare.

Physical custody (child access) means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody.

There are a variety of different custody arrangements that parents either arrive at voluntarily or that the court imposes. In some instances, the parties agree to or the court awards one parent **sole or primary custody (primary residential access)**. This includes both legal and physical custody. In those cases, the other parent is awarded visitation or child access rights.

Another possibility is that both parents agree to or are awarded **joint custody**. In this case, one parent may have sole or primary physical custody of the child(ren) and both parents may share joint legal custody, or the parents may share both physical and legal custody of the child(ren).

There is a movement in the country to develop a different vocabulary regarding parental access to and relationships with children. Supporters of updating the language do so because of the impression that being a "non-custodial" parent, and other terms, give a negative impression and do not appropriately describe the relationship between a parent

and his or her child. Thus, new language may begin to be used, such as “child access time,” “decision-making authority,” and the like. There is some view that until the federal government updates its vocabulary surrounding child support, newer more careful language will not be adopted in state courts due to concerns that it will complicate funding for child support initiatives in the states. But you may see some other language being used. In essence, the language is much less important than the specific schedules and decisions regarding who will have the decision-making authority over the children.

The Best Interest of the Child Standard

In making any decisions about the custody of a child, the court must determine what is in the **best interest of the child**. In cases where **sole custody** (primary child access) is requested, the court will consider, at a minimum, the following factors:

- the fitness of the parents;
- the character and reputation of the parties;
- the desire of the natural parents and any agreements between them;
- the potential for maintaining natural family relations;
- the preference of the child, when the child is of sufficient age and capacity to form a rational judgment;
- material opportunities affecting the future life of the child;
- the age, health and sex of the child;
- religious considerations;
- allegations of abuse;
- grounds for divorce that can be shown to have affected the minor child, e.g., adultery, cruelty or desertion;
- the residences of the parents and the opportunity for visitation;
- the length of the separation of the parents; and,
- whether there was prior voluntary abandonment or surrender of custody of the child.

In cases where **joint custody (shared child access)** is requested, the court, in addition to the above factors, must consider the following factors:

- the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare (*this is the most important factor on the list*);
- the willingness of the parents to share custody;
- the fitness of the parents;
- the relationship established between the child and each parent;
- the preference of the child;
- the potential disruption of the child’s social and school life;
- the geographic proximity of the parents’ homes;
- the demands of parental employment;
- the age and number of the children;
- the sincerity of the parent’s request;
- the financial status of the parties;

- the impact on state or federal assistance; and
- the benefit to the parents.

As always, even in the case of joint custody awards, the best interest of the child is still the paramount concern. The court may also consider any other factors it deems appropriate. *For example, joint custody is not advisable in cases where there has been a history of domestic violence.*

Furthermore, both parties should seriously consider the practical realities of a joint legal custody arrangement before consenting to one. In many situations, the parent who was originally the primary caretaker and is now the primary physical custodial parent continues to bear all, or almost all of the child-rearing responsibilities, while the other parent has equal decision making rights.

Moreover, if the parties agree to a joint physical custody arrangement, the agreement should include a specific schedule so that the child and the parents know exactly when the child is with each parent. Many problems can occur when an agreement states, for example, “the children will live with each parent on as equal a basis as is practical,” or “the children will live with the mother four (4) nights a week and the father three (3) nights a week.” Lack of specifics often leads to repeat visits to court to clarify or modify the order or agreement.

In some cases, joint custody arrangements are referred to as “parenting plans” or “access schedules”. The parties should consider all of the factors listed above relating to joint custody before consenting to one of these plans.

Finally, a different formula is used to calculate child support that will significantly reduce the amount of the child support payments owed to the primary caretaker in cases where the child spends 128 or more overnights with the other parent. This is true regardless of whether the label is “joint custody,” a “parenting plan,” or “visitation,” or any other name or description.

Modification of Custody Orders

Because the child’s interests are always a matter of state concern, custody rulings are not final, and may be changed as circumstances change. The ruling may be challenged by a parent, or at the age of 16, by the child.

A party petitioning the court for a change in custody must prove that there is a **“material” change in circumstances** that requires a change in the original custody order. This assessment is very fact specific. A material or substantial change can be, for example, that the parent who has sole or primary physical custody intends to move out of state, or that the child is having serious problems in the custodial parent’s care.

You should consult an attorney before filing a Petition or Complaint to Modify Custody to ensure that all of the circumstances that require a change in custody are sufficiently articulated in the court papers.

Visitation/Child Access Rights

Visitation or child access rights of the parent without custody, or the non-custodial parent, may be set out in the separation agreement or in the court's decree. However, the court has the final say as to what is in the best interest of the child or children.

These rights may be as specific as naming certain days when the non-custodial parent may visit a child and the geographic limits within which such visits may take place. Alternatively, visits can be described as at "reasonable and appropriate times." Sometimes the non-custodial parent discovers, to his or her dismay, that what is "reasonable" may be left solely to the custodial parent's discretion.

Serious concerns must exist for the court to deny visitation rights to a parent. Failure to provide financial support, alone, does not justify refusal of child access.

Custody & Visitation/Child Access in Child Abuse Situations

If the court in a custody or visitation proceeding has "reasonable grounds" to believe that a child has been neglected or abused by one of the parties to the proceeding, it *must* determine whether the abuse or neglect is likely to occur if custody or visitation rights are given to that party. Unless the court finds that there is *no* likelihood of further abuse or neglect by the party, the court must deny custody or *unsupervised* visitation to that party. In such a case, the court may approve a supervised visitation arrangement that "assures the safety, and the psychological, physiological, and emotional well-being of the child." There are supervised visitation centers and other services in most counties in Maryland.

Third Party/Grandparent/Step-Parent Visitation Rights

At any time the court may consider a petition for reasonable visitation by the grandparent, stepparent or other third party of a natural or adopted child. However, there is a presumption that the visitation allowed by a parent is in the best interests of the child. This presumption can only be overcome by a showing of parental unfitness or exceptional circumstances demonstrating the current or future detriment to the child absent such visitation. Only if the third party successfully demonstrates either parental unfitness or exceptional circumstances does the court then look at whether the third party visitation is in the best interest of the child. In Maryland it is very difficult for a third party to obtain custody or visitation over the objection of a parent or the parents.

Third party visitation rights are not dependent on the parents' marital status. A divorce is not a precondition to having the court consider a petition or complaint for visitation.

In 2016, Maryland's highest court decided a case called *Conover v. Conover*. In this case, the Court determined that in a same sex relationship, a non-biological person who can establish *de facto parenthood* status can obtain custody or visitation rights without having to prove unfitness of the parent or exceptional circumstances. This decision arose in the context of a same sex relationship. The party asserting de facto parenthood must prove the following:

1. The biological or adoptive parent consented to, and fostered, the formation and establishment of a parent-like relationship with the child;
2. The de facto parent and the child lived together in the same household;
3. The de facto parent assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; and
4. The de facto parent has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

It remains to be seen whether this may be extended to a grandparent or other third party who can prove de facto parenthood.

Costs and Attorney Fees

The court can order one party to pay the fee for the other party's lawyer and for all costs closely related to bringing or enforcing an action for custody or visitation. Such an award would depend on the financial circumstances of the parties and justification for bringing the action. A request for an award of attorney's fees must be included in the papers filed with the court.

CHAPTER SEVEN CHILD SUPPORT

Both parents have a legal duty to support their child according to their ability to do so. Parties can make agreements with respect to child support, which can be incorporated into a separation agreement. However, the court always retains jurisdiction over child support issues, whether child support is agreed to by the parties or ordered by the court.

The duty to support a child does not terminate when the marriage ends. As such, if the divorce decree or separation agreement does not provide for child support, the custodial parent may bring an action for child support later.

The custodial parent may have a private attorney represent him or her, or may handle the case without a lawyer (*pro se, or as a self-represented party*). Additionally, the parent may obtain the services of the child support agency in their county or in Baltimore City.

Maryland's Child Support Guidelines

In 1990, the Maryland legislature adopted guidelines to assist courts in determining the amount of child support awards. These guidelines were updated effective October, 2010. The guidelines provide a formula for calculating child support based on a proportion of each parent's income.

The child support guidelines take the following into account:

- each parent's gross income;
- the cost of medical insurance and the cost of child care for the children; and,
- any other child support the non-custodial parent is actually paying (to someone else).

The guidelines also take into account the amount of time the child spends with each parent. If the child spends less than 128 overnights with one parent, it is a "sole" or "primary" custody case. If the child spends 128 or more overnights with each parent, a different formula, the "shared" custody formula is used to calculate child support. The shared custody formula results in a reduction in child support owed to the primary custodian.

Child support worksheets and copies of the guidelines are available from the Circuit Court Clerk's office, your local child support agency, your local self-help or pro se courthouse clinic, or at www.dhr.state.md.us/CSOCGuide/App/disclaimer.do. Courts in Maryland will apply the guidelines unless a party can show that to apply the guidelines would be unjust and inappropriate in a particular case. In addition, if the combined adjusted incomes of the two parents is over \$15,000 per month, the court determines the child support amount according to actual needs of the child(ren), rather than the formula described above. These are called "above" or "beyond" guidelines cases.

Termination of Child Support

The obligation to support one's children continues until certain terminating events have occurred. Generally, these include when the child reaches the age of 18 (or graduates from high school even if he or she turns 18 while in high school), becomes self-supporting or gets married, whichever is earlier. In Maryland, there is no legal requirement to pay for college or university tuition or other expenses.

Modification of Child Support

A court can modify child support if there is a **“material” or significant change in circumstances**. Possible justifications for modifying child support payments are a child's serious illness or accident, a parent's illness or disability, or a sizable increase or decrease in a parent's income or assets.

Remarriage by the parent who has physical custody will not terminate payments by the non-custodial parent, unless the non-custodial parent gives up his/her parental rights and/or a stepparent adopts the child(ren). Subsequent remarriage and the added financial burdens of the parent ordered to pay support will generally not terminate the duty to support. However, having additional children may qualify as a significant change in circumstances. A lawyer can help make the arguments to court to include that consideration.

Maryland Child Support Agencies

Every jurisdiction in Maryland has a child support agency that is required to provide the following services:

- establishment of paternity, including blood testing;
- establishment and enforcement of orders for child support and medical insurance; and,
- review every three years to determine whether a modification is justified.

The child support agency charges a one-time fee of \$25 for these services.

Even if the custodial parent has hired a private attorney to obtain child support in a custody or divorce case, it is still advisable to apply for child support agency services. This is because there are a number of collection services that are only available through the child support agency, including:

- interception of state and federal tax refunds;
- a payment registry;
- driver and professional license revocation for failure to pay; and,
- access to databases containing information on the absent parent's location, employer, and financial resources.

If a person is receiving “social services,” now called Temporary Cash Assistance (TCA), the right to pursue child support is assigned to the state and the person is barred from collecting child support from the non-custodial parent while receiving assistance. In these cases, the child support office pursues child support on behalf of the state, which keeps any child support collected.

For the number of the child support office in your jurisdiction, call 1-800-332-6347 (except Baltimore City and Queen Anne's County). For Baltimore City Customer Service call 410-951-8000, and for Queen Anne's County Customer Service call 410-758-4347. For more extensive information, including a child support calculator, go to <http://www.dhr.state.md.us/csea/>.

Health Insurance

The court has the authority to require a parent to obtain health insurance for the child if the parent is eligible for family coverage through the parent’s employment, and if the child can be included on the policy at a reasonable cost. The requirement would be incorporated in the court order.

Also, the court can compel employers and insurers to honor the order to provide health insurance. Employers will not be allowed to remove a child from the policy so long as a court order is in effect, unless alternative coverage has been obtained, the employer has terminated family coverage for all employees, or the parent-employee has left the company and is no longer eligible for insurance. Employers also have the responsibility of notifying the child support agency and both parents of the date of enrollment and/or any reasons why they cannot comply with the order.

Tax Issues

Unlike alimony, child support is not taxable to the recipient. It is also not tax deductible from the income of the paying parent. Generally, the person with primary or sole physical custody retains the right to claim the dependency exemption on his or her federal income taxes. You should consult with an attorney or tax specialist about this issue.

Paternity

The State’s Attorney may request any individual summoned for a paternity lawsuit to submit to a blood or genetic test. If the individual does not submit to a blood or genetic test, the State’s Attorney may apply to the Circuit Court for an order requiring a test. Usually, the state’s attorney is involved when paternity is disputed as a part of a child support action brought by the Office of Child Support Enforcement. A private attorney may also initiate these proceedings.

The courts will assume paternity where a genetic test indicates a 99% or greater statistical probability that a party is the biological father of a child. Also, the courts can enter a judgment of paternity against a father if he fails without “good cause” to show up in court

to contest the action, as long as sufficient evidence is presented to support the finding of paternity. For more information on paternity issues, go to <http://www.peoples-law.org/node/295>.

CHAPTER EIGHT ***DIVISION OF PROPERTY***

Property Rights

Non-Marital property

Any property obtained prior to the marriage remains the property of the party who owned it prior to the marriage and as such is non-marital property as long as it is not gifted or titled to the other spouse. Also, any property received by a spouse by gift or inheritance during the marriage from a third party remains the non-marital property of that spouse unless gifted or titled to the other spouse.

In the event that the marriage is dissolved and one spouse wants to claim particular items as his or her own, the person must have proof that the property in question belongs to him or her alone. A couple may acquire joint ownership in property brought to their marriage by either spouse through appropriate agreements or transfers of title. *See Chapter Two, Marital Agreements.*

Non-marital property is protected from the debts of the other spouse. Each party has the power to dispose of property owned by him or her alone, as if unmarried.

Furthermore, a married person may engage in business, make contracts, bring lawsuits and be sued in his or her own name. Neither spouse is liable for contracts made by the other spouse in his or her name, nor for the debts the other spouse may have acquired prior to marriage.

Marital Property

All property obtained during the course of the marriage is marital property, regardless of who paid for it. The exception to this general rule is property received by one spouse as a gift or inheritance from a third party. As stated above, this property is considered non-marital property. However, property can be determined to be partially non-marital and partially marital, depending on facts (e.g., a non-marital home where extensive upgrades were made during the marriage using monies earned during the marriage). Marital property can include real estate, bank accounts, stock, furniture, pensions and retirement assets, cars and other personal property.

Any interest in real estate which is titled as tenants by the entirety (or owned by husband and wife), regardless of whether it was acquired before the marriage or from a third party, is presumed to be marital property.

Limitations on Jointly Owned Property

Property jointly owned by husband and wife cannot be sold by one without the consent of the other. Nor may the creditors of one spouse make a claim to it. However, a creditor of both parties may move against property jointly owned.

Property Rights Upon the Death of a Spouse

Upon the death of either spouse, the survivor becomes the sole owner of property held jointly by the couple. This is true even if the spouse dies without a will. This is in addition to the property rights discussed below.

A Spouse Who Dies Without a Will

When a spouse dies without a written will, state law governs the division of his or her property. The share of the surviving spouse depends, generally, on whether the deceased spouse has surviving children or parents.

If there are surviving children and any of these children are under the age of 18, the surviving spouse receives one-half of the property of the estate after all debts, funeral expenses and taxes have been paid. If there are surviving children, but none of the children are under the age of 18, the debts, funeral expenses, and taxes are paid and then the surviving spouse receives the first \$15,000 plus one-half of whatever is left. The children share the balance equally.

If there are no surviving children, but there is a surviving parent of the person who died, the debts, funeral expenses and taxes are paid and the surviving spouse then gets \$15,000 plus one-half of whatever is left. The balance passes to the surviving parent or parents.

Finally, if there are no surviving children and no surviving parents, the surviving spouse receives all the estate remaining after debts, funeral expenses and taxes have been paid.

A Spouse Who Dies With a Will

The surviving spouse has a choice. The surviving spouse can take what is left to him or her under the will or can renounce and elect against the will. Electing against the will means that instead of receiving whatever is left to the surviving spouse, if anything, under the will, the surviving spouse will receive one-third of the property that passes through the will.

Division of Property

Agreement of the Parties

The parties may agree on the division of any property held by them without the assistance of the court. *See Chapter Two, Marital Agreements.*

Equitable Distribution by the Court

Absent an agreement, the division of property is governed by the Marital Property Act. Under the act, all marital property is subject to *equitable distribution*. Equitable distribution does not necessarily mean equal distribution.

When the court makes an equitable distribution of the property, the court first determines what property belonging to the couple is marital property. It then determines the value of that property. It is the parties' responsibility to present the evidence from which the court can make these determinations.

Finally, the court determines who is entitled to what share of the valued, marital property, taking into account the following factors:

- The contributions, monetary and non-monetary, of each party to the well-being of the family;
- The value of all of the property interests of each spouse;
- The economic circumstances of each spouse at the time the award is to be made;
- The circumstances and facts which contributed to the estrangement of the parties;
- The duration of the marriage;
- The age and physical and mental condition of the parties;
- How and when specific marital property was acquired, including the effort expended by each party in accumulating the marital property;
- Any award or other provision which the court has made with respect to family use personal property or the family home, and any award of alimony;
- Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award; and,
- The contribution of either party to the acquisition of the property is also considered.

As a part of an order addressing a marital property award, the court can order a transfer of ownership of certain property titled in one spouse's name to the other spouse. Or, the parties may agree and take steps to transfer this property on their own in and as a result of a marital agreement. The court can order a transfer of ownership in retirement accounts, pensions and profit sharing, in real property if the property was the primary residence of the parties, and family use personal property.

For example, if the parties own a residence together, subject to the terms of any lien (mortgage) the court could order one spouse to transfer title to the other spouse. Or, the court could choose to authorize one party to purchase the other party's interest in the real property. But, for example, if a husband owns \$10,000 worth of stock titled in his name and purchased with his salary earned during the marriage, that stock is marital property. The court has no authority (because it does not fit in to one of the categories above) to transfer the stock or any portion of it to the wife. It can, however, take into account the

factors listed above and grant a monetary award to the wife based on the value of the stock.

The court is not required to award 50% of the value of the stock or any set percentage. The amount of the award and the method of its payment are determined after consideration of each of all of the above listed equitable distribution factors.

This area of the law is very complex, often requiring expert valuation of property. If there are property interests, advice from an attorney is essential.

Special Note on Pensions & Retirement Assets

Pensions can also be part of the marital property “pool.” The court has the ability to determine whether the pension should be included in the marital property and if so, what its value is. Evidence must be presented on the pension value.

After the court makes its determination, it can transfer ownership of an interest in a pension, retirement, profit sharing, or deferred compensation plan or both from one spouse to the other, and/or grant a monetary award to provide for an equitable distribution of the pension.

This area of the law is very complex. In particular, the method by which a portion of a pension is paid to another party is extremely difficult and usually only handled by an expert in this area. If there is a pension, advice from an attorney is essential.

Family Use Personal Property

In addition to the concept of marital property, there is also property that is categorized as “family use personal property.” Family use personal property includes the family home, car, furniture, appliances, etc. The court has the authority to award exclusive use and possession of the family home and other family use property to the spouse with custody of the minor child or children. The purpose of such an award is to permit children to continue to live in an environment and community which is familiar to them. Such an award can last for up to three years from the date of the decree.

The court must take into account the following factors in making this award:

- The best interests of any minor child;
- The respective interest of each spouse in continuing to use the family use personal property or occupy or use the family home or any portion of it as a dwelling place;
- The respective interest of each spouse in continuing to use the family home or part of it for the production of income; and
- Any hardship imposed upon the spouse whose interest in the family home or family use personal property is infringed upon by an order issued under this section.

CHAPTER NINE

ALIMONY

Alimony in Marital Settlement Agreements

Parties to a separation, limited divorce or absolute divorce may agree to pay alimony. The parties are free to agree to any amount. This agreement can be incorporated into a divorce decree. *See Chapter Two, Marital Agreements.*

Depending on the language of the agreement, the amount of alimony can be modified by the court or be fixed and unchangeable. In order for a provision like alimony to be fixed and not modifiable by the court, the agreement must specifically state that the provision is not subject to modification by the court. If the agreement does not contain such a statement, the award of alimony by the court will be modifiable by the court should the income or circumstances of either party change significantly. If the parties in a settlement agreement agree to waive alimony, they may not then go to court to try to obtain alimony – the waiver is permanent.

Alimony Decided by a Court

In the absence of an agreement, and by request of one of the parties, the court will determine alimony. The right to alimony is not contingent upon divorce.

During litigation, prior to the divorce, the court may award temporary alimony or alimony pendente lite. To receive temporary alimony, a party must show financial need and the ability of the other party to pay. The court has discretion in determining the amount.

Generally, the alimony award is made at the time of the divorce. If the right to receive alimony is reserved at the time of the divorce, the court may later set the amount. If either party obtains a valid divorce without alimony in another state, a Maryland court may award alimony if the party seeking alimony has been a Maryland resident for at least one year before the divorce was granted.

Whether and in what amount a court will award alimony depends on a variety of factors. These factors include the following:

- The ability of the party seeking alimony to be wholly or partially self-supporting;
- The time deemed necessary by the court for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
- The standard of living of the parties established during the marriage;
- The duration of the marriage;
- The contributions, monetary and non-monetary, of each party to the well-being of the family;
- The facts and circumstances leading to the estrangement of the parties and the dissolution of the marriage; [Fault is not an absolute bar to alimony. It is only one

- factor to be considered. Therefore, the spouse seeking alimony can recover even if he or she is the party at fault if other factors support receipt.]
- The age and physical and mental condition of each party;
 - The ability of the party from whom alimony is sought to meet his or her needs while meeting those of the party seeking alimony;
 - Any agreement between the parties;
 - The financial needs and resources of both parties, including:
 - All income and assets, including non-income producing property;
 - Any marital property award;
 - The nature and amount of the financial obligations of each party; and,
 - The respective rights of the parties to receive retirement benefits; and,
 - Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable award of alimony.

The purpose of alimony is to provide an opportunity for the recipient spouse to become self-supporting. If alimony is awarded, it is usually “rehabilitative alimony,” for a certain period of time to allow a dependent spouse to become self-supporting.

The court may award alimony for an indefinite period of time under two conditions. First, if a dependent spouse cannot become self-supporting due to mental or physical disability. Second, even if a dependent spouse becomes self-supporting there remains an “unconscionable disparity” between the spouses’ standards of living. The court makes a determination of what constitutes an unconscionable disparity.

Tax Consequences of Alimony

When considering alimony, it is important to look at the tax consequences of the payment. Unless agreed to otherwise, alimony is usually taxable to the recipient and deductible from the income of the payor.

Attorneys Fees

Closely related to alimony is the obligation to pay attorney’s fees. Under present law, one party can be ordered to pay money for the other’s lawyer and for all costs closely related to bringing an action for divorce, depending on the financial circumstances of the parties. This includes court costs, and in some cases, even the cost of a private investigator. The request for an award of attorney fees and costs must be included in the papers filed.

Displaced Homemaker Law

A displaced homemaker is defined as an individual who is at least 35 years old; has worked for the individual’s family in the family home; is not gainfully employed; has had or would have difficulty in securing employment; and, has depended on the income of a family member and has lost that income as the result of separation or divorce. Under the law, displaced homemakers are provided the counseling, training, employment placement

assistance, services and health care that displaced homemakers need to continue as productive residents of the State of Maryland. For information on eligibility and programs, call your County or Baltimore City Department of Social Services.

CHAPTER TEN ***ENFORCING ORDERS***

When a former spouse fails to comply with a court order or the terms of a private separation agreement, the other spouse may ask the court for help in gaining compliance. The court may exercise its jurisdiction over the former spouse who has not abided by the order if:

- he or she lives within the state;
- if he or she lives in a state in the United States which has a reciprocal agreement with Maryland; or,
- in the case of enforcing a monetary agreement, he or she owns property within the state, e.g., real estate, bank accounts, a business, or stocks and bonds.

The Court's Contempt and Imprisonment Powers

The Maryland courts generally require strict compliance with a decree or order for child and/or spousal support. If a parent or spouse ordered to pay support does not adhere to the terms of the decree, he or she can be found in **contempt** of court. The court's contempt powers include imprisonment if the nonpaying spouse has the ability to pay the amount and fails to do so.

The State's Attorney can also criminally prosecute intentional failure to pay child support cases. However, in both the contempt and criminal prosecution cases, where a real inability to pay can be shown, jail will probably not result.

Custody and visitation orders can also be enforced through the court's contempt powers. An unjustifiable denial or interference with court-ordered custody or visitation can result in the court ordering make-up time or modification of the existing order to ensure future compliance. The court can also assess attorney's fees and costs against the offending party.

Maryland's Mandatory Earnings Withholding Statute

Child and spousal support orders are automatically subject to Maryland's mandatory earnings withholding statute. The law requires that the payor parent's employer withhold from the payor parent's paycheck a court ordered amount. That amount is forwarded to the child support recipient either directly or through the child support agency.

The law is intended to assist an individual who wishes to pursue support enforcement without an attorney, or with the assistance of the Child Support Enforcement Administration. It places on the courts many responsibilities usually performed by attorneys. Sample forms should be available at the clerk's office in every county and Baltimore City, or at www.mdcourts.gov/family/forms.

If a parent leaves the state to avoid paying child support, and a child support order has been established, that order can be enforced through the Uniform Interstate Family

Support Act (UIFSA). If there is no child support order, child support can be established through UIFSA. UIFSA actions can be handled through the Maryland child support agency in your county.

Maryland has initiated a program for payors of child support, in certain cases, to arrange to reduce arrearages of child support (Child Support Payment Incentive Program). Qualifying obligors who pay on their obligation for twelve months may have their arrearages reduced by 50%, and after 24 uninterrupted months of payment their arrearages may be reduced to 0. Payors interested in this program should contact their local child support enforcement agency.

Special Considerations in Enforcing Monetary Awards

Monetary awards contained in divorce decrees cannot be enforced through Maryland's mandatory earnings withholding statute. In order to enforce this type of order, you must have the monetary award reduced to a judgment. Then you must have the clerk docket your judgment. At that point, you can file a garnishment action against your former spouse. Through garnishment, you can access your spouse's paycheck, bank accounts and other liquid assets. You will likely need an attorney to assist you in these matters.

CHAPTER ELEVEN DOMESTIC VIOLENCE

A husband and wife or unmarried cohabitants have no right to abuse each other by threats or acts of physical violence. If you have been a victim of threats or acts of violence, you should do the following:

- call the police immediately;
- get to a safe place;
- file criminal charges;
- obtain a temporary order for protection; and,
- obtain an order for protection for up to 12 months (with a possibility of extension in certain circumstances).

If you choose to leave the home, you may request the assistance of a police officer while removing personal possessions.

As a part of any order of protection, a court can order the following:

- that the abuser stop the abuse;
- that the abuser stay away from the victim and her family;
- that the abuser vacate and stay away from the family home, the victim's job and a minor's school or child care;
- that the abuser surrender any firearms (this is mandatory in a final protective order);
- that the victim have custody of minor children;
- visitation with third party exchanges;
- emergency family maintenance, e.g., financial support;
- that the victim have use and possession of a jointly owned vehicle; and,
- any other additional relief for the safety of the victim (effective October 1, 2105).

Petitions for protective orders can be filed in the District or Circuit Court in the county where the abuser lives or works. In order to file a petition, the person filing the petition must be one of the following:

- married or have been married to the abuser;
- have cohabited with or formerly cohabited with the abuser;
- have a child in common with the abuser;
- be related by blood, marriage, or adoption to the abuser; or
- have been in a sexual relationship with the abuser within the past year (effective October 1, 2015).

A person may also seek protection for a minor child or vulnerable adult who is abused or threatened with abuse by a household member.

Peace Orders

If you do not meet any of the relationships qualifications above, you may file for protection through a Peace Order in the district court. Peace Orders offer many of the

same protections as protective orders, but can only be ordered for 6 months (with a possibility of extension in certain circumstances). You may not obtain emergency family (financial) maintenance in a Peace Order or use and possession of a jointly owned vehicle.

Interim Protective or Peace Orders

If you need to seek protection during hours when the courts are closed, you may go to the District Court Commissioner's office in your area to seek an interim protective order or interim peace order. This order gives you protection until a hearing on a temporary protective order or temporary protective order can be scheduled within 48 hours of when the courts are next open.

You do not need any attorney to file an interim, temporary or final protective order petition or an interim, temporary or final peace order. The Women's Law Center provides free attorney assistance and safety planning to domestic violence victims at the Baltimore City, Baltimore County and Carroll County Circuit Courts, and the Baltimore County and Carroll County District Courts, while the House of Ruth operates programs in the Montgomery County and Prince George's County courthouses and the Baltimore City District Court. Other jurisdictions also have providers for legal representation. See www.mnadv.org (Maryland Network Against Domestic Violence).

(See *Battered: What Can I Do?*, available from the Maryland Commission for Women, 410-767-7137 or the Women's Law Center of Maryland, Inc. 410-321-8761, or at www.wlcmd.org, and click on publications).

CHAPTER TWELVE COURT PROCEDURES

Filing For Divorce

(Note: the following procedures apply to annulment, limited divorce, and absolute divorce matters.)

To begin a legal action, the attorney for the party seeking a divorce, the **plaintiff**, files a **complaint or petition** with the court. The complaint includes information such as the following:

- when and where the marriage took place;
- the names and ages of the children;
- how long the plaintiff has been a resident of the state and his or her place of residence;
- whether there are any other pending cases (such as domestic violence, child support) between the parties;
- the grounds for divorce; and,
- the specific relief the plaintiff is requesting.

When seeking financial relief such as alimony or child support, a statement of your income and expenses must also be filed.

A copy of the complaint, along with a **summons**, must then be **served** on the other spouse, the **defendant**. The **writ of summons** is issued by the court and sent to you. Service can be accomplished either by certified mail, through the sheriff, or by “private process,” and the plaintiff is responsible for achieving service. For more detailed information on service of process, see Chapter Fourteen, *Handling Your Case Without a Lawyer*.

The defendant will then have a period of time to file an **answer** responding to the complaint. If the defendant is within the state of Maryland, the time period will be 30 days from the date the defendant was properly served with the summons and complaint. If the defendant lives outside of the state, the defendant will have a longer time to respond.

In the answer, the defendant can admit or deny the charges made in the complaint. The defendant can also file a **counter-complaint** for divorce on his or her own grounds, and request relief.

After the defendant files an answer, the next step depends on whether the case is contested. See *The Role of the Court* below for the next steps in either case.

If the defendant does not file an answer, the plaintiff’s attorney may file a request for a **default judgment**, along with a military affidavit (a document that states that the party is not in the military). If the plaintiff served the defendant correctly, the order of default will likely be granted. At that time, the plaintiff can proceed as if the case were uncontested. Please, note, courts have begun to require more than just an affidavit (sworn

statement) that the Defendant is not in the military. You may have to provide proof of non-membership in the military – there are websites that can assist with this.

However, at any time prior to the court entering a final judgment, the defendant can file a motion to vacate the default judgment. The judge will then determine if any good cause exists for doing so. In custody matters, even if the defendant does nothing but then appears on the day of trial, the court is likely to hear from the defendant in its effort to determine what is in the best interests of the child.

The Role of the Court

Uncontested Matters

If both parties want the divorce and there are no contested issues, the plaintiff's case can be heard by an officer of the court called a **Magistrate-Examiner**. The Magistrate will determine from the plaintiff's evidence whether a divorce should be granted. The defendant need not appear, but the defendant must be given notice and an opportunity to appear.

If you are a plaintiff, your attorney will help you prepare to testify by familiarizing you with the questions that will be asked. **Beginning October 1, 2016, you are no longer required to bring a live witness to corroborate your grounds for divorce.**

If the magistrate determines that a divorce should be granted, he or she will prepare recommendations for a judge. A judge will review the Magistrate's recommendations. If there are no objections by either party, a final judgment will usually be entered citing the terms recommended by the Magistrate.

Sometimes, depending on where the case is filed, uncontested cases being heard by Magistrates can be scheduled within a few weeks after an answer is filed or a default judgment is entered. The divorce judgment will usually be issued a few weeks after that.

Contested Matters

If the defendant opposes the action, the case will go to trial before a judge. Before a trial on the merits, however, there can be months of **discovery** (interrogatories, document requests, depositions, etc.) as both sides find out what the other's position will be.

In addition, there will probably be at least one **scheduling** or **settlement conference** before trial to see if some, if not all, of the issues can be resolved without trial. In a contested divorce, both the plaintiff and defendant and their attorneys must appear. The court may also order the parties to attend **mediation** to attempt to resolve, with the assistance of a mediator, issues of custody and visitation.

At **trial**, both parties will present their own testimony and be subject to cross-examination by the opposing side. After hearing the evidence of the parties and their

witnesses, the judge will decide whether a divorce will be granted and under what terms. To get the divorce, the plaintiff must present the more convincing case. Other contested issues, such as custody, visitation, support and property disputes, will also be decided at the trial. It is important to understand that even with the **new law on October 1, 2016, that eliminates the need for a corroborating witness**, if you think the other side will not agree to the grounds for divorce you are relying on, you may want to bring additional evidence to prove that ground.

It can take many months after filing for a contested divorce to get a trial date. The divorce judgment, whether contested or not, is final when the judge signs it, which is not necessarily the day of the trial.

Once the divorce is final, either party can remarry. However, in the case of a contested divorce, one should wait until after the 30-day appeal period has expired.

Pendente Lite Relief

While your divorce case is pending, the court can consider many issues. For example, you may need alimony, use of the family home or car, or child support some time before the final decree is entered. This is especially true in contested cases, which can sometimes take years to sort out.

In these cases, your attorney can file a motion for pendente lite relief. The court can then award temporary relief for the duration of the divorce litigation or until the final divorce is awarded.

CHAPTER THIRTEEN

WORKING WITH A LAWYER

Finding a Lawyer

Once you decide that legal advice is appropriate, your immediate task is choosing a lawyer. If you have a family lawyer, contact that person. Although he or she may not choose to take your case, your family lawyer can recommend another attorney who specializes in domestic relations. If you do not have a family lawyer, you might seek the recommendations of friends, business associates, your clergy or counselor.

If you do not know the name of a lawyer, you should call the Lawyer Referral Service of the Bar Association in your county or Baltimore City. You will be given the name of an attorney who can help with your particular problem. For a small fee, you are entitled to one consultation with a recommended lawyer. After the first interview, the attorney will charge according to his or her regular fees.

Through the Legal Aid Bureau, free legal assistance **may** be available to parties who are income eligible. To determine whether you qualify for such assistance, you should call the Legal Aid Bureau in your county or Baltimore City. The Maryland Volunteer Lawyers Service, Inc., (410-547-6537 or 1-800-510-0050) may also assist you in finding a lawyer to provide free or reduced fee representation if you are financially eligible.

Because a lawsuit is an adversarial or two-sided proceeding, you and your spouse absolutely should not use the same lawyer. The court may not respect an agreement where each party has not been independently represented by a lawyer freely selected.

Basic Considerations in Choosing a Lawyer

Your First Meeting

Before you meet with your attorney, you should make a list including the following information:

- the date and place of birth of you and your spouse;
- the date and place of your marriage and whether a religious or civil ceremony was performed;
- the date and place of any previous marriages of either spouse as well as the date, place and circumstances under which such marriages were terminated;
- the name, date of birth, and place of birth of each child born or adopted during the marriage;
- an estimate of the income, expenses, assets and liabilities of each spouse;
- a brief indication of what you want the attorney to do—e.g., offer advice about alternative courses of action, obtain a limited divorce, or file for an absolute divorce; and,
- if you know what grounds you have for the action, a brief description of the grounds and available evidence.

To properly represent your interests, your lawyer must know the facts – all the facts! Your reluctance to discuss the details of your private life with a stranger is understandable, but remember, an attorney-client relationship is strictly confidential.

Your lawyer must be in a position to evaluate objectively both your bargaining leverage and that of your spouse. Do not conceal any misconduct on your part that your spouse may use against you. If you do, your lawyer will not be prepared to protect you.

It is important to choose a lawyer who you trust as a professional. Your lawyer should be able to answer your questions in terms that you understand. You should also be assured that your lawyer will communicate with you when appropriate and be responsive to your concerns.

Fees & Expenses

At your first meeting with your lawyer, do not hesitate to talk about money. Find out how much you can expect your case to cost. Costs include attorney's fees, the expense of a private detective (if your lawyer thinks an investigator is necessary), the expense of any experts (sometimes necessary if business valuations are necessary), the expense of an attorney appointed to represent the child if appropriate, and court costs. Determine also whether you or your spouse will be liable for payment.

A lawyer may charge a flat sum or an hourly rate. A lawyer cannot charge a contingency fee in a domestic case. A contingency fee is a percentage fee based on an amount you expect to recover or win in your case.

If the lawyer's charge is an hourly rate, costs will increase with the complexity of the case. The attorney will likely charge you for the following time spent:

- meeting or speaking with you, either in person or on the telephone, or via email or text;
- researching the law as it applies to your particular circumstances;
- negotiating with your spouse and his attorney;
- drafting and filing the necessary documents (correspondence, discovery requests, separation agreements, formal complaints);
- case preparation; and,
- appearing in court.

You can expect to be asked for an advance payment (a retainer fee) when the lawyer agrees to take your case. Often, the entire fee is to be paid prior to the courtroom appearance. If your spouse is subsequently ordered to pay your attorney's fees at the time of the trial, your attorney will reimburse you for expenses already incurred.

Problems With Your Lawyer

You have the right to have a lawyer that does the following:

- represents you in a diligent, prompt and competent manner;
- keeps you reasonably informed about the status of your matter and promptly responds to reasonable requests for information;
- charges a reasonable fee;
- keeps your information confidential, except when necessary to adequately represent your interests; and,
- avoids representing clients that are in direct conflict to you, such as your spouse.

If your lawyer is not fulfilling his or her obligations to you, and you have attempted without success to resolve the situation through communications with your attorney, you can call the Attorney Grievance Commission of Maryland at 1-800- 492-1660 or email to agcmd@mdcourts.gov (see also www.mdcourts.gov/attygrievance/index.html).

CHAPTER FOURTEEN

HANDLING YOUR CASE WITHOUT A LAWYER

General Overview

In simple, uncontested cases where the parties do not own property or have pensions, they have the option of filing their case without a lawyer (self-represented, *pro se* or *in proper person*). Even if you plan to file your case without a lawyer, you should seek the advice of an attorney beforehand.

How to manage your case on your own

There are legal forms available free of charge from the Circuit Court Clerk's Office in every jurisdiction and on-line at www.mdcourts.gov/family/forms. These forms can be used to file the following types of uncontested cases without a lawyer: limited and absolute divorces; child support (establishment, enforcement, and modification); custody (establishment, enforcement, and modification); visitation (establishment, enforcement, and modification); and name changes.

In addition, many of the jurisdictions have walk-in projects to assist *pro se*, or self-represented litigants. Through these projects, you can receive help completing the statewide forms, and in some cases, brief legal advice. Some of the *pro se* assistance projects require you to be income eligible, in other words to earn less than a certain amount, before they will assist you.

For telephone assistance with the forms statewide or more information about the walk in programs, call the Legal Forms Helpline at 1-800-818-9888 or the Family Law Hotline at 1-800-845-8550. There are also many legal manuals and other resources in public libraries. Parties can also use the law libraries that are located in the courthouses in each county.

For more detailed information, see Chapter Twelve, *Court Procedures*. That chapter explains what you can expect to happen in your divorce case.

Service of Process

The opposing party in the case must be properly served. Under Maryland law, service can be achieved in one of three manners: sheriff service, personal service (anybody over the age of 18 except the party may serve the other side by handing them a copy of everything filed plus the writ of summons), or certified mail, restricted delivery, return receipt requested (and the return receipt must be returned to someone other than the party to the case). Service ensures that the opposing party has notice and an opportunity to respond to your petition/complaint. If the court determines that a party has not been properly served, the court case will not continue until proper service has been made.

If you are not sure where the other party lives, you have several resources at your disposal. For example, call the other party's family and friends; look in the phone book or on the internet (www.zabasearch.com); call local 411 information or AT&T "00" information; check with the Motor Vehicles Administration in Maryland or in whatever state the opposing party might be living.

If you cannot find the opposing party, there are alternatives. With the permission of the court, you can achieve service by posting or publication. However, these alternatives can be complicated and usually require the assistance of an attorney. The Motion for Alternate Service is available from the Circuit court clerk's office or online at www.mdcourts.gov/family/forms.

Appearing in Court Without a Lawyer

Before going to court, it is essential to prepare. The following is a list of things you should do or think about before your court date:

- Call and confirm the attendance of any witnesses.
- Speak to your witnesses prior to the hearing and prepare them for the questions you will be asking.
- If your case is a divorce case, even if it is uncontested, bring a corroborating witness. This person must know that you have lived in Maryland for six months prior to filing your case; that you were married; the circumstances of your separation; and, that you have lived separate and apart from your spouse for the time you stated in your complaint.
- Have your witnesses come to court for your hearing at the date and time that is scheduled. This is critical!
- Do not ask a witness in court a question to which you do not know the answer.
- If you plan on introducing evidence, make sure you have copies for the opposing party and the court. (The court generally gets the original copy.)
- Observe a hearing before you go to court in your case.
- Prepare what you are going to say before you go to court.
- Get to court early on the day that your hearing is scheduled. You will need to check in with the court's personnel. If you are not there, your case can be dismissed.
- Address the Judge or Magistrate as "Your Honor".

The court personnel and judge are not required to assist you in putting on your case. In other words, you must be prepared to place in evidence anything the court will need to make its decision, be it an uncontested divorce or a case with multiple issues such as divorce, custody and child support, marital property award. Take time to develop what evidence you will need to prove your case (information about income of both parties for child support purposes, etc.).

CONCLUSION

From this general review of the marriage and divorce laws in Maryland, you have undoubtedly realized that protecting your rights is not a do-it-yourself proposition. If you need to clarify your marital rights and responsibilities, initiate a legal action, enforce your rights, or defend yourself in an action brought by your spouse, you should not hesitate to consult a lawyer. You should also call the Family Law Hotline at 1-800-845-8550 to speak with a lawyer who can give you information on domestic issues in Maryland.



Serving over 11,000 individuals each year, the Women's Law Center of Maryland is a leading advocate for the protection and expansion of legal rights for women in Maryland. Founded in 1972 as a 501(c)(3) nonprofit, the WLC remains true to its original mission to promote justice and fairness for women. Each day, the Women's Law Center works to ensure women are protected and empowered by providing free legal representation, advice and information to an underserved population. Its research and advocacy efforts support collective change to increase equality under the law.

For more information, visit our web site at www.wlcmd.org, become our fan on Facebook or follow us on Twitter at www.twitter.com/wlcmd.

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