

# **Florida Divorce Procedures**

## **What to Expect**

Legal matters are complex. Divorces are very fact-specific. If you have questions or concerns about your specific circumstances, it is strongly recommended that you speak with a qualified Florida family law attorney.

This page is intended only to serve as an overview to familiarize readers with understanding common events during a divorce in Florida. Everything discussed on this page may not happen during every divorce, and there may very likely be some things that occur in a divorce that are not included here.

The information on this page is for informational purposes only and does not constitute legal advice.

## **Dissolution of Marriage v. Divorce**

In Florida, divorce is called a "dissolution of marriage." As such, the terms "divorce" and "dissolution of marriage" are used interchangeably throughout these materials.

## **Professionals who May be Involved in a Florida Divorce Case**

### **Florida Family Law Attorney**

Sometimes family situations arise which necessitate seeking advice from a qualified attorney. Choosing an attorney is an important decision. There are many factors that should be considered prior to determining who could best assist in resolving the legal issues. The Florida Bar has published a pamphlet to help individuals in the attorney selection process. Click here to [read more](#).

Florida family law attorneys are counselors and advocates. They are resources that clients can use to address concerns and work to achieve desired outcomes whether

those outcomes are achieved through communication on the client's behalf, alternative dispute resolution processes, or litigation.

Florida family law attorneys are bound by the Florida Rules of Professional Conduct which are developed and regulated by the Florida Bar. You can [click here](#) to read these Rules. Florida attorneys are further encouraged to abide by guidelines on professional conduct to promote professionalism within the legal profession. You can [click here](#) to read these guidelines.

Florida law requires family law attorneys protect their clients' interests to the same extent as a fiduciary or a trustee. Everything a client tells his/her attorney, with limited exceptions, is confidential. A client who promptly provides his/her attorney with requested information and timely advises his/her attorney of personal matters, events, or activities which might affect the outcome of the case will enable his/her attorney to effectively advocate for his/her interests.

### **Mental Health Professional(s)**

Parties involved in family law cases are expected to be under some level of emotional stress and strain, even for the party who decided to initiate the case.

Florida family law attorneys will attempt to reduce and minimize the emotional impact on their clients whenever possible. Nevertheless, attorneys cannot and do not control everything, so the emotional stress and strain on a party will likely fluctuate throughout the divorce. The pressures, at times, may be best addressed by friends, mental health experts, or medical professionals.

Developing a relationship with a qualified mental health professional, such as a counselor or therapist, early on in the case often saves a client time and money because the professional can help re-frame and address emotional issues as they arise thus helping the client prioritize and streamline the legal case.

Other valuable benefits to counseling before, during, or after a divorce may include:

1. Understanding each person's part in the relationship discord so that it will not be repeated in the current or future relationships.
2. Better understanding the child(ren) and to help the child(ren) through the changes in their parents' relationship.
3. Understanding why each person chose his/her spouse.
4. Helping resolve issues between the parties that arise before, during, and after the divorce.

### **Financial Expert(s)**

Depending on the complexity of the assets and liabilities at issue, it may be desirable to utilize the services of a financial expert(s). Each party's attorney can assist him/her in choosing an experienced certified public accountant (C.P.A.), appraiser, private investigator, securities analyst, or banker, who may be of direct assistance for the particular issue(s) to be resolved.

**IT IS IMPORTANT TO RECOGNIZE THAT AN EXPERT, NO MATTER HOW QUALIFIED, MAY NOT SERVE YOU WELL IF HE/SHE IS UNFAMILIAR WITH THE LEGAL ASPECTS AND REQUIREMENTS OF YOUR TYPE OF FAMILY LAW ISSUE(S).**

Also, in some cases, parties may agree to engage a joint neutral expert(s) to help resolve certain issue(s).

It is often a mistake for a client to undertake the services of a financial expert on his/her own without prior discussion with his/her Florida family law attorney. Therefore, it is prudent for the parties to discuss all question(s) and concern(s) regarding engaging financial professional(s) prior to engaging any professionals.

## Before a Florida Divorce Case Begins

### Financial Concerns

Depending on the facts of the case, a party may be advised to take action to preserve financial accounts or other assets during a divorce. This may include changing the names on existing accounts, obtaining some restraint or “hold” on the accounts, opening new accounts, or limiting the use of credit cards. How to address financial concerns in family law cases is fact-specific and it is important that each party discuss his/her concerns with a qualified Florida family law attorney early on and as the concerns arise.

### Discovery/Evidentiary Concerns

It is often prudent to take steps to secure important papers (financial statements, deed of title, receipts, cancelled checks, contracts, tax returns) and place them (or copies of them) in a location that no one else can access.

There is a list of documents that must be produced in almost every divorce case ("mandatory disclosure documents"). A list of mandatory disclosure documents is available by [clicking here](#). More documents may be requested as the case progresses.

To read more about helpful things that a client can do prior to discussing property division with his/her Florida family law attorney, [click here](#).

## Issues Typically Needing Resolution in a Florida Divorce Case

Typically, these six issues are the major issues that must be resolved during a divorce case in Florida:

1. Whether the marriage is irretrievably broken (which is the normal basis for a divorce);

2. Parenting plan issues;
3. Equitable distribution of assets and liabilities;
4. Alimony;
5. Child support; and
6. "Everything else" (such as restoration of a party's name and/or payment of or contribution towards attorney's fees and costs).

## Basis for a Divorce ("No fault divorce") in Florida

Reconciliation — or saving the relationship — is in the interest of the family and society when it can be achieved safely. Both parties should consider the possibility of reconciliation before and during the divorce case. When parties cannot resolve relationship or other family conflicts on their own, they may wish to seek professional help.

Depending on the circumstances, a court may order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party(ies) prior to finding that a marriage is irretrievably broken.

Section 61.052(1), Florida Statutes, requires, with limited exception, that the court find that the marriage is irretrievably broken before it can grant a party's request for a divorce.

## Parenting Plan Issues

Parenting plan issues include, among other things, parental responsibility and timesharing, which were previously called "child custody" and "visitation."

Section 61.13(2)(c)(1), Florida Statutes, reads "It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage

parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child."

Sharing of the rights, responsibilities, and joys of childrearing is not conditioned upon the payment of support by either parent. This means that a parent has a right to time with his/her child(ren) even if he/she is not presently financially supporting the child(ren).

### **Parenting Class**

Section 61.21, Florida Statutes, requires all parents of minor child(ren) involved in a divorce to attend a state-approved course to help them focus on what is in the best interests of their child(ren) before, during, and after resolution of their court case.

Section 61.21, Florida Statutes, requires the petitioner (person who filed the petition) to complete the course within 45 days of filing the petition and the responding party to complete the course within 45 days of, among other things, an order granting timesharing to or support from that party. Normally, each party to a divorce case must file proof of completion of the required class before a final judgment can be entered. A party's failure to attend the class may result in the court sanctioning him/her. To see a list of all state-approved Parent Education and Family Stabilization Course Providers (updated as of November 18, 2013), [click here](#).

A party who has completed the required course typically will send his/her original certificate of completion to his/her attorney who will file it with the court on the client's behalf.

Most judges require course attendance in-person (not on-line) except in extraordinary or unique circumstances. A party should plan on attending the course in-person unless a judge or his/her attorney tells him/her on-line attendance is acceptable.

## **Parental Responsibility**

Parental responsibility is the decision-making authority over a child. Florida law presumes that the parents will share parental responsibility unless the court finds that shared parental responsibility would be detrimental to the child(ren).

Shared parental responsibility means the parties have equal decision making authority over the major decisions in their child(ren)'s live(s) including, but not limited to non-emergency medical care, religion, education, and other decisions unique to the family.

Parental responsibility is separate and distinct from timesharing. Just because a child(ren) may spend more time with one parent does not mean that the parent with majority timesharing has greater decision-making authority than the other parent.

## **Timesharing**

Timesharing is how a child splits (or shares) his/her time with each of his/her parents. A timesharing schedule can be flexible or open (in other words there is no formal schedule and it is as the parents agree on an ongoing basis) or more formal (where each parent is allotted time with a child on pre-determined days and times).

If the parents are unable to agree on a timesharing schedule for their child(ren), the court will determine a schedule based on the best interests of the child(ren). To read the factors Florida courts must consider when determining a child's best interest [click here](#).

## **Parenting Plans**

A parenting plan is an agreement or court order that outlines the parental responsibilities and timesharing schedules of each parent and child and which addresses other concerns unique to the family. Section 61.13(2)(b), Florida Statutes, states "A parenting plan approved by the court must, at a minimum, describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;

a designation of who will be responsible for any and all forms of health care, school-related matters including the address to be used for school-boundary determination and registration, and other activities; and the methods and technologies that the parents will use to communicate with the child."

As each family is unique, each final parenting plan, whether drafted by the parties' agreement or the court, will be unique. To see some sample parenting plans, [click here](#).

### **Psychological Evaluation, Social Investigation, and/or Parenting Plan Evaluations**

If development of a parenting plan is at issue, the court may decide that it needs input from a court appointed expert to determine the child(ren)'s best interests. The court may thus order a psychological evaluation of one or both parties, a social investigation, or a parenting plan evaluation be performed by a qualified court-appointed evaluator(s). If you have questions about any of these evaluations, you should speak with a qualified Florida family law attorney.

## **Equitable Distribution**

Equitable distribution is the division of assets and liabilities.

Florida law requires that, except in certain circumstances, non-marital property be set aside to the party to whom it belongs and the marital property be equitably divided between the parties starting with a presumption of an equal split (50% to each).

### **Marital Property**

Marital property is everything that the spouses have acquired together during their marriage. In most cases that includes:

1. Money that each spouse has which either spouse has earned during the marriage.
2. Anything either spouse purchased with money earned during the marriage.

In Florida, the courts have the power to equitably divide marital property at the time a marriage is dissolved. This means the division of marital property is made without regard for whose name is on the title.

### **Non-Marital Property**

Under Florida law, non-marital property is:

1. Anything a spouse owned before the marriage.
2. Anything a spouse earned or received after the parties' separation or after a petition for dissolution of marriage is filed.
3. Anything that a spouse received at any time as an individual gift or by inheritance.

A party claiming an asset or liability is non-marital has the burden to prove that it is non-marital.

## **Florida Alimony**

Alimony (aka spousal support or maintenance) may be awarded based on the requesting party's need and the other party's ability to pay.

Alimony, if awarded, can be paid in a variety of methods and for varying lengths of time depending on the facts and circumstances of the case.

To read more about Florida alimony, [click here](#).

## **Florida Child Support**

The court may order either or both parents to pay an amount necessary for the support, maintenance, and education of the minor child(ren) born to or adopted by the parents.

Florida has a set of child support guidelines that must be utilized in calculating an amount of child support. With limited exceptions, child support terminates when a child reaches the age eighteen.

Child support in Florida does not include a college education. The parties can agree to provide for their child(ren)'s college education if they so choose but it cannot be court-ordered over a party's objection.

A court cannot order an automatic cost of living increase in child support payments unless the parties agree to it.

Child support can be made directly between parties, through the state disbursement unit (SDU), and through an income withholding order (IWO).

## "Everything Else" (Other issues to be resolved)

### **Restoration of Last Name**

The court may restore a former name of a spouse in the Final Judgment. This relief cannot be granted unless a spouse specifically requests it, which is usually done within the original petition or a counter-petition filed with the Court.

The name to which the requesting spouse is to be restored must be the name he/she had prior to the marriage. Extra steps are typically required if a party desires to establish a new name for him/herself or desires that a child's name be changed.

Persons with questions about a name change should consult with a qualified Florida family law attorney.

### **Attorney's Fees**

A party may request that the court order the other party to contribute to or pay his/her attorney's fees and costs. A court may award attorney's fees and costs based on the parties' disparate economic needs and abilities and/or a number of factors relating to the, history, nature and course of litigation.

Typically, the attorney's fees hearing is held after the trial because of evidentiary reasons. Expert witnesses may be presented at the attorney's fees hearing.

## Process/Procedures for a Florida Divorce

### Initial Pleadings

A dissolution of marriage action begins with the filing of a petition for dissolution of marriage which is normally filed in the circuit court of the county in which the parties last resided as a married couple. If a summons is issued and served, the responding party has twenty days after service to respond to the petition. The responding party may have additional time to respond to the petition if he/she has filed an acceptance of service in lieu of having the petition served on him/her. Once the responding party answers the petition, the case has begun.

### Discovery

Discovery is the process that attorneys or parties to a court case use to obtain facts, documents, and information pertinent to resolving the pending issues. Discovery could be informal (the parties or attorneys simply provide each other with lists of the desired documents or information and the parties voluntarily comply with the request(s)) or formal (the discovery request is filed with the court at which time a deadline for response is imposed by the Florida Family Law Rules of Procedure).

The most frequently used formal discovery tools include:

1. **Mandatory Disclosure:** This is a mandatory list of documents which must be exchanged between the parties in almost every dissolution of marriage case. Usually, these documents must be exchanged within 45 days of the petition being served on the responding party. [Click here](#) for a copy of the mandatory disclosure list.

2. **Requests for Production of Documents:** This is a written request to the opposing party for a specific list of documents to be produced at a specific date and time.

3. **Interrogatories:** Interrogatories are detailed written questions which the receiving party must answer under oath to the best of his/her ability.

4. **Depositions:** A deposition is when the opposing counsel asks the person being deposed questions under oath before a court reporter.

5. **Admissions:** When a party is required to admit or deny specific written statements. If a response is not received by the deadline, the statements are deemed admitted, and the fact issue resolved accordingly;

Parties may use some or all of the above discovery tools a various times throughout the divorce case. Parties may also use other discovery tools not listed here. Which discovery tools are used, in what combination, and how often will depend on the facts and circumstances of the case. If you have questions about what discovery tools may be most effective in your case, you should speak with a qualified Florida family law attorney.

## **Settlement Negotiations**

### *Cooperation during Litigation*

Some people feel that for an attorney to be a "fighter" the attorney must be (1) uncooperative with opposing counsel in such matters as disclosing information, disclosing documents, and arranging for convenient dates for meetings, depositions, etc.; and, (2) never consider or counsel compromise or negotiate with the opposing counsel. This notion is sadly misguided.

An uncooperative attitude only serves to greatly increase attorney's fees and costs because all legal steps must be followed (i.e. filing of discovery requests and motions, appearances in court, etc.) to procure the desired information/documents while Florida law and/or the applicable rules of procedure will likely require the desired information/documents to be disclosed. Thus, an uncooperative attitude serves no useful purpose.

An attorney can be (and often is) an effective zealous advocate for his/her client while cooperating with an opposing counsel's reasonable request and actively engaging in settlement negotiations.

### *Settlement Negotiations between Parties and/or Counsel*

Parties may negotiate with each other directly or have their attorneys negotiate with each other on the parties' behalf.

It is possible, in some cases, to reasonably anticipate what a court is likely to rule on various issues. In some cases, opposing attorneys may not quite see eye-to-eye with one another, but may be able to, after negotiations between the parties or attorneys, help the parties reach a compromise which is within the range of what a court would probably hold. Once the parties reach this point, it may result in a full or partial settlement of the case.

An attorney must discuss a settlement offer in full with his/her client prior to presenting the offer to the other side or accepting the offer on his/her client's behalf.

If the parties reach a full or partial settlement, their settlement will be reduced to a written agreement signed by both parties which memorializes the parties' understanding.

### *Mediation*

If parties are unable to reach an agreement on their own or through their counsel's negotiations, they may go to mediation. A mediator is a neutral third party. The mediator is not a judge and cannot make any binding decisions. Instead, the mediator is a facilitator who assists the parties in negotiating a settlement. The mediator may be through the court mediation and diversion program or a mutually-agreed-upon private mediator.

With very limited exceptions, mediation is confidential. What happens in mediation stays in mediation. If a final agreement is reached at mediation, that

agreement will be reduced to a written agreement signed by both parties which memorializes the parties' understanding.

### **Final Hearing/Trial**

The length of time to finalize a divorce is determined by the number and nature of issues in dispute. A divorce action with no complex issues and mutual agreement between the parties may be finalized in six to eight weeks. A complex case can be litigated for six to twelve months, sometimes longer.

#### *Uncontested Final Hearing*

Once the parties have reached a final agreement, the last step to getting divorced is the uncontested final hearing.

Most jurisdictions in Florida require that at least one party attend an uncontested final hearing. Some jurisdictions permit an uncontested case to be resolved through writing. If an uncontested final hearing is required, one party will usually waive his/her appearance provided his/her attorney approves the final judgment prior to its entry.

Normally, one attorney will prepare a proposed final judgment which the other attorney will review and approve before it is submitted to the judge for the judge's signature.

A court appearance at an uncontested final hearing will typically take only about five minutes. The attending party will be sworn in to give testimony about jurisdiction and the final settlement. Assuming all goes smoothly, the judge will, at the end of the hearing, sign a final judgment of dissolution of marriage which incorporates the parties' final agreement(s). Once the judge signs the final judgment, the parties are divorced.

#### *Contested Final Hearing*

If a final agreement on all issues has not been reached, the case is considered contested and a trial (aka final hearing) is necessary.

How long it takes to get to a trial depends on, among other factors, how much discovery is needed prior to the trial, the time the trial is expected to take, and the congestion of the court's calendar. The time varies from case to case, court to court, time to time, but four to six months is not unusual.

At the trial, which is before a judge without a jury, witnesses may be called and records introduced to substantiate each party's position on whatever issue(s) have not yet been resolved. A trial can be 15 minutes, 30 minutes, 2 hours, a day, a week, or longer. The length of the trial depends on how many and what issue(s) remain to be decided.

After the trial, the judge may render his/her decision immediately or he/she may inform the attorneys of his/her decision by mail or e-mail within a few days, weeks, or months later. How long it takes for the judge to rule will depend on the facts of the case, including how many and what issue(s) must be decided.

It is not unusual for a judge to require one of the attorneys to prepare the final judgment for approval by the other attorney; or both attorneys to prepare proposed final judgments for the court's consideration; or the judge to prepare the order his/herself. It is up to the judge who drafts the final judgment in a contested case.

Once the judge signs the final judgment of dissolution of marriage, the parties are divorced.

## Post-Judgment Considerations

### Appeal

Either party may file an appeal of the contested final judgment if they are not satisfied with it. The notice of appeal must be filed within thirty days of the final judgment or rehearing. An appeal usually takes from six months to one year for a decision. No additional testimony or evidence is presented for an appeal.

If you have concerns about an appeal of your case, it is strongly recommended you promptly seek competent legal advice from a qualified family law attorney.

## **Post-Judgment Compliance**

Often there are various tasks that must be completed after a final judgment has been entered including, but not limited to, preparation and recording of deeds, transfers of money, entry of an income withholding order (IWO), and/or entry of a Qualified Domestic Relations Order (QDRO). These follow-up tasks can sometimes take several weeks to complete. Regardless of what tasks must be completed to comply with the terms of the final judgment, the parties are divorced after the judge signs the final judgment.

## **Estate Planning Concerns**

During times of transition, such as a divorce, it is frequently advisable to prepare or update estate planning documents such as a will, health care surrogates, beneficiary designations, and powers of attorney.

It is prudent for a party to a family law proceeding to alert his/her Florida family law attorney to any estate planning concerns. If the Florida family law attorney is unable to personally address those concerns, the attorney can refer the client to a qualified Florida estate attorney.

## **Additional Concerns**

It is recommended that you consult with a qualified Florida family law attorney if you have questions or concerns about your particular case.