

Ohio law provides three ways for a husband and wife to end or alter their marital relationship: legal separation, divorce and dissolution of marriage. To obtain a dissolution or divorce, you must live in Ohio for at least six months before filing. The law does *not* require persons seeking a legal separation to live in Ohio for any particular length of time before filing. The terms *visitation* and *companionship*, once used to describe parental rights, now describe the rights of non-parents. *Parent time allocation* and *parenting time* now refer to the time parents spend with their children.

What is a legal separation?

This is a civil lawsuit that does not legally end a marriage, but allows the court to issue orders concerning property division, spousal support, allocation of parental rights and responsibilities, child support and parent time allocation for any minor children. The parties remain married, but live separately. When a court grants a legal separation, each party must follow the court's specific orders.

What is a dissolution of marriage?

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

What is a divorce?

Divorce is a civil lawsuit to end a marriage. It arises when the husband and wife cannot resolve their problems, and are asking the court to make the final decision and issue orders concerning property division, spousal support and matters regarding the children.

A divorce is started by one spouse, the *plaintiff*, who files a *complaint* with the clerk of court. In this initial complaint, the plaintiff must claim, and eventually prove, the appropriate statutory grounds. Discuss with your attorney why you believe the grounds justify the filing of the lawsuit.

The clerk of court "serves" upon the other spouse, the *defendant*, a copy of the complaint and a summons. Service is generally made by certified mail. If the defendant's residence is not

known, there is a procedure for service by publishing a legal notice in a newspaper. This publication method of service is effective for obtaining a divorce decree, but generally is *not* effective for obtaining orders about matters such as spousal or child support.

The defendant has 28 days after service of the complaint and summons to file an answer in response to the complaint. The defendant also may file a counterclaim requesting a divorce, by stating the grounds the defendant believes apply. The plaintiff files a reply in response to the counterclaim.

Most cases are eventually settled by agreement between the parties. When this occurs, a proposed agreed decree of divorce is prepared, signed by the parties and submitted to the court for approval. When approved, the agreement is made effective by a court journal entry.

If the parties cannot agree to resolve one or more of their disputed issues, the disputes are presented to the court. The court will review the parties' evidence and make its decision based on Ohio law.

How is property divided after a marriage is ended?

Ohio statutes define marital and separate property. Marital property is property acquired during the marriage, including real estate, personal property or intangible property such as stocks and bonds, bank accounts and retirement plans. Marital property also may include increases in the value of separate property due to either spouse's work effort, labor or contribution of marital money to the increase in the property's value. Separate property includes all real, personal and intangible property from an inheritance; property owned before the marriage; income or appreciation from separate property not resulting from the labor or substantial effort of either party during the marriage; a gift after the marriage date that is proved to be made to only one spouse; and an award for personal injury, except any part of the award that compensates for lost wages occurring during the marriage, or medical bills from the injury paid with marital funds.

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

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

What is spousal support?

Changes in Ohio law have substituted the term *spousal support* for what once was called alimony. Spousal support is awarded to help sustain a spouse after a property division has

been awarded. The court may consider 13 specific factors in making an award. Some of these factors are the ages, earning ability and health of the parties, the length of the marriage, and the standard of living during the marriage. The court also may consider any other relevant factors.

How are parental rights and responsibilities allocated?

Formerly, Ohio courts usually granted custody of the children to one party or the other. Now, the court allocates the parental rights and responsibilities between the parties based on the best interests of the children who are not yet age 18 or have not graduated from high school. Shared parenting is often preferred for allocating these rights and responsibilities. If a plan for the children's care is submitted by one or both parties, the court may adopt the plan and grant shared parenting. However, if the court finds the proposed plan is not in the best interest of the children, it can request amendment of the plan or deny shared parenting altogether. If no plan is submitted, the court cannot award shared parenting and will allocate the parental responsibilities to one of the parents, naming that parent as the child's residential parent and legal custodian.

At either or both of the parties' request, the court must talk with a child about his or her wishes concerning parenting arrangements. Then, the court also may (or, if a parent asks, must) appoint a guardian ad litem for the child. The guardian ad litem, often another attorney, represents the child and the child's best interests. The court takes into consideration, but is not bound by, the child's own wishes and concerns in these matters. Other factors taken into account include the child's mental, emotional and psychological development; the interaction of the child with other significant persons; and the adjustment to the school, community and home. The court also may consider factors such as whether a party can appropriately serve as a custodial parent, whether support has been paid, and whether parenting time has been allowed or any abuse has occurred. If one of the parents intends to leave the state permanently, the court also may consider this as a factor.

Some courts provide mediation services to help the parties resolve parenting issues themselves.

How are parenting time rights determined?

In every case involving children, the court orders a specific schedule for parenting time allocation to the parents. The primary consideration is the best interest of the children. Ohio statutes provide many factors to be considered in making the determination. Each Ohio county must have a standard parenting time order. These standard parenting time orders can be changed to meet individual children's needs. In appropriate cases, the court also may award companionship rights to persons other than the parents, but only if the court finds it is in the best interest of the child.

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

What are temporary orders?

The court may issue temporary orders to be in effect while the case is pending and before the final decision. The person seeking temporary orders files a motion with the court, for instance, for the use of the marital residence, allocation of parental rights, support of minor children, spousal support and assignment of responsibility to pay marital debts (such as the house or rental payments, car payments, insurance, utilities, finance companies and charge accounts). These temporary orders are not necessarily what the court will award as a final order when the case is resolved.

Restraining orders restrict or prohibit one or both of the spouses or others from certain behavior and activity. Restraining orders may be granted prohibiting harassment or abuse of the other spouse or to prohibit one or both spouses from transferring or disposing of marital funds or assets.

All temporary orders and restraining orders may be modified by the court on formal request, if appropriate. Temporary orders, unless modified, usually remain in effect and are enforceable from the time the court approves the order until the final action is granted.

How is child support determined?

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

To determine the appropriate amount of child support, the court calculates each parent's gross income. The gross incomes are combined and the total is used to locate the proper amount on the basic support chart. Any spousal support paid is added to the income of the recipient and deducted from the income of the payor to arrive at gross income. Costs of medical insurance and necessary child care are factored in, and the resulting child support obligation is divided according to the percentages of each party's income to their total combined annual income.

The amount of child support determined by these calculations is presumed appropriate. The court has discretion, in certain circumstances, to deviate from the basic support tables where applying basic support would be inequitable. The court also will issue orders for the children's medical needs, including insurance. Child support must be paid to the designated support enforcement agency, which usually orders the employer to deduct that amount from wages.

What are my responsibilities as a client?

Because you have established a relationship with a lawyer who will present your demands and requests to the court, you have responsibilities to your attorney as a client. Rely on your attorney's experience in this area to guide you through the process, and do what your attorney asks you to do.

Clearly communicate to your attorney your wishes and priorities. Do not force your attorney to guess.

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

What are my responsibilities as a party?

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

Among the diverse areas of family law that we handle at the Law Office of Michael J. Davis, we have made **family law** a priority. We handle all areas of family law, from marriage to annulment. And we insist on being available to you, giving you updates on every development in your case and addressing any questions, issues or concerns you might have.

You can count on aggressive representation of your interests in court, especially where your financial rights and rights concerning access to your children are concerned. We can handle child custody and spousal support issues, pursue appropriate divisions of marital property, and press for visitation guidelines that are fair for everyone involved.

Our reputation for the hard work we put into believing in and persuasively representing your cause is almost three decades in the making. Contact us today if we can help you resolve any family law matter you may have. We have been handling family law matters in Warren County, Ohio and surrounding Counties for more than 20 years.

An uncontested divorce is defined as the legal separation and termination of a marital relationship by judgment of a court. This happens when the court finds, and the parties agree, that certain "grounds" for divorce exist. In other words, neither party "contests" the granting of the divorce, so neither has to accuse the other of any wrongdoing. It's basically a "no-fault" divorce, as it's known in other states. The divorce puts an end to the marital relationship.

A contested divorce can be a maze of dizzying details, with major considerations like physical property and monetary assets, to alimony and child support. In some situations, one spouse is

found to be more financially secure than the other. As a result spousal support becomes a contentious issue. We look out for your interests at all stages of the process.

We handle all complaints and petitions, child custody affidavits, restraining and protective orders, and discoveries of marital assets. The care we take with every detail will assure you that your case is in good hands.

Our family law attorney's past contested divorce clients will tell you this: We approach your specific, unique situation with the utmost sensitivity to your lifestyle, thorough preparation, open lines of communication and sympathy for the strain that's been put on your family budget.

We arm you with as much information as you need to participate in the decision-making process. We make sure you're aware of all of your options and wisely advise you as to the pros and cons of each. Our immediate, overriding goal is to put you in a position to decide what is best for you and your family so that you can remain fully in charge of your own life.

Speak With Michael J. Davis. Our skilled, experienced family law attorney wants to find out more about the contested divorce facing your family. We bring professionalism and compassion to your case while aggressively representing your interests in contested divorce, child custody and marital property areas. At the Law Office of Michael J. Davis, we can handle every aspect of your family law case.

[Contact](#) us today by phone call, fax or e-mail and set up **your initial consultation**. We look forward to meeting you and working with you.

How may a marriage be terminated or ended in Ohio?

In Ohio, the only way a marriage can be terminated is through court actions of divorce, dissolution, annulment, the death of one of the parties or a presumption of death (a common law presumption of death requires an unexplained continuous absence from the home for a full seven years).

What is the difference between "divorce," "dissolution," and "annulment"?

A "divorce" is the legal separation and termination of the marital relationship by the judgment of a court which may be granted only upon a finding by the court that certain "grounds" for divorce exist. A divorce puts an end to the marital relationship.

A "dissolution" of marriage is a form of no fault termination of the marriage relationship where

both parties have agreed upon all of the terms of the termination (such as division of marital property, spousal support, parental rights and responsibilities, child support, etc.) and are requesting that the court terminate the marriage and approve the agreement between the parties. The basic advantages of a dissolution are that it is not adversarial in nature (i.e. the parties have already agreed upon every aspect of termination); there is no plaintiff or defendant; it is not a "divorce" (although it does terminate the marriage like a divorce); and the court does not have to make any of the decisions it would have to make in a contested divorce. Additionally, it is usually concluded faster than a divorce action.

An "annulment" is a decree from a court determining that the marriage is legally invalid because of some defect that existed at the time the marriage was entered into. An annulment decree declares that a marital status never existed, unlike a divorce decree that terminates a marriage. The grounds for an annulment include: an underage marriage; bigamy (i.e. one of the parties has another living spouse); mental incompetence of one of the parties; fraud; duress and non-consummation of the marriage (which may include impotency).

What is necessary in order to obtain a divorce in Ohio?

In Ohio, in order to grant a divorce, the trial court must find:

1. that the plaintiff (the person filing the divorce complaint) has been a resident of the State of Ohio for at least 6 months immediately prior to the filing of the complaint and a resident of the county in which the divorce has been filed for at least 90 days or that the plaintiff for at least 6 months immediately prior to the filing of the complaint and that the defendant spouse has been a resident of the county in which the divorce has been filed for at least 90 days; and
2. that "grounds" (legal reasons) for divorce exist for the granting of the divorce.

What are "grounds" or legal reasons for divorce in Ohio?

Ohio law permits the granting of a divorce only upon a finding by the court that there are statutory grounds to terminate the marriage. There must be testimony by the plaintiff and a corroborating witness (or an admission by the other spouse) as to these specific grounds.

Ohio has both "no-fault" and "fault" grounds for divorce. The "no-fault" grounds include "incompatibility" and "living separate and apart without cohabitation for one year."

There are nine "fault" grounds in Ohio. These "fault" grounds include:

1. another spouse living at the time of marriage (bigamy);
2. willful absence of a party from the marital home for one year;
3. adultery;
4. extreme cruelty (defined as "acts conduct calculated to destroy the peace of mind and happiness of one of the parties to the marriage");
5. fraudulent contract (i.e. a party was induced to enter the marriage as a result of a fraudulent representation that materially affects the essential elements of the marriage;
6. gross neglect of duty (i.e. acts that constitute an omission to perform a legal duty, such as a failure to support the family);
7. habitual drunkenness;
8. imprisonment of the adverse party in a state or federal institution at the time of the filing of the complaint; and
9. an out-of-state divorce.

How is a divorce case started in Ohio?

A divorce case is commenced by the filing of a "complaint." The spouse who files the complaint is called the "plaintiff." The other spouse is called the "defendant." The complaint must allege that the plaintiff has resided in the State of Ohio for the statutorily required period of time (6 months) immediately prior to the filing of the complaint; must indicate the date and place of marriage along with the name and birth dates of any minor children; there must be an allegation of at least one of the statutory grounds for divorce, and; it must contain a demand for the relief being requested from the court.

"Service" of the complaint must be made on the defendant in order to bring him or her within the jurisdiction of the court. There are several methods of service available, even if the defendant spouse lives in a state other than Ohio.

The defendant spouse should then file an "answer" to the complaint, admitting or denying the allegations in the complaint. If the defendant denies the allegations he/she may also raise any defenses he/she has. Additionally, the defendant spouse may also file a "counterclaim" asserting any claim he/she has against the plaintiff spouse for divorce or for a "legal separation."

If the defendant spouse files a counterclaim, the plaintiff must file a "reply," either admitting or denying the allegations contained in the counterclaim and raising any defenses that the plaintiff may have.

What if the defendant spouse cannot be located or evades service of the complaint?

Where the current residence of the defendant is unknown, "constructive" service may be had on him/her by publication. Service by publication permits the court to commence the case and rule on the status of the marriage and the marital property located within the state. Unless the defendant has been personally served or has voluntarily entered an appearance in the case, however, the court cannot rule on property outside the state and cannot make a ruling on spousal support.

What is the defendant is served with the complaint but does not file an answer?

The court rules in Ohio preclude the granting of a default judgment in a divorce case. Instead, where the defendant has been personally served but has failed to file an answer or otherwise appear, the plaintiff must merely present sufficient evidence to establish a prima facie case to allow the court to grant the divorce and rule on the division of property, parental rights and responsibilities regarding the children and any support orders.

What happens after the filing of the complaint and answer/counterclaim?

During the pendency of the divorce case, either party can request temporary orders for child support, spousal support (alimony), parental rights and responsibilities (commonly referred to as temporary custody or visitation rights), and any other temporary order that may be called for in a particular case such as a temporary restraining order restraining one or both spouses from removing the children from the jurisdiction of the court or restraining one or both spouses from harassing, threatening or physically abusing the other.

Additionally, during this time the parties can request that the court order psychological or psychiatric evaluations of the parties and/or the children to aid the court in making determinations with regard to the parental rights and responsibilities concerning the children. Home studies can be requested to help the court in determining the living conditions of the parties and how those conditions may affect the children. Discovery procedures, such as interrogatories and depositions, can be engaged in that would aid the parties in determining what assets are involved in the case, what plans the parties have for the children and any other matters that are relevant to the divorce action. Experts may be retained to appraise property and businesses.

The court will probably hold one or more pre-trials during this time in an attempt to determine whether a mutually agreeable resolution of the case can be had and, if not, what the issues are that will have to be determined at trial. If the case cannot be resolved, the court will set dates for the conclusion of the discovery procedures, for the production of expert reports and evaluations and for the date of the final hearing (trial).

Can the children's interests be protected?

A "guardian ad litem" (GAL) can be appointed by the court at the request of either party or upon the court's own motion to represent the interests of the minor children of the parties. The GAL is usually an attorney familiar with domestic relations law and his/her job is to act in the best interests of the children. The parties will generally be required to pay the fees of the GAL based upon their ability to pay. The GAL will be asked to make recommendations to the court and will have considerable influence when it comes time for the court to make determinations relating to the children.

Is there a right to a jury trial in a divorce case?

No. Ohio does not permit jury trials in divorce cases. If the case goes to trial, the judge will make the final determinations.

What are the major legal issues in a divorce case?

Generally, the major issues in divorce cases are, the issue of the grounds for the divorce itself, parental rights and responsibilities (commonly known as custody, child support, visitation), spousal support (commonly called alimony), and the division of the marital property and debts of the parties.

How does the judge make a final decision?

Both parties will provide the judge with information and documentation regarding all of the issues relevant to the case. The court will have any of the various expert reports that may have been ordered during the time that the case has been pending. The court will hold hearings and a trial where the parties present witnesses, including expert witnesses, testimony and any other evidence that is properly admitted at the time of trial. The judge will consider the recommendations of the guardian ad litem, if one has been appointed. The judge may interview the children if requested or if he/she feels it would be beneficial to do so. The judge is then required to make a decision based on the evidence presented and the law. While the judge has some discretion, he/she must comply with the law.

What if I'm not happy with the final decision of the judge?

A party who is not satisfied with the final decision of the trial judge has a right to appeal the decision to the Court of Appeals. Appeals are relatively expensive (\$10,000.00 - \$15,000.00 is not unusual) and there is no guaranty that an appeal will be successful. Generally, the only matters that can be appealed are claims that the judge has abused his/her discretion or that the judge has misapplied the law in making the final determination. An appeal is not a new trial. It

is a wholly different type of procedure and is strictly a legal proceeding. No witnesses or evidence are presented. An appeal is based solely on the proceedings had in the trial court and whether or not substantial justice was done.

Your marriage is coming to an end. Who gets the antique mirror your mother-in-law gave you last Christmas? Who gets the stocks in GE? The furniture? Car? How do you divvy up the accumulated belongings of years of marriage?

Many people come to an amicable agreement about the division of property, but if there's disagreement about one or more items, there are a number of fair methods of deciding who gets what. One of the most common is bartering, where one spouse takes certain items in exchange for others. For example, the wife may take the car and furniture and the husband may take the truck and tools. Another method is to sell the marital property and divide the proceeds. Mediators or arbitrators may also be used.

Dividing Debts

Often even more difficult than dividing the property in a divorce is deciding who will be responsible for the debt the couple has incurred. In order to do this, you'll need to know how much you owe. Even if you trust your spouse 100%, do yourself a favor and order your joint credit report from each of the three credit reporting agencies. People have been known to run up debt without their spouse's knowledge, especially when they're contemplating leaving the marriage. Overlooking this step could cost you years in debt repayments.

Next, go through the credit reports and identify which debt is shared and which is in your spouse's name only. At this point it's important to stop the debt from growing any larger while you're in the process of getting divorced. The best way to do this is to cancel most of your credit cards, leaving perhaps one to use for emergencies.

Once you've identified your debts and taken steps to ensure they don't increase, it's time to decide who will be responsible for what debt. There are several ways to do this, including:

- If possible, pay off the debts now. If you have savings or assets you can sell, this is the cleanest method. You don't have to worry that your spouse will leave you responsible for his/her portion of the debt, and you can start your new life debt-free.
- Agree to take responsibility for the debts in exchange for receiving more assets from the division of your property.
- Agree to let your spouse take responsibility for the debts in exchange for receiving more assets from the division of property.
- Agree to share responsibility for the debts equally. This leaves you the most vulnerable, because your spouse could stick you with the total debt. Legally, you are responsible if your ex-spouse doesn't pay up, even if s/he signs an agreement taking responsibility for the debt.

Tax Issues in Divorce

People sometimes get caught up in the obvious issues of divorce such as the division of property and debt, who will have custody of the kids, etc., and don't think through the tax implications of divorce, an oversight that can cost you thousands of dollars and more. Tax issues include:

- Who will get the tax exemption for dependents?
- Who will be able to claim Head of Household status?
- Which attorney fees are tax deductible?
- How can you be sure "maintenance" payments will be tax deductible?
- How can you avoid the mistake of having child support be non-deductible?

Retirement Plan Issues in Divorce

If your spouse has retirement savings, you are probably entitled, by law, to half. This money can be used for your own retirement or for a down payment on a house, relocation expenses, or other current expenses. To avoid the 10% penalty on early withdrawal, be sure to follow IRS regulations.

A Word About Dishonest Spouses

Divorce can bring out the worst in some people, and you need to be aware that even the most honest of people may try to cheat when it comes to settling up financially in a divorce, by under-reporting income, asking an employer to delay a large bonus or salary increase, etc. Most vulnerable are those whose spouse owns a closely-held business.

Contact the Law Office of Michael J. Davis

To talk to Michael J. Davis about your legal concerns, please contact us by calling 513-604-8391 or emailing us at davislaw01@gmail.com

Michael J. Davis is located in Mason, Ohio, and serves clients throughout Ohio, including Lebanon, Maineville, Mason, Morrow, Springboro, South Lebanon, West Chester, Warren County, Butler County, Hamilton County, Clermont County and Clinton County, Ohio.

