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ST. LOUIS DIVORCE: THE BASICS

By Leigh Carson

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What are the requirements to get a divorce in Missouri?

First, although everyone calls the case and the judgment that legally end a marriage a “divorce”, it is technically a “dissolution of marriage.” For purposes of this e-book, we will use “divorce.”

In order to get a divorce in Missouri, one of the spouses must have been a resident of the state of Missouri for the ninety (90) days right before the petition for dissolution of marriage (divorce) was filed.

The court must have jurisdiction (power to act) over the non-filing party also, which it usually does because that party currently lives in Missouri or did live in Missouri while legally married to the person who filed for divorce.

You must claim (and prove, if the other side denies it) that your marriage is irretrievably broken and that there is no reasonable likelihood that it can be preserved.

If either party is on active duty in the armed forces of the US or any of her allies, the person either needs to waive the legal protections given to them by virtue of the active duty status (filing the Petition will constitute a waiver); otherwise there are lots of rules and an attorney familiar with the Service members Civil Relief Act should be consulted.

What paperwork do I need to file to start a divorce?

In St. Louis City and St. Louis County, you need to file:

1. A certificate of dissolution of marriage that has been filled out completely. This form is available at the Courthouse (the City Courthouse is located at 10 No. Tucker and the County Courthouse is located at 7900 Carondelet in Clayton).
2. A filing certificate, also available at the courthouses.
3. A Petition for Dissolution of Marriage. If you choose to represent yourself (known as acting pro se) there are forms available on the Plaza level of the St. Louis County Courthouse.
4. Completed Statement of Income & Expenses and of Property, blank forms are available at the Courthouses.
5. The filing fee. This changes sometimes, so you will need to check with the Court to determine the correct amount. You cannot pay the filing fee with a personal check.
6. You will either need an address where the party who is not filing can be served or an entry of appearance and waiver of service signed by the party who is not filing. If you do not know the address where the person may be served, you need to consult an attorney knowledgeable in family law.

How will the property be divided in the divorce?

First, the Judge must decide whether the property is “separate” or “marital.”

All separate property is set aside to the person who owns it. Separate property is property (a) owned prior to the marriage; (b) property acquired after the marriage by just one person by gift or inheritance by just that person; (c) property excluded from marital property by a valid agreement (most likely a pre-nuptial or a post-nuptial agreement) or property exchanged for one of the types of property described in (a) through (c) above.

Marital property is all property – other than separate property as described above – acquired after the date of the marriage and prior to the entry of a judgment of divorce or legal separation, regardless of whether title is held jointly by the spouses or individually by one of the spouses.

The Court is to divide the marital property in such proportions as the Court deems “just” after considering five factors listed in the statute. “Just” does not necessarily mean that each party receives 50% of the property, although it often does.

The factors that the Court is to consider in dividing the marital property are:

1. The economic circumstances of each party at the time of the division. If there is a house and there are children, the Judge must consider the “desirability” of awarding the possession of the family home or the right to live there for a specified period to the person who has custody of the children;

2. The contribution of each person to the acquisition of the marital property, including any contribution as a homemaker;
3. The value of the separate property set aside to each party;
4. The conduct of the people during the marriage [more like misconduct]; and
5. The custodial arrangements for the children.

Will spousal support be awarded in my divorce and if so, how much and for how long?

Spousal support (which is not the same as child support) is called maintenance in Missouri family law matters and alimony by the IRS. One former spouse will be ordered to pay maintenance to the other if the Judge finds that the person seeking maintenance lacks sufficient property, included marital property awarded to him or her to provide for his or her reasonable needs AND is unable to support himself or herself through appropriate employment OR is the custodian of a child whose circumstances make it appropriate for the custodian not to be required to seek employment outside of the home.

Once the Judge determines that an award of maintenance is appropriate, the amount of maintenance and the length of time that maintenance will be paid are determined by the Judge after considering the following factors:

1. The financial resources of the person to receive maintenance, including the marital property awarded to him or her, his or her ability to independently meet his or her needs and the extent to which any child support awarded includes support for that person;
2. The time needed for the person receiving maintenance to get the training and/or education in order to find appropriate employment;
3. The comparative earning capacity of each person;
4. The standard of living during the marriage;
5. The property (separate and marital) awarded to each party and the debts assigned to each party;
6. The length of the marriage;
7. The age and condition (emotional and physical) of the person asking for maintenance;

8. The ability of the person being asked to pay maintenance to meet his or her own needs while meeting the needs of the person seeking maintenance;
9. The conduct of both people during the marriage;
10. The catch-all: any other relevant factors.

The Judge must say in the Judgment whether the maintenance is modifiable (can be changed) or non-modifiable (cannot be changed).

Unless the Judge specifically says that the maintenance is non-modifiable, either party may petition the Court to have the maintenance increased (in reality, that is very rare), decreased or terminated.

The higher courts have held that recipients of maintenance have an affirmative duty to seek appropriate employment.

The higher courts have also held that it is error to limit the length of time that maintenance is to be paid unless substantial evidence was presented to the Judge of an impending and significant change in the financial circumstances of the parties.

If our child lives primarily with me, will I receive child support from the other parent?

In almost every case, yes, the other parent will be ordered to pay you child support (collection is a whole separate issue).

In Missouri, there is a formula by which the “presumed amount” of child support is calculated, based on the gross incomes of the parents, the cost of daycare, the cost of medical insurance (the cost of dental insurance may be included as well) and in some cases, the cost of education and extraordinary expenses. The form used to calculate the presumed amount of child support is the Form 14, and a link to it may be found at www.courts.mo.gov, under the court forms tab, under child support.

Although using the form looks simple and straightforward, that is not necessarily the case. What if one parent sometimes works overtime? What if a parent is self-employed? What if a parent is on disability? What if the babysitter is paid in cash? What if custody is shared equally? What if one parent lives out of town? These are just some of the factors that complicate the calculation of child support generally and the proper use of Form 14 specifically.

Choosing to do the Form 14 yourself will save you attorney’s fees in the short run, but in the long run it may end up costing you money (either because you are paying too much child support or receiving too little child support).

It is important to remember that the Form 14 only results in a presumed amount and that a Judge may decide that a different amount is appropriate in a particular situation – either more or less.

The law requires that the Judge consider “all relevant factors” in determining the proper amount of child support to be paid, including:

1. The financial needs and resources of the child;
2. The financial needs and resources of the parents;

3. The standard of living that the child would have enjoyed if the parents had not divorced;
4. The child's physical and emotional condition, including the child's educational needs;
5. The physical and legal custody arrangements for the child and any travel expenses associated with the time spent by the child with each parent; and
6. The reasonable work-related child care expenses of each child.

When and how does child support end?

Child support ends when the child is emancipated, but the parent paying support must file a case with the Court to officially terminate the child support.

There is a form designed to allow people to do this themselves (pro se) called Affidavit for Termination of Child Support. These forms are available at the courthouse and on-line at www.courts.mo.gov, under the courts forms tab, under Affidavit for Termination of Child Support.

Emancipation occurs (unless the circumstances of the child manifestly dictate otherwise and the Judge so finds), and the child support ends when the child:

1. Dies;
2. Marries;
3. Enters active duty in the military;
4. Becomes self-supporting, so long as the custodial parent has released the child from parent control by express or implied consent; or
5. Has graduated from high school or not enrolled in and attending an institution of vocational or higher learning by October 1st following graduation from high school.

A child who continues to attend high school and progress toward completion of high school is eligible for support until age 21.

The rules about being eligible for child support while enrolled in vocational school or college are complex and must be followed for child support to continue past graduation from high school.

In the middle of the divorce and can't agree on counseling for the kids?

The Judge can help.

If the parents can't agree on that the children need counseling, a request may be made to the Judge to order counseling for the children. The Judge may then order counseling and apportion the costs of that counseling between the parents. In St. Louis County, if the parents can not agree on a counselor, the Judge will name a specific counselor. Just because a request is made, the Judge is not required to order counseling for the children, but may do so. If you are asking the Judge to order counseling for the children while the case is pending, be prepared to show what attempts you have made to get them help, such as through support groups at school for children whose parents are going through a divorce. Don't focus on the other parent's awful behavior, focus on the effect that the legal proceedings have on the children.

5 Reasons you should NOT handle your divorce pro se (without an attorney)

1. You have a child with your spouse who was born before the marriage.
2. Your spouse is a professional or owns his or her own business.
3. Your spouse's retirement cannot be divided with you by court order.
4. You were not really involved in financial affairs during the marriage.
5. You have been abused by your spouse during or prior to your marriage.

My spouse and I both cover ourselves and the other person with health insurance; now that I have filed for divorce, can I drop my coverage for my spouse and children, since they are covered by my spouse?

In a word, no. The law provides that upon the filing of a Petition for Dissolution of Marriage, neither party shall terminate coverage for the other party or any minor children under any existing policy of health, dental or vision insurance so long as the case is pending.

Although the law does not specifically allow it, most likely the judge would entertain (and could grant) a request for permission to drop coverage in the event of double coverage.

Don't drop coverage – even if your spouse agrees – without getting permission from the Judge to do so. If for some reason you can't wait, get your spouse to express consent to you dropping coverage in writing and be specific about the coverage that you may drop and for which person.