Region Legal Service Office,
Naval District Washington
Legal Assistance Department

Preventative Law Handout

MARYLAND: DIVORCE INFORMATION

ELIGIBILITY – RESIDENCY REQUIREMENTS

- Bona Fide Resident
  - For jurisdiction in a divorce action to exist in a Maryland court, at least one of the parties must have been a "bona fide" resident of Maryland when the complaint was filed.
- Service Member Residency Requirement
  - Maryland courts possess subject matter jurisdiction over a divorce action filed by a member of the armed services who had established a domicile in Maryland prior to entering the service, but who has not lived in Maryland since; once a member of the armed forces has established a valid domicile in Maryland, that individual's domicile will continue in Maryland unless the facts of a given case establish an intent to abandon that domicile.
- Cause of Divorce Residing in the State
  - A court has jurisdiction in a divorce proceeding where adultery, the cause of the divorce, was committed in this State, even though both husband and wife were, at the time, nonresidents and the wife became a resident of this State only a few months prior to the filing of the bill.
- Cause of Divorce Outside of the State
  - If the reason for your divorce happened outside of Maryland, you can only apply for a divorce in Maryland if you or your spouse has lived in Maryland for at least six months before you file.

TYPES OF DIVORCE

- Absolute Divorce
  - Absolute divorce legally ends your marriage. It settles all issues, including property. Once finalized, you and your ex-spouse may remarry.
- Limited Divorce
  - In a limited divorce**,** some important issues are settled, but it does not end your marriage. File for limited divorce if you and your spouse need the court to address issues such as child custody or finances before you are eligible for an absolute divorce.

LEGAL GROUNDS FOR ABSOLUTE DIVORCE

- Adultery
- Desertion
- Conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the defendant has:
  - been sentenced to serve at least 3 years or an indeterminate sentence in a penal institution; and
  - served 12 months of the sentence

- 12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce;
- Insanity
- Cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation;
- Excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or
- Mutual consent

LEGAL GROUNDS LIMITED DIVORCE

- Cruelty of treatment of the complaining party or of a minor child of the complaining party;
- Excessively vicious conduct to the complaining party or to a minor child of the complaining party;
- Desertion; or
- Separation, if the parties are living separate and apart without cohabitation.

ELEMENTS OF A DIVORCE

(1) Property Distribution (Equitable Distribution)

- Maryland is an "equitable distribution" state. The spouses retain their separate property, including (1) any gifts and inheritances; (2) property acquired prior to the marriage; and (3) property, which is directly traceable to property, listed in (1) or (2). Marital property, including retirement benefits and military pensions, is then divided on an equitable basis.
- The court may order a division of the property, a sale of the property and a division of the proceeds, or a money award as an adjustment of the values. The court may award the family home to either party. The following factors are considered: (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family; (2) the value of all property interests of each party; (3) the economic circumstances of each party at the time the award is to be made; (4) the circumstances that contributed to the estrangement of the parties; (5) the duration of the marriage; (6) the age of each party; (7) the physical and mental condition of each party; (8) how and when specific marital property or interest in property was acquired, including the effort expended by each party in accumulating the marital property or the interest in property, or both; (9) the contribution by either party to the acquisition of real property held by the parties as tenants by the entirety; (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property. Maryland Code, Family Law, §§ 8-202, 8-203, and 8-205.

(2) Alimony/Maintenance/Spousal Support

- Either spouse may be awarded alimony and based on the following factors: (1) the ability of the party seeking alimony to be wholly or partly self-supporting; (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment; (3) the standard of living that the parties established during their marriage; (4) the duration of the marriage; (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family; (6) the circumstances that contributed to the estrangement of the parties; (7) the age of each party; (8) the physical and mental condition of each party; (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony; (10) any agreement between the parties; (11) the financial needs and financial

resources of each party; and any other factor the court deems just and equitable. Maryland Code, Family Law, § 11-106.

(3) Spouse's Name

- Either spouse's former or birth name may be restored if the purpose is not illegal, fraudulent, or immoral.

(4) Child Custody

- Types of custody:
  i. Legal Custody (Decision Making)
  ii. Physical Custody (Visitation)
- Joint or sole custody may be awarded to either or both parents, based on the best interests of the child. Custody may be denied if the child has been abused by the parent seeking custody. There are no other factors for consideration set out in the statute. The court shall attempt to allow the child to live in the environment and community that are familiar to the child and will generally allow the use and possession of the family home by the person with custody of the child(ren).

(5) Child Support

- Child support may be awarded. There are specific child support guidelines and charts supplied in the statute. There is a presumption that the amount shown for support in the guidelines is correct. However, the amount may be adjusted up or down if it is shown to be inappropriate or unjust under the circumstances of the case. In determining whether the amount would be unjust, the court may consider: (1) the terms of any marital settlement agreement between the parents, including any provisions for payments of marital debts, mortgages, college education expenses, the right to occupy the family home, and any other financial terms; and (2) the presence in the household of either parent of other children that the parent has a duty to support. The family home may be awarded to the parent who has custody of a child to enable the child to continue to live in the environment and community that are familiar to the child.

HOW TO OBTAIN A DIVORCE

Step One: Filing a Complaint, Summons, and Answer

(1) FILE A COMPLAINT

- An action for divorce begins by filing a Complaint, Summons, and Cross Reference Intake Form in the Superior Court's Domestic Relations Branch and paying the required filing fee. The clerk will return date-stamped copies of the Complaint and a signed Summons. Divorces are heard in the Circuit Court.

(2) SERVICE OF PROCESS

- Plaintiff's counsel must arrange for service of the Complaint and Summons on the defendant. If the parties are willing to cooperate to expedite proceedings, the defendant can accept service of the Complaint by regular mail or email, or, if represented by counsel, through his or her counsel, then file an Answer, thereby waiving formal service. If this level of cooperation is not possible, plaintiff must formally serve the defendant

(3) ANSWER

- Once served, defendant must file an Answer or, if defendant fails to answer the Complaint, the plaintiff may proceed to default

Step Two: Pretrial Orders

Soon after the complaint is filed, the Plaintiff's attorney will file Pre-Trial Orders. These orders are formal motions, which attempt to resolve any disputes, which may arise, concerning living arrangements, finances, temporary custody, and visitation. Following the filing of the Pretrial Orders, the judge will instantly clarify the immediate future for both spouses concerning temporary arrangements. It is important to bear in mind that the temporary arrangements are by

no means set in stone, and do not necessarily directly influence the final outcome of the divorce settlement.

Step Three: The Discovery Procedure
This is the process by which the attorney seeks to uncover vital information that the client has yet been unable to access.

Step Four: Negotiations
Once all of the relevant information desired by each side has been acquired, negotiations may begin to resolve the contested issues. It should not be forgotten that an out-of-court settlement might be reached at any point in time throughout the entire legal divorce process.

Step Five: The Trial
Depending upon the practices in a given locality, evidence in a divorce case may be taken in the office of an attorney representing one of the parties, in the office of a commissioner appointed by the court to take the evidence, or in a courtroom before a judge. Controversies over custody, child support and spousal support are usually heard before a judge of a Circuit Court.

RESOURCES
Maryland Code: https://mgaleg.maryland.gov/mgawebsite/Laws/Statutes
Maryland Courts

- Divorce: https://mdcourts.gov/legalhelp/family/divorce
- Child Custody: https://mdcourts.gov/legalhelp/family/childcustody
- Child Support: https://mdcourts.gov/legalhelp/family/childsupport

This handout is for informational purposes only and is not intended to be specific legal advice. If you need legal advice, speak with an attorney at your nearest Legal Assistance Office. Legal Assistance Offices can be found at https://legalassistance.law.af.mil/

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