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## Divorce Questions & Answers *Wisconsin Law*

The dissolution of a marriage involves many legal issues – some of them with financial and emotional implications for many years to come. The following information has been developed to address some of the most frequently asked questions regarding divorce in Wisconsin.

### ***What does no-fault divorce mean?***

In Wisconsin, the only grounds or legal reason required to obtain a divorce is that the marriage is irretrievably broken. There is no reason for the court to find fault with either party. Since the court does not base the judgment of divorce on the misbehavior of either party, Wisconsin is said to have “no-fault divorce.” This should not be confused with a “default” or “uncontested” divorce settlement in which the parties mutually agree on the terms and conditions of the divorce.

### ***What is the difference between a legal separation and a divorce?***

A divorce ends the marriage. In a legal separation, the parties divide all of their property and debts, determine custody, placement and support, but still remain married. The process for a legal separation is much like the process for a divorce, except that fewer time requirements apply to a legal separation. Typically, a legal separation is used by parties who have strong religious feelings prohibiting divorce, or when the parties must remain married in order to continue health insurance coverage for a seriously ill spouse.

### ***How do I start a divorce?***

A party must reside in Wisconsin for six months before filing for a divorce. A divorce is started by filing a Summons and Petition with the court and serving copies of those pleadings on the other party. A divorce judgment cannot be granted in less than four months from the date the papers are served on the other party. However, divorces usually take longer depending on the complexity of the issues, availability of information, and the ability of the parties to negotiate agreements. A couple cannot be divorced until all issues are resolved either by negotiation or a judge’s decision. Parties must wait at least six months after the judgment is granted before marrying.

### ***What happens while a divorce is pending?***

Parties use the time after filing and serving papers to gather information and negotiate the terms of settlement. In many cases, the court issues temporary orders to protect the rights of the parties on issues such as custody and placement of the children, use of the home and other property, paying debts and protecting assets. A party who violates the temporary orders or the statutory restraining orders may be found in contempt by the court.

While a divorce is pending, statutes prohibit (restraining orders) both parties from disposing of any property owned by either party or jointly without mutual consent or prior court order.

Neither party can relocate with the minor children outside of Wisconsin or more than 150 miles from the other parent within the state. The parties are also prohibited from harassing, intimidating, abusing or imposing any restraints on the personal liberty of the other party.

***How is legal custody and physical placement of minor children decided?***

Wisconsin law allows courts to award sole legal custody to either parent, or joint legal custody to both parents. Joint legal custody means that both parents have the right and responsibility to make major life-shaping decisions for the children.

Physical placement refers to where the children live and the allocation of time between the parents (formerly called "visitation"). Even though parents in many cases have joint custody, they do not necessarily have equally shared physical placement. Decisions concerning legal custody and physical placement are based on the children's best interests as determined by a variety of information relevant to the children's upbringing and welfare.

***What is mediation?***

Mediation is a method of dispute resolution in which the parties meet with a neutral trained mediator to facilitate negotiations between the parties. Mediation is required in all cases where there is no agreement on custody and placement. Courts encourage parties to settle as many issues as possible.

***How is child support calculated?***

In Wisconsin, a parent's child support obligation is calculated by applying percentage standards to the gross incomes of the parents and by taking into consideration the extent the parents share placement of the children. The percentage standards vary by the number of children: 1 child – 17%; 2 children – 25%; 3 children – 29%; 4 children – 31% and 5 or more children – 34%. Support orders may be stated as a specific amount or as a percentage of gross income. The court has discretion to deviate from the percentage standards if the court determines that use of the standards is unfair under the particular circumstances of the case, such as special needs of the children, the earning capacity of each parent, prior existing support orders and extraordinary travel expenses for placement. If parents substantially share physical placement of the children, support is adjusted according to a detailed formula.

***What is maintenance?***

Maintenance is court ordered spousal support, or what used to be termed "alimony." The court may determine that either party should receive maintenance based on actual earnings or the earning capacity of the parties, financial needs of each party, the parties' standard of living and the ability of the recipient spouse to become self-supporting. The statutes do not provide any formulas regarding the amount of maintenance or duration of the payments. Because maintenance decisions are left to the court's discretion, maintenance is a frequently litigated issue.

***Who will be responsible for repaying debts and obligations?***

There is no legal rule or practical rule of thumb for assigning responsibility for debts. Courts may base these decisions on the allocation of income between the parties, who retains property purchased by debt, or who incurred the debt.

***Will assets be divided equally?***

All assets owned by the spouses, including pensions and life insurance, will be subject to property division, unless the spouse can prove that an asset was received by inheritance, bequest or gift from a third party. Wisconsin law requires that property be divided equally unless the court finds that a different allocation is appropriate under the circumstances. Usually, the value of the entire estate of the parties is divided equally rather than an equal division of each asset.

***Is there any way to change the judge's decision after the divorce?***

If one party objects to the final outcome, that party may ask the court to reconsider its decision. A party may also appeal to the Court of Appeals. In addition, some issues such as legal custody, physical placement, child support, or maintenance can be reviewed and modified, if the court determines that there has been a substantial change of circumstances. Final orders concerning property division or denial of maintenance cannot be changed.