

SOUTH CAROLINA BAR
Divorce and the Law



GROUNDINGS FOR DIVORCE

In South Carolina there are five grounds for divorce: separation of the spouses for at least one year (the “no-fault divorce”), adultery, physical cruelty, habitual drunkenness (alcohol or narcotic drugs) and desertion. The proof needed to allow the court to grant a divorce on one of these five reasons depends on your circumstances. The lawyer will ask you about your situation and advise you about your case. Testimony from a third party will probably be required.

State law requires that a family court judge make a specific finding that reconciliation is not possible before the judge can grant a divorce.

FAMILY COURTS

In South Carolina, family courts handle all marital litigation. The family courts decide whether to grant a divorce, issues of custody and support (child support and alimony) and equitable division of marital property.

Family courts can grant a request to allow a person to resume use of a maiden or

previous name. Family courts also handle separation actions, which may include custody, visitation, support and division of property.

SEPARATION

When you and your spouse have separated but do not have grounds for divorce, you can apply to the court for the right to live separate and apart. This is done through an action for “separate maintenance and support,” which is a claim for spousal support. If the court considers issues of alimony, child support or child custody at this time, it can also deal with equitable division of marital property. Separation officially begins on the day that the spouses no longer live together.

AGREEMENTS

By working together, spouses are often able to decide issues without court intervention. When such agreements are reached, the parties have settled their case. When a couple has settled their issues, their lawyers will present the agreement to the court and

request that the judge approve the agreement. If the court finds the agreement fair, reasonable and voluntary, then the agreement will become an official court order when signed by the judge.

EQUITABLE DIVISION

If the spouses cannot agree on how to divide their marital property, the family court will make the decision for them. Marital property usually includes all assets or debts acquired during the marriage, with certain exceptions such as inherited property or gifts from outside the marriage. Your lawyer will advise you on what is considered marital property.

It is helpful for each spouse to provide the lawyer with a list of all assets, when and how these assets were acquired, the approximate value of each asset and any debts either spouse may have. Copies of recent tax returns and insurance policies and estimated monthly living expenses are helpful information to take when first meeting with the lawyer.

Which spouse has legal title to an item of marital property

does not necessarily determine to which spouse the family court will award that property. The court will consider the financial contributions and conditions of the parties, their ages, health, education, fault and the length of the marriage.

CUSTODY AND VISITATION

When parents cannot agree on who should have custody of their minor children, then the court must decide. Custody litigation is an expensive procedure and often very emotional. Both parents should look honestly at their new living conditions, available time and other resources and consider carefully which parent can provide a better home life for their children. Because neither parent automatically has a legal right to custody, the court will consider the best interests of the children. The court may order joint or shared custody.

Children who have reached an appropriate level of maturity may express their preference to the judge. However, a child's preference is not controlling. Minor children may be appointed guardians *ad litem* to

represent them in court.

Noncustodial parents can be awarded periods of specified visitation with their children. If circumstances surrounding custody and the child's best interests change substantially, the family court can then order a change of custody or visitation.

SUPPORT

Spousal support is called alimony. Either spouse may be entitled to monetary support from the other spouse. Alimony can be paid in a lump sum or in installments. Where appropriate, the family court can award short term alimony to help a spouse upgrade or acquire job skills that could make him or her self supportive.

Both parents have legal responsibility to provide economically for their children. A noncustodial parent usually will be required to pay a specified amount of child support to the custodial parent. In determining the appropriate amount, the court must use the Child Support Guidelines that provide a calculation of support based on the gross income of the

parents. The court can order that child support payments be made through the clerk of court along with a collection fee. Many employers offer an automatic payroll deduction for child support payments.

PROCEDURE

The process begins formally by the service of a summons and complaint (legal papers setting out what the plaintiff, or party starting the suit, wants). The defendant (party on whom the summons and complaint are served) has 30 days after being served to file a formal written response (answer) and to request any other relief (counterclaim).

The court may order the parties to attend mediation to resolve the issues, especially custody and visitation. The court may also order that parties attend a parenting course that deals with families going through a divorce.

If the parties can settle their case, the court holds

an abbreviated hearing. If the parties cannot settle, then each side can present evidence at a trial to show why the court should grant the relief wanted. After trial the judge decides what relief should be given. A temporary hearing will be held if there are any issues that must be decided before the final hearing. At a temporary hearing, evidence usually is presented by affidavit without witnesses taking the stand. Except in cases involving separation, there is a two month waiting period after service of Summons and Complaint before a divorce action can go to trial and three months before a Decree can be issued.

YOUR LAWYER'S ROLE IN YOUR DIVORCE PROCESS

A lawyer's job is to represent your best interests in legal proceedings and in court. When you are properly advised of your legal rights and obligations, you can better understand what a divorce settlement should involve.

Also, your lawyer can advise you on how the court would likely proceed if an agreement is not reached. By providing both practical and legal advice, your lawyer can help guide you through the divorce process. One lawyer cannot represent both you and your spouse.

While many lawyers have a specific fee for a simple, uncontested divorce, the fee for most divorces depends on the amount of time a lawyer and staff must spend working on the case. This will depend on whether the case is contested and whether there are issues of custody, support and property division. In certain cases, the court can order one spouse to pay all or part of the other spouse's legal fees and related expenses.

Your lawyer should discuss the charges involved in a case and any payment options.

General information:

South Carolina Bar Lawyer Referral Service

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284; if you are in Richland or Lexington Counties, call 799-7100.

Additional Legal Tips Available

To access answers to frequently asked questions on other legal issues, visit the South Carolina Bar's LawLine online at www.scbar.org/public/lawline.asp

Provided as a public service of the



P.O. Box 608 | Columbia, SC 29202
(803) 799-6653 | Fax: (803) 799-4118
www.scbar.org

Copyright ©2006 South Carolina Bar
Printed 2006