

What are the Four Parts of a

DIVORCE?



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Divorce can be a frustrating and frightening experience, especially if you have no idea what to expect. In addition to having fear for the future and mourning the loss of your marriage, you feel anxiety about the divorce process itself. In many cases, your attorney will prepare you for the process of divorce, whether it will occur through mediation and/or litigation. However, it can help you feel more at ease and make it easier to address important issues if you have a general idea what will be determined during your divorce settlement.

Every situation is different and various couples will be faced with issues and decision that might not occur in other families. However, in general, there are four basic issues that must be addressed during a divorce. What are they?

Equitable Distribution



Equitable distribution is the distribution of property and debt obligations the court uses to divide marital assets and liabilities during a divorce. Equitable does not always mean equal; it means that marital assets and liabilities are to be divided fairly. What is considered fair varies depending on the circumstances. When dividing marital assets and liabilities, the court considers a number of facts that may call for an unequal distribution. Some of those

factors include the contribution to the marriage by each spouse, including contributions to the care and education of the children and services as a homemaker; the economic circumstances of the parties; the length of the marriage; any interruption of personal careers or educational opportunities of either party; the desirability of retaining any asset, including an interest in a business or professional practice; the intentional dissipation, waste or depletion of marital assets; as well as any other factors necessary to do equity and justice between the parties.

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Alimony

Alimony is a payment from one spouse to another during and following a divorce. Not all spouses are entitled to alimony and solely, or even just because, a spouse is a woman does not necessarily entitle that spouse to alimony. Alimony is intend to provide financial support for a spouse, regardless of gender, whose earning capability or financial wealth is substantially inferior to the other spouse.

As of today, there are several forms of alimony in Florida. There is temporary alimony that is paid while the divorce is pending, durational alimony, lump sum alimony, bridge the gap alimony, rehabilitative alimony and permanent periodic alimony. Each form of alimony is designed to serve a particular purpose specific to the divorcing couple.



In awarding alimony, the judge will consider a laundry list of factors when determining the form, amount and duration of alimony. The judge will listen to evidence concerning

- the financial resources of the spouse seeking maintenance, including separate property and any award of marital property
- all sources of income, including investment income, available to either spouse
- each spouse's earning capacity, educational history, vocational skills, and employability
- any time and expense required by the spouse seeking maintenance to obtain education and training for appropriate employment
- the marital standard of living
- the length of the marriage
- each spouse's age and physical and emotional condition
- each spouse's contribution to the marriage, including homemaking, child care, education, and helping the other spouse build a career
- any tax consequences of the alimony award, and
- the responsibilities each spouse will have for any minor children they have in common.

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Children's Issues



Parents are often concerned how divorce may affect their children. While divorce is almost always stressful for children, most children that are surrounded by loving and supportive parents are surprisingly resilient.

In Florida cases that involve sharing time with children, the court will always consider what is in the best interests of the children. Florida law has changed dramatically over the years and terms such as “custody”, “visitation” and “primary” or “secondary residential parent” can no longer be found in our statutes. Today, the court considers parents timesharing with the minor children and decision-making authority. To that end, every family going through a divorce in Florida with minor children must agree upon a parenting plan and if unable to do so, the Court will make the necessary decisions and enter a court order adopting a parenting plan that the parents must comply with. A well drafted and detailed parenting plan minimizes disputes between parents and gives children structure and predictability.

In addition to timesharing, child support must be established and it is determined entirely by statutory guidelines that take into consideration each parent's income, the cost of healthcare and any necessary daycare as well as the timesharing arrangement. Parents are often surprised to learn that child support is considered the right of the child and not the right of the parents. As such, parents are not free to decide what the child support payment will be if the amount they choose falls below the statutory guidelines.

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Fees

Attorney's fees and costs for divorce, paternity, child custody and support, and enforcement or modification proceedings vary widely. The more complex and the more contested the issues, the more the family law proceedings will cost. In some cases, the court may, after considering the financial resources of both parties, order a party to pay a reasonable amount of attorney's fees and costs to the other party. The reason a court is authorized to award attorney's fees and costs is to ensure that both parties have equal access to competent attorneys to represent them in family law proceedings.



When deciding whether to award attorney's fees, the court considers a number of issues including the financial resources of each party, the respective needs and ability to pay as well as whether the award of fees and costs is reasonable. In certain cases, the court may decline to award attorney's fees and costs if the court finds that one or both parties are unnecessarily litigious.

While there is no way to predict the total costs associated with a particular family law proceeding, your attorney can provide you an estimate based upon the information you provide. It's important to always remember that estimates will change as the information and circumstances change.

If you have a family or marital law issue for which you need a lawyer and have questions about attorney's fees and costs, contact the law offices of Schuttler, Greenberg & Mullins. For more information or to schedule a consultation, contact Holly or Stacey at 561.393.0565 or by email at holly@schuttlergreenberg.com or stacey@schuttlergreenberg.com.

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