

DANA H. HANKINS, P.A.
2510 E. JACKSON STREET
ORLANDO, FLORIDA 32803
www.danahankins.com
HankinsLaw@att.net
(407) 896-9650

YOUR DISSOLUTION OF MARRIAGE

We know that a dissolution of marriage (divorce) is an especially upsetting event, regardless of the circumstances. This document discusses many areas that concern our clients. We hope it will help you through this difficult time.

1. **GROUND**S: Florida has adopted the concept of "no-fault" divorce, making it unnecessary to prove grounds such as cruelty and adultery in order to obtain a divorce. Instead, a party must show the Court that the marriage is "irretrievably broken" because of discord or conflicts of personality that destroy the legitimate ends of the marriage relationship and prevent any reasonable expectation of reconciliation. BE ADVISED THAT FAULT MAY BE CONSIDERED IN CASES WHERE ALIMONY IS REQUESTED AND ADULTERY OF EITHER SPOUSE MAY BE MENTIONED IN COURT WHEN MONEY AWARDS ARE BEING CONSIDERED.

2. **LEGAL SEPARATION**: Although in some isolated instances a form of legal separation is possible, it is not generally used. Ask me if you want to discuss this.

3. **DISSOLUTION (DIVORCE) PROCEDURE**: The first step is the preparation and filing of a Petition and a Financial Affidavit. If your spouse has already filed, then your first step is filing an Answer to the Petition and a Financial Affidavit.

4. ACTUAL SEPARATION: There is no legal requirement for actual separation before filing the Petition.

5. WHO SHOULD FILE: There is no legal significance as to whether the husband or the wife files the Petition, although there may be procedural and tactical advantages.

6. WAITING PERIOD: No Florida divorce can be granted until at least 21 days have passed following the date of filing the Petition.

7. SERVICE OF PROCESS: After the Petition is filed, the other spouse must receive proper notification. This is usually accomplished by asking a qualified person to hand-deliver a copy of the Petition and other pleadings to that spouse.

8. PARENTAL RESPONSIBILITY AND PARENTING PLAN: In Florida, legally fit parents are usually awarded “shared parental responsibilities.” "Shared parental responsibility" means that both parents retain full parental rights and responsibilities with respect to their child(ren) and requires both parents to confer so that major decisions affecting the welfare of the child(ren) will be determined jointly. In ordering shared parental responsibility, the Court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare, such as education or religion, or may divide those aspects between the parties based on the best interests of the child(ren).

Often, bitter legal battles develop because the parties involved cannot agree how best to share time with their child(ren). Angry parents often focus on their own hostility toward each other rather than the best interests of the child(ren). Ultimately, if an agreement called a Parenting Plan is not reached, the matters of parental responsibilities are resolved by a Judge.

The standard used by the Court is "what is in the best interest of the child." The Court has considerable discretion in deciding parental time-sharing. The Judge's decision is based on testimony and other evidence provided to him either during the course of the litigation or at the time of the final hearing.

Determination of the best interests of the child(ren) must be made by evaluating all of the factors affecting the welfare and interests of the particular minor child(ren) and the circumstances of that family, pursuant to Florida Statute 61.13, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(I) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Knowing this, be advised that the following list of activities should be avoided. Participation may greatly hinder your chances of being awarded the time you seek with your child(ren):

1. Criminal offenses;
2. Drug use/abuse;
3. Alcohol use/abuse:

- a. Public intoxication;
 - b. Frequenting nightclubs/bars/lounges;
 - c. D.U.I. arrest;
4. Late-night activities/"partying";
5. Morals:
 - a. Immoral/inappropriate conduct;
 - b. Cohabitation/romantic involvement with opposite or same sex;
6. Abuse/neglect of children:
 - a. Insufficient/no supervision;
 - b. Failure to provide for physical and mental health; and
 - c. Unhealthy home environment.

Information a Court considers may include the availability of a parent; emotional ties of the child to a parent and others; religious preferences of the parents; the desirability of cultural continuity; the wishes of the child; the opinions of expert witnesses such as Therapists, Psychologists, Psychiatrists, Social Workers and Guardians Ad Litem; alternate lifestyles; and methods of child discipline.

During your divorce, you should be on your best behavior. It is not uncommon for angry spouses to engage the services of a private investigator to monitor activities. You should be aware that the results of an investigation may be admitted as evidence against you. Also, keep in mind that public information available on social and business networking sites such as FaceBook, MySpace, Twitter, Foursquare, Tumblr, Instagram, YouTube, LinkedIn and the like may be viewed by the opposing party and ultimately the Judge deciding your case.

You should try to keep personal and verbal contact with uninvolved parties (such as mutual friends, neighbors, co-workers, and your spouse's relatives) to a minimum. These people are often subpoenaed to appear and testify in Court at a hearing and may present damaging evidence concerning your morals, character, and ability to provide for your child(ren). Their testimony could affect your chances of being granted the time you seek with your children. Don't discuss details of your case or disparage your spouse, especially in the presence of your child(ren).

9. CHILD SUPPORT: The Legislature has established Child Support Guidelines based on the after-tax income of both parents. These guidelines are mandatory except in limited cases.

10. SPOUSAL SUPPORT: Alimony is also awarded according to the Judge's discretion. There are several types of alimony. The following factors will be considered per the requirements of Florida Statute 61.08:

- (a) The standard of living established during the marriage;
- (b) The duration (length) of the marriage;
- (c) The age and the physical and emotional condition of both parties;
- (d) The financial resources of each party, and the non-marital and marital assets and liabilities distributed to each;
- (e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party;

(g) The responsibilities each party will have with regard to any minor children they have in common.

(h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.

(i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.

(j) Any other factor necessary to do equity and justice between the parties.

11. PROPERTY DIVISION: There is no fixed way to determine how you or the Court should divide marital property. A beginning point is a 50/50 division of marital assets. Liabilities as well as assets must be considered. Other factors include the nature of the property (e.g. whether it can be easily divided, whether it produces income); the duration of the marriage; and the economic circumstances of each spouse. In some cases, gross misconduct by a spouse (such as exorbitant spending) can be considered. Non-marital assets are not included in the distribution. If you and your spouse can agree, if your agreement is reasonable, and full disclosure has been made by both parties, your agreement likely will be approved by the Court. If you cannot agree, the Court will divide the property.

12. "UNCONTESTED DIVORCE": Your divorce will be contested unless you and your spouse agree that a divorce should be awarded and agree to all aspects of parental responsibilities, time-sharing, child support, alimony, property distribution, payment of

liabilities, and attorney's fees and court costs. If your spouse disputes any of these matters, you do not have an uncontested divorce.

13. COURT COSTS: Court costs are approximately \$500.00 if the case is totally uncontested. If there are depositions and other "discovery," the costs increase. You must pay for these items as the litigation proceeds.

14. OUR FEES: The exact fee will vary with the services you require. Our basic uncontested divorce services usually include our initial conference; the preparation and filing of the Petition, Financial Affidavit, and other initial pleadings (or the review of the Petition and pleadings filed by your spouse); arranging for service of process to your spouse; obtaining and analyzing information from your spouse and you concerning your assets, liabilities, income and expenses and making recommendations concerning property divisions, child support and alimony; routine settlement negotiations with your spouse's attorney; preparation or review of a Marital Settlement Agreement; preparation or review of the Final Judgment of Dissolution of Marriage, Income Withholding Order and other closing documents; and attending a final court hearing. Fees are also charged for office conferences, telephone calls, and other services. Certified Paralegal services are provided at the rate of \$75.00 per hour.

BE ADVISED THAT YOU ARE MY CLIENT AND I WILL LOOK TO YOU FOR PAYMENT. If you are the wife and the court orders your husband to pay a certain amount toward your fees, you will be responsible for the remainder. Read your Fee Agreement carefully and be prepared to meet its terms. There will be no exceptions to the contract.

15. ONE LAWYER FOR BOTH OF YOU: It is not ethical for a lawyer to represent competing interests. In those isolated instances where you and your spouse have agreed on everything, it may be possible for us to do most of the legal work. To make this determination, one spouse must come to the office and give us the chance for eye-to-eye contact and discussion. Even if it seems that you will agree, we follow the ethical requirement of representing only one spouse.

16. RECONCILIATION: Sometimes divorce seems like the only solution. Often it is not. After a divorce action is commenced, you may decide to change your mind and try to work things out. Our policy is to encourage efforts towards reconciliation. If you decide to drop the divorce action you will owe only for the retainer or for those services actually performed up to that point in time.

17. CHANGE OF WIFE'S NAME: A wife's former name may be returned to her as part of the final judgment at no additional charge. If you want this service, you must let us know before we prepare the Petition.

18. FINAL DISSOLUTION OF MARRIAGE: If there is no appeal, your dissolution (divorce) will be final the day it is granted in court or on the day the Judge signed the final decree if that date is later.

19. REHEARING AND APPEAL: If you wish to contest the final trial outcome, you may request a rehearing on certain grounds if it is filed within ten days after final judgment. You may also wish to appeal to a higher court, and in that event, notice of appeal must be filed within thirty days after final judgment. You may discuss appeal with any lawyer of your choice since our representation technically ends upon entry of final judgment.

20. REMARRIAGE: You may remarry anyone of your choice after the divorce final judgment is signed. However, we recommend you wait at least one year.

21. DATING: DON'T. You're married. We know this is the twenty-first century, however, there are valid reasons not to date until your divorce is final. Make your own decision, but be prepared to face the problems that may arise. Be truthful with us when we ask you about this.

22. CONFIDENTIALITY: We must have all facts to represent you properly. Anything you tell anyone in this office is strictly confidential and will not be disclosed without your permission (unless you advise that you are going to commit a crime or you advise us that child or elder abuse has occurred).

23. KEEPING YOU INFORMED: We will make every effort to keep you informed. You will receive copies of all pleadings and correspondence prepared or received by us in connection with your case.

24. OUR PROFESSIONAL SERVICES: In performing legal work for you, we provide an experienced attorney and competent staff support. Your legal problems are given our continuing personal attention in an effort to obtain for you the best results possible in the most reasonable time and at a reasonable cost. We are not trained to provide counseling services but can recommend persons to help you if you feel the need.

25. YOUR RESPONSIBILITIES: We expect you to be cooperative and truthful. If you are not, we will not continue to represent you. We also expect you to handle your financial commitments to our office in a prompt and business-like manner. Please notify us of any change of address or telephone number or if you learn anything that may affect your case.

26. ADVICE FROM OTHERS: Your well-meaning friends and associates may offer you advice about your case. Frequently such advice is not accurate and you should not follow it. The facts surrounding your marriage, divorce, children and property are unique and they differ from every other case. Remember, you pay me well to represent you - shouldn't you listen?

27. NEW WILLS: The Florida Probate Code invalidates certain provisions of Wills which were made prior to a divorce. Following the divorce you will probably need a new Will. If you wish to pursue this, let me know. You may also need to revisit life insurance benefits.

28. THANK YOU: We appreciate the opportunity to be of service to you at this particularly difficult time. Thank you for your trust and confidence.