

IOWA DISSOLUTION OF MARRIAGE LAW

Prepared for client use by: Elizabeth A. Rosenbaum
600 4th Street, #1006, Sioux City, IA 51101

DEFINITION: "Dissolution of Marriage" is a termination of the marriage relationship and means the same as "divorce". Iowa law also recognizes separate maintenance which allows a spouse to obtain a legal separation but still remain married. All provisions of the Iowa dissolution of marriage laws apply to separate maintenance except that the spouses remain married to each other and cannot marry someone else.

BASIS FOR DISSOLUTION: A dissolution of marriage will be granted when "there has been a breakdown in the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved."

LEGAL PROCEDURES: A dissolution of marriage is started by filing a petition with the clerk of court. This petition is served on the other spouse either by the sheriff or by the other spouse signing a written acknowledgment of service. There is a ninety day waiting period before a dissolution decree can be entered. Parties often times negotiate a settlement agreement which is the basis for a decree of divorce. If the spouses cannot negotiate a settlement, the court will decide the terms of the divorce in a trial at which testimony and evidence is presented. You should ask your lawyer about the legal procedures.

WAITING PERIOD AND CONCILIATION: You must wait 90 days before a final decree can be granted. This waiting period can be removed by the court in unusual circumstances. During this waiting period, either spouse can ask for a marriage conciliation and settlement can be negotiated. You should talk to your lawyer about conciliation and settlement.

DISCOVERY: The facts of your case will determine the results of your dissolution. Discovery is both an informal and formal process of determining the facts of your case. You are the lawyer's first source of discovery: help your lawyer organize your case facts. Your spouse and other persons can be ordered to answer written questions, give oral statements under oath or produce records and documents. You should discuss with your lawyer how much formal discovery is needed and what formal discovery might cost in your case.

TEMPORARY ORDERS: While the dissolution action is going on, the court may, upon notice to the other spouse and after a hearing, provide for temporary custody and visitation rights and for the support of any minor children. A copy of current child support guidelines is available from our office. The court may also order temporary support for either of the spouses and provide for attorney fees for either of the spouses.

FINAL DECREE: At the time of the final hearing the court will settle the parties' property rights, (including division of

debts), spousal support rights and obligations; and child custody and visitation rights for non-custodial parents.

MODIFICATION: After the divorce, a court may change a decree only if a former spouse can show a substantial and material change of circumstances that the court did not contemplate at the time the decree was entered. Once custody of the children, visitation rights of the non-custodial parent, amount of support, and a property settlement are determined, these decree provisions will remain in effect unless a judge orders a change. Property settlements cannot be modified later.

In determining whether there is a substantial change in circumstances, the court can consider the following:

1. Changes in the employment, earning capacity, income or resources of a party;
2. Receipt by a party of an inheritance, pension or other gift;
3. Changes in the medical expenses of a party;
4. Changes in the number or needs of dependents of a party;
5. Changes in the physical or emotional health of a party;
6. Changes in the residency of a party;
7. Remarriage of a party;
8. Possible support of a party by another person;
9. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.
10. Contempt by a party of existing orders of court;
11. Other factors the court determines to be relevant in an individual case.

CONTEMPT PROCEEDINGS: If a party willfully disobeys a court order, that party may be required to come before the court and be punished for contempt. A person found guilty of contempt may be committed to jail for a period not to exceed 30 days. If the violation is of a support order, the court may also direct the payor to assign a portion of future salary or wages for both what is overdue and future support payments as they come due.

PROTECTIVE ORDER: The court may order a spouse not to enter the marital homestead and protect the other spouse from harassment, intimidation or injury if there is imminent risk of physical or emotional harm to the other spouse or the children. Talk to your lawyer if you have a concern for your protection. The threatened spouse must show the threat of real and immediate physical, mental or emotional injury. A court may also order a financial restraining order.

FACTORS THE COURT WILL CONSIDER IN DIVIDING PROPERTY: The law requires both spouses to disclose their financial status on a form provided by the court.

The court makes the final division of the property between the spouses. In so doing, it will look at:

1. The length of the marriage;
2. The age, physical and emotional health of each spouse;
3. The distribution of property;
4. The educational level of the husband and the wife at the time of marriage and at the time the action started;
5. The earning capacity of the spouse seeking maintenance, including skills, work experience, length of absence from the job market, or responsibilities for children under either an award of custody or physical care. This includes also the time and expense necessary to acquire a sufficient education or training to enable the spouse to find appropriate employment;
6. The feasibility of the spouse seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal;
7. The tax consequences to each spouse;
8. Any mutual agreement made by the husband and wife concerning financial or service contributions by one of them with the expectation of future reciprocation or compensation by the other;
9. The provisions of an antenuptial agreement; and
10. Other factors the court may determine to be relevant.

CHILD SUPPORT: In ordering child support, the court will determine the amount of support as specified by the guidelines. A copy of the guidelines is available from our office.

Factors the court may also consider are:

1. Financial resources of the child;
2. The financial resources of both parents;
3. The standard of living the child would have enjoyed had there not been an annulment, dissolution or separate maintenance;
4. The desirability that the spouse who would be primarily responsible for the physical care remain at home as a full-time parent;
5. The cost of day care for the spouse who would be primarily responsible for the physical care of the child if that spouse works outside the home, or the value of the child care services performed by the spouse if that spouse remains in the home;
6. The physical and emotional health needs of the child;
7. The child's educational needs;
8. The tax consequences to each spouse; and
9. Other factors the court may determine to be relevant.

The spouse required to pay support must pay it to the clerk of the district court or to the appropriate state agency which will record the payment and forward it to the recipient. If support payments become one month delinquent, the recipient may petition the court for a wage assignment against the spouse who owes the money. Another way is for the Department of Human Services, Child Support Recovery Unit, to certify the delinquency to the court, and initiate a wage assignment procedure.

ATTORNEY FOR CHILD: The court may appoint an attorney to represent any minor children whose rights may be affected by the dissolution action.

CHILD CUSTODY AND VISITATION: Iowa law favors granting joint legal custody of the children to both parents when the marriage is ended and provides that one parent may have primary responsibility for the physical care of a child. Where joint legal custody is granted, even though responsibility of physical care of the child may be awarded to only one parent, both parents have a right to participate in major decisions affecting the child's welfare. This includes medical care, education, extracurricular activities, and religious instruction.

The court will normally grant visitation rights or alternate periods of care to the parent not having physical care of a child or children. The law favors continuing contact by both parents with the minor children. Grandparents may be awarded

visitation rights under certain conditions.

The court makes the final custody decision. The standard which guides the court is the best interest of the child. There is a strong preference in the law for joint legal custody even though primary care responsibilities may be placed with one parent. There is no automatic gender preference. The court may place custody with a third person. The court will consider denial by one parent of a child's opportunity for maximum continuing contact with the other parent, without just cause, as a significant factor in determining the proper custody arrangement.

Among the factors to be considered by the court in deciding what type of custody arrangement is in the best interest of the child are:

1. Whether each parent would be a suitable custodian for the child;
2. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents;
3. Whether the parents can communicate with each other regarding the child's needs;
4. Whether both parents have actively cared for the child before and since the separation;
5. Whether each parent can support the other parent's relationship with the child;
6. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity;
7. Whether one or both the parents agree or are opposed to joint custody;
8. How closely the parents live to each other; and
9. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

You should discuss child custody concerns with your lawyer. Many different arrangements can be made to accommodate the needs of your children. The process of mediation is also encouraged to help develop parenting plans.