

and if a settlement has been reached, the spouses may be eligible for a simplified divorce procedure, which they can do themselves, quickly. In fact, no person seeking a divorce actually is required to use an attorney. If a person does plan to represent himself or herself during the proceedings, though, they should not expect the court clerks and judges to give legal advice. By law, they are unable to do so. Most people do, at least, consult with an attorney, and usually select one who is experienced in divorce law.

It is very important to recognize that a lawyer cannot represent both parties in a case: the lawyer can only represent the party who first saw him or her. Although quite often documents (including a separation agreement) are prepared by one lawyer, and the other party does not hire a lawyer, the fact is that the lawyer who drafted the documents is only representing one party.

Most lawyers do not charge a flat fee for a divorce unless the divorce is very simple, and both parties have agreed to everything from the outset. Instead, a lawyer will usually request a retainer from the client (like a security deposit) and charge for the lawyer's time, based on the amount of time he or she believes the divorce action will take to complete. Also taken into account are the attorney's legal experience and the complexity of the case. Lawyers in Illinois are prohibited from charging a contingent (or percentage) fee for a divorce. Once a fee arrangement has been made, a lawyer should prepare a written contract which the lawyer and client sign.

With regards to actual payment of the fees, a judge may determine that one person should pay for the other person's attorney fees, either on a temporary or final basis, if there is a great disparity in the income of the parties. Often, a judge determines whether each party has the ability to pay his or her own fees.

OTHER ISSUES

Domestic violence. With or without the filing of a petition for dissolution of marriage, an abused party may ask the court for an Order of Protection for herself, himself or on behalf of someone who is unable to ask the court themselves. If the court finds there is a danger of abuse, it may limit the contact between the par-

ties, or exclude one party from the home, or grant other relief. The order is for a limited time only, unless it is merged with a judgment for dissolution of the marriage.

Compliance. If one of the parties does not adhere to the terms of judgment, the other person may have to go back to court and ask that the non-compliant party be held in contempt of court. If held in contempt, the non-compliant party may be required to: a) do what he or she failed to do, b) pay for the attorney's fees for the other person, and/or c) pay a fine or be imprisoned.

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**ILLINOIS STATE
BAR ASSOCIATION**

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**ILLINOIS STATE
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ASK A LAWYER

THE LEGAL ISSUES INVOLVED IN ENDING A MARRIAGE

In the U.S., a **divorce** (known as a **dissolution** under Illinois law) is the means by which the marriage between a couple is legally terminated. A judgment for divorce means that the parties have reached an agreement or, if the parties cannot agree, a judge has made a decision regarding parental responsibilities for the children of the marriage and the couple's financial affairs. Following a divorce, each party is free to remarry and is also able to resume a former (maiden) name.

Other issues to consider before the divorce is final are the needs for medical insurance or life insurance, obligations on a mortgage if one party stays in the marital home, and tax implications of property division or financial awards.

RESIDENCY AND FEE REQUIREMENTS

If a couple decides to divorce, there are a number of steps they must take before the divorce can be granted. Their first step is to file a petition for divorce. In Illinois, there is no waiting period to file a petition: it can be filed as long as one of the spouses legally resides in the state on the day of the filing. The actual divorce, however, can be granted only if he or she legally has resided in Illinois for 90 days before the judgment. After a petition for divorce is filed, **temporary orders** often will be entered into and will address maintenance (formerly called alimony), visitation, and child support; and these may remain in effect until the divorce is final.

The fee for filing the divorce petition is different in each county. If a person cannot afford the filing fee, a fee waiver is possible.

GROUNDINGS FOR DIVORCE

Before a judge will grant a divorce, a spouse or both spouses must prove **grounds**. The only

grounds for divorce recognized in Illinois is **irreconcilable differences**, which some people call **no fault** divorce. Illinois law defines irreconcilable differences as the "irretrievable breakdown" of a marriage. In such a case, the spouses are required to prove to the judge's satisfaction that there is a breakdown in the marriage, that all efforts at reconciliation have failed, and that future attempts to reconcile would not be "in the best interests of the family."

Irreconcilable differences can be proven by showing that the parties have lived separately for at least six continuous months prior to the divorce action.

TRIAL OR AGREEMENT

Although most couples who are divorcing have disagreements about certain issues, these disputes usually are resolved through negotiation, and advice from lawyers and a judge. Most divorce cases ultimately are settled by agreement, in part because going to trial can be expensive.

Among the issues that must be settled before the divorce can be granted are the following:

- division of property—real estate, investments, money;
- division of debts;
- whether or not one person will have to pay maintenance to the other, and if so, how much and for how long;
- if there are children, what the custody and visitation arrangements will be; and
- what financial obligations each person will have to the children.

MARITAL PROPERTY

If the parties do not reach agreement, a trial will be held in front of a judge.

Property includes real estate, furniture, cars, savings accounts, stock portfolios, retirement savings and other assets. Anything that is acquired during the marriage, unless it was a gift, inherited or specifically excluded by a pre-marital agreement, is considered marital property, regardless of who earned the most money while

the parties were married. The court may also consider the increase in value of non-marital property during the marriage as marital property. Unlike some other states, Illinois law requires that all marital property, including debts, be divided "equitably," not "equally."

In determining what is **equitable**, the financial or other contribution each party had made to acquiring property is considered, along with each person's financial circumstances and the likelihood with each party will acquire assets in the future. The court may also look at whether a party used marital income for purposes not related to the marriage, the duration of marriage, and the custodial provisions for any children of the marriage, among other factors. Marital property may be divided when the judgment is rendered, or there may be provisions for payments to be made over a period of time.

CUSTODY AND VISITATION REQUIREMENTS

Some of the most painful and expensive disputes that divorcing parents experience involve parenting rights and responsibilities. A judge may require couples who have disagreements about these issues to attend parenting programs or participate in mediation. Some courts may require all parties to attend classes concerning the effects of divorce on children. If the judge appoints an attorney to represent a child in a contested case, the parents will be responsible for paying the fees of that attorney, as well as their own attorneys' fees.

In making decisions regarding children of the marriage, the court will consider the allocation of various parental responsibilities, including the ability to make decisions about educational, health, and religious matters for the child. The court will consider what is in the best interests of the child, as well as any agreements made between the parents. All parents, after the filing of a divorce action, will be required by the court to file, either separately or jointly, a proposed parenting plan.

CHILD SUPPORT AND MAINTENANCE

Temporary orders and/or the judgment for divorce may call for payment of child support and/or maintenance.

Both parents have an obligation to support the children. If one parent has custody or in most cases, residential custody, the law assumes that the residential parent is contributing to the children's needs, and directs the other parent to pay a percentage of his/her income to the parent receiving support (for example: 20% of income after mandatory deductions if there is one child, 28% if there are two children). Any deviations from these percentages are the exception. The law also requires that whenever possible, the payments for child support must come directly from the paycheck of the parent paying support, through payroll withholding. Except in special circumstances, the parent who has custody is able to claim the child for income tax purposes. Child support is always modifiable, however, should there be a substantial change in circumstances.

The obligation to pay child support continues until a child reaches 18 or graduates from high school. Both parents may also have an obligation to contribute to a child's post-high school education.

The court will make the determination whether or not the payment of maintenance to one spouse is appropriate. If maintenance is appropriate, the court will follow statutory guidelines as to how much maintenance is paid, and for how long. Under that guideline, the maintenance award will generally be calculated as 30% of the paying spouse's gross income minus 20% of the receiving spouse's income. The length of time maintenance will be paid depends on the length of the marriage.

HIRING AN ATTORNEY

If the marriage was short in duration, if the couple had no children, if there is no real estate,