

FOR THE THERAPIST’S TOOLBOX: DIVORCE FROM A LEGAL PERSPECTIVE

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A. **Basic Definitions:**

Separation The couple is either informally (physically) or formally (legally) separated, but the marriage remains intact.

Informal separation- The couple is simply living apart.

Legal separation-The couple is living apart in accordance with a written separation agreement or judgment of separation.

Benefits:

Allows couples to retain certain benefits of marriage, such as healthcare coverage and other financial advantages—tax filing, Social Security, etc.

Couples who are not certain about the future of the relationship might opt for a separation as a trial period to decide if they want to dissolve the marriage.

Divorce The legal ending of a marriage between two people—each is free to marry again.

Annulment: A court declaration that a marriage was never legally valid.

Marital agreement: A formal written understanding between two people concerning their respective rights and obligations to each other.

Examples: premarital/prenuptial agreement, post-nuptial agreement, separation agreement, divorce settlement agreement or stipulation of settlement.

B. **Preparing for the Process**

Therapy/counseling

Gather financial information-tax returns, financial statements, property records, etc.

Consult with attorney(s)

Select an attorney (or decide to mediate)

Follow the attorney’s advice!

C. Types of Divorce

Uncontested Divorce: An uncontested divorce occurs when: (a) there are no disagreements between the spouses over any financial or divorce-related issues; and (b) the spouses either agree to the divorce, or one side fails to appear in the divorce action.

Contested Divorce: The parties do not agree on one or more issues. If the parties cannot come to an agreement, the court will have to determine the outcome.

D. The Process

Mediation A neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dissolution of the marriage. The mediator does not decide the case, but helps the parties communicate so they can try to resolve the case themselves.

Negotiation The attorneys for the parties exchange financial information which they analyze and evaluate, and then they engage in settlement discussions with each other to try to get the case resolved. Such "direct" negotiations may begin before or after a legal action is started.

Litigation The process of resolving a dispute through the court system. The parties, usually with attorneys, present their respective arguments and evidence and a judge is responsible for hearing the evidence and deciding the outcome of the case.

Most litigated divorce cases end in a settlement agreement.

E. The Issues

Grounds:

Irretrievable breakdown in relationship for a period of at least 6 months--"No fault"

Cruel and inhuman treatment

Abandonment (one or more years)

Imprisonment (three or more years)

Adultery

Separation agreement (one or more years)

Judgment of separation (one or more years)

Equitable Distribution: The way marital property is to be divided between the parties.

Marital property: All property either spouse acquired or bought during the marriage, regardless of whose name is on the property.

Separate Property: Property a spouse owned before the marriage or acquired by inheritance or gift from someone other than the spouse during the marriage. A personal injury award is also considered separate property.

Custody:

Legal custody: The right to make major decisions about the child, such as those relating to education, medical treatment, and religious upbringing.

Physical custody: Who the child lives with on a day-to-day basis. A parent with primary physical custody is called the "custodial parent." Physical custody is also referred to as "residential custody."

Visitation/Parenting Time The time that the parent who does not live with the child sees/has the child.

Maintenance: Support paid by one party to the marriage for the support of the other party. Also referred to as alimony and/or spousal support.

Child Support: Money paid by one parent to another for a child/children's expenses after separation and/or divorce.

In NYS, a parent is legally required to support a child until the age of 21, but if a child is developmentally disabled a parent may be required to pay support until the age of 26.

Debt Allocation

Taxes

Legal Fees

Additional Resources:

New York State Unified Court System Divorce Resources

<https://ww2.nycourts.gov/divorce/index.shtml>

New York State Maintenance and Child Support Calculator

<https://www.joyrosenthal.com/new-york-maintenance-child-support-calculator/>

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