

Issues To Consider In An Uncontested Divorce

The following issues must be addressed in most divorces. It is the responsibility of the Court to ascertain that both parties are being dealt with in a fair manner, even when both parties state that they “agree” on specific issues involved in the divorce. The Court will not approve a Stipulation that appears grossly unfair to one party.

1. Division of Property. It is assumed that all property will be valued and be divided approximately evenly in value. This includes all pensions, IRA’s, and other retirement type assets. A retirement asset should be evaluated in terms of present value, unless such asset will be equally divided between the parties. It may be necessary for you to retain an attorney to assist in drafting a Qualified Domestic Relations Order that meets the requirements of the retirement fund administrator.

If there is a business involved, a professional valuation of the business may be required to determine its current value. If the business is substantial, you will probably require the services of an attorney to assist in presenting the value of the business operation.

2. Division of Debts. It is assumed that all debts will be determined and be divided approximately evenly in value.

3. Maintenance (alimony). If the parties have been married over five (5) years, then the issue of maintenance must be considered. Generally, both parties should receive approximate equal income for at least some period of time following the divorce. Particularly with a very long-term marriage (such as 25 years) unless both parties are earning about the same gross income, maintenance will be required for the lower-earning spouse. It is possible to off-set some maintenance with the property division.

4. Child(ren). If minor child(ren) are involved, then the following matters must be addressed:

- (a) legal custody (ability to make major decisions for the child(ren) such as elective medical and dental care, education, and choice of religion)
- (b) physical placement, specifying when each parent will have placement with the child(ren). To simply say “equal placement” is not adequate. There must be specification as to periods of physical placement.
- (c) child support – a worksheet must be completed
- (d) provision of health care insurance and health care costs
- (e) allocation of federal and state income tax exemptions
- (f) extra ordinary and/or variable costs if placement is shared

5. What if we cannot agree on all issues? You have a contested divorce and you are urged to retain a divorce attorney to assist you. Remember, the Court is not permitted to “mediate” your unresolved divorce issues. You should request that your case be placed on the trial calendar of the circuit court judge assigned to your case as the Family Court Commissioner does not hear contested divorce matters.