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**“I don’t want to do this anymore.”
What Happens When Couples Divorce**

By Lisa Clark
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You’ve had it – years of disagreements and disappointments have caused you and your spouse to grow apart. You no longer want to share a home, a bed and a bank account. If you’re contemplating divorce, you need to be prepared for a time-consuming, expensive and emotionally draining process. Here’s an idea of what to expect when you file for divorce in the Baton Rouge area.

Reasons for Divorce

While some couples divorce because of domestic abuse or adultery issues, the vast majority simply decides “they don’t want to be married anymore,” says Baton Rouge family law attorney Kathy Underwood of the Underwood Law Firm.

It’s never just one reason that leads up to a divorce, explains Underwood, because most couples can work through a single issue. Often, an accumulation of problems over the years leads an individual or a couple to conclude they no longer want to be married.

Planning for Divorce

If you’re considering a divorce, it’s vital to become informed about your rights and obligations. The first step is to talk to an attorney who’s experienced in family law matters to be sure you understand all the implications of pursuing a divorce.

Second, you need to understand your family’s financial situation, including all of your community assets and debts.

Third, protect your assets. Lorraine Andresen McCormick, a board certified family law specialist with the Baton Rouge law firm of Lee & Walsh, recommends taking the following precautions: move half the money from any joint accounts into a separate bank account; make copies of all financial records and move them to a safe place; create an inventory of all household items and other property and keep it in a safe place; and protect heirlooms, photographs and other special items by moving them to a safe place.

Fourth, Underwood urges her clients to take a look at the business-side of their marriage, not just the emotional issues. Look at what your financial situation will be without any income from your spouse. Make a budget using only your income and expenses and see if you can handle the financial obligations on your own. This exercise is a real “eye-opener” for many people, says Underwood. They’re often surprised to discover that they can’t be financially independent.

Types of Divorce

The vast majority of Louisiana divorces are “no-fault” divorces, which means the divorce is not based on the misconduct of one or both spouses. The general requirement to attain a no-fault divorce is that the couple must live separate and apart for a period of six-months. The law allows you to file for divorce before, during or after the six-month period, but the divorce will not become final until the six-month waiting period has been completed.

A waiting period will not apply to the small minority of divorces which are based upon the other spouse committing adultery or being convicted as a felon. These issues must be proven to the court in order for the divorce to be granted.

If you and your spouse entered into a covenant marriage, it will be more difficult to divorce. Ending a covenant marriage requires a two-year waiting period, counseling and more complex legal procedures.

The Divorce Process

To begin the divorce process, you need to find a qualified attorney who’s experienced in family law matters and with whom you feel comfortable. You may need to interview several lawyers before you find the right one for you.

The lawyer will determine the proper parish in which to file your petition for divorce. It must be filed in a parish where either spouse resides. For couples who are already living apart and who reside in different parishes, you may have a choice of where to file. If you file in East Baton Rouge parish, your case will be assigned randomly to a division of the family court and will be heard by a judge who deals exclusively with family matters.

In parishes other than East Baton Rouge, divorce cases are handled in district court by judges of general jurisdiction, who handle all different types of legal issues. McCormick states that while there may be pros and cons to filing in various parishes, all of the local judges hearing the cases are competent. She also notes that you may not choose a particular judge regardless of where you file your case.

When the petition for divorce is filed, your attorney will most likely include a request for the court to address “incidental matters.” This may include child custody, child support, spousal support, use of the family home and similar issues. In most cases, the court will hold a hearing on the incidental matters within two-to-six weeks of filing.

Underwood encourages her clients to work out as many of these issues as possible before the matter comes before a judge. With the help of their lawyers, most couples are able to compromise and agree on how to handle custody and support matters. As much as 85-95% of cases are settled by clients with the help of their lawyers, states McCormick. Where both parties are willing, mediation may be an effective tool for resolving issues as well. The remaining 5-15% of cases must be litigated – a process which is emotionally painful and expensive.

Finally, once the six-month period has elapsed, the court will issue a final divorce decree. There may still be hearings after the final divorce decree to address any issues that have not yet been settled. In fact, it may take several years to resolve all of the community

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property issues, primarily because the parties are simply too emotional to deal with those matters during the divorce process.

Family law attorneys charge by the hour and their rates vary widely. Most require an up-front retainer to begin work on your case. Attorney fees for cases which can be settled without litigation may run anywhere from \$1,500 to \$7,500. In the small minority of cases which must be litigated, costs can skyrocket to as much as \$30,000.

Child Custody

Child custody is a more complex issue than many people realize. To begin with, decisions must be made with respect to both legal custody and physical custody.

Legal custody refers to decisions about the health, education and welfare of a child. When parents have joint legal custody, it means they have a mandatory obligation to talk to each other and try to agree on these issues, explains McCormick.

Physical custody concerns the amount of time a child physically spends with each parent. The law favors equal time with each parent to the extent such an arrangement is feasible and in the child's best interest.

Equal time can be structured in many different ways and may depend upon the age of the child, the parents' work schedules and other factors. For example, a very young child might spend Monday and Tuesday with mom, Wednesday and Thursday with dad, and alternate long weekends between the two parents. School-age children, on the other hand, might alternate weeks between parents. The exact schedule, if not determined by the parties themselves, is up to the judge's discretion.

However, even in cases where there is a 50/50 physical custody arrangement, the court will designate one parent as the "*domiciliary parent*" and the other as the "*non-domiciliary parent*." According to McCormick, this designation is the main reason parents fight over child custody because the domiciliary parent has several key advantages. First, if the parents cannot agree on an issue involving the health, education or welfare of their child, the domiciliary parent makes the final decision. Second, the domiciliary parent usually gets child support and the use of the family home. Third, the domiciliary parent often can claim a tax deduction for the child.

The court chooses the domiciliary parent by determining what is the in the best interest of the child based upon a variety of factors. Norma Beedle, a Baton Rouge attorney whose practice focuses on fighting for fathers' rights, believes the most important factor in choosing the domiciliary parent should be which parent is most willing to facilitate and encourage a relationship between the child and the other parent. Unfortunately, says Beedle, this critical factor is often overlooked.

Beedle also advocates a co-domiciliary arrangement. "It's so important for kids to have fathers involved in an equal role," states Beedle, because this involvement provides emotional stability that's crucial to the child's well-being. Children who grow up without a father involved in their lives are more likely to get poor grades, get pregnant, use drugs and commit crimes. In addition, a co-domiciliary situation may be best for moms, because it means they don't have to shoulder the burden of decision-making on their own.

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While some local judges will permit a co-domiciliary situation, a court cannot order such an arrangement. Co-domiciliary parents are permitted only when both parents agree.

Child Support

Both parents have an obligation to financially support their children. Judges determine the amount of support based on worksheets and guidelines set forth in the law. The guidelines look at the gross income of the parents. Generally, the spouse who earns more money will pay child support to the spouse who earns less. The higher-earning spouse will usually pay less child support in situations where the parents share physical custody of the child 50/50.

After looking at gross income, other items are then factored into the child support equation including: daycare expenses; health insurance for the child; extraordinary medical expenses for chronic conditions, orthodontia, counseling and the like; and which parent can claim an income tax deduction for the child. Private school expenses may be taken into account at the discretion of the judge.

Child support continues until the child graduates from high school, but may be extended in the case of a child with special needs. Parents have no legal obligation to pay for a child's college education.

Spousal Support

While judges must follow strict guidelines when granting child support, they have far more discretion with respect to granting spousal support.

There are two types of spousal support, both of which are determined based on net income. *Interim support* may be granted to provide financial assistance to the lower-income spouse while the divorce is pending. Both spouses complete an affidavit which details their income and expenses. If, for example, the wife's expenses exceed her income and the husband has the ability to pay, a judge is likely to grant interim spousal support to the wife for a period of time while the divorce is pending.

An order of *final spousal support* is far more difficult to obtain. A spouse who requests final spousal support has the burden of proving that she is not at fault, in any way, for the break-up of the marriage, and that she does not have the means to support herself. Because fault is the key issue, litigation about final support can be extremely nasty, warns McCormick. The court will look into the most intimate details of the marriage, and each spouse will attempt to make the other look as bad as possible.

If the spouse requesting support establishes that she is without fault, the court will then look at a number of factors to determine how much support to award. These factors include: the duration of the marriage; the income, needs and financial obligations of the parties; the earning capacity of the parties; the time necessary to acquire education, training and employment; the health and age of the parties; and the tax consequences to the parties.

An order of final support continues until the person receiving the support remarries or begins living with someone in a marriage-like relationship, or until either spouse dies. Final support orders can be modified by the court if the financial circumstances of either spouse change significantly.

Community Property

Most assets acquired by a couple during their marriage are considered community property, owned equally by both spouses. This includes real estate, cars and personal property of all sorts.

While the divorce is pending, the court will decide who has use of marital property such as the family home and cars. Generally, the court will also issue an order to prevent either spouse from taking or disposing of community property during that time.

But once the divorce is final, the property must be divided. This is done by identifying all community property and community debts, and placing a value on the property. Though it can take a long time, most couples manage to negotiate how they want to divide their property. Any unresolved issues, however, can be brought before the court.

Helping Children Deal with Divorce

“Children must know the divorce is not about them,” stresses Underwood. They also need to know that “each parent loves them in their own way,” and that love will continue forever.

No matter how angry you feel or how much you dislike your spouse, never say bad things about your spouse to your children and never let your children take sides.

Remember your child must now create a new kind of relationship with each parent separately and the first few weeks and months following the divorce will establish a base for that relationship.

Underwood urges parents to talk to each other and to encourage their child to communicate regularly with the other parent. She also advises that children not be given a choice about spending time with the other parent. Instead, you should require your child to spend time with the other parent to allow their relationship the time it needs to develop.

Odd and Ends

Divorce requires a couple to make many huge decisions. But there are also plenty of details that require attention. For instance, you’ll likely have to contact your child’s school to change your emergency contact information, change beneficiary designations on life insurance policies, change your health plan coverage, and determine who will claim your child as a dependent for income tax purposes. While it may be tempting to put off dealing with these things, taking care of them promptly will help you get your new life in order.

Room for Improvement

While Louisiana’s divorce system works fairly well, there’s always room for improvement. McCormick would like to see the law changed to prohibit an individual from filing for divorce while still living with her spouse. She feels so strongly about this, that her firm will not file a divorce petition for a client who’s still living with his spouse because of the potential for violence. Imagine a scenario, for example, where an unsuspecting husband gets served with divorce papers while still living in the same home with his wife. The emotional shock could result in abuse, murder or suicide. In addition, many judges will not address custody and support matters while a couple is still living together, so this only serves to delay the process.

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Another area of concern is the use of the domestic abuse statute to gain a tactical advantage in a divorce situation. Beedle explains that while there are legitimate cases involving domestic abuse, sometimes a woman will exaggerate her fear of being harmed by her husband in order to gain immediate custody of the kids and evict the father from the home. She'd like to see a provision that would impose a penalty on anyone making a false allegation of abuse. A penalty that impacts custody decisions or imposes a fine may deter misusing the domestic abuse law for strategic purposes.

Underwood would like to see step-parents treated more compassionately in the divorce process. Step-parents currently have no legal right to seek custody or visitation.

Further, Underwood believes the legislature eventually will have to deal with custody and support issues which arise in non-traditional families. East Baton Rouge family court judges already deal with custody and child support situations involving children whose parents never married. In those cases, the court acts in the best interest of the children by treating them as though their parents were married and are getting divorced.

But more complicated situations are bound to arise. Consider the case of a homosexual couple who adopt a child or who have a child of their own using a surrogate mother or artificial insemination. While homosexual couples cannot marry in Louisiana and therefore cannot divorce, the children of such families face the same issues as children from traditional families whose parents divorce. Underwood would like to see the law look out for the best interests of those children, without making any moral judgments about the types of families from which they come.

Many thanks to Baton Rouge attorneys Lorraine Andresen McCormick, Kathy Underwood and Norma Beedle for the valuable information they provided for this article.