

DIVORCE

A GUIDE TO THE PROCESS



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PREFACE

Divorce is one of life's most traumatic experiences. It is frequently marked by feelings of anger, betrayal, fear and worry. At the same time as you may be overwhelmed by these feelings, you must make decisions about your personal and financial affairs which will affect your life for a long time. The judicial process may seem like a maze. It is often unpredictable, and important decisions affecting your life and your children's lives are addressed in an environment fraught with overcrowded calendars and the individual predilections of a particular judge. Going to court requires you to lose time from work, pay for child care and pay your attorney to wait your turn to speak to the judge.

The purpose of this booklet is to serve as a compass to help guide you through this new and difficult process. It will explain how the courts function, what kinds of questions you can expect a judge to address, what factors judges consider in making their decisions and how you can be an effective partner with your attorney to achieve the best result possible for you and your children.

THE FIRST STEP **CHOOSING AN ATTORNEY**

When you first believe that your marriage may be ending, it is very important to see an attorney. Early decisions such as whether to leave the home, whether to open your own bank account, and whether to divide assets can have a very significant impact the ultimate result in your divorce case. An early meeting with an attorney can educate you about your rights and give you a good idea about what you can realistically expect in terms of custody of your children and your financial situation once the case is over. An attorney should also tell you what information you can begin to gather in order to assist in the preparation of your case and what kinds of litigation costs you can expect to incur. It is impossible to predict the total cost of a divorce case. However, in the early meeting you can learn how time is billed, what specific expenses of the attorney will be passed along to you and whether it is likely to be cost effective to litigate certain issues. Most experienced attorneys charge for initial consultations.

One of the most important decisions you will make as you face your divorce is your choice of an attorney. The attorney is someone with whom you will work very closely, probably for a year or longer. You will need to deal with subjects that may be uncomfortable for you to discuss. Thus, it is critical to choose someone with whom you feel comfortable. While you may want a strong attorney, someone who intimidates you is not a good partner. You may wish to interview more than one attorney to compare how your questions are answered and who makes you feel most comfortable. There are many on-line sites that "rate" attorneys. Do not rely entirely on these ratings as they are often part of an internet marketing strategy.

Ask for recommendations from people you trust and follow your instincts after a consultation. Once you make your decision remember: You are on the same team.

These are some important questions to ask when you interview an attorney:

1. **How long has the attorney been practicing?**
2. **What percentage of the attorney's time is devoted to family law?**
3. **Does the attorney have knowledge of the culture in the county where your case will be filed?**
4. **Has the attorney tried family law cases involving the issues in your case, such as custody or business valuation?**
5. **Is the attorney a member of professional associations reflecting family law expertise, such as the American Academy of Matrimonial Lawyers, Supreme Court Family Practice Committee, Executive Committee of the New Jersey State Bar Family Law Section or is he/she a Certified Matrimonial Trial Attorney?**
6. **Has your attorney successfully settled similar cases?**
7. **Is the attorney familiar with divorce mediation? Does the attorney think it is right for you? If so, why? If not, why not?**
8. **Has the attorney published any articles on family law subjects?**
9. **Has the attorney taught family law to other lawyers and/or judges?**
10. **At the initial interview, were you provided with the attorney's approach or "strategy" on the case?**
11. **Did the attorney help you to feel comfortable and at ease in asking questions? Were your questions answered directly?**

When you hire your attorney, you will enter into an arrangement for the payment of fees. This is called a **Retainer Agreement**. Before you do so, make certain that you have the following information:

1. **What is the attorney's hourly rate?**
2. **Is the rate the same for trial time and non-trial time?**

- 3. For how long is that rate guaranteed?**
- 4. How often will you receive bills or statements?**
- 5. Will you receive a detailed listing of how the attorney's time was spent?**
- 6. Will you be billed for additional charges, such as photocopies, faxes, mileage for travel, secretarial overtime, etc...? At what rate?**
- 7. Will other attorneys or paralegals be working on your case? At what rate?**
- 8. What does your retainer cover? If the attorney puts in less time, will you receive a refund?**
- 9. Is there a minimum time period for which you are billed?**

All of these questions should be answered in the retainer agreement. It is the contract between you and your attorney so it is important to understand every sentence. Upon signing the agreement, you are obligated to pay for the services described in the agreement. Don't skim through the agreement and sign it when it is first provided to you. Take the agreement home. Read it carefully. Ask questions. Retain a signed copy for your records. If a friend or a relative has offered to pay your fees, tell your attorney, as the attorney may wish to have that person sign the retainer agreement. Similarly, if you borrow your retainer from a friend or family member, be sure to sign a promissory note to document the loan.

THE FAMILY COURT

The Family Court is a division of the Superior Court of New Jersey. The court has authority to decide cases involving divorce, custody and support in out-of-wedlock relationships, as well as, cases involving civil unions, juvenile crime, child abuse and neglect, domestic violence, and enforcement and modification of prior family court orders.

The cases are assigned to individual judges in a number of different ways. In some counties, all divorce cases are assigned to certain Family Court judges, with other judges handling matters, such as domestic violence, juvenile cases, child abuse and neglect and matters between unmarried parents. Cases are also assigned among the judges either alphabetically, by where you live, or by the docket number the case is assigned when it is filed. Your attorney should know how the cases are assigned in the county where your matter will be heard. Although it is the goal of the Family Court to assign one judge to hear all the matters arising with respect to each case, this goal often is not achieved. The judge may change in the middle of your case.

THE ISSUES IN YOUR DIVORCE

In every divorce, decisions must be made either by your spouse and you or by a judge about the following issues:

Cause of Action (Grounds for Divorce):

The **cause of action** is the “ground” for divorce. In New Jersey, the grounds for divorce include: **irreconcilable differences, adultery, desertion, extreme cruelty, 18 months separation with no reasonable prospect of reconciliation, habitual drunkenness and sexual perversion.**

It is important to be aware that the ground for divorce is really only the key that opens the courthouse door. It gives you access to the court system so that a judge can resolve the other issues in your divorce. It is not relevant, in most cases, to custody or economic issues. Today, most people file on the ground of irreconcilable differences which simply requires a showing that there have been irreconcilable differences for a period of six months warranting the dissolution of the marriage and that there is no reasonable prospect of reconciliation. Ordinarily, there is no reason to choose another “ground” for divorce. To do so tends to heighten the anger and emotions without serving any positive goal.

Custody and Parenting Time:

These terms describe the rights and responsibilities that parents have to make decisions for and spend time with their minor children. They include where children live, who has the authority to make certain decisions on their behalf and what time the children spend with both parents. If judges are called upon to

decide these issues, they are required to consider certain factors which are listed in New Jersey Statutes Annotated (N.J.S.A.) 9:2-2, which can be found on the New Jersey State Judiciary website at www.judiciary.state.nj.us. Generally speaking, the options for custody are:

Sole legal and physical custody in one parent;

Joint legal custody with one parent being the parent of primary residence and the other parent being the parent of alternate residence;

Joint legal and physical custody.

There is no issue more important in your divorce that requires you and your spouse to work together to resolve than custody. Parents fighting over their children can have major and long-term consequences to the children's well-being. Children feel insecure when they see that their parents cannot speak to them with one voice. They also become inappropriately and sometimes dangerously empowered. Research indicates that children often feel that they are the cause of the tension. They feel frustrated because the very foundation on which they rely for their security is crumbling and they cannot control what is happening to them. Often they react by becoming depressed, violent, or misbehaving in school. Grades often suffer. Children regress developmentally. Drawings done by children whose parents are fighting over custody show children crushed under heavy buildings or being pulled by both parents, as though they were a rope in a tug of war. While not all children will react in such a manner, it is important to continually monitor the impact of the divorce on your child(ren).

Custody litigation is emotionally and economically costly for both parents. You will lose time from work and from other activities you enjoy. You will think about the custody dispute 24/7. There are options for resolving custody without a custody trial. Try mediation. The courts will send you to one mediation session in the courthouse. If it is unsuccessful, don't give up. Turn to a well-respected mediator. There is no "right" or "perfect" schedule. Any schedule that both parents can manage and will serve the needs of your children will be accepted by the court so long as you agree. You can try a schedule on an experimental basis. Focus on what time and resources each parent can provide to the children and to the child's needs. Many children tolerate moving between two homes easily. In such cases, joint legal and physical custody may work well so long as the parents can communicate. However, it is important not to get bogged down by comparing the number of hours the children spend with each parent. Some children become anxious and function poorly if they cannot rely on one place where they do their homework and keep their things. Above all, children need contact with both parents – even if those parents are less than perfect.

Where parents can communicate about their child(ren), it makes sense for them to share in decision-making. When that occurs it is called "**Joint Legal**

Custody.” If you and your spouse agree to joint legal custody and your agreement requires consent to certain decisions, be careful not to use this consent provision as a tool to exert power over your spouse by withholding consent. Look to what you did during the marriage that worked for the children. Your agreement can create a mechanism for resolving deadlocks between parents – perhaps a mental health professional, lawyer or clergy person in whom both parties have confidence. This person is called a “**Parenting Coordinator.**” A custody agreement may also address what categories of decisions will be shared and what decisions will be the province of one parent. Where parents have difficulty communicating with one another about, or around, their children, a judge may send them to a “**Co-parenting Therapist.**”

If you and your spouse cannot agree on custody and/or parenting time, there will usually be a custody evaluation conducted by an expert mental health professional. In some cases, the parents choose a joint expert or the court appoints one. In other cases, each parent hires their own expert. There are advantageous to each which you should discuss with your attorney. The evaluations include interviews of each parent and the children, if they are old enough to be interviewed. The expert also usually observes the children interacting with both parents. The expert may administer psychological tests which are generally used to validate the impressions that the expert gains from the interviews and observations. Teachers, neighbors, relatives and therapists are sometimes contacted. Sometimes there is a visit to the home(s) in which the parents live to check on the living conditions. Either parent is free to submit letters to the expert from people who have knowledge of their character and parenting abilities. Do not submit anything to the expert without having your attorney review it first. In some cases the court will appoint a lawyer to serve as a **Guardian Ad Litem** for the children. The guardian speaks to everyone having important information about the parents and the children and makes recommendations to the court. Where the children are older, the guardian will meet with them and pass on to the court what they are thinking and feeling.

In some counties, judges use **Custody Neutral Assessments** (C.N.A.) to determine whether custody is a real issue and how it is likely to be resolved. This is an abbreviated process and is neither as detailed nor as expensive as a full custody evaluation.

As you enter the divorce process, you may be very angry with your spouse. Nevertheless, it is important to follow these rules in dealing with your child(ren) during the process:

1. **Do not speak negatively about your spouse to the child(ren).**
2. **Do not leave correspondence from your attorney or court papers in view of your child(ren) and do not show court papers to them.**
3. **Do not take your child(ren) to your lawyer.**

4. Do not take your child(ren) to your therapist. (You may want to consider therapy for your child(ren), but they are entitled to their own sounding board. This is a subject you might want to raise with your attorney.)

5. Do not take your child(ren) to Court unless directed to do so by the Judge.

6. If you become short tempered with your child(ren), be careful to explain that while you are under pressure, it is not their fault.

7. Try to spend a little bit of extra time with your child(ren).

8. Avoid arguing or discussing financial issues with your spouse in your child(ren)'s presence.

9. Do not make plans for your child(ren) when they are supposed to be with your spouse.

10. Advise your spouse of child(ren)'s plans, invitations, activities, etc. which are to occur when the child(ren) is/are scheduled to be with your spouse. Look into a computer application called Family Wizard. It allows you to share a calendar with your spouse where your children's schedule and activities can be posted. It also enables you to communicate with one another via email.

11. Do not send messages to your spouse through the child(ren).

12. Assure your children that the divorce is not their fault, that they did not cause it and they cannot change the situation.

13. Assure your children that you and your spouse love them and that neither you nor your spouse has left them.

14. If your children complain to you about your spouse, do not encourage them. Rather, suggest that they address the issue with your spouse. Similarly, do not use your children to carry messages from your children to your spouse.

15. Do not make your children your confidants.

16. Exercise careful judgment about whether to expose your children to a new significant other. Remember your children are suffering the loss of their family as they know it. While a "new flame" may help you get over feelings of low self esteem and loss, it will not have the same effect on your children. Certainly, do not do it near the beginning of the divorce process. It is best to make sure that the person is someone special and your children have become acclimated to the fact that you and your spouse will be living separately.

Children are constantly developing and changing. While the divorce will affect them, don't assume that every acting out, sleep disturbance or appetite change is a reaction to divorce. New behaviors may be attributable to normal developmental milestones. Thus, it is important not to overreact or blame any new behavior on the divorce. If you are unsure, consult a mental health professional.

There are times when life after divorce for one parent means moving out of state or even out of the country. In such cases, if the parents cannot agree, the court will conduct a **Removal Hearing**. A court cannot stop a parent from leaving the state, but it can stop a parent from leaving with the child(ren). The parent who wishes to move must show that he/she has a good faith reason for the move. A unique job opportunity, family in another state and the absence of family in New Jersey or a fiancé often satisfy the good faith requirement. However this is only the first step. Once this good faith showing is made, the court will hold a hearing to decide whether the advantage to the one parent in moving is outweighed by the negative impact on the relationship between the child(ren) and the other parent and whether a different timesharing arrangement can be worked out to minimize the effect on the parent-child relationship. Often, this means that the children will spend more of the summer, school vacations and other blocks of time with the parent not moving. The parent who wishes to move may also assume more of the transportation responsibilities. Before you pursue a course of action that may result in your leaving the state, ask yourself how you would feel as the parent being left behind and where the children are in high school to delay the move until they graduate.

The best way to guard against your spouse being permitted to move out of state with your children is to show up – at games, performances, teacher conferences. Volunteer as a class parent, coach or field trip chaperone. Generally, the more time a child spends with the **Parent of Alternate Residence**, the less likely it is that the other parent will be permitted to move with the child out of state. If there is shared physical custody, the court will hold a full custody hearing before allowing a parent to move out of state with a child.

On occasion, a parent absconds with a child out of the state or even out of the country. There are State and Federal laws that protect against this and provide for return of the child, with punishment for parents who act wrongfully, or third parties who assist the parent. It is important to consult an attorney who has handled similar cases in order to get the prompt, appropriate action required, particularly if the child(ren) has been taken out of the country.

Child Support:

In New Jersey, the amount of child support to be paid is governed by the **Child Support Guidelines**. The Guidelines apply to families where the combined net income of the parents is \$187,200.00 per year, or \$3,600 per week or less. The amount to be paid is determined primarily by the combined income of

the parents, the number of children for whom support is being paid, their ages and the amount of time the children spend with each parent. The guidelines also account for any alimony being paid by one party to another and costs one or the other parent may be paying for the child's medical insurance and work-related child care. The amounts set forth in the Guidelines represent estimates of the weekly costs for shelter, transportation, food, clothing and other basic living expenses. The parents share responsibility for providing the basic support amount according to the amount of overnight time the child(ren) spend with each parent and according to the proportion of each parent's income to their total combined income. The Guidelines represent mandatory minimum sums. Courts have a right to deviate from the Guidelines if one of the assumptions on which the Guidelines are based does not exist in a particular case. For example, if one parent has no shelter expenses, the Guidelines may not apply. The Guidelines also do not apply to children living at college, although, the support amount may be adjusted to account for periods of time where the child(ren) may be at home (or summer break). There are two approaches to child support calculations: **Sole Parenting** calculations and **Shared Parenting** calculations. The calculations are reflected on a worksheet that must be attached to the divorce judgment. In order for the shared parenting calculation to be appropriate the child(ren) must spend at least 28% of their overnights over a period of a year, on a regular and repetitive basis, with the parent of alternating residence. Usually, vacation overnights and holiday overnights are not included for the purpose of deciding if the shared parenting worksheet can be used. However, there are mechanisms for adjusting the child support of non-repetitive overnights. The **Child Support Guidelines**, instructions for their use and the worksheets can be found on the New Jersey State Judiciary website, www.judiciary.state.nj.us.

Child support is paid until a child is emancipated. In New Jersey, there is no official emancipation age. If a child attends college or another full-time, post-high school program, following graduation from high school, he or she is not considered to be emancipated. If a child interrupts his education, he may be considered emancipated for the time he is not in school, but becomes unemancipated when he returns to school. Once a child finishes high school, the issue of emancipation is dependent upon the facts of the case and judges have a great deal of discretion in making this determination. If a child joins the military or gets married, the child is emancipated.

A parent is entitled to have child support paid through the courts in the county where the person who is obligated to pay resides. This is called "payment through Probation." Usually, support payments are collected by wage garnishment. Child support which is paid through the court is subject to review every three years. When a child reaches the age of 19, the collection agency for child support, the New Jersey Family Support Center, will notify the parents that it will stop collecting support unless the custodial parent can prove that the child is unemancipated.

If a parent falls delinquent in paying child support, the court may issue a bench warrant for the parent's arrest and hold him or her until the amount due, or a lesser amount required by the judge is paid. The New Jersey Family Support Center is also a reporting agency that notifies the IRS of support delinquencies, leading to the IRS attaching any tax refunds due to the delinquent parent. A parent who is delinquent in support is in jeopardy of losing his or her professional or driver's license.

A parent may also make an application to modify the support if there are substantial changes in circumstances from when the support was ordered. A child's maturation resulting in greater needs is one such circumstance. The courts have also decided that children are entitled to share in the lifestyle of the more financially well-off parent, even if there is an incidental benefit to the other parent. Thus, one parent may be required to supply funds to enable the other parent to drive a newer, safer automobile so the children are not in danger or live in a larger residence. Similarly, there can be orders for summer camp, trips, lessons, tutoring, etc.

The more a parent earns, the greater his or her obligation for child support will be. If the combined net income of the parents is greater than \$3,600 per week, the courts set a base child support number and will look to the family lifestyle before the divorce in determining the amount to be paid.

Where a parent cannot be relied upon to pay support, a judge can have that parent post assets to secure their support obligation.

College Expenses:

New Jersey is one of the few states where a parent is required to contribute to the reasonable costs of a child's attendance at college. The issue then becomes, "What is a reasonable cost?" Judges evaluate a number of factors in determining reasonable costs and contributions, including the child's aptitude, the parents' financial circumstances, monies which the child may have or have access to, what education the parents had, whether the school meets any unique needs of the child, and the relationship between the child and the parent from whom the contribution is sought.

If you will be seeking to have your spouse contribute to the college costs for your child, there are certain things which will be helpful in gaining the other parent's financial assistance. They are:

1. Providing the other parent with the child(ren)'s grades, reports, SAT scores, etc. on a regular and continuing basis from the time you begin living separately.
2. From the beginning, have the child discuss his/her wishes about college with the other parent.

3. Suggest that the other parent share in visiting colleges.
4. Include the other parent in the application process.
5. Invite the other parent to be part of the financial aid process.
6. If the other parent is not a willing participant, make sure that the above behavior is documented in letters, copies of applications, etc.

Remember, college expenses are not limited to tuition room and board. They include the costs of PSATs, SATs, preparation courses, application fees, trips to visit colleges, mandatory fees, necessary electronics and dormitory set up expenses. These things can be costly and should be considered when you negotiate child support issues.

College is becoming increasingly expensive and there are few families that are able to pay the costs out of their regular income. As part of your settlement, consider whether it is possible to set aside money from an asset or include an agreement that one or both parents will contribute to 529 accounts between the date of the divorce and the time the children start college.

Similarly, as a result of the increasing costs, judges are putting an increasing burden on the college-aged child to contribute by way of seeking grants, scholarships, loans, work study and monies that have been put away for the child in the past.

When a child is living away at college, child support may be modified depending on how the parents are sharing the costs of college. It is not always less expensive to have a child living away. The reduction in costs at home are modest and the reduction is exceeded by the child's living expenses (aside from costs charged by the school).

Alimony:

This is financial support paid by one spouse to another. The legal basis of alimony is that divorce should not cause a dependent spouse to become impoverished or suffer a drastic reduction in his or her lifestyle. It is intended to compensate a dependent spouse for economic opportunities that were lost due to him or her by undertaking homemaking and child care responsibilities and enabling the other spouse to build a career. If possible, the courts endeavor to allow both spouses to enjoy a lifestyle reasonably comparable to the lifestyle enjoyed by the parties during the marriage. At the same time, both spouses have a responsibility to contribute to their own support in accordance with their ability to do so. Courts generally expect a spouse who stayed at home during the marriage to work outside the home after divorce if that spouse is healthy and of an age where it is reasonable to re-enter the job market.

Of all the issues in a divorce, alimony is the one most frequently disputed. In determining whether alimony is awarded, the following factors, among others, are considered: the spouses' ages, health and education, each party's work history, the length of the marriage, whether there are young children, the absence of one spouse from the job market, deferral of one spouse's career, etc. All the factors considered are set out in a statute, N.J.S.A. 2A:34-23, which can be found on the New Jersey State Judiciary website www.njleg.state.nj.us.

Alimony is tax deductible to the person who pays it and taxable to the person who receives it.

At the present time, there are four different types of alimony that a court can order. They are open durational alimony, limited duration alimony, rehabilitative alimony and reimbursement alimony.

Open Durational Alimony is alimony that does not have a specific end date. Permanent alimony has been eliminated in New Jersey as of September 2014. Open durational alimony is typically paid in a marriage longer than twenty years. In marriages shorter than twenty years, except in exceptional circumstances, the court cannot order a term of alimony longer than the length of the marriage. Some of these exceptional circumstances include the receiving spouse having a serious illness, the recipient being elderly when the award is made, the need for a parent to be home with a child, where one spouse has been economically dependent for so long that he or she cannot reasonably be self-supporting, where the paying party has received a larger share of the assets.

Limited Duration Alimony is now the type of alimony awarded most frequently. It is paid for a fixed number of years, usually fewer than the number of years that the parties were married.

Rehabilitative Alimony is paid for a period of time and designed to allow one spouse to gain education or skills to enable that person to enter the work force. A specific plan for how long education or training is expected to take is required.

Reimbursement Alimony is designed to reimburse one spouse for supporting another through education and training which led to a career. It generally is not a large award, and is only awarded in certain fact-specific circumstances.

Sometimes these different kinds of alimony are combined. This may occur where a divorcing spouse plans to go to school for a specific program which will enable him or her to have a career, but the career still will not generate sufficient income to support a lifestyle substantially similar to the marital lifestyle. During the period the spouse is in school, both rehabilitative and either open duration or limited duration alimony will be paid. The rehabilitative alimony will end when

the educational program is complete. The other types of alimony will continue indefinitely or for the number of years agreed upon or ordered by the court.

Alimony ends with the death of either the paying or receiving spouse or the remarriage of the spouse receiving alimony. It is important to make sure that the person receiving alimony is protected from pre-mature loss of support by making sure that the paying spouse has life insurance or some other security to protect the obligation.

Alimony may also be suspended or terminated upon **cohabitation** of the spouse receiving the alimony.

Unless the spouses agree otherwise, alimony may be modified (increased or decreased) based upon a showing of a substantial change in the financial circumstances of either party. Sometimes, as part of a settlement, people agree that there will be no modification of alimony, irrespective of changes in circumstances. The provision memorializing this agreement is called an **Anti-Lepis** clause.

FAQs:

1. *My spouse has a job where she receives a salary, but most of her income is paid in a year-end bonus which changes every year. How is alimony determined?*

There are two approaches to this situation. Some people take an average of the prior five years of income and base the alimony on that average. Another alternative is that the employed spouse and the receiving spouse are paid the same way. Alimony is paid based on the salary and then a percentage of the bonus or other additional income is paid as “supplemental alimony.”

2. *Can I stop paying alimony when I retire?*

This was an open issue in the law for many years and the answer was “it depends.” While that is still the simple answer, the alimony statute was changed in 2014 to give us much more guidance. For divorces occurring after September 10, 2014, alimony is “presumed” to end at retirement so long as it is at full Social Security retirement age. A presumption doesn’t mean that it will definitely end, but it is more likely than not to end. There are some professions such as law enforcement where retirement usually comes must earlier. Here, judges will look at all the facts including what the spouses planned for when they were married, whether there is a prospect for the retiree to move on to another job, the financial condition of the dependent spouse before making a decision. It is wise to address the issue of retirement in your negotiations. Spouses can agree that the dependent spouse may receive a greater share of the

assets in order to guarantee that the working spouse can retire at a certain date. Under the old law, divorcing parties often agreed that one would keep the house and the other would retain all of the pension payments. Under the current law, this is rarely a good idea for either party.

If you got divorced under the old law and are paying “permanent alimony,” you are not prevented from seeking a termination or modification of alimony when you retire. Here the judge will look at a number of factors which are set forth in N.J.S.A. 2A: 34-23(j) (3) which can be found on the judiciary website.

Insurance:

Once a divorce is filed, an insured person must maintain insurance coverage and may not change beneficiaries without court permission

The purchase of life insurance is usually required as part of a divorce settlement whenever one party has the obligation to pay money to another for alimony, child support or to compensate the other spouse for assets he or she is retaining. This is to make certain the needs of the child(ren) and dependent spouse will be met and that a spouse who may be waiting to be paid off for an asset will be secure if the wage earner dies. Sometimes disability insurance is also required.

If the paying spouse, due to medical issues or age, is either uninsurable or the cost of insurance is prohibitively expensive, don't give up. Consider using assets, such as retirement funds to be pledged as security.

Life insurance is usually dealt with toward the end of the negotiations and the amount needed to make sure the obligations are secured is given insufficient consideration. Sit with your lawyer and calculate the amount of after-tax money will be required for the entire period the obligations are in effect. When calculating life insurance to secure child support, don't forget about college and other expenses, such as lessons, sports, medical bills, orthodontia, counselling etc. that the parents are sharing. Also, particularly when custody is shared don't forget about the expenses that a parent pays when the children are with him or her.

The obligation to provide health insurance for children is usually included in a divorce agreement.

If you are covered as a dependent on your spouse's employee health insurance plan, you may convert to individual coverage for a period of three years. This can be expensive and it is important to research the cost and include it when drafting your post divorce budget.

Equitable Distribution:

This is the legal mechanism which provides for the sharing of marital property (assets) upon divorce. It is a three-step process which consists of:

1. Determining what property is subject to distribution;
2. Determining the value of the property; and
3. Deciding how the property should be shared between the parties.

The best way to understand equitable distribution is to walk through this three-step process.

Step One

What property is subject to distribution? Property can be defined as being in one of two broad categories: **marital property** and **separate property**. **Marital property** generally includes all personal and real property acquired from the date of the marriage until the complaint for divorce is filed, although the dates may vary in certain instances. Examples include, homes, cash, stock, brokerage accounts, patents, businesses, cash value of life insurance. Sometimes an asset is purchased before the marriage, but still included as marital property since its use is intended for the marriage. In such instances, it is viewed as being acquired “in contemplation of marriage” and is included in the marital estate. If an asset is owned by one spouse prior to the marriage, but put into a joint account or asset, it may also be considered marital property. Marital property does not include inheritances, third-party gifts, or gifts received via intestacy no matter when they were acquired. Many people are surprised to learn that gifts between husband and wife during the marriage, such as jewelry, are marital property. The engagement ring, however, is usually the property of the recipient.

Separate Property includes all property acquired prior to the marriage, property acquired after the filing of the divorce complaint, inheritances, and gifts from third parties to one of the spouses. Although the concepts of marital and separate property may seem simple, they are often disputed and are addressed by the courts on a case-by-case basis. As an example, one of the spouses may have owned a business before the marriage but the business grew in value during the marriage due to the efforts of one or both spouses. The increase in value is marital property.

Step Two

What is the value of the asset? This is the second equitable distribution issue that a court must address since it is the dollar value of the asset that is shared between divorcing parties. The values of some assets, such as bank accounts and publicly traded stock are quite simple to determine. Real estate can be appraised. Personal property such as furniture or jewelry may also be appraised, but people are usually disappointed to learn that the values of these items are much smaller than anticipated.

Assets, such as pensions, stock options and non-publicly held businesses present more complex valuation questions. Usually, **forensic accountants** or **actuaries** are hired in these cases to provide expert valuations to the court. Even experts can differ on value. Thus, sometimes a judge will appoint an expert. Each party has the right to have his or her own expert on valuation. Sometimes the parties agree on an expert.

Even where spouses worked together in a business, it is rare that they continue to do so after a divorce. The courts frown on people continuing to be economic partners after divorce. Thus, the business is valued and one party buys out the other. There are several components to the value of a business or professional practice, such as a law practice or medical practice. They include equipment, accounts receivable and “goodwill.” **Goodwill** is the likelihood that the business will generate profit in the future. There are different approaches to valuing goodwill which your attorney and expert can evaluate. The “book value” of a business is rarely its value for equitable distribution.

Pensions and other **deferred compensation plans** are also subject to being valued and divided upon divorce. It may not be appropriate to simply rely on the number reflected on the statement. There might also be several different retirement benefits and/or **annuity plans** provided by an individual employer. It is important to make sure all retirement and deferred compensation plans are disclosed. The portion of a retirement plan that is distributed between the parties in equitable distribution will not be considered as income for alimony.

Step Three

How should the assets be shared between the parties? Equitable distribution does not necessarily mean “fifty-fifty.” Judges have discretion to divide assets in a way that a judge determines to be “fair.” The factors that a judge considers are set forth in the statute, N.J.S.A. 2A:34-23, which can be found at the New Jersey Legislative website www.njleg.state.nj.us. Some of the factors include:

- 1. The length of the marriage.**
- 2. The source of the acquisition of the asset.**

3. **The contributions of the parties to the maintenance of the assets.**

4. **The separate assets of each of the parties at the time equitable distribution occur.**

5. **The tax consequences of the distribution.**

6. **The capacity of the assets to generate income.**

It is important to focus on these factors and make your attorney aware of any facts which may be relevant to these questions.

As a general rule, the **equity** in certain assets, such as bank and investment accounts funded during the marriage and the marital home, tend to be shared equally. Still however, issues remain about whether the home is to be sold immediately upon divorce or one of the parties will continue to live there until some future time. The cost of maintaining the property, whether there are high school age children living there and the amount of equity in the property are factors courts consider when a parent wishes to stay in the home with the children. You may feel a strong emotional connection to the home. While it may be difficult, it is important to evaluate the costs of maintaining the home, the need for and cost of repairs, and the likelihood that the home will maintain its value, to determine whether you actually want to keep this asset. It may be better to have the cash, which will give you the flexibility to purchase something more affordable. If your home has substantially increased in value since it was purchased, you need to consider that some of the value may be lost by the payment of **capital gains taxes** once it is sold. It is important to know whether these taxes will be borne solely by you or shared with your spouse. This is something to discuss with your attorney and a tax accountant.

Broadly defined, there are two types of **retirement plans**: A **defined contribution plan** and a **defined benefit plan**. A 401K is an example of a defined contribution plan. It is like a bank account and the employer and employee both may contribute. A defined benefit plan is one where the employer contributes to one fund for its employees and the benefit to the individual employee is expressed as a monthly sum that the employee will receive at retirement at a specific age.

Retirement assets are shared in several ways. The benefit which was earned between the date of the marriage and the filing of the complaint for divorce can be split into two separate accounts (or, in the case of a defined benefit plan, two equal monthly benefits paid at retirement), one for the employee and one for the non-employed spouse by a mechanism called a Qualified Domestic Relations Order (**QDRO**). The non-employed-spouse's fund continues will grow or diminish based on the financial market and can be collected at the earliest date for collection under the plan. The employed spouse's benefit continues to grow through

contributions, not shared by the non-employed spouse, for as long as the employee continued to work. In certain types of plans, the non-employee-spouse's portion can be rolled into an IRA. Transfers from the employed spouse's retirement plan to an account for the non-employed spouse can be made tax free because they are done as part of a court order emanating out of a divorce. While the "transfer" into a new account for the non-employed spouse is tax free, income taxes will be paid when the retirement benefits are actually received as income. In distributing a defined benefit pension plan, it is important to address the survivorship benefits under the pension. These benefits allow the pension to be paid beyond the death of the employed spouse. Generally, this results in a modest reduction in the monthly benefit.

Another way in which pension benefits are shared is by way of what is called an **immediate offset**. This means that the non-employed spouse's share of the pension is received by the employed spouse giving up part of another asset. Generally, this method results in the non-employee spouse receiving a smaller share of the pension because it is being received immediately and the recipient will not pay income taxes upon receipt.

It is rare that a business or professional practice is divided equally between divorcing spouses. One reason is that it is not clear that the business will maintain its value or when, or if, it will ever be sold. Another reason is that part of the value of such a business is its ability to generate income which is being paid as alimony. Courts also know that, if the business is sold in the future, there may be taxes on the sale.

A word about **personal property**. Divorcing parties often get bogged down on the distribution of personal property. This tends to be very expensive and counterproductive. Most items do not retain their value after they leave the store and people often find that fighting over their furniture costs more than the value of what they are fighting for. Judges are very busy and do not consider litigation over personal property a priority of the court system. Usually, the satisfaction of "winning" that special piece of property is short lived. Consider the following approach. Each party makes a list of the items he/she wishes to retain. Each party keeps the items which appear on their list only. The items on both lists are placed on a third list and the parties choose alternately until all items are exhausted. A coin toss determines who gets the "first pick." Sometimes parties agree that the person who "loses" the toss gets the second two picks to "even the playing field."

Tax Issues:

The tax impact of your payment or receipt of income or assets can make a very large difference in the actual value you retain for your own use after the divorce. For example, alimony is **tax deductible** to the payor and taxable to the recipient. Child support and equitable distribution are not taxable or deductible. However, there may be tax consequences when you sell an asset you receive in equitable distribution. Tax losses which accrue during the marriage have value

since they can reduce your taxes and increase spendable income. Thus, it is important to address how these will be shared.

It is also important to discuss which parent will claim the children as tax exemptions and who will have the benefit of head of household filing status. While the tax law gives the exemption to the parent caring for the child, judges often give it to the parent who will receive the greatest tax benefit. If the benefit does not go to the primary custodian, IRS form 8332 must be signed by the custodial parent relinquishing the exemption. It may be appropriate to consult with an accountant to determine how these tax issues will affect your settlement.

Compensation for Physical or Mental Abuse:

Our law permits one spouse to sue the other and seek monetary damages for physical and/or mental abuse perpetrated during the marriage, illegal wiretapping and invasion of privacy and other **tort claims**. Claims of this nature are called “**Tevis Claims**.” Generally damages are awarded only in the most severe cases. Such a suit must be brought in the context of the divorce case or it is forever waived. There are many rules surrounding the bringing of these claims. If you were abused during your marriage, it is important to discuss the facts of the abuse with your attorney.

Attorney and Expert Fees

Among the issues addressed in a settlement or trial is whether the supporting spouse will have an obligation to contribute to the supported spouse’s attorney and expert fees. This will depend upon the divorcing spouses’ relative financial positions and whether they have acted in good faith. Sometimes, if requested, a judge will create a fund (usually from joint assets) to have these fees paid as the case progresses. This can do a great deal to even the litigation playing field.

THE DIVORCE PROCESS

Introduction

Once divorce becomes inevitable, you should discuss with your attorney whether you want to enter the court system immediately or try to resolve your case outside of court. A conference between you, your spouse and your attorneys will help crystallize the issues in dispute and perhaps even lead to an early settlement. Mediation, Arbitration and Collaborative Divorce are methods of Alternate Dispute Resolution and are discussed later in this booklet. The decision whether to seek resolution in or outside of court will depend on many factors including whether you need immediate receiving support or access to your children, the issues to be resolved and finances.

Getting Into Court

A divorce case is introduced into the court system by the filing of a **Complaint for Divorce**. The complaint sets forth certain facts which will satisfy the requirements in N.J.S.A. 2A:34-2 that a divorce be granted on certain grounds. The grounds for divorce are not important in the determination of issues of custody and economics. In the complaint, you spell out in broad terms what you want from the court such as custody, alimony, child support and equitable distribution. While you do need to file a complaint in order to obtain a divorce, you do not need to file a complaint in order to begin resolving custody and economic issues. The filing of a complaint gives you access to the judicial process in case you need the assistance of the court in obtaining information from your spouse or an order for support, custody or visitation. The filing also sets a **cut-off date** for equitable distribution. This means that property acquired after the date the complaint is filed will not be shared with your spouse.

In order to file a Complaint for Divorce in New Jersey, you must live here for a year before you file. The complaint is filed in the county in which the party filing the complaint resides.

If your spouse files a complaint against you, the response is to file a document called an **Answer and Counterclaim**. This notifies the court that you are aware that a divorce has been filed and gives you a chance to state what you are asking for from the court.

Once these documents are filed, your case will be administratively tracked by the court so that it will eventually be scheduled for trial or final hearing at which time the court will grant a **Final Judgment of Divorce**. Depending on the county in which the case is filed, this can take anywhere from a few months to several years. In most counties, the court schedules a **Case Management Conference** shortly after the Complaint, Answer and Counterclaim are filed. At that time, the judge and attorneys discuss what issues are in dispute, the information necessary to prepare the case for settlement or trial (discovery) and how long it will take to gather **discovery**. While it is the state's policy for every divorce to be completed within one year, this is more a goal than a reality in cases where the issues are numerous or complex or one or both parties are very angry. Crowded calendars, delays in economic information being supplied and expert reports being completed often cause cases to take considerably longer than a year to be finalized. If the case has to be decided by a judge after a trial, it is highly unlikely that it will be completed within the one year time frame.

If you and your spouse are able to settle your case with the assistance of your attorneys, or by mediation you can usually get into court to finalize your divorce within weeks, and sometimes days, of signing an agreement.

Motions and Orders to Show Cause

After the complaint for divorce has been filed, you have access to the courts to obtain orders for custody, support, appointment of financial or mental health experts, and enforcement of discovery requests and other court orders. These requests are usually made in a **Notice of Motion** which sets forth what relief you or your spouse is requesting from the court. You can also make a request for emergency relief in an **Order to Show Cause**. In a document called a **Certification**, which accompanies the Notice of Motion or Order to Show Cause, you explain why the court should grant what you are requesting and certify to the truth of the statements you are making. Orders resulting from motions or Orders to Show Cause during the pendency of the divorce are called **pendente lite orders**. These are temporary and subject to change when the divorce is finalized, and sometimes earlier if circumstances change significantly. Judges have the authority to enforce **pendente lite** orders and can incarcerate a person for non-compliance if an application is made to the court and the judge finds non-compliance to be willful. A judge can also order the party violating the order to pay attorneys' fees for the enforcement application. Since these orders are temporary and often entered without complete information, the judge can modify them retroactively at trial. The request to have a temporary order modified retroactively is called a **Mallamo Claim**.

If you have a concern that your spouse may be using alcohol or drugs when with the children, you can request a **“risk assessment”** which is a relatively quick evaluation to determine whether the children are safe in his or her custody.

Discovery

During the period between when the complaint is filed and when the divorce is concluded, you and your spouse will obtain **discovery**. This means you will exchange information about income, assets, expenses, debts, and in custody cases, information about the parents' and children's mental health, parenting styles and availability to the children. The following are the primary methods of conducting discovery:

Case Information Statement (C.I.S.) – This is the most important financial document that you will prepare in your divorce case. It is a statement of your income, assets, expenses and debts, as well as, certain biographical information. It is on this document that a judge will base any decision about what you should pay or receive in alimony and child support.

The C.I.S. contains a detailed budget. If you are uncertain of your expenses, look through past checks and credit card bills. Be careful not to understate your expenses. If you are no longer able to spend as much as you did during the marriage on any particular item, you should indicate that in a footnote. If you anticipate certain expenses which you have not had in the past (such as child care, psychotherapy, a car payment, etc.), you should estimate the expense and note that

this is “anticipated.” Review the C.I.S. carefully, since in the future, you might be asked how you arrived at your expenses. If you used notes or workpapers to complete the budget, it is useful to save the backup. The C.I.S. can and should be updated at various states in your divorce case.

The C.I.S. also contains a balance sheet of your assets and liabilities. Make certain to list all assets and debts, even if your spouse does not have a claim to them. Failure to list an asset can give rise to a claim that you deliberately failed to disclose it. If you do not know the value of an asset or you are estimating its value, simply state that the value is “unknown” or “estimated.” If funds are in the name of your child under the Uniform Gift to Minors Act, they are the property of the child and need not be listed on your C.I.S. If you received the asset as a gift from a third party or an inheritance, it should still be listed on your C.I.S. with a note to this effect. If you borrowed from parents, make sure you list the debt in your C.I.S.

The C.I.S. is the foundation of all economic issues in your case. Its preparation requires the greatest care. Once you prepare a draft, you must have it reviewed by your attorney. If you are having difficulty translating your expenses into the categories in the CIS or if your financial situation is complex, it may be useful to have an accountant who is familiar with divorce cases assist you in completing the document.

Interrogatories – These are written questions that require written answers. The party responding certifies to the truth of the responses. They usually deal with income, assets, expense and debts and how each was acquired and disposed of. There are also custody interrogatories in which questions are asked about why a party is seeking custody and what benefits they feel they can offer the child. Where alimony is in dispute, some attorneys send “Lifestyle Interrogatories” that ask about vacations, household help, investing, dining out and other aspects of lifestyle. Generally, interrogatories include requests for lists of trial witnesses, what documents you intend to present at trial and the names of individuals who have knowledge about the case. The answers should be updated prior to trial.

Subpoenas and Demands for Production of Documents – These are written demands for a party to produce records, such as bank statements, canceled checks, tax returns, records of a business, financial statements, credit card records – virtually anything that will either prove or disprove a person’s representations about financial condition. In certain cases, diaries, passports and medical reports are sometimes requested. Subpoenas compel both document production and appearance at a deposition. They are sent to third party such as banks and credit card providers.

It is more expensive to subpoena credit card documents and bank statements than for spouses to exchange them since financial institutions charge per page. If you are considering leaving your home, make copies of your bank and credit card records for the previous three years before leaving.

Depositions – A deposition is testimony taken under oath, usually in an attorney’s office. Questions and answers are taken down by a court reporter and bound in a booklet. Any person having information relevant to financial or child related issues can have their deposition taken. These are useful to determine how convincing a witness will be if there is a trial and to having a potential witness commit to a particular version of a story. They are not used in all cases, but tend to be most helpful when custody is in dispute or the documents are incomplete or raise questions.

Requests for Admissions – These are demands that a person either admit or deny certain statements. They are used less frequently than other tools of discovery.

You and your attorney will have to decide which tools of discovery are most appropriate for your case based on the information that needs to be obtained. As with every decision in your divorce, you must do a cost-benefit analysis:

Do I have all the information I think I need? If not, what is the most I can receive and what is the cost of obtaining the information?

Early Settlement Panel and Mandatory Mediation

Once you and your attorney have had some time to conduct discovery, the court schedules the case for an **Early Settlement Panel (E.S.P.)**. This is a free, but mandatory, service provided by the courts to assist you in settling your case. The E.S.P. panel is composed of experienced attorneys who devote a substantial portion of their practice to Family Law in the county where your case is filed. The panelists volunteer their time to listen to the facts of your case and make suggestions for settlement. They are familiar with the judges who will hear your case and give you an opportunity to hear suggestions for a fair resolution from people who have no stake in the outcome of your case. Their recommendation is not transmitted to the judge unless the attorneys agree and it is totally non-binding. However, it represents a well-educated, unbiased judgment and it should be given great consideration. By accepting the recommendation of the panel or some modification on which it is based, you can save a great deal of money in counsel fees. Additionally, you can sometimes get divorced the day you are there for the **E.S.P.**, (although, if your settlement is complicated, your attorney might prefer to wait until you have a formal signed settlement agreement). Whether you get divorced on the day of the E.S.P. or wait for a signed settlement agreement, making a settlement based on the suggestions of the Early Settlement Panel saves anxiety and gives you the opportunity to go forward with your life without the stress, delay and expense of a trial.

The E.S.P. is often the first time you will hear what uninvolved, but experienced, people think is a reasonable solution. Many people do not consider

the recommendations carefully. Don't make that mistake. The litigation just gets more expensive from that point on.

If the E.S.P. is ineffective in resolving your case, you will be sent to **Mandatory Economic Mediation**. There you, your spouse and your attorneys will meet an attorney or forensic accountant who devotes a substantial portion of his or her practice to Matrimonial Law and has been trained and approved by the Supreme Court of New Jersey as a Family Mediator. You will receive two hours free of charge by the mediator (one of which can be devoted to the mediator's preparation time) and are then, if you continue, responsible to pay the mediator at his or her hourly rate. The Economic Mediation process affords you more time to work on settlement than the E.S.P. In mediation, you and your spouse can agree on a creative resolution that meets your needs, but that a judge may not have the authority to order

If you find one or both of the E.S.P. panelists helpful you might consider selecting them as your economic mediator(s).

The Trial

If you are unsuccessful in settling your case at the E.S.P., economic mediation, settlement conferences or through divorce mediation, you will have a trial before a judge. You and your spouse and possibly other witnesses will testify and a judge will make a decision on the issues described above. A trial can be a scary and frustrating process for several reasons. It is rare that a trial begins and continues every day until it is concluded. Judges have other responsibilities and your trial is likely to be interrupted by emergencies or the judge's responsibility for other cases. Even after a trial has started, it may be several days or even weeks between trial days. Despite the interruptions, you are paying your attorney (and sometimes your expert) for the time he or she spends waiting. This is very costly. Although judges listen carefully and work very hard to do the right thing, the decisions they make are largely subjective. They come into your life for a few days and are called upon to make decisions that will affect you for a lifetime. Facts that are important to you may not seem important to the judge. Also, judges have an obligation to report testimony that tax fraud has occurred to the prosecutor or U.S. Attorney. If you have been living on untaxed income you might want to consider a resolution of your divorce issues outside of court.

If your case does go to trial, this is what you can expect: The person who is the **Plaintiff** presents his/her case first. Each witness presented is first questioned by the plaintiff's lawyer. This is called **direct testimony** and it is the plaintiff's opportunity to tell his or her story. Once each witness's direct testimony is complete, the **Defendant's** lawyer has the right to **cross-examine** the witness. The purposes of cross-examination are for the defendant to bring out facts from the plaintiff's witnesses that will help the defendant's case and to raise questions about the credibility or recollection of the plaintiff's witnesses. There may then be re-direct and re-cross examination where the lawyers try to clear up

areas where the witness's testimony may seem unclear or inconsistent. It is common for a judge to ask questions of the witnesses, as well. After the plaintiff's case is complete, the defendant presents his/her case and the process is repeated. The plaintiff may then present **rebuttal testimony** to respond to new issues raised by the defendant's witnesses. The defendant may also rebut claims raised in the plaintiff's rebuttal. It is important that each witness be prepared both for direct testimony and for what questions might be asked on cross-examination. The entire trial is recorded. In addition to oral testimony, the attorneys may submit documents, such as bank records and credit card records, emails, tape recordings and photographs to help tell the story.

Prior to the testimony beginning, your attorney may submit a trial brief to the court to give the judge an outline of your case and the support for your claims. Some judges allow an oral opening statement by each attorney before the testimony begins.

Divorce cases are tried before a judge, not a jury. The only exception is if there is a claim for damages for injury to one of the parties. This issue may be tried before a jury.

Testimony at the trial is controlled by the New Jersey Rules of Evidence. The purpose of these rules is to make certain that only reliable and relevant evidence is considered by the court. During the questioning of a witness, a lawyer may object to a question on the grounds that it violates one or more of the rules of evidence. If there is an objection, the witness should stop speaking until the judge rules on the objection.

After all the witnesses testify, the judge will usually permit the attorneys to make a final argument, either orally or in writing, sometimes both. The judge then renders a decision. It is rare that a judge makes the decision immediately at the conclusion of the trial. It may take weeks or even months. Once that occurs, the judge or the attorneys prepare a Final Judgment of Divorce which recites the court's rulings on all the issues.

Appeals

If you disagree with the judge's decision you may appeal. However, the scope of an appeal is very limited and most of the time the decision of the trial judge is sustained. The appellate courts rarely re-examine the factual determinations made by the trial judge. Appeals are successful only where the court finds a misapplication of the law, that the judge made an error in procedure, or abused his or her discretion. "Abuse of discretion" is very difficult to prove. An appeal is also a long and expensive process since you will have to pay for a transcript of whatever proceeding is being appealed and your attorney will have to research legal precedent and file a brief demonstrating that the judge misapplied the law, failed to follow appropriate procedure or abused his discretion.

If you are unhappy with a judge's ruling and file an appeal, the ruling is not automatically suspended. It is fully enforceable unless you obtain a “**stay.**”

You only have the “right” to file appeals of orders that are final on all issues for all parties. This means that if you are unhappy with a temporary order you must obtain the appellate court's permission to file. Also, if a judge rules on most issues in a case, but asks for more information or delays ruling on one issue, the order is not final.

Enforcement and Modification of Agreements and Court Orders

The signing of an Agreement or entry of a court order does not guarantee that you will get what has been ordered or agreed to. Sometimes people simply refuse to do what they are supposed to do; sometimes despite best intentions they do not have the ability to do so. As a result, courts have the right to enforce and modify agreements.

Enforcement and Modification are the subject of separate applications and usually carry a new fee arrangement with your attorney.

If your spouse is obligated to pay alimony and/or child support or equitable distribution and refuses to do so, you can ask the judge to enforce the Order or Agreement that gives you these rights. This is done by the filing of a Notice of Motion.

If your spouse has failed to pay support or equitable distribution, and the judge finds that your spouse has the ability to comply, the order will be enforced by the court ordering the payment of the delinquent amount within a fixed time or according to a schedule. If payment of alimony or child support is not being made through the courts, the court can order it. The court can also order that an arrest warrant issue if the amounts are not paid according to the schedule.

Generally speaking, alimony and child support are modifiable based upon a **substantial showing of a change in circumstances** of either the payor or the recipient. This cannot be a temporary change. The person who seeks the modification files a motion, often called a **Lepis motion**, and bears the burden of showing a likelihood (“prima facie case”) that there has been a change in circumstances before the other party is required to give any information about his or her finances to the court. If the court determines that the person seeking the change has made a “prima facie” showing of a change in circumstances, the court can modify the order. It can also order discovery, litigation fees and a hearing to determine whether the apparent change in circumstances is real, is not temporary and affects the parties' ability to pay or need for support. This can be nearly as time consuming and expensive as the divorce.

Equitable distribution is not modifiable.

If you have been denied time with your children which has been agreed to or ordered by a court, the judge can order compensatory time and even transfer custody in cases where the violation is deliberate and repetitive. The court can also appoint a **Parenting Coordinator** or a **Co-parenting Therapist** if the court finds that the difficulties are related to an inability of you and your spouse to communicate. If your children are reluctant to see you, the court can order joint counseling, or a neutral pick-up location. If there is a concern or an allegation that the children are not safe with one parent or that a parent's conduct at pick up or drop off is inappropriate, there are a few private agencies that can supervise or monitor parenting time. There is also a supervised parenting program at each county courthouse. These tend to be crowded; they are often at inconvenient times and are used as a last resort.

If the court finds that the failure to comply with the order for custody, parenting time or payment obligations was deliberate, it may order that all or part of the attorneys fees you spent to enforce the order be reimbursed to you.

Divorce and Bankruptcy

Obligations which are **“in the nature of support”** are not **dischargeable in bankruptcy**. In fact, support is an obligation that is given “priority” under the bankruptcy code, which means that it gets paid from the assets of the debtor before other debts which are not secured by a mortgage.

Bankruptcy cases are not heard in the Family Court. They are heard in the Federal Bankruptcy Court. If a bankruptcy action is filed, all other litigation, including the divorce action, is automatically suspended or “stayed.” If you need relief from the Family Court, your attorney will have to go into the Bankruptcy Court and seek **“relief from the automatic stay.”**

If you and your spouse have joint debts and your spouse discharges the debts in a bankruptcy proceeding, the creditors can pursue claims against you. Agreements you make with your spouse do not necessarily bind your creditors.

If you believe that your spouse may file for bankruptcy protection, you must tell your attorney and would do well to have a consultation with a bankruptcy attorney.

MEDIATION **ARBITRATION** **AND COLLABORATIVE LAW**

Mediation, arbitration and collaborative law are all methods of resolving your divorce case outside of the court system. While you still need to file a Complaint and go to court to get your Judgment of Divorce, if you use any of these three approaches, the important decisions are made outside of the court system

and are not subject to many of the bureaucratic frustrations that you may encounter if you go to court.

In **mediation** you will work with a trained mediator to come to agreement with your spouse on the issues on which you disagree. The mediator is neutral and usually both you and your spouse have attorneys. The mediator must be agreed upon by you and your spouse and is paid separately. Usually the fee is split between the spouses. Mediation works well when both sides want to reach a settlement and there is not a large imbalance of psychological power between you and your spouse. Where there is a power imbalance, be sure to have your attorney present for the mediation sessions. The mediator's job is to arrive at an agreement, not to be an advocate for either you or your spouse. Sometimes in mediation you can arrive at creative solutions that could not be ordered by a judge.

You will begin by signing a mediation agreement which will establish the rules of the mediation. It is useful to agree on and commence mediation as early in your case as possible. If you wait until you have already been in court and it has ruled on some issues, you and your spouse may have fewer resources (financial and otherwise) to craft a settlement. Also, going to court creates a win-lose mentality and allows people to be driven by anger. A mediator can help you narrow the issues in dispute and create a list of what you will need to resolve the more difficult issues.

While some mediators believe that all the options for settlement should be generated by you and your spouse, others are more pro-active. When you interview mediators or discuss mediators with your attorney, think about which approach is most likely to be effective in your situation and in light of the fact that you may be unfamiliar with the law and what remedies may be available to you. Ask around to see if your acquaintances who are divorced worked with a mediator they found helpful. If you reach an agreement, it will be memorialized by the mediator in a document called a **Memorandum of Understanding**. One of the attorneys will then prepare a formal Property Settlement Agreement.

In **Arbitration**, rather than reaching an agreement, the arbitrator makes a decision, much as a judge would do. Both parties are represented by attorneys and the arbitrator listens to testimony and reviews documents which the attorneys submit as exhibits. You and your spouse will receive a written document called an **Arbitration Award**. Prior to beginning the arbitration, you and your spouse will agree on whether it is binding or non-binding. Binding arbitration is essentially the final decision. Rights to appeal if you are dissatisfied with the arbitrator's ruling are very limited. Among the advantages to arbitration are that you are not subject to the interruptions that judges suffer during the court day and that the arbitration sessions can be scheduled at the convenience of you, your spouse, the attorneys and the arbitrator. Some of the formality of a trial is relaxed. Matrimonial attorneys who serve as arbitrators often have more experience in matrimonial law than the judges who are assigned to hear Family Court cases.

While you do not pay judges for their time in hearing your case, you will have to pay the arbitrator.

If you have filed for divorce and then decide to go to arbitration, the court can now place your case on the “Arbitration Track” so that you are not required to appear for regular scheduling conferences for at least a year. Another option is to begin arbitration when you and your spouse agree that you will be divorcing, but before either files anything in court.

Sometimes people start a divorce because they believe it is important to set a “**cut-off date**” for equitable distribution. This way, if the case takes a long time, assets acquired after the cut-off date, but during the divorce are not shared. Most experienced lawyers when they enter mediation or arbitration will agree on a cut-off date.

Collaborative law is a relatively new approach to resolving matrimonial disputes. In it, the attorneys, spouses and collaborative law facilitator attempt to reach an agreement that best serves the family. This process employs specialists, such as financial planners, mortgage specialists and even communication coaches to assist the family in developing a plan for the children and their economic life after divorce. It is intended to be completely non-adversarial. Formal tools of discovery, such as interrogatories and depositions often are not used. Since Collaborative Law professionals are specially trained, if you are interested in this approach, it is important to determine whether your attorney has the necessary training.

In a Collaborative Law matter, the lawyers sign an agreement that under no circumstances will they participate in litigation on behalf of one of the clients. This means that if the process is not successful, you will need to go to another lawyer to have your case tried or settled.

Since judges may have an obligation to report perceptions of tax fraud to the IRS, people who have potential tax problems and cannot reach a settlement sometimes use one of these three methods of **Alternate Dispute Resolution**.

DOMESTIC VIOLENCE

The Family Court is also the forum for spouses and people who are, or were, in a dating relationship with an abuser to seek protection from domestic violence. **Domestic Violence** is a broad term and includes assault, harassment, terroristic threats, stalking, criminal restraint, kidnapping, false imprisonment, trespass, burglary, lewdness, criminal mischief, criminal trespass and homicide, as each of these terms is defined in the criminal statute. A domestic violence proceeding is a separate proceeding begun by the filing of a Domestic Violence Complaint. Initially, either a Family Court judge or a Municipal Court judge hears the complaint and decides whether to issue a **Temporary Restraining Order**. A hearing is then scheduled before a Family Court judge within ten days of the date

the Complaint is filed to decide whether the temporary order should become a **Final Restraining Order**. In this hearing, a judge will hear live testimony and witnesses are subject to cross examination.

In a domestic violence proceeding, judges can order:

- that a person be ejected from his or her home and restrained from returning
- that he or she be restrained from contacting the complaining party and other friends and relatives
- that one parent have custody of the children
- that access to children be limited or scheduled
- that interim support and bills be paid
- that damages be paid for injuries one party inflicts on the other
- that the perpetrator pay the victim's counsel fees for the domestic violence proceeding
- That any guns in the house be surrendered to the police, even if they are licensed

In hearing these complaints, judges focus on the specific act in the complaint. Prior acts of domestic violence are relevant only if the act in the complaint is determined to be domestic violence. A judge will not issue a restraining order simply based on a generalized fear that your spouse will behave violently.

Generally, although not always, a judge will decline to issue an order removing someone from his or her home unless there is some kind of physical violence. A minor incident which may stem from an argument in which there are no injuries usually will not result in an order restraining a party from the home. Judges are mindful that some people will file a Domestic Violence Complaint to try to gain an advantage such as possession of the house or custody of the children, in a divorce case which has been filed or will be filed soon. Before filing a Complaint for Domestic Violence, it is helpful to speak to an attorney about the likelihood of success and what facts should be emphasized in the written complaint and the testimony. Unsuccessful domestic violence complaints give the other side psychological power.

If you are injured by an act of domestic violence, it is important to file your complaint as soon as possible. You should also see a medical professional and take

photographs to document your injuries and any damage to property. The longer you wait to file your complaint, the less seriously a judge is likely to take your claim. If you leave the home out of fear, don't return until after you have seen the judge.

The issuance of a restraining order can have a long term negative impact. A licensed professional could lose his or her license. You could be prevented from holding a position that requires a clean criminal record. You could be prevented from obtaining a license for a firearm. For these reasons, it is rarely a good idea to consent to the issuance of a Final Restraining Order, even if you have done the act alleged.

If such an order, even a temporary one, is issued against you **do not attempt to contact your spouse** or have anyone do so on your behalf – even if you want to apologize or try to convince your spouse to reconcile. That will be viewed as a violation of the order and treated as a criminal action.

If such an order is entered, you will be given a brief opportunity to go to your home with a police officer to retrieve necessary clothing and toiletries. This is not intended to be an opportunity to get all the things that you want to retain in the divorce. Still, use all the time afforded to you.

If a temporary restraining order is entered against you which you believe is unjustified, your natural inclination may be to get into court as quickly as possible. It may be better to wait and get the transcript of what your spouse said that resulted in the restraining order being entered. Consult with counsel immediately to see if your attorney can negotiate an agreement for you to see your children if that is not already part of the order.

An alternative to the issuance of a Domestic Violence Restraining Order is for the parties to agree to a “**civil restraining order**” and dismiss the domestic violence action. If there is a divorce proceeding already filed, this is done by the parties reaching an agreement and filing it as a **consent order** in that case. If there is no divorce pending, one can be filed. Another alternative is for one of the parties to file a complaint for support or custody and to then file the consent order in that proceeding. A civil restraining order does not have the force of a domestic violence restraining order in that a violation will not lead to arrest or criminal sanctions. If the evidence on which the temporary restraining order is weak and you are planning or willing to leave the home anyway, agreeing to a civil restraining order may enable you to gain concessions on economic issue and even custody in return for staying out of the home. Lawyers can draft these civil orders in a neutral manner so that it does not appear that anyone is at fault. When civil orders are entered, the Domestic Violence action is dismissed.

If you have filed a domestic violence action and agree to dismiss a domestic violence and enter into civil restraints, you are not precluded from filing another complaint if another act of violence occurs.

In addition to granting a restraining order, a judge in a domestic violence proceeding can enter orders for custody, support and even order the perpetrator to pay damages for injuries inflicted on the victim. Since a domestic violence hearing is a “**summary proceeding**” and judges generally have a full calendar, it may be prudent to defer claims for money to the divorce action. This is something you should discuss with your attorney.

SAME SEX RELATIONSHIPS AND CIVIL UNIONS

Same-sex marriage was legalized in New Jersey in 2013, and in 2015, the Supreme Court of the United States issued a landmark decision legalizing same-sex marriage across the country. All fifty states, along with United States territories, must recognize validly-performed same-sex marriages, and issue marriage licenses to same-sex couples. As a result, same-sex married couples across the country are to be afforded the same rights as heterosexual couples, in both marriage and divorce.

UNMARRIED COHABITANTS

Unmarried cohabitants who have not entered into a civil union do not have the right to share in assets acquired by the other party during the period that they live together. Also, under a recent amendment to the **Statute of Frauds**, unmarried cohabitants do not have a claim for support unless they enter into a written agreement.

INTERSTATE AND INTERNATIONAL ISSUES

As our society becomes more mobile, courts face increasing numbers of cases where parents live in separate states and even separate countries. There can be differences among the states on issues, such as a parent’s responsibility to share in the costs of college and child support. Specific statutes govern interstate support and custody disputes: the Uniform Child Custody Jurisdiction and Enforcement Act (**U.C.C.J.E.A**) in the case of custody, and the Uniform Interstate Family Support Act (**U.I.F.S.A.**) in the case of alimony and child support. If a child is moved to another state without your permission or the permission of the court, there are compacts between the states to facilitate the child’s return and to impose punishment upon the abductor. If you know at the time of your divorce that you or your spouse is likely to move to another state, or you wish to do so, it is important to discuss these laws with your attorney and to choose an attorney who has handled these issues.

Similarly, from time to time, international custody disputes arise. A parent having custody receives permission to move to another country for a new job. Children are abducted. A parent is in the military stationed abroad. There are Federal protections for people in the armed services. There are international agreements to which certain countries subscribe. Nevertheless, these cases are

difficult. Even more difficult are those cases where the country to which the child is abducted does not subscribe to international treaties. International custody litigation requires the knowledge and skill of an expert attorney who has handled other such cases and has contacts in the international community.

TIPS FOR ASSISTING YOUR ATTORNEY AND SURVIVING YOUR DIVORCE

1. Make your attorney aware of any history of domestic violence and/or alcoholism, drug abuse or criminal convictions.
2. Write down any questions you may have so that when you call your attorney you can address more than one issue at a time.
3. Leave specific messages with the attorney's secretary or paralegal.
4. Ask if your attorney is comfortable communicating by email. If so, consider utilizing this method of communication. It gives you the opportunity to re-read responses and gives the attorney flexibility in providing you with answers to your questions when he or she is available to address them. That said, be considerate of your attorney's privacy and non-business time. If your attorney does not have "down time" his or her productivity and creativity will not be at their best. ***Do not use email to communicate with your attorney if your spouse has access to your email account!***
5. Provide as much information as possible to your attorney in writing.
6. Keep copies of every document you send to your attorney or your spouse.
7. Organize bills for which you are seeking payment or reimbursement. Make a list of creditors, amounts and attach copies of bills and checks that you have paid for which you are seeking reimbursement.
8. Make copies of all financial data in the home and on the family computer, including tax returns, brokerage statements, bills, credit card statements, bank account numbers, insurance policies, financial statements, business records, etc.
9. If your spouse keeps large sums of cash or bearer bonds in the home, take photographs with the serial numbers visible. Use the date stamp function on your camera.
10. If bills are paid or recorded by computer in a system such as Quicken, obtain a printout of as many months as possible.

11. If you believe that your spouse has tampered with your computer, hacked into your email account, diverted your telephone calls to his or her phone, placed a GPS tracking device on your car, or in any other way violated your privacy, notify your attorney immediately.

13. Retain any emails and/or text messages between you and your spouse that are threatening or in any way relate to your case. If you go to court for a domestic violence hearing and want to use those messages, make sure they are printed and photocopied. There is an “app” called Tansee that enables you to print full conversations in a way that is easy for a judge to read.

14. If there is information on a computer or account to which you do not have access which you believe will be important for your case, notify your attorney immediately.

15. Be very careful about what you say and how you say it in emails to your spouse and third parties. You should assume that your email communications will be produced in a court document.

16. If possible, secure a password protected email account.

17. Do not hack into your spouse’s password protected email account.

18. Avoid websites with sexually explicit material or which invite adulterous activity. While the grounds for divorce are irrelevant to economic issues, Judges are human beings and draw conclusions which could harm your custody claim.

19. Think twice about posting anything on social networking sites, particularly photos or posts about your significant other or your spouse.

20. Remember, your attorney is not your therapist. You have a right to expect your attorney to be empathic, but not to be your sounding board. You are paying for your attorney’s time and it should be used as efficiently as possible. Your attorney may also have to tell you things you would rather not hear. It is usually helpful when going through an event as traumatic as divorce to consult a therapist who will be there just to help you with the emotional aspects of this life changing event.

21. If, after meeting with an attorney your spouse suddenly proposes reconciliation, consider the possibility that he or she may wish to buy time to manipulate finances. You may want to insist that the reconciliation be governed by a written agreement which gives you full access to family finances. If your spouse is unwilling to be open about finances, it does not portend well for a reconciliation.

22. If you are represented by an attorney, do not call the judge's law clerk or the other attorney.

23. Take care of yourself physically and emotionally. Take time for yourself and do something you enjoy. No one can be at his or her best without some respite. Divorce can be an emotionally depleting experience. While it is in progress, your other obligations are still there. Thus, it is more important than ever that you listen to your body. It is not self indulgent!

A FINAL WORD

This booklet is not intended to be a legal document or treatise. It is far from complete and is not the final word on any topic it addresses. It is intended only to give you a compass to help you navigate the divorce process. All positions you take and decisions you make should be discussed with your attorney.

FOR A CONSULTATION CONTACT

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GLOSSARY OF DIVORCE TERMS

Actuary: A financial professional who calculates the value of money over time.

Admission (Request/Demand for): Documents sent by one party to another demanding that the receiving party admit or deny certain statements. Part of the discovery process.

Alimony: Financial support paid by one spouse to another. There are four types of alimony: open durational alimony, limited duration alimony, rehabilitative alimony, and reimbursement alimony.

Open durational alimony: Alimony that does then have a fixed termination date, usually reserved for marriages longer that twenty years.

Limited duration Alimony: Alimony paid for a fixed period of time. Most often paid in cases where there was a short or intermediate length marriage.

Rehabilitative Alimony: Alimony, paid for a period of time, designed to allow one spouse to gain education or skills which will enable that person to enter the workforce.

Reimbursement Alimony: Alimony designed to reimburse one spouse for supporting another through education and training which led to a career.

Appeal: Review of a trial court decision by a higher court. In New Jersey, appeals are heard by the Appellate Division.

Interlocutory appeal: An appeal of a trial court ruling before the trial has concluded.

Stay: A temporary judicial action providing that an order will not be enforced pending the outcome of an appeal or bankruptcy

Appellate Division: The appeals court in the state of New Jersey. Hears and decides appeals of motions and judgments of the Superior Court, including those related to divorce cases.

Alternate Dispute Resolution (ADR): The processes by which a case or conflict may be resolved without resort to trial or other litigious means. Generally done without direct intervention by a Court. Forms of ADR include arbitration, mediation, and collaborative law. See Arbitration, Mediation, and Collaborative Law.

Answer (Answer to Complaint): The response to the Complaint for Divorce. Addresses the allegations set forth in the Complaint. Must be filed within 35 days of receiving the Complaint. May also be accompanied by Counterclaims. See Counterclaim.

Annuity: A financial instrument designed to generate a specific income stream at a future time.

Annulment: A Judgment of the court declaring a marriage void from its inception due to fraud or other very limited and specific reasons. It is unrelated to a religious annulment and is not necessary in order to obtain a religious annulment.

Appraisal: Engaging in the assessment of the value of an item. Often refers to real property. In divorce matters, appraisers may be considered experts. See Experts.

Arbitration: A binding legal process in which disputes are resolved by a neutral third party. Parties may present evidence to the arbitrator and are generally bound by the arbitrator's decision. May be entered into voluntarily or by court order.

Automatic Stay: A legal mechanism which suspends any other legal proceedings, including a divorce action, upon the filing of a bankruptcy action. If a spouse needs relief from the Family Court after a bankruptcy action is filed, he/she must go into Federal Bankruptcy Court and seek "relief from the automatic stay."

Bankruptcy: A legal mechanism that allows a debtor to be freed from (discharge) or pay a lesser portion of his/her obligations. Obligations "in the nature" of alimony and child support are not dischargeable in bankruptcy. Bankruptcy requests are filed in Federal Court. The filing of a bankruptcy case automatically suspends the divorce proceeding.

Bed and Board: A separation wherein the parties are still considered legally married, but all of the economic issues relating to the separation have been resolved. In some cases this will allow a spouse to remain on a medical insurance plan. If you are divorced from bed and board, you cannot remarry.

Blue Ribbon Panel: A term generally used to describe a group of exceptional attorneys appointed to use their expertise to issue findings or recommendations to the parties and their attorneys.

Business Valuation: Estimates the financial value of a business and/or the owner's interest in a business. Is used to value a business as an asset for equitable distribution. Usually conducted by forensic accountants. See Experts.

Callahan trust: A way to resolve issues surrounding nontransferable or restricted stock options. The stock is placed in a constructive Callahan Trust and allows the party who owns the stock to hold the stock for the benefit of the other party. The holding party must employ the stock in the Callahan trust as per the instructions of the other party.

Capital Gains Taxes: Taxes paid upon sale of an asset based upon the increase in value of the asset from the time of acquisition until the time of sale after deducting certain expenses related to the asset.

Case Information Statement: A document providing the Court with relevant information about the parties' financial circumstances and their marital and current lifestyles. It gives the Court a snapshot of the parties' incomes, expenses, assets, and debts. It must be filed with the Court soon after the filing of the Complaint and Answer. It is a helpful tool for the Court in the calculation of alimony and child support.

Case law: Reported decisions by trial-level and appellate-level courts. Case law guides the Court in decision-making processes. It may be binding, persuasive, or non-binding.

Case Management Conference: A meeting at the Courthouse with the judge, scheduled shortly after the filing of the Complaint, Answer, and Counterclaim. The judge and attorneys discuss the issues in dispute. Case management orders issued at these conferences may set forth a timeframe for the eventual resolution of the matter.

Certification: A document that accompanies request for action from the court such as a Notice of Motion or Order to Show Cause. The document states the facts on which the person seeking action from the court relies. The person who states the facts signs a statement at the end of the document certifying that the facts in the document are true.

Child support: Financial support paid by one spouse to the spouse with primary custody of the children. Child support is for the benefit of the children and belongs to the children; generally paid until a child is emancipated.

Child Support Guidelines: These guidelines govern the amount of child support to be paid by the Parent of Alternate Residence to the Parent of Primary Residence. Used in establishing or modifying a child support award. Accounts for parental income, parenting time, alimony payments. Estimates realistic weekly costs of basic living expenses for children. Applies to families where combined net income is \$187,200.00 per year or less. A discretionary amount is added to the recommended award where the combined income exceeds \$187,200.00.

Civil Restraining Order: An order entered in a divorce or support case which restrains a person from entering property or contact another person. It has lesser protections for the victim and lesser consequences for the defendant than a domestic violence restraining order, but is sometimes an appropriate remedy. It is entered upon the voluntary dismissal of a domestic violence complaint.

Civil Union: A relationship between unmarried parties who reside together which has been formalized by registering with the State of New Jersey. Parties in civil unions have rights to support and equitable distribution, although they are not officially “married.”

COBRA: A Federal Law which permits divorced spouses to continue to be eligible to receive health insurance equivalent to what the same plan he or she received as a spouse is provided to new participants in the group plan. There is a cost, but typically the coverage is superior to that available in non-group plan.

Cohabitation: When an unmarried couple lives together at the same residence, especially where they are engaging in a sexual relationship.

Collaborative Law: A process enabling the parties to work with their lawyers to resolve the issues relevant to their divorce without going to Court. Parties may sign a contract pledging to engage in the collaborative law process. If the collaborative process fails, the lawyers are generally forbidden from representing the parties in future litigation related to the divorce.

Compensation: An item, often money, given or received in return for something else. Often refers to income. See Income.

Complaint: Initiates the divorce process within the court system. Sets forth the ground(s) for divorce and the facts supporting the ground(s) for divorce. Asks the court to resolve all issues relating to the divorce. Served along with the summons. See Summons.

Consent order: An order setting forth an agreement voluntarily entered into by the parties. Generally submitted to the Court by the parties’ attorneys for a judge’s signature.

Co-parenting therapist: A mental health professional who counsels the parties, during or after a divorce, on how to work together as parents.

Counterclaim: Sets forth any claims against the party who filed the Complaint for Divorce. Not mandatory, but must accompany the Answer if filed. See Answer.

Cross-Examination: Questions by the attorney adverse to the attorney who has called the witness. These questions are usually for the purpose of aiding the cross-examiner’s case and attacking the credibility of the witness or other witnesses on the side of the attorney calling the witness. Cross-examination questions may be

“leading” which means they suggest the answer or consist of a statement requiring a “yes” or “no” answer.

Custody: Concerns the relationship between the parties and their children, both in terms of decision-making and location.

Legal custody: The determination as to whom will have the ability to make important decisions concerning the child. Most cases see joint legal custody, where both parents have the ability to make decisions concerning the upbringing, welfare, education, and health of their children. Sole custody is where only one parent has the ability to make said decisions.

Physical custody: The determination as to with whom the children will reside.

Custody Evaluation: An assessment and investigation into a family environment and background for purposes of making custody recommendations to the Court. Will look to consider the best interests of the child. Often involves interviews and psychological testing. Usually conducted by a psychologist. May be Court-ordered, wherein the Court will often give substantial weight to the evaluator’s recommendations. Custody evaluators are considered to be experts. See Experts.

Custody Neutral Assessment: A program developed by individual counties wherein a psychologist or other mental health professional meets with the parties on a single occasion and issues a report with recommendations on how to resolve custody and parenting time issues.

Defendant: The person against whom the Complaint for Divorce is filed. The Defendant has the right to file an answer and a counter-complaint (**Counterclaim**). There is no negative connotation to being the Defendant.

Deferred Compensation Plan: An employee benefit where funds are allocated for employees set aside for retirement and not taxed until that time.

Defined Benefit Plan: A retirement plan where the employee will receive a specific monthly benefit at retirement based on the age at retirement, the number of years with the employer and the employees income. The value is a calculation based upon these factors.

Defined Contribution Plan: A retirement plan where the employee, and sometimes the employer, make contribution into the account. The value is the balance in the account.

Discharge in Bankruptcy: A mechanism by which the Federal Court cancels a person's debts to give the debtor a fresh start. If one spouse has a joint credit card obligation discharged in bankruptcy, the creditor can pursue the claim against the other spouse.

Deposition: Formal testimony taken under oath, usually in an attorney's office. Questions and answers are recorded by a court reporter.

Direct testimony: Testimony given by a witness who has been called by the side that wishes to present the witness's testimony. (See opposite, cross-examination)

Domestic Violence: Violence, abuse, or harassment directed toward a victim with whom the aggressor shares a familial or romantic relationship. May result in the entrance of a temporary or final restraining order. Domestic violence hearings are held pursuant to N.J.S.A. 2C:25-29.

Discovery: The formal procedure where the parties and their attorneys exchange information about income, assets, expenses, debts, etc. and in custody cases, about the parties' history of and ability to meet their children's needs. Can include interrogatories, depositions, subpoenas, and request for admission. Takes place between the filing of the Complaint and the conclusion of the divorce.

Early Settlement Panel (ESP): A free, mandatory, confidential service provided by the Court aimed at assisting in the settlement of cases. Parties and their attorneys appear before a panel of experienced attorneys who make recommendations with respect to the resolution of the case.

Economic Mediation: Takes place if the Early Settlement Panel does not result in a resolution of the outstanding financial issues in a case. Experienced professionals, usually attorneys, work with the parties and their attorneys to achieve a settlement regarding the financial issues. Free for the first two hours.

Emancipation: The time at which a child is considered to be free from a parent's "sphere of influence." When a child is emancipated, the payment of child support is no longer necessary. Although many states set the emancipation age at 18, there is no official emancipation age in New Jersey. Courts consider the child's freedom from the "sphere of influence" and weigh many other factors in determining if a child is emancipated, including whether the child is a full-time student, is married, maintains a permanent residence away from home, is in the military, or maintains full-time employment.

Employability Evaluation: An evaluation of the ability of a party to obtain work and/or to make a certain amount of income. Undertaken either voluntarily or via court order where there is a dispute as to a party's ability to obtain a job or to earn money. May result in the imputation of income to a non-working or underemployed party. May affect the amount of alimony paid or received by the parties.

Equitable Distribution: The legal mechanism providing for the division of marital property upon divorce. Requires a determination of which property is subject to distribution and a determination of the property value. If equitable distribution is determined by a judge, the judge will consider the factors set forth in N.J.S.A. 2A:34-23, including the length of the marriage, source of the acquisition of the asset, and the contributions of the parties to maintenance of the asset.

Equity: (in assets): The value of an asset after deducting any mortgages or liens against that asset.

Experts: Professionals, particularly accountants or psychologists, who are hired by one party or both parties to draw conclusions or make recommendations as to a controverted issue. Joint experts are hired by both parties, whereas individual experts work for the benefit of the individual party who has hired them. Experts may be called to testify if the case goes to trial.

Ex parte: On the application of one party alone. No notice is given to the other party on “ex parte” applications. These are only permitted where giving the other party notice of the application is likely to result in money or children being taken before the court can rule.

Final Judgment of Divorce: An Order of the court that declares the marriage dissolved. Usually the parties financial and custody agreement or the court’s decisions on those issues become part of the Final Judgment of Divorce so they have the strength of a court order.

Forensic accountant/evaluation: See Business Valuation and Experts.

Goodwill: A component of the value of a business that reflects the business’s ability to continue to generate profit into the future.

Grounds for Divorce: Also known as “causes of action.” These are the legal reasons for filing a Complaint for divorce. In New Jersey, the available grounds for divorce are set forth at N.J.S.A. 2A:34-2 and include irreconcilable differences, 18 months separation, adultery, desertion, extreme cruelty, habitual drunkenness, institutionalization, imprisonment, and deviant sexual contact.

Guardian ad Litem: An individual appointed by the Court to represent the best interests of a child where there are substantial parenting time or custody issues in a case.

Hearsay: Evidence that does not come from the personal knowledge of the witness presenting it. Often it is what someone else said to the witness. In most, but not all cases, hearsay is not admissible evidence.

Immediate Offset: A method of sharing retirement funds where the employee retains the retirement fund and gives up claims to another asset.

Income: The money received or earned as a result of labor or services given over a specified period of time.

Imputed income: Income credited to a party, although not actually earned, based on that party's personal circumstances, including education, ability to work, ability to obtain work, and unearned income.

Interrogatories: Written questions, usually requiring written answers, exchanged by the parties as part of the discovery process. Usually deals with income, assets, debts, and custody.

Irreconcilable differences: Grounds for a "no-fault" divorce in New Jersey. Requires there to be differences between the parties that have caused the breakdown of the marriage for at least six months. There must be no reasonable prospect for reconciliation. Set forth at N.J.S.A. 2A:34-2(i).

Judgment of Divorce: The final divorce document; officially divorces the parties. Often accompanied by a Property Settlement Agreement.

Jurisdiction: Legal authority of a court to decide a case or an issue in a case or to make rulings effecting a person.

Law clerk: A recent law school graduate who provides legal assistance to the judge. Assists the judge in many aspects of his or her job, including legal research and in the drafting of orders and opinions.

Lepis Motion: A motion for a modification of alimony or child support. The name comes from a case called *Lepis v Lepis* which set the standard and procedure for modification to require that the person seeking the modification show a "substantial change in circumstances."

Lien: Debt that can reduce the value of a specific asset.

Lis pendens: Means "suit pending" and is a document concerning real property that is recorded with the county clerk's office. Gives notice that there is a dispute concerning the title of the real property subject to the *lis pendens*. Not to be confused with *pendente lite*.

Mallamo claim: A claim that the court should modify an order, usually for support, retroactively because information which came to light later in the case demonstrates that that the obligation in the order was too high or too low.

Marital Lifestyle: The standard of living at which the parties conducted their married lives. Usually refers to the financial and employment status of the parties during the marriage. Marital lifestyle is often used to determine the amount of alimony and equitable distribution to which the parties are entitled. A lifestyle analysis may be conducted by an expert if there is disagreement as to the lifestyle led by the parties during the marriage.

Marital Property: Any property acquired by either party during the marriage, no matter whose name it is in, that is not a gift from a third party to one of the parties and is not inherited by one party.

Mediation: A legal process in which a neutral third party assists the parties in the resolution of issues related to their divorce. That person is called a “**mediator.**” Unlike arbitration, it is generally not binding on the parties. Is usually a voluntary process, although it is sometimes court-ordered. If voluntary, can be terminated if a party refuses to continue.

Memorandum of Understanding: A document setting forth the basic terms of an agreement reached in mediation.

Motion and Certification: A (notice of) motion sets forth a party’s requests for relief from the Court. Asks the Court to enter orders pertaining to custody, support, and all other divorce-related issues. A Certification accompanies the Motion, explains why the Court should grant the requested relief, and certifies to the truth of the statements therein.

Motion for Enforcement: A motion filed by a party where the other party has failed to abide by the terms of a prior Court order, the Judgment of Divorce, or the Property Settlement Agreement. Sanctions for failing to abide by these previous orders may include payment of counsel fees, wage garnishment, suspension of a driver’s license, or incarceration.

Motion for Leave to Appeal: An application to the Court requesting permission for the Appellate Division to review an interim, or interlocutory, order.

Motion for Modification: A motion filed by a party asking that the Court modify the specific terms of a Court order, the Judgment of Divorce, or the Property Settlement Agreement. Generally requires a showing of a substantial change in circumstances.

Motion for Reconsideration: A motion filed by a party asking the Court to revisit a prior recent decision of the Court. Must be a legal basis for review of the order other than dissatisfaction. Must be filed within 20 days of the date of the prior final Court order.

Motion for a Stay (pending appeal): Where an appeal has been filed, this motion asks the Court to stay all proceedings and orders until the appeal has been decided.

Motion in limine: A motion filed by a party prior to trial asking the Court to rule that certain evidence may or may not be presented at trial.

Newburgh Analysis: Determines whether a parent is responsible for contributing to a child's college costs. Generally reflects that a parent should contribute where they are financially capable, if the child is unemancipated and is a qualified student. Considers twelve factors, including the parent's ability to pay, the availability of financial aid, the relationship between the parent and child, the child's scholastic aptitude, and the amount sought for contribution.

Notice to Produce: A request to produce documents for inspection. Part of the discovery process. See *Subpoena Duces Tecum*.

Obligations in the Nature of Support: Obligations set forth in a court order or marital settlement agreement that are designed to assist in the support of a spouse or children. These obligations cannot be discharged in bankruptcy and can include obligations for equitable distributions and for one spouse to pay the other spouse's debts, including attorney's fees.

Order: A document issued by the Court setting forth the parties' legal responsibilities to the Court and to each other. May require payment of support, prevent parties from engaging in certain behavior, set forth a parenting time schedule, and resolve countless other issues. Often issued after motion hearings. Generally written and signed by the judge.

Order to Show Cause: A request for emergency relief from the Court. Generally requires proof of irreparable harm.

Parent of Primary Residence: The parent with whom the child(ren) reside(s) with for more than fifty percent of the time (primary physical custody).

Parent of Alternate Residence: The parent with whom the child(ren) reside(s) with for less than fifty percent of the time.

Parenting Coordinator: A neutral third party, often a mental health professional who assists in resolving disputes over scheduling and parental decision making.

Parenting time: Visits between the children of the marriage and the Parent of Alternate Residence. Parenting time may be agreed upon by the parties or ordered by the Court. Visits may be supervised if there is a concern as to a child's safety or if the parent is attempting to reinstitute a relationship with the child(ren).

Pendente lite: Means “in the pendency of the litigation.” Decisions made between the filing of the Complaint and the entry of a Judgment of Divorce are considered to be made “pendente lite.” They are temporary and subject to change when the divorce is finalized. Not to be confused with *lis pendens*.

Pendente lite support: Financial support paid by one spouse to the other during the period between the filing of the Complaint and the entry of a Judgment of Divorce.

Plaintiff: The person who starts the lawsuit. The Plaintiff files a Complaint for Divorce against his or her spouse who is referred to as the Defendant. It does not matter who is the Plaintiff.

Plenary hearing: A hearing, with witnesses, conducted to determine the merits of a party’s position where a decision cannot be made based solely on motion papers. Often involves more complicated issues.

Post-Judgment application: A motion filed in family court to enforce, modify, or otherwise address the terms of a Judgment of Divorce, Property Settlement Agreement, or other issues arising from a previously-resolved divorce.

Property Settlement Agreement (PSA): Accompanies the Judgment of Divorce and sets forth all of the conditions by which the parties agree to abide after their divorce. May include conditions regarding alimony, child support, custody, parenting time, equitable distribution, and other issues raised during the divorce process. Also often called Matrimonial Settlement Agreement (MSA).

Qualified Domestic Relations Order (QDRO): An order that divides and changes ownership of pension and other retirement plans for purposes of equitable distribution. May or may not be tax-free, depending on whether the monies are rolled into a new account or paid as income.

Qualified Medical Child Support Order: An order which enables the parent who is not the health insurance policy holder to track reimbursement claims and be reimbursed directly for medical expenses he or she advances.

Rebuttal testimony or witness: Testimony in response to testimony raised by the other side.

Removal: When a party wants to move out of state or country with the child(ren) of the marriage. If the parents cannot agree as to the removal, the Court will conduct a removal hearing where it considers the reasons for the move and whether the move will be inimical to the child(ren)’s best interests.

Restraining Order: Forbids a party from contacting another party, going to certain designated locations or from engaging in certain prohibited behaviors. In the financial context, may forbid a party or parties from dissipating or

encumbering assets. In the domestic violence context, prevents contact between parties (see below).

Temporary Restraining Order: Usually issued after an act of domestic violence. Prevents an aggressor from contacting a domestic violence victim for a limited period of time, usually until a final hearing can be held on the matter.

Final Restraining Order: Issued after a final domestic violence hearing. Prevents an aggressor from contacting a domestic violence victim for an indefinite period of time. Generally, can only be vacated upon consent by the victim or upon motion by the aggressor.

Civil Restraining Order: An order entered in a divorce or support matter which prohibits contact between parties or one party from going to certain location(s). Usually accompanied by the dismissal of a domestic violence complaint. Does not have the same force as a Temporary Restraining Order or Final Restraining Order under the Domestic Violence Act

Retainer: A lump sum of money paid by you to your attorney upon the initiation of representation. This money will be used to fund the litigation. Extra, unused monies may be returned to you; more money may be required where the retainer does not adequately cover all costs.

Retainer agreement: The contract between you and your attorney. Signed at the inception of representation. Answers various questions surrounding representation, including the retainer amount, billing rate, other costs and fees that may accrue, people working on your case, and coverage provided by the agreement.

Separate Maintenance: See alimony.

Separate Property: Property owned by one of the parties at the time of the marriage or property received by one of the parties during the marriage by gift or inheritance. This property is not subject to equitable distribution.

Statute: Codified legislation.

Statute of Frauds: A law which sets forth promises for the payment of money; must be in writing. Included is the right to support for unmarried people who are not in a civil union.

Subpoena: A writ or order commanding a party to produce evidence or testimony. Failure to abide may be contempt of court.

Subpoena Duces Tecum: A subpoena requiring the production of physical evidence.

Subpoena Ad Testificandum: A subpoena requiring testimony, often in the form of submitting to a deposition.

Substantial Change in Circumstances: The legal standard for modification of a court order or agreement for custody, alimony or child support.

Summary Proceeding: A legal proceeding which is intended to address limited issues, be brief, and where the parties have limited rights of discovery.

Summons: Written notice compelling a party to appear in court and defend a lawsuit which has been filed against that party. Served along with the Complaint. See Complaint.

Superior Court: The trial courts in the state of New Jersey. The Family Part, where divorce cases are handled, is a division of the Superior Court. The Family Part has jurisdiction to decide matters involving divorce, custody, support, enforcement and modification of orders, juvenile crime, child abuse & neglect, and domestic violence.

Supreme Court: The highest court in the state of New Jersey.

Tax Deductible: An amount that can be deducted from a person's income for tax paying purposes. For example, alimony is tax deductible. The income of a person paying alimony is reduced for tax purposes by the amount of the alimony. The amount of the alimony is then taxable to the person who receives it. Child support is not tax deductible to the payor or taxable to the recipient.

Trial: Occurs if you are unsuccessful at settling your case. Attorneys present various forms of evidence to the court, and the parties and other witnesses testify before the judge, who makes a final decision on the issues in controversy. Parties and witnesses may be examined and cross-examined. Generally occurs over several non-consecutive days and is not decided by a jury.

Tort Claim/Tevis Claim: A claim where a party seeks damages for physical abuse or injury sustained during the marriage. Must be filed along with the Complaint for Divorce. Subject to a jury trial apart from the adjudication of the divorce.

U.C.C.J.E.A: Uniform Child Custody Jurisdiction and Enforcement Act. A statute adopted by most states for the purpose of creating consistent rules as to what state shall decide disputes between parents living in different states and enforcing orders from other states.

U.I.F.S.A.: Uniform Interstate Family Support Act. A statute adopted by most states for the purpose of resolving what state should decide support disputes between parents and spouses living in different states, permitting one state to enforce orders entered in another state and resolving what state's law applies to such disputes.

Uncontested hearing: The hearing at which the judge enters a Judgment of Divorce if the parties have resolved all matters relating to the divorce proceedings. The parties present the Property Settlement Agreement to the Court at this time.

Visitation: See Parenting Time.