

Washington State Divorce Laws

This article is intended as a brief primer on the laws of the State of Washington relating to marital dissolution. While the information here was current when published, laws change, and courts interpret these laws, on a daily basis. Especially if you are representing yourself in a marital dissolution proceeding, you should consult the Revised Code of Washington (find this Code in a library or online at <http://www.wa.gov>), or consult with an attorney if questions or doubts arise. In addition to laws, the Courts of the State of Washington are governed by Court Rules and individual counties have peculiar "Local Rules" which may affect a dissolution proceeding; all must also be consulted.

Before delving into "the law" and what the court will require, it is important to note that the courts are very inclined to accept and approve final orders (or even temporary orders) that are arrived at by mutual consent. The court will still inquire into whether the parties to an agreed order are treated fairly and whether they have knowingly and willingly entered into the agreed order, but as long as the Court believes this is the case, they will generally enter the order. Where children are concerned, however, the court must be satisfied that each and every pertinent law, local rule and other authority has been complied with. Nonetheless, with or without children, the parties to a marital dissolution can save hundreds and sometimes thousands of dollars on attorney fees if they can sit and talk, and arrive at agreed orders that the court will adopt. The parties will also save stress, conflict, lost time from work and other costs and fees normally associated with a divorce.

While saving time and money are an attractive reason to work toward agreed orders, you should always feel free to consult with an attorney to ensure that your rights are protected in the final orders. Generally, law offices will provide time for you to sit with an attorney to discuss the situation and your options. You need not "retain" an attorney for your divorce, but it is very desirable for you to be briefed on how an objective and trained professional sees the order that the other side is asking you to sign. With that said, let's look at the "law" of Washington relating to divorces, child custody and support, and property division.

RESIDENCY REQUIREMENTS AND WHERE TO FILE: The person filing for dissolution of marriage (the "petitioner") must be a resident of the State of Washington (or a member of the Armed Forces stationed in Washington). The dissolution petition may be filed in any county where either the petitioner or respondent resides. The court will not act on the petition – that is, it cannot enter final orders - until 90 days has run from the filing and the service of the summons and petition on the other party (the "respondent"). RCW 26.09.010 and 26.09.030.

LEGAL GROUNDS FOR DISSOLUTION OF MARRIAGE: Washington is a "No-Fault" divorce state. This means that the petitioner need only plead that the

marriage is “irretrievably broken.” RCW 26.09.030. This “irretrievable breakdown of the marriage” is the only grounds for dissolution of marriage in Washington. The opposing party cannot protest the dissolution because he or she disagrees with the determination that a breakdown has occurred. In short, if one spouse wants a divorce, that courts will enter a decree.

LEGAL SEPARATION: A legal separation proceeding is almost identical to a dissolution proceeding except that the final "decree" is for a legal separation instead of a dissolution of marriage which means that the parties are still legally married but have divided their assets and liabilities and provided for their children (if any) by entry of an Order of Child Support and Parenting Plan. The ground for a legal separation in Washington is the same “irretrievable breakdown of the marriage.” Again, the petitioner must be a resident of Washington or a member of the Armed Forces stationed in Washington. The court will not act on (that is, it will not finalize) the petition until 90 days has elapsed from the filing and the service of summons on the respondent. RCW 26.09.030

SEPARATION OR PROPERTY SETTLEMENT AGREEMENTS: “Separation Agreements” or “Property Settlement Agreements” are specifically authorized by law and, if the court finds such an agreement fair, all portions of the agreement will be binding on the court and the parties (whether it is entered in conjunction with a dissolution proceeding or a legal separation proceeding) with the sole exception of provisions relating to parental rights and responsibilities – including child support. There are large volumes of state laws and case authorities that guide the courts in determining custody, visitation and support issues.

MEDIATION OR COUNSELING REQUIREMENTS: The local rules of several Washington counties require that parties to attempt “alternative dispute resolution” prior to the date set for trial – that is; a judge will not hear any request for final orders if the parties have not been through “ADR” – there are exceptions. In other counties, upon the request of either party, the spouses may be referred to a counseling service of their choice. A report must be requested from the counseling service within 60 days of the referral. Contested issues relating to custody or visitation will be referred to mediation. There may also be mandatory settlement conferences if there are contested issues, RCW 26.09.015, 26.09.030, and 26.09.181.

WHAT TO AVOID: Probably the most significant portion of any divorce, you may come to learn, will develop over the custody and visitation of your children. In some cases, a spouse may legitimately need protection from violence and will seek immediate orders restraining visitation, phone calls and all other contact. This is typical in a case where there has been domestic violence, and especially when the violence has involved the children. Yet, protection orders are often sought in matters where there have not been any legitimate instances of violence simply because one party wants to “smear” the other in court – to gain an advantage in a later custody proceeding. Usually these baseless claims can be

resolved, and sometimes sanctions may be imposed against the party bringing a false claim. Even when the outcome is just and right, the parties will expend large sums of money, and much of their own time, fighting through the allegations.

If I could give any divorcing couple any general advice, it would be to resolve custody at the very first opportunity. When a spouse announces that he/she wants a divorce, try to get into counseling where you can resolve this issue promptly, and put together a final Parenting Plan that neither party can walk away from simply because the property division is not settling. Do this for your children; to save time; and to save money.

Washington avoids use of the term “custody” and has opted for “residential parent” or “non-residential parent”. Custody will be ordered according to the “best interests” of the child – a variable terms, over which there is much litigation. Every dissolution of marriage where the parties have a minor child will include a Final Parenting Plan. As mentioned above, the parents are well-advised and encouraged to make an agreement regarding a parenting plan instead of asking the Court to decide this issue.

If litigated, the Court and other agencies that may become involved will work to arrive at a parenting plan intended to: (1) provide for the child's physical care; (2) maintain the child's emotional stability; (3) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications of the Plan; (4) impose authority and responsibility for each parent; (5) minimize the child's exposure to parental conflict; (6) encourage the parents to resolve disputes outside of court (to reduce their costs and time consumption); and (7) “otherwise” protect the best interests of the child.

The parenting plan, using a mandatory form, will contain provisions for: (1) resolution of conflict; (2) a “residential schedule” for the child (a custody and visitation order in other states); and (3) division of decision-making authority for the child's needs.

To determine decision-making authority the court will consider: (1) if both parents agree to mutual decision-making; (2) the existence of any physical or sexual child or spousal abuse, neglect, or abandonment; (3) the history of participation by each parent in the decision-making process; (4) whether the parents have demonstrated an ability and desire to cooperate in the decision-making process; and (5) whether the parents live in close enough proximity to make meaningful mutual decisions.

Residential provisions (that is, custody and visitation) are considered by investigating (1) the strength, nature, and stability of the child's relationship with each parent, (what can be very important is a parent's performance of daily parenting functions); (2) any spouse or child abuse, neglect, or substance abuse;

(3) the history of participation of each parent in child-rearing; (4) the wishes of the parents; (5) the wishes of the child, if the child is of an age and maturity to express an opinion; (6) the child's relationship with siblings and other significant family members in either parent's home; and (7) any agreement between the parties. By state law, factor (1) is to be given the most weight in arriving at a decision. A mandatory settlement conference may be required.

Equal-time alternating residential provisions will only be ordered if: (1) there is no child or spouse abuse, neglect, abandonment, or substance abuse; (2) the parents have agreed to such provisions; (3) the parents have a history of shared parenting; (4) the parents are available to each other, especially in terms of geographic location; and (5) if equal time provisions are in the best interests of the child. The court has the authority to order an investigation concerning parenting arrangements for the child, 26.09.181 to 26.09.220.

CHILD SUPPORT: Either parent may be ordered to pay child support. Again, marital misconduct is not a factor to be considered. Official support guidelines and mandatory worksheets are completed and provided to the court to aid in its decision process. The amount derived from the guidelines will be presumed correct unless a party can show that the figure is somehow unjust or inappropriate under the particular circumstances of a case – the law supplies a list of reasons why a court may “deviate” from the computed amount. Mandatory wage assignments can be obtained after entry of the final order if the paying parent's payments become more than 15 days past due. Child support payments can be made through the Washington State Support Registry or directly to the parent. The court may require either parent to provide health insurance coverage for the child if insurance is provided by the parent's employer.

MANDATORY FORMS FOR DISSOLUTION OR SEPARATION: All divorce cases **must be** filed on official Washington forms. The forms are available from the Washington Office of the Administrator for the Courts, and in most counties, from the Superior Court Clerk's Office. The spouses must file a Washington Department of Health Certificate with the petition, giving the state certain information for statistical purposes. There are also certain local court rules which apply to dissolutions of marriage. These are found in Washington Local Court Rules, Rule 94.04. or, in King County they are contained in Local Family Law Rules.

PROPERTY DIVISION: Washington is a "community property" state. Each spouse retains his or her separate property, consisting of: (1) all property acquired prior to their marriage; (2) any property obtained by gift or inheritance; and (3) any increase in value of their separate property. "Quasi-community" property is property that is acquired while a spouse resides outside of Washington, but because of the manner of acquisition, the property would have been considered community property if it was acquired while they were living in Washington. "Quasi-community" property will be divided as if it were community

property. The court will divide the community property of the spouses equally, or equitably. This consists of all non-separate property acquired during the marriage. In making the property division, the court will consider: (1) the nature and extent of each party's separate property; (2) the economic circumstances of each party at the time the division of property is to become effective; (3) the length of the marriage; (4) the nature and extent of community property; and (5) the question of awarding the family residence or a party's request to occupy the residence for a reasonable period (generally to the "residential parent" if there are minor children). Misconduct of a party during the marriage is not to be considered by the court for any purpose, including the division of property. RCW 26.09.080, 26.16.010, 26.16.020, 26.16.030, and 26.16.220.

SPOUSAL SUPPORT: Either spouse may request "spousal maintenance" (what is termed spousal support or alimony in other states). Again, marital misconduct will not to be considered. The factors for consideration in a request for maintenance are: (1) the time necessary for the requesting spouse to acquire a sufficient education and training to become self-supporting; (2) the standard of living that the parties enjoyed during the marriage; (3) the length of the marriage; (4) the ability of the paying party to meet his or her needs while paying maintenance in addition; (5) the financial resources of the party who is seeking maintenance, including the separate or community property apportioned to them in the property division, along with the requesting party's ability to meet his or her needs independently; (6) the needs and obligations of each party; (7) the age of the parties; (8) the physical and emotional condition of the parties; and (9) any child support responsibilities that will be ordered. Maintenance payments may be required to be paid through the clerk of the court or through the Washington State Support Registry if there are also child support payments being made. RCW 26.09.050, 26.09.090, and 26.09.120.

CHANGE OF NAME: Upon request and for a just and reasonable cause, the wife's maiden or other name may be restored upon entry of the Decree. RCW 26.09.150.

The above is just a sample of the many issues that may arise in a dissolution or legal separation action in Washington State. For more information, or to make an appointment for a consultation, call The Law Offices of John Compatore at 206-285-6881 or email John at john@compatorelaw.com.