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COLORADO LAW IN A NUTSHELL: MARRIAGE and ENDING A MARRIAGE

This is a very brief, very general introduction to Colorado divorce law. Nothing here applies to any other state. This is not legal advice. It cannot take the place of legal advice from a lawyer. You reading it/me providing it does not make us "client and attorney." I only become someone's attorney after both of us have signed a written Fee Agreement and the person has paid in good funds any required deposit or initial fee. You cannot make any decisions to take or not take action based on this information. Always talk with a Colorado licensed lawyer when you want legal information or advice for a Colorado issue.

AM I MARRIED?

Generally speaking, if you enter into a legally valid marriage anywhere, you are married after moving to/living in Colorado unless and until your marriage ends by death of your spouse or a valid court order.

WHAT IS COMMON LAW MARRIAGE?

A common law marriage is a legally valid, actual, "real" marriage. There is no legal difference between the rights and duties of a couple who got married common law and those of a couple who purchased a marriage license and had a formal wedding. As with any other marriage, a common law marriage ends only by death of a spouse or an order of a court.

Colorado allows common law marriage. However, not every state does, so couples who take certain actions in another state which if done here mean they are married, might not be married until they move to Colorado and continue here such actions. A couple who are common law married in Colorado are married in every other state.

The basic elements of a common law marriage in Colorado are that two persons who are legally free to marry each other (that is, not legally prohibited from marrying, such as being married formally or common law to someone else, not brother and sister, etc.) jointly intend they are married. From that moment forward, they are married.

Just as with a marriage based on a formal wedding ceremony, there is no requirement for a common law marriage to exist that the couple live together, have sexual relations, use the same last name, or file joint income tax returns. The more of these that are present, the more likely a Judge or Magistrate will decide the couple is married; the fewer that are present, the less likely a Judge or Magistrate will decide the couple is married.

And, there is no time requirement. If, at a formal wedding immediately after the couple are pronounced husband and wife the couple has an argument, decide they made a mistake, and never live together, that couple is still married. Likewise, if a couple decides on Monday at 9:00 a.m. they are now common law married, and then have an argument at 9:05 a.m. and separate, they are still married.

Lots of couples who live together are not married, common law or otherwise. Without the intent to be married, there is no marriage. This is true regardless of how long they lived together, how many children they produced, and whether or not they have jointly owned property and bills.

Thus, whether a specific person is common law married is usually a question of law based on specific facts: at some point did that person and the "spouse" decide they were married? If so, and if they were free to marry each other, and presented themselves to the outside world or parts of it as being married (joint tax return; adding one to the others health insurance; loan applications as "married" etc.) then they are married.

Only a Judge or Magistrate has the power to make a binding decision that two specific people are or are not married. To obtain such a decision requires that a Petition be filed. Often, such a Petition asks for a determination of marital status and, if the determination is "married," that the marriage be ended legally. If there is a dispute as to the existence of a common law marriage, the Judge or Magistrate looks to the actions of the parties based on their behavior before

the dispute arose: joint tax returns; use of the same last name; birthday cards "to my wife/husband;" how the people usually introduced themselves ("this is my wife/husband"); and many other factors.

There is no such thing as a "common law divorce." Once a party is married common law, that marriage ends only by death of one spouse, a judicial dissolution of marriage (divorce), or a judicial declaration of invalidity (annulment). People who are married common law and who later marry someone else commit bigamy, which is a crime.

WHAT IS AN ANNULMENT?

Colorado does not use the term "annulment". Instead, what is sometimes called an annulment in other states in Colorado is called a "declaration of invalidity."

Only a Judge or Magistrate can decide if a marriage was invalid. This, of course, means filing a Petition in court asking for such a declaration. Sometimes, one files a Petition asking for such a declaration and adds a request that if the Judge or Magistrate decides there is a valid marriage, that the marriage be ended by dissolution or legal separation.

Getting a declaration of invalidity requires proof of very specific facts, such as one party was physically unable to have sexual intercourse at the time of the marriage; one or both parties were drunk, high on drugs, or too mentally ill to understand he/she/they were getting married; one or both parties were under age; one party defrauded the other and the fraud goes to the essence of the marriage; or the marriage itself is illegal.

HOW DOES A MARRIAGE END?

There are only two ways to end a marriage: (1) death of a spouse; or (2) a decree (lawyer talk for an "order") from a Judge or Magistrate.

Colorado recognizes most divorces entered by a Judge or Magistrate elsewhere (another state, another country) by whatever name they are called. For example, "divorce" does not exist in Colorado law; instead, here a divorce is called a "dissolution of marriage." However, some "quickie divorces" from some foreign countries are not recognized as valid here and thus the couple would still be legally married here.

There is no such thing as a "common law divorce". Once married, common law or otherwise, that marriage ends only by death or by a decree signed by Judge or Magistrate.

DO I HAVE TO GET A COURT DECREE?

Yes, if you want to legally end your marriage.

No, if you don't care about still being married. Anyone can "move out" and go live somewhere else, alone or with another person of the same or opposite sex. Of course, if (weeks)(months)(years) later you or your spouse want to end the marriage, all the property and debts of each of you are "on the table" for division by the Judge or Magistrate at the time the marriage is ending legally, including all that happened long after you separated.

HOW DOES RELIGION FIT IN?

Usually, religious decisions that a person is or is not married; did or did not have a marriage annulled; or did or did not follow religious law in getting married and/or in ending a marriage have no legal impact in Colorado law. Or, put another way, the business of religion is only the business of religion, and the business of the Judge or Magistrate is only the business of the Judge or Magistrate. Thus, a person could be married or divorced according to Colorado law but might not be married or might still be married according to a specific religion, or vice-versa.

I'VE ONLY BEEN MARRIED ONE (WEEK)(DAY)(HOUR)(MINUTE). DOES THAT MAKE ANY LEGAL DIFFERENCE?

No. Once married, you are married until the marriage is ended by death or a Judge or Magistrate decree.

WHAT IS THE DIFFERENCE BETWEEN A JUDGE AND A MAGISTRATE?

In Colorado, Judges are appointed by the Governor and stand for a retention vote thereafter. Magistrates are lawyers hired by a Judge or Judges and are assigned tasks by the hiring Judge or Judges. For family law cases, Magistrates generally have the same powers as a Judge and orders and/or decrees signed by a Magistrate have the same force of law as those signed by a Judge.

SEPARATION

No one is required by law to live with their spouse. Either spouse is legally free to move out of the marital residence without "permission" from the other or from a Judge or Magistrate.

CAN MY SPOUSE "GET ME" FOR "ABANDONMENT?"

Not really. Anyone can "move out" and go live somewhere else, alone or with another person of either sex. "Abandonment" of minor children might affect court orders regarding the children if a family law case is filed.

WHAT IS A LEGAL SEPARATION?

A legal separation results only from a decree signed by a Judge or Magistrate. The only difference between a "legal separation" and a "dissolution of marriage" (divorce) is that after a legal separation the couple is still married and neither can marry anyone else, and after a dissolution of marriage, they are not married and can marry someone else immediately. Legal separations exist in law for two basic reasons: (1) some people "need to be divorced" but cannot get divorced due to personal or religious reasons, so they get a legal separation which is exactly like a divorce except they are still legally married, and (2) so that a couple who wish to be "divorced" can "sort of" be divorced, but can take advantage of being legally married for health insurance and similar reasons.

The time, expense, procedures, and emotional investment in a legal separation case are no different than in a divorce.

If one spouse files for a legal separation and the other spouse says, "I want a divorce/dissolution," the Judge or Magistrate must grant a divorce/dissolution.

Once six months has passed after a decree of legal separation issues, a Judge or Magistrate must change it to a divorce/dissolution if either party asks. There is no court hearing. The Judge or Magistrate just signs a different legal form.

WHAT ARE THE GROUNDS FOR DIVORCE OR LEGAL SEPARATION?

The *legal* grounds for divorce/dissolution or legal separation is that the marriage is "irretrievably broken."

The *practical* grounds for either is that one party does not want to be married.

A Judge or Magistrate must enter a divorce/dissolution or legal separation if either spouse answers "yes" to the question: "is your marriage irretrievably broken?" The other spouse's opinion is basically irrelevant.

I WANT TO STAY MARRIED. HOW CAN I PREVENT A DIVORCE?

You can't.

While there are ways of slowing down a case and/or making it more expensive, anyone in Colorado who doesn't want to be married can get a divorce/dissolution with or without any cooperation from their spouse.

MY SPOUSE CAUSED ALL THE MARITAL PROBLEMS. DOES THAT MAKE A DIFFERENCE?

No. Colorado is a "no fault" divorce/dissolution state. The Judge or Magistrate is not allowed to hear about who is "at fault" when deciding the case except, perhaps, as any misbehavior that is proven is directly relevant to issues regarding children of the marriage.

WHAT IS AN INITIAL STATUS CONFERENCE?

At least in metro Denver courts, the filing of a family law case triggers an automatic order that both parties attend an Initial Status Conference (ISC). The ISC is generally a "meet and greet" with a Judge, Magistrate, or court clerk at which time each party will be informed that he/she has a legal duty to act as an adult, comply with all court rules, and the like. If any agreements have been reached on any issues, the Judge or Magistrate will consider making them into court orders. If the ISC is not being run by a Judge or Magistrate, the clerk will send the agreement to the Judge or Magistrate assigned to the case for review and perhaps entry of the agreement as an Order. Sometimes, the Judge

or Magistrate will use the ISC as an informal Temporary Orders hearing.

I JUST MOVED HERE. CAN I FILE FOR DIVORCE OR LEGAL SEPARATION?

Maybe. At least one spouse must have been a resident of Colorado for at least the 90 days immediately prior to the filing of the case. If so, either spouse may file. Temporary absences, such as for a vacation, a temporary job location, or being in the military service generally are not relevant. Neither spouse needs to be a Colorado resident after the case is filed.

HOW DOES A CASE START?

The case starts with the filing of a "Petition". If only one spouse signs the Petition, that spouse is the "Petitioner" and the other spouse is the "Respondent. If both spouses sign the Petition, each is a "Co-Petitioner."

SHOULD I BE THE PETITIONER OR THE RESPONDENT?

Your rights are the same either way. However, if the parties live in different judicial districts, the Petitioner gets "first choice" of in which judicial district the case will be filed. That might be important. For example, you live in Denver and your spouse lives in Grand Junction. You might want the case filed in Denver to save yourself hours of driving and/or flying back and forth to Grand Junction.

MY SPOUSE IS DANGEROUS AND/OR WON'T MOVE OUT. IS THERE ANYTHING I CAN DO?

PROTECT YOURSELF AND ANY CHILDREN. .

If it is dangerous for you and/or the children to live with or be near your spouse, **GET OUT, GET SAFE** and then get legal help. In a proper case, Judge or Magistrates can issue a Temporary Restraining Order ordering your spouse to move out of the marital residence, to stay away from you, and not to call or talk with you. Usually, a Temporary Restraining Order is done the same day you hire me or the next day. The timing is usually based on your own budget and time frame.

Remember: Temporary Restraining Orders are pieces of paper. They do not stop bullets, fists, parental kidnaping of children etc. If you are at risk, **GET OUT, GET SAFE** and then think about trying to get a Judge or Magistrate order.

WHAT IS THE AUTOMATIC RESTRAINING ORDER?

When a case is filed and the other spouse (both, if a joint Petition) gets his/her copy of the first set of court papers, each is under an automatic restraining order.

The order tells each spouse not to assault or harass the other party; prohibits either from taking any child under age 19 out of Colorado for a trip or any other reason without written permission from the other spouse or the Judge or Magistrate; and prohibits each spouse from selling, transferring, hiding, using up, or wasting any marital assets.

Violations could be punished by up to six months in jail and/or a \$1,000 fine and/or having to pay the other spouse's attorney fees, for each violation.

If your spouse is dangerous and/or refuses to move out, see the above discussion on that subject and talk with your attorney or some other qualified source about a Temporary Restraining Order.

HOW LONG DOES A CASE TAKE?

The Judge or Magistrate must wait a minimum of 90 days after the case is filed and both spouses sign the initial Petition, or the spouse not signing the Petition received a copy of the first set of court papers, or the spouse not filing a joint initial Petition filed a response to the Petition before signing a decree.

If both spouses agree to everything, and all paperwork is done correctly, and each spouse has a lawyer or there are no minor or disabled children, it is possible to get a decree in about 120 days. Absent any of the above, a more usual time frame is six months to a year. Complex cases could (and do) often take years.

I CAN'T WAIT THAT LONG. HOW DO I GET AN ORDER FASTER?

Either spouse may ask for "temporary orders" to fix each spouse's rights and duties while they wait for a decree. Examples of temporary orders are temporary child support, temporary rules about which spouse pays which bills, and temporary maintenance.

It usually takes about six to twelve weeks to get a temporary orders hearing.

Once entered, temporary orders are the "rules" for the parties until changed by an order made later.

WHAT IS PROPERTY IN A FAMILY LAW CASE?

Property is money or anything that can be turned into money now or in the future. This includes not only houses and cars; but also any kind of retirement plans (I.R.A.s; employment pensions, including military pensions; P.E.R.A.; 401Ks; etc.); lawsuits or claims (worker's compensation; medical malpractice; auto accidents); stocks and bonds; some stock options; cash value life insurance; furniture; appliances; jewelry; etc.

However, Social Security benefits are not property for division in family law cases. Even so, they are considered "financial circumstances" for consideration of maintenance (alimony) and income when figuring the amount of child support.

HOW IS PROPERTY CLASSIFIED IN FAMILY LAW CASES?

Property is classified as "marital" or "separate".

Marital property is all property owned by either spouse that is not separate property, and all property jointly owned. Marital property also includes the increase in value of any separate property. For example, one spouse owns a home at time of the marriage with an equity of \$50,000 and keeps it titled only in his/her name. At time of divorce or legal separation, the equity has gone up by \$60,000 to \$110,000. The house itself and the first \$50,000 of equity are the separate property of the spouse that owned the house before marriage. The \$60,000 increase in the equity is marital property to be divided.

Separate property is any property of any kind a spouse had just before the marriage that still exists and was kept separate, or any property of any kind received during the marriage by gift or inheritance and kept separate after being received. For example, a car owned by a spouse before the marriage that at time of the case still is owned by that spouse and titled only in that spouse's name is separate property. Another example: a birthday gift of \$100 from one spouse, put into the receiving spouse's sole bank account is the receiving spouse's separate property. If it is then spent on a small TV, that TV is the receiving spouse's separate property. Another example: one spouse's parent dies and the spouse inherits the parent's home. That home is separate property. However, if in the example the car is titled jointly, or in the \$100 example, the money goes into a joint bank account, or in the house example, the house gets titled in both spouses' names, then the car, the \$100, and the house are all marital property once they were no longer kept separate.

HOW IS PROPERTY DIVIDED?

Separate property goes to its owner.

Judge or Magistrates encourage spouses to reach agreement on how to divide marital property. To the extent that no agreement exists, the Judge or Magistrate will make the division.

Marital property is divided "equitably" (lawyer talk for "fairly"). Usually, most Judge or Magistrates shoot for about a 50/50 split. However, sometimes the split is entirely different overall (i.e., perhaps 20/80 or 60/40) or sometimes in a case certain property is split 50/50 (i.e., perhaps money in the bank) and other property in the case is split entirely differently. Without an agreement, the Judge or Magistrate will decide what he/she thinks is fair for each case. Sometimes what one or both spouses think is "fair" is not what the Judge or Magistrate decides is "fair." Without an agreement, it is rare that both spouses leave the courthouse feeling each was treated "fairly."

WHAT ABOUT OUR HOME?

This depends on whether it is classified as separate or marital. And, it depends on whether the spouses have reached an agreement. If not 100% separate and if no agreement is reached, the Judge or Magistrate decides what is "equitable" for these spouses.

If the case involves minor children, usually the Judge or Magistrate decides that the spouse who will have most of the time with the children gets the first right to keep the house and buy out the other spouse.

If one spouse is buying out the other, the Judge or Magistrate can set up whatever rules the Judge or Magistrate thinks is fair, such as payment within 10 days or payment within 10 years or monthly payments over a number of months or years. Whether or not interest will have to be paid and at what rate is also a decision for the Judge or Magistrate. If children are involved, often the payment is due at some sort of the child's milestone: graduation from grade school, middle school or high school, for example.

If there are no minor children and the spouses cannot agree on whom will buy out the other, the Judge or Magistrate often just order the home sold and the sales price divided.

WHAT ABOUT ALIMONY OR MAINTENANCE?

Alimony and maintenance are the same thing: money paid by one spouse to the other to help with living expenses. Colorado uses the term "maintenance;" the term "alimony" does not exist in Colorado law.

If the spouses reach an agreement, usually the Judge or Magistrate gives his/her okay and makes the agreement an order. If not, the Judge or Magistrate decides whether maintenance will be ordered and if so, how much, and for how long.

Whether or not maintenance is awarded, and for how much, and how long is pretty much a "crap shoot." While the Judge or Magistrate will try to be "fair," radically different results can and do happen based on similar facts.

For temporary orders, the Judge or Magistrate *might* order temporary maintenance via a formula: 40% of the higher earning spouse's income minus 50% of the lower earning spouse's income. For example, if one spouse earns \$3,000 month and the other earns \$2,000, the temporary maintenance would usually be \$200 per month (40% of \$3,000 = \$1,200; 50% of \$2,000 = \$1,000; \$1,200 minus \$1,000 = \$200). The higher earning spouse would have \$2,800 left to live on while the lower earning spouse would have \$2,200. Or, the Judge or Magistrate *might* run the figures and adjust them up or down based on "gut feelings" as to changes needed to make it "fair."

For "permanent" maintenance, if requested by one or both parties, the Judge or Magistrate first looks at the financial ability of the spouse asking for maintenance to support him/herself financially in a style similar to that enjoyed during the marriage. Consideration is given to all separate and marital property awarded as well as the norm during the marriage as to that spouse working. If the Judge or Magistrate feels that the spouse needs financial help, then the Judge or Magistrate thinks about how much, if anything, the other spouse could pay and still maintain something similar to the marital standard of living. If the Judge or Magistrate orders maintenance to be paid, how long it must be paid is the final question the Judge or Magistrate decides. For cases filed in or after 2014, Colorado law uses the above-discussed formula as a suggestion for determining the amount of maintenance, but Judge or Magistrate makes the final call. Colorado law suggests that the maintenance duration should be half the length of the marriage or "for life" for marriages that lasted 20 or more years, but Judge or Magistrate makes the final call. Colorado law suggests for marriages that lasted less than 36 full months, no permanent maintenance should be awarded, but Judge or Magistrate make the final call. Once ordered, alimony may be modified in the future based on very substantial changes of circumstances, such as the party paying maintenance becoming disabled, unemployed or otherwise involuntarily being unable to pay.

Maintenance is income tax deductible for the spouse paying it and, just like wages, is income taxable to the spouse receiving it.

HOW ARE DEBTS HANDLED?

Hopefully, the spouses will agree which will pay which debts. If not, the Judge or Magistrate will decide.

However, creditors are not part of any family law case or, put another way, you are getting a divorce/dissolution/legal

separation from your spouse, not from your creditors. If the Judge or Magistrate orders your spouse to pay a bill and he/she doesn't pay it, you have no protection from the creditor collecting from yourself. For example, assume the Judge or Magistrate orders your spouse to make the payment on a loan signed by you and your spouse secured by the car you drive. Your spouse misses a payment. The creditor can repossess the car and sue you, sue your spouse, or sue both of you for any loss on the car. You can ask the Judge or Magistrate to punish your spouse for not making the payment, but you are still without a car and have a repossession on your credit report.

Usually, for debts traced to specific property, the Judge or Magistrate orders they be paid by the spouse getting the property. For example, there is a Visa bill and the balance due was mostly to buy a big screen TV. Usually, the Judge or Magistrate orders the spouse who is getting to keep the TV to make the payment. Re-read the paragraph above about what happens if the payment is not made.

For general bills (medical expenses, credit card bills for dinners and the like), the Judge or Magistrate divides "equitably" the duty to make the payments. This often means "based on percentage of income." For example, if one spouse makes twice as much as the other, often the higher earning spouse is ordered to pay about two-thirds of the total debts and the lower earning spouse is ordered to pay the other one-third.

WHAT ABOUT CHILD CUSTODY AND SUPPORT?

For general information on this subject, look at my information sheet: *Colorado Child Support/Custody Law In A Nutshell*.

CAN YOU GET MY SPOUSE TO PAY MY ATTORNEY FEES?

Maybe. Often this is part of the settlement of a case. If not, the Judge or Magistrate decides.

If there is a big difference between the income of the spouses, the Judge or Magistrate can order the "richer" spouse to pay some or all of the attorney fees of the "poorer" spouse. Whether this will be done in your case, and if done the amount ordered to be paid, is up to the Judge or Magistrate.

At my office, my client is responsible to pay my fee. If the Judge or Magistrate orders the other spouse to pay some or all of it directly to me, whatever is paid becomes a credit on my client's bill. If the other party fails to pay, my client is still responsible to me to pay my bill.

HOW MUCH WILL THE CASE COST ME IF I HIRE YOU?

That cannot be known until the case is finished, as every case is different.

I generally do not offer to provide my services on a "flat fee" basis. Abraham Lincoln remarked when he was an active lawyer that a lawyer's "stock in trade" is his advice and time. I charge based on the time spent on your case and the value of certain "stock" documents I have developed if I adapt for use for your case and use them in your case. Every case requires a certain minimum amount of work. I have no control over many factors that might affect the cost of your case, such as how reasonable you and your spouse might be; the skill of any other lawyers involved in the case; problems arising regarding other lawyers involved in the case; which Judge or Magistrate is assigned; which judicial district is handling the case; scheduling problems, and the like.

I do offer each client opportunities to "do some of the work" and thus save some of the expense. An example is very detailed worksheets I have developed to gather the information for some of the paperwork. Some clients do not like to fill out worksheets and thus that client's case will be far more expensive than the case of a client who does carefully fill out the worksheets. Another example is mediation. Mediation is a good choice for some clients and could save a lot. Other clients do not want to sit with their spouse and try to mediate and for them, mediation is a bad choice.

I also give each client money saving suggestions. For example, each time a client calls me, there is a minimum charge for 12 minutes of my time, regardless of whether I spend 5 minutes or 12 minutes. By saving up questions and asking several on one call, a client can save a lot.

HOW DO PEOPLE AFFORD A LAWYER?

Most persons don't have a special savings account "in case I need to hire a family law lawyer." They often need to finance hiring a lawyer by using one or more credit cards and/or taking out a loan. Sometimes, they have to turn to

family or friends for financial help.

I accept Visa and Mastercard, but do not have any other “finance plans” for my clients. I generally require a security deposit, which may be paid by credit card. Think of it as a rent deposit with a landlord. I bill more or less monthly as the work progresses. Each month’s bill must be paid by its due date, sort of like paying rent each month. The security deposit itself does not pay the bill unless the client fails to pay timely. At the end of the case, the security deposit is refunded.

Very low or no income persons in metro Denver might be able to find a free or low-cost lawyer via the Denver Bar Association’s Metro Volunteer Lawyer Program (MVL). Access to MVL is via a financial eligibility screening done for it by Colorado Legal Services. Call 303-837-1313 and ask to be screened financially for MVL services.

MAY I BE MY OWN LAWYER?

Yes. But, Colorado law is clear that anyone representing him or herself is expected to know and follow all the rules and laws as if he or she was a Colorado licensed lawyer. Or, put differently, do not hope or expect the Judge or Magistrate will “cut you a break” because you are representing yourself without a lawyer.

Self-help forms, court rules, etc. can be found at www.courts.co.state.us/Courts/Supreme. Look for the “self-help /forms” tab in one of the upper tool bars. Most if not all district courts have a “self-help/*pro se* coordinator” where persons representing themselves can get broad, general information but cannot actually get a lawyer to handle their case. Self-help books are available at some large bookstores but be sure any such book was written by a Colorado lawyer for Colorado cases as the law varies widely from state to state. Also be sure any such book either has a publication date in the last year or so or has a update edition.

Think very carefully whether “being your own lawyer” is a reasonable or responsible choice. Orders in family law cases typically affect you and your child/children for many years. Even though lawyers are expensive, make a careful decision whether you desire a lawyer’s assistance. After all, lawyers do not just “wake up” one day and become a lawyer. At least 19 years of formal education is required, followed by passing a multi-day examination, followed by years of actual practice of Colorado family law. I have been doing family law cases since 1970.

SUPPOSE WE AGREE, DO I NEED A COURT ORDER?

Yes, if you want the agreement to be enforced by a Judge or Magistrate. Judges or Magistrates only enforce Judge or Magistrate orders, not agreements. Thus, unless and until an agreement is made into a Judge or Magistrate order, there is no legal way to enforce the agreement. Or, put another way, an agreement not adopted as an actual Judge or Magistrate order is legally worthless if one spouse decides not to follow it.

This does not mean there must be a big court fight. Usually, agreements are written up, signed by the spouses, and within a couple of days and without a court hearing, the Judge or Magistrate signs an order making the agreement an order. Once that happens, it is no longer just an agreement. it is a court order.

MUST WE GO TO COURT?

No. If an agreement is reached and there are no minor children or, if minor children are involved and each spouse has his/her own lawyer, you can get divorced by mail.

WHAT IS A SEPARATION AGREEMENT?

A separation agreement is a written document that settles all or some issues in a divorce/dissolution or legal separation case. It addresses issues such as division of property, division of responsibility for payment of debts, maintenance, attorney fees, and financial issues regarding the children.

Like any agreement, a separation agreement is basically legally meaningless unless and until it is made an order by a Judge or Magistrate.

WHAT ABOUT MEDIATION?

Mediation is often a good, very cost-effective way to reach a settlement on some or all issues.

A "mediator" is a neutral person whose job it is to help the spouses reach an agreement on all or some issues. The mediator tries to help each spouse see and understand the other spouse's position on an issue, suggests compromises, and generally tries to help each spouse to "give and take a bit" so the case can be settled.

A mediator does not act as an attorney for either spouse, even though the mediator might be an attorney.

Anyone can call him/herself a mediator. Like any other occupation, some are better than others. Mediators usually charge each spouse a fee, usually based on the time spent. The Colorado Judicial Department sponsors a mediation program that is usually far less expensive than are private mediators.

I am a qualified court mediator.

SUPPOSE ONE OF US DOES NOT FOLLOW A COURT ORDER?

Judge or Magistrate orders are not "suggestions". Severe punishment could happen for a violation of a Judge or Magistrate order, including a jail sentence of up to six months and/or a fine of up to \$1,000 and/or an order to pay all attorney fees of the "innocent" spouse.

Usually, the only way a Judge or Magistrate knows of a possible violation of a Judge or Magistrate order is if a spouse tells the Judge or Magistrate or Magistrate of the problem. Then the Judge or Magistrate conducts a trial to decide if the order was violated. If so, the Judge or Magistrate makes a ruling of "guilty" and can impose punishment.

I HATE THE ORDER. CAN I APPEAL?

Yes, if you file a timely Notice Of Appeal. Usually, that means within 49 days after the order's date.

An appeal often takes about two years. Legal fees could easily run in the \$10,000 and "up" range.

Appeals are a speciality area of the law. Most family law attorneys do not represent people in appeals as unless one handles lots of them, it is not possible to really develop the important expertise.

I do not have the speciality expertise to handle appeals and thus do not do any appeals.

WHAT PAPERWORK IS USUALLY REQUIRED IN A FAMILY LAW CASE?

Lots. First, each spouse must exchange with the other all documents of a financial nature, including tax returns for the past 3 years, pay check stubs, bank and other financial account statements, pension plan information, real estate deeds, appraisals, business statements for businesses owned, and the like. And each must exchange a detailed financial affidavit, listing income, a very detailed budget, and very detailed information as to all property.

WHAT IS YOUR WAY OF HANDLING DECISIONS IN MY CASE?

Lawyers have different styles. Some tell their clients what the client is to do. Others consider the client their "boss" and do what the client tells them to do.

I realize that decisions made in your family law case will affect your life for many years. The case is yours, not mine. The decisions are yours, not mine. The decisions will affect your life, not mine. Therefore, I do not "tell" my clients what to do or not do, and I do not criticize my client's decisions.

Instead, I see my job as being to help you understand the various options and choices, the pros and cons of each, and my best guess what a Judge or Magistrate would do if no settlement was reached. Then, it is your job to make the decision. Once you've made the decision, it is my job to try to carry it out if doing so is lawful and ethical.

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