

# **NEW JERSEY DIVORCE GUIDE**

## **1. Can you please provide me with an overview of the New Jersey divorce process?**

The world of New Jersey divorce law is very complicated. Don't be fooled into believing that you can handle your own divorce case. If you are considering filing for a divorce case, then you should always retain an experienced and affordable divorce lawyer. There are two parts of every divorce case and they are the procedural and substantive aspects of your case. The procedural aspect of your case involves the scheduling of the discovery and the court dates. Meanwhile, the substantive aspects of the divorce case focus on the legal standards that will apply to any of the issues that are raised in your case.

## **2. What are the procedural aspects of a divorce case?**

The ultimate goal of a divorce case is to reach a fair and reasonable deal that everyone can live with. A divorce case is not a game wherein there are winners and losers. Everyone loses in a divorce. Approximately 98% of the divorce cases are settled. Once an agreement is reached then the deal is formalized in a written agreement that is called a judgment of divorce or a property settlement agreement. Basically, these legal documents are a legal contract between both spouses. This contract should be written as clearly as possible. The PSA should define the rights and obligations of the parties after they are divorced. If either party fails to comply with the terms of the judgment of divorce, then the aggrieved spouse can file an enforcement motion with the family court.

It is very important to emphasize that the major goal of the divorce process is to encourage the parties to reach a reasonable settlement. The parties can reach a settlement at any time, even before the divorce case is filed. Litigating a divorce case can be a very expensive process. Therefore, if at all possible it is strongly advisable for litigants to settle their case as soon as possible through give and take negotiation and by mutual compromise.

The majority of the cases ultimately reach an amicable settlement. Settling a case is a win-win situation. The family court system is overwhelmed. The family court system is not designed to have trials for all of the cases. If there was a trial for every divorce case, then most county court houses would have to be built as tall as the Empire State Building to handle all of the cases. Moreover, a settlement will also save you a tremendous amount of missed time at work, endless aggravation, and most importantly your hard earned cash.

Nonetheless, it is often difficult to reach a divorce settlement without the assistance of an experienced lawyer. Moreover, most people are very upset once the cold hard reality of divorce stares them in the face. As time wears on most people soften up and become less scattered brained. To start the divorce process a person must file a divorce complaint. The divorce complaint must also have a confidential litigant form, a certification of mediation, and an affidavit of insurance attached to it. The complaint for divorce is then filed with the county clerk. A filing fee must also be paid to file the complaint. Currently the filing fee is \$250. Additionally, there is a \$25 fee to pay for a parental education court if the parties have children.

After you file the complaint for divorce the clerk will stamp it as filed. Thereafter, you have to serve the summons and complaint to your ex-spouse. You can either have your spouse sign a legal form called an acknowledgment of service to effectuate service. This form will verify that your spouse has received the summons and complaint. Alternatively, you could have a process service company serve your spouse. The typical service fee is \$75. The county sheriff also could be used to serve the complaint. However, most county sheriff offices are overwhelmed, and there could be a long delay before they get around to serving your ex-spouse.

Once the divorce complaint has been served upon your spouse, then he or she has thirty-five days to file an answer. The time period to file an answer can be extended if a person files a late answer. The courts always want to give a person chance to participate in his divorce case. Only in the rarest of cases will a judge strictly enforce a default.

Generally, most divorce cases take between six months to one year to be finished. However, the great majority of the cases are settled in about six to nine months. If there are custody issues then the case could take a much longer period of time to litigate.

After the answer is filed, then the next part of the divorce process is called discovery. Basically discovery involves the mutual exchange of information, tax returns, financial portfolio information, retirement account information. The main tools used to effectuate discovery are interrogatories, notices to produce, and depositions. Only in the high end cases are depositions used. In many hotly contested cases the parties use the discovery process to intimidate, harass and annoy each other. The discovery process permits you to obtain as much information as possible about the case before you try to reach a settlement or if necessary are forced to try the case. Additionally, as part of the discovery process, your home will be appraised, bank account statements must be produced, pensions must be valued, and any other important assets must be disclosed.

In the discovery process it is very important that you obtain as much information about your spouse's financial situation as possible. You should obtain any Social Security statements, credit card statements, checkbook registers, cancelled checks, credit/loan applications, and your spouse's resume or curriculum vitae.

The goal of every divorce case is to try to reach a fair and reasonable settlement. Almost all of my clients always advise me that they want to get divorced like yesterday. However, more often than not a divorce drags on for many months if not years. You can't obtain all of your financial information in a week. It takes many months to obtain all of your financial information. Even though you want to settle your case, you should always handle your case like it will have to be tried. The discovery process will generally take three months to complete. If a couple has big bucks then the discovery period can be extended. The court also requires that the parties sign off on a discovery plan. This plan is then memorialized in a form called a case management order. This is basically a scheduling order that clearly defines what information has to be exchanged, and it also sets forth the dates when the material has to be produced. The case management order must be prepared and filed a few weeks after the answer is filed.

The most important document in the discovery process and in the entire case is known as a Case Information Statement (CIS). This 10-page form is a financial disclosure statement. Each spouse must completely fill it out. Your most recent tax return and last three pay stubs must also be attached to it. The CIS is a very comprehensive financial disclosure statement. You really can't settle your case unless both parties have completed it. In the CIS you must disclose all your assets and liabilities, all monthly debts, your income and other relevant financial information. For many people filling out the CIS is pure drudgery. However, it has to be done and there is no excuse for not filing one. In fact if you don't file a CIS then your case could be dismissed. Additionally, if you blow off preparing the CIS then your case could drag on for many more months. Moreover, you will need a CIS in the future if you ever try to reduce your child support or alimony payments.

If the parties are unable to reach a deal to settle their case then they must participate in a non-binding arbitration program called the Early Settlement Program (ESP). This program consists of two neutral lawyers who have ample experience in the world of matrimonial law. They volunteer their valuable time to assist you to settle your case. Approximately one week before your ESP court date, your lawyer must submit a detailed ESP memo to the panelists. In this memo you must outline your position on what will happen to the marital home, how much child support and alimony should be, how will the credit card debts be paid, when

and how will the mortgages be refinanced, and how will the retirement accounts be split. The ESP panel does not address any issues of custody or of parenting time.

On the date of your ESP hearing, you will have to wait in the hallway while your lawyer enters the panel room with your spouse's attorney. The panelists will then carefully listen to any legal arguments and positions of the attorneys. Thereafter, the panelists will make a recommendation as to what they believe is a fair settlement of the case. Many cases will be settled at the ESP hearing. Many warring spouses need input from a neutral third party to break any type of log jam in the divorce negotiations. If you reach a deal at the ESP hearing then you can also get divorced on that same day.

If you are still unable to reach a deal at the ESP date, then you have to participate in mediation. The mediation process is not binding. You will have to choose a mediator from a court provided list. The mediator must also provide the first two hours for free. After the first two hours are used up, the average hourly rate for the mediator is about \$250 per hour. If the parties have a positive outlook and if they want to settle their case then mediation can work extremely well. However, if the parties just want to keep fighting, then mediation can be a waste of time, and it can be extremely expensive. In many mediation sessions the key issue that the parties fight about is who is going to pay for the mediator's legal bill. The legal bill for many mediators is routinely several thousands of dollars. Moreover, some mediators simply don't do their job, and they are only really concerned about getting paid. If the case drags on, many mediators simply stop working if they are not getting paid. In summary, if you search the web there is endless info about how great mediation is. I don't buy it! Mediation can be extremely expensive and time consuming. Moreover, the skill levels and competence of the mediators vary significantly. Finally, more often than not in many of my mediation cases the key issue that was fought over was who was going to pay the mediator.

If you have still not reached a settlement after the ESP or in the mediation process, then you will be forced to have to have a trial. The court will then schedule two or more court dates called settlement conferences. At these court meetings the judge will try to assist the parties to reach a deal. If the settlement conference(s) is not successful, then you will receive a trial date. In the majority of the cases your case will be adjourned about three to four times before your case is actually tried. There is an extreme shortage of family court judges. Moreover, there are many emergent cases that are filed such as domestic violence cases and order to show causes. The New Jersey family court system is top notch but it is underfunded and undermanned.

In most counties you have to wait for approximately six months

before you actually receive a trial. One of the major problems of waiting so long for a trial is that your ex-spouse could dissipate marital assets during the waiting period. Given this bleak scenario, most people are more than willing to make concessions to reach a settlement so as to avoid waiting so long for their day in court. Additionally, the legal fees can be enormous if you are forced to try your case. Trying a case takes a forest worth of paper and a tremendous amount of time. It is important to note that cases are not tried on a continuous basis. Cases are tried a few hours each day. Therefore, this factor often increases your legal bill by thousands of dollars. Moreover, the judges want pre-trial briefs submitted and summation briefs. These briefs cost big dollars to prepare and they are not free.

### **3. What are the major areas of law that will be decided in my divorce case?**

#### **A. CUSTODY**

Custody is the most difficult legal issue to resolve in any divorce case. People can blow all of their savings to litigate a nasty custody case. There are two concepts of custody in any divorce case, and they are legal custody and physical custody or also known as residential custody.

Physical custody simply means that you have the legal right to have a child with you on an everyday basis. The second kind of custody is known as legal custody. Having legal custody has some important rights attached to it. The most important distinction between the two types of custody is that the non-custodial parent will have to pay child support to the parent with legal custody. The cost of living is so expensive in New Jersey that the primary purpose of many custody battles really is based on financial considerations. The cold hard reality is that many men fight for split custody so that they can pay no child support or reduce their child support payment(s). The more overnights that a non-custodial parent translates into lower child support payments. I know that this statement sounds harsh. However, in my almost two decades of experience it is definitely the truth. Warring spouses often fight over custody solely for financial reasons.

Both parties have a legal right to be involved in the major medical or educational decisions for the children. Moreover, both parents are also entitled to receive copies of the children's report cards and attend parent/teacher conferences. Only in the rare cases does a parent lose these type of legal rights. In the majority of the cases the parties have joint legal custody, and one parent is designated with physical or residential custody. In most cases a parent will not be permitted to have either legal custody or physical custody if he has engaged in abusive conduct toward the child, if he is a substance abuser, or if he has

criminal convictions that could place the children in danger.

If the parties are unable to reach an agreement as to custody or to a parenting plan, then they must attend the Custody and Visitation Mediation Program. At the early stages of the divorce case, the parties will either agree as to a temporary plan for custody. Alternatively, a party can file a motion/application before the court to determine a temporary custody order/plan.

Thereafter, the case will then be referred to the Custody and Visitation Mediation Program. If the parties are able to reach an agreement through mediation then the custody and visitation issue will be settled. If they are not able to reach an agreement through the mediation process, then the parties must gear up for a custody trial. In a custody trial the parties must each retain a child psychologist to render a best interests report. These reports are very expensive to prepare. In these reports the child psychologist will make a recommendation to the judge as to which parent should be awarded custody. In some cases the judge will appoint a joint expert who will render only one report. This could save the parties substantial expert costs. In some custody cases the judge will appoint another lawyer to serve as a guardian ad litem to render a custody report. However, in the majority of the cases both parties will have to retain and pay for their own child psychologist. The average retainer to prepare these types of reports is \$5,000. Moreover, there are additional fees that can easily exceed another \$5,000 to \$10,000 if these experts are forced to testify at court.

In summary, having a full-blown custody or relocation case is a great way to waste all of your savings and to go broke. Believe me I have many clients who have blown all of their savings on custody case. It is so hard to earn and save money in this world. If possible every effort should be made to avoid a lengthy and expensive custody battle.

#### **B. PARENTING TIME**

Parenting time is also known as visitation and it is also an important part of any divorce case. The typical visitation plan for the non-custodial parent is every other weekend from Friday night to Sunday at 5:00 p.m. Moreover, the non-custodial parent is also entitled to parenting time on Wednesday from 5:00 p.m. to 8:30 p.m. Once again this is just a cookie cutter parenting plan that is used by many divorced couples. If the parties cooperate then the amount of variations of parenting plans is endless.

Nonetheless, any parenting plan should be as specific as possible. The more specific that a parenting plan is then the less room there is for the parties to squabble. Moreover, the parties should also agree to a parenting plan to split all of the major holidays including Mother's Day, Father's Day, East,

Halloween, Christmas, and summer vacation. If you can't agree on a reasonable parenting plan then your case will be referred to parenting mediation. These programs are great. In the majority of the cases you will be able to iron out your differences and come up with a reasonable parenting plan. However, please keep in mind that a parenting plan is just a plan. In the world of family law parenting plans are made to be broken. Don't expect that your ex-spouse will honor all of the terms of your agreed upon parenting plan. Life after divorce is not always fun or easy. You must be prepared to file enforcement motions to protect your parenting time. If the custodial parent likes to play games, and if she tries to alienate you from your children, then you must file an enforcement motion and seek to have her held in contempt of court.

### **C. CHILD SUPPORT**

Child support is based upon the New Jersey child support guidelines. The guidelines are a method of analyzing as to how much a person must pay child support. Child support is based on a shared income concept. Each parent is responsible for contributing a sizable portion of their take home pay to raise the children. The child support guidelines are very complicated. You need a computer program to determine your child support payment.

Once a child support payment is determined then you have to fill out a confidential litigant form. This form is then given to Probation along with the court order or judgment of divorce that authorizes the garnishment of the non-custodial parent's pay check. Once the paperwork is submitted to Probation then in about two months the garnishment will kick in, and you will start receiving your child support payments. The child support payor must make payments to Probation during the interim period when there is no garnishment in effect.

If either parent experiences a change of circumstance called a Lepis event, then he can make an application to reduce his child support payment(s). The most common "change of circumstance(s)" is a loss of a job, suffering from a serious medical condition, a failed business, or having more children. Additionally, once the children attend college then most judges will re-evaluate any child support award.

Determining child support can be an extremely complicated process. Many parents simply become very lazy if they have to pay child support. Their rationale is why should I work if most of my paycheck is garnished. Additionally, child support can be complicated to determine if a parent is self-employed. There could be countless to analyze a parent's income if he is self-employed. In these types of scenarios the courts often use the concept of imputing income. This topic is discussed thoroughly in

my other articles. However, it is important to emphasize that the concept of imputing income can make the simple task of determining child support into a "federal case." There are endless arguments that can be made to try to increase a parent's child support payment. One argument that is often made is that the parent is underemployed. In cases such as these it can be very difficult for the parties to settle their case.

#### **D. MEDICAL INSURANCE**

The party who has medical insurance will generally be required to maintain health insurance coverage for the children until they are declared emancipated. However, keep in mind that the date of emancipation for the children could be in their twenties. Therefore, you could be legally required to provide medical insurance for the children for a very long time. Any non-reimbursed medical bills also have to be split and apportioned according to each party's income share. However, the custodial parent normally has to pay for the first \$250 of medical bills. Thereafter, the parties typically are required to pay unreimbursed medical bills on a percentage of income basis.

#### **E. LIFE INSURANCE**

Each party should be required to maintain some form of life insurance. Moreover, if this is an alimony case, then the payor must have life insurance and name his former wife as a beneficiary. Basically, you still have to pay alimony even if you die. The divorce laws of New Jersey even follow you to the grave.

#### **F. TAX ISSUES**

There are many important tax issues that also must be addressed in your divorce. First, the parties must decide whether to file separately or as a married couple in the year when they file for divorce. If the parties decide to file separately, then they must try to reach an agreement as to how to share the write offs for the marital home. Moreover, the parties must reach an agreement as to who will claim the children as dependent deductions on their tax return. The allocation of dependent deductions should not be overlooked. Over the course of the children's lifetime, these dependent deductions could save you tens of thousands of dollars in taxes.

Another important tax consideration is that the parties may not have filed all of their returns. There are major penalties and interest imposed on a taxpayer for unfiled tax returns. Therefore, this point also should not be overlooked.

#### **G. ALIMONY**

In New Jersey alimony is a four-letter word to many people. There



are four types of alimony and they are rehabilitative alimony, reimbursement alimony, limited duration alimony and the dreaded permanent alimony. Alimony is determined based upon a long list of statutory factors. These factors include; a) the length of your marriage; b) your health condition; c) your earning ability; d) your spouse's earning ability; e) your spouse's ability to pay; f) your needs; g) the equitable distribution of your assets and liabilities; h) the lifestyle established during the marriage; and i) and other important factors.

Determining an alimony award is perhaps the most difficult road block to reaching an amicable settlement. Determining an alimony award is much more difficult than determining a child support award. There are child support guidelines to assist warring spouses to determine a child support award. However, there is no such animal as alimony guidelines. There simply is no mathematical formula to determine an award of alimony. Some jurisdictions are using guideline approach similar to that utilized by New Jersey with regard to child support. This type of methodology suggests that one third thirty three percent of the difference in income between husband and wife. This figure represents a presumptive starting point to try to assess a fair and reasonable alimony award.

In summary, the legal issue of determining alimony can ruin many potential divorce settlements. Most men simply hate paying for alimony. Moreover, the laws of alimony are very amorphous. To one judge a case could be a limited duration alimony case. Meanwhile, another judge could view the case as requiring permanent alimony. Given these dynamics determining an alimony award is often a stumbling block to reaching a reasonable divorce settlement.

#### **H. EQUITABLE DISTRIBUTION**

The final area of law that must be addressed in any divorce settlement is the distribution of assets and debts. This is called equitable distribution. The New Jersey courts will distribute assets and liabilities according to what is fair and equitable in your case. In most long term marriages, the marital assets are divided in half. This includes any equity maintained in the marital home, retirement accounts, pensions accrued during the marriage, bank accounts, mutual funds stocks, other investments, vehicles, etc. However, there are a line of cases that permit a judge to make an unequal distribution of marital assets in certain circumstances. Usually there has to be bad faith exhibited by one of the spouses, or there has to be a dissipation of martial assets to justify a disproportionate split of the marital estate.

All of the marital debts also have to distributed during the divorce. In the last few years more and more New Jersey couples

have been battling over paying off the bills instead of fighting over the marital assets. Credit card bills have to be paid off. Home equity loans have to be addressed. Car loans have to be paid off or addressed. All of these issues have to be decided and clearly spelled out in the PSA. It is important to note that most marital credit cards make each spouse liable for the debt. Therefore, even if the PSA allocates the credit card debt to one spouse, if this debt is not paid the credit card company will go after both spouses. In summary the credit card companies will go after both spouses regardless of what the parties' PSA specifies.

#### **I. ATTORNEY'S FEES**

The last issue that must be addressed in your divorce case is who is going to pay for the lawyers. The general rule of thumb is that each party must pay for his own lawyer fees. However, if the spouse's respective incomes are disproportionate then a counsel fee contribution may be necessary. Please keep in mind that the longer the case drags out, then the more expensive the case will become. If the judge believes that one spouse has acted in bad faith, then you could really get hammered for counsel fees. I had one case wherein the parties had a very small amount of marital assets. However, the judge ordered my client to pay \$50,000 in counsel fees. The judge ruled that my client acted in bad faith during the marriage and he dissipated marital assets.

There is a lot of politics that go into awarding of counsel fees. The longer the case drags on, then there becomes a very real risk that you could be hit with a tremendous counsel fee bill for your ex-spouse. I recently had another case wherein my client was ordered to pay \$150,000 of his wife's legal bills. I represented this client on appeal. Thankfully, I did not represent him at his trial. However, please be warned that there is a very real risk that you could be liable to pay for your ex-spouse's legal bills if there is disproportionate income between the parties, and if the judge believes that you have acted in bad faith.