

This checklist is informational and not meant as legal advice nor does it create an attorney-client relationship between you and this firm. We will only be your attorneys once a written retainer agreement is signed with us. If you have any specific questions when going through this, please call me to discuss it. There are many ways that an agreed divorce can be done and this does not include every way to do it.

BASIC CHECKLIST FOR AN AGREED DIVORCE

Custody Options:

- Sole Custody – is where one parent is the residential custodial parent and has the final decision-making authority with respect to a child
- Joint Custody – or “Joint Parenting” comes out of a “Joint Parenting Agreement” that is negotiated between the parents. Joint Parenting does not mean equal time with a child but is shared decision-making between both parents regarding major life decisions for the children. It requires a high degree of cooperation between both parents. Joint Parenting Agreements are drafted at an additional cost – particularly where tailored to your situation.
- Shared Custody - There are also situations where “shared residential” custody can be approved by the court. In my experience it requires that the parties not only desire it but that they: a) live close to one another; b) have a very high degree of cooperation on the issues with the children and c) both parents have relatively equal earning ability. Shared custody is very different from Joint Custody (i.e. Joint Parenting) so ask specifically about this if it is an issue. It can translate into a situation where there is no child support paid by either party or some sort of offset because one parent makes more than the other parent.

Visitation Schedule

- Regular (weekly), extended weekends, holiday, school breaks, summer vacation
- Transportation issues, pickup and drop off times and locations
- Moving from state: “Removal” is generally prohibited unless specifically agreed between the parents or ordered by the court after a hearing.

NOTE: Parenting arrangements whether sole or joint have much more detail regarding visitation, rules of handling school, extracurricular, religious and medical issues with the children – after a consultation, you may request that a sample Joint Parenting Agreement is sent to you.

Child Support

- Amount generally based on yearly gross income from all sources minus certain tax and other allowable deductions (including but not limited to union dues, health insurance premiums). You must be able to tell me what the gross pay (weekly, monthly or yearly) is for the parent paying support and then what additional (non-tax) deductions are taken from the gross amount (e.g. health insurance, life insurance, union dues, mandatory deductions, student loans, etc.) If any of those amounts are not readily known, then you should discuss this issue with me.
- Providing W-2's/tax returns at the time of the divorce and (if agreed) on a yearly basis thereafter?

Tax Exemptions

- who gets to claim one or more of the children
- can agree to split them/alternate years
- beware of IRS rules and regulations <http://www.irs.gov/pub/irs-pdf/f8332.pdf>,
<http://www.irs.gov/publications/p501/index.html>,

Health Insurance

- who picks up coverage for kids? What is the cost difference between coverage for just the family, just the employee parent and then the parent plus children?
- who has a better or more stable plan?
- what about un-reimbursed medical (usually split 50/50)?
- will other spouse have kids on their insurance as secondary ins.? (suggested if at no additional/low cost)
- coverage for each spouse after divorce. If you were on your spouse's health ins. then you will generally lose it the day of your divorce. You may have rights to get COBRA coverage.

Life Insurance

- types of policy (whole, term etc.), face amounts for each parent policy
- any policy carry a cash value?
- children will be placed as beneficiaries (person(s) to benefit from policy)
- spouse will be named as trustee? (person to manage funds for minors)
- annual proof of coverage required?

Real Estate/Marital Home

- Possession issues - Who will move out of the house and when? How will the mortgage get paid as well as real estate taxes, homeowners insurance, utilities, etc until the property is sold
- Separating Co-ownership – The good news is that separating co-ownership is rather easy (use of a quit claim deed) however, it is the mortgage that binds you really to the property. So unless you own your home outright (no mortgage or liens) you have to determine what works best: assumption of mortgage, refinance, buyout, sale & division of proceeds, etc.
- Issues of mortgage interest/real estate tax deductions in year after divorce
- Other real estate? Timeshares, vacation homes, lots, camp grounds, etc?

Maintenance/alimony (where applicable)

- Entitlement to Maintenance - IMPORTANT: whether one party is entitled to alimony/maintenance can be a complex issue with a variety of factors to consider such as: length of marriage, age & health of the spouses, present & future income capacity of each spouse, education or training of each parent, standard of living maintained in the marriage, tax implications, time devoted to being a stay-at-home parent, etc.
- Waiver: each spouse must be extremely cautious of waiving any right to maintenance and have all the facts necessary before making a decision – once maintenance is waived, it is forever waived.
- Types of Maintenance - there are many options where maintenance is warranted: permanent or temporary; lump sum payout; money for school/training; modifiable, reviewable, reservation of the right for a certain time or even an award of a larger portion of property settlement spouse instead of maintenance
- Remarriage issues or if the spouse cohabitates (moves in with) a new partner then maintenance usually ends

- Tax Issues – there are generally specific tax benefits to the spouse paying maintenance and a corresponding tax liability to the spouse receiving maintenance. On this and other tax issues, you need to discuss it with an attorney AND a CPA.

Personal Property

Every meaningful asset must be addressed in the settlement including furniture, campers/boats, money market accounts, bank accounts, jewelry, tools, 401(k) plans/other retirement benefits, stocks/bonds, certificates of deposit, motorcycles, electronics, etc.

- Marital v. non-marital real estate must be assessed – generally property acquired during the marriage (but not by inheritance or gift) or placed into joint ownership during the marriage is marital property. However, each case is different so ask specifically about property one party may claim is non-marital. Also, there are some rather complex rules in place if non-marital property contributes to marital property and if marital property contributes to non-marital property. Sometimes a right of reimbursement is triggered.

Vehicles

- awarded to whom?
- loans? (need balances and account info)
- refinance if in both names?
- signing of title docs

Retirement monies: Pension/IRA/401 (k)/SEP

NOTE: pensions are especially hard to place a value upon and to figure out what the other spouse's interest is in it (if any). You may choose to have one spouse receive more in property settlement (cash/assets/home equity) to offset an interest in a pension but this must be done carefully and with knowledge of the value of the pension. The reason pension are so difficult is because they are a future asset (generally only collectible when retirement age hits). Since so much can happen in between the time of a divorce and retirement (death, remarriage, company closings or company bankruptcy etc.), these become complex to properly handle.

- Beneficiary Check: Always make sure your beneficiary information is up to date on all retirement accounts before, during and after a divorce
- Pension Expert: Pensions are notoriously difficult to assess in value and ensure your future rights to it are secured as best as possible. For most pensions and some 401(k) I suggest the retention of an expert to assist with a proper evaluation or division.

Division of ALL Debts

It is generally easier for each person to take the debts already in his or her respective name and/or to pay off all joint debts before the divorce is completed. Also if one person takes a debt, they should generally get the asset tied to it (i.e. the person taking the car, should also take responsibility for the car loan associated with it). Keeping debts or assets in both names after a divorce is rarely ever a good idea but sometimes unavoidable.

Division of ALL Assets

This should be done along with the division of debts. A useful tool may be a large ledger sheet listing all debts (current balances) and all assets (along with the value of the asset minus any debt with it). The goal may be a strictly even split or there may be some offset

for other issues, like one spouse giving up a right to alimony/maintenance or a pension. I can provide a simple asset division tool if needed

NOTE: All debts and assets need to be discussed with the attorney – even ones you think are not part of the assets or debts related to or arising during the marriage

College Expenses

This can be simply reserved for a later time (common with younger children) but you may also put in some generally agreed provisions (i.e. only state schools will be paid for by the parents or what do the parents expect the child to contribute when it comes time, etc.)

Modification and mediation issues. Can the property settlement or child custody terms be modified? and if so then on what grounds? Generally, property divisions are final but child-related or spousal maintenance issues can be modified.

Maiden Name: Is Wife to have the right to resume the use of her maiden name? If she ever wants this, now is the time to request it because it adds no cost to the divorce. If she wants to change it later then she would have to file a separate case, a "Petition for Name Change", pay more in fees, etc.

OTHER ISSUES:

Financial Documents Generally Needed in Every Divorce Case: Discovery is the process by which both parties exchange financial information – this is needed particularly where spouses kept their information separate through the marriage. Whether by informal exchange or sworn under oath with written documentation, to complete a divorce attorneys generally need information on/copies of the last 1-3 years of:

- Federal and state income tax returns.
- Proof income: W-2's, pay stubs, 1099's, etc.
- Life insurance policies
- Bank and credit card account statements/info. account numbers, balances, and whose name each is in.
- Pension/401(k)/Investment account statements
- Stock certificates and info on options, bonds, mutual funds, annuities or any other asset
- Real estate documents including, mortgage/home equity line statements, deeds, lien information, closing statements, appraisals or market studies,
- Car, boat, motorcycle titles or title info and any loan information
- Information on any other debt or asset held by either party even if you think it is not the other party's responsibility

ATTORNEYS: Because of ethical rules we can only answer the questions of the spouse that contacted us first. The other spouse should protect their own interests by either understanding fully what they are agreeing to or hiring their own attorney to review the settlement proposal. The basic idea here is that the more complex the issues, the more each spouse may need their own attorney to be involved so that they each understand what they are doing. Issues like maintenance/alimony, pensions, business interests, numerous debts, obligations on prior marriages, taxes, proper calculation of child support, etc. are not always easily decided and generally require the assistance of an attorney to do it properly.

MEDIATION OPTION: There is also the option to mediate your issues with a mediator who can assist the two of you in coming up with a fair agreement. If mediation fails to get a result, then things said in the mediation can not be used later against either of you in court.

Suggested Mediators: Note: I do not receive any compensation or referral fee for recommending a mediator. Also, make sure neither party has used any selected mediator in the past as their attorney.

- o Andy June, 1861 Black Road, Joliet, IL 60435-3420 (815) 725-8000
- o Kristie Breseman, 58 N. Chicago St., Suite 503, Joliet, IL 60432 (815) 714-9863
- o Joseph P. Glimco, 8340 Lemont Rd Bldg F, Darien, IL 60561 (630) 910-6400
- o Brad Groselak, 1201 State St Ste 201, Lemont, IL 60439-5522(630) 243-1200
- o Erin O'Sullivan, 211 N. Chicago St., Joliet IL 60432, (815) 727-2100

FEES & COSTS OF FILING A DIVORCE IN WILL COUNTY:

1) Attorney fees: start at \$1,250

Additional fees charged when children/custody involved, joint custody sought, division of pension involved, sale of real estate, complicated debt/asset separation, spousal maintenance (alimony) sought or any other issue that requires more attorney involvement. I will fully discuss this with you and ultimately quote you a fixed fee. Note: my fees for an agreed case are paid on a flat-rate basis meaning you will not be billed additional amounts in attorney fees as long as the parties remain agreed on all issues throughout the case.

2) Will County filing fee: \$276 (paid to court, not attorney)

3) Service of papers: \$60-100 (paid to process server, not attorney)

Service of papers and the service fee is not necessary when your spouse files an "Appearance Form" – This is appropriate when your spouse wants to stay actively involved in the case, will directly pay a filing fee (\$160) and will definitely show up for the final court date.

4) Parenting Classes: \$90

The person filing the divorce MUST attend Parenting Classes. The other spouse MUST also attend if they want visitation rights. Most judges reserve (suspend) visitation rights of the parent not attending parenting class. This is a requirement that when not done, very often delays the case. To register or for more information on Parenting Classes in Will County go to:

<http://www.stfrancis.edu/content/solutions/parenting/register.htm>

FINAL WORD

The above information is merely a starting point on basic issues and to provide some idea of how to resolve them – IT IS NOT COMPREHENSIVE – that will come if the parties mediate and/or this firm is retained and only once all issues are decided. There are many other ways to resolve a divorce other than those listed above and you should NEVER sign any agreement until it is fully reviewed by your own attorney. Attorneys can only represent one person's interest in a divorce so you should never believe an attorney (other than a mediator) is working for both of you.

Again, any questions call me at (815) 954-8175.

Sincerely
Anthony Andreano
Attorney at Law