

Divorce Attorney

Absolute Divorce in North Carolina typically occurs after the issues of Child Custody, Child Support, Alimony, and Equitable Distribution are resolved. It doesn't always happen last, however. In order to obtain an Absolute Divorce in North Carolina, a couple must be physically separated for at least one calendar year prior to the filing of the Divorce Complaint, with at least one of the parties intending the separation to be permanent. It is important to have an experienced, competent divorce attorney by your side during these proceedings, to protect yourself and your children.

Pre-marital Agreements

A Pre-marital Agreement, also known as a Prenuptial Agreement, is a contract that you enter into with your future spouse in which you decide how certain issues that can arise in divorce will be handled in the event that the marriage doesn't work out. Alimony and Property Distribution (known as Equitable Distribution in North Carolina) are two common issues that are addressed in a Pre-marital Agreement. For example, couples can decide how much Alimony will be paid in the event of separation and divorce, or if there will be no alimony paid by either spouse. Couples can also make clear which property they are bringing into the marriage and which property each will leave with in the event of separation and divorce. Division of the marital home can also be addressed in the Pre-marital Agreement, as can the division of debts acquired by each person prior to the marriage. Child Custody and Child Support issues are usually not included in a Pre-marital Agreement, as North Carolina law specifies that a judge has final say in those matters, whether there is a contract or not.

Many couples do not like to think about a Pre-marital Agreement, as many believe that such an Agreement is "bad luck" or "insulting" or any number of other reasons. The fact is that a Pre-marital Agreement can protect money and assets and save each person a lot of money in divorce litigation should something go wrong.

Separation Agreements

A Separation Agreement is a binding contract between two spouses who have decided to end the marriage. It is valid even after the divorce. A Separation Agreement typically resolves the issues of Child Custody, Child Support, Alimony, and Property Distribution (Equitable Distribution in North Carolina). It can, and typically does, address other issues as well, such as pre-divorce tax filing status, claiming of yearly child tax exemptions, inheritance rights prior to divorce, and third-party marital tort claims.

A Separation Agreement is typically much less expensive than lawyer litigation fees for months or years of litigation. Another advantage is that the Separation Agreement allows separated and divorcing couples to maintain more control over their settlement terms than if the matter is decided by a judge in court. Once a judge hears the case, the parties are no longer in control – the judge is. Neither person may like what the

judge decides on the issues of Child Custody, Child Support, Alimony or Equitable Distribution, and if the couple can settle their issues in a Separation Agreement, the control they have over the final language generally is more satisfactory to them than an Order issued by a judge.

A divorce lawyer can help you and your soon-to-be-ex-spouse come to agreeable terms and avoid years of litigation.

Equitable Distribution

In North Carolina, Equitable Distribution is a system that courts use to divide property and debt. Property division can be settled in a Separation Agreement, or either party can ask the court to divide their property and debt. When an Equitable Distribution lawsuit is filed, if there is no settlement, there are four basic steps the court will follow to determine how to divide up the property and debt. The four steps are IDENTIFY, CLASSIFY, VALUE and DIVIDE. First, the property and debt will be IDENTIFIED, usually by requiring that each party list the property and debt in an Affidavit so that the court is aware of what exactly is being divided. Next, the property and debt must be CLASSIFIED. That means that the property and debt must be labeled as marital, separate or divisible. Since the court can only divide marital or divisible property, this step is critical. Third, the court will VALUE the property and debt being divided. This step is where valuation tools such as appraisals come into play. In North Carolina, every piece of property that is divided between spouses must be valued, including retirement accounts and pensions. Finally, a court will decide who gets which property and who will assume certain debts.

It is vital to remember that “equitable” does not necessarily mean “equal.” One way to think of the word “equitable” is to think “fair.” A judge in North Carolina can consider several factors in determining what is “FAIR.” The presumption in North Carolina is that the property and debt will be divided on a 50/50 basis, but remember, a judge can deviate from that if he or she finds supportable statutory reasons to do so. Another critical thing to remember is that property and debt do not each have to be divided on the same percentage basis. What that means is that a judge can consider the property and debt separately, and could award one party more than 50% of the property, but less than 50% of the debts. Most people, and some attorneys, mistakenly believe that property and debt must be considered together and divided using the same percentage, but that is not the case. For purposes of Equitable Distribution, property and debt do not have to be treated in the same manner. It’s up to the judge based on the facts presented at trial and based on the statutory factors for distribution.

Property distribution in North Carolina is extremely complex, and the litigation process requires the gathering and filing of several documents and disclosures on a deadline-driven schedule. Having a competent divorce attorney by your side is critical to navigating this area of family law.

Alimony

Alimony is the legal obligation to provide financial support to one’s spouse either before or after divorce. Alimony can be settled in a Separation Agreement, or it can be decided by a judge after the filing of an Alimony claim. It is important to have a divorce lawyer to explain these issues and to make sure that neither party is having their rights trampled upon.

In North Carolina, one must be a “dependent spouse” in order to be entitled to receive Alimony. The “supporting spouse” pays the Alimony in an amount decided by the Court. In general, the supporting spouse is the party who earns the most money and the dependent spouse is the spouse who earns less or doesn’t work at all. The facts of an individual case will determine whether a judge finds that a person is financially “dependent” on his or her spouse and is thus entitled to Alimony.

After the issue of “dependence” is decided, the amount of Alimony is determined on a case-by-case basis using several factors in the Alimony statute. The basic idea is that the supporting spouse must pay the difference between the dependent spouse’s expenses and his or her income. The amount is only part of the equation, though, as the judge must also decide how long the alimony payments will last.

Alimony, like Equitable Distribution, requires the gathering and filing of documents and disclosures on a deadline-driven schedule. Perhaps the most important document in an Alimony action is the Financial Affidavit of each party. The Financial Affidavit is a document where each party lists his or her income and expenses. The court will use this document to help determine what each person’s reasonable needs and expenses are, and the conclusions a judge makes in this area will impact the amount of Alimony tremendously. It is vital that you have a competent attorney to guide you through the process of completing and filing the documents required in an Alimony action.

The financial picture is not the only consideration in an Alimony proceeding. Marital fault plays a part as well. The most common marital fault that comes into play in an Alimony proceeding is adultery. If the court finds that a dependent spouse committed adultery and the supporting spouse did not, then Alimony is barred by statute in North Carolina, and the dependent spouse will get no Alimony. If the court finds that the supporting spouse committed adultery and the dependent spouse did not, then Alimony is required by statute in North Carolina, and the supporting spouse will be required to pay Alimony. If both parties are found to have committed adultery, the decision on whether to award Alimony will be decided by the judge on a case-by-case basis.

In addition to Alimony, some parties will seek Post-Separation Support from his or her spouse. Post-Separation Support is “temporary Alimony,” and is designed to allow the dependent spouse to meet his or her expenses during litigation and thus ensure a fair trial.

Whether your issue is Alimony or Post-Separation Support, it is critical to have the guidance of a competent attorney to guide you through it.

Child Support

Child Support refers to the amount of money that each parent is expected to pay for the support of a minor child or children. Child Support issues can be resolved in a Separation Agreement, or the issue can be resolved by a judge.

Most people think of child support as a payment from one parent to the other, and it is. It’s more complicated than that, though, as technically under the North Carolina Child Support Guidelines, both parents have an obligation to support the child(ren). To determine the amount of each parent’s obligation in the typical case where one parent has primary physical custody and the other parent has visitation, both parents’ incomes are entered into a child support calculator, along with health insurance costs and work-related childcare costs. The calculator then creates a worksheet where both parents’ obligation is listed. The lower number is subtracted from the higher number, and the result is the amount of child support that gets paid to the parent who has primary physical custody.

There are different custody scenarios, though, and thus there are three primary child support worksheets in North Carolina. Each calculates a child support payment based on various factors on a case-by-case basis.

A child support attorney can help ensure that your children are provided for properly and that neither party is being taken advantage of.

Child Custody

Child Custody refers to the arrangement that parents have regarding decisions about their children, where the children will live and how much time the children will spend with each parent. Child Custody issues can be resolved in a Separation Agreement, or the issue can be litigated, and a judge will decide the particulars of the custody situation.

In North Carolina, the standard that a judge uses to make his or her decision is the “best interest of the child.” Based on the evidence presented to him or her, the judge will do his or her best to decide what kind of custody arrangement will best promote the health and welfare of the minor child(ren) involved.

There are two “types” of custody. One is “legal custody,” which means decision-making. The other is “physical custody,” which means where and when each parent will have the children.

In most custody cases, parents will share what is known as “joint legal custody,” and that means that each parent has a say in the decisions related to health, education and welfare of the child(ren). “Joint physical custody” is less common, and typically one parent or the other is awarded “primary physical custody.” There is no statutory requirement in North Carolina that one parent or the other be awarded “primary physical custody,” but that is the most common outcome in litigated custody cases. When one parent is awarded “primary physical custody,” the other parent is usually awarded “secondary physical custody,” which is sometimes referred to as “visitation.”

People who settle their child custody issues in a Separation Agreement have much more control over the way the time with their children will operate than if they choose to litigate. In addition, settling the child custody issue keeps the child(ren) from having to testify or otherwise be involved in a child custody trial. There are times when litigation is simply unavoidable, but child custody is perhaps the one area in North Carolina Divorce law where settlement can benefit the most, especially for the children involved. It is very important to have a knowledgeable child custody lawyer by your side to ensure your children’s interests are being protected, and your rights to your children are not being denied.

The Divorce Process

Your case, as with most divorce cases, will be resolved with a document. That document can be a Separation Agreement or a Court Order. A Separation Agreement is a contract between two married persons in which some or all of the divorce issues are resolved. The issues that typically get resolved in a Separation Agreement are Child Custody, Child Support, Alimony and Equitable Distribution (also known as Property Distribution). Those issues can also be resolved in court through litigation. Either way, you will have a document at the end of the process that clarifies your rights and responsibilities.

I become involved in the process with most clients after they have separated from the other spouse. Sometimes a client will come to me prior to physically separating from his or her spouse, however. Both situations are common.

If the potential client has already physically separated, the consultation involves determining whether the marital issues can be resolved in an amicable way without the need for long, expensive court battles. At that point, the client chooses the best path for him or her given all of the unique factors of each individual case. If the client makes the decision to try to resolve the situation in an amicable, settlement-oriented way, we begin the process of drafting an Agreement that can resolve the marital issues. Some cases simply cannot be resolved without court, and if that's the case, the client chooses when to file the necessary paperwork to begin the litigation process. Litigation cases can also be settled without actually going to trial, but typically once a case goes down the litigation path, it is a much longer and more expensive process than the non-litigation approach.

If the potential client has not separated from his or her spouse at the time of the consultation, the process is essentially the same as for those who have separated, except that there will necessarily have to be a negotiation with the other spouse about which person is moving out and when.

In North Carolina, the Absolute Divorce is typically handled after the other marital issues are resolved. It doesn't always happen that way, but usually the Absolute Divorce comes after the other issues. The Absolute Divorce can be filed after the spouses have been physically separated for one continuous year, and it is a separate proceeding from the issues of Child Custody, Child Support, Alimony and Equitable Distribution.

This summary is intended only as a general overview of the divorce process. There is much more to it than can be explained here. It is critical that you consult with an experienced divorce attorney if you are faced with these issues, as not doing so can result in the loss of critical rights and can put you at a tremendous disadvantage in a system that can be confusing and extremely stressful.