FAIRFIELD COUNTY DIVORCE GUIDEBOOK

A Roadmap to Divorce Law in Connecticut

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(2) IRS forms W-2, 1099 and K-1 within the last three years including those for the past year if the income tax returns for that year have not been prepared;

(3) copies of all pay stubs or other evidence of income for the current year and the last pay stub from the past year;

(4) statements for all accounts maintained with any financial institution, including banks, brokers and financial managers, for the past 24 months;

(5) the most recent statement showing any interest in any Keogh, IRA, profit sharing plan, deferred compensation plan, pension plan, or retirement account;

(6) the most recent statement regarding any insurance on the life of any party;

(7) a summary furnished by the employer of the party's medical insurance policy, coverage, cost of coverage, spousal benefits, and COBRA costs following dissolution;

(8) any written appraisal concerning any asset owned by either party.

Upon close inspection, this list of documentation appears daunting, especially for a party who might not have had any involvement in the family finances. However, attorneys should remind clients that these obligations extend to both parties and truly do enable the attorneys to gather a better understanding of the financial mechanics of the marriage and the assets subject to division, especially by focusing on the past two years of statements.

While some litigants or law firms begin the divorce action by requesting immediate mandatory disclosure (thereby dictating compliance within thirty days of the return date), others may attempt to conduct informal discovery in an attempt to resolve matters during the ninety day waiting period without unnecessary expense. Our recommendation for all litigants in dissolution actions is to make diligent efforts to gather and exchange this material at the earliest possible time - and to share it with your counsel - as there is no better way to quickly ascertain the family’s full financial picture.

Parenting Education Program

Whenever a minor child is involved in a dissolution of marriage proceeding, both parents must attend parenting education classes. These classes are designed specifically to educate parents about how their separation may affect their children. By statute the courses must include information regarding the developmental stages of children, adjustment of children to parental separation, dispute resolution and conflict management, guidelines for visitation, stress reduction in children and cooperative parenting.[1] There is a mandatory $125.00 participation fee; however, where a party is indigent, it may be waived by the court. Parenting education classes are generally six hours in total duration, and are typically offered as two three hour classes or three two hour classes. A parent should sign-up with the provider directly, and bring to the first class the Parenting Education Program Order, Certificate and Results form (JD-FM-149) which can be found under "Forms" on the State of Connecticut Judicial Website. Classes are available at several locations in Fairfield County, including Bridgeport, Norwalk, Stamford and Greenwich, and a parent may find contact information for the various providers on the Connecticut Judicial Website. It is important to note that in the event a parent does not complete the program in a timely manner, the court may decline to enter orders in the case, and may even decline to accept a separation agreement until both parents have done so.

Motion Practice

Once your case has begun, there may come a time -- either before or after the Case Management Conference -- when a dispute rises to the level that it requires the intervention of a judge. A large percentage of divorce litigants in Connecticut stay out of court entirely, at least until the final, uncontested hearing when the judge approves a final separation agreement and enters a judgment. Others, however, are faced with more immediate, short term problems which may be difficult to resolve either with or without attorneys. Determining who will have temporary possession of the marital home, how the children will be cared for while the case is pending, or how household bills will be paid until judgment are some examples of what are referred to as "*pendente lite*" issues which may be resolved by motion practice.

[1] C.G.S. § 46b-69b.

A motion is any written request by a party, in a form described in more detail in Chapter 11 of the Connecticut Practice Book, properly filed with the court in a manner upon which a judge can grant relief to the party requesting the action. Family division motions in the Connecticut Superior Courts are accepted either in person (at the appropriate clerk's office), by mail or by fax, with the appropriate facsimile filing cover sheet (also available on the Connecticut Judicial Branch website). Motions should be concise, in plain language, and with no more facts than are necessary to spell out the nature of the request from the Court. Certain post-judgment motions require filing fees; however, *pendente lite* motions may be filed at no additional cost, can be easily filed by fax, and automatically appear on the "short calendar" for that courthouse within a couple weeks of filing the motion.

The family "short calendar" call is done on one day of each week (Mondays in Stamford and Danbury Judicial Districts, and Thursdays in Bridgeport, for example). At this time, all of the family case motions that were filed within the previous week will be listed, giving the parties to the motion an opportunity to be heard on that date.[2] A motion filed in the Fairfield Judicial District at Bridgeport, for example, will appear on a short calendar list on a future Thursday, and the parties to the dissolution action may consult the judicial website short calendar lists to confirm the precise date the motion is "written on." Armed with that information, if the party who filed the motion is ready to proceed, he or she must do two things. First, the motion must be "marked ready" by following the procedure and timeframe designated by the Court in that district (in Bridgeport, this must be done by 4 pm on the Tuesday before the Thursday short calendar; in Stamford, however, this must be done by the Thursday a full eleven days before the hearing). Second, the party marking the motion ready must notify the other side by "serving" written notification of the ready marking by fax, email, or regular mail. The moving party should bring proof of this notification to court on the short calendar date.

If a party is not "ready," is unavailable on the short calendar date, or otherwise decides to delay the motion being heard by the Court, one can file a "reclaim" form with

[2] An exception to this timing is in the Stamford/Norwalk Judicial District, which currently utilizes a program wherein the motions are written on the calendar a full two (2) weeks before the short calendar date. Other judicial districts provide litigants with approximately one (1) week's notice. We suggest that you consult with your attorney or with the clerk's office regarding motion practice in your judicial district.

the clerk (also by fax, and also available on the judicial forms website). The filing of that reclaim will cause the motion to reappear on the next available short calendar date, triggering new deadlines for marking the motion ready. In all cases, if a motion addresses financial issues, the court rules require that the parties file and exchange updated financial affidavits at least five (5) days before the hearing.

At the actual short calendar call, the parties should be present before 9:30 am. In some judicial districts (Stamford and Danbury) but not all (Bridgeport), the judge will actually "call" the calendar in order. Parties or attorneys are expected to announce their presence, their intention to proceed, and give the Court an estimation of how much time the motion will take if an amicable resolution cannot be reached. With all motions, other than very limited cases in which legal argument is all that is required, the parties will be directed to visit the Family Relations Office, where a court official will attempt to mediate and resolve the subject matter of the motion(s) to be heard that day. Unrepresented parties meet personally with the family relations counselors; otherwise, only attorneys attend and discuss the matter behind closed doors in the Family Relations Office. If an agreement can be forged, sometimes the family relations counselor himself or herself will draft the document and the parties will sign it on the spot, subject to approval by the Court. Family relations counselors are trained to opine on matters regarding parenting disputes, and often will assist in running child support calculations where applicable. If the matter is excessively complex, would require substantially more time than the constraints of short calendar would allow, or if an agreement cannot be reached, the family relations counselor will provide the parties with a form confirming their attendance for the Court. This form will be taken back to the assigned judge, who will then determine when a hearing will be conducted.

This is where parties should be forewarned: many, many motions in family cases are filed each and every week. Hundreds of litigants across the state appear eagerly before family division judges at short calendar, ready to proceed with their motions. There are simply not enough judges, and not enough courtrooms, to handle every motion that cannot be resolved by the Family Relations Office, most certainly not in the few hours that are available on any given short calendar date. Parties may be frustrated by a process which involves considerable waiting, and sometimes exasperating rescheduling.

While courts will make best efforts to hear emergent matters first (restraining orders regarding abuse, for example), the parties are often best served by attempting in good faith to resolve their temporary dispute (the subject of the motion) by way of a written agreement. Having an attorney can indeed help speed up the process for any litigant unfamiliar with the family court docket, but in Fairfield County, there is often no replacement for creative, effective negotiation and compromise in resolving temporary issues to the mutual benefit of the parties.

MARITAL PROPERTY & EQUITABLE DISTRIBUTION

Marital Property Explained

Even before divorce litigation is commenced, most laypeople have a generalized understanding of the concept of "marital property." Marital property is any asset - whether real estate, a bank account, a business or legal interest, a security or stock holding, or even a piece of home furnishing - which was purchased or obtained during or prior to the marriage, and remains the property of either party of the marriage, regardless of whose name is listed on the title for such property.

Equitable Distribution

Connecticut General Statutes Section 46(b)-81(a) broadly defines the court's powers with respect to equitably dividing marital property between divorcing spouses:

> "At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect."

In essence, this subsection sets forth the very generous authority of the Superior Court in family matters to fairly divide assets, and even order the sale of property, in order to accomplish what the court finds to be fair and equitable in a divorce action.

Connecticut is sometimes defined as an "all property distribution state," or a "kitchen sink jurisdiction." Divorcing spouses can and should expect that the court will consider allocating any and all property - including premarital or inherited property -- by and between the parties, regardless of how that property was acquired. This does not, however, mean that inherited property, for example, will necessarily be equally divided in all cases. As with all property, the court will consider a number of statutory factors in determining what a fair division of the assets would be. These factors, set forth in Connecticut General Statutes Section 46b-81, are:

(1) The age of the parties;

(2) the health of the parties;

(3) the station of the parties;

(4) each party's occupation

(5) the amount and sources of the parties' respective income;

(5) each party's vocational skills and employability;

(6) the party's liabilities;

(7) relevant special needs;

(8) each party's future earning capacity and prospects for acquisition of capital assets and income; and

(9) the contribution of each of the parties in the acquisition, preservation, or appreciation of the assets.

In determining whether a party has a likelihood of retaining a certain asset after trial (or in order to advance such a position during negotiation), capable counsel will be familiar with recent court decisions, and engage in discovery so they may advance the best possible presentation and position at trial. Nevertheless, due to the broad discretion afforded to the Superior Court to divide marital property by statute, no spouse - and no attorney - should expect or guarantee that a certain item of property will be insulated from equitable distribution to the other spouse in any and all circumstances.

It should be further noted that C.G.S. § 46b-81 only permits the courts to enter orders regarding the distribution of property *during* the dissolution proceedings. The court is not permitted to modify its original orders or enter additional orders providing for the distribution of property after the divorce is finalized. That being said, there are three limited exceptions where a court may revisit its original property orders. Firstly, a party may seek to open a judgment if, for example, one of the parties engaged in fraud, or the judgment was based upon a mutual mistake of the parties. Secondly, a court may enter orders to *effectuate* a previously ordered property distribution. Thirdly, parties may agree to have the court retain jurisdiction to resolve disputes that arise while parties are attempting to carry out orders related to the division of property. The last two scenarios may occur, for example, where the parties reach an impasse with respect to terms

regarding the sale of a home (e.g., selecting a broker, reducing the price, etc.), or the division of specific retirement accounts.

The Marital Residence

In the majority of divorces, parties are jointly living in a home that they jointly own at the time of service. This property, referred to as the "marital residence," often becomes an asset subject to equitable division by the court at some later date. Again, although there are often variations with respect to which spouse is listed on the title and/or any note or mortgage associated with the property, the trial court is empowered to either force a sale of the property, or assign that property to one party or the other as part of the dissolution action, where appropriate.

Pursuant to the Automatic Orders (as discussed above) neither party may deny the other use of the parties' primary residence without a court order. Nevertheless, due to the likelihood of conflict between the parties (and perhaps in the presence of minor children), the spouses have the option of filing and proceeding with a motion for exclusive possession of the marital home. This procedural mechanism allows one party - on a temporary basis only - to be heard as to why it would be "just and equitable" to grant only one party interim use of the marital home (to the exclusion of the other spouse) without making a determination as to which party will ultimately receive title to that property upon final judgment.

A myriad of factors may be considered by the court in awarding temporary (also referred to as "Pendente Lite," Latin for "while the action is pending") exclusive possession of the marital home, but perhaps the most significant factor is recent or present violence (or the threat thereof) in the marital home, especially if the same has resulted in police intervention or involvement by the Department of Children and Families. In circumstances of physical abuse of a spouse or a child, there are three options to be considered and employed (in tandem or individually) as circumstances allow: A) criminal proceedings and a criminal protective order; B) a civil application for relief from abuse; and C) the temporary, exclusive possession of the marital home as discussed here. Each of these options comes with its own benefits and procedural mechanisms; obviously, in the case of an emergency or serious, imminent danger to a person or child, law enforcement is the best option.