



PURSUING JUSTICE FOR  
VICTIMS OF ABUSE

**\*\*\*PLEASE NOTE\*\*\***

As of January 25, 2016, the laws in New York were changed to include calculations for spousal support/maintenance/alimony. These changes may also affect the calculations for child support. This booklet has not yet been revised to reflect these changes. Please contact an attorney to learn how these new laws may affect your specific situation.

# DIVORCE Q & A

**4<sup>th</sup> Edition**

**Answers to Questions about  
Divorce, Equitable Distribution, Maintenance, Custody,  
Child Support and Domestic Violence**

**Written by:**

Steven Jon Levine, Esq. and May Orenstein, Esq.

**Revised 2012 by:**

Steven Jon Levine, Esq. and Jane Silverman, Esq.

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78 North Broadway · White Plains, NY 10603 · 914.287.0739

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Pursuing Justice  
For Victims of Abuse

Pace Law School  
78 North Broadway  
White Plains, NY 10603

914.422.4069 tel  
914.422.4102 fax  
[www.law.pace.edu/wjc](http://www.law.pace.edu/wjc)

Jane Aoyama-Martin, Esq.  
Executive Director

Cindy J. Kanusher, Esq.  
Deputy Director

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Pace Women's Justice Center (PWJC) is Westchester County's leading civil legal services and training provider addressing domestic violence and elder abuse. We are a nonprofit legal center located at Pace Law School, with satellite offices at the White Plains and Yonkers Family Courts. With an experienced staff and a team of dedicated volunteers, including attorneys, other professionals and students, we have built an effective, coordinated community response to interpersonal violence.

Each year, we serve thousands of victims and survivors of domestic violence and elder abuse who cannot afford the legal help they need. We can help obtain orders of protection and provide legal services related to divorce, custody, support, financial exploitation, public benefits, housing and other matters. Our outreach and training programs raise awareness, share information, and train judges, police officers, attorneys, social service providers, law students, and the public about domestic violence and elder abuse.

The Westchester Division of the Pace Women's Justice Center provides free legal education on a variety of topics including family law, domestic violence, elder law and elder abuse. We are very pleased to present the *Fourth Edition* of **Divorce Q&A: Answers to Questions about Divorce, Equitable Distribution, Maintenance, Custody, Child Support and Domestic Violence** to the Westchester community.

We are extremely grateful to Steven Jay Levine, Esq., May Orenstein, Esq. and Jane Silverman, Esq. for their expertise in writing the *Divorce Q&A*. We also thank the Westchester County Office for Women for its generous support, which made this project possible.

PWJC is a nonprofit organization and relies on donations and grants to support our work. To learn more about PWJC and find out how you can get involved, please contact us at 914.422.4069 or on our website at [www.law.pace.edu/wjc](http://www.law.pace.edu/wjc). To order additional copies of the *Divorce Q&A* please call our office, or you can access the publication online at [www.law.pace.edu/divorce-q](http://www.law.pace.edu/divorce-q).

Sincerely,

The Pace Women's Justice Center Westchester Division

**Table of Contents**

**Your Relationship with Your Lawyer..... 3**

**Grounds for Divorce..... 15**

**Equitable Distribution: The Division of Marital Property..... 17**

**Maintenance (Alimony) ..... 23**

**Health Insurance ..... 25**

**Division of Debts..... 25**

**Prior to the Divorce Decree ..... 26**

**Post-Nuptial Agreements..... 28**

**Custody..... 29**

**Grandparent Visitation..... 32**

**Child Support..... 33**

**Domestic Violence ..... 35**

**Anatomy of a Typical Divorce Action in Westchester County ..... 36**

**Summary of Selected Provisions of the Domestic Relations Law ..... 37**

**Resources and Readings ..... 40**

## **YOUR RELATIONSHIP WITH YOUR LAWYER**

*I am contemplating a divorce. How do I choose a lawyer?*

Hiring an attorney is a process that requires thoughtful reflection, and involves the signing of a written retainer agreement. A retainer agreement is a legally binding contract between you and your attorney that specifies the services to be performed, the costs of the services and your obligation for payment for the services.

There is no foolproof method for selecting a competent and ethical lawyer. Selecting a lawyer to handle your divorce requires you to rely on your own judgment precisely at the time your judgment may be clouded by emotional distress. Therefore, it is best to start with recommendations from friends and relatives, trusted business associates and other professionals who are likely to have contact with lawyers. Names obtained from the phone book, the local bar association, or general legal referral services may be random or on a pay-per-referral basis and therefore are less likely to provide meaningful recommendations. However, a lawyer referral service, which offers the services of a panel of matrimonial lawyers, may be helpful. Interview more than one lawyer. Three lawyers is a reasonable number.

Make sure your lawyer is experienced in the area of matrimonial law. Ask your lawyer directly how many divorce cases she or he handles annually. Look for evidence that your lawyer's concentration is matrimonial law, i.e. that your lawyer is a member of professional organizations specifically concerned with matrimonial and family law issues, has familiarity with the laws governing separation and divorce and has contact with other members of the matrimonial bar.

Ask tough questions during the initial interview. Without being aggressive and belligerent, try to get your prospective lawyer to be responsive to some of the real issues facing you. Ask your prospective lawyer what will happen if you run out of funds to pay fees on an ongoing basis. Question her or him about billing practices. Request an outline of a reasonable settlement for your case based upon a summary of your circumstances. A lawyer who becomes evasive, defensive or hostile is not the right lawyer for you. Most matrimonial lawyers charge for an initial consultation. Get your money's worth in advice and information.

Beware of a lawyer who is unwilling to discuss or negotiate the terms of the retainer agreement or who insists that it be signed on the spot. Beware of a lawyer who makes oral commitments at variance with the terms of the retainer agreement and who refuses to revise the agreement to reflect assurances made to you.

The lawyer should explain the laws and procedures affecting your case and any important deadlines. You and the lawyer should discuss the pros and cons of going to trial versus a settlement agreement. You should also be informed of the reasons for possible delays such as the requirement for pre-trial production of financial documents.

Keep in mind that in hiring a lawyer you are making a business decision. Good lawyers do recognize the mental and emotional state of their client and will tell you that when hostility escalates, so do legal expenses. However, some lawyers may seek to attract clients by suggesting

that they can offer emotional support, vindication or revenge against the estranged spouse. Your best “revenge” is to live a happy and productive life after the divorce. When listening to any promises or guarantees made by your prospective lawyer, remember that the outcome of your divorce will be influenced by the lawyers for both parties, the parties’ respective needs, resources and expectations and by the court having jurisdiction over the divorce. No lawyer, no matter how skilled or dedicated, can single-handedly control these factors.

The realities of divorce can be grim. Don’t automatically select the good news lawyer over the bad news lawyer. The lawyer who tries to induce you to engage him or her by offering an overly optimistic and unrealistic description of the outcome of your case may not be treating you as an equal. On the other hand, don’t accept a lawyer who seems defeatist or passive or one who appears to be setting you up to accept lackluster performance by lowering your legitimate expectation for a fair and reasonable outcome. Your lawyer should offer you a significant role in shaping your case and encourage you to keep control over your case.

It is possible that your spouse will immediately interview well-qualified matrimonial attorneys in your area so as to prevent them from subsequently representing you. It may, thus, be important that you consult with an attorney at the early stages of marital strife. It is important to note that conflict of interest rules prohibit one attorney from representing you and your spouse. Also be aware that if one spouse is self-represented and the other spouse retains an attorney, the attorney may only represent his/her client.

You should be as organized as possible for your initial meeting. In addition to basic information, be prepared to provide an employment history and copies of tax returns, W-2 statements and pay stubs, a summary of assets and liabilities and any pre-nuptial or marital agreement.

If your spouse has a higher income and it is difficult for you to pay an attorney, Domestic Relations Law Section 273 creates a rebuttable presumption that counsel fees should be awarded to you. This means that the non-moneyed spouse has the ability to make a motion to the court (ask the court) for counsel fees to be paid by the moneyed spouse. The goal is to create equal access to the legal process so that the financially disadvantaged spouse may assert and protect his or her rights.

If you cannot afford a lawyer, the court, under appropriate circumstances, may appoint a lawyer to represent you on a *pro bono* basis (free of charge). There are local organizations such as the Pace Women’s Justice Center and Hudson Valley Legal Services that offer information about no or reduced-cost legal services in matrimonial cases. You should also be aware that you are entitled to act *pro se* (represent yourself) in a legal case, including matrimonial cases.

In addition, Judiciary Law Section 35(8) permits the Supreme Court to appoint an attorney to represent you when the issues involve custody and or the request for an order of protection. However, the appointed attorneys are not authorized to represent you on the remaining issues such as grounds and equitable distribution.

Please see the [Resources and Readings Section](#) at the end of this Q&A for further resources.

### *What is a retainer agreement?*

A retainer agreement is a legally binding agreement between you and your attorney. Pursuant to a retainer agreement, you engage an individual lawyer (or the partners and associates of a law firm) to perform certain services for you and agree to pay for these services. Upon signing the agreement, you are required to pay the retainer, an agreed upon amount which is prepayment to the lawyer for services to be rendered and expenses to be incurred on your behalf. The Rules of the Court require that a retainer agreement state the following:

1. Names and addresses of the parties entering into the agreement;
2. Nature of the services to be rendered;
3. Amount of the advance retainer, if any, and what it is intended to cover;
4. Circumstances under which any portion of the advance retainer may be refunded. Should the attorney withdraw from the case or be discharged prior to the depletion of the advance retainer, the written retainer agreement shall provide how the attorney's fees and expenses are to be determined, and the remainder of the advance retainer shall be refunded to the client;
5. The client's right to cancel the agreement at any time and how the attorney's fee will be determined and paid should the client discharge the attorney at any time during the course of the representation;
6. How the attorney will be paid through the conclusion of the case after the retainer is depleted; whether the client may be asked to pay another lump sum;
7. Hourly rate of each person whose time may be charged to the client, any out-of-pocket disbursements for which the client will be required to reimburse the attorney and the incorporation of any changes in such rates or fees into a written agreement constituting an amendment to the original agreement, which must be signed by the client before it may take effect;
8. Any clause providing for a fee in addition to the agreed-upon rate must be defined in plain language and must set forth the circumstances under which such fee may be incurred and how it will be calculated;
9. Frequency of itemized billing, which shall be at least every 60 days; the client may not be charged for time spent in discussion of the bills received;
10. Client's right to be provided with copies of correspondence and documents relating to the case, and to be kept apprised of the status of the case;
11. Whether and under what circumstances the attorney might seek a security interest from the client, which can be obtained only upon court approval and on notice to the adversary;
12. Under what circumstances the attorney might seek to withdraw from the case for non-payment of fees, and the attorney's right to seek a charging lien from the court;
13. Should a dispute arise concerning the attorney's fee, the client may seek arbitration, which is binding upon both attorney and client; the attorney shall provide information concerning fee arbitration in the event of such dispute or upon the client's request.

No specific text of a retainer agreement is mandated, but it is required that the terms of compensation and the nature of services to be rendered must be set forth in "plain language." In

addition to formalizing the basic attorney/client relationship and providing for the payment of the retainer, the key elements of the retainer agreement should cover the issues outlined below.

The formula for payment of legal fees should include: 1) the cost per hour for services including any variation depending on type of service, for example, consultation, negotiation and court appearances; 2) the rates at which you will be billed for services provided by partners, associates, paralegal and other personnel; and 3) other expenses such as court fees, photocopying, telephone charges, travel expenses, fax, scanning, overnight delivery service and the like for which you may be charged. If it is your understanding that services are to be provided by a specific individual, the retainer agreement should specify this. The retainer agreement should not allow your lawyer to increase the amount of the fee based upon the outcome of your case. Further, in matrimonial cases your attorney is not permitted to charge a fee based upon the outcome of your case (“contingency fees”).

The retainer agreement should provide that you will be billed at monthly or other specified periodic intervals in accordance with the Court Rules (which require that attorneys bill their clients no less frequently than every 60 days) and should state when payment is due. Bills should be itemized to indicate the component services and expenses reflected in the total amount due. Your lawyer’s fee should cover routine overhead expenses and state whether you will be charged an extra fee if your case requires an extraordinary amount of secretarial or clerical support.

The retainer agreement should provide for the refund of the unused portion of a retainer if you, for any reason, decide to discontinue the services of your lawyer. Take notice of the term “engagement fee,” which may indicate a non-refundable amount. The Rules prohibit non-refundable retainer fees or the charging of any fee beyond an agreed upon hourly rate, which is not refundable in the event that the lawyer is discharged prior to the conclusion of the action.

Keep in mind that the form of retainer agreement handed to you at an initial consultation is a document written by a lawyer for a lawyer. You can request changes. You have the right to request changes in the retainer agreement to reflect your actual and legitimate expectations for fair treatment and diligent legal services.

*What are my rights and responsibilities as a client in a legal representation?*

A matrimonial attorney is required to provide you with a Statement of Client’s Rights and a Statement of Client Responsibilities in the following form:

### **Statement of Client’s Rights**

- 1. You are entitled to be treated with courtesy and consideration at all time by your lawyer and the other lawyers and personnel in your lawyer’s office.**
- 2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with standards of the profession. If you are not satisfied with how**

**your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).**

**3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.**

**4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.**

**5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.**

**6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.**

**7. You are entitled to have your legitimate objectives respected by your attorney; including whether or not to settle your matter (court approval of a settlement is required in some matters).**

**8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.**

**9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.**

**10. You may not be refused representation on the basis of race, creed, color, age, religion, sex, sexual orientation, national origin or disability.**

### **Statement of Client's Responsibilities**

**Reciprocal trust and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the following responsibilities:**



- 1. The client is expected to treat the lawyer and the lawyer's staff with courtesy and consideration.**
- 2. The client's relationship with the lawyer must be one of complete candor and the lawyer must be apprised of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client's cause or unflattering to the client.**
- 3. The client must honor the fee arrangement as agreed to with the lawyer, in accordance with law.**
- 4. All bills for services rendered which are tendered to the client pursuant to the agreed upon fee arrangement should be paid promptly.**
- 5. The client may withdraw from the attorney-client relationship, subject to financial commitments under the agreed to fee arrangement, and, in certain circumstances, subject to court approval.**
- 6. Although the client should expect that his or her correspondence, telephone calls and other communications will be answered within a reasonable time frame, the client should recognize that the lawyer has other clients equally demanding of the lawyer's time and attention.**
- 7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number or address and respond promptly to a request by the lawyer for information and cooperation.**
- 8. The client must realize that the lawyer need respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions which are unprofessional or contrary to law or the Lawyer's Code of Professional Responsibility.**
- 9. The lawyer may be unable to accept a case if the lawyer has previous professional commitments which will result in inadequate time being available for the proper representation of a new client.**
- 10. A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or that a suitable working relationship with the client is not likely.**

These rules apply to all actions or proceedings in either the Supreme Court or the Family Court or in any court of appellate jurisdiction where issues of divorce, separation, annulment, custody, visitation, maintenance or child support are involved. The client must receive the Statement of Client's Rights and the Statement of Client Responsibilities at the time of the initial conference and before the signing of a retainer agreement.

*What steps can I take to minimize my legal expenses?*

Minimizing expenses requires an understanding of how lawyers charge for their services. The overwhelming majority of lawyers charge for their time at an hourly rate. They keep daily records of time spent on each of their clients. Typically these records are divided into minimum billing intervals. Every time your lawyer answers a phone call from you, a member of your family (with your permission), or your spouse's lawyer, works on documents or correspondence relating to your case, participates in negotiations on your behalf, prepares for trial, or appears in court, the time so spent will be charged to you at this hourly rate. When you save your lawyer time, you save yourself money. Here are some steps you can take to minimize your legal costs:

1. Be organized. Your lawyer will need an accurate picture of your financial situation. Try to assemble a complete collection of relevant documentation and organize it in a coherent way. Important documentation includes personal and business federal and state income tax returns, bank statements, mortgages, loan statements, stock option plans, brokerage accounts, employee withholding statements (W-2's), 1099 forms, pay stubs, and pension and other retirement statements. Other important documents include financial statements prepared in connection with loan applications, closing documents relating to the purchase and sale of a home, deeds, title certificates, registration statements for vehicles and boats, insurance policies and premium statements, and documentation of loans and gifts from family members and others. Your lawyer will also require information regarding trusts, inheritances, collectibles and collections, frequent flyer accounts and reward programs, rights in intellectual property such as copyrights, patents and trademarks and the fruits of the creative process, such as publishing a novel.

Your lawyer will also need information about your family expenses. Assemble a file documenting expenses such as rent, house payments, car payments, household maintenance, utilities, tuition, child care, medical care, insurance (life, homeowners, auto, etc.) and any other significant, recurring expenses. For most families, checking account and credit card records will be critical to establishing a history of these expenses. It is wise to begin this process of documenting your expenses and net worth and to obtain copies of relevant financial papers at the first suggestion of marital trouble. Financial records may be maintained on your computer. Later, when conflict is more open, your spouse may attempt to hinder your access to this important information.

It is also helpful to prepare a written summary and chronology of the relationship between you and your spouse. Don't withhold information. It is better for your lawyer to know any negative information about you than be caught off guard as your case progresses.

2. Keep notes and records of your discussions with your attorney. If you have a question for your lawyer, jot it down on a notepad kept for that purpose. If possible, resist calling your lawyer until you have several issues to discuss. Take notes of your telephone and personal conferences with your lawyer and record the time of your calls. This will prevent you from repeatedly seeking the same information. Your businesslike manner

and vigilance will communicate to your lawyer that you hold her or him accountable for the time billed to your account.

Your lawyer should send you a copy of all correspondence and legal documents produced or received in connection with your case and keep you posted about all major developments and key deadlines. Maintain your records in an orderly file. In addition to providing a resource for you to understand the legal process you are participating in and to work more efficiently with your lawyer, keeping such a file could facilitate a decision to change lawyers, should that become advisable.

3. Inquire whether your spouse will be required or requested to pay all or a portion of your legal fees. Recently enacted legislation has amended Domestic Relations Law § 273 to create a rebuttable presumption that counsel fees shall be awarded to the less moneyed spouse. This is intended to create equal access to the legal process so that the financially disadvantaged spouse may assert and protect his or her rights. This legislation provides that an order for counsel fees may be granted to ensure that the less moneyed spouse be placed on a “level playing field” at the very beginning of the case or during the case. In the past, the burden was placed on the party seeking counsel fees to demonstrate why awarding the fees would be in the interests of justice. With the recent passage of this amendment, it is left to the moneyed spouse to show why it would not be in the interest of justice to award attorney’s fees. However, the amount and timing of the awards are in the discretion of the court. Accordingly, neither you nor your lawyer can rely on them with certainty. The extent to which your attorney is willing to accept court awarded fees as payment for services should be discussed during the initial interviewing process and specified in the retainer agreement.
4. Ask for estimates of the costs of major legal services or strategies. Before insisting upon or giving permission for a major legal initiative such as the filing of a motion or the hiring of costly experts, engage your lawyer in a “cost/benefit” analysis of the proposed action. Each such decision should be addressed from a business perspective. It usually doesn’t make sense for you and your spouse to pay your lawyers \$1,000 to argue over property worth \$500. If you and your spouse insist on retaining particular property after divorce, the disputed property may be sold and the proceeds of sale divided or you and your spouse may “trade off” one or more items of property for the desired property. Resist the temptation to act emotionally or seek personal gratification by taking aggressive or punitive steps not likely to materially improve your situation.
5. Do not seek non-legal services from your lawyer. Your lawyer may be a source of good practical advice, but he or she is usually not trained as a psychotherapist or money manager. It is wise to ask your lawyer for a referral to a trained professional or to seek such referrals from other qualified sources. Please see the Resources and Readings Section at the end of this Q&A for further resources.
6. Educate yourself about the legal issues of your case. Early on in your case, your lawyer should provide you with a copy of relevant portions of the New York Domestic Relations

Law and discuss the law with you.

7. Keep in mind that there is liberal “disclosure” in matrimonial cases. You have the right to obtain copies of your spouse’s financial records of assets and liabilities, including business records.

*To what extent are my conversations with my lawyer confidential?*

The attorney/client privilege requires your lawyer to treat everything discussed between you and your lawyer as confidential. However, the privilege may be waived if you choose to discuss confidential information with a third party present or if you send a fax or e-mail message to a fax machine or computer that is not used exclusively by the attorney and the attorney’s staff. Be aware of the pitfalls, as well as the benefits, of technology. Also, beware of holding confidential conversations in settings in which your conversations may be easily overheard.

*Is it a good idea to consult with a second lawyer before a separation agreement is finalized to determine whether it is a fair agreement?*

While seeking a “second opinion” prior to signing a separation agreement is not unheard of, whether or not it is a useful practice is highly dependent on the circumstances of a particular case. The “fairness” of a separation agreement is not generally apparent from the document itself. A separation agreement is the result of the give and take of the negotiating process and the product of that process cannot be meaningfully evaluated without a full understanding of the whole course of negotiations. So, for example, a low figure for maintenance might appear unfair or inadequate unless it is understood that this was bartered for in return for a favorable division of the marital property.

On the other hand, if you are being pressured to finalize a separation agreement and you have serious doubts as to its fairness or its treatment of specific issues and you are not satisfied with your lawyer’s responses to your concerns, it could make sense to seek another legal opinion.

*My lawyer and I disagree about the fees I owe. What legal recourse is available to me?*

The Court Rules require that you have the right to resolve the dispute by arbitration. In the event of a fee dispute, your lawyer is required to provide you with necessary information about the arbitration program. Also, an informational pamphlet explaining Fee Dispute Arbitration is available in the Office of the Administrative Judge for each district of the New York State Supreme Court. Please see the Resources and Readings Section at the end of this Q&A for further resources.

If you choose to engage in arbitration, your attorney is required to participate. If you do not arbitrate the dispute, you may seek to litigate the dispute in court. Arbitration is less formal than litigation in court. However, unlike a court decision, an arbitrator’s decision is binding and, for the most part, may not be appealed. While your oral testimony is evidence in arbitration, you will want to provide the arbitrator with written evidence, as well. For example, written evidence may include your retainer agreement, letters discussing legal fees and canceled checks. Your

presentation to the arbitrator may include a statement that presents the basic facts of your case, presentation of evidence and a closing statement that sums up your case.

*My spouse and I have agreed to divorce. Our relationship remains on fairly good terms. Should we engage a single lawyer to represent both of us?*

While this may seem to be an economical approach to an amicable divorce, as stated above, a lawyer may not ethically simultaneously represent divorcing spouses. For this reason, lawyers will refuse such an engagement.

*How much will my divorce cost? Both my spouse and I wish to end our five-year marriage?*

Due to many variables, it is impossible to accurately predict from the outset the financial costs of divorce. Attorney's fees, of course, constitute the largest (but not the only) component of divorce costs. The two factors having the greatest influence on the amount of legal fees are the complexity of issues to be resolved and the willingness and ability of the parties to reach an agreement on the terms of the divorce, without resorting to contested litigation. Even thorny issues such as the custody of children and the division of substantial property can be expeditiously (and therefore relatively inexpensively) resolved when both of the parties are committed to negotiating in good faith and in the spirit of compromise. On the other hand, the inflexibility of one or both of the parties can cause even a "simple" divorce to cost tens of thousands of dollars. If custody is an issue, the court will often appoint a lawyer ("the attorney for the child") who will represent the child and a forensic psychiatrist to interview the parents and children (if age appropriate). The fees of the attorney for the child and forensic psychiatrist will be paid by you and/or your spouse. If the value of a business is an issue, the court may appoint a neutral forensic accountant to review the financial records of the business(es).

Another variable influencing costs is the hourly rate charged by your lawyer. Lawyers' hourly rates vary widely depending on such factors as their experience, prestige and geographic location. The rates of many Westchester County lawyers with established matrimonial practices are in the \$350-\$475 per hour range. Regardless of the hourly rate charged, once trial preparation commences and a case goes to trial, legal fees far in excess of \$50,000 are not unusual. Court costs and the fees of experts such as accountants, appraisers and psychologists may also be significant components of the costs of divorce.

*What is divorce mediation? How does it work?*

Mediation is a voluntary and confidential process in which an impartial party helps spouses to reach a mutually acceptable settlement. The general idea behind mediation is that the traditional adversarial approach to marital dissolution can be costly, counterproductive and emotionally punishing. Mediation may provide a way to resolve the various issues surrounding the dissolution of a marriage in a relatively amicable way. However, be aware that the mediation setting may also become just another forum for a wife and husband to vent their anger, frustration and other emotions in a counterproductive manner.

Your spouse cannot force you to participate in mediation, nor can you force your spouse to cooperate. To be successful, mediation requires that both parties to the divorce be committed to the mediation process and be prepared to openly discuss financial and other issues. Mediation is not recommended if there is domestic abuse, the threat of abuse or if one spouse is likely to “overpower” the other spouse in the mediation process. To commence the mediation process, a mediator mutually acceptable to both spouses is selected. Some mediators have professional backgrounds in the field of social work. A mediator may or may not be a lawyer but should not provide legal advice in his or her capacity as mediator. Unlike an arbitrator, a mediator cannot impose settlement terms on the parties.

Mediation has not achieved standardization and is practiced in a variety of ways. A mediator might combine separate meetings with each spouse with joint sessions to discuss such issues as property division, maintenance and custody. A mediator does not eliminate the need for legal representation. Mediators, who are not lawyers, often formally incorporate the participation of lawyers into their procedures. In any case, independent lawyers should review and finalize an enforceable settlement agreement.

Apart from the mediator, other professionals who may contribute or participate in the mediation process include accountants, social workers and psychologists, therapists or psychiatrists.

Please see the Resources and Readings Section at the end of this Q&A for further resources.

#### *What is Collaborative Law?*

Collaborative Law is a practice in which both parties and their attorneys agree in writing that each will use their best efforts and good faith to come to a mutually agreed upon settlement without resorting to judicial intervention. Four-way settlement meetings are conducted where each party and their attorney is present. The difference between collaborative law and mediation is that unlike mediators, collaborative lawyers are active legal advisors and negotiators for their clients. The structure of the four-way meetings is led by the attorneys, not the parties.

In order to find a collaborative law attorney, there are several options available to you. You can contact your local bar association and inquire about any collaborative lawyers in your area. You can also contact the International Academy of Collaborative Professionals to locate collaborative lawyers near you. Please see the Resources and Readings Section at the end of this Q&A for further resources.

Whichever method you employ to find collaborative lawyers, make sure once you do, you interview several of them and ask for their resumes. Excellent and reasonable questions to ask the collaborative lawyers are how many collaborative law cases they have handled, how many of them were terminated without agreements, and what training the collaborative lawyer has had in collaborative law, alternative dispute resolution, and conflict management. Do not assume that because a lawyer’s name appears in an advertisement for collaborative law services that the lawyer is necessarily suited by temperament or background to represent you effectively.

If for any reason, once you and your spouse have engaged an attorney and began the collaborative law process, and cannot reach a settlement and therefore must seek a judicial remedy, your individual lawyers up to that point cannot represent you or your spouse in court. You and your spouse must obtain new counsel in the event settlement negotiations fail. The additional expense of bringing new counsel “up to speed” should be considered in determining whether the collaborative law process is the right approach.

*My original retainer paid to my lawyer has been used up and she is requesting an additional amount that I am unable to pay. What should I do?*

The Code of Professional Responsibility, which binds all lawyers, prohibits a lawyer, who has accepted you as a client, from terminating his representation of you in the midst of divorce litigation simply because you are unable to continue to pay legal fees. To be released from his obligation to you, a lawyer must obtain your permission or apply for permission from the court. Despite this, as a practical matter, a lawyer who is representing you unwillingly may be little better than no lawyer at all. How you plan on financing your divorce proceedings, what funds are available to you for this purpose and what will happen when these funds are depleted are issues that should be discussed openly with your lawyer before the retainer agreement is signed. The outcome of these discussions should be clearly stated in your agreement.

*Who is entitled to receive attorneys' fees from a spouse?*

Recently enacted legislation has amended Domestic Relations Law Section 273 to create a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. This presumption is intended to create equal access to the legal process so that the financially disadvantaged spouse may assert and protect his or her rights. This requires that that an order for counsel fees be granted at the outset of the case to ensure that the less monied spouse be placed on a “level playing field” at the very beginning of the case. The amount and timing of the awards are in the discretion of the court. Accordingly, neither you nor your lawyer can rely on them with certainty. The extent to which your attorney is willing to accept court awarded fees as payment for services should be discussed during the initial interview process and specified in the retainer agreement.

*I owe my lawyer several thousand dollars in legal fees and he has asked me to give him a lien on my house and to sign a confession of judgment to secure this debt. Is this ethical?*

When you incur legal fees that remain unpaid, your lawyer becomes your creditor. Giving your lawyer a lien on your house changes her or him from a general creditor to one who may have priority relative to other creditors with regard to your equity in your home. A confession of judgment eliminates the need for your lawyer to sue you, prove the amount of your indebtedness and obtain a judgment in order to collect fees.

In order to obtain a security interest during the course of representation of a client, there are rules which must be followed:

1. A client must be advised in the written retainer agreement whether, and under what circumstances, the lawyer might seek a security interest.
2. An application (motion) must be made to the court, on notice to the adversary, for approval of the proposed security interest.
3. The court may grant the application only after reviewing the parties' finances in the context of an application for legal fees.

The Rules also provide that a lawyer may not foreclose upon a mortgage placed on the primary residence while the spouse who consents to the mortgage remains a titleholder and continues to reside in the residence.

The nature of many matrimonial practices is that a lawyer occasionally represents a client without the current payment of fees for extended periods of time. Discuss with your lawyer how this situation will be handled before it arises. This will not be a situation unfamiliar to her or him. Ask your lawyer how the problem has been handled in the past with other clients. If your lawyer agrees to represent you accepting court-awarded attorneys' fees as payment or makes other specific commitments to you, ask that these be described in the retainer agreement.

If you receive a questionable bill and you are satisfied with the lawyer's services, a good approach to solving the problem amicably would be to contact your lawyer as soon as possible and ask whether there is a clerical (or "computer") error and request an explanation of the charges. It is in your lawyer's interest to resolve your complaint, as a satisfied client is often a source of other business.

## **GROUND FOR DIVORCE**

*My spouse of 15 years told me that he wants a divorce. I suspect that he is having an affair. I don't want a divorce. Can I just say no?*

As of October 13, 2010, New York provides for "no-fault" divorce on grounds that, "the relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath." (Domestic Relations Law Section 170(7)). Prior to this change in the law, one of four fault grounds had to be established for the court to grant a divorce. It has not been settled whether it is legally possible to refuse to divorce a spouse who desires to leave a marriage. However, such a strategy must be carefully considered for its long and short-term financial and emotional consequences. In New York, the marital faults that provide grounds for divorce are:

Adultery; or

Abandonment, either physical or sexual (sexual abandonment is often referred to as constructive abandonment), for a period of one or more years prior to the commencement of the divorce action; or



Cruel and inhuman treatment that so endangers the physical and mental well-being of the plaintiff as to render it unsafe or improper for the plaintiff to cohabit with the defendant; or

Imprisonment of the defendant for a period of three or more consecutive years after the marriage of plaintiff and defendant.

*What is the definition of adultery?*

Adultery is the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff, after marriage.

*What constitutes physical abandonment?*

Generally, the ground of abandonment requires a voluntary separation by one spouse from the other for a period of one year or more with the intent not to resume cohabitation. The abandonment must be without the consent of the other spouse and be without justification. If physical abandonment is with the consent or acquiescence of the other spouse, it cannot be used as a ground for divorce.

*What does constructive abandonment mean?*

This term is used to describe one spouse's unjustified refusal for a period of one year or more to have sexual relations with her or his spouse. However, if the refusal is consented to or acquiesced in by the other spouse, it ceases to be a ground for divorce. In addition, a spouse who locks out her/his spouse or whose abuse drives the spouse from the home may have committed constructive abandonment.

*My spouse is verbally abusive and in general makes my life miserable. Does this constitute cruel and inhuman treatment?*

The spouse alleging the cruel and inhuman treatment ground for divorce must prove that she or he suffers from cruel and inhuman treatment which endangers his or her well-being and makes it unsafe or improper to continue living with the other spouse. Unfortunately, for the spouse who seeks to end a loveless and miserable marriage against the wishes of the other spouse, mere incompatibility will not meet the statutory criteria for cruel and inhuman treatment, particularly where the marriage is of long duration. To obtain a divorce on cruelty grounds, there must be substantial evidence of cruel and inhuman treatment.

*My spouse and I each desire to terminate our marriage but neither of us can prove that we have grounds. What are our alternatives?*

The most recent development in New York Divorce law is the "no-fault" divorce by one party stating under oath that the marital relationship has irretrievably broken down for a period of at least six months. It is important to note that under the "no-fault" divorce rules, the divorce will not be granted until the economic, child custody and visitation issues have been resolved.

New Yorkers can also obtain what is essentially a “no-fault” divorce by living apart for one year or more pursuant to a signed separation agreement and substantially abiding by its terms or living apart pursuant to a judicial decree of separation. The separation agreement must conform to statutory requirements and certain formalities must be observed when it is signed. A year after the signing of a separation agreement either party may file it with the court prior to commencing an action to obtain a divorce. No marital fault of either party need be shown. This way of obtaining a divorce is sometimes referred to as a “conversion divorce,” although the conversion is not automatic. An action for divorce must be commenced.

Another method to obtain a divorce without waiting for a year to pass is for one spouse to agree not to contest the allegation of fault made by the other. The spouses then reach an agreement as to the financial and custodial issues and request that the court sign a judgment of divorce. You should be aware, however, that it is illegal to fabricate grounds for obtaining a divorce where none exist, in order to take advantage of this procedure.

Your lawyer can advise you as to which of the foregoing procedures, is appropriate in your circumstances.

*In a divorce proceeding does it make any difference who is the plaintiff and who is the defendant?*

In a legal action, the plaintiff is the party who initiates the action for divorce. The defendant is the party who responds to the action. A defendant in a matrimonial action may “counterclaim” for a divorce in that action. Because marital fault has become a relatively unimportant factor in determining the outcome of the economic issues of a divorce, when the desire for divorce is mutual, the relative advantage of being plaintiff or defendant in a divorce action is largely strategic and tactical.

## **EQUITABLE DISTRIBUTION: THE DIVISION OF MARITAL PROPERTY**

*What is equitable distribution?*

Under the laws of New York State, at the time of divorce the property of a married couple acquired during the marriage is to be distributed equitably, or fairly, between the parties. If you and your spouse have not agreed to a property settlement, in dividing property, the court will consider a number of factors set forth in the statute which governs divorce. These factors include each spouse’s financial position at the time of marriage and at the time of divorce, the length of the marriage and each party’s financial and non-financial contributions to the marital property. Marital debts are also considered in an equitable distribution of property. (The division of debts, however, does not end your liability to creditors for debts in your name and for joint debts.)

The various statutory factors are not that meaningful in the abstract, apart from their application to the circumstances of a marital history. Moreover, it is important to realize that some of the factors weigh more heavily than others, particularly under certain circumstances. For example, most matrimonial lawyers will agree that the existence of a marriage of very long duration tends

to negate the significance of many other factors and indicates the appropriateness of a 50/50 division of certain types of marital property.

*What constitutes marital property?*

Under the equitable distribution “system”, the assets of the parties are first characterized as “marital” or “separate”. The property is then valued and the court will make an “equitable” distribution of the marital property (unless the parties have distributed their property by a valid, written agreement). Marital property is all property (other than separate property) acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action (other than an action for legal separation), regardless of the form in which title is held.

*What constitutes separate property?*

Separate property consists of four categories: (1) property acquired before marriage or inherited property acquired by bequest, devise or descent, or property acquired by a gift from a party other than the spouse; (2) compensation for the pain and suffering associated with personal injuries; (3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due on part to the contributions or efforts of the other spouse; and (4) property described as separate property by written agreement of the husband and wife.

*Must marital property be “valued”?*

You should be aware that the valuation of marital assets is an extremely important component of a matrimonial case. A house, business, artwork, professional practices, degrees, licenses, pensions, and other assets must be valued fairly. Your lawyer should inform you of the need to hire appraisers to value major marital assets and discuss the risks of accepting the value claimed by your spouse. You should also be aware that you may require a court order such as a DRO (Domestic Relations Order) or a QDRO (Qualified Domestic Relations Order) to receive benefits from your spouse’s pension plan.

There are many different types of retirement plans that may constitute marital assets, which are subject to equitable distribution. For example, IRA accounts may be divided or “rolled over” into an IRA in the name of the recipient spouse. A self-employed person can contribute to a business retirement plan called a Keogh. Deferred compensation plans permit an employee to defer income until retirement. Employees may make various retirement plans available, in addition to pensions, such as profit sharing, 401(k) savings plans, and employee stock ownership (ESOP). Specialized retirement plans are often available to railroad employees, teachers, union members and government employees.

Often, lawyers work with actuaries and other experts to value a spouse’s interest in retirement plans and to prepare orders that comply with federal and state laws and regulations and the rules of the retirement plan. A draft DRO or QDRO or other form of order may be submitted to the plan administrator for review before the order is submitted to the court.

It is often important for the spouse who is covered by a retirement plan to obtain appropriate forms relating to benefits under the plan from his or her employer. The alternative payee (spouse of the plan participant) should obtain information about the timing and receipt of benefits and election forms from the plan administrator after approval of the QDRO or DRO.

It is also essential to consult with a qualified tax advisor as to tax consequences, if any, of receipt of retirement benefits. In general, there are two types of pension plans: defined contribution plans and defined benefit plans. Information about sponsored retirement plans is available from the plan administrator, with proper authorization from the spouse covered by the plan. If your spouse is or was in the military service, military law may govern the distribution of certain assets.

Your lawyer should be able to give you a feeling as to how a court would apply the law to the facts of your particular case in determining the division of marital assets. However, even the most experienced and skilled lawyer's projection of the outcome of your case is just an educated guess. Ultimately, if your case goes to trial the outcome will depend on the court's perception of the merits.

*Is property acquired during the marriage in my name separate property?*

Loosely defined, marital property is any property acquired during the marriage by either or both spouses, regardless of the form in which it is held, who earned it or who holds title to it. Pensions, professional licenses and separate bank accounts can all be marital property. There are, however, some important exceptions to the general rule. An inheritance, a gift to you from someone other than your spouse, - or an award or settlement resulting from a personal injury is considered separate property even though received during the marriage. Also, if separate property is sold, the cash proceeds of the sale are separate property. However, a spouse may claim that the value of the appreciation of separate property constitutes marital property.

In the absence of circumstances or an explicit agreement indicating other intentions, the property of each spouse acquired before the marriage remains separate property. When one spouse transfers title to separate property to both spouses jointly, it may be asserted that it was the intention of that spouse to convert or "transmute" separate property into marital property. The assertion may be rebutted.

*What is a distributive award?*

This term refers to cash payments made in lieu of or to carry out the distribution of marital property. Distributive awards are often used when each spouse's share of a marital asset, such as a family business or one spouse's professional license cannot actually be divided or distributed to each spouse. The spouse who retains the asset pays the other spouse the cash equivalent of that spouse's equitable share. A distributive award can be either a lump sum payment or a series of installment payments over time. The purpose of a distributive award is to supplement, facilitate or effectuate the distribution of marital property and to achieve equity between the parties.

*What is maintenance?*

Maintenance (formerly called “alimony”) is a payment that is paid over a period of time, usually monthly, by one ex-spouse to the other, which terminates on the occurrence of a stated event such as death, remarriage or a date specified in the judgment of divorce.

*How much maintenance and child support will I receive?*

Under recently enacted legislation, a presumptive award of temporary maintenance is determined by using a formula based on each party’s gross income (presently up to \$524,000). Temporary maintenance is only awarded where the less monied spouse earns two-thirds as much or less than the more monied spouse. If the presumptive award is unjust or inappropriate then the court may deviate from that amount based on a number of factors including the standard of living of the parties established during the marriage; the age, health and earning capacity of the parties; education expenses; the cost of medical insurance; domestic violence that has had a negative impact on a party’s earning capacity; wasteful dissipation of marital property and the need to care for other children or disabled adults. Income over \$524,000 may increase the award based on the factors including many of the same factors listed above, along with the length of the marriage, and the contributions and services of the party seeking temporary maintenance as a spouse, parent, wage earner and homemaker to the career or career potential of the other party. With the enactment of DRL§ (B)(1)(5-a), the application of the temporary maintenance guidelines may only be waived where the parties have already entered into a properly executed agreement. As the duration of the award of temporary maintenance may be based upon the length of the marriage, it is possible that the temporary maintenance award may terminate before the divorce is granted. The parties may, by written agreement, “opt-out” of the temporary maintenance formula.

At the conclusion of the divorce action (or by agreement of the husband and wife), post-divorce maintenance may be paid for a limited duration or, under appropriate circumstances, for the lifetime of the person receiving same.

The desirability and availability of long-term maintenance will depend on the circumstances of the parties. For example, if a young, employed couple is divorcing after a brief marriage, little or no maintenance may result. The right to receive maintenance puts the recipient spouse in the position of a creditor with the attendant risks of non-payment and the burden of enforcement. Under certain circumstances payment of obligations may be modified or excused by the court because of changes in the financial situations of the spouses. These changes would have to involve extreme financial hardship such as unemployment or the ill health of the payer. If a settlement agreement or judgment of divorce has been signed, the payor may seek a discharge in bankruptcy of obligations to make future payments intended as distributions of marital property. Accordingly, it may be prudent to consult with a bankruptcy lawyer in view of changes in the bankruptcy code to discuss the possibility of the discharge of your right to receive marital property or a distributive award. Maintenance and child support payments made pursuant to a written agreement or court order cannot be discharged in bankruptcy.

The distribution of property and payment of maintenance and child support may be viewed as an economic package. The “package” also often provides for the occupancy or sale of the marital home and “special relief” such as the purchase and maintenance of health and hospitalization insurance coverage for a former spouse and children and life insurance coverage. The federal government has established rights of divorced spouses to retain health insurance coverage. The law requires employers who are subject to the provisions of the “COBRA” law to make continuation of medical insurance coverage available for a certain period of time. The cost of continuing coverage under COBRA may be more or less than the cost of obtaining other health insurance coverage. The responsibility for payment of premiums for COBRA coverage is often a subject of negotiation.

A favorable property settlement may reduce or eliminate the need for maintenance. This does not mean that a dollar of one form of award is always equal to a dollar award in another form. For practical, legal and tax reasons, some of which are touched on below, this may not be the case. A simple example of this is the fact that generally payments of maintenance are taxable income to the recipient and are deductible by the spouse making the payment. In contrast, a distributive award intended to compensate a homemaker for her contribution to professional practice of her husband is generally structured as a tax-free transfer.

Whether it is advisable to accept the marital home as all or part of an award will depend not only upon the market value of the house in the context of fluctuating real estate markets, but also upon whether the home is to be sold and what the projected tax consequences of any re-sale will be. Of course, the person who receives the marital home must be able to afford to “carry” the costs of maintaining the home. If a large portion of the owner’s income must be used to pay the mortgage, real estate taxes, homeowner’s insurance, etc., the result may be a poorly maintained home and a loss in value. The profit received upon sale of the marital home may be subject to capital gains tax while any compensatory payment or credit to the spouse who does not get the house is generally tax-free. There are also “non-tangible” elements to consider such as the relationships with neighbors and children’s relationships with friends, as well as proximity to schools.

A taxpayer is generally able to exclude up to \$250,000 (\$500,000 if married and filing a joint return) of gain realized on the sale or exchange of a principle residence. To be eligible for the exclusion, a taxpayer must have owned the residence and occupied it as a principle residence for at least two of the five years prior to the date of the transaction. It is important that the tax consequences of any re-sale be discussed with your tax advisor.

*Is a “lump sum” settlement better than maintenance?*

Because of the many issues affecting the structure of a divorce settlement, particularly one concerned with a marriage of long duration during which substantial assets have been accumulated, there are no easy answers and no generalizations applicable to this question. Each settlement must be scrutinized by one or more astute professionals who will take into consideration the particular circumstances of the case viewed against the complex background of enforcement issues, tax consequences and the possible impact of a future declaration of bankruptcy.

*What can I do if I suspect my spouse is hiding assets?*

It is not unheard of for spouses to attempt to minimize assets by depositing funds in another person's account, overpaying credit card statements, delaying the distribution of trust income and deferring income. An accountant may be engaged to review such items as owner loans, dividends, retained earnings, distributions of income by partnerships and subchapter S corporations, bonuses, expense accounts, retirement plans, depreciation of property and perquisites of employment.

Where it is suspected that a reduction in income is related to the marital dispute, an accountant may look for a sudden unexplained reduction in salary, deferred payment of salary and bonuses, an increase of personal expenses paid by the business, payment of salary to third persons, payment of business expenses to a "shell" business created by the self-employed spouse, unusually high payments to suppliers, loans to the company by the owner which have the effect of reducing income paid to the owner and/or reducing the value of the business, and payroll checks that are not cashed or cash receipts that are not deposited. It may be necessary to search for undisclosed assets. In some cases, forensic accounting techniques require the review of numerous documents to follow a "money trail". The process can be very expensive. The search for information may include such sources as computer records, receipts, passports, foreign income reported on tax returns and records showing transactions which are just under the limit which must be reported by banks to the government.

*My spouse left our home almost a year ago and I have just engaged a lawyer to commence divorce proceedings. When it comes to valuing our marital property, what will be the relevant date for valuation?*

The relevant date for valuation of marital property may be determined by a court to be any time from the date of commencement of the divorce action to the date of trial. The valuation date is selected in light of the particular circumstances presented. The trial court has broad discretion in selecting valuation dates and depending upon the circumstances, it may fix different valuation dates for different assets. The appropriate date for a particular asset may depend upon whether any change in value of the asset during the time period referred to above is due to the contribution or management of one spouse or to market forces over which neither spouse had control. Actively managed assets, for example a family business, may be valued at the commencement of actions while so-called passive assets may be valued as of the date of trial. The inherent difficulties in applying the above rule can provide fertile ground for negotiation and litigation.

*Is property in a child's name considered marital property?  
Are gifts given by a spouse to her children during the marriage marital property?*

Property owned by a minor child, whether received from a parent or other person, is not considered marital property. However, the existence of such property will be a factor that the court may consider in determining the amount of support awards. The existence of property owned by a child will be particularly relevant if either spouse, as custodian or trustee, has access to such property for the payment of expenses or other purposes.

*Is there any relationship between the grounds for divorce and the relative culpability of the parties and the award of maintenance, asset distribution, etc.?*

As a general rule, the marital fault of a party is not a relevant consideration in the distribution of marital property or an award of maintenance, especially now that New York has become a “no-fault” divorce state. Thus, the fact that one spouse was a blameless victim while the other effectively destroyed the marriage by his or her abandonment, adultery or perpetration of cruel and inhuman treatment is irrelevant to both the property division and maintenance.

However, marital fault that is egregious or shocking may be taken into consideration in determining an award of property and maintenance. Even where egregious fault exists, though, it is only one factor to be considered by the court and by no means precludes a sharing in the marital property or even the receipt of maintenance by the culpable party. Furthermore, it is often costly to prove this type of marital fault and matrimonial attorneys recognize this fact.

Apart from such issues of marital fault, the court is required to consider economic fault in distribution and maintenance determinations. Economic fault consists of actions by a spouse to dissipate, transfer or encumber assets prior to or during a matrimonial action in order to thwart the equitable division of property. In addition to the willful action of a spouse to dissipate marital property, a court may also consider other behavior, such as gambling or substance abuse which may have led to a decrease or “wasting” of assets.

## **MAINTENANCE (ALIMONY)**

### **\*\*\*PLEASE NOTE\*\*\***

As of January 25, 2016, the laws in New York were changed to include calculations for spousal support/maintenance/alimony. These changes may also affect the calculations for child support. This booklet has not yet been revised to reflect these changes. Please contact an attorney to learn how these new laws may affect your specific situation.



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*What can I do if my spouse fails to pay court-ordered maintenance?*

Legal remedies for the enforcement and collection of court-ordered maintenance include obtaining money judgments, sequestering personal property and real estate of the debtor ex-spouse, and requiring the ex-spouse to provide security for payments of maintenance.

*Is there tax on an equitable distribution, maintenance and child support?*

There is no tax on an equitable distribution award. Maintenance is ordinarily tax deductible to the payor and includable in the recipient's income. Child support is also ordinarily tax deductible to the payor, but is not includable in the recipient's income.

## **HEALTH INSURANCE**

*Can I continue to be covered by my ex-spouse's health insurance once we are divorced?*

Once you are divorced you will no longer be eligible for coverage under your ex-spouse's health insurance, only your children will be eligible. The loss of health insurance coverage is a factor to be considered by the court in making an award of equitable distribution and maintenance. The court is required to ensure that both sides of a divorce action be notified of a possible loss of health care coverage before a Judgment of Divorce is signed. Stipulated or settled matters must continue to include a provision about health care coverage.

## **DIVISION OF DEBTS**

*If credit cards are in only one spouse's name, are such credit card debts incurred during the marriage also the responsibility of the other spouse?*

Liabilities (debts) incurred during the marriage have to be considered from two perspectives – within the marriage, between husband and wife, and outside the marriage, as between the creditor and debtor. Between spouses, debt incurred during the marriage, like property acquired, is subject to division by equitable principles such as who has the means and ability to pay the debt and for whose benefit the debt was incurred. Equitable principles will apply to the division of marital debt regardless of whose name appears on the credit card or who signed the promissory note. The apportionment between spouses of any existing debts is an integral part of the financial resolution of a divorce and may be achieved by written agreement or pursuant to a court order.

The relationship between the creditor and the debtor is not affected by the terms of a divorce decree or by any agreement between the spouses as to the division of debt. If, pursuant to your separation agreement or court order, your spouse assumes responsibility for certain debts incurred either solely in your name or jointly and your spouse fails to make the required payments, you are and will remain liable for these bills and your separation agreement will provide you with no defense against your creditors. Your recourse in these circumstances would be to take action against your spouse for enforcement of her or his obligations. You may include a provision in a settlement agreement that requires your spouse to indemnify you in the event of

her or his failure to pay a debt and requires such debts to be paid by your ex-spouse's estate and a provision that designates you as the beneficiary of a sufficient amount of life insurance to pay off the debts.

You may also include a provision in a settlement agreement that requires your spouse to indemnify you in the event of her or his failure to file tax returns or pay taxes or in the event that the tax returns contain incorrect or false information.

*We have more debts than assets. If I just walk out and leave the marital home taking only my personal possessions, will I still be responsible for the bills?*

You may possibly still be responsible. With respect to obligations for which you are the sole or a joint debtor, for example jointly held credit cards or utility bills, abandoning the marital home will not terminate or otherwise affect your liability to creditors. As between you and your spouse, until your marriage is legally ended, debts incurred by either of you are subject to apportionment between you along equitable principles either as part of a court-ordered property distribution or pursuant to a written agreement.

*May I become liable for the pre-marital debts of my spouse?*

While it may seem unfair, it is possible to have your property become subject to your spouse's unpaid premarital debts. Suppose your spouse has debts which have remained unpaid at the time of marriage and that after marrying, you and your spouse purchase a house which is jointly-owned. The creditor for your spouse's premarital debts can sue your spouse and, upon obtaining a judgment against him, may convert that judgment to a lien with respect to jointly-owned property. Other than indirectly through ownership of jointly-owned property, you are not liable for your spouse's premarital debts, unless you have agreed to assume the obligation. However, the existence of premarital debts may have a significant impact upon the divorce or separation negotiation process.

## **PRIOR TO THE DIVORCE DECREE**

*What does pendente lite mean?*

This Latin phrase means "during the litigation". It refers to the time after divorce proceedings have been commenced but before a divorce decree has been obtained. Many of the powers of the court in a divorce action, such as orders for maintenance, custody and child support and attorney and expert fees can be exercised on a temporary basis during the pendency of the litigation, as well as pursuant to a final decree of divorce. Lawyers consider *pendente lite* orders to be crucial because they perceive a tendency by the courts to be resistant to a change in the status quo once established, although such orders are not binding on the trial court.

*How can I make my spouse leave the marital home?*

Generally speaking, in the absence of a protective order for domestic violence, an exclusion order by the court, or until a marriage is legally terminated, each spouse has the right to continue

to reside in the marital home. Once divorce proceedings have been commenced, the court has the power to grant one spouse exclusive possession of the marital home. This power will rarely be exercised against an unwilling spouse before the divorce is final unless the spouse to be excluded is engaging in behavior that is abusive to either the other spouse or to dependents within the home. You may obtain a protective order in the Family Court or Criminal Court for domestic violence before or after retaining an attorney. Domestic violence is grounds for an order of protection issued by a court and may be grounds for an order excluding a spouse from the marital residence.

*Am I hurting myself if I move out of the family home?*

When marital assets include a home, several possibilities exist for its use and disposition pending and after a divorce. When the marital home constitutes the sole or main asset of the marriage, it may be sold after the divorce so that its value can be equitably distributed between the spouses. Sometimes, the sale of the home will be delayed to allow one party, particularly the custodial parent, to have the use of the home until the children are grown or graduate from high school or college. When, in addition to a home, other more liquid assets also exist, it might be appropriate for one party to receive the house as part of the property settlement.

When it is your objective to remain in the marital home either permanently or temporarily following the divorce, your lawyer might advise you against moving out, even when remaining with an estranged spouse is causing emotional distress. This is not because of any actual law that prejudices the property rights of a spouse who chooses to leave the marital home during divorce proceedings. It is, instead, because many lawyers feel that the courts tend to uphold the status quo with the result that the spouse in the home at the time of divorce proceedings obtains an advantage in achieving the goal of remaining there. In addition, the spouse who leaves the home may, as a practical matter, diminish the likelihood of obtaining sole custody. Often, the leaving spouse will demand a “non-abandonment” letter which states that such leaving shall not be asserted by the spouse remaining in the home, as a ground for divorce. The letter may also contain provisions that the leaving shall not be construed as a waiver of custodial and access rights to the children.

*My spouse and I have each engaged lawyers to pursue a divorce. Although my spouse is living elsewhere and has removed many of his belongings, he occasionally shows up at our house unannounced. Why is he doing this?*

Often, on the advice of a spouse’s lawyer or on her or his own initiative, a spouse who is living elsewhere and has removed belongings may occasionally appear at the marital residence to strengthen a claim to the right to reside in the marital home or to demonstrate that such spouse has a continuing interest in the welfare of the children who are residing in the home.

*I am concerned that my spouse has access to my funds. What should I do?*

Where the divorce is “amicable”, the best course of action may be to maintain the status quo as to joint bank accounts and other assets until settlement is reached. However, if the divorce is bitterly contested and there is a reasonable expectation that a spouse will abscond with or secrete

funds, you and your lawyer should discuss reasonable steps to prevent your loss of access to funds and other property. Domestic Relations Law Section 236 (B)(2)(b) states that automatic restraining orders will be issued upon the commencement of an action for divorce. The issuance of such automatic orders at the commencement of the divorce action aims to prevent both parties from dissipating assets, incurring unreasonable debts, or removing a spouse or children from health or life insurance policies. Other restraining orders to freeze access to marital bank accounts or to prevent the sale or transfer of property or to preserve electronic records may be obtained from the court.

## **POST-NUPTIAL AGREEMENTS**

*What is a post-nuptial agreement?*

Post-nuptial agreements are made after marriage between two people who are still married. Post-nuptial agreements take the form of either separation agreements, property settlements in contemplation of a separation or divorce, or property settlements where there is no intention of the parties to separate.

*I signed a separation agreement with my spouse one year ago. I am unhappy with its terms. How can I get out of it?*

Once signed, separation agreements are extremely difficult to nullify. If you are disturbed by some aspect of a proposed separation agreement, the time to address your concerns is before you sign it. Nonetheless, there are various legal bases for nullifying a separation agreement, including fraud, undue influence, duress and overreaching. A court may review the maintenance provisions of a separation agreement if there is a demonstration of extreme hardship. Despite this, it should be borne in mind that no one should enter into a separation agreement with the idea that he or she will be able to void it at some future time.

*My spouse is not living up to the obligations of the separation agreement we signed one year ago. What recourse do I have? How does this effect finalizing the divorce?*

Various enforcement remedies, such as money damages and wage garnishment are available to a party whose spouse has failed to comply with the terms of a separation agreement, particularly where the agreement has been incorporated by reference in a divorce judgment. Much less frequently, certain obligations contained in a separation agreement may be deemed to be so important and so central to the other spouse's willingness to enter into the agreement, that the failure to perform them may provide grounds for the rescission (nullification) of the agreement. There are additional and speedier enforcement remedies available to a spouse who has entered into a separation agreement or stipulation of settlement that incorporates the terms of the agreement or stipulation and provides that the terms shall "survive" (not be extinguished by) the judgment of divorce.

The spouse who seeks to terminate the marriage on the grounds that the couple has been living apart pursuant to a separation agreement must show substantial compliance with the agreement.

*Is a separation agreement necessary in New York State before a divorce is granted or can a divorce be granted without one?*

The option of obtaining a divorce by living apart pursuant to a separation agreement is only available to parties who are able to negotiate a mutually acceptable agreement. Spouses who wish to divorce and who are unable to negotiate a separation agreement must either allege “fault grounds” or “no-fault grounds” (the irretrievable breakdown of the marriage for at least six months) to obtain a divorce.

*My spouse and I signed a separation agreement one year ago. What happens now? Are we automatically divorced?*

No, you are not automatically divorced. If you and your spouse have been separated for one year, and have abided by the separation agreement during that time, you now both have grounds for a divorce. One of you must file for divorce and provide proof that he or she performed all the terms and conditions of the separation agreement. Although the process is often referred to as a “conversion divorce”, the separation agreement does not automatically convert to a divorce after the one year period.

## **CUSTODY**

*What are the forms of custody?*

The most common forms of custody are sole custody, which gives one parent authority to make all decisions, and joint custody, which often refers to parental sharing of major decisions concerning child rearing. Legal custody refers to the authority of one or both parents to make decisions as to the child’s health, education, welfare and other interests. Physical custody describes the physical residence of the child. For example, one parent may have sole physical custody while the parents have joint legal custody. Regardless of the custody label, parents have great latitude to determine a custody arrangement by entering into a written custody agreement. Under the court rules, parents are encouraged to enter into a Parenting Agreement, at the early stage of the litigation. In the Supreme Court, Westchester County, a professional is available to assist the parties in reaching agreement.

*What factors affect custody?*

The laws relating to custody emphasize the best interest of the children. Both natural and adoptive parents may not ordinarily be denied custody unless there is gross parental unfitness.

There are numerous factors considered by the court in making custody and visitation determinations. Such factors include age, physical, mental and emotional health of the child or parent, and the quality of the home environment, including continuity, stability and security in the child’s home. Other factors that are considered include the primary caretaker status of a parent (which may not necessarily override other factors), whether a parent has made unfounded allegations of abuse, and the recognition (or lack thereof) of the importance that a child have a relationship with the non-custodial parent (alienation). Custody is not awarded after a child has

attained the age of eighteen. (Note, however, that the statutory “cut-off” for child support, absent other agreement of the parents, is twenty-one years of age). When custody is contested, the court may appoint an “attorney for the child” (formerly called a “law guardian”) to represent the child(ren). This person is a lawyer who will interview the children (if age appropriate) and represent the child(ren)’s wishes to the court. If the child is of a young age this person is required to make a recommendation to the court concerning the custody arrangement.

### *What is joint custody?*

Traditionally, custody of the minor child(ren) of a dissolved marriage was granted to one parent (“sole custody”). The custodial parent had the exclusive right and responsibility to provide for the care of the child and to make all minor and major decisions about such issues as education and medical care. Joint custody refers to an arrangement of sharing these rights and responsibilities between the parents. Although some joint custody arrangements provide for residence of the child to alternate on a daily, weekly or monthly basis, joint custody does not necessarily involve an even split of the child’s time between the parents’ respective homes.

The sharing of responsibility for a child’s welfare requires that a couple be able to subordinate any acrimony between them to the accomplishment of this effort. In recognition of this, courts generally reserve joint custody for divorced couples who demonstrate an ability to maintain a relatively stable and amicable relationship regarding the children’s needs. This does not necessarily mean that the desire for joint custody must be mutual before it can be ordered by the court. However, the parents must be able to make joint decisions in matters relating to the care and welfare of the child. It should be recognized, however, that a joint custody relationship can turn into a “power play” between former spouses. Joint custody is not indicated where one parent is likely to impose her or his will on the other parent by, for example, refusing to approve the choice of a doctor or to fill out financial assistance forms which are required in financial aid applications. However, a moderate level of disputes between parents, may not necessarily preclude an award of joint custody.

There is a far greater likelihood of achieving a joint custody relationship by agreement between the parties than by request to the court. New York courts attach significance to a custody determination made by the parents unless the arrangement is detrimental to the child.

### *When is the decision with which parent the child will live left up to the child?*

In determining which parent of a marriage will be awarded primary physical custody of the children of the marriage, a judge may take into account, but is never bound by, the expressed wishes of the children through their attorney. The desires and preferences of a child are not a controlling or determining factor. However, the choices of older adolescents may receive greater weight in the determination of custody. The court will also consider whether the children’s feelings were fostered by the hostility of one parent toward the other.

*What is the impact of domestic violence on a custody order?*

Domestic Relations Law Section 240 (1)(a) states that upon a sworn statement that the other party has committed an act of domestic violence against the person making the statement, or a family or household member, and the statement is proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interest of the child, together with such other facts as the court deems relevant, in making an award of custody.

*I have a vacation, out of the country, planned with my child. What is the procedure for getting a passport and required travel documents for my child? Do I need my spouse's consent?*

There are several provisions that apply to obtaining a passport for a minor. For passport purposes a minor is defined as any unmarried person under the age of 18 years old. Either parent (U.S. citizen or not) may apply for a U.S. passport for their minor child. However, under the Two Parent Consent Law, if the child is under the age of 14, both parents must consent to obtaining a passport for their child or the parent who is applying for the passport must produce documentation that it is such parent's sole authority to obtain a passport for the child. Before a passport is issued for a child under age 14, Passport Services will require evidence of one of the following: sole custody, a court order allowing the parent to travel with the child, a written statement that the other parent agrees to issuance or is unavailable, a termination of the other parent's parental rights, or compelling humanitarian reasons relating to the welfare of the child. Also, when applying for a passport on behalf of a minor under the age of 14, parents are required to have their child present. Under exceptional circumstances the United States Department of State will authorize a parent, acting alone, to obtain a passport for a child. Parents seeking to obtain passports under these circumstances must complete and submit United States Department of State Form DS-3053. Please see the Resources and Readings Section at the end of this Q&A for further resources.

Grandparents may not apply for the passport of a grandchild unless they have a document of guardianship or written authority that complies with the Two Parent Consent Law. Minors who are over the age of 14 execute their own passport application with proper identification from a parent or responsible adult.

Lacking agreement of the parties, the court may order a parent to provide a child's passport and required travel documents to the other parent.

*Can I find out if my spouse has obtained a passport for my child?*

Whether or not you have custody of your child(ren), you can obtain information about your child(ren)'s passport status as part of a passport restriction request. Certified copies of a child's passport application can be obtained from:



U.S. Department of State  
Passport Services  
Office of Research and Liaison, 5<sup>th</sup> Floor  
1111 19<sup>th</sup> Street, NW  
Washington, D.C. 20522-1705  
Phone: (202) 955-0447

*What happens if my spouse takes our child out of the country without my knowledge or consent?*

One means of redress is under the Hague Convention on the Civil Aspects of International Child Abduction, which has the objectives of securing the prompt return of children wrongfully removed to or retained in a participating country (“Contracting State”) and ensuring that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States. Not all matrimonial attorneys deal with such matters and it is necessary to consult with a qualified professional in the field. Inquiries of this nature should be addressed to the:

U.S. Department of State  
Office of Children's Issues  
SA-29, 4th floor  
Washington, D.C. 20520  
Phone: 1-888-407-4747  
Fax: 202-736-9133

## **GRANDPARENT VISITATION**

*What are the rights of grandparents to visitation?*

Grandparent visitation rights are governed by statute (the New York Domestic Relations Law) and by cases interpreting the statute. In a leading case, the court determined that grandparents have standing to seek visitation where either parent of the grandchild has died and may also have standing to seek visitation if they can establish “equitable” circumstances which demonstrate that visitation would be in the best interest of the child.

The grandparents of such child may apply to the court by commencing a special proceeding or by applying for a writ of habeas corpus to have such child brought before the court. The court, by order, after due notice to the parent or any other person or party having the care, custody and control of such child, may make such directions for visitation by grandparents as the best interest of the child may require.

In considering a request by grandparents for visitation rights, the court will consider whether the grandparents have made a sufficient effort, under the circumstances, to establish a relationship with the grandchild or grandchildren and will take into account the nature and basis for a parent’s objection to visitation. The court may decide to award visitation rights to both or neither of the paternal and maternal grandparents, or to only one set of grandparents.

## **CHILD SUPPORT**

**\*\*\*PLEASE NOTE\*\*\***

As of January 25, 2016, the laws in New York were changed to include calculations for spousal support/maintenance/alimony. These changes may also affect the calculations for child support. This booklet has not yet been revised to reflect these changes. Please contact an attorney to learn how these new laws may affect your specific situation.

*What can I do if my spouse refuses to pay child support?*

There are various remedies which are available to secure payments of child support, such as directing a party to provide reasonable security after a default in payment, requiring the defaulting party to pay the legal expenses of the custodial parent, and obtaining a money judgment for the amount of arrears of support. In addition, the law provides that a person's driver's license and state-issued professional and business licenses may be suspended when a person is four months or more in arrears in the payment of child support or combined child and spousal support.

If the defaulting parent lives in a different state than you and your children and is delinquent in child support payments for a period of longer than one year or the arrears are in excess of \$5,000, such parent can be charged under the Child Support Recovery Act and the Deadbeat Parents Punishment Act. Under the Deadbeat Parents Punishment Act a parent is not absolved from paying child support because financially such parent only pay a fraction of what is owed in child support payments. The delinquent parent must make an effort to at least pay part of the child support judgment that is owed.

As in other areas of matrimonial law, the availability and content of enforcement mechanisms changes from time to time. It is wise to consult an attorney to review your options.

However, it may be a difficult, time-consuming and expensive process to secure payment of child support. A court order must first be obtained and there are often long delays between obtaining the order and obtaining payment.

*My child's other parent has no job, property or assets. Is there any way I can still collect support for him?*

You may request child support enforcement services from the Westchester County Child Support Enforcement Unit. Gather as much information as you can about your spouse in order to give to the Enforcement Unit. Important information includes your spouse's date of birth, social security number and present and past addresses and telephone numbers. Other information includes past employer names, addresses, and telephone numbers (if your spouse is currently unemployed) and your spouse's driver's license number. Also try to obtain information concerning any other professional, business or occupational licenses your spouse may have.

If you are a victim of domestic violence, you can petition for temporary child support at the same time that you petition for an order of protection. For information concerning domestic violence, see below.

*I received a judgment for child support against my spouse. However he has just filed a petition in bankruptcy. Does his bankruptcy affect the judgment against him for child support?*

No, your spouse's filing for bankruptcy protection does not affect the child support judgment against him. There are a number of exceptions to the general grant of discharge provided by filing bankruptcy. Included in the exceptions are any debt owed to a spouse, former spouse, or

child of the debtor, for alimony, maintenance, or support of such spouse or child, in connection with a separation agreement, divorce decree or other similar order from a court of record.

## **DOMESTIC VIOLENCE**

*What is a Domestic Incident Report (DIR)?*

A Domestic Incident Report is a form that the New York State police use to record information about a domestic incident. The report contains information about the parties involved and the date, time and place of the incident. Also included in the report are the police officers' observations and a summary of the incident. There is also a space in the form for the victim to write a brief statement about the incident. The DIR is a multi-part form, which allows both the police officers and the victim to retain a copy. If the incident is a serious domestic violence felony, police are required to make an arrest.

*What is an order of protection?*

An order of protection is an order issued by the Family Court, Criminal Court or Supreme Court that orders an abuser to stop committing offenses against you. You can also request an order of protection on behalf of your children which would protect both them and you from the abuser.

*How do you obtain a Family Court Order of Protection?*

In order to receive an order of protection from the Family Court the abuser must either be someone you are married to or divorced from; the parent of your child(ren); related to you by blood, such as a child, parent or sibling; or someone who you are or have been in an intimate relationship with, regardless of whether you have lived with the abuser or whether the relationship is of a sexual nature. Initially the order that you obtain in Family Court is temporary and only becomes effective once the alleged abuser ("abuser") is served with it. You cannot serve the order of protection yourself. The order of protection must be served by either the police or anyone other than you who is over the age of 18.

On the same day that you receive the temporary order of protection you will get a future court date. On that date, both you and the abuser will have to go to court to appear before the judge. The abuser may either opt to admit to the allegations in the petition and consent to abide by the order or deny the allegations. If the abuser admits to the allegations in the petition and consents to abide by the order, the order will become "permanent" (meaning that the order will last for a fixed amount of time, usually one or three years). If the abuser denies the allegations a date will be set for a "fact finding hearing", which resembles a trial. If after the fact finding hearing the court finds that the abuser did indeed commit the allegations in the petition, your order of protection will become "permanent" (meaning that the order will last for a fixed amount of time, usually one or three years). If after the fact finding hearing the court finds that the abuser did not commit the allegations, the case will be dismissed and the temporary order of protection will end. If the abuser is served and fails to appear in court the judge will either adjourn the case and schedule another time for the abuser to appear or will grant your petition in the abuser's absence.

In Family Court there are several organizations that can help you file a petition for a temporary order of protection. In Yonkers Family Court and White Plains Family Court you may seek assistance from the Pace Family Court Legal Program, as well as from the probation department of each Family Court in Westchester County.

*When do you obtain a Criminal Court Order of Protection?*

If your relationship to the abuser does not allow you to file a petition in Family Court you must seek relief in the Criminal Court. The procedure for obtaining an order of protection in Criminal Court is completely different than in Family Court. In Criminal Court the District Attorney, based on an arrest must bring a criminal case against your abuser in order for you to obtain an order of protection. The order will be temporary and you will receive it in the mail. If your abuser is convicted of the criminal offense against you, the temporary order of protection can be made “permanent”. For more information about a Criminal Court order of protection contact the Westchester County Domestic Violence & Child Abuse Bureau, or Attorney’s Office at (914) 995-3000.

## **ANATOMY OF A TYPICAL DIVORCE ACTION IN WESTCHESTER COUNTY**

If the negotiation process breaks down and the parties cannot reach agreement regarding all issues, including economic and child custody issues, a divorce action is commenced by the filing of a Summons with Notice (of divorce). After the service of the Summons with Notice or Summons and a Verified Complaint, a request for judicial intervention is filed. In Westchester County, this triggers a process governed by a unique set of rules.

Initially the case is assigned to an attorney-referee whose function is to time-manage the case. Before the parties appear before a Judge, the attorney-referee meets with the parties and their attorneys. Prior to this meeting, the attorneys must meet to prepare pre-conference orders/stipulations regarding grounds and issues yet to be resolved.

- At the pre-conference meeting, the attorney-referee sets a timetable for the case including a time-frame for exchange of financial and other documents and when all other financial “discovery” must be completed. Should one party wish to make a motion for relief to be granted during the pendency of the action (a *pendente lite* motion), a request must first be made to the referee for a scheduling of a pre-motion conference (except in emergencies). At the conclusion of that conference, the referee submits his or her recommendation to the assigned judge prior to the motion being heard by the judge.

The motivation for instituting this reform was to streamline the process, thus freeing up more time for the court to hear cases. Once you access the system, the time-line is pre-set and if you do not settle the case in the allotted time, a trial will be scheduled. This process can take over a year if the case is complicated. Many attorneys believe that the system is not “settlement friendly” and may advantage the monied spouse.

Clearly, it is economically and often emotionally beneficial to settle the issues of divorce through negotiation, as each appearance before the referee or judge is costly and the preparation of court

papers is also costly. However, in some cases the marital issues are too divisive for settlement and a trial is necessary to resolve the issues.

## **SUMMARY OF SELECTED PROVISIONS OF THE DOMESTIC RELATIONS LAW**

### Bases for Divorce

- Adultery
- Abandonment
- Cruel and inhuman treatment
- Imprisonment for three years after marriage
- Living apart for one year or more pursuant to a signed separation agreement or judicial decree of separation
- The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath.

### Powers of the Court in a Divorce Action

- Grant or deny an action for divorce
- Distribute marital property and marital debts
- Award temporary and permanent maintenance (alimony)
- Award temporary and permanent child support, custody, visitation
- Order possession and use of marital home and the contents of the home
- Order purchase of health/life insurance
- Order the payment of counsel, investigative and appraisal fees
- Issue an Order of Protection

### Equitable Distribution Factors

- Income and property of each party at time of marriage
- Income and property of each party at commencement of legal action

- Duration of marriage, age and health of parties
- Need of custodial parent to occupy or own marital residence and to use or own marital effects
- Loss of pension rights and inheritance rights as of date of dissolution of the marriage
- Any award of maintenance
- Equitable claims to, interest in, or contributions made to, (i) the career or career potential of the other party and (ii) the acquisition of the marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker
- Liquid or non-liquid character of all marital property
- Probable future financial circumstances of each party
- Impossibility or difficulty of evaluating any asset or interest in a business, corporation or profession
- The desirability of retaining the asset, or interest in the business, corporation or profession free from any claim or interference by the other party
- Tax consequences to the parties
- Economic fault of moneyed spouse who attempts to dissipate, transfer or encumber assets prior to or during a matrimonial action to preclude equitable distribution
- Any other factor which the court shall consider just and proper

#### Maintenance

- Standard of living established during the marriage
- The income and property of the respective parties including marital property distributed pursuant to the divorce
- The duration of the marriage and the age and health of both parties
- The present and future earning capacities of both parties
- The ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefore

- Reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage
- The presence of children of the marriage in the respective homes of the parties
- The tax consequences to each party
- Contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, as well as contributions of the party seeking maintenance to the career potential of the other party
- The wasteful dissipation of marital property by either spouse
- Any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration
- Any other factor which the court shall expressly find to be just and proper



## RESOURCES AND READINGS

### **Pace Women's Justice Center**

78 North Broadway

White Plains, NY 10603

[www.law.pace.edu/wjc](http://www.law.pace.edu/wjc)

Phone (914) 422-4069

Fax (914) 422-4102

*Provides legal information related to domestic violence and all aspects of family law including divorce, equitable distribution, child support, and custody. Monday through Friday, 9:00 a.m. to 5:00 p.m.*

### **Helpline**

Phone (914) 287-0739

*Free legal information provided by attorneys to callers on a variety of issues relating to NYS Law.*

### **Moderate Means Panel**

Phone (914) 287-0739

*Panel of matrimonial attorneys charging reduced rates for qualified applicants. Contact the above number, at Pace Women's Justice Center, in order to receive an application for the program.*

### **Family Court Legal Program**

*Free legal assistance for domestic violence victims and survivors seeking orders of protection, orders of child custody/visitation, and orders of child support.*

### **White Plains**

111 Dr. Martin Luther King Jr. Boulevard, Second Floor

White Plains, NY 10601

(914) 995-7400

### **Yonkers**

53 South Broadway, 2<sup>nd</sup> floor

Yonkers, NY 10701

(914) 231-2886

**National Domestic Violence Hotline**

1-800-799-SAFE (7233)  
For hearing impaired 1-800-787-3224  
In New York State 1-800-942-6906

**Hotline Deaf Advocates on duty**

**9 AM – 5 PM M-F**  
deafhelp@thehotline.org  
24/7 at 1(800) 787-3224  
Videophone at 1(855) 812-1001 (Monday-Friday 9-5 PST)

**New York State Coalition Against Domestic Violence**

350 New Scotland Avenue  
Albany, NY 12054  
[www.nyscadv.org](http://www.nyscadv.org)  
Phone (518) 482-5465  
Fax (518) 482-3807  
English-In State (800) 942-6906  
Spanish-In State (800) 942-6908  
Email: [nyscadv@nyscadv.org](mailto:nyscadv@nyscadv.org)

*The New York State Coalition Against Domestic Violence (Coalition) is a not-for-profit membership organization whose mission is to eradicate domestic violence and to ensure the provision of effective and appropriate services to victims of domestic violence through community outreach, education, training, technical assistance and policy development.*

**Family Abuse Court Services Program**

**Mental Health Association of Westchester County, Inc.**

www.mhawestchester.org  
580 White Plains Road, Suite 510  
Tarrytown, NY 10591  
(914) 345-0700

**Clinics:**

20 South Broadway, Suite 1109  
Yonkers, NY 10701

344 Main Street, Suite 301  
Mt. Kisco, NY 10549  
(914) 666-4646

300 Hamilton Avenue, Suite 201  
White Plains, NY 10601  
(914) 345-0700

29 Sterling Avenue  
White Plains, NY 10606  
(914) 949-1212

MHA Family Abuse 24-Hour Hotline – (914) 347-4558

*The Family Abuse Court Services Program trains community volunteers to help individuals who are seeking an order of protection from the Family Courts in Yonkers, White Plains and New Rochelle. The program, which provides crisis support for abused family members, is an on-site service available weekdays from 8:30 a.m. – 4:30 p.m. and is free of charge.*

**Westchester County Department of Social Services, Child Support and Enforcement  
1-888-208-4485**

Westchester County Office of Child Support Enforcement  
100 East First Street, 5th Floor  
Mt. Vernon, NY 10550-3488

[Newyorkchildsupport.com](http://Newyorkchildsupport.com)  
[socialservices.westchestergov.com](http://socialservices.westchestergov.com)

*Information and assistance on court-ordered child support.*

**Westchester Jewish Community Services**

Headquarters  
845 North Broadway  
White Plains, NY 10603  
914-761-0600

[hdq@wjcs.com](mailto:hdq@wjcs.com)

*The Westchester Jewish Community Services offers a variety of services to all members of the community such as home care, mental health services, abuse and violence prevention services, self-help and community education, clinical services, supportive services, and emergency assistances.*

**Westchester Self-Help Clearinghouse**

845 N Broadway  
White Plains, NY 10603  
(914) 761-0600 ext. 308

*Information about self-help organizations.*

**State of New York  
Grievance Committee  
For the Ninth Judicial District**

399 Knollwood Rd, Suite 200  
White Plains, NY 10603  
(914) 824-5070

[www.nylawfund.org/attorney.shtml](http://www.nylawfund.org/attorney.shtml)

*Identification of publicly censured, suspended or disbarred attorneys. Website provides information on how to file a complaint.*

**American Bar Association  
Center for Professional Responsibility**

15<sup>th</sup> Floor  
321 N. Clark Street  
Chicago, IL 60610-4714  
(312) 988-5325

[www.abanet.org/cpr/ethics.html](http://www.abanet.org/cpr/ethics.html)

*The A.B.A. Data Bank logs public discipline orders from most states, including New York.*

**International Academy of Collaborative Professionals**

4201 N. 24<sup>th</sup> St. Ste 240  
Phoenix, AZ 85016  
(480) 696-6075

[www.collaborativepractice.com](http://www.collaborativepractice.com)

*The International Academy of Collaborative Professional's purpose is to increase understanding of the benefits of collaboration for marriage dissolution, child custody, and co-parenting issues.*

**Cluster Inc.**

[www.clusterinc.org](http://www.clusterinc.org)

Westchester:  
Cluster Inc.  
20 South Broadway  
Yonkers, NY 10701  
(914) 963-6440

Rockland:  
Rockland Mediation Center  
15 North Mill St. Ste 217  
Nyack, NY 10960  
(845) 512-8730

**Divorce Mediation Professionals**

Westchester County  
480 Mamaroneck Ave.  
Harrison, NY 10528  
(914) 703-3122

Nassau County  
585 Stewart Avenue Suite 610  
Garden City, NY 11530  
(516) 222-0101

Suffolk County  
145 Commack Road Suite 7  
Commack, NY 11725  
(631) 231-0031

Manhattan  
120 East 36<sup>th</sup> Street Apartment 1G  
New York, NY 10016  
(212) 490-0992

**The New York State Attorney-Client Fee Dispute Resolution (FDRP)**

<http://www.nycourts.gov/admin/feedispute/index.shtml>

Honorable Alan D. Scheinkman  
Administrative Judge  
Ninth Judicial District  
111 MLK Jr. Boulevard  
White Plains, NY 10601  
(914) 824-5100

**The U.S. Department of State  
Passport Services and Child Abduction**

Passport Services:

[http://travel.state.gov/passport/passport\\_1738.html](http://travel.state.gov/passport/passport_1738.html)

Child Abduction:

[http://travel.state.gov/abduction/solutions/locatechildren/locatechildren\\_3850.html](http://travel.state.gov/abduction/solutions/locatechildren/locatechildren_3850.html)

*Legal matters and documentation in order to prevent children from being taken out of the country by one parent, and advice on what to do if this situation has already occurred.*

**Hope's Door**

PO Box 203

Pleasantville, NY 10570

24-Hour Hotline: (888) 438-8700

Administrative Office: (914) 747-0828

<http://www.northernwestchestershelter.org>

*Emergency shelter, 24-hour hotline, safety planning, counseling and advocacy services, legal services, support groups, children's programs, teen education program, community education and outreach program, and workplace violence program.*

**My Sisters' Place**

24-Hour Hotline: (800) 298-7233

General Information: (914) 358-0333

[www.mysistersplaceny.org](http://www.mysistersplaceny.org)

*Emergency shelter, 24-hour hotline, safety planning, counseling and advocacy services, legal services, and support groups.*

**Westchester County Department of Social Services**

112 East Post Road, 5th Floor

White Plains, NY 10601

General Information: (914) 995-5000

<http://socialservices.westchestergov.com>

*Temporary financial services, employment services, family and children's services, housing*

*services, adult services and medical services, fair hearings services, medical assistance, and a variety of other adult and children services for the people of Westchester.*

**Family Services of Westchester**

(main corporate office)

One Gateway Plaza

Port Chester, NY 10573

(914) 937-2320

<http://www.fsw.org>

*Family Services of Westchester is a private, not-for-profit, non-sectarian agency that is dedicated to strengthening and supporting families and individuals with a broad range of social and mental health services.*