

## **DIVORCE – Start to Finish**

By Matt Flanagan

This article is a summary of the divorce process and describes some important milestones you pass on the way to finalizing.

### ***How long will my divorce take?***

The 60 day Rule – An original petition for divorce must be on file with the court for at least 60 days before the divorce can be finalized. This rule applies even if the parties have an agreement on all the issues. That means the absolute shortest period of time it will take to complete your divorce is 60 days.

Reality – If there are disagreements, finalizing a divorce in 60 days is not realistic. If the disagreements involve simple issues, expect your divorce to take between 60 days and 6 months to finalize. More complicated issues need more time. If you must have the court resolve your disagreements in a trial, the process can take up to a year or more.

### ***What is the process for getting divorced?***

#### **1. Original Petition for Divorce**

The original petition for divorce is the first document filed in a divorce case. When you file an original petition for divorce with the court, you are asking the court to grant you a divorce. It is usually only a few pages long, but it is important, and its contents can set the tone of the divorce. The more aggressive the petition, the more reactive your spouse is likely to be when they receive it through the service of process.

#### **2. Service of Process OR Waiver of Service**

##### **2a. Service of Process**

After the original petition is filed, it must be delivered to the other party in a process approved by law. We refer to this delivery method as service of process (also referred to as “process service” or “service”). An individual called a “process server” delivers the original petition for divorce to the other spouse.

**WARNING:** If you think you have been served with divorce papers, do not delay in reading them and contacting one of our experienced family law attorneys.

## 2b. Waiver of Service

A waiver of service is an alternative to service of process. The waiver is used in uncontested divorces or uncontested custody modifications. The waiver is a document that must be signed and notarized by the spouse who is to be served. If this occurs the spouse is waiving service of process, which means you can forgo the expense of hiring the process server to serve the divorce papers.

**WARNING:** If someone is asking you to sign a waiver of service, consult one of our experienced family law attorneys before executing the waiver. Also be sure that you are not waiving valuable right such as property rights or rights regarding the children.

### **3. Temporary Orders**

Temporary orders provide the spouses with temporary rules to play by while the divorce is pending. Even in amicable situations, divorces can take many months to finalize. Temporary orders are often necessary where certain disagreements exist during the divorce process that must be addressed before the divorce is finalized. If the parties and their attorneys cannot agree on temporary orders, there will likely need to be a hearing so the court can put into place temporary orders. A hotly contested temporary orders hearing can be a pivotal moment in a divorce or child custody case. Examples include who stays in the home, who is the primary conservator of the children, child support, continuation of a family business, payment of bills, and the list can go on.

### **4. Discovery**

Discovery is the investigative process attorneys use to learn what evidence may be presented at trial. It is necessary especially in high asset divorces, instances where assets may be hidden, and high conflict custody cases. It is also where a lot of money can be spent if the spouses are highly disorganized or stubbornly refuse reasonable discovery requests. Spouses looking to keep their cost down should inquire about organized, informal exchanges of evidence in lieu of discovery. Avoiding discovery is not always possible or practical. If the spouses go to trial, at least some discovery must be conducted.

### **5. Mediation**

Mediation is a confidential settlement meeting conducted by an approved mediator. This settlement conference is where most cases are finalized. If there are only minor issues to be resolved, mediation might be unnecessary. However, in a case where there is any amount of uncertainty regarding more substantive issues like child custody or property, it is likely you will need to participate in a mediation. In fact, many courts require the spouses to mediate before bringing disagreements before the court. A final agreement reached in mediation is called a

Mediated Settlement Agreement and is binding on the parties (commonly referred to as an “MSA”).

**WARNING:** Mediated settlement agreements are irrevocable and final!

## **6. Final Decree of Divorce**

The final decree of divorce is the last document needed to finalize the divorce. When you and your spouse reach an agreement, the agreement must be drafted into an order of the court. The final decree is that order. It formally decrees your divorce. You will often hear the attorneys simply call it the “final order.” Once the judge signs this order, you may consider yourself officially divorced.

If no agreement can be reached, the spouses will go to trial.

## **7. Prove-Up OR Trial**

### 7a. Prove-Up

If you and your spouse reach an agreement, one of the spouses and their attorney will need to go to court to prove up the final agreement and the agreed final decree of divorce. You will hear attorneys refer to this as the “prove-up.” The prove-up consists of brief testimony from one of the spouses under oath. Both spouses may attend, but only one is necessary. After you prove up the final decree of divorce, you are officially divorced.

### 7b. Trial

If an agreement is not reached the court will conduct a trial. Jury trials are rare in family law. More often the trial occurs only in front of the judge. Both spouses will present their evidence to the court, and the judge will divide the property and determine custody. At the end of the trial the judge will write an order often called a memorandum or report. You are officially divorced when the judge issues this memorandum. The judge will direct one of the attorneys to draft a final decree of divorce that conforms to the judge’s memorandum. Once the decree is finished it is submitted to the court for approval. When a trial is conducted a prove-up is not necessary.

If your divorce goes to trial, you and your spouse must go through the cumbersome and expensive discovery process.