



PENNER LOWE, LLC  
LAW GROUP

# DIVORCE IN KANSAS

## INTRODUCTION

Divorce is generally a difficult and stressful time. We have prepared this brochure with the hope that the following information will help relieve some of your anxiety and help you understand the steps involved.

## LEGAL SEPARATION

Although a form of legal separation called "Separate Maintenance" is available in Kansas, it is not a procedure we typically recommend because it is frequently merely a prelude to divorce and increases the total cost of the legal services to the family. Legal separation leaves the parties married to each other while providing a court order covering such ongoing subjects as property division, child support and custody, and spousal support. In some limited situations, it may be desirable as an alternative to divorce. Feel free to ask about legal separation if you believe it may be more appropriate in your situation. If you are not sure you want a divorce, we will likely recommend counseling services to see if the marital problems can be worked out.

## GROUND

In Kansas, a person may file for divorce based upon "incompatibility" and/or "breach of marital duty"; however, most actions for divorce in the State of Kansas are filed on grounds of "incompatibility". In filing the divorce action, the Petition need only state that the parties are "incompatible". It is not necessary to allege or prove such traditional grounds as adultery, cruelty, physical abuse, etc. (i.e., breach of marital duty), even though such conduct may have occurred.

Occasionally one spouse will state, "I will not give you a divorce" or "we are not incompatible." While one spouse may object to the divorce, the final authority to grant a divorce belongs solely to the court; the parties involved do not have the power to "give" or "not give" a divorce.

## RESIDENCY REQUIREMENTS

Either you or your spouse must have been a resident of the State of Kansas for at least 60 days before the filing of the Petition for Divorce. Typically, the divorce action is filed in the county in which you reside or your spouse resides. Your attorney will discuss the exceptions to this procedure if you wish to file in a different county.

## STARTING THE PROCEEDINGS

Who should file? There is no legal significance to which person files the Petition (the "Petitioner"), although there may be procedural and tactical advantages to being the Petitioner. Pride is another matter. Talk it over with your spouse and let's avoid a race to the courthouse and further hurt feelings over this small item.

The first step is to file a petition. The petition contains the following information:

1. Date and place of marriage;
2. Residence of the parties;
3. Names and ages of any children of the marriage;
4. Grounds for divorce;
5. Request for a division of property and for child support and alimony (or family support, if applicable);
6. Change of Name: A wife's spouse's former name may be returned as part of the final Decree at no additional charge. We generally suggest that the restoration of the maiden name occur only when there are no children, or to restoring a former married name when there are children of that former marriage. If you want your name changed, you must let us know before we prepare the Petition.

If there are minor children, an Affidavit setting forth the facts regarding their residence and the persons responsible for the custody of the children is attached to the petition. This Affidavit is required by the Uniform Child Custody Jurisdiction Act which has been adopted by the State of Kansas and most other states.

If you are seeking temporary support for your minor children and/or temporary support for yourself, a Motion for Temporary Support will be filed with the petition. It will be accompanied by another affidavit (called a "Domestic Relations Affidavit") containing information about your incomes, the number and ages of your minor children, your monthly expenses and debts and how much support you are requesting to meet those needs.

If the Court finds your request for temporary support reasonable, it will issue a "Temporary Support Order".

If your spouse has already filed, please be sure to bring us a copy of the Petition - especially if it was delivered to you by the sheriff, a process server, or your spouse's attorney.

### SERVING THE PAPERS

There are two ways to notify your spouse officially that you have filed a divorce action:

1. Your spouse may sign a written receipt (called an "Voluntary Entry of Appearance") for a copy of the petition and any other papers filed at the same time. The signing of the receipt acknowledges that the Court has jurisdiction over the parties. It does not mean that your spouse has agreed to any of the requests in the petition or other papers filed. The receipt can be signed in our office or mailed with the necessary papers to your spouse.
2. If your spouse is unwilling to sign a receipt or you don't want to handle it that way, the Sheriff or a Process Server will deliver ("serve") a copy of the Petition (and temporary support order, if any) to your spouse. Your spouse will then have twenty to thirty days in which to respond to (answer or oppose) the petition.

### RESTRAINT ORDERS

If you have reason to fear abuse or harassment from your spouse as a result of filing a Petition for Divorce, a restraining order can be issued by the Court, giving you exclusive possession of your present residence and forbidding your spouse to enter it except to remove personal clothing and effects and restraining each of you from harassing or abusing the other.

The restraining order can be served by the Sheriff or process server along with the petition and temporary support order, or it can be one of the papers delivered to your spouse when the receipt document is signed.

### ONE LAWYER OR TWO?

It is neither practical nor ethical for a lawyer to represent competing interests. In those isolated instances where you or your spouse have agreed on everything, it may be possible for us to do all of the legal drafting.

To make this determination, both spouses must come to the office together and give us the chance for eye-to-eye contact and discussion. Even if it looks like you can agree, we follow the policy of representing only one spouse, and if you and your spouse disagree later, we will continue to represent you unless we have been directed otherwise or legal ethics prohibit our continuing.

## UNCONTESTED DIVORCE

Your divorce will be "contested" unless you and your spouse agree on all aspects of custody, visitation, support, property settlement, and the payment of liabilities, attorney's fees and court costs. If your spouse disputes any of these matters, you have a "contested" divorce. In either case, a trial before the Court is required to finalize the divorce, but it can be a brief hearing in an "uncontested" case or affidavits of the parties can be submitted to the Court in lieu of appearing in person.

## FEES AND COSTS

The Court Clerk charges a filing fee when a divorce case is filed. There are no other "Court costs" collected by the Clerk of the Court.

Our legal fees are based upon the time actually expended on your case, the complexity of the case, the novelty of the issues involved, and several additional factors. No divorce case is like any other, so "standard fees" are really impossible. The exact fee will vary with the services you require.

Our basic divorce service includes the initial conference; the preparation and filing of the Petition (or review of the Petition filed by your spouse); the preparation of an Entry of Appearance (or "receipt") to be signed by your spouse, or arranging for the sheriff or process server to serve your spouse with a copy of the Petition; conferences to obtain information from you concerning your assets, liabilities, income and expenses and to make recommendations about property division and support; routine correspondence and settlement negotiations with your spouse's attorney; preparation or review of Property Settlement and Support Agreement; preparation or review of Divorce Decree; preparation or review of forms required by the Kansas Bureau of Vital Statistics; and representing you at the Court hearing to obtain the divorce decree. The fees for these services in an uncontested divorce generally run between \$1,000.00 and \$5,000.00, depending on the complexity of the case. A contested case (one in which the parties cannot agree on one or more issues) can easily increase the cost by double or more.

Additional fees are charged for additional conferences, extensive negotiation, complicated tax planning and advice (such as spousal maintenance arrangements), and for all other Court appearances.

If a trial is necessary, the Court may order either party to pay some (but usually not all) of the other party's legal fees. As our client, you are responsible for paying our agreed fees and we will give you full credit for any payments made by your spouse.

We require a refundable deposit ("retainer") after the initial conference and full payment by the time of the final hearing. We will discuss our fees with you at this first meeting, and our understanding will be expressed in a written contract which you may terminate at any time.

The degree of cooperation and agreement between you and your spouse regarding matters of child support, visitation, and property division has a direct effect on the amount of time we will have to spend on your case and, thus, the amount of fees charged by our firm.

It is in your best interest to come to a fair and equitable division of property and a reasonable agreement concerning the support, custody and visitation with children.

Emotional "blackmail" or a desire for revenge for past or present transgressions can cloud the issues and almost always results in increased legal fees.

Other factors which may increase the cost of a divorce action where the parties cannot reach an agreement might be:

1. Depositions - A deposition is testimony under oath, taken by a court Reporter in which the attorney (or attorneys) asks questions of a witness or party regarding the issues in the case. This is usually done in the attorney's office. The reporter's services alone may cost from \$100.00 to as high as \$500.00 or more, in addition to the legal fees.
2. Costs for making copies of tax returns, financial statements, medical reports, etc.
3. In some cases, the parties may disagree concerning the proper value to be placed on a business, land or other asset. In such cases, experts may be necessary (appraiser, accountants, business brokers, etc.) to establish the values.
4. In matters relating to child custody disputes, there may be need for psychological evaluations of the parties and/or children. The psychologist's fees can add from \$150 to more than \$1500 to the divorce costs.
5. Alternative Dispute Resolution – when there are disputes regarding custody and/or property, you and your spouse may agree to or be ordered by the Court to attend what is called Alternative Dispute Resolution (mediation, parental coordination, etc.)

## CUSTODY AND VISITATION

Your children, although technically not "parties" to your divorce action, are deeply involved in the changes that a divorce will make in your family. The Court will make whatever orders the Judge finds necessary to protect the children and provide for the children's best interests. The Court's orders will cover such items as child custody, visitation with the children, and the support of the children. "Mediation" conferences with a neutral mediator to see if you and your spouse can work out an agreement about the children may be required by the judge before the final hearing.

Although a divorce ends the legal relationship between you and your spouse as partners in marriage, it does not end the legal relationship that each of you has as a parent to the children. Each of you will continue to have, after the divorce, the same obligations as a parent that you had before the divorce. You will be awarded "joint custody" of your children and the duty of guiding their education and religious training; selecting their doctor and dentist; being responsible for their discipline, etc. Unless the Court decides that joint custody is not in a child's best interest, both parties will continue to be involved in these major decisions.

Whether the court orders "joint" or "sole" custody, one of you will be designated as the "residential" parent with whom the children will live most of the time. The other parent will be awarded "visitation" or "contact" rights with the children. The right of visitation is as much the right of the child as it is the right of the non-residential parent. The purpose of visitation is to permit the child to continue to have contact with both parents to as great an extent as possible. Usually, the Court will order that the non-residential parent have "reasonable visitation" with the children of the marriage, rather than trying to specify a rigid and inflexible schedule of visits which may in the future prove to be unsuitable due to the child's activities, school events, health considerations, vacation plans, and the like.

"Reasonable visitation" requires that the parents cooperate with each other as mature adults to ensure that visitation takes place, that it is for the benefit of the children, and that it is convenient to the schedules of both parents, and the children themselves.

If you and your spouse can agree on the details of visitation, the Court will usually approve the plan you have worked out. A typical pattern is to visit on certain days of the week, alternating weekends, several weeks in the summer, time for birthdays, Christmas and other holidays, plus additional or different times as you may agree upon.

If "reasonable visitation" cannot be arranged between the parents by agreement, either parent may ask the Court for an order specifying visitation times on a more rigid schedule.

## CHILD SUPPORT

Similarly, though parents may be divorced from each other, they remain parents obligated to provide for their child's financial needs. This is a duty which both parents have, and neither parent can "bargain it away" through an agreement with the other parent. It is the child's right to be supported and the Court will protect this right, despite an agreement between the parents that no child support shall be paid.

Kansas Courts have "child support guidelines" from which we can estimate the amount of child support that will be required in a particular divorce.

The factors involved in the determination of the child support include the ages of the children, the number of children to be supported, the non-residential parent's income, the residential parent's income, any special educational or health needs of the children, and similar factors.

Child support is normally payable until the children reach the age of majority (in Kansas, 18 years old or the next June 30 if the child's 18th birthday occurs while the child is still attending high school). The obligation to pay child support may be extended to age 19 under certain circumstances. By agreement between the parties, it may be continued beyond the age of majority to cover such matters as educational expenses in college and the like, but a college expense obligation cannot be imposed by the Court without the agreement of the parties.

The payment of child support, whether temporary child support during the proceedings or permanent child support awarded in the divorce decree, should not be thought of as an equivalent to the purchase of a "ticket" to see the children. The child support obligation is owed to the residential parent and it is one which may be enforced by the Court if payments are not made.

The residential parent does not have the right to deny the visitation simply because the other parent has not been "on time" in making child support payments or may be behind in the child support payments. Denial of access to the children should not be used as a "lever" to enforce a financial obligation which exists between the parents.

## MAINTENANCE (ALIMONY) AND "FAMILY SUPPORT"

Alimony ("other money") was originally based, in the 17<sup>th</sup> and 18<sup>th</sup> centuries, on the fact that a woman was not entitled to receive an education, could not work outside the home, and could not obtain income to support herself following a divorce. Thus, the husband, if he wanted a divorce, was obligated to provide financial support until his wife's death or her remarriage, since she obviously couldn't support herself.

Spousal maintenance is usually awarded today, either a) because the parties agree that a payment of spousal maintenance is appropriate or b) for a limited period of time, in order to enable the recipient of the spousal maintenance payments to complete an education or otherwise become self-supporting. The initial order for spousal maintenance, if imposed by the Court rather than by agreement, cannot last for more than ten years, although extensions can be ordered where justified.

Sometimes a part of the support payments are termed "family support" by agreement, because such payments are taxed differently than child support payments. From and after January 1, 2019, a recipient of maintenance ("alimony") or "family support" no longer pays income tax on such money received as though it were earned income.

We will discuss with you the arrangements that are most advantageous to you.

### PROPERTY DIVISION

The Court will not allow a spouse to "take them to the cleaners." Nor will the Court allow a spouse to "cut them off without a dime." The law requires an "equitable division" of the property, taking all factors into consideration. We will work with you to reach a fair division of your property (regardless of who paid for it, or whose name it is in) which will be expressed in a Settlement Agreement. The Settlement Agreement will include terms relating to support, insurance (health and life), responsibility for taxes, claiming dependents as exemptions on income tax returns, division of property and other matters relating to the dissolution of the marriage.

It is our earnest desire that, with our help, you and your spouse can reach such an agreement. If so, it will be signed by both of you and filed with the Court.

If you cannot agree, the Court will decide how your property shall be divided. If the Court makes the decision, you are bound by it, even if you do not agree with the decision. Therefore, it is generally in your best interest to reach an agreement prior to a divorce hearing. The Court will usually accept the terms of the Property Settlement Agreement reached by the parties.

### PRE-MARITAL AGREEMENTS

In some marriages, the ability of the parties (and the Court) to divide the marital property may be limited by an existing "Pre-marital" agreement (also sometimes called an "ante-nuptial" contract.

If you believe there is a pre-marital agreement which relates to your marriage, please let us know as soon as possible, and bring us a copy of it.

## LIFE AND HEALTH INSURANCE

Each of the spouses has certain rights under applicable Federal laws (COBRA, ERISA, TRA) to a continuation of their right to participate in employer-provided group health insurance plans at their former spouse's place of employment. A notice to the employer that a former spouse wishes to elect continued coverage should be given within 30 days after the decree of divorce is filed with the Court. If you do not have health insurance of your own, you may wish to consider electing to a continuation of your coverage under your spouse's plan.

While life insurance coverage for the benefit of a former spouse is not normally required, one or both of the parties may be required to keep insurance in force to protect the payment of child support, property division or spousal maintenance payments not yet made.

In addition, Kansas child support guidelines provide that the parents of minor children will be required to pay the uninsured costs of medical treatment for their children. It is therefore important that medical insurance for children be maintained whenever it is available.

## HOW LONG DOES IT ALL TAKE?

An "uncontested divorce" (the parties agree on all matters relating to the divorce) can be accomplished in about sixty to eighty days from the date of filing the petition (or even sooner if the Court agrees that there is a genuine emergency which justifies shortening the required 60-day waiting period).

A "contested divorce" (if there is any item, such as property division, support or child custody on which the parties don't agree) can delay the final hearing for many weeks, because more time must be reserved on the Court's calendar for presentation of the evidence.

## FINAL DIVORCE

The parties are forbidden to marry anyone (other than each other) for 30 days after the divorce becomes "final" unless both agree to waive their right to appeal.

If there is no appeal, your divorce will be final the day the Judge signs the Decree. An appealed divorce is not final until the appeal is decided.

## MOVING OUT OF STATE?

Kansas law requires a parent who has been awarded a child's custody to give written notice to the other parent at least 21 days before changing the child's residence to another state or removing the child from Kansas for more than 90 days. The notice must be sent by registered or certified mail, marked "return receipt requested showing address where delivered" and "deliver to addressee only". Failure to give the required notice can result in custody being changed to the other parent and being found in contempt of court.

## RECONCILIATION

Sometimes divorce seems like the only solution. Sometimes it is not. After a divorce action is commenced, you and your spouse may decide to try to work things out and reconcile.

We encourage reconciliation, and if you decide to drop the divorce action you will owe only for those services actually performed up to that time.

## DATING

Don't. You're married. We all know this is not 1890, but your spouse might use it against you and more importantly, if there are minor children, it can confuse them and increase their stress during an already difficult situation for them. Already involved? Can't resist? You're an adult. Make your own decision, but be prepared to face any problems that may arise.

## CONFIDENTIALITY

We must have all the facts to represent you properly. We have a questionnaire for you to complete so we may have some basic information necessary to prepare the initial paperwork. Anything you tell an employee of this office is strictly confidential and will not be disclosed without your permission.

## KEEPING YOU INFORMED

You will receive copies of all documents prepared or received by us. At or shortly after your initial appointment, you will meet our legal assistants, who will be available to assist you if an attorney is unavailable. Any of them can give you information or take messages, but they can't give legal advice. Try to work with them. It will make things easier and will reduce the cost of your divorce.

## OUR PROFESSIONAL SERVICES

Your legal matters will be given our continuing personal attention in an effort to obtain the best results possible for you in the most reasonable time and at a reasonable cost.

## YOUR RESPONSIBILITIES

We expect you to be cooperative and truthful. If you are not, we may decide to terminate our engagement and cease to represent you. We also expect you to handle your financial commitments to our office in a prompt and business-like manner. Please notify us of any change of address or telephone number or if you learn of anything that may affect your case.

## GENERAL SUGGESTIONS

Well-meaning friends and associates will no doubt offer you advice about your case. Frequently such advice is not accurate and you should be discerning in following it. Your marriage, divorce, children and property are unique and they differ from every other family. Divorce proceedings can be very emotional and sometimes brings out the worst in people. It is important to communicate with your attorney and trust their expertise in handling the legal proceedings of a divorce.

The proper handling of a divorce requires more than just "filing the papers." Even at best, a divorce is a painful process. We will be happy to recommend counselors for you or your children to help you cope with the emotional trauma of divorce.

You may also wish to consider financial or investment counseling and estate planning following your divorce. If so, please let us know.