

“I Want a Divorce!”

Seldom do people want to utter these words, but they’ve become frequently spoken and heard in today’s world where 50 percent of marriages fail. There is no use philosophizing over the whys of this reality but to say that divorce is real for many Americans regardless of race, wealth, social circle, and religion. It’s unfortunate that marriage is an easier contract to make than to break, but the best way to a clean and uncomplicated divorce entails reaching certain agreements with your spouse and setting a plan for your family’s legal breakup. And that can also entail leaving the lawyers out and working hard at doing all the negotiating yourself.

Divorce is a state-governed transaction. Every state has different laws regarding how one can get a divorce and what options are available for pursuing divorce. You are bound by your state’s divorce laws and must abide by them for your divorce to be final. By having the right information and the right attitude, you can settle your own divorce without many hassles—and without leaving you bankrupt.

The decision about whether to file for divorce can be a difficult one. Knowing what is involved and how to prepare for your divorce are the subjects of chapters 2 and 3. We start, however, by introducing you to the basic laws that apply to divorce settlements throughout the country. This chapter also lays the necessary groundwork for understanding divorce and minimizing costly mistakes throughout the process. Always remember that the more knowledge you can obtain, the better positioned your family will be to emerge from your divorce quickly and less painfully.

Knowledge Is Power

We will repeat this truth throughout this book: *Knowledge is power!* Repeat this statement out loud to yourself and feel the confidence it gives you. Facing a divorce might make you feel crippled, but do your best to keep things in perspective. Use the information in this book to empower yourself and make good decisions for your future. Keep this statement in the back of your mind as you move through these chapters. It will fuel you with the energy you need to conquer your fears related to ending your marriage, do what you need to get done, and move on.

Fundamentals of Family Law

Family law is almost as old as humans. As soon as people started roaming the earth and intermingling, rules had to emerge to help manage the dynamics of family life. Before formal governments existed, when people lived together in tribes, cultures developed their own customs or adopted rules from their deities. In Western culture, particularly after the Norman Conquest in 1066, the church initially took the responsibility of regulating marriage and divorce. But as the entities of church and state separated over time, civil courts and legislatures began enforcing more control over family law. And eventually, the regulation of family law grew more and more complicated. A woman, for example, cannot divorce her husband today by simply leaving her husband's moccasins outside on the doorstep, as a Pueblo woman could once do.

As with many legal matters, the advancement of our culture has led to more complex rules and more hurdles to clear. Periodic legislative reforms have tried to simplify the rules, but for the most part, we are stuck with a complicated system that we must navigate carefully. Part of the reason divorce is so much harder to execute than marriage is that society would rather support a marriage—the union of two people for the sake of a family—than sanction a divorce. No matter how far we've come in our modernized world that attempts to separate church from state, or moral ethics and values from the law, certain meshes still exist.

Family law is also known as *matrimonial law* or the *law of domestic relations*. *Family law* is a general term that does not just involve separation and divorce but also includes the requirements of marriage and adopting a child. Any relationship shared between a couple, between two parents, or between a parent and child falls under family law. Family law can also extend to refer to the various actions regarding violence between family, friends, or acquaintances.

The actions that come under the body of family law include the following:

- Dissolution of marriage (divorce)
- Legal separation
- Nullity of marriage
- Summary dissolution of marriage (a simpler form of divorce for those who qualify)
- Establishing parentage (also called *paternity*)
- Petition for custody and support of minor children
- Custody and visitation
- Child support
- Spousal support
- Domestic violence restraining orders
- Civil harassment

Because more couples have children outside of wedlock today than a hundred years ago, paternity plays an important role in the family courts today. The issues that revolve around paternity are nearly identical to the issues that revolve around divorce. We'll explore the topic of paternity in chapter 2.

Child Custody Laws

The court's view of children has changed vastly over the past two centuries, flipping between a system that once favored fathers having custody to mothers having custody. Now, the right

Family law covers inherently emotional issues. It deals with marriage, separation, divorce, adoption, and spousal obligations, as well as parental obligations. As society evolves and changes its attitude or values, family law typically reflects those changes. For example, now that more women work outside the home, the courts must take that into consideration when deciding on alimony or who will serve as the primary caretaker of children. A woman is more likely to pay alimony to her husband now than she was 30 years ago. Women are less likely, however, to get sole custody of their children, since the courts view both parents as having an equal right to share custody.

to have custody of children is generally shared unless the specific circumstances of a couple dictate some other arrangement. Children are no longer considered property as they were throughout much of history. In fact, some states prefer to use the phrase *parental responsibility* over *custody*. We'll explore the different types of custody arrangements in chapter 4. There is a difference, for example, between legal and physical custody. Shared *legal* custody—whereby both parents share decision-making responsibilities for the children—is common nowadays, but shared *physical* custody—whereby both parents split their time evenly with the children—is often still impracticable except in the most amicable of situations.

Before the Industrial Revolution, children were essential participants in the family unit as workers on the family farm. When a couple divorced, the father typically got the children so they could continue working on the farm. But once men moved into factory jobs and mothers began to take more responsibility for the daily caring of their children, the legal system began to favor mothers as the primary caretaker. And by the mid-1800s, mothers were typically granted full custody of their children in a divorce. Family law judges used a standard that was known as the *tender years doctrine*. Under this standard, a child of tender years—under the age of eight—was automatically awarded to its mother. The only way to prevent this was to prove that the mother was unfit to raise the child. The *best interests of the child* standard has eliminated the tender years doctrine. Mothers are no longer automatically awarded custody of young children, but some states still make use of the tender years doctrine, without calling it such.

Not until the 1960s, with the civil rights movement and the migration of women from the home to the workplace, did family law experience another shift. States began to view each parent as equally fit for raising the children. States also began to favor shared or joint custody rights. Men have also become more aggressive in asserting their legal rights to custody. There are three times more men who have full custody of their children today than there were 30 years ago. From 1970 to 2003, the proportion of single-mother family groups grew to 26 percent from 12 percent and that of single-father family groups grew to 6 percent from 1 percent.

Courts now assume that mothers and fathers share an equal responsibility for meeting their children's needs, both financially and emotionally. In almost all states, both parents are presumed to have an equal right to custody, as well as an equal responsibility to support their children. Neither parent automatically has a superior legal right to custody. Moreover, one parent may not have to show the other to be unfit in order to obtain custody. If a judge must decide how custody arrangements will work, the court will consider the children's best interests, including the children's relationship with each other and with their parents; the

In many states, such as Colorado, the term *custody* has been replaced with *parental responsibility*.

children's adjustment to home, school, and community; the mental and physical health of all children and their parents; and, in certain circumstances, the wishes of the child or children.

Most Divorces Avoid the Courtroom Battle

When you seek a divorce, you hope to avoid the proverbial divorce court that gets dramatized on television. You will be bound by the family laws of your state and have to comply with the legal system, but you do not necessarily end up in an actual courtroom before a judge, with you on one side and your spouse on the other. (And rarely do divorce cases get decided by a jury.) A divorcing couple who can work out their divorce amicably can usually avoid the costly trip to court. In fact, only about 5 percent of divorces end up in court; 95 percent of divorces happen outside the courtroom. Even in complicated or messy divorces you can find a way to avoid the litigated divorce that will do nothing but cost you more money, anguish, time, and frustration. Couples with children should avoid litigated divorces. This book will show you how to resolve all of your divorce issues, including the most troubling or combative. If you do have to appear in court, it will be brief, and it will not entail arguing over major issues so that a judge can decide what will happen in your future.

What Is Marriage Anyway?

Marriage is more than a romantic gesture. It's more than a union of two people under one roof who share assets, offspring, and a last name. Marriage is a public, legal commitment and not merely a private exchange of sentimental wishes. Marriage is also a legal contract that encompasses a legal, financial, and social relationship. It requires a license from your state, which gets filed in a government office, usually the county clerk's office. Marriage does not entail as many qualifications as divorce. Any adult (defined by each state) can obtain a marriage license with the proper signatures and proof of blood work (if even required by that state), participate in a ceremony with any witness, and be considered married. Reversing this process, however, is not so easy. And the longer you are married, the harder it gets to break that contract. A married person assumes certain responsibilities that often get glossed over during an elaborate service and forgotten during troubled times or when contemplating divorce. Some of those obligations include the following:

- Supporting your spouse financially—through good times and bad
- Giving some—if not all—of your assets to your spouse at your death
- Allowing your spouse a right to certain retirement, pension, Social Security, or other benefits
- Caring for your spouse and making decisions for him or her if he or she cannot, such as when your spouse is on life support
- Assuming responsibility for shared debt
- Sharing all acquired assets and income acquired during the marriage, no matter who is responsible for bringing that income in or acquiring that asset

All the property (assets) that you and your spouse acquire during your marriage is presumed to be *marital property*, regardless of whose name is on the asset. (A common misperception is that you can keep things from your spouse by keeping his or her name off it. This is not true.)

Most states define marriage as a civil contract between a man and a woman to become husband and wife. When a man and a woman marry, their relationship acquires a legal status. According to the United States Supreme Court in an 1888 case, "The relation once formed, the law steps in and holds the parties to various obligations and liabilities." It is because of these obligations and liabilities that divorce can be difficult. The rights and obligations of married persons are not the same as those of single persons. Married people share rights that single people do not have with anyone else. For example, married people may have rights to their partner's property and future income, they may be responsible for each other's debts, and they are subject to different tax rates than single persons. State and federal laws determine the scope of the married person's new rights and duties.

If a marriage produces children, you assume even greater obligations. Beyond the custody, visitation, and support you must figure out in your divorce, you have obligations as a parent that have nothing to do with your divorce. These include providing for your children with food, clothing, shelter, and necessary medical care. Your children must receive a minimal education, typically through high school, in either a private, a public, or a home-school setting. You can choose where you want to live and how you want to raise your children, but the courts will intervene if the choices you make for your children result in jeopardizing their lives or threatening their livelihood. The laws exist to protect both you as a parent with rights and your children with their own set of rights—regardless of a divorce. If one parent is not meeting these legal obligations, the court will see to it that the other spouse gets custody of the children. Parental obligations remain until children reach legal adulthood, which can be 18 in some states and 21 in others.

On a moral note, your job as a parent is to see your children mature into thoughtful, productive adults. Because so many divorces occur during children's maturing years, it's especially important that you tune in to your children's needs and concerns more than anyone else's, including your own. We will touch upon issues related to children throughout this book, and talk about custody and visitation specifically in chapter 4. The important thing to keep in mind is that getting a divorce when you have children is not about making a good decision for yourself—it's about making good decisions for you *and* your children. Divorcing parents who neglect the needs of their children spend a lifetime trying to resolve perpetual problems.

In most people's eyes, marriage is a private bond between two people, but it is also an important social, legal, and as some would say, financial institution. Because of the assumed obligations of marriage, ending a marriage requires terminating these obligations in a manner that is fair for both people involved.

Three states now offer so-called covenant marriages, which are optional forms of marriage that make divorce more difficult to obtain. They are designed to combat the divorce rate. In general, covenant marriage laws lay ground rules that limit reasons for divorce to spousal or child abuse, imprisonment for a felony, and infidelity. And before most divorces can be filed, couples are usually required to seek counseling during a mandatory waiting period that can, in some cases, last up to two years. The states that allow covenant marriages include Arkansas, Arizona, and Louisiana. Twenty-five other states have proposed such laws, and the idea of covenant marriages is gaining popularity across the country.

Despite the divorce reforms of the 1970s that gave us no-fault options, some states have attempted to reverse the process of making divorces easy by taking away the no-fault option and permitting fault divorces only. This makes divorce more difficult, costly, and complicated. The result? Fewer divorces. States have also proposed longer waiting periods for obtaining a divorce in an attempt to prevent divorces. Because the concepts of marriage and divorce have become a much-debated issue at the state (and federal) level in recent years, no one can be certain what will happen in the future. Strategies to save marriages and prevent divorces may not seem like concerns of the government, but until they become private matters managed outside of the law, people are bound by the laws and, unfortunately, the morals and values that are inherently part of those laws. At some point, it may become just as hard to get married as it is to get divorced. But only time and history can make that determination.

Later in this book, we'll give you some information about situations that bring the legality of your marriage into question, such as common-law marriage rules or a case in which one spouse was a noncitizen before the marriage or a couple got married in another country. For now, this book assumes that you are legally married and have chosen to legally divorce. Refer to chapter 7 for a discussion of atypical scenarios. That chapter will also explain how prenuptials and postnuptials work.

What Is Divorce?

Every 13 seconds, a divorce is finalized in the United States. By definition, divorce is a legislatively created and judicially administered process that legally terminates a marriage. Divorce is also known as *dissolution of marriage*. Traditionally, divorce was fault based, meaning one of the spouses had to be at fault for the divorce. One spouse was labeled as innocent or injured and was able to obtain a divorce from the at fault spouse. This system didn't work because so many marriages that fail have nothing to do with one spouse doing something wrong. Not all divorces are the result of adultery, abuse, desertion, or some other concrete reason. Back when the fault system was in place, one spouse had to allege wrongdoing by the other—a very adversarial system that obviously was not flexible enough to include more frequent and realistic reasons for divorce, such as irreconcilable differences, incompatibility, or just an undefined breakdown of the marriage. In the 1970s, the no-fault system emerged. Today, we still have a little more than a dozen states that allow fault divorce, while in the others you have a choice between the two. No-fault divorces typically cost less and cause much less anguish for both parties involved.

In the court's eyes, divorce is the breakup of a partnership, particularly a business partnership. Just like a business's breakup or dissolution, there are assets to be divided, financial details to work out, and items or people to be shared, such as children. No matter how at odds you may be with your spouse, divorce is a deeply emotional and personally challenging transition to make in life. The courts treat divorces as case numbers, and so long as you maintain a positive outlook, a fair perspective, and a good support system (that does not include the courts or a lawyer if you have one), you'll be okay.

The decision to file for a divorce is just the first of many decisions to be made during the process. Common initial questions include these:

- Do I need an attorney? What if things get combative?
- Do I need to be separated before I get divorced?

- How long will it take?
- Should I worry about the fate of my children?

These are all good, relevant questions. By the end of this chapter, you'll have their answers.

Do I Need an Attorney?

For uncontested divorces, you typically do not need an attorney. If you and your spouse can come to an agreement about your divorce and the decisions you need to make about your assets, debts, children (if any), and continued family support (spousal and child's), you may not need the involvement of lawyers. You will, however, need to complete legal documents that set out the terms of your divorce and become accepted by the courts. Some courts offer help in filling out the proper forms and knowing how to complete the documents that your particular court wants. Most are straightforward and self-explanatory, but we'll give you tips for getting through the documents carefully. We'll also provide you with some sample documents from various states so you can see what they look like. It's not rocket science—but you do need to get your paperwork done right and know exactly what you should ask for in your divorce. It can be hard to make major changes or fix something in your final divorce decree if you forgot to ask about an entitlement you may have had before the judgment was rendered. Later chapters in this book will explore all that you may or may not be entitled to have at your divorce, which will help you understand your local family court's procedures and your rights.

If you think you need help filling out and completing your paperwork, you can always visit a We The People store (see appendix B for a list of stores across the country). We can also help you navigate the particulars of your local family court. Remember that the court's job is to review your documents and suggest the proper adjustments for finalizing your divorce. The courts—not attorneys—are responsible for certifying your divorce.

Divorce is a universal experience today: One divorce is finalized every 13 seconds, 75 percent of divorced people remarry within five years, and 60 percent of second marriages don't last.

What Do You Mean by "Uncontested"?

Lots of people think that *uncontested* means simply that both parties want a divorce. That's not what the word *uncontested* means. In fact, a divorce is uncontested only if both parties agree to the divorce *and* all the issues involved in a divorce, such as who gets custody of any children, whether and how any spousal support will be paid, who buys whom out of the house, what will happen to the marital debts and assets, and so on. If you agree to get divorced but you and your spouse are still fighting over the kids or the house, it's not an uncontested divorce—it's a contested divorce. Contested divorces don't always reach the courtroom in a drawn-out legal battle. You can take your contested issues through mediation and arrive at an agreement that turns your contested divorce into an uncontested one. Generally, if you and your spouse have an uncontested divorce, you can proceed without an attorney. But you do need to educate yourself about your rights and understand what you may be entitled to in a divorce. That's why you need this book, as it will give you the information you should know so you can proceed confidently. And if you do decide to hire an attorney to help, you'll have a head start and know how to maximize the use of your attorney.

Between your efforts and any outside help you get, such as that of a mediator (to work out tough issues) and a legal document preparer, you can do this yourself and avoid the high cost of attorneys, who tend to complicate matters.

Resolving the issues of your children, your money, and your assets may require the help of a neutral third party, such as a mediator, but that does not always entail attorneys and/or a judge. It may require a little more time and effort to work out difficult issues, but once you do, what remains is simply asking the court to grant you a divorce. This all happens with paperwork, so you may never need to actually appear in court. Many courts now make it relatively easy for people to handle the whole process without a lawyer. The

more you can cooperate with your spouse, the quicker you can reach an agreement and get your divorce finalized.

Despite what most people think, lawyers do not always make processes easier or quicker. Lawyers—particularly divorce lawyers—may make your situation worse. Remember: Lawyers are trained to argue, and they make a living by fighting for what *they* think is best. In other words, they have built-in financial incentives to make cases difficult, long, time consuming, and combative. It's nearly impossible to have one lawyer play a neutral role for both spouses' interests. Even amicable divorces with attorneys involve each spouse having his or her own attorney. But because each attorney fights for one spouse's best interests, clashes can emerge that never would have had the couple avoided attorneys entirely.

Once lawyers are in the equation, there's no telling where your divorce case will go. You may find it harder to control your divorce and you may also find that the extra cost, frustration, and mounting arguments are not worth it.

Some circumstances command that you seek an attorney. Examples of such circumstances are the following:

- You have very large assets to divide.
- You have a very large estate (a total of what you own and owe).
- Your spouse has an attorney (you had planned on representing yourself, but you find that your spouse has hired a savvy attorney who is ready to fight for everything you stand to lose, such as assets, custody of your children, and necessary alimony).
- There is a real problem with abuse (spousal, child, sexual, or substance). A lawyer can help you arrange for your protection, as well as protection for your children, if any.
- Your spouse is extremely uncooperative or is behaving dishonestly or vindictively.
- You believe your spouse may be hiding substantial assets that you may be entitled to.

When you take the uncontested route to divorce, you forgo *discovery*, or the process whereby the court requires both parties to disclose all of their assets to one another. You

Family law attorneys come with a price. Hourly rates vary. An experienced family attorney can charge \$150 an hour or more than \$300 an hour. Costs can skyrocket out of control—along with your emotions—and before you know it, your divorce costs you more than you can afford and you owe tens of thousands of dollars once it's over. The average cost of a divorce today is \$15,000 in legal fees alone *for each spouse* (or \$30,000 total). Divorce is second only to the death of a spouse on the psychic pain meter, according to the experts who rate such things, and has been known to trigger panic attacks and major depressive episodes.

cannot ask for a share in something that you didn't know existed. (However, we'll see that uncontested divorces routinely involve so-called disclosure statements, which are documents exchanged between both parties that list all assets and debts.)

You may have the best intentions of representing yourself in your divorce, but should your spouse be so unwilling to cooperate with you that he or she hires a lawyer, you need to seek an attorney who can fight for your best interests. This is especially true if you have children or are facing complicated financial issues. It is your legal right to ask the judge for an adjournment (a postponement) so you, too, can look for an attorney. If you cannot afford a lawyer, call your local legal aid office. If you qualify financially, a lawyer will, at a minimum, discuss the legal aspects of your case with you and may continue to answer questions on an ongoing basis during your proceedings. If the legal aid attorney's caseload permits, he or she may take your case, usually at little or no cost. You can also inquire about a pro bono program, which is a program run by your local county bar association that has a list of private attorneys who are willing to take on cases recommended by legal aid. These services are also available at little or no cost. If you don't qualify for legal services or pro bono help, ask friends and family members for referrals to trustworthy and reliable attorneys.

Always keep your children in mind, because attorneys can indirectly make the impact of the divorce harder on them. Your children may need their own attorney to represent their interests, and as the arguments among vying attorneys commence, the ones who suffer most are the children. Children are profoundly affected by divorce, both in self-esteem and in their sense of safety and comfort. Adding bitterness and strangers (that is, attorneys) to an already bad situation has no benefits. It does lasting damage. You must also think about your post-divorce life and how your children will continue to be part of both your and your spouse's lives forever—no matter how much you dislike your spouse. The more chaotic and unpleasant you make your divorce, the harder it will be for your family to move beyond the divorce and feel confident about the future. After all, wouldn't *you* rather negotiate over such vital matters as how your children will be raised, what happens to the family home, and how your property will be divided than let attorneys do the haggling for you? You know your interests better than anybody, and chances are, you know your spouse's interests, too.

Lawyers do not make divorce any easier or quicker. To the contrary, attorneys can create more problems than they help resolve. The more people you have participating in your divorce, the longer it will take, and the more money you will spend. The risk of a messy, angry, and emotional divorce is greater once lawyers enter the scene.

Divorcing couples sometimes lose sight of how the divorce will affect the entire family for a long time. The emotions generated by divorce can boil out of control during the acute phase of the divorce, which ultimately creates many scars that remain—and remain more so with children. So even though the divorce may be over for the parent and that parent may move on in life, the impact of the divorce on the children may not dissipate so quickly. This is why it's in your best interests to work hard at having a cooperative and lawyer-free divorce. We know that divorce is an emotional journey that may bring you more bad days than good days, but you'll get through it eventually and regain your sense of well-being. If you stay calm and cooperative throughout your divorce, you'll remain in control of it and not become subject to court rulings against your wishes.

What You Need to Figure Out

Unlike when you got married, you have to figure out several things before you can divorce. In our stores, we tell customers they have three items—A, D, K—to work out: assets, debts, and kids. Marriage does not require a commitment to have children, a decision about future marital assets, or a formula for dealing with future marital debt. Divorce, however, requires that you set plans for and make decisions about the following:

- How you will divide marital property (the property you acquired while you were married) as well as debt (what you jointly owe). As with marital assets, marital debt generally includes all debt acquired during the marriage, regardless of whose name is on the debt.
- Whether or not one spouse will pay alimony (or *maintenance*) to the other, and if so, how much and for how long.
- How your children, if any, will be shared, including financial and caring responsibilities.

These may seem like easy decisions to make, but once the conversation gets going, you may find yourself at odds with your spouse, and before long you cannot come to any agreement. Having a difficult time resolving these issues, however, does not mean you will land in court and have an all-out battle with lawyers and a judge. With a little more time, patience, and perhaps some mediation (which we'll discuss), you can figure it out for the best of all parties involved—including the children.

Types of Divorce

There is only one way down the aisle, but there many avenues to divorce. The goal of this book is to guide couples through divorces that minimize the role of the courts and lawyers. Even a messy divorce can avoid the drama of a court scene. Consider it the option of last resort. The following are your choices when it comes to divorce:

- *In agreement (uncontested)*: If you and your spouse can come to terms with the important decisions and draw up an agreement, you can file a no-fault divorce and proceed quickly. You can even hire a legal document preparer to help you complete your paperwork professionally. This is the best way to get a divorce. It's the *healthiest* way to get a divorce, saving you pain and anguish.
- *Not in agreement (contested)*: If you and your spouse are having difficulties reaching an agreement on the major issues, there are other options to consider before going in front of a judge. Mediation is the best and most popular option, which we'll discuss in chapter 3. Even though you may have disagreements at the start of your divorce, this does not mean you cannot ultimately have an uncontested divorce. Once you work through your differences, you can arrive at an agreement and proceed as if it were uncontested.
- *Go to court before a judge*: If the court must step in and make decisions for you and your spouse because you cannot reach an agreement, you will lose control. Courts do not like to make decisions for warring couples, especially when it comes to parents fighting over their children. A court will strongly encourage parents to make decisions for their kids and even go as far as sending the parents to more mediation programs before ruling. If you cannot reach an agreement through cooperation, mediation, and

even the use of attorneys, you will have to go to court and have a family law judge make decisions for you and your family. Television and movies may make divorce court look straightforward and painless, but it's not. It can be the most heart-wrenching, expensive, and time-consuming process to endure. Children are particularly vulnerable.

In most cases, complicated and disputed divorces do not have to reach the courts. But there are situations that are characterized by a combination of the aforementioned scenarios. You and your spouse may experience a combination of agreeing on most issues, contesting some, and needing a judge to have the final say in a few important matters.

Cooperative Divorce Law with Attorneys (or Collaborative Divorce)

Another type of divorce that is gaining popularity is called the *collaborative divorce*. This type of divorce seems too good to be true because it counters most attorneys' natural instincts. In a collaborative divorce, the attorneys for both spouses agree to assist the couple in resolving conflicts or legal issues (as opposed to arguing and disagreeing with one another). Whereas the classic divorce lawyers reflect an adversarial process, collaborative divorce lawyers reflect a supportive process that is mutually beneficial.

The collaborative process started in the Twin Cities area of Minnesota in 1990 with a group of four family law attorneys. The goal is to arrive at a divorce using cooperative strategies rather than adversarial techniques and court proceedings. Since its inception, this type of divorce has spread throughout the United States and Canada. It requires, however, that both attorneys be trained in collaborative law, which is a relatively new field. Because collaborative law still involves attorneys representing the interests of their respective clients, it's not the same as mediation, which entails a neutral third party who does not take sides.

Under the collaborative law process, both spouses attend informal discussions and conferences with their attorneys. Hostility is kept out of the room and instead an atmosphere of honesty, cooperation, integrity, and professionalism is (supposed to be) present. Both spouses must provide all important and relevant documents, as well as any information related to the issues in question. If experts are needed, both parties agree to the experts. Couples work together and reach a shared resolution that keeps the future well-being of the family the number one priority.

Using a team approach has its advantages. Collaborative divorce law is less time consuming and adversarial, and more cost-effective than the alternate divorce lawyer route. This process limits the fear of going to court and encourages a win-win situation for both spouses. The attorneys involved also share the payment, so there is no disparity, especially if one spouse has fewer funds than the other.

If the collaborative process fails and a settlement cannot be reached, the collaborative lawyers withdraw from the case and both parties must retain trial attorneys to pursue the matter in court. This also means that the divorce process must start all over again.

Is Collaborative Law Right for Us? Not every case can employ the collaborative divorce process. First, you must find two attorneys who specialize in this kind of law and are willing to take on your case. If you live in California, Minnesota, Ohio, Oregon, or Texas, you may find it easier to locate such an attorney. But if you live elsewhere, your options may be limited. Second, if the process reaches an impasse, you and your spouse will be back at square one and you risk your divorce landing in court, where you may experience nasty litigation.

For the majority of divorcing couples, collaborative law is not a good option if you can work your issues out without any lawyers and extra expenses (because collaborative law is not free). Both collaborative law and choosing to go about settling your divorce on your own require a strong commitment on both sides to be honest and open in exchanging information. If you live where collaborative law is available, you may want to reserve this as an option for if and when you cannot come to an agreement with your spouse, you've tried mediation, and you think it's best that each of you hires an attorney. Any option that further prevents you from divorce litigation in court is a good idea.

Mediation

Not all couples can reach an agreement without outside help. Mediation is a process by which you work with a neutral third party to settle major issues and prepare your divorce agreement. This process is voluntary and nonbinding. Depending on how you look at mediation, it can make your divorce process quicker or longer. The more you need to resort to mediation, the longer it will take to reach an agreement; however, mediation is designed to help couples avoid pursuing legal battles with expensive attorneys and lengthy court proceedings. Mediation is an excellent way to resolve your contested issues.

The difference between the cost of an attorney-represented divorce and a mediated divorce can be staggering. An ordinary divorce agreement that might drag on for months and cost each spouse at least \$15,000 (in legal costs alone) can sometimes be worked out with a mediator in three sessions, often for as little as \$750. Unlike attorneys, however, mediators do not make the decisions for you. Moreover, just as every situation is different, every mediator has a different approach to mediation. It is the mediator's responsibility to structure the sessions so that you can successfully negotiate a divorce agreement with your spouse. A good mediator will encourage you to put the past behind you and focus on the facts at the present moment.

Mediation will be discussed in chapter 3.

A Glance at the Process

The exact process you'll experience in your divorce will depend on two things: (1) what kind of divorce you have (uncontested, contested, or litigated in court) and (2) how your state deals with divorce laws. For most couples who aim to avoid a litigated divorce and reach an agreement together in a no-fault and uncontested case, the following sequence of events is typical:

- One or both of you *decide to separate and/or divorce*.
- *Check with residency and separation laws* in your state and local jurisdiction.
- *Go to your local court* that handles divorces (see links to courthouses in appendix A or go to www.wethepeopleforms.com for those links) and *request all the forms* you need to start your divorce proceeding. *Inquire about additional forms and/or documents* you must provide.
- You (petitioner) *fill out the paperwork* and the *divorce petition*, also called a *complaint* in some states. Note: A petition is not necessarily just one piece of paper. When you file, most likely you will have to file a set of papers together with your petition. The court will provide all of this paperwork for you to fill out. Ask how many copies to provide, one set of which must go to your spouse.

- *File the first set of papers* (including your petition) and pay the related *filing fee* to the court (again, refer to your local court's rules to meet specific requirements).
- After you file the papers, your spouse needs to get copies of all the papers. You *serve the other spouse* copies of the paperwork with a deadline to respond—usually 20 to 60 days. Or if the divorce is amicable and mutually understood, the other spouse can *sign a waiver of service* and avoid getting formally served. (See chapter 5 for details on serving spouses.)
- You and your spouse work together to *structure a divorce agreement*, or *marital settlement agreement*, that covers all the major and minor issues (example: money, children, assets, and debts).
- If the spouse (respondent) who was served the divorce papers does not respond formally through the court within a set time period, he or she is said to *be in default* (this will go forward as an uncontested matter), which allows the divorce to move toward the judgment phase.
- The filing spouse files a form declaring the other spouse to be in default and then files other final paperwork required by the court.
- A judge signs your papers, *granting your divorce*.
- *Divorce is final*. Copies of the divorce papers are delivered to both parties from the court.

Before the family judge certifies your divorce, a final hearing may or may not be scheduled, and depending on your particular state, the spouse who originally filed may have to make a brief appearance in court. As mentioned, each state has its own specific way of granting divorces. In addition to your state's specific laws and guidelines, your divorce is also subject to many other variables, such as local norms and customs, as well as the cultural, economic, and social values practiced by a particular family law judge. Family law judges may exercise a wide spectrum of power—from signing off on your marital agreement quickly to rearranging your spousal or child support figures and visitation rights. The laws and guidelines that govern divorce are flexible, so while you are hammering out your issues with your spouse and attempting to arrive at a fair and balanced agreement, don't forget that your decisions will ultimately be reviewed by a judge.

The exact paperwork, additional documents, time frames, and sequence of events will differ from state to state. In Maryland, for example, to receive an *absolute* divorce (which means that the divorce is permanent, permits remarriage, and terminates property claims), a hearing is set for even default cases. At this hearing, which both parties must attend, a corroborative witness must testify to the facts of the case, including how long the couple has been separated.

If the spouse who is served the papers does, in fact, respond to the court, the divorce is said to be contested. He or she is contesting the terms of the divorce initially filed with the court, which may include property, child custody, child support, alimony, and assumption of marital debts. But this can also mean that the spouse who responds simply wants to have a voice in the divorce proceeding, and he or she chooses to respond for purposes of placing his or her name in the case. When a spouse contests a divorce, it can go forward only by agreement (between the spouses) or by doing legal battle in court. Agreements can be reached in one of four ways: (1) between the husband and wife, (2) between the husband and wife with the help of a mediator, (3) between the husband and wife with attorney representation, and (4) by going to court with or without attorneys. If you end up in court, the judge will make

You can find a lot about how the family courts in your state deal with divorce, separation, paternity, and annulments by accessing their web sites. You may also be able to download forms and start your divorce proceeding right away. We've compiled a list of links that will take you to these web sites, and you'll find them on our site at www.wethepeopleforms.com, as well as in chapter 5 and in appendix A.

decisions *for you* (hence, the incentive to make decisions before you battle it out in court). As we said, this is a rare occurrence.

Remember: These events describe a *default* divorce, which is possible only in uncontested and no-fault divorces.

Of course, there are many situations that do not relate to default divorces. For example, what if one spouse wants a divorce but the other doesn't? What if one spouse has committed a heinous act and refuses to cooperate from the beginning? What if you cannot locate your spouse because he or she has left you? What if you don't even know if your original marriage was legal? These are unusual situations (some of which do qualify as default divorces), which we'll discuss in chapter 7. We will also go into the details of litigating a divorce in chapter 5.

Can We Make This Quick and Easy?

To answer this question, you have to ask yourself how fast you can settle your assets, debts, and kids with your spouse (in other words, only you can answer this question). The quicker you and

your spouse can come to an agreement on the major issues, the sooner you will be divorced. However, you may have to comply with state laws regarding residency and separation. If you use mediation, or come to rely on attorneys and court proceedings, your divorce takes longer and longer to settle.

Even though you may have an uncontested divorce, the spouse who gets served with divorce papers may want to file a response to the court just so he or she has a voice in the case. In fact, this is a wise decision to make, as it shows the court that the responding spouse is playing an active part in the divorce proceeding and wants to be kept in the case.

Residency Requirements

All states require that one spouse be a resident of the state before filing for a divorce in that state. (Only one spouse has to qualify.) Only three states—Alaska, South Dakota, and Washington—have no statutory requirement for resident status.

If you and your spouse are living apart and in different states, you may want to file first so you know that your case will

be handled close to you. This reduces traveling expenses and ensures that all divorce-related proceedings, which include future dealings beyond your official divorce, are handled in your local court. All states recognize a divorce, whether or not the divorce took place in one particular state.

When you file for divorce, you are filing a civil lawsuit against your spouse. The filing spouse automatically becomes the plaintiff (or petitioner) and the other spouse becomes the defendant (or respondent). If you are the plaintiff, you pay the initial court costs, and if your case ends up in court, your side goes first. This may not seem fair if you and your spouse are agreeing on your divorce, so what you can do is have each of you pay your own legal and court costs, and include the division of these expenses in your divorce agreement (or marital settlement). A provision in the agreement can allow for reimbursements so all costs are shared.

Residency Requirements by State

Alabama	6 months*	Montana	90 days
Alaska	No statutory provision	Nebraska	12 months
Arizona	90 days	Nevada	6 weeks
Arkansas	60 days	New Hampshire	12 months
California	6 months	New Jersey	12 months [‡]
Colorado	90 days	New Mexico	6 months
Connecticut	12 months	New York	12 months
Delaware	6 months	North Carolina	6 months
District of Columbia	6 months	North Dakota	6 months
Florida	6 months	Ohio	6 months
Georgia	6 months	Oklahoma	6 months
Hawaii	6 months	Oregon	6 months
Idaho	6 weeks	Pennsylvania	6 months
Illinois	90 days	Rhode Island	12 months
Indiana	6 months	South Carolina	12 months [§]
Iowa	12 months	South Dakota	No statutory provision
Kansas	60 days	Tennessee	6 months
Kentucky	6 months	Texas	6 months
Louisiana	6 months	Utah	90 days
Maine	6 months	Vermont	6 months
Maryland	12 months	Virginia	6 months
Massachusetts	12 months [†]	Washington	No statutory provision
Michigan	6 months	West Virginia	12 months [¶]
Minnesota	6 months	Wisconsin	6 months
Mississippi	6 months	Wyoming	60 days
Missouri	90 days		

*The months can also be translated to days. In other words, "6 months" can also mean "180 days," and you may be restricted to waiting out the length of time in actual days—not months.

†There is no residency requirement if the grounds for divorce happened inside the state of Massachusetts. If it happened outside the state, you must wait one year.

‡Required for all grounds but adultery.

§If both spouses are residents of South Carolina, the residency requirement is reduced to 3 months.

¶If the marriage occurred in West Virginia, there is no residency requirement as long as one spouse is a state resident. If the marriage took place in another state, one spouse must have lived in West Virginia for a year before filing.

If your spouse lives and files for divorce in another state, any decisions made by that court regarding the division of assets, alimony, custody, and child support, however, may not be valid unless you consent to that court's authority (you agree to abide by that court's jurisdiction). You consent by appearing at a court date or signing an affidavit of service (a formal document), which acknowledges receipt of the filed legal documents. You may also automatically consent by abiding by the ruling of the court, such as paying for court-ordered child support. This does not mean you should disobey a court order because you don't want to give consent (or you disagree with the order). If a court has the authority to rule, you have to obey

court orders. You can waive objections to jurisdiction (for example, by signing off), but there is no guarantee that a court will refuse authority just because you'd prefer to be in your own home state.

Although different courts in different states will vary on this situation, the general rule is that a court can grant a divorce but not deal with the issues of assets and debts if it has no authority over that person. If the parent in the state where the divorce is filed physically has the children residing with him or her, the court in some states will usually deal with custody issues and possibly support.

If you receive documents from a foreign country, you should consult an attorney to advise you of whether your state court or the foreign court governs the issues. This depends on many factors, such as which particular country is involved, where the two people lived and for how long, and, of course, whether children are involved.

Your particular county may also set residency requirements that allow couples to file for divorce only when one has lived in that particular county for a specific period of time. For example, to file for divorce in Los Angeles, one spouse has to have lived in Los Angeles County for at least three months before filing for divorce. So even though you lived in San Francisco for years, if you try to file for divorce in Los Angeles, you will have to wait three months. If you have moved to California recently, you must wait six months, and when you do file, you must do so in a county where you have lived for a certain period of time (depending on that county's requirements).

Where you got married has nothing to do with where you can file for divorce. You do not need to file for divorce in the state where you got married.

Separation Requirements

Some states impose a separation requirement, which means you must be separated from your spouse (not living together) for a definite period of time. This is especially true in no-fault divorces. The exact time period varies from state to state, from as little as three months to as long as three years (technically, however, you could establish residency in another state with a lower separation requirement to obtain a quicker divorce). The purpose of separation requirements is to ensure that divorce is necessary. It can allow for a cooling-off period before an actual divorce, or it can allow for a much-needed time-out that prepares the couple to reconcile and rebuild a stronger marriage. The requirements intend to help promote reconciliation between spouses and prevent hasty divorces.

In chapter 2, we'll define the different kinds of separation that are possible alongside the various grounds for divorce. There are formal and informal ways to go about separating. In some states, the date you and your spouse decide you don't want to be husband and wife

According to the United Nations, there are 8.2 legal marriages performed and registered in the United States per 1,000 population in any given year. And there are 4.19 final divorce decrees granted under civil law per 1,000 population. The country of Chile boasts the lowest divorce rate (0.42 per 1,000), but divorce was legalized only in November of 2004. The country of Mauritius claims to have the highest marriage rate (9.2 per 1,000) and a surprisingly low divorce rate (1.00 per 1,000).

**TIME
OUT!**

I Don't Understand What You Mean By . . .

Plaintiff The person (the spouse) who initially files the divorce papers with the court. Also called the *petitioner*.

Defendant The person (the spouse) who is served divorce papers once the other spouse has filed. Also called the *respondent*.

Divorce petition Your formal request to the court for a divorce. In your petition, which is also called a *complaint*, you establish the facts, present the issues of your divorce, and indicate what, if anything, you ask the court to order from your spouse, such as spousal support, child support, or custody of your children. This is one of the first papers you'll file to begin your case.

Answer The formal response to the court once divorce papers have been served. In contested divorces, the spouse who is served divorce papers must respond to the court within a set time period, usually 20 to 60 days.

Property Everything you own, both real (such as a home) and personal (such as your car). Also called *assets*. Assets you acquire during your marriage are called *marital assets*.

Debt Something owed, an obligation to pay.

Alimony Payment of support (not child support) from one spouse to another so that the spouse receiving the payment can maintain the lifestyle that he or she was accustomed to during the marriage. Also called *spousal support* or *maintenance*.

Custody The legal right and responsibility awarded by the court for the care of a child.

anymore is the day you become separated, even if one spouse does not move out of the house. Should you decide to separate legally, which is a possibility in some states, you may have to file a petition with the court and work out details very similar to getting a divorce. See chapter 2 for a full explanation of the separation procedure.

Property Laws and Your Divorce

Besides the divorce laws of your states, how your state views property will affect your divorce, particularly in how your assets get divided.

If you live in a community-property state, marital assets should be divided evenly between you and your spouse. Community-property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. (In Alaska, you can now sign an agreement that

If you've been married a very short time, have acquired little or no assets and debts, and have no young children, you may be able to get a simpler divorce in your state. Many states offer a shortened (or accelerated) divorce process for such couples. Ask your court if any such rules can apply to your situation.

A Statistical Look at Divorce*

Median age of divorce: Men: 35.6 Women: 33.2

Combined age of the world's oldest couple to get a divorce: 188

Median duration of a marriage: 7.2 years

Largest divorce settlement in United States: \$43 million (awarded in 1998)

Percentage of first marriages that end in divorce: 50

Percentage of remarriages that end in divorce: 60

Percentage of women who are stalked by a current or former spouse, cohabitating partner, or date at some time in their life: 5

Percentage of men who are stalked by a current or former spouse, cohabitating partner, or date at some time in their life: 0.6

Estimated average cost of divorce: \$15,000

Estimated average length of divorce proceedings: 1 year

*Sources: National Center for Health Statistics; *Guinness Book of World Records*

designates some or all of your property as community property.) In Mississippi, the lone title state, you keep only the property that is in your name, and the court divides the rest. In the remaining states, you divide the property according to what's "fair." Couples must figure out how to evenly divide their property, and if they cannot come to an agreement, a judge will decide how to split up the assets in a fair manner.

Remember: State laws set the framework for your divorce, but they are always open to interpretation. About 95 percent of divorces are settled out of court, which leaves plenty of room for negotiation. Just because you live in a community-property state does not necessarily mean that you are limited in your negotiations. As we'll see in upcoming chapters, the entire process of divorce is about agreeing, negotiating, and making certain concessions—and maybe a few sacrifices.

Community property is a form of asset ownership between a husband and wife. Under this form of ownership, all assets acquired prior to marriage and assets that one spouse receives either by gift or inheritance during the marriage are separate property. All other assets acquired during the marriage are community property. Each spouse owns one-half interest in the assets. Example: A married couple buys a home together; the husband is the breadwinner and pays the mortgage, while the woman is a stay-at-home mom. If they live in a community-property state, the wife still owns one-half of that home—regardless of her husband's responsibility for paying the bills. The community-property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Alaska has an optional community-property system.

JAMES'S STORY

Divorce was never on my life's list of things to do. The decision to get a divorce was hard, but neither one of us was happy in the marriage. We got married too young and had been going in different directions for years. I think the hardest part of the process was telling people—our families, especially. No one expected us to ever divorce. But it was time for us to pursue separate lives.

My wife and I kept our divorce secret until we had it all worked out. We were both incredibly worried about the financial burdens related to divorce because we had accumulated tons of debt from graduate school and couldn't afford to spend a lot of money on lawyers. The house and our four-year-old daughter were our biggest concerns. We sat down and talked about how to proceed in the divorce as cheaply and in as uncomplicated a way as possible. It was one of the hardest things we've ever had to do, but we needed a game plan. We needed to know what kind of decisions we had to make, how to make them, and how to fill out all the paperwork that the courts would accept. I had a friend who had gotten divorced the previous year, and it ruined him financially. He ended up moving out of state and changing careers just to make ends meet. I didn't want that to happen to us. I wanted to save our friendship, our daughter from unnecessary pain, and our checkbooks.

We hit a lot of roadblocks, and at one point we didn't know if we'd be able to get through the divorce without hiring attorneys. Once I learned how to navigate through the paperwork and get to know my local family law court, I began to feel a bit better about the whole process. Then we found a mediator to help us sort through the tough issues (like dealing with those debts and dividing assets), and we eventually came to an agreement. There were days, however, when I was not in the mood to deal with it all. But I must admit, being in charge of our own divorce had an overwhelming sense of relief to it. We signed a Marital Settlement Agreement and a Parenting Plan, in which we set forth exactly how we'd divide our assets and share custody of our daughter.

About seven months after we filed, we were divorced. I had moved out and got my own apartment, not too far away. I intend to be as much of a parent in my daughter's life as I was when married. We are much happier now. I learned a lot about myself—and my ex-wife—as we went through the motions of a divorce. And in retrospect, I think that if we had given up and hired our own attorneys, we would not have come out of the divorce feeling as confident about our futures.

Conclusion

The preceding sample story could be similar to your own experience, but we don't want to sugar-coat it. Divorce is not a pleasant transaction in life, but if you stop and think rationally, compassionately, and methodically through your divorce, you and your family will be better off. You will have good days and bad days. You will feel like negotiating one day, but not the next. Divorce is an emotional roller coaster. It's okay to feel overwhelmed, frustrated, depressed, anxious, angry, sad, ashamed, and stressed. Just about every emotion possible will move through you at some point.

Making a sworn enemy of your spouse and approaching your divorce in an angry and vengeful manner will do no good and perhaps cause a lot of unintended harm. Studies are just emerging that clearly demonstrate how damaging an acrimonious and brutish divorce can be on a family. Spouses who fight constantly before divorce, through divorce, and even after divorce do lasting damage to their children that impacts their children's lives forever and influences the choices they make in their futures—long into adulthood.

In reality, the era of the nasty split and the bitter divorce may be over. The divorce rate peaked in the 1970s and 1980s, and leveled off in the 1990s. Some gen Xers today can recall the restraining orders, midnight screaming matches, and public displays of malice at graduations, birthdays, and celebrations that marred their childhoods. They know what they spare their own children by getting divorced in as friendly a manner as possible.

Because divorce has become a lifestyle for 50 percent of families, society has embraced a new way to view divorce and its inner workings among blended families. The law has also made some adjustments by allowing alternatives to formal litigation. Courts want to see the stability and healthy environment of the family survive divorce, which may explain why jurisdictions in 40 states require new divorces to undergo a four-hour education course on coparenting.

It's not uncommon now to find families—ex-spouses and new spouses and/or girlfriends/boyfriends—getting together over the holidays or on important days throughout the year for the sake of the children. And with mediation now available or required in 37 states, more couples than ever are splitting up without much rancor. Such displays of gallantry were rare before 1969, when California governor Ronald Reagan signed the nation's first law permitting no-fault divorce. No-fault divorce prevents couples from having to declare war and has since become the norm rather than the exception.