



Northwest Justice Project

Ending Your Marriage in Washington without Children: The Basics

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, September 2007.

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Ending Your Marriage in Washington without Children: The Basics

Introduction

The legal information in this publication is designed to help you learn about the laws that apply when you want to end your marriage (known as a “marital dissolution” or “dissolution of marriage”) in Washington and you have no children. It will give you an overview of the law and help you decide what type of case you need to file in court.¹ This publication is intended for persons who want to file a dissolution of marriage (petitioner) or persons who have been served with dissolution of marriage papers (respondent).

In addition to this publication, you may want to use one of our do-it-yourself packets that have forms and instructions for filing or responding to a Petition for Dissolution. You may also want to check with your County Court Clerk or Family Law Facilitator (if your county has a facilitator) to see if your county has the packet you want: local packets may be easier to use because they include required local forms and procedures. For a complete listing of our family law packets, visit our web site at www.washingtonlawhelp.org or if you are a low-income individual, call the CLEAR hotline at 1-888-201-1014.

If at all possible, you should meet with an attorney who specializes in family law before you file anything in court. **If either you or your spouse has a lot of money or property, or you have been married a long time or your spouse is going to disagree with any part of what you are requesting, you should talk with an attorney before using our do-it-yourself publications.** You may have rights, such as the right to a share of your spouse’s pension or other property that you could lose if you do not present them properly in your dissolution case. **Even if you cannot afford to hire an attorney to file your case, you should talk at least once with an attorney to get advice about your situation.** If your income is very low, and you do not live in King County, you may call CLEAR.

Section 1. Should I file a Divorce or a Separation?

What is a Marital Dissolution?

A marital dissolution is another word for divorce – it is a court action that you may file to end your marriage. In Washington, we use the word *marital dissolution* instead of “divorce.” You may file a marital dissolution only if you are married. In most situations, if you are legally married according to the laws of the state or country in which you were married, your marriage will be recognized as

¹ In this packet, you will see footnotes, like this one. These footnotes will tell you the law or court case that supports the statement that comes before the footnote. RCW stands for [Revised Code of Washington](#), which is the law of Washington State. Court cases have names, such as *In re Marriage of Parent*. You may use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. Keep in mind that the references to the law are up to date as of the date this packet is published. The law sometimes changes before the packet can be updated.

legal in Washington.² Washington has “no fault” dissolution -- you do not need to prove that either spouse was “at fault” in order to get a divorce. Only one party needs to prove that there are *irreconcilable differences* (you can no longer get along with each other).

What Relief May I Get in a Marital Dissolution?

The main purpose of a marital dissolution is to legally end your marriage. In general, as part of a marital dissolution, the court may also divide your property and debts, award maintenance (also known as alimony) to one spouse, enter orders restricting one spouse’s contact with the other spouse and change the name(s) of the parties.³

However, there are some situations in which the court has the power to end your marriage, but cannot grant other relief that you might want. Whether the court will give you the relief that you want depends upon whether the court has *jurisdiction* over the responding spouse. If Washington does not have jurisdiction over your spouse, you may still file a marital dissolution in Washington. However, there will be limits on what the court has the power to order in the dissolution, which are described below.

How is a Marital Dissolution Different from a Legal Separation?

In a legal separation, the court may grant all of the relief that is available in a marital dissolution but the court does not actually end the marriage (in other words, the couple is not divorced at the end). Sometimes, persons will choose to file for a legal separation instead of a divorce because they do not want to end the marriage, but they want the other relief (such as property and debt division) that is available through a formal legal separation. This may be the case, for example, where a person’s religious beliefs discourage him from filing for dissolution. We do not have a publication that tells you how to file a petition for legal separation; however, the procedures are very similar and require use of the same forms. For more information on how to file a petition for legal separation, consult your local Family Law Facilitator (if your county has one) or court clerk.

There are a few important facts about legal separation that you should keep in mind if you are thinking about filing one:

- You do not need to file a petition for legal separation before filing for marital dissolution. If you want to make sure that you are not responsible for debts your spouse may create after one of you moves out of the house, you should file a marital dissolution and a motion for temporary orders.
- If you file a petition for legal separation, but your spouse files a counter-petition asking for a marital dissolution, the court will probably enter a marital dissolution. This is because only one spouse must show that there are *irreconcilable differences* between the spouses in order to get a dissolution.

² Washington does not recognize marriages by a person who already has another spouse who is living, by persons who are close relatives, or by persons who are of the same gender. [RCW 26.04.020](#).

³ [RCW 26.09.050\(1\)](#).

- If you file a legal separation, but you later change your mind and want a marital dissolution, you will need to file and serve a new petition for dissolution (unless your spouse has cross-petitioned for a dissolution).⁴
- If the court enters a legal separation decree, the legal separation can be easily changed to a marital dissolution. Keep in mind that, once the court enters a decree of legal separation, your spouse can turn it into a divorce without your consent. Any time after six months have passed after entry of the decree of legal separation, either spouse may file a motion with the court to change the decree of legal separation to a decree of dissolution. The court must grant the request.⁵ All of the other parts of your legal separation orders (such as the parenting plan and order of child support) will not be affected and will stay in effect.

May I Get an Annulment Instead of a Divorce?

There is no legal action called an “annulment” in Washington.⁶ There is a little-used action called a *petition for a declaration of invalidity*, which is like an annulment in that it declares that the marriage was void (could not legally exist) from the day it started. There are very limited circumstances in which you can have your marriage declared invalid. The court can declare a marriage invalid if it decides that the parties should never have been married because:

- 1) one or both parties were underage (under 17);
- 2) lack of required parental or court approval for persons under age 18;
- 3) one or both parties was already married when the marriage took place;
- 4) the parties are too closely related by blood;
- 5) one spouse *lacked capacity* to consent to the marriage (could not give consent), either because of mental incapacity or because of the influence of alcohol or drugs;
- 6) a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage.

Even if the court finds one of the six factors, the court will declare the marriage valid unless the petitioner also proves that the parties have not “ratified” their marriage (showed that they wanted to continue the marriage) by voluntarily continuing to live together as husband and wife after turning 18, or after having the ability to consent, or after the force or duress stopped or the fraud was discovered.⁷ In addition, only the spouse who was the victim of force or fraud can petition for a declaration of invalidity.⁸

☀ If you would like to file a petition for a declaration of invalidity, or you have been served with such a petition, you should talk with an attorney.

⁴ *In re Marriage of Markowski*, 50 Wn. App. 633, 749 P.2d 754 (1988).

⁵ [RCW 26.09.150](#).

⁶ Some religions have a procedure for annulment of a marriage under that religion’s rules. However, a religious annulment does not legally annul or end your marriage.

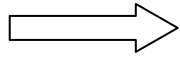
⁷ [RCW 26.09.040\(4\)](#).

⁸ *Saville v. Saville*, 44 Wn.2d 793, 271 P.2d 432 (1954).

Section 2. Where Should I File My Divorce?

May I File a Marital Dissolution in Washington?

You may be surprised to learn that you and your spouse do not both have to live in Washington in order for you to be able to file for marital dissolution in Washington.



You may file a marital dissolution in Washington IF:

- You live in Washington; **OR**
- Your spouse lives in Washington; **OR**
- You are a member of the armed forces stationed in Washington; **OR**
- Your spouse is a member of the armed forces stationed in Washington

AND

your spouse will continue to be stationed in Washington for at least ninety (90) days following the date that you file and serve the marital dissolution.⁹

What If One Spouse Has Never Lived in Washington?

In order for the Washington court to make certain types of orders, Washington must have *personal jurisdiction* over the responding spouse (the one who did not file the dissolution). Washington generally will have jurisdiction over the respondent if:

1. The respondent lives in Washington;
2. The respondent lived in Washington at some point during your marriage;
3. One of your children was conceived in Washington.¹⁰ ;
4. You (the petitioner) have continued to live, or be stationed in the armed forces, in Washington.

If you are the responding spouse and you have never lived in Washington, Washington will not have personal jurisdiction over you unless you do something to give Washington jurisdiction over you. If Washington does not have personal jurisdiction over the responding spouse, the Washington court cannot order that spouse to pay maintenance or any debts, or divide any property that is not physically in Washington.¹¹

⁹ [RCW 26.09.030](#). Although the text of RCW 26.09.030 does not state that your spouse must be stationed in Washington for 90 days after the divorce is filed, if you live outside of Washington and you are filing a marital dissolution in Washington, your divorce may not be recognized by other states if you do not make sure that your spouse is a Washington resident or is stationed in Washington for at least 90 days after you file and serve your divorce. *Marriage of Ways*, 85 Wn.2d 693, 702-03, 538 P.2d 1225 (1975). If you do not live in Washington and you want to divorce your spouse who is in the military, it is best to talk to an attorney for advice.

¹⁰ [RCW 4.28.185\(1\)](#).

¹¹ *Marriage of Peck*, 82 Wn. App. 809, 920 P.2d 236 (1996); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 1 L.Ed.2d 1456, 77 S. Ct. 1360 (1957).

However, the petitioning spouse may still be able to obtain a divorce even if property issues will not be heard because of lack of personal jurisdiction over the responding spouse.

☼ If you believe that Washington does not have jurisdiction over you, you must make that claim in writing to the court before you file anything else (such as a response) with the court in Washington. **If you do not challenge jurisdiction right away, you can waive (give up) your right to say that Washington does not have jurisdiction over you.**

You may agree to Washington having jurisdiction over you if you would like to do so.

What if I Cannot Find My Spouse?

If you are not able to locate your spouse, you may still be able to file a marital dissolution and serve your spouse by *publication*. If you serve your spouse by publication, you may ask the court to end your marriage and divide any property and debts that are located in Washington. You should think carefully before relying on service by publication, however. First, if you serve your spouse by publication, you must follow the rules for service very carefully – if you do not, your court orders could be set aside years later. Second, service by publication does not give the court personal jurisdiction over your spouse unless you can prove that your spouse is hiding either inside or outside Washington in order to avoid being served or to avoid paying debts.¹² If the court does not have personal jurisdiction over your spouse, you will not be able to ask the court to order maintenance or enter restraining orders.

What if My Spouse is a Native American who lives on an Indian Reservation?

If your spouse is a Native American who is living on reservation land (even if it is not your spouse's tribe of origin), you may be required to file your dissolution in tribal court.¹³ You should consult an attorney who has expertise in Indian law to find out where you should file.

What Should I do if I Have Been Served with a Dissolution and I Don't Think My Case Should Be in Washington?

If you think that the Washington court should not have jurisdiction over you, over the property, and/or over the marriage, you must argue about jurisdiction BEFORE you file anything else in the case. You should see an attorney for advice if you can. If you cannot afford one, you must be very careful not to do anything that could give Washington jurisdiction over you, such as filing a response, signing agreed orders, or asking the court to grant relief to you (other than dismissing the case).

If you do not tell the court that you do not think Washington has personal jurisdiction over you right at the beginning, you are likely to lose your chance to object.¹⁴ If possible, you should write to the court before you have a hearing and tell the court why you believe that Washington does not have jurisdiction over you. You may also file a motion to dismiss for lack of jurisdiction.

¹² *In re Marriage of Powell*, 84 Wn. App. 432, 436 (1996).

¹³ 25 USCA §1322; [RCW 37.12.010](#).

¹⁴ [Civil Rule \(CR\) 12\(b\), \(g\), \(h\)](#); *Sherrer v. Sherrer*, 334 U.S. 343, 92 L. Ed. 1429, 68 S. Ct. 1087 (1948).

For more information on filing a motion to dismiss for lack of jurisdiction, talk with an attorney or see your Family Law Facilitator.

If you already have a hearing scheduled, and you cannot write to the court before the hearing, go to the hearing in person (or you may be able to participate in the hearing by telephone by calling the court and arranging it in advance). Tell the judge why you think there is no jurisdiction over your case. If the judge decides in your favor, then the case should be dismissed to the extent that the Washington court has no jurisdiction over the case. If the judge does not rule in your favor, then you will need to be prepared to respond to the marital dissolution in Washington.

☀ If you are going to a hearing to tell the judge that you do not think Washington has jurisdiction, you should still prepare a response to the motion or petition *before* the hearing. Do not file the response, but bring it with you to the hearing. If the judge decides that Washington has jurisdiction, you may then ask the judge to read your response.

In Which County Should My Dissolution be Filed?

You may file a petition for dissolution of marriage in the county where you live, or in the county where the respondent lives.¹⁵ If the case is filed in the county where one spouse lives, and the other spouse wants to move the case to the county where she lives, the court may (but is not required to) change venue.¹⁶ See the publication entitled “Filing a Motion for Change of Venue in a Dissolution of Marriage (Divorce) at our website www.washingtonlawhelp.org. You should also consult the county Family Law Facilitator or court clerk to see if a local publication is available or consult a private attorney (low-income persons may call CLEAR at 1-888-201-1014).

☀ **A Note on Filing in a County Where Neither Spouse Lives:** Some private services that prepare marital dissolution papers for a fee advise people to file their dissolution in a county in which neither person lives. One county in which dissolutions are commonly filed by non-residents is Lincoln County. However, you should think very carefully before filing in a county where neither you nor your spouse lives. If one spouse files a dissolution in a county where neither spouse lives, the responding spouse has the legal right to move the case to the proper county and the court should grant a change of venue – thus, it can just mean more paperwork and responding to motions for you.¹⁷ Further, there are practical problems with filing in a county where you do not live. If you need to make a motion in your case, or you end up having a trial, or you need to get copies of your court papers later, you may have difficulty doing this if you have filed in a county that is far from where you live. If you want to modify the final court order at a later time, it will be much more difficult. Finally, if your spouse does not file a response to your petition, you may have difficulty getting a default order against your spouse – and if you do get a

¹⁵ [RCW 26.09.010\(2\)](#).

¹⁶ [RCW 4.12.030](#).

¹⁷ *Schroeder v. Schroeder*, 74 Wn.2d 853, 447 P.2d 604 (1968).

default order, you may be ordered to pay your spouse's attorney's fees and costs if your spouse asks the court to vacate (cancel) the order later.¹⁸ **We recommend that you file your dissolution in the county where you live, or the county where your spouse lives. If you cannot afford the dissolution filing fee in your county, you may make a motion to the court to ask that the fee be waived.**

Again, jurisdiction is very complicated. If you have any questions about whether Washington has jurisdiction, you should talk with an attorney as soon as possible; if you are low-income and live outside King County, you may call CLEAR at 1-888-201-1014.

Section 3. How Long Will a Divorce Take?

You must wait at least 90 days after you filed the petition for marital dissolution and you have served it on your spouse before you may enter final orders.¹⁹ However, marital dissolutions often take longer than 90 days. If your spouse responds and does not agree with everything in your petition, the amount of time that will pass until your case is finished will depend on your county and how complicated your case is. In some counties, such as King County, the court will give you the date for your trial at the beginning of the case. In most other counties, you will need to file a request that the court set a trial date after the other parent has filed a response.

Section 4. I was Served with Divorce Papers. What Should I Do?

Read ALL of the documents you receive very carefully.

1. Find out What County Your Case is in.

Look at the papers you received. The papers should say “Superior Court of the State of Washington, County of _____” at the top. Make sure your case was filed in the right county. See Section 2 above.

2. Find Out Whether You have been Served with a Motion for Temporary Orders or Ex Parte Restraining Order/Order to Show Cause

Look carefully at the title of your papers (in the upper right section of the first page, under the case number).

- If the papers you got include forms called a *Summons*, and a *Petition for Dissolution of Marriage*, then you have a marital dissolution case. You will need our packet called “Responding to a Petition for Dissolution (Divorce)”.
- If the papers you got include a *Notice for Hearing* or *Note for Calendar Motion* (or any other paper indicating that a court date has been scheduled) and a *Motion and*

¹⁸ [Civil Rule \(CR\) 55\(a\)\(4\)](#) states: A default **shall not** be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county. *See also* CR 55(c)(2).

¹⁹ [RCW 26.09.030](#).

Declaration for Temporary Orders, then you have a Motion for Temporary Orders. You may receive both a Petition for Dissolution and a Motion for Temporary Orders. If you received a Motion for Temporary Orders, you will need our packet called “Responding to a Motions for Temporary or Emergency Orders in Dissolution Actions...”.

- If the papers you got include an *Ex Parte Restraining Order/Order to Show Cause*, then you have a Motion for an Ex Parte Restraining Order/Order to Show Cause. You may receive both a Petition for Dissolution and a Motion for an Ex Parte Restraining Order/Order to Show Cause. You will need our packet called “Responding to a Motions for Temporary or Emergency Orders in Dissolution Actions...”.

☼ An Ex Parte Restraining Order/Order to Show Cause is a court order which the other party got without providing notice to you. You must be careful to obey the Ex Parte Restraining Order until your court hearing.²⁰ At your hearing, the court will decide whether the Ex Parte Restraining Order will remain in effect.

3. Remember that It is Important to Respond on Time!

When you are served with legal papers, it is very important to take steps right away to figure out how to respond. In many cases, if you do not respond on time, the other party will automatically win what they are requesting. **For a motion, you may have as few as four business days after you receive the papers to file your response.** It may take time to locate legal resources, and to read through this packet. Please keep in mind that you should do this as soon as possible after you receive the papers. If you cannot respond in time, you will need to file a *Notice of Appearance* and ask for a *continuance* (explained below).

4. Talk with an Attorney

Even if you cannot afford to hire an attorney to file your case, you should talk at least once with an attorney to get advice about your situation. If your income is very low and you do not live in King County, you may call CLEAR at 1-888-201-1014. If you live in King County, you may call the King County Bar Association for referrals to low or no-cost legal advice clinics for family law cases.

5. Get the Do-it-Yourself Packets That You Need

See Section 7 below.

Section 5. What if I need a Court Order Sooner than 90 Days?

In many cases, you may want the court to enter orders before you get your final dissolution decree and other orders. You may want to request *temporary orders* – court orders that are entered very quickly and last until trial or the end of your dissolution case.

²⁰ You may file a Motion to Quash the Ex Parte Restraining Order before the hearing. In many cases, it will be difficult to do this without an attorney. You may want to respond to the Motion for an Ex Parte Restraining Order/Order to Show Cause and wait for your scheduled hearing to let the court decide whether the restraints in the order should stay in effect. If you want to file a motion to quash, talk with an attorney.

For example, you might want to get a court order before trial that will make it clear that you are not responsible for debts that your spouse creates or that would prevent your spouse from cleaning out the bank accounts or selling things. You may do this through a *Motion for Temporary Orders* or, in emergency situations, through a *Motion for an Ex Parte Restraining Order/Order to Show Cause*.

What is a Temporary Order?

A temporary order is a court order that gives you certain rights and/or protections before your dissolution is finished. You may request a temporary order at any time between when you file your Summons and Petition for Dissolution and the day your divorce is final. To get a temporary order, you must file a Motion for Temporary Orders and give your spouse notice and a chance to respond to your motion. You will have a hearing within about a week to three weeks at which the judge will decide whether to grant what you asked for in your motion. The amount of notice you must give your spouse before a hearing varies from county to county. You should consult with the court clerk or Family Law Facilitator for information about your county's notice requirements.

Do I Need a Temporary Order?

To decide if you need a temporary order, think about the following things:

- Are you happy with the way things are going right now without the temporary order? Do you need to ask the court for help to order your spouse to do something (or to stop doing something)?
- You may ask the court to order many types of things in a temporary order, including:
 - Restraining orders that order one spouse not to harass or come near the other one;
 - Restraining orders that order your spouse not to give away or sell property, or take out loans in both your names, or take your name off insurance policies;
 - Orders for maintenance (spousal support), attorney's fees, or use of your property, such as the house or car;
 - Order that one spouse can live in the house and the other cannot.

Do I Need an Emergency Order?

If there is an emergency, you may need protection from the courts right away. An *Ex Parte Restraining Order/Order to Show Cause* takes effect right away, and is often entered without any prior notice to your spouse. (Your spouse will later have a chance to have a hearing at which the judge will decide whether the order will continue). You may need an emergency order if you cannot wait a week to three weeks for a hearing to get help from the court. This happens, for example, when your spouse is harassing or harming you, or is taking large amounts of money out of your accounts or is selling or hiding property. If you file a Motion for an Ex Parte Restraining Order, you do not need to file a Motion for Temporary Orders since the same types of orders are available.

What if I Want to Change my Temporary Order?

Unlike a final Decree of Dissolution, a Temporary Order may be changed at any time before your divorce is final.²¹ To change a temporary order, you will need to file another Motion for Temporary Orders.

If Your Spouse Has Hurt You

If you are afraid that your spouse may injure or threaten you, the court can issue special orders to help protect you from harm. If you have been a victim of domestic violence,²² or have been threatened with injury, you should consider asking the court to award you a Domestic Violence Protection Order. Often it is a good idea to do this before you file for divorce, but you may request a Protection Order after you file a marital dissolution. You may also ask that a permanent protection order be entered as part of the final orders in the divorce.

A Domestic Violence Protection Order can:

- Keep a person out of the family home and away from your home, work or school;
- Order a person not to threaten, assault, harass or stalk another; and
- Order a person to attend treatment for domestic violence and/or alcohol/drug treatment.

For more information about getting a Protection Order, contact your court's protection order advocates, your local domestic violence program, or call the 24-hour statewide domestic violence hotline at 1-800-562-6025.

Section 6. How Does the Court Decide Who Gets the House (and other property) and Who Pays the Debts?

In a dissolution, each spouse must tell the court about all of his or her property and debts – separate and community. The court must divide all of the spouses' property and debts in the Decree of Dissolution. Washington is a *community property* state. Generally, in Washington, all property that either spouse gets during the marriage is community property and belongs to both spouses.²³ If property, such as a house, other real estate or a car, is purchased during the marriage, the property is probably community property even if only one spouse is on the title.²⁴ Each spouse's earnings, any pension benefits accrued, and any 401(k) contributions made during the marriage are community property.

Separate property (which belongs to only one spouse) generally is property that the spouse got before the marriage, or which was given to that person by inheritance or gift (whether before or

²¹ [RCW 26.09.060\(10\)\(b\)](#).

²² Domestic violence refers to acts of violence or threats of harm by one spouse toward the other spouse or their children. [RCW 26.50.010\(1\)](#). If you or your children have been injured or threatened with bodily injury by your spouse, you may be a victim of domestic violence.

²³ [RCW 26.16.030](#); *Yesler v. Hochstetter*, 4 Wn. 349, 30 P. 398 (1892).

²⁴ *Huling v. Vaux*, 18 Wn. App. 222, 566 P.2d 1271 (1977).

during the marriage), or which the spouse got after separation.²⁵ (However, if you lived together in a stable relationship before your marriage, the property and earnings that you had during the time that you lived together may also be considered community property).²⁶

Generally, all debts created by either spouse during the marriage are community debts, which both spouses are equally responsible for paying. Separate debts are those that are made before the marriage or after the date of separation.

The law about division of community and separate property in marital dissolutions can be very complicated. It is not possible to provide all of the information you might want about property and debts in this information packet. This section will attempt to give general answers to frequently asked questions about property and debts; however, you should consult an attorney about your specific case.

When We Divorce, Will the Court Divide all of our Property and Debts 50/50?

The court is not required to award one spouse's separate property to that spouse, or to divide the community property 50/50.²⁷ **The court can make any division of property and debts that is *just and equitable***, after considering:

- The nature and extent²⁸ of the community property;
- The nature and extent of the separate property;
- The duration of the marriage; and
- The economic circumstances of each spouse at the time the division of property is to become effective.²⁹

How Does the Court Decide What is a Just and Equitable Division of Property and Debts?

How much property the court awards to each spouse, and who is ordered to pay what debts, will depend on a number of factors.

The main factor that a court will consider is in what type of financial condition the division of property and debts will leave each spouse after divorce.³⁰ The court generally will not want to leave

²⁵ *Jacobs v. Hoitt*, 119 Wn. 283, 205 P. 414 (1922); *Walker v. Fowler*, 155 Wn. 631, 285 P. 649 (1930); [RCW 26.16.140](#).

²⁶ *See, In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984); *In re Marriage of DeHollander*, 53 Wn. App. 695, 770 P.2d 638 (1989); *but see, In re Marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000) (court determined that facts did not support a finding that a meretricious relationship existed). The court may also consider contributions you both made toward your spouse's separate property while you were living together as community contributions. *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 855 P.2d 1210 (1993).

²⁷ *See, for example, In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, *review denied*, 122 Wn.2d 1021, 863 P.2d 1353 (1993).

²⁸ The nature of the property means what type of property it is (real estate, cars, household items, etc). The extent means how much property there is or how much it is worth.

²⁹ [RCW 26.09.080](#).

³⁰ *See, e.g., In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, *review denied*, 122 Wn.2d 1021, 863 P.2d 1353 (1993).

one spouse extremely wealthy and the other poor.³¹ The court will consider issues such as each party's age, health, education, and prospects for employment. Thus, for example, in a long-term marriage in which one spouse has not worked much outside the home, the court is more likely to award that spouse more of the community property (or long-term maintenance) to make sure that spouse does not end up much poorer than the other spouse.³² Or, if one spouse is disabled and will not be able to work, the court may award the disabled spouse more of the community property.³³ Likewise, the court may consider which spouse will be able to afford to pay the debts after dissolution when deciding who must pay them.³⁴

In most cases, the court will award each spouse his or her separate property and order each spouse to pay his or her separate debts. The court will award one spouse's separate property or separate debts to the other spouse only in very unusual circumstances.³⁵

What if I have a Prenuptial Contract or Community Property Agreement?

Some people sign a written agreement before they marry that states how the parties' property and debts will be divided if they should divorce. This is often known as a prenuptial or antenuptial agreement. Other people sign an agreement during the marriage regarding their property, which states what property is community and what is separate. This is known as a Community Property Agreement. These are sometimes completed as part of an estate plan. Still others may sign an agreement after they separate that divides property and debts – an agreement known as a Property Settlement Agreement or Separation Contract. If you believe that you have any type of written agreement regarding your property and debts, you should get a copy of it and have an attorney review it. This type of contract or agreement may (but does not always) determine how the court will divide property and debts in your particular case.

I Bought our Car and Most Other Property with My Income, so Shouldn't the Court Award the Car and other Property to Me?

Not necessarily. If your car and other property were purchased with money earned during the marriage, it is community property. Each spouse's income during the marriage is community property, so anything that you buy with either spouse's income belongs to both of you. It does not matter whose paycheck was used.³⁶ The court will divide the car and other property according to what the court decides is just and equitable overall.

My Spouse Owned our House before our Marriage, but We Both Paid the Mortgage. Shouldn't I get Part of the House?

Maybe. The court may award you an interest in the house (sometimes called an equitable lien), depending upon a number of factors. Because your spouse bought the house before your marriage,

³¹ However, if the marriage is very short (less than five years), and there are no children, the court may decide to return the parties to the financial condition they had before the marriage, even if that means that one spouse ends up much better off.

³² See, e.g., *In re Marriage of Donovan*, 25 Wn. App. 691, 696-97, 612 P.2d 387 (1980).

³³ See, e.g., *Oestreich v. Oestreich*, 2 Wn.2d 72, 97 P.2d 655 (1939); *Shay v. Shay*, 33 Wn.2d 408, 205 P.2d 901 (1949).

³⁴ See *In re Marriage of Steadman*, 63 Wn. App. 523, 821 P.2d 59 (1991).

³⁵ *Matter of Marriage of Olivares*, 69 Wn. App. 324, 848 P.2d 1281, review denied, 122 Wn.2d 1009, 863 P.2d 72 (1993).

³⁶ See, *In re Marriage of DeHollander*, 53 Wn. App. 695, 770 P.2d 638 (1989).

the house is your spouse's separate property. Therefore, the house remains separate, even after you marry (unless the house is given as a gift to the community, such as could happen if it is refinanced in both spouse's names). You may be entitled to an interest in the increase in any value due to improvements (such as a remodel or new deck) to the house, plus the community payments toward the mortgage. However, your community interest would be reduced by the reasonable rental value of the house because you had the benefit of living there during the marriage. Thus, in some cases, the court could rule that you have no community interest in the house because your community contributions were offset by the value you got from living there.³⁷ This issue is complicated -- you should consult an attorney about your specific case.

I Think We Need to Sell Our House, But My Spouse Disagrees. Can the Court Order us to Sell the House?

Yes, the court has the power to order that your house should be sold even if one spouse objects.³⁸ The court is most likely to do this if a sale of the home is necessary to enable the court to divide the property equitably or if the parties are behind on payments.

Is it True that I Have No Right to My Husband's Pension because He Earned it?

Not necessarily. Retirement or pension benefits, including 401(k) plans that are earned during the marriage, are community property in which both spouses have a legal interest. If a pension was earned both before and during the marriage, the portion of the pension earned during the marriage (and the increase in value of that portion) is community property.³⁹ Some disability benefits that substitute for pension benefits may also be community property in which both spouses have an interest.⁴⁰ **If you believe that your spouse has a pension (including a military pension), 401(k), IRA, or other retirement or disability plan, you should talk with an attorney about what rights you may have to the pension.** You may be able to get an order entered, called a Qualified Domestic Relations Order (QDRO), under which your spouse's pension plan will pay benefits directly to you after your spouse retires. The Pension Rights Center publishes a very good book called *Your Pension Rights at Divorce: What Women Need to Know*, which you may want to buy. You may find out more at their website, <http://www.pensionrights.org/pubs/divorcebook.html> or you may call them at (202) 296-3776.

My Spouse Had an Affair that Caused our Divorce. Since the Divorce is My Spouse's Fault, Shouldn't the Court Give Me More of the Property?

No. Because Washington has "no fault" divorce, the court may not consider which spouse "caused" the dissolution when deciding how to divide the property. However, the court may consider the

³⁷ See, e.g., *Marriage of Miracle*, 101 Wn.2d 137, 675 P.2d 1229 (1984), declined to extend by *In re Marriage of Marshall*, 86 Wn. App. 878, 940 P.2d 283 (1997) (the court would not extend an equitable lien on the separate property interest of either party).

³⁸ *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997).

³⁹ See, e.g., *In re Marriage of Killmer*, 73 Wn. App. 373, 870 P.2d 978, review denied, 124 Wn.2d 1022, 881 P.2d 253 (1994).

⁴⁰ See, e.g., *Matter of Marriage of Leland*, 69 Wn.App. 57, 847 P.2d 518, review denied, 121 Wn.2d 1033, 856 P.2d 383 (1993).

conduct of the other spouse if that spouse wasted assets from the marriage without the other spouse's consent, or if that spouse tried to hide assets from the court.⁴¹

Since I'm Not Working Right Now, Will the Court Order my Spouse to Pay Me Alimony?

Maybe. Maintenance, or alimony, is a payment that one spouse makes to the other to provide financial support. Maintenance is not automatically awarded to either spouse. The court looks at several factors in deciding whether a spouse should get maintenance, including:

- length of the marriage;
- financial situation of both spouses given the division of property and debts, and the other spouse's ability to pay maintenance;
- time it will take for the spouse asking for maintenance to get education or training;
- standard of living during the marriage; and
- age and health of the spouse asking for maintenance.⁴²

If you have been unemployed for a long time (such as may be the case if you stayed home to care for the children), the court may be more likely to award you maintenance than if you have been laid off temporarily. On the other hand, even if the spouse seeking maintenance is capable of working (or is working to support him or herself), the court may still award maintenance to that spouse if awarding maintenance will help that spouse enjoy the standard of living that was usual during the marriage. The court uses maintenance "not just as a means of providing bare necessities, but rather a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time."⁴³ Long term or permanent maintenance is more likely to be ordered after long marriages and if one spouse is disabled and/or stayed home to care for the children while the other worked and is therefore less likely to be able to get a well-paying job.⁴⁴ Unless the Decree of Dissolution states otherwise, maintenance payments end when the person receiving the payments remarries or dies.⁴⁵ Again, whether or not maintenance will be awarded in your case is a complicated issue. If you have questions, you should talk with an attorney if possible.

Important Information about Marital Debts

You may end up paying a debt even if your spouse was ordered to pay it. As part of the final Decree of Dissolution, the court will order one or both spouses to pay any debts that the parties owe. This includes your mortgage, any car loans, credit card debts, utility bills, back taxes, etc. Even if the court orders your spouse to pay a particular debt, the creditor (person to whom the debt is owed) may still come after you to collect any community debts. You will not be able to stop the creditor from collecting from you by telling that person that your spouse is supposed to pay. If your spouse fails to pay the debt and you end up paying it, you will need to

⁴¹ See, e.g., *In re Marriage of Nicholson*, 17 Wn. App. 110, 561 P.2d 1116 (1977); but see, *In re Marriage of Williams*, 84 Wn. App. 263, 927 P.2d 679, review denied, 131 Wn.2d 1025, 937 P.2d 1102 (1996) (court held that wife's gambling debts, which were offset by her extra earnings, did not constitute wasting of marital assets).

⁴² [RCW 26.09.090\(1\)](#).

⁴³ *In re Marriage of Washburn*, 101 Wn.2d 168, 178, 677 P.2d 152 (1984).

⁴⁴ See, e.g., *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989).

⁴⁵ [RCW 26.09.170](#).

sue your spouse in court to force your spouse to pay you back. If you think that this might be a problem, you should make sure that you check the “hold harmless” provision in the Decree of Dissolution form (paragraph 3.6, second box). Then, if you must sue your spouse to force him or her to reimburse you for debts you paid, your spouse will be required to pay your attorney’s fees and costs as well.

Your spouse may try to avoid paying marital debts by filing for bankruptcy. If your spouse files for bankruptcy after your Decree of Dissolution is entered, the bankruptcy court may relieve your spouse of paying for those debts. If your spouse files for bankruptcy, you should get notice of it. You should immediately talk with an attorney who is familiar with bankruptcy law about your rights. You may need to participate in the bankruptcy case in order to protect yourself.

Section 7. Our Do-it-Yourself Family Law Packets

Are There Alternatives to Filing a Marital Dissolution Using the Do-it-Yourself Publications?

Yes. There are at least three alternatives:

- A. You may hire an attorney to represent you.** If you can afford to hire an attorney, it is best to consult one about your particular case and consider hiring the attorney to file the marital dissolution for you. If you cannot afford an attorney, you may contact your local legal services office to see if an attorney can represent you or give you advice to help you represent yourself. Some legal services offices and county bar and pro bono programs represent individuals in marital dissolutions; however, they usually are able to directly represent very few of the many people who apply for help. If you are low income and do not live in King County, you may call CLEAR for a referral at 1-888-201-1014. If you are low income and live in King County, call the King County Bar Association at (206) 623-2551 and ask for a referral for low-income representation in family law.
- B. You may take a “Self-Help” class.** In some counties, such as King County, there are “self-help” classes that teach you how to file your own marital dissolution. A class may be more expensive than this packet, but may provide you with more help filling out the forms and with local court procedures. If you can go to a class, we recommend that you do so. To find out whether your county has a self-help class, contact your local Family Law Facilitator if there is one in your county.
- C. Where available, you may use the local Family Law Facilitator’s Do-It-Yourself packets.** In some counties, there are Family Law Facilitators who can help you file your own dissolution action in court. The facilitators are not attorneys and are not permitted to give you legal advice; however, they often have do-it-yourself packets that are designed for that county.

What Packets Do I Need for a Dissolution of Marriage?

The Northwest Justice Project publishes several different do-it-yourself packets, which will give you instructions and forms for completing a marital dissolution. The following list should help you decide which packets you will need. You will need more than one packet to complete an

entire marital dissolution case, but we recommend that you get only the packets you need at the time that you need them.

- Filing Your Dissolution of Marriage** – You may use this packet to file (start) a marital dissolution (divorce) case. If you have children, you will also need the *Parenting Plans and Child Support* packet.
- Filing In Forma Pauperis (IFP)** – You may use this packet if you want to file a marital dissolution but you cannot afford to pay the filing fee (usually \$200-250). This packet may help you ask the court to waive (forgive) the fee.
- Service by Certified Mail or Publication** – You may use this packet if you are filing a dissolution of marriage and you have tried to serve the other party in person, but could not do so. This packet may help you ask the court for permission to serve the other party by certified mail or publication.
- Responding to a Petition for Dissolution** – You may use this packet to respond to a dissolution of marriage (divorce) case if your spouse has already filed one.
- Filing a Motion for Temporary Orders for Dissolution Actions and for Custody/Parenting Plan Modifications of Dissolution Actions** – You may use this packet to ask the court to enter an order that will cover the time period between the date you file for divorce and the date your divorce is final.
- Filing a Motion for Emergency Orders for Dissolution Actions and for Custody/Parenting Plan Modifications of Dissolution Actions** – You may use this packet to ask the court to enter an order that will take effect immediately and can cover the time period between the date you file for divorce and the date your divorce is final. You should use this packet if you need an emergency order.
- Responding to a Motion for Temporary or Emergency Orders** – You may use this packet if the other party has filed a Motion for Temporary Orders or a Motion for an Ex Parte Restraining Order/Order to Show Cause.
- How to Write a Declaration** – This packet will help you and your witnesses to write the most effective and persuasive statements in support of your motion.
- Preparing for a Hearing or Trial** - This publication will assist you in organizing your evidence and preparing your oral argument to present to the court in your hearing or trial.
- Getting Witnesses or Documents by Subpoena** – You may use this packet if you need to make sure important witnesses or documents are at trial.
- Finishing Your Dissolution of Marriage by Default** – You may use this packet when you are ready to finish your dissolution and one party hasn't responded.
- Finishing Your Dissolution of Marriage without Children by Agreement** - This packet will help you fill out and file the forms and papers that you need to complete a dissolution (divorce) action when you and your spouse have an agreement (or settlement).
- Dismissing Your Dissolution** – You may use this packet if you decide that you do not want to end your marriage after all.

- ❑ **Other:** Local Do-it-Yourself packets: In some counties, you may need other forms or packets during your divorce case that are required by local court rules. For example, King County requires you to file other forms, such as a Confirmation of Issues form, while your divorce is going on. Consult your court clerk's office or Family Law Facilitator (if your county has one) to find out if your county requires more information. The Northwest Women's Law Center (206-621-7691 or <http://www.nwwlc.org>) has a do-it-yourself packet about following the case management schedule for divorces filed in King County, and also has informational publications on other divorce issues, such as *Community Debt* and *Mediation*.

I Have More Questions about the Law, Where Do I Get More Information?

We have other publications and packets on our website, <http://www.washingtonlawhelp.org> and links to help you do legal research, which may help you if you want more information about marital dissolution. If you need more information, or do not have access to the internet, you may want to visit your local law library (usually located in your county's Superior Court building). The library staff may be able to help you find the resources you need.

Section 8. Words You May Need to Know

Affidavit - A statement made under oath and notarized by a Notary Public. Affidavits are no longer required in Washington; instead the courts use Declarations (see below).

Appearance - letting the court and all other parties know where you can be contacted and your desire to participate in your case. You can "appear" in person at a Court hearing or in writing by filling out a Notice of Appearance or Response.

Attorney of Record - An attorney who has filed either a Notice of Appearance or any court papers in the case, and who has not later filed a court paper called Notice of Intent to Withdraw.

Bailiff - The person in charge of courtroom procedure and security. The bailiff may sometimes be the same person as the clerk.

Beneficiary - A person who receives benefits or advantages (for example, money from an insurance policy).

Calendar - The court's schedule of cases to be heard, also called a Docket.

Caption - The heading of each legal document that contains the name of the court, the names of the parties, the case number, and the name of the document itself.

Certified Copy - A copy of a document from the court file made by the court clerk that has an official stamp on it. Usually there is a fee for a certified copy.

Clerk of the Court - An officer of the court who handles clerical matters like keeping records, entering judgments and providing certified copies.

Commissioner (Court Commissioner) - This person is similar to a judge but only makes decisions relating to a particular subject matter. Many counties have family law commissioners who hear and decide only family law cases (dissolutions, etc.).

Conformed Copy - A copy of any court document that has been filed. It must be stamped with the date filed. If the document is an order, it must have the name of the judge/court commissioner who signed it either written or stamped on it.

Community Property - The property you and your spouse acquired during your marriage. (See Separate Property) This includes wages, pensions and other benefits from employment during your marriage.

Continuance - Postponing your court hearing to a later date.

Court - The judicial branch of government that has the purpose of applying the laws to disputes brought before it. When this packet refers to "the court," that means you will be talking to the judge or commissioner who represents the court.

Declaration - A written statement made to the court that the signer declares or certifies under penalty of perjury is true.

Decree - The final court order in your dissolution.

Default - The failure to respond to court papers within the required time.

Default Order - An order that can be obtained if the responding person does not respond within the required time.

Dissolution - The legal word for divorce.

Ex Parte - Going before the court without notifying the other party.

Filing - Giving court papers to the court clerk to place in the official case file.

Hearing - Going before a judge or court commissioner in person to request a court order.

In Forma Pauperis - A Latin term which means you may file your papers in court without paying the filing fee if you are poor.

In Re the Marriage Of: - The heading of all your court papers. It tells the court that the type of your court action relates to your marriage.

Irretrievably Broken - The basis for getting a divorce. It means that you cannot successfully continue your marriage; that your marriage has broken down.

Jurisdiction - The court's authority to make decisions regarding certain people and issues. If a court does not have jurisdiction it cannot make orders.

Joinder - Both spouses ask the court together to dissolve their marriage, divide the property and make arrangements for the children, if any.

Maintenance/Spousal Support - A fixed amount of money paid from one spouse to another for support, sometimes called "alimony".

Motion - A request made to the court for an order.

Motion Docket - The court's schedule of motions to be heard.

Note/Notice of Hearing - A written request to the clerk to schedule your case for a hearing.

Notice of Appearance - A paper filed with the court showing that a party wants to participate in the case and where to send papers filed in the future.

Order - A court document signed by a judge or commissioner that requires someone to do or not to do something.

Order to Show Cause - A court order requiring a person to appear in person at a time set by the court for a hearing.

Petition - A formal written request for a dissolution of marriage (divorce).

Petitioner - The spouse who files the dissolution case

Pro Se - Acting without the aid of an attorney; representing yourself.

Process - Written notification to appear in court (see Summons and Order to Show Cause).

Protection Order - a special court order to protect a spouse from domestic violence

Restraining Order - A court order to prevent a spouse from doing some act that may harm the other spouse.

Response - A formal written answer to a petition filed with the court by the respondent.

Respondent - The spouse against whom the dissolution case is filed.

Ruling - A decision made by the court.

Separate Property - Property owned before marriage or obtained during a marriage as a result of a gift or inheritance made specifically to one spouse but not the other.

Service - Giving court papers to the other party by having them hand-delivered, sending it by certified mail or publishing in a newspaper.

Summons - A written notice that a dissolution case has been started with time limits for a response.

Temporary Order - An order entered after a case is filed and before it is finished which is only in effect while the case is going on.

Venue - The county where the case should be filed, usually the county where you live.