

## Glossary of Legal Terms

[NOTE: This glossary lists terms sequentially—that is, in the order in which they become relevant during the divorce process—rather than alphabetically.]

**Summons.** The summons is used to begin the divorce action. It must be personally served on the respondent. If the respondent cannot be located, the action is started by publishing the summons in the local newspaper.

**Petition.** The petition sets forth many statistical facts about the marriage and the parties and also states that the marriage is irretrievably broken (divorce) or that the marital relationship is broken (legal separation). The petition is served with the summons.

**Response.** The respondent may deny that the marriage is irretrievably broken or that the marital relationship is broken. Normally this must be done within 20 days after the petition is served.

**Counterclaim.** The respondent may claim that he or she has grounds for divorce that he or she wishes the court to consider. The counterclaim is identical to the petition except that it is filed by the respondent against the petitioner.

**Affidavit.** An affidavit is a statement of facts made voluntarily before a person authorized to administer the oath or affirmation (usually a notary public) and submitted to the court in support of a motion or order.

**Motion/Order to Show Cause.** This is a written request that the court make an order. A hearing will be held to determine whether or not the motion should be granted. It is most often used shortly after the divorce action is commenced for the purpose of obtaining a temporary order regarding custody, placement, support, and other matters. It may also be used to obtain a change in a previous court order or judgment or to commence contempt proceedings for failure to abide by previous orders.

**Temporary Order.** This is an order of the court (usually by the circuit court commissioner) setting forth the rules that are effective prior to the final hearing on the divorce. The temporary order usually covers such items as custody, placement, support, temporary attorney fees, temporary use of the home and other property of the parties, and payment of bills and mortgages.

**Circuit Court Commissioner.** This is a reputable attorney of recognized ability and standing, appointed by a judge, who will preside at all temporary hearings and may enter judgments in actions concerning child support or maintenance. Some matters are referred to the circuit court commissioner for recommendations. All decisions of the commissioner are reviewable by a judge upon request of a party.

**Legal Custody.** Legal custody means the custodial parent's right and responsibility to make major decisions concerning the child, except with respect to specified decisions set forth in any agreement reached by the parties or in any court order or judgment. Major decisions include, but are not limited to: decisions regarding consent to marry, enter military service, and obtain a motor vehicle operator's license; authorization for nonemergency health care; and choice of school and religion.

**Sole Legal Custody.** Sole legal custody is the condition under which one party has legal custody.

**Joint Legal Custody.** Joint legal custody is the condition under which both parties share legal custody and neither party's rights are superior except if specified decisions are to be made by one parent pursuant to the parties' agreement or the court's order or judgment.

**Physical Placement.** Physical placement means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

**Mediator.** This is a person with special skills and training in dispute resolution.

**Mediation.** Mediation is a cooperative process involving you, your spouse, and a mediator, the purpose of which is to help the two of you, by applying communication and dispute resolution skills, define and resolve your disagreements, with the best interest of the child as the paramount consideration.

**Deposition.** A deposition is your testimony under oath. You will be asked questions by the opposing attorney and in some cases by your own attorneys, and the questions and your answers to them will be recorded by an official court reporter. There is little difference between testimony at a deposition and testimony in the courtroom, except that at the deposition there is no judge ruling over the matters as they arise. The judge may do so later.

If we receive notice that your deposition will be taken by the opposing attorney, we will provide you with more detailed information about depositions at that time.

**Interrogatories.** Interrogatories are written questions directed to the other party regarding finances or other relevant information. They are used in preparation for trial to obtain information not otherwise available. Interrogatories must be answered under oath by the party to whom they are directed.

**Subpoena.** A subpoena is a document authorized by the court requiring a witness to appear and give testimony at the hearing or trial.

**Demand to Produce.** A party may request the opposing party to produce documents in the opposing party's possession or control that are relevant to the issues of the action. Both notice of oral deposition and a subpoena can include a provision for production of documents.

**Subpoena Duces Tecum.** A party may also request a nonparty to produce documents in the nonparty's possession or control that are relevant to the issues of the action.

**Agreement or Stipulation.** A stipulation is a formal written agreement between the parties and their attorneys. It can cover any subject. Stipulations are used by the parties to agree on the provisions of a final judgment. If there is a stipulation or agreement regarding terms of the final judgment, the divorce is considered to be a "default" divorce. Default divorces in which there is a stipulation or agreement are less complicated, less costly, and scheduled more quickly than contested divorces.

**Findings of Fact, Conclusions of Law, and Judgment of Divorce.** The court makes formal findings of fact and conclusions of law and judgment in a formal written document usually prepared by the petitioner's attorney and signed by the judge. This is the legal document that grants a divorce, property division, support and maintenance, or such other legal relief as the court may order at the final hearing.

**Child Support.** These are court-ordered payments for the reasonable or necessary support of a child. The payments are expressed as a percentage of income or as a fixed amount. They are neither tax deductible to the payer nor reportable as income by the custodial parent.

**Maintenance.** This is a limited or indefinite support payment for a former spouse, earlier known as alimony. These payments are tax deductible to the payer and reportable as income by the payee if they are made in connection with a divorce or separation instrument and meet the tax rules.

**Family Support.** This is a financial order that substitutes for child support and maintenance orders. It may be tax deductible/reportable. It is subject to complex tax rules.

**Marital Property.** All property of spouses is presumed to be marital property unless classified otherwise. Each spouse has a present undivided half interest in each item.

**Individual Property.** Property acquired by gift or inheritance before marriage or during marriage is individual property. Gifts between spouses are marital property.

**Mixed Property.** Property that has marital and nonmarital (individual) components is called mixed property and is treated as marital property unless the nonmarital component can be traced. Note that the substantial uncompensated efforts of either spouse relating to individual or marital property can create mixed property.