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## MARRIAGE AND DIVORCE

### MARRIAGE

#### THREE REQUIREMENTS FOR MARRIAGE

##### **You must have reached a minimum age:**

- Usually, persons wishing to be married in South Carolina must be at least eighteen years of age.
- A person who is at least sixteen may be married in this state so long as the parent, relative, or guardian with whom the person resides has given them permission to do so.
- There is one exception to the parental permission requirement. If a woman under eighteen is pregnant or has a child, she and that child's father may be married in South Carolina without the consent of his parent or guardian. Her parent or guardian must still give permission, however. If she does not have a parent or legal guardian, the Department of Social Services (DSS) may grant permission for her to be married.

##### **You must have a marriage license:**

- You must go together to a county courthouse and bring identifying documents along with cash for the license fee. No blood test is required.
- Persons over the age of 18 may bring a driver's license or birth certificate.
- Persons under 18 must bring not only a certified copy of their birth certificate, but also a written, notarized letter of consent from a parent or guardian.
- Twenty-four hours later, either of you may pick up your license, which is good for an unlimited time.

##### **You must have a ceremony:**

- A member of the clergy, probate judge, or any notary public can perform the ceremony.

#### FREQUENTLY-ASKED QUESTIONS ABOUT MARRIAGE

##### **Can people in prisons, hospitals, or other institutions get married?**

Yes, but check with the prison, hospital, or institution before making plans.

##### **Does a couple have to live in South Carolina to get married in this state?**

No, but you must meet South Carolina requirements. A valid marriage in South Carolina will usually be recognized in other states.

##### **What is common-law marriage?**

Some relationships may be recognized as marriage even though the legal requirements have not been met. A Court may conclude that you and your spouse have a common-law marriage by looking at four things:

- Whether you live together;
- Intent to live as husband and wife;
- Deliberately making others think you are husband and wife; and

- Capacity: that is, you could get married at any time. You must not be married to someone else and you must be at least sixteen years of age.

### **Will my common-law marriage be recognized in court?**

Maybe. Because there are so many requirements, there is a chance that a Court will not consider your common-law marriage to be valid. Many government benefits (such as Social Security) and other money benefits (such as inheritance) require a valid marriage. If you have any doubts, you should go to court to have your marriage legally recognized. Also, you should obtain a divorce from a common-law marriage before entering into another marriage.

## **DIVORCE**

### **SOUTH CAROLINA RECOGNIZES FIVE GROUNDS:**

- Adultery—a sexual relationship between a married person and someone other than the spouse, even if it happens while the husband and wife are separated.
- Physical Cruelty—one spouse beating the other, usually over a period of time. One beating may be grounds for divorce if it was extremely serious or life-threatening. Mental abuse or cruelty is not a ground for divorce in this state.
- Habitual Drunkenness—this may be abuse of either alcohol or drugs. You must prove that this is a current problem which caused the breakdown of the marriage.
- Desertion—when one spouse leaves the home without a good reason and stays away for a year against the wishes of the other spouse.
- One Year's Continuous Separation—when both spouses decide to live in separate homes for one full year. This is considered a “no-fault” ground. You do not need to go to court to begin this separation, but you are still considered married during this time.

## **OTHER REQUIREMENTS**

### **Residency**

- If you have moved to South Carolina but your spouse does not live here, you must wait one year before beginning a divorce action.
- If both of you are in-state, a divorce action may begin so long as the parties have been here for three months.
- Appearing in Court
- The divorce case will be heard by the Family Court.
- You should have a lawyer with you if at all possible. Divorces can be complicated, especially if there are custody, support, or property issues.
- When you decide where to bring the divorce action against your spouse, you may choose either the county in which you both lived last together, or the county in which your spouse lives.
- If your spouse has moved out of the state or if you and an attorney cannot locate that person, you may go to the Court in the county where you live. You will still be able to obtain a divorce, but you will need an attorney's help in this case.

### **Witness**

No matter which ground the divorce will be based upon, you must have a witness to verify the truth of the claim. This should not be a child of the marriage.

## **BASIC DIVORCE ISSUES**

Judges can resolve many related legal disputes in the process of granting two people a divorce.

## **ALIMONY**

Alimony is money paid from one spouse to support the other. Either spouse may request alimony.

- Alimony may be awarded for a temporary time to help a spouse get back on his feet. It may be awarded for a specific purpose such as going back to school. Alimony may also be awarded on a permanent basis.
- If the Court finds that a spouse has committed adultery, South Carolina law will not require the other spouse to pay alimony.
- Alimony can be cut off if the spouse receiving alimony moves in with his/her girlfriend or boyfriend. The paying spouse can ask the Court to cut off the alimony after the other spouse lives with his/her girlfriend or boyfriend for 90 days.

## **DIVIDING PROPERTY OF THE MARRIAGE**

The Court can give either person any property purchased during the marriage and owned at the time of the divorce. If the two of you have made a fair agreement about dividing the property, it will probably be accepted by the judge.

- If there is no agreement, the judge considers certain factors, such as the amount each party contributed towards the property, incomes of the parties, length of the marriage, misconduct (fault) of the parties, and custody of children.
- Pension and retirement funds may be considered property subject to division.
- The judge may also divide debt of the parties and assign each spouse a fair amount to pay.
- This division of property and debt is permanent and doesn't change if the parties' circumstances change.

## **RESTRAINING ORDER**

The Court may issue a restraining order or Order of Protection as part of the divorce if needed to protect one spouse from being abused or harassed by the other.

- If a spouse needs protection from abuse before a divorce proceeding begins, the Court may issue an Order of Protection to the person being abused. It is not necessary to have a lawyer to get an Order of Protection. The Court clerk has forms you can use.
- If you have an Order of Protection, read it carefully because it will be specifically written for your individual circumstances. Be sure to show it to your attorney before the divorce proceedings.

## **NAME CHANGE FOR WIFE**

If a woman wants to change her name back to her maiden name or to a previous married name, she should ask the judge during the divorce proceedings. If she waits to change her name after the divorce is granted, she will have to get some record checks done to make sure she is not changing her name to commit fraud. She should try to do the name change as part of the divorce. It will be her responsibility to change all identification such as her Social Security card or driver's license. Children's names cannot be changed as part of the divorce proceeding.

## **ATTORNEY'S FEES**

The judge may order either spouse to pay the lawyer fees, court costs, and guardian ad litem fees when applicable.

## **ISSUES THAT INVOLVE CHILDREN**

Judges take special care in parents' divorce cases to make sure the best interests of the children are met first. Judges try to make sure that the disputes of the parents change the life of the child as little as possible. It is important to remember that both spouses have equal responsibility for their children until the judge decides otherwise.

### **Custody**

- The Court will consider who has had the most responsibility for caring for the children and who is best able to care for the children.
- The Court will also consider the conduct of the parties. This includes determining whether one spouse has abused the other. A parent should not lose custody of a child because that parent has been abused.
- Custody can be changed by a judge if the parties' circumstances change.

### **Visitation**

Usually, the parent not given custody of the children will be given a certain amount of visitation time with them.

- The Court may limit this visitation in a way the judge feels will protect the children. For example, the Court may require visitation to be supervised by another person or limited to certain times and places.
- Visitation and child support are separate issues. A parent who fails to pay child support may still be allowed to visit with the children.
- Visitation may be modified if the parties are not being reasonable about matters affecting the children, such as by being constantly late for exchanges.

### **Child Support**

- The Department of Social Services (DSS) has set guidelines for the amount of money parents should pay. These are based on parents' income and the needs of the child. Courts follow these guidelines unless there are very good reasons not to.
- Child support payments are usually made to the Court clerk, who then sends money to the other parent. The Court keeps a record of all child support payments that have been made.
- The amount of child support can be changed if circumstances change, but a Court must make that determination. Support is not terminated simply because visitation has stopped.
- DSS can help obtain and enforce child support orders even if the other party lives out of state. Failure to pay child support could result in jail time.

This brochure does not have all the information you need to know if you are planning to get married or divorced. You may want to talk to a lawyer about your individual situation.

If you don't have one, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to consult and advise you at a discounted rate. For the name of a lawyer in your area, go to the Lawyer Referral Service Online or call (800) 868-2284 (statewide) or (803) 799-7100 in Columbia and Lexington County.

If you have a very low income, your local legal services office may be able to help you. To get in touch with them, call the Legal Assistance Telephone Intake Service for a referral at 744-9430 in Columbia, or toll-free, (888)346-5592 from other places in the state.

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