

## WHAT DOES IT TAKE TO GET A DIVORCE IN MISSISSIPPI?

In Mississippi there are 12 grounds for divorce found in the Mississippi Code (our state laws, often referred to as "statute") in section 93-5-1. They are:

1. Adultery
2. Bigamy
3. Wife's pregnancy by another at the time of the marriage and the Husband does not know that the child is not his
4. Habitual Cruel and Inhumane Treatment
5. Habitual Drunkenness
6. Habitual Drug Use
7. Desertion
8. Imprisonment for more than one year without pardon
9. Natural Impotency
10. Incest
11. Insanity at the time of the marriage
12. Institutionalized for insanity during the marriage

The most common of these grounds used are Adultery, Desertion, Habitual Cruel and Inhumane Treatment, Habitual Drunkenness and Habitual Drug Use.

However, quite often when a person does not have grounds for a divorce and the spouse does not want a divorce the person seeking the divorce generally uses habitual cruel and inhumane treatment in an effort to get their spouse into court and to understand that they no longer wish to live with them and to give them a divorce on the grounds of "Irreconcilable Differences".

"Irreconcilable Differences" is sometimes called the "13th" ground for divorce or "No-fault Divorce". However, in order to get a divorce on this ground BOTH parties must agree that they do want a divorce because their marriage is completely broken and beyond repair. An Irreconcilable Differences divorce requires a 60-day waiting period, before it can be granted by a Judge, during which time both parties must come to an agreement on custody and child support, if there are any children of the marriage, as well as the division of property and marital assets.

## IS THERE A LEGAL SEPARATION IN MISSISSIPPI?

No. Mississippi only offers divorce and what is called separate maintenance. The difference between the two is as follows:

### DIVORCE:

There is a complete severance of the marriage and the husband and wife are no longer married and live apart free from interference from the other. The parties themselves or the Court will make a division of the assets and debts accumulated during the marriage and divorce them equitably (not necessarily 50/50). The parties or the Court, if the parties can not decide, will divide the furniture

and furnishings and determine the amount of child support and/or alimony. If there is real property (house or land) the court will divide the property or the parties will decide who shall be entitled to the ownership of the house and the debt on the house.

#### SEPARATE MAINTENANCE:

The couple will stay married and there will be NO division of the assets or the debts of the parties. In this type of action the person seeking to have the other party evicted from the home must show the same grounds for separate maintenance as you do for a divorce. The Court will require the offending party to leave the home and to pay maintenance to the innocent party. Maintenance is child support and spousal support which can come in different forms, such as house payments, cash payments, car payments, etc.

In this action you may not sell your property, transfer it to someone else and you may not let it go to waste just to spite the other person.

**MAJOR POINT:** Both types of litigation COST about the same. Therefore, you must decide if you really want a divorce or to stay married indefinitely, but live apart.

#### HOW LONG WILL IT TAKE TO GET A DIVORCE?

If the parties have filed a Joint Complaint for Divorce which is an application to the Court together stating that they want a divorce on the grounds of irreconcilable differences (no fault), and then depending on whether you have children, you will draft and file a document called a Child Custody and Property Settlement Agreement. This document must be completed, initialed and signed by both parties before it can be filed. Once this is filed, the parties must wait 60 days and then they are eligible for a divorce. You are eligible because 60 days has elapsed but it may be on a weekend or a holiday. Some Judges require lawyers to get an appointment to get the Final Judgment of Divorce signed. If everything goes smoothly and both parties agree, an irreconcilable differences divorce should take between 60 and 75 days from the time the Joint Complaint is filed.

The time that it takes to get a divorce where one party files a divorce suit against the other party is totally unpredictable. It depends on what there is to fight about. For example, if the parties have no children, no real property and they are already living separately, and the only issue is who gets the money and who gets what possessions, it should not take much longer, if any longer, than the no fault divorce. If the parties are fighting over everything, kids, house, cars, savings, then it could take a long time. Some can go as long as two (2) years depending on the court calendar and the needs of the party.

#### HOW MUCH CHILD SUPPORT DO I HAVE TO PAY (OR SHOULD I EXPECT TO RECEIVE)?

Child support in Mississippi is based on our state statute, Mississippi Code Ann. Section 43-19-101. Child support is based on the adjusted gross income of the person who will be paying the child support. In other words, take your gross pay, subtract your taxes, medicaid, social security, and any mandatory retirement (state and federal employees) then if you are required to pay union dues or

uniform costs (whatever is a requirement to do your job) then the remaining funds are multiplied by the following:

one child - 14%

two children - 20%

three children - 22%

four children 24%

for any children more than four the rate is still 24%.

If both parties are going to share joint legal and physical custody then child support will be paid with each party paying the other the same amount of child support and the difference is the actual payment. For example: John and Sally have two children. They will each have their children one week each. Sally will pay John 20% of her adjusted gross income to John and John will pay Sally 20% of his adjusted gross income. Whichever payment is higher, the lesser payment will be paid to the appropriate recipient (the party with the lower income).

#### IS MISSISSIPPI AN ALIMONY STATE?

YES! There are four (4) types of alimony in Mississippi. They are:

**Rehabilitative:** This type of alimony is awarded to someone who will need some time adjusting to the work force due to either being a homemaker or because they have been a student. Some reason has kept them from being able to enter the workforce at a level of optimum income based on their educational background.

**Reimbursement:** This alimony is awarded to the spouse who worked while the other party went to school to become a doctor, lawyer, CPA, engineer or some other type of professional school that allowed him or her to make a substantial living and then after graduating and getting a good job, decides to trade their spouse in for a younger, newer model. The Court will allow the supporting spouse reimbursement for the time and money spent sending the husband/wife to professional school and putting their own interest aside, either to support that spouse or while raising a family.

**Periodic:** This is alimony paid on a monthly basis to the spouse who has been involved in a lengthy marriage and is now too old or unable to become re-educated and needs support. This alimony can be modified by the Court either upwards or down depending on the ability of the paying spouse and the needs of the receiving spouse. Periodic Alimony is generally given in a marriage lasting beyond the 20 year mark and where the wife has had a traditional stay-at-home role. It should be noted that men can also be candidates for this type of alimony as well. The purpose to this type of alimony is to balance the equity of income in the parties and keep the parties living comparable to how they were living as a couple.

**Lump Sum:** This is money paid to a spouse in a large sum or to be paid over a period of time. For example: John is to pay Sally \$50,000.00 however, it will be paid at the rate of \$500.00 per month on the first day of each month until paid in full. This type of alimony may not be modified and is taxable to the recipient (the party receiving the alimony payment) and deductible to the payor (the

person paying it). This alimony is to even the estates of the parties and to compensate the party who has a lower chance of reentering the work force at a level comparable to the other spouse. Do not confuse this alimony with a division of the marital assets. Marital assets are the possessions, materials and things which were acquired during the course of the marriage.

For more information, call the law offices of M. Judith Barnett at **601.981.4450**.