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FAMILY LAW IN SOUTH CAROLINA - FREQUENTLY ASKED QUESTIONS

How long does it take to get a divorce in South Carolina?

90 days for a divorce based on fault, or 12 months for one year's continuation separation. Under South Carolina law, there are several grounds for a divorce:

- (1) Adultery;
- (2) Desertion for a period of one year;
- (3) Physical cruelty;
- (4) Habitual drunkenness or drug use; or
- (5) Living separate and apart without cohabitation for a period of one year.

For reasons (1) through (4), no final decree of divorce can be granted sooner than 90 days after the case is filed. For reason (5), the divorce may be granted after the defendant has answered the complaint for divorce or the defendant is in default for failing to answer the complaint for divorce.

As a practical matter, it may take months or years before a final divorce is ordered by the court. In cases involving such issues as adultery, physical cruelty, etc., the parties may engage in "discovery" of each other's cases by taking depositions of each other or witnesses, or obtaining documents or other prepared materials such as photographs, financial records, etc. This process of discovery can take many months before the case is ready to go to trial. Further, even when the parties and their lawyers are ready to go to trial, the court docket is often full of many other cases filed before your case and waiting to be heard by the court. The bottom line is, even in a simple, uncontested case for divorce, it may take many months before you get a final decree.

In divided property in a divorce case, is it true that the court usually splits the property 50/50?

No. Each case is unique in its facts, and therefore it is not possible to determine beforehand what split the court will make. In determining how to divide property between the parties, the court generally looks at the following factors:

- (1) the duration of the marriage;
- (2) the age of the parties;
- (3) the physical and emotional condition of each spouse;
- (4) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential;
- (5) the employment history and earning potential of each spouse;
- (6) the standard of living established during the marriage;
- (7) the current and reasonably anticipated earnings of both spouses;

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- (8) the current and reasonably anticipated expenses and needs of both spouses;
- (9) the marital and non-marital properties of the parties;
- (10) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;
- (11) marital misconduct or fault of either or both parties if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage;
- (12) the tax consequences to each party as a result of the particular form of support awarded;
- (13) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and
- (14) such other factors the court considers relevant (this last factor is a "catch-all" factor that allows the court to consider any matter it deems important and appropriate).

As one can see from the number of factors considered by the court in dividing property, it is no easy task for the court, or for the parties' attorneys, to determine who should get what and in what amount.

How does the court determine the amount of child support I must pay?

Child support is calculated using the parties' gross income and certain child-related expenses that are plugged into a mathematical formula which is set forth in the South Carolina Child Support Guidelines. These guidelines, however, are not etched in stone. In other words, upon a showing of special circumstances, the court may order a party to pay more or less than what is calculated under the guidelines. For example, if you do not have custody of your child and you must travel from out-of-state in order to exercise your rights of visitation, the court may order you to pay less than the guidelines due to the extra expense of travel and lodging incurred by you to see your child.

I want custody of my children in the divorce (or to get custody back from my ex-spouse). How does the court decide who gets custody?

By determining what is in the child's best interest. Like division of martial property, each case turns on its own set of facts and circumstances. Typically, the court looks at many factors to award custody, such as the child's wishes (if the child is old enough to convey his or her desires), the needs of the child, the ability of the parents to provide a stable home environment, the child's educational needs, and the character and fitness of each parent (such as criminal records and a history of drug and alcohol abuse). In making a determination, the court may order that the child be appointed a neutral third party, known as a guardian ad litem, to make a recommendation to the court as to what is in the child's best interests. The guardian ad litem will meet with the child and each parent, the child's family members and teachers, and other witnesses. Additionally, the court, the guardian ad litem, or the parties may request that a licensed professional prepare a "custody evaluation" based, in large part, on the psychological profiles of the parents and their motivations for custody. Additionally, the guardian ad litem may request that court appoint an attorney to represent him or her in the trial of the case. Importantly, in addition to paying attorney fees, the parties may be required to split the cost of the guardian ad litem's fees and the fees of the guardian's attorney.

If your ex-spouse previously received custody by agreement or by court order, to change custody you must show there has been a material change in circumstances that now impacts on the child's best interests. For example, if your ex-spouse is exposing the child to a live-in lover, has abused the child mentally or physically, or is abusing drugs or alcohol, the court may determine that a change of custody is in the child's best interest.

Although obtaining custody may be possible, you must be prepared for the difficulties and expenses that lie ahead. In all, contested custody cases are one of the more complex, time consuming, emotionally draining, and expensive, forms of litigation.

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If you need help with a divorce, child custody, child support, or other issues regarding family law, call the Futeral Law Firm locally at (843) 284-5500, toll free at (877) 913-5500, or

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