



Montgomery County
Commission for Women

www.montgomerycountymd.gov/cfw

A Guide to Surviving the Legal Process of Separation, Divorce, and Custody in Maryland



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The Montgomery County Commission for Women (CFW) is an advisory board to the Montgomery County Government. Established by county law in 1972, the CFW is charged with the responsibility of advising the County Executive, the County Council, the public and the agencies of the county, state and federal governments on the issues of concern to women. The CFW is comprised of 15 county residents appointed by the County Executive and confirmed by the County Council. Commissioners serve three-year terms without compensation.

The CFW's legislative mandate is to advance women's equal and full participation in the benefits, responsibilities and opportunities of society. The CFW's responsibilities include:

- identifying inequities in laws, policies, practices and procedures, recommending and promoting remedies;
- conducting research, holding public forums, analyzing economic, political, and social trends;
- publishing informational materials and providing education on women's issues in the community;
- holding an annual legislative briefing in partnership with other women's organizations.

The Commission's Priority Issues Include:

- Economic Empowerment for Women
- Fairness in Family Law
- Immigrant Women's Issues
- Science, Technology, Engineering and Math (STEM) Education for Women and Girls
- Senior Women's Issues
- Single Mothers and Poverty
- Women's Health Care Disparities
- Work/Life Balance including Paid Sick Leave for *all* employees

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PLEASE NOTE: The following information reflects the law as of October 1, 2021 . The law may change as a result of court decisions or legislative enactments . Accordingly, it is advisable to verify the current accuracy of this information with an attorney .

A WOMAN'S GUIDE TO SURVIVING THE LEGAL PROCESS OF SEPARATION AND DIVORCE IN MARYLAND

Introduction

The process of divorce can be an emotionally and financially challenging experience. This is perhaps the most critical time in your family's life, particularly if you have children. The decisions you must make over the next several months will affect your emotional and financial well-being and that of your children for years to come. Yet, these crucial, confusing, and difficult decisions must often be made in a time of acute emotional and sometimes financial distress. Parties to a divorce often experience anger, fear, despair, guilt, betrayal, anxiety and grief - sometimes all at once! It is probably never more difficult to be rational, mature, and reasonable, and yet you must!

If you enter this process equipped with knowledge and a determination to make the best possible decisions for everyone concerned, your divorce can result in a family restructuring, however difficult and painful, which does not destroy the family in the process. At the same time, you may protect yourself and your children from being treated unfairly.

Decisions about your financial and emotional well-being should be based on a well-informed and rational - not emotional - desire to protect yourself and your family from harm, and to plan the best possible future for yourself and your children.

The costs of legal services put many divorcing couples in serious debt. The emotional repercussions may be devastating for the whole family and may last for years. This booklet was developed to inform you of the basic principles of divorce, separation, and custody and to help you make a better and more informed decision for you and your children.

Please note that this book is designed to explain some of the basic aspects of the divorce process. It is intended to complement, not replace, a lawyer, mediator, therapist, or financial advisor, AND is not to be construed as legal advice. This book is for informational purposes only. Every case is unique, and you should seek legal advice from an attorney regarding the specific aspects of your case.

This book provides information about the types of divorce available in Maryland, the grounds for divorce, alimony, child custody, and support, a monetary award to balance financial inequity as to marital property, and the use of dispute resolution processes, other than litigation, in a divorce. A glossary is included at the back of the book to explain terms that may be unfamiliar to you.

Additionally, contact information for some local resources that offer legal, counseling, and domestic violence support is provided. If you have other questions about where to obtain services, please call the Montgomery County Commission for Women at (240) 777-8300.

The Commission for Women hopes that this guidebook will serve you well. Our Counseling Services stands ready to provide additional help through personal and couples counseling, and legal information workshops. Please call our office at (240) 777-8300 or visit the CFW website at www.montgomerycountymd.gov/cfw for more information.

PLEASE NOTE: The presence of a listing in this Guidebook of a resource for services does not imply endorsement or recommendation by the Montgomery County Commission for Women.

The Montgomery County Commission for Women in partnership with The Bar Association of Montgomery County, Family Law Section, The Montgomery County Women's Bar Association, and The Montgomery County Divorce Roundtable

Presents:

Seminars on the Legal Process of Separation and Divorce in Montgomery County

Rockville Memorial Library Building
21 Maryland Avenue, Suite 330
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When a Marriage Ends: Financial, Property and Practical Issues Both Wife and Husband Must Consider

- *Grounds for Divorce*
- *Types of Divorce*
- *What to Expect in Court*
- *Alternatives to Court*
- *Alimony*
- *Property Division*
- *Domestic Violence*
- *Role of the Attorney*
- *Custody, Support and Visitation*

Visit www.montgomerycountymd.gov/cfw for seminar listings and schedule
Call 240-777-8300 for more information

Chapter 1: Working With an Attorney

When you first realize that you may be facing a divorce, you may feel overwhelmed by the thought of what lies ahead. Divorce can be a complicated process and you may have many questions and concerns. The first step may be to get some emotional support and reliable information. The Commission for Women provides workshops on the legal aspects of separation and information through the legal referral service. For more information, please call (240) 777-8300 or visit the Commission's website at www.montgomerycountymd.gov/cfw.

Another important first step to consider is hiring an attorney to help you understand the divorce process and provide useful information along the way.

It is important to keep in mind that hiring a lawyer may be very expensive. The cost of a divorce is directly related to the amount of time your lawyer and your spouse's lawyer spend on the legal process. Most lawyers charge by the hour and keep a record of every conversation they have with you, your spouse's attorney, and relevant third parties, including telephone calls. Anything you can do for yourself, as opposed to having your lawyer do it for you, will save you money. Settling outside of court through mediation or other alternatives to litigation may reduce the cost of your divorce considerably.

At the same time, a word of caution is in order. Do not sign anything in haste, anger, guilt or fear, or before you thoroughly understand your rights. You should always consult an attorney before signing an agreement.

Why do you need an attorney?

You may want to hire an attorney:

- To educate you about your rights and obligations. See an attorney early in the process, before negotiations begin or you go to court
- If your spouse has an attorney
- As a source of general information on rights, obligations, the law, and tactics
- To review any proposed agreement

- To represent you in negotiation and/or litigation

What should you expect from your attorney?

- A positive relationship between your attorney and you
- A clear and understandable explanation of the law, your rights, and obligations
- Reasonable communication and access. It is reasonable to expect the attorney or a member of his or her staff to return your call within twenty-four hours
- A clear, written fee arrangement, including an explanation of payment terms and an explanation of expected prepayment of costs, such as for depositions or experts
- Confidentiality (your private information should remain private)
- Experience in the field of family law
- Explanation of what the legal process entails
- Preparation of legal documents and your case as a whole
- Reasonably regular billing system
- Copies of documents filed with the court and correspondence sent or received
- Notification of all court dates and deadlines
- Communication of any offers received
- Honest assessment of the potential outcome. An attorney cannot assure a result. Beware of the attorney who guarantees a particular outcome!

What should your attorney expect from you?

- Honesty and full cooperation, including keeping scheduled appointments and returning phone calls
- Full and complete disclosure including:
 - Financial information for both spouses
 - Description of assets, including how and when acquired, how titled, and what value
 - List of expenses for both spouses and the children
 - Description of special needs (medical care, education, etc)
- Assistance in the preparation of your case

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- Prompt notice of any changed/changing circumstances, financial or otherwise
- Replying to requests for information and documents in a timely manner
- Understanding of the attorney's role with reasonable and realistic expectations
- Prompt payment as agreed, or diligence, communication, and commitment in making alternate arrangements
- Direction and assistance from you in establishing and clarifying your goals and objectives

- What steps and actions are likely to be involved?
- What issues appear likely to present the most difficulty in your divorce?
- Would she/he recommend mediation or other alternative dispute resolution processes? Will mediation or alternative dispute resolution processes be required if the case proceeds to litigation?
- What documents should you gather or locate?
- What actions should you, or should you not, be considering? For example, limiting the use of social media

What should you ask your attorney when you meet for the first time?

When you go for your initial consultation, it is advisable to treat it as a two-way interview. You are seeking information about the lawyer, his or her expertise and philosophy in handling divorce cases, and details of the legal fees involved. You are trying to determine whether you could work well together on the case. The lawyer will be seeking information on some basic facts about your case and providing you some answers to your legal questions.

NOTE — Before you go for your initial consultation, be sure to ask the attorney if there is a charge for the consultation and what documents or information, if any, you should have with you in preparation for the consultation.

At your consultation, be sure to ask the attorney:

- How will you receive a breakdown of the charges for your case? Request a best estimate of the approximate total cost of the divorce but know that there cannot be any guarantees
- Is a retainer required?
- What will direct costs be? "Out-of-pocket" expenses are generally billed separately from fees. Examples of out-of-pocket expenses are copying charges or filing fees
- How will fees be paid once the original retainer is exhausted? If an additional retainer is required, discuss the terms of payment
- Will the unused portion of the retainer be refundable? Maryland law prohibits non-refundable retainers, although the attorney will be entitled to keep that portion of the retainer that he or she has earned and possibly a reasonable "engagement fee."

Chapter 2: Divorce without an Attorney

Although hiring an attorney may provide important information and support, it may be very expensive to pay for an attorney throughout the divorce process. You may not need an attorney if you and your spouse have been able to reach agreement on all the decisions regarding your money, property, and children, or if there is simply very little money or property to divide between you. Representing yourself is called proceeding “pro se”. Although the courts do not encourage proceeding “pro se”, there is assistance available to you through the Montgomery County Circuit Court Family Law Self Help Center.

The Family Law Self Help Center – A free walk-in clinic, staffed by attorneys and paralegals that provides general legal information.

- Located in the Montgomery County Circuit Court, Room 224
- Walk-in Service Only
- Hours: 8:30 A M – 4:30 P M
(no intakes accepted after 3 P M)

Call the Circuit Court Main Information Line for more information: (240) 777-9415

****A Spanish language interpreter is available on Wednesdays from noon to 4:00 p.m.****

You may represent yourself by filing the appropriate forms at the courthouse. The courthouse has forms online and at the clerk’s office that you may use for filing for a divorce, or for other family disputes. Please keep in mind that there may be fees attached to the filing of these forms. To find these forms on-line, go to this link: www.courts.state.md.us/family/forms/domrellist.html.

The Montgomery County Commission for Women Counseling Service also offers programs about filing for a divorce pro se.

**Montgomery County Commission for Women
Counseling Service**

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Handling your divorce without legal representation may save a lot of money, but it may also cost a lot if there are important issues to decide, and you do not know your rights. The decision to proceed “pro se” is one you should consider very carefully.

You may be able to save considerable attorney’s fees without giving up legal representation by keeping the channels of communication open with your spouse, doing as much of the work as possible yourself, trying to reach agreement rather than fighting over every issue, and trying to be fair with each other.

Chapter 3: Where to File for Divorce

Once you have either hired an attorney or gathered enough information about representing yourself in your divorce, you may feel a little more comfortable about taking the next steps.

In every state, there are many rules that determine where your divorce may take place. These rules are referred to as “jurisdiction” and “venue”.

Which court can hear your divorce case?

Each court can hear cases involving certain people, in certain locations and involving certain issues. This is referred to as jurisdiction.

A Circuit Court in Maryland has jurisdiction over your divorce if either you or your spouse has lived in Maryland for at least six months before filing for divorce or if the grounds for divorce occurred in the state of Maryland. This is called subject matter jurisdiction.

Maryland courts can also hear the divorce case if the defendant (the person against whom the case was filed) lives or is served with process in Maryland. This is called personal jurisdiction.

What if your spouse does not live in Maryland?

Even if your spouse does not live in Maryland, a Maryland court may still have jurisdiction over your case if:

- You reside in Maryland at the time you file for divorce, and
- Maryland was the state where you lived as a couple, or if the obligation to pay child support, spousal support, or counsel fees arose under the laws of Maryland, or under an agreement created in Maryland.
- However, if the defendant does not live in Maryland and was not served with the lawsuit in Maryland, a Maryland court may not have the authority to resolve issues such as property distribution.

NOTE — *If a Maryland court lacks jurisdiction, the parties cannot simply agree to have their case heard in Maryland.*

In what county may you file for divorce?

The county where you should file for divorce is called the venue. Your divorce may be heard in the county:

- Where your spouse lives, carries on a regular business, is employed, or regularly works; or
- Where you live.

NOTE — *Unlike jurisdiction, venue can be “waived”, meaning that a husband and wife can agree to have their case heard in a particular county, even though neither party lives or works there.*

Chapter 4: Types of Divorce

Absolute vs. Limited Divorce

In the state of Maryland, there are two types of divorce that you may request - absolute or limited divorce. The grounds for each type of divorce are established by statute. Except for very limited circumstances, parties rarely obtain a limited divorce. However, since some grounds for absolute divorce require the parties to be separated for a year or more, a party will often file for a limited divorce to obtain access to the court system and seek temporary financial and/or other relief. It is best to consult with an attorney to determine which type of divorce is more appropriate for your situation.

What is an absolute divorce?

This type of divorce includes:

- Permanent and final end to the marriage.
- Legal right to re-marry.
- Resolution of issues of real and personal property, custody, child support, alimony, and certain other issues arising out of the marriage.
- Potential for obtaining use and possession orders of a family home and family use personal property.
- Potential that the court will enter a monetary award equitably distributing the marital property.
- Potential for the court to order the sale of your property or to transfer certain types of property.
- Potential for you to take a former name.

What do you need to prove in order to obtain an absolute divorce?

To obtain a divorce in Maryland, you must be able to show a valid reason for the divorce, what the courts call grounds for divorce. Depending on the grounds, certain elements required for divorce must be confirmed by a witness or other evidence.

The following are grounds for an absolute divorce:

- **Mutual Consent** – You can obtain a divorce without proving a “fault” ground or being separated, if you establish Mutual Consent. This occurs when (1) you and your spouse execute a written settlement agreement that resolves all

issues regarding alimony, property, and the care, custody, access, and support of minor children; (2) a completed child support guidelines worksheet is attached to the agreement if that agreement provides for the payment of child support; (3) neither party seeks to set aside the agreement; and (4) the court determines that the terms of the agreement relating to the minor children are in the children’s best interest.

- **Adultery** – You must be able to prove that your spouse had both the opportunity and the disposition to commit adultery. Often a private investigator is a useful tool to prove this. No period of separation is required. Certain defenses may be available,

such as condonation (forgiveness) or recrimination (the spouse seeking the divorce has engaged in certain inappropriate conduct).

■ Desertion:

- ◆ Actual desertion – Essentially, your spouse abandoned the marriage, and this is his or her deliberate and final act. The desertion must continue for twelve (12) months without interruption, and there must be no reasonable expectation of a reconciliation.
- ◆ Constructive desertion – One spouse is so harmful to the well-being of the other spouse that the innocent spouse is forced to leave the marriage to preserve his or her emotional well-being, health, or safety. The desertion must continue for twelve (12) months without interruption, and there must be no reasonable expectation of a reconciliation.
- One Year Separation – You and your spouse live separately for at least 12 consecutive months and have NO cohabitation (no sexual relations or spent a night under the same roof with or without sexual relations) during that time.
- Conviction of Felony or Misdemeanor – Your spouse is incarcerated and has served at least one year under a sentence of three or more years.
- Insanity – Your spouse has been confined to a mental institution, hospital, or similar facility for at least three years, with testimony from two psychiatrists that the insanity is incurable and there is no hope of recovery. This ground for divorce also requires that at least one of the parties has been a resident of Maryland for at least two (2) years before the divorce case is filed.
- Cruelty of Treatment Toward Spouse or Minor Child – Your spouse engages in extremely destructive conduct calculated to destroy the mental or physical health or happiness of you or your child, and there must be no reasonable expectation of a reconciliation.
- Excessively Vicious Conduct toward Spouse or Minor Child – Similar to “cruelty of treatment” grounds, and typically involves physical violence.

What is a limited divorce?

A limited divorce, is a partial divorce or judgment of separation. You and your spouse are still officially married but you can do certain things that a divorced couple could not do, such as filing tax returns separately. Limited divorces are rarely obtained, but having grounds for a limited divorce will enable a spouse to seek relief, such as custody, use and possession, and temporary alimony or child support, until grounds exist for an absolute divorce.

What do you need to prove in order to obtain a limited divorce?

The following are grounds for a limited divorce:

- Cruelty of treatment of the complaining spouse or spouse's minor child
- Excessively vicious conduct to the complaining spouse or the spouse's minor child
- Desertion, which need not be for any particular duration of time
- Separation, whereby the parties are living separate and apart without cohabitation which need not be for any particular duration of time

Contested vs. Uncontested Divorce

Divorces may be either contested or uncontested. In a contested divorce, there are certain aspects of your divorce that are in dispute. In an uncontested divorce, you and your spouse agree on all material issues, and the court must simply grant you the divorce.

What do you need to know about contested divorce?

- With a contested divorce, the grounds for divorce and/or issues of child custody, child support, spousal support, use and possession, and/or property distribution may be wholly or partially in dispute
- The matter may require appearing in court before a judge or a family division master
- The resolution process may be lengthy and expensive

What do you need to know about uncontested divorce?

- With an uncontested divorce, both spouses agree to divorce and the grounds for the divorce and all issues have been resolved, usually in a written separation agreement
- With uncontested divorces, only a brief hearing is required, although evidence of the grounds for divorce must be presented, and it must be proven that child support is consistent with the State of Maryland's Child Support Guidelines if child support is an issue

Please see chapter 8 for more information about child support.

Note: If a case begins as a contested divorce and later all issues are resolved by the parties, you may request an uncontested divorce.

who does not know you.

Chapter 5: Alternatives to Court

Proceeding with your divorce inside a courtroom, before a judge or master, with your attorney and your spouse's attorney arguing every aspect of the divorce is not your only option. Fortunately, this process, called litigation, MAY be avoided!

Going to court is almost always more expensive than resolving your dispute outside of the courtroom. Avoiding litigation may save you time, money, and stress. Most alternatives to litigation will allow you, your spouse and both of your attorneys to discuss your divorce settlement in a less adversarial way. Courts are also limited in the types of relief that can be granted. Alternatives to litigation enable spouses to reach agreements that differ from what the court can do.

The three main alternatives to litigation are mediation or alternative dispute resolution, collaborative law, and direct negotiation between spouses and/or their counsel.

MEDIATION

Mediation involves using a neutral, third-party mediator who assists you and your spouse in resolving your differences. The mediator does not represent either you or your spouse but s/he is a "resolution facilitator." Similarly, alternative dispute resolution is mediation, but both parties' attorneys are present.

Why is mediation helpful?

Mediation encourages communication between you and your spouse in resolving important issues in your divorce. It may be a relatively speedy, inexpensive and efficient process

The goals of mediation are to enable you and your spouse to:

- Experience less bitterness and hostility during and after divorce;
- Establish a more constructive way of resolving future conflicts;
- Achieve a settlement that creates the best possible ongoing parent-child relationship; and
- Allows you and your spouse to decide what is best for your family rather than leaving it up to a judge

How does mediation work?

Typically, the mediator will educate you and your spouse regarding what to expect in terms of the mediation process and that all communications during mediation are confidential. Then, under the guidance of the mediator, you and your spouse will negotiate and re-solve such issues as living arrangements for the children, financial support, and property division.

Depending on the style of the particular mediator, spouses may also discuss their needs, feelings, and expectations. Some mediators may offer alternative approaches to facilitate an agreement.

The goal of a mediator is to find a position of agreement between the parties.

Mediators meet with the couple together in the mediation session and may also talk with each spouse individually. If the spouses have reached an agreement, the mediator may prepare a summary of the resolution reached, or even a comprehensive agreement, which the spouses may have reviewed by their attorneys.

Are attorneys involved in mediation?

Attorneys are present for alternative dispute resolution. For mediation, while you are not required to have an attorney during the mediation process, it is advisable to have your own legal counsel, and most mediators will encourage you to do so. When a mediated agreement has been reached, you should have your own attorney review the agreements and draft any formal papers that may be required.

You should also meet with your attorney prior to mediation to be informed of your legal rights, and you may want to meet with your attorney throughout the process.

What is the role of the mediator?

The role of the mediator is to:

- Promote and encourage full financial disclosure
- Prevent either of you from abusing the other in negotiations
- Assure that decisions are made willingly by both parties

- Promote a mutually acceptable agreement

Where can you find a qualified mediator?

- Ask an attorney for a referral
- Call the Circuit Court for Montgomery County at (240) 777-9080 for a listing of approved mediators
- Visit the Academy of Family Mediators website at www.mediate.com

COLLABORATIVE LAW

The goal of collaborative law is to achieve a comprehensive separation and property settlement agreement without involving litigation through the court system.

Collaborative law is a relatively new approach to resolving separation and divorce issues. The process does require each spouse to have a collaboratively trained attorney. The spouses and their attorneys participate in four-way conferences to try to reach a resolution together. Sometimes, other professionals such as a financial planner, child specialist, psychologist and “divorce coaches” may be included as well.

One key component to collaborative law is that both spouses and their lawyers enter into a contract agreeing to full disclosure and a commitment to resolving the case without going to court. If no resolution can be reached and a lawsuit is filed, each spouse is required to hire a new attorney.

For more information on collaborative law options or to find a collaboratively trained attorney, contact the Montgomery County Bar Association at (301) 424-3454 or the Maryland Collaborative Practice Council www.marylandcollaborativepractice.com/

NEGOTIATION

Negotiation involves discussions between the parties and/or their attorneys to try to resolve issues without going to court. The goal of negotiation is to achieve a comprehensive separation and property settlement agreement.

What is the result of the negotiation process?

The ultimate result of the negotiation process is an agreement between you and your spouse. This agreement is written, signed by both of you, and resolves some or all of the issues between you and your spouse.

IMPORTANT!!

Things to keep in mind about your agreement:

- *An agreement is contractually binding as soon as it is signed. Once incorporated into (made a part of) a judgment of divorce, the agreement will have the same force and effect as a court order. However, issues related to the children, such as custody and child support, are always modifiable if there has been a material change in circumstances.*
- *An agreement should be based on complete and accurate financial information from you and your spouse.*
- *There are many benefits to resolving your divorce by reaching an agreement outside of court. One major benefit is that you can agree to things in your agreement that are normally beyond a court's authority. A few examples of issues that can be included in your agreement but would normally not be decided by a court are:*
 - *Which spouse will pay for your children's college education.*
 - *What will happen with your children's health insurance or other matters in the future if either you or your spouse lose your job, or any other unanticipated events occur.*

Chapter 6: Going to Court

Sometimes alternatives to litigation are not successful for a couple seeking divorce and the couple must proceed to court. Although going to court may be intimidating at first, an attorney can assist you throughout this process.

If your divorce proceeds to court, your attorney and your spouse's attorney will argue the different aspects of your divorce, and a judge or magistrate will issue a decision to resolve the issues over which the court has jurisdiction.

What types of temporary relief are available through litigation?

A court may issue a temporary order while litigating your case. This type of relief is called *pendente lite* relief. Courts can offer *pendente lite* relief for issues of:

- Child support
- Spousal support/alimony
- Access to the children
- The maintenance of health insurance
- Attorney's fees

Additionally, in the case of emergencies, *pendente lite* relief is available for:

- Temporary custody orders and/or injunctive relief (an order for someone to stop or start doing something). Such orders are rare though, and are issued in the event of a true emergency.

What types of permanent relief are available through litigation?

The court may award many types of permanent relief such as spousal support/alimony, child support, the exclusive use and possession of certain types of property, etc. The next several chapters discuss these issues.

IMPORTANT!!

Other matters the court can resolve:

Aside from the various issues addressed in this book, there may be other issues you would like to resolve during your divorce. The court does have the power to address some of these issues.

In a divorce case, the court may:

- Restore your former name either during the proceeding or within 18 months after the final divorce..
- Require one spouse to contribute toward the other spouse's attorney's fees, litigation costs, and other expenses related to the lawsuit.
- Require one spouse to provide health insurance for the children or access to continuation of current health insurance coverage for the children or the other spouse.

Chapter 7: Alimony

One of the concerns you may have when going through a divorce likely involves your finances. If you rely on your spouse for financial support, you may be concerned that you will be in a difficult situation after the divorce is finalized, or you may be concerned that your spouse will need additional financial support after the divorce process. The courts have sought to address these issues through alimony.

Alimony is intended to provide financial assistance for a spouse who is not self-supporting or to prevent an unconscionable disparity in the parties' standards of living.

What do you need to know about alimony?

- Alimony is a periodic or lump-sum payment for the support and maintenance of a spouse. Previously, the payments were taxable to the recipient and tax deductible to the person who pays alimony, but this is no longer the case.
- Alimony may be ordered on a *pendente lite* basis to maintain one spouse until the final divorce is granted.
- If the spouse who is paying alimony falls behind in payments, the court can order the alimony to come directly out of his/her salary.
- Maryland law prefers rehabilitative (temporary) alimony, but will award indefinite (permanent) alimony if the court finds that:
 - Due to age, illness, infirmity or disability, the spouse seeking alimony cannot be expected to become self-supporting or
 - Even after the spouse seeking alimony will have made as much progress as can reasonably be expected toward becoming self-supporting, the standards of living of the two spouses will be too unequal.

What factors will the court consider when deciding whether to award alimony?

- The ability of the person seeking alimony to be self-supporting;
- The time necessary for the person seeking alimony to either go back to school or receive training in order to find employment;
- The standard of living that the couple established during the marriage;
- The length of time the couple was married;
- The contributions, monetary and non-monetary, of each spouse to the well-being of the family;
- The circumstances that contributed to the separation of the couple;
- The age of each spouse;
- The physical and mental condition of each spouse;
- The ability of the spouse from whom alimony is sought to meet his or her own needs while meeting the needs of the financially dependent spouse;
- Any agreement the couple may have had;
- The financial needs and financial resources of each spouse, including:
 - ◆ All income and assets, including property that does not produce income;
 - ◆ Any monetary award or award of exclusive use and possession of property;
 - ◆ The nature and amount of financial obligations of each spouse;
 - ◆ The right of each spouse to receive retirement benefits;
- Whether an award of alimony would cause the resident of a hospital or residential facility from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur

IMPORTANT!!

A few things to keep in mind about alimony:

- *If the court awards alimony, the length of time a person receives it may be modified upon a material change in circumstances or as circumstances and justice require (although this latter option is unlikely).*
- *If you receive rehabilitative (temporary) alimony, you must request an extension before the rehabilitative period ends in order to have the court consider extending the alimony period.*
- *Alimony terminates upon the death of either party, the marriage of the recipient, or if the court finds that termination is necessary to avoid a harsh and inequitable result (which is unlikely).*
- *An agreement regarding alimony may:*
 - *Contain waivers of alimony that cannot be changed at a later time;*
 - *Make the alimony agreement non-modifiable; and/or*
 - *Alter termination events.*

Chapter 8: What about the Children?

General Issues about the Court and Your Children

The biggest concern many parents have when going through a separation or divorce is how this process will affect their children. Parents may worry about the emotional well-being of their children while this often-stressful process is underway.

Additionally, most parents worry about how their children's lives will change once the divorce is final. These concerns are normal. Children do pose special issues and concerns in a separation or divorce, but there are several ways that the court and its resources may address the issues affecting your children.

If you are concerned with the emotional impact of the divorce process on your children, you may want to consider having your children speak with a professional counselor who specializes in divorce. Please see the "Counseling and Other Resources" section at the end of this book for additional information.

What are your parental responsibilities regarding children?

The parents of a child under 18 years old are jointly responsible for the support, care, nurture, welfare, and education of the child. Each parent is responsible regardless of whether the other parent fulfills his or her obligation. The obligation to support a child may continue into adulthood if the child is unable to support himself/herself due to a physical or mental illness.

It is important to know that child support and custody/access/parenting time are two separate issues. One cannot be withheld in exchange for the other, no matter what the circumstances are.

What are the powers of the court regarding children?

The court may make several decisions that affect children involved in a divorce.

IMPORTANT!!

A few things to keep in mind about children and the courts:

Parenting Seminars

- *Montgomery County Courts require parents to participate in a two-part co-parenting seminar. The seminar is offered either at the Circuit Court for Montgomery County, 50 Maryland Avenue, Rockville, Maryland, 20850 or virtually. A primary goal of these seminars is to teach parents who will no longer be living together how to continue to effectively communicate and work together regarding their children.*

Appointment of an Attorney for the Child

- *A court may appoint an attorney to represent the best interests of a child or children in an appropriate case. The court will determine how payment of related fees should be divided between the parents.*

The court may:

- Determine who will have custody or visitation of a child, either on a *pendente lite* ("temporary" until your final hearing) basis or on a permanent basis;
- Determine the child support responsibilities of the parents;
- Set aside or modify custody and support orders.

What are the types of hearings in custody determinations?

Pendente Lite Hearing— An "interim" hearing held before the final divorce hearing. Here, the court will try to maintain a stable situation for the children or stabilize a volatile situation until the final hearing.

- Custody Merits Trial – The full and final custody trial.
- Modification Hearing – A hearing where the court exercises its power to oversee the best interests of the children until they are 18 years old. The court can set aside or modify custody,

visitation, and

support orders, when necessary. The person that requests these modifications must show that:

- There has been a material change in circumstances since the last court order; and
- Warranting a modification.

Can an attorney represent your child in court?

There are several conditions under which attorneys represent children in divorce cases:

- Child Privilege Attorney (“CPA”) – A privilege of confidentiality exists between a therapist and a child. This means that what a child tells a therapist is kept private in most situations. Because persons under the age of 18 are not legally competent to waive that privilege, the court must appoint an attorney – the CPA – to determine whether it is in the child’s best interest to waive that privilege.
- A Best Interest Attorney (“BIA”) – In addition to having the same authority as a Child Privilege Attorney, a Best Interest Attorney represents the best interest of a child in court throughout the case and is usually present at all proceedings involving the child(ren).
- A Child Advocate Attorney (“CAA”) – This attorney represents the child in the same way an attorney would represent an adult, by advocating for the child’s desires. The CAA is appointed in those instances when the child is older and mature enough to understand the issues, is in need of a voice in the court process, and the child’s interests are quite distinct from those of the parents. This is rare and occurs more often with older children.

IMPORTANT!! Shared Custody:

Shared physical custody for purposes of child support means that both parents have the child or children for at least 25% (or at least 92 overnights) in a one-year period. The number of overnights each parent has is one of the determinative factors for child support.

Awarding Custody of the Children

One major concern that you may have for your children is not only where your children will live once the divorce is final, but how you and your spouse will care for them when you are no longer living together. A custody determination will set out a plan for your children – who will make the major decisions concerning their welfare, where they will spend their time, and with whom that time will be spent:

- There are two types of custody in Maryland:
 - Legal custody – the authority to make major decisions as to the child’s health, education, religion, and general welfare;
 - Physical or residential custody – with whom the child lives primarily.

The physical custody arrangement is not necessarily related to the legal custody arrangement. What factors will the court use in determining physical custody?

In deciding the appropriate physical custody arrangement, the court will consider *the best interests of the child*. The court will assess the following factors:

- The fitness of each parent to have custody;
- The character and reputation of each parent;
- The desire of the parents and any agreement between them;
- The potential to maintain natural family relationships with other family members;
- In limited instances, the child’s preference when the child is old enough and has the capacity to form a rational judgment;
- Material opportunities affecting the future of the child;
- The age, health, and gender of the child (although recent case law has determined that the gender of the child may no longer be a factor);
- The suitability of the residences of the parents and whether the non-custodial parent will have adequate opportunities for visitation;
- How long the child has been separated from a parent who is seeking custody;

- The effect of any prior voluntary abandonment or surrender of custody of the child;

- Whether leaving the child where s/he is will injure the child before trial

****The court will take into account the parents' wishes, but will give priority to the best interests of the children.****

What factors will the court consider in awarding legal custody?

In deciding the appropriate legal custody arrangement, the court will look at the following factors:

- Capacity of the parents to communicate and reach shared decisions affecting the children, and a finding of a strong potential for such conduct in the future;

- Willingness of parents to share custody;

- Psychological and physical fitness of the parents;

- Relationship established between the child and each parent;

- In some circumstances, the preference of the child;

- Potential disruption of child's social and school life;

- Geographic proximity of parents' homes;

- Demands of parental employment;

- Age and number of children;

- Sincerity of parents' request;

- Financial status of parents;

- Impact on state or federal assistance;

- Benefit to parents

A few other things to keep in mind about custody awards:

- A child who is 16 years old or older may petition the court to change custody.

- The court may grant visitation rights to grandparents. However, recent case law has severely restricted the ability of the courts to grant visitation to any non-parent.

- In limited circumstances a child, especially one with strong feelings about custody, may be interviewed privately by a magistrate or judge regarding his/her preferences. Calling a child as a witness, however, is discouraged and doing so typically reflects negatively on the fitness of the parent seeking to have the child testify.

- A non-custodial parent is likely to get reasonable access privileges, even if they live in another state or country.

Child Support

To ensure that children are financially supported, the courts normally require child support. Child support refers to payments from one parent to the other parent who has residential custody of the children. Child support, as the name indicates, provides financial support for the care of your children.

The Financial Statement is one of the most important documents in your case! It should be as detailed and accurate as possible. The long-form financial statement (when alimony is at issue or the parties' combined income amounts to at least \$180,000 annually (or \$300,000 annually after July 1, 2022) may be found online at www.courts.state.md.us/family/forms/dr31.pdf. The short-form financial statement (used when alimony is not at issue and the parties' combined incomes are less than \$180,000 annually (or \$300,000 annually after July 1, 2022) may be found online at www.Courts.state.md.us/family/forms/dr30.pdf.

What do you need to know about child support?

- Child support is a right that belongs to the child and cannot be waived by the parents. Even in an uncontested case, the court will require that appropriate child support is being paid.
- Unless the parents' combined incomes exceed \$180,000 annually (or \$300,000 annually after July 1, 2022), the court must use the Maryland Child Support Guidelines when determining the appropriate amount of child support. These guidelines set forth child support payments based on each parent's actual income. In most circumstances, the court *must* follow these guidelines.
- Child support is based on the total number of minor children.
- All initial *pendente lite* (temporary) child support orders are presumptively retroactive to the date of filing the first request for child support.
- **Child support may be collected with the assistance of the Office of Child Support Enforcement Office. A small fee will apply for this service.**

Montgomery County Office of Child Support Enforcement

51 Monroe Street, Suite 811
Rockville, MD 20850

1 (800) 332-6347

- Child support may be both awarded and enforced even when the parent paying it lives outside of Maryland
- It may also be possible to obtain child support from an individual who has "voluntarily impoverished" himself/herself to avoid payment of child support if it can be shown that the individual had the intention of avoiding child support or spousal obligations
- The courts may modify child custody and support if there is a material change in circumstances
- The court may order a parent to pay child support through a wage lien ("Earnings Withholding Order") rather than directly to the recipient. The wage lien is collected by the Maryland Child Support Account of the Child Support Enforcement Administration of Maryland.

IMPORTANT!! Financial Statements

Before you can request child support (or alimony) from the court a financial statement is required. If you are only asking for guideline child support, the financial statement is a single page and limited in scope. However, if you are asking for alimony, or if the combined income of both parents is more than \$180,000 per year, (or \$300,000 per year beginning July 1, 2022), a more detailed financial statement is required, outlining all of the typical monthly expenses for you and your children and listing all of your assets and liabilities.

How is the amount of child support determined?

In Maryland, the Child Support Guidelines are typically used by the courts to establish the child support obligation of each parent based on the income of each parent as a proportion of the total family income. Child Support Guidelines forms can be found online:

■ www.dhr.state.md.us/CSOCGuide/App/work-sheetA.do (for sole custody)

■ www.dhr.state.md.us/CSOCGuide/App/work-sheetBC.do (for shared residential custody)

In order to determine child support, the Child Support Guidelines follow five basic steps:

Step 1-Add gross income (adjusted before-tax “actual” income) of both parents:

- ◆ Actual income includes salaries, wages, commissions, bonuses, dividends, pension income, interest income, trust income, Social Security benefits, workers' compensation, unemployment insurance benefits, disability insurance benefits, alimony, etc.
- Income does not include benefits received through public assistance programs.

Step 2 - "Adjust" incomes to add or subtract any pre-existing child support or alimony obligations.

Step 3 - Refer to the chart in the Maryland Child Support Guidelines to determine the total amount of child support required by the statute, taking into account the number of children.

Step 4 - Apportion child support between the parents, based on each party's percentage share of total family income.

Step 5 - Apportion work-related child care costs, extraordinary medical expenses, private school expense, and health insurance premiums (child(ren)'s portion only) in accordance with each party's percentage share of income.

You and your attorney may follow these same steps to estimate the amount of child support the court is likely to order in your case. Your attorney will likely have the software to run the guidelines calculation.

Ten Tips for Divorcing Parents

Divorce is never easy on kids, but there are many ways parents can help lessen the impact of their break-up on their children:

- **Never disparage your former spouse in front of your children.** Because children know they are "part mom" and "part dad", the criticism can batter the child's self-esteem.
- **Do not use your children as messengers between you and your former spouse.** The less the children feel a part of the battle between their parents, the better.
- **Reassure your children that they are loved and that the divorce is not their fault.** Many children assume that they are to blame for their parent's hostility.

■ **Encourage your children to see your former spouse frequently.** Do everything within your power to accommodate the visits.

■ **At every step during your divorce, remind yourself that your children's interests – not yours – are paramount, and act accordingly.** Lavish them with love at each opportunity.

■ **Your children may be tempted to act as your caretaker.** Resist the temptation to let them. Let your peers, adult family members, and mental health professionals be your counselors and sounding board. Let your children be children.

■ **If you have a drinking or drug problem, get counseling right away.** Impairment inhibits your ability to reassure your children and give them the attention they need at this difficult time. It may also impact time you ultimately spend with your children and your participation in child-related decision-making.

■ **If you are the non-custodial parent, pay your child support.** This is support for your child(ren); not the other parent. The loss of income facing many children after divorce puts them at a financial disadvantage that has a pervasive effect on the rest of their lives.

■ **If you are the custodial parent and you are not receiving child support, do not tell your children.** It feeds into the child's sense of abandonment and further erodes his or her stability.

■ **If at all possible, do not uproot your children.** Stability in their residence and school life helps buffer children from the trauma of their parent's divorce.

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Chapter 9: Property

You may have questions about what will happen to your home, savings, and other assets – things that you and your spouse have worked toward during your marriage. The first thing you should know is that you **DO** have rights to such property when seeking a divorce.

You and your spouse can agree on how to divide your property outside of court. If you are unable to do so, the court has the power to resolve property disputes.

Additionally, the court may order one spouse to pay a monetary award to the other spouse to balance any inequity in ownership of property by title. A monetary award, while typically equal to half of the marital property, does not have to be. While the court lacks the authority to transfer ownership of most types of property, it can, under certain circumstances, transfer ownership of retirement benefits, a jointly titled marital home, and family use personal property.

What is marital property?

Marital property is all property acquired by either or both spouses at any time during the marriage up to the date of divorce (not date of separation), as well as any real property owned jointly by a husband and wife as tenants by the entirety. Maryland is an “equitable distribution” state. The purpose is to reach an equitable (fair) division of marital property, not necessarily an equal division.

Marital property does NOT include:

- Property owned prior to marriage;
- Property obtained by gift from a third party (not the spouse) to one party or by inheritance;
- Property excluded by valid agreement;
- Property that came directly from any of the above sources.

BUT NOTE that non-marital property may become marital if it is “commingled” (mixed) with other marital property.

What factors will the court consider when determining whether or not to issue a monetary award for marital property?

- Contributions, monetary and non-monetary, of each spouse to the well-being of the family;
- Value of all property interests of each spouse;
- Economic circumstances of each spouse at the time the award is to be made;
- Circumstances that contributed to the estrangement of the couple;
- Duration of the marriage;
- Age of each spouse;
- Physical and mental condition of each spouse;
- How and when specific marital property or interest in the pension, retirement, profit-sharing or deferred compensation plan was acquired, including the effort made by each spouse in accumulating the property;
- Contribution by either spouse of non-marital property to the purchase of real property held by the couple as tenants by the entirety;
- Any award of alimony or any award or other provision that the court has made with respect to family use personal property or the family home;
- Any other factor that the court considers necessary or appropriate to arrive at a fair and equitable monetary award.

How will the court decide who gets your family’s home?

What about your home? This is a very important question for someone going through a divorce. You may be wondering what will happen now to the home that you and your spouse purchased together.

The court may transfer an ownership interest in jointly owned real property owned by the parties and used as their principal residence when they lived together. The court may order the transfer of ownership of the property if the party to whom the real property is transferred obtains the release of the other party from the mortgage; authorize one party to purchase the interest of the other, or both.

Even if the court does not transfer ownership of a home, the court may allow the custodial parent to remain in the family home for a period of time, to enable a child to live in a familiar home and community. This is called a family home *use and possession order*.

The use and possession of the family home may be awarded only to the parent who has custody of at least one minor child. The home may be awarded on a temporary basis until the divorce is finalized (*pendente lite*) and/or for up to three years from the date of the divorce.

Courts look at several factors when making this decision. In order for the court to award use and possession of the family home, the home:

- Must have been the principal residence the parties used when they lived together;
- Must be owned or leased by at least one of the spouses at the time of the proceeding; and
- Must be used by a spouse and any minor child of the parties as their residence; stepchildren do not qualify.

What may happen to the other property that you own?

Subject to the consent of lienholders, the court can transfer ownership of certain personal property if it is “family use personal property”. “Family use personal property” is property:

- Acquired during the marriage of the parties;
- Owned by either or both spouses; and
- Used primarily for family purposes.

Examples of “family use personal property” are cars, furniture, furnishings, and appliances. In addition to transferring ownership of family use personal property to one spouse, the court may also award use and possession of family use personal property for a period of three years from the date of divorce.

IMPORTANT!!

Limitations on Use and Possession Orders:

- Courts can and may put limits on the property that is to be shared and/or used.
- The use and possession order cannot continue for more than three years after the divorce.
- The order automatically terminates if the party having use and possession of property remarries.
- As it relates to the marital home, the court can order the spouse who does not have use and possession to pay some or all of the expenses related to the home including, but not limited to, mortgage expenses.

Chapter 10: Domestic Violence

Domestic violence remains one of the most critical issues impacting families. The cycle of domestic violence does not target any specific group; it affects individuals from all ages, races, and socio-economic backgrounds. Victims may feel embarrassed by or ashamed of the abuse they are experiencing. They may be too afraid to seek help and may stay in an abusive relationship because they think there are no other options.

The cycle of domestic violence often involves a building up of stress between the parties, an eruption of violence, and then a “honeymoon” period of romance and promises not to do it again, followed by a repeat of the cycle. The violence may escalate as the cycle continues to repeat itself. The cycle rarely, if ever, stops without outside intervention.

REMEMBER: *Domestic violence is something that no one should endure. Although getting out of these relationships can be difficult, there are many organizations in this area that can help you. These organizations and agencies can assist you in seeking shelter, requesting a protective order, requesting financial assistance, protecting your children, and with other matters you may want addressed if you are in an abusive relationship. Protecting your safety and your children’s safety is the MOST important thing.*

When domestic violence occurs, several alternatives are available to the victim. These include:

- Leaving the home
- Securing a Civil Protection Order (CPO)
- Filing criminal charges
- Filing for divorce with a mandatory injunction (although injunctions are rarely granted)

While domestic violence is a separate issue from divorce, it may be one aspect of your divorce. If so, the courts can provide some assistance to you in seeking safety.

Local organizations that may help you if you are in an abusive relationship

Montgomery County Abused Persons Program
(240) 777-4195 * (240) 777-4673 (24 hours)

Montgomery County Victim Assistance and Sexual Assault Program (VASAP)

(240) 777-1355 * (240) 777-HELP (4357)

www.montgomerycountymd.gov/vasap

Montgomery County Crisis Center

(240) 777-4000

Police Department Domestic Violence Unit

(240) 777-7016

Maryland Network Against Domestic Violence

(301) 429-3601

* 1 (800) MD-HELPS (63-43577)

www.mnadv.org

House of Ruth

(240) 777-9077 * (410) 889-7884 (Hotline)

Circuit Court, Third Floor, Room 307

www.hruth.org

Child Welfare Services

(to report child abuse or neglect)

(240) 777-3500

If you or your children are victim to domestic violence, the most important consideration is your safety. Help IS available. Please use it.

Protective Orders

Protective orders are civil orders issued by a judge to prevent one person from committing certain acts against others.

Additional information about protective orders:

- Under certain circumstances, “ex parte” temporary orders (orders issued without the presence of the other party) can be issued for up to seven days
- Protective orders may include orders to refrain from contact and abuse, to refrain from entering a home, to vacate the home, to grant custody, visitation and family maintenance (support)
- After notice and a hearing on the issues with the other party present, the relief may become effective for up to one (1) year. If requested for good cause, the orders may be extended for up to six (6) months. Additionally, a judge may extend the term of the protective order for up to 2 years if: (1) during the term of the protective order, the judge determines that the abuser has committed a subsequent act of abuse or (2) the abuser consents to the extension. Before extending for up to 2 years, the judge must consider (1) the nature and severity of the subsequent act of abuse, (2) the history and

severity of abuse in the relationship, (3) whether criminal charges are pending and if so what charges, and (4) the nature and extent of injury or risk of injury caused.

■ An action for a protective order may be filed in any Maryland trial court—either the District Court or the Circuit Court. If a protective order hearing occurs in the District Court, either party may appeal the decision to the Circuit Court.

The Montgomery County Family Justice center offers many services to victims of domestic violence including:

- Safety Planning
- Legal Advocacy
- Legal Representation for Civil Protective Orders
- Counseling for Victims and their Children
- Criminal Investigation
- Immigration Consultation Under the Violence Against Women Act
- Emergency Protective Orders
- Shelter Referrals

The Family Justice Center

600 Jefferson Street, 5th Floor
Rockville, MD 20852
(240)773-0444

(240)777-4000 (24-hour Crisis Line)

Hours: Monday – Friday 8:30 a m – 6:00 p m

TO REQUEST A PROTECTIVE ORDER

during regular business hours (Monday – Friday 8:30 a m – 4:30 p m) go to either Montgomery County District Court Civil Office or the Family Department of the Circuit Court for Montgomery County

The Montgomery County District Court
191 E Jefferson Street, Rockville, MD

OR

8552 Second Avenue in Silver Spring, MD

Information Line
(301) 279-1500

Circuit Court for Montgomery County
50 Maryland Avenue Rockville, MD

Family Department Information
(240) 777-9426

AFTER REGULAR BUSINESS HOURS, you may obtain an order of protection from a District Court commissioner. This order is effective for two (2) days, until there can be a further hearing in the District Court. Please call either of the following numbers:

(301) 610-7217 (Rockville)

(301) 563-8550 (Silver Spring)

Chapter 11: Special Issues for Immigrant Women

If you came to the United States as an immigrant, you may have specific questions that are unique to your situation in seeking a divorce in Maryland. This chapter provides basic answers to some of those questions. Your family lawyer may be able to answer additional questions or may refer you to an immigration attorney.

Do you need to be a United States citizen to file for divorce?

NO. If you are not a United States citizen, you may still obtain a divorce and participate in a divorce proceeding in Maryland, if you or your spouse resides in the state.

Can divorce affect your immigration status?

In most situations, the answer is NO, but depending on the type of immigration visa you hold, this could be an issue. You should discuss your case with an immigration or family law attorney if you have any concerns about this.

What if English is not your first language?

If you are not fluent in English, the court will provide an interpreter for you **at no cost.**

To request an interpreter, contact the Clerk of the Court at (240) 777-9467 at the Circuit Court for Montgomery County. You can also download and complete the spoken language interpreter request form at www.courts.state.md.us/courtforms/joint/ccdc041.pdf. You should submit this form at least two weeks before your court date.

What if you own property in another country?

As with property owned in the United States, you should gather all documentation that you can on property owned in another country. This documentation includes such things as copies of the deed/title and any other documents showing current ownership, date acquired, amount(s) paid, value (cur-

rent and when acquired), location and description. You should obtain a current appraisal if possible. A court in the United States may not be able to transfer ownership of property held in other countries. However, information about those properties will be helpful to the court in determining whether to grant you compensation for your interest in marital property remaining in your spouse's name.

Can your legal status affect a custody determination?

Your legal status will be taken into account if it is relevant for determining the best interests of your children and it usually *is*. However, this does **NOT** mean that you will be subject to deportation. It does mean that your status may be considered (along with many other factors) in determining what is the best solution for your children. For example, a person who is undocumented or is otherwise deportable *may* be at a disadvantage against a person who is not deportable and is otherwise a fit and proper person to have custody of the children. You are strongly urged to ask an attorney if you are concerned about this.

What if you are the victim of domestic violence?

Although domestic violence affects women from every cultural, national and ethnic background, women who came to the United States as immigrants, may be especially concerned about the impact of seeking help on their immigration status.

REMEMBER: *Your safety should ALWAYS come first and no matter what your immigration status, you should never hesitate to seek help if you are the victim of domestic violence.*

What should you do if you experience domestic violence but you do not speak English?

Find someone other than your child or your abuser to interpret for you to the police.

Should you call the police?

YES. Domestic violence is against the law. The police can escort you and your children out of the house if you want to leave and often can transport you to a safe place. Officers may arrest your husband/intimate partner if they believe a crime has been committed.

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Always ask the police to complete a report about the incident and give you an incident report number so that you can get a copy of the report. Also ask for and write down the name and badge number of the officer making the report.

If your husband/partner is taken into custody, he may be released in as little as two hours. Use this time to find a safe place to go. **The police generally will not turn a woman reporting domestic violence in to the United States Citizenship and Immigration Services (previously called the Immigration and Naturalization Service).**

Can you get a protective order even if you are not a United States citizen?

YES. You do not need to be a citizen or legal permanent resident to get a protective order. A lawyer may be helpful, but is not necessary just to get a protective order. **Civil courts generally do not ask about a woman's immigration status when she asks for a protective order or a child custody order.** Ask an attorney or an immigrant advocate about this issue.

Will you be deported if you take any actions to report domestic violence and protect your family?

If you are now a United States citizen, lawful permanent resident or possess a valid visa, you cannot be deported unless you entered the United States on fraudulent documents, violated conditions of your visa or have committed certain crimes, yourself.

If you are undocumented or are unsure about your immigration status, seek the assistance of an immigration attorney to see if you can legalize your status. Until then, you should do what you need to do (find shelter, ask for help) to make yourself safe. Even if your husband/intimate partner were to report you to the United States Citizenship and Immigration Services, deportation may not follow, would not be immediate, and, in most cases, you would have the opportunity to present your case to a judge.

Will your husband/intimate partner be deported if you take any action?

You must keep yourself and your children safe. It is your husband/intimate partner that has put himself at risk by his actions. Seeking assistance from shelters or lawyers is unlikely to result in the

deportation of your husband/intimate partner. If you contact the police and your husband/intimate partner is convicted of a crime, he may be deported, depending on his immigration status and the seriousness of the crime.

How can you get a lawful permanent residency without your husband's help?

The Violence Against Women Act (VAWA) creates two ways for battered women married to U.S. citizens or lawful permanent residents to get their residency. The first is called "self-petitioning." Instead of depending upon your husband to apply for your residency with the United States Citizenship and Immigration Services, you may apply on your own for yourself and your children. Your husband plays no role in the process and does not have to know you are applying for residency. Because the law is complicated, you should not go to the U.S. Citizenship and Immigration Services without first consulting a shelter worker or immigration attorney.

The second method for obtaining residency is called "cancellation of removal." This method is only available to you if you are in, or can be placed into, deportation proceedings. If you qualify for cancellation, the court may grant you residency. See an immigration attorney before proceeding.

If you don't seem to qualify under VAWA, don't despair. There may be other ways you could get immigration status, such as a new visa Congress has created for crime victims. Discuss your situation with an immigration or domestic violence advocate. on a temporary basis until the divorce is finalized on a temporary basis until the divorce is finalized.

**Information in this section adapted from the Family Violence Prevention Fund's informational brochure for immigrant and refugee women - www.endabuse.org*

U visa

Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of lawenforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while, at the same time, offer protection to victims of such crimes. The legislation also helps law enforcement agencies to better serve victims of crimes.

Q: How Does One Become Eligible for U Nonimmigrant Status?

A: There are four statutory eligibility requirements. The individual must:

- The individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity.
- The individual must have information concerning that criminal activity.
- The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
- The criminal activity violated U.S. laws

Source: www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1b15306f31534210VgnVCM100000082ca60aRCRD&vgnextchannel=ee1e3e4d77d73210VgnVCM100000082ca60aRCRD

Este libro está disponible en Español

IMPORTANT!!

Special Visas for Victims of Domestic Violence

You may be eligible for a special immigration visa due to domestic violence you have experienced. For more information, call CASA of Maryland at (301) 431-4185.

Domestic Violence Resources for Immigrant Women:

- **Montgomery County Abused Persons Program** (Services offered without regard to language spoken)
(240) 777-4195 * (240) 777-4673 (24 hours)
- **Asian/Pacific Islander Domestic Violence Resource Project**
(202) 464-4477 (M-F, 10am - 6pm)
<http://www.dvpr.org>
- **Korean Community Service Center Domestic Violence Prevention Program**
(240) 683-6663 * 1 (888) 987-4561 (Domestic Violence Hotline)
<http://www.kcscgw.org>
- **ASHA- Asian Women's Self Help Association**
Helpline- 1 (888) 417-2742
<http://www.ashaforwomen.org>
- **Adelante Familia at House of Ruth Maryland**
(410) 732-2176 (located in Baltimore)
<http://www.hruth.org>
- **CASA de Maryland Social Services Program** (Offer a referral service)
(301) 431-4185
<http://www.casademaryland.org>
- **Ayuda Domestic Violence Clinic**
(202) 387-4848
<http://www.ayuda.com>
- **Women's Law Center of Maryland Multi-Ethnic Domestic Violence Project**
(410) 534-8800
<http://www.wlcmd.org>



Montgomery County *Commission for Women*

www.montgomerycountymd.gov/cfw

21 Maryland Avenue, Suite 330 ♦ Rockville, Maryland 20850 ♦ 240-777-8300

The Montgomery County Commission for Women (CFW) is an advisory board to the Montgomery County Government. Established by county law in 1972, the CFW is charged with the responsibility of advising the County Executive, the County Council, the public and the agencies of the county, state and federal governments on the issues of concern to women. The CFW is comprised of 15 county residents appointed by the County Executive and confirmed by the County Council. Commissioners serve three-year terms without compensation.

The CFW's legislative mandate is to advance women's equal and full participation in the benefits, responsibilities and opportunities of society. The CFW's responsibilities include:

- identifying inequities in laws, policies, practices and procedures, recommending and promoting remedies;
- conducting research, holding public forums, analyzing economic, political, and social trends;
- publishing informational materials and providing education on women's issues in the community;
- holding an annual legislative briefing in partnership with other women's organizations.

The Commission's Priority Issues Include:

- Economic Empowerment for Women
- Fairness in Family Law
- Immigrant Women's Issues
- Science, Technology, Engineering and Math (STEM) Education for Women and Girls
- Senior Women's Issues
- Single Mothers and Poverty
- Women's Health Care Disparities
- Work/Life Balance including Paid Sick Leave for *all* employees

Counseling Services:

The CFW offers collaborative, solution-focused, short-term counseling and seminars designed to help individuals effectively address challenging life transitions. Counseling is available by appointment on **Tuesdays, Wednesdays and Thursdays from 9 a.m. to 5 p.m.**

Counseling services are available to individuals who are:

- Montgomery County residents;
- Without access to insurance coverage for mental health counseling.
- Adults 18 years and older;
- Single with no dependent children and income of less than \$50,000 per year; or
- Single with dependent children and income less than \$75,000 per year; or
- Married with a combined income of less than \$75,000 year.

Counseling services may help you address the following issues:

- Family crises and difficult life transitions
- Challenges balancing work and family
- Managing self-esteem issues
- Effective communication in the family or workplace
- Problems in relationships

Please call 240-777-8300 to schedule an appointment.

APPENDIX 1

GLOSSARY

Alimony: Financial support from one spouse to the other.

Answer: The formal response to a Complaint or Counterclaim; usually required within thirty days.

Child Support: Financial support from one parent to the other to assist in the care of children.

Complaint: The formal document which initiates litigation procedure.

Condonation: The act of forgiving a spouse who has committed an act of wrongdoing that WOULD have been a ground for divorce.

Contempt: When a Court Order is disobeyed.

Contested Divorce: When there is disagreement on issues such as grounds for the divorce, custody, child support, alimony or property distribution.

Custody: The right and obligation to care for and make decisions for the child/children. The parent having custody is called the custodial parent. The other parent is called the noncustodial parent.

Default: When an Answer to a Complaint is not timely filed.

Defendant: The person against whom a divorce is sought.

Deposition: Testimony under oath taken before a court reporter but not in court. A discovery method.

Discovery: Methods by which one party can “discover” and learn information pertaining to the divorce and custody issues from the other party.

Divorce: The legal termination of a marriage. Also called “dissolution.” There are two types of divorce in Maryland.

Limited Divorce: A partial divorce or judgment of separation.

Absolute Divorce: Complete and absolute dissolution of a marriage, after which the divorced persons are free to remarry. The statutory right to inherit from the other spouse is terminated upon final divorce.

Domicile: One’s legal, permanent home, as opposed to a temporary residence.

Earnings Withholdings Order (a k a Wage Lien): Process by which spousal or child support award may be enforced. Money is automatically taken from one’s paycheck.

Exceptions: An “appeal” from the Recommendations of a Family Division Master.

Grounds for Divorce: The basis on which one can request a divorce, or the basis on which a divorce may be granted.

Injunction: A court order which requires a party to do some act or prohibits a party from doing some act.

Interrogatories (Discovery): Written questions tendered by one party to be answered under oath by the other party.

Jurisdiction: The power of the court to hear a case.

Litigation: When a case goes to court before a judge or master to determine the issues.

Marital Property: Property acquired by the couple or an individual spouse during the marriage.

Master: A judicial hearing officer who is one level lower than a judge. Masters cannot pass Orders, but instead make recommendations. If neither party objects to those recommendations, the recommendations ultimately become an Order.

Parties: The defendant and the plaintiff in a divorce action are called the parties to the divorce.

Pendente Lite: Latin for “pending litigation.” It is the time during which the suit is taking place, but prior to a trial or final court decision. *Pendente lite* alimony or child support can be awarded by the court.

Plaintiff: The person who initiates the suit by filing a complaint with the court.

Pro Se: A person who represents him/herself in court without an attorney.

Rehabilitative Alimony: Temporary support from one spouse to the other while the recipient spouse works to become self-sufficient.

Request for Admission (Discovery): Request by one party that the other admit or deny posed statements; Deemed “admitted” if not answered in thirty (30) days.

Request for Documents (Discovery): Request by one party in a divorce action to examine and/or copy documents in possession of the other party.

Retainer (or Retaining Fee): The initial amount paid to your attorney at the beginning of your suit. You can expect to be asked for this fee when an attorney agrees to take your case.

Retainer Agreement: The agreement between attorney and client stating the nature of the legal services to be rendered and the cost of these services.

Separation Agreement: An agreement in which the spouses put in writing their intent to separate and live apart.

Service of Process: The process by which the defendant is notified that a suit has been filed against him or her; notice is usually delivered by the Sheriff, certified mail, or a private process server.

Uncontested Divorce: When both spouses agree on all issues.

Use and Possession Order: An order that one parent may live in the family home or use other property, such as the family car.

Writ of Summons: Document given to the defendant, along with the Complaint, alerting the recipient to the requirement to file a written Answer.

APPENDIX 2

COUNSELING SERVICES

If you find that the stresses and emotions that accompany divorce are taking their toll on you and your family, you may want to speak with a professional about these issues or join a support group where people experiencing a similar situation can discuss how they are coping. The following are just a few organizations and agencies that can provide counseling services to you and/or your family:

**Montgomery County Commission for Women
Counseling Services**
(240) 777-8300

The CFW offers collaborative, solution-focused, short-term counseling and seminars designed to help individuals effectively address challenging life transitions. Counseling is available by appointment on Tuesdays, Wednesdays and Thursdays from 9 a.m. to 5 p.m.

21 Maryland Ave , Suite 330
Rockville, MD 20850
www.montgomerycountymd.gov/cfw

National Family Resiliency Center
(301) 610-5666

Offers individual and family therapy, support groups and educational seminars focused on divorce and separation.

451 Hungerford Drive, Suite 225
Rockville, MD 20850
www.divorceabc.com

Child and Adolescent Mental Health Services
(240) 777-1450 • (240) 777-1432

Offers mental health services for children and adolescents in Montgomery County. Services available in Spanish.

8818 Georgia Avenue, 1st Floor
Silver Spring, MD 20910

7300 Calhoun Place, Suite 600
Rockville, MD 20855

The Family Services Agency
(301) 840-2000

Offers mental health services to adults, children, couples and families.

610 East Diamond Ave , Suite 100
Gaithersburg, MD 20877
www.familyservicesagency.org

Affiliated Community Counselors
(301) 251-8965

Offers individual counseling, couples and family counseling, group therapy and psychological testing and evaluation. Services to both children and adults.

15841 Crabbs Branch Way
Rockville, Maryland 20855
www.accirockville.org

APPENDIX 3

COUNSELING & OTHER SOCIAL SERVICES FOR MEMBERS OF THE IMMIGRANT COMMUNITY/ THOSE WITH LIMITED ENGLISH PROFICIENCY

CASA of Maryland Social Services Program

(301) 431-4185

Provides information about the availability of basic social services such as free or low-cost medical programs, mental health care, legal services and emergency shelter.
www.casademaryland.org

Ayuda

(202) 387-4848

Provides multi-lingual case management and therapy.
www.ayuda.com

Counselors Helping (South) Asians/Indians

(CHAI) Inc.

(443) 615-1355

Provides information, referrals and educational resources on mental health and counseling for the South Asian community.
www.chaicounselors.org

Islamic Center of Maryland Social

Services Program

(301) 840-9440

Offers counseling, social services and financial support.
www.icomd.org

Muslim Community Center

(301) 384-3454

Provides counseling, a free clinic and financial assistance.
www.mccmd.org

Muslimat Al-Nisaa

(410) 466-8686

Responds to healthcare, educational and housing needs of homeless Muslim men and women in the larger community as a whole.
www.mnisaa.org

APPENDIX 4

LEGAL RESOURCES

Lawyer Referral Service (301) 279-9100

Offers consultation and referrals. The client is connected directly with an attorney via a telephone conference call in order to set up an appointment. Services also available for those with lower incomes.

Metropolitan Maryland Legal Aid Bureau 1 (888) 215-5316 * (240) 314-0373

Offers free legal services for low income individuals only.

Women's Law Center of Maryland Family Law Hotline 1 (800) 845-8550

Provides an opportunity to talk to an attorney without charge over the phone.

Pro Bono Program Legal Clinics (301) 424-7651

Provides free legal services (including domestic cases) for low-income clients only . Please call the numbers below for hours of operation .

- Gilchrist Center for Cultural Diversity:
(240) 777-4940 (Wheaton)
(240) 777-6950 (Germantown)
- TESS Community Center:
(301) 565-7675

Office of Child Support Enforcement 1 (800) 332-6347

Assistance in the process of obtaining child support from a parent who is not paying.

Asian Pacific American Legal Resource Center (202) 393-3572

Direct services and legal referrals for Asian Americans.

Montgomery County Commission for Women Legal Call-back program (240) 777-8300

The Legal Callback Program provides telephone legal consultation by volunteer attorneys.

ONLINE RESOURCES FOR DIVORCE

Forms used in divorce

Many of the forms you will need during the divorce process can be found online

www.courts.state.md.us/family/formsindex.html

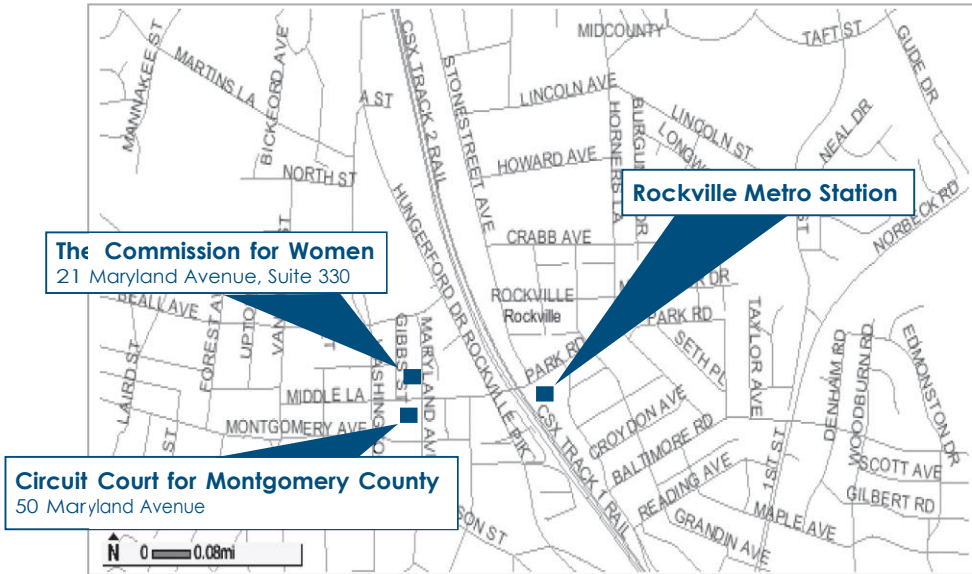
American Academy of Matrimonial Lawyers

Several online resources for those going through divorce

www.aaml.org

APPENDIX 5

MAP OF DOWNTOWN ROCKVILLE, MARYLAND



Map courtesy of Montgomery County Planning, MNCPPC.
www.montgomeryplanningboard.org

