

# THE KENTUCKY DIVORCE PROCESS

*Although Each Divorce Is As Unique as Each Marriage, There Are Common Steps and Considerations in Any Kentucky Divorce*



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The decision to end a marriage is usually not made easily. Often, a couple spends months, even years, trying to make the marriage work before resorting to divorce. Once the decision has been made, however, it is time to move forward with the divorce process. If you have never been through the process of divorce it helps to have an idea what to expect. Although each divorce is as unique as each marriage, there are common steps and considerations in any Kentucky divorce.

## **FAMILIARIZING YOURSELF WITH THE TERMINOLOGY**

The legal system can be intimidating regardless of the reason for your involvement. One reason why the legal system can be so intimidating is the legal

jargon used. If you are going through a divorce you should familiarize yourself with some terminology commonly used in a divorce to make the process a bit less intimidating.

- **Petitioner** – spouse who files for the divorce
- **Respondent** – non-filing spouse
- **Petition for Dissolution of Marriage** – name of the document that must be filed with the appropriate court to begin the divorce process in Kentucky
- **Decree of Dissolution of Marriage** – name of the document entered when the divorce process is complete and you are granted a divorce.
- **Summons** – document sent to the Respondent, along with a copy of the Petition for Dissolution of Marriage, informing the Respondent that the divorce process has begun.
- **Child Support Worksheet** – document that must be filled out and used to compute child support if minor children are involved.
- **Marital Settlement Agreement** – document filed with the court when the parties are able to reach an agreement with regard to issues in the divorce. This agreement is also sometimes called a Separation Agreement

## FILING THE PETITION

The first step in a Kentucky divorce is to file the Petition for Dissolution of Marriage. To file for divorce in Kentucky either you, or your spouse, must have lived in Kentucky (or been stationed in Kentucky if in the military) for the 180 days preceding the filing of the Petition.

Kentucky is a “no-fault” divorce state, meaning that no grounds for divorce are required. Instead, all divorces in Kentucky are filed on the grounds of “irretrievable breakdown”. Fault, or marital misconduct, can play a role, however, when it comes to division of assets, payment of alimony, or custody/visitation with minor children.

Kentucky requires the parties in a divorce to live apart for at least 60 days before a final decree can be entered. The 60 day requirement can be met if the parties remain living in the same home but refrain from sexual relations during the required time period.

## RESPONDENT’S ANSWER



After the Petition is served on the Respondent, he or she has the option to respond to the Petition in the form of a written “Response”. A Response will address the points set forth in the Petition and provides the court, and the Petitioner, with some idea of the issues

that will be contested in the divorce. If the Respondent fails to file a Response with the court the Petitioner may ask for a Default Judgment. Although a Default Judgment allows the divorce to be finalized, some issues cannot be decided without the Respondent’s input, making a Default Judgment a course of last resort in most cases.

## COMMON DIVORCE ISSUES

Once the Petition and Response have been filed with the court both parties will begin negotiating the terms of the divorce. Some divorces are resolved relatively quickly by the parties while others can drag on for a year or more before a resolution is reached. The most common issues that need to be resolved before a divorce can be finalized are:

- **Assets and Debts** – Kentucky is an “equitable distribution” state. What that means is that if a court is required to decide how assets of the marriage are divided the court will decide based on what is “equitable”, or fair. Both parties may own separate property during the marriage; however, how property is titled does not necessarily determine who will receive the property in a divorce. Furthermore, “equitable” does not mean “equal”. A court will consider things such as: duration of the marriage; contribution of each spouse to acquisition of assets, including contributions by a stay-at-home parent; and the economic circumstances of each spouse at the time of the divorce.
- **Children** – the court will consider the “best interests of the child” when custody and/or visitation are issues in a divorce. The court is only concerned with lessening the impact of the divorce and doing what is best for the child. The court will only consider misconduct by one of the parties if that misconduct impacts the children. For example, if domestic violence or substance abuse by a parent is alleged in a divorce the court will only consider the allegations to the extent they affect the children. If domestic violence occurred in front of the children, for example, it could impact custody or visitation decisions.

- **Child/Alimony/Spousal Support**—the court will typically order the non-custodial parent to pay child support to the parent with custody of the children. Child support is based on the child support worksheet; although, the parties or the court can deviate from the worksheet for good cause. Kentucky does allow spousal support to be ordered in situations where it is agreed to by the parties or when the court finds it is warranted. Factors such as the length of the marriage, the value of marital property awarded to each spouse, and the requesting spouse’s ability to obtain employment given his or her education and employment history will be considered when deciding whether or not to award spousal support and, if so, how much to award and for how long.

## MEDIATION OR COUNSELING



If the Respondent does not want the divorce, the court may order the parties to counseling or to a conciliation conference. Furthermore, the parties may choose to use mediation as an alternative to a trial or as a pre-trial option. Mediation involves a neutral

third party who has gone through special training to become a mediator. Often, a mediator is an attorney. The mediator will confer with both sides to determine what the contested issues are in the divorce and then work with both sides to try and obtain a resolution to those issues.

## REACHING AN AGREEMENT

If the parties are able to reach an agreement that resolves all of the issues in the divorce they may submit a Marital Settlement Agreement to the court for approval. If the court approves the Agreement the divorce can be finalized without the need for a trial. Clearly, reaching an agreement saves both time and money in a divorce as well as avoids the emotional cost of a trial.

## WHAT HAPPENS WHEN AN AGREEMENT CANNOT BE REACHED?

If the parties are unable to resolve all of the issues in a divorce a trial will be



necessary. If some issues are resolved but others remain contested the trial can be limited to resolving only those issues that are contested; however, a trial of any type can be expensive, both in terms of dollars and in terms

of the emotional toll on those involved.

No two divorces are the same. Although the preceding information provides a general overview of the divorce process in Kentucky there is no substitute for professional advice. If you are considering divorce, consult with an experienced Kentucky divorce attorney as soon as possible to ensure that your rights are protected.

## RESOURCES

DivorceSource.com, [Kentucky Divorce Laws](#)

NOLO, [Divorce in Kentucky](#)

Legal Aid, [Divorce Topics](#)



## **About the Author**

Paul Musselwhite, Carol Blakeley Meinhart, Kimberly Musselwhite Staples, and Robert D. McIntosh are the experienced and knowledgeable attorneys that make up Musselwhite, Meinhart & Staples. With over 50 years of combined experience, they have been serving the legal needs of individuals, individuals in the military and families in Hardin county and all of central Kentucky with pride and dignity. Practicing divorce cases in Hardin county, central Kentucky and beyond, they are experienced in all types of law.

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