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Absolute Divorce: The absolute ending of a marriage. Both parties are free to remarry.

Ab Initio: Latin for “from the beginning.”

Action: A lawsuit or proceeding in a court of law.

Affidavit: A written statement of facts made under oath and signed before a notary public or other officer who has authority to administer oaths.

Agreement: A verbal or written resolution of disputed issues.

Alias Summons: Another Summons when the original summons is not served on the defendant.

Alimony: Periodic or lump sum support payments (not child support) to a former spouse to support his/her lifestyle. The paying spouse may deduct these payments, and the receiving spouse must declare them as income if they are “periodic” (payable over a definite period) and meet the criteria outlined under IRS Code Section 71. Also referred to as spousal support or maintenance payments.

Alternative Dispute Resolution (ADR): Ways for divorcing parties to resolve their disagreements without a trial. ADR methods include: negotiation, mediation, arbitration, and collaborative divorce.

Annulment: The legal ending of an “Invalid Marriage”. To the law neither party was ever married, but all children born of the annulled marriage remain legitimate.

Answer: The written response to a complaint, petition or motion.

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Appeal: The process whereby a higher court reviews the decision of a lower court and determines whether there was reversible error. If so, the appellate court amends the judgment or returns the case to the lower court for a new trial.

Appraisal: Procedure for determining the fair market value of an asset when it is to be sold or divided as part of the divorce process.

Arbitration: Submitting a disputed matter for decision to a person who is not a judge. The decision of an arbitrator is usually binding and final. Arbitration varies greatly from Mediation.

Arrearages: The difference between the amount of spousal or child support paid, if any, and the amount required under court order.

Assets: Cash, property, investments, goodwill, and other items of value (as defined by state law) that appear on a balance sheet indicating the net worth of an individual or a business.

“Best Interest of the Child”: A discretionary legal standard used by judges when making decisions about custody, visitation, and support for a child when the parents are divorcing.

Change of Venue: A change of judges or geographical location, requested by a party to the action who feels that the change is justified by state law.

Child Support: The amount of money paid by a non-custodial parent to the custodial parent for a child’s day-to-day expenses and other special needs. Each state is required by congress to have written child support guidelines and enforcement procedures.

Child Support Guidelines: A series of mathematical formulas used to calculate the amount of child support to be paid in some cases. Congress has mandated that states adopt child support guidelines and support enforcement procedures.

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COBRA: Consolidated Omnibus Budget Reconciliation Act (COBRA) law passed in 1986. It allows an ex-spouse to continue to receive health insurance coverage from his/her former spouse's employer if the employer has at least 20 employees, for up to three years after the divorce. Premiums for this coverage are typically higher than when they were covered under the employer's plan. It should be noted that the normal COBRA provision states that if an employee leaves or is fired from a job, he or she can get health insurance from that company for 18 months. However, in the case of a divorce it is extended to 3 years or 36 months.

Collaborative Divorce: Collaborative Divorce is a team approach to divorce. Divorcing families obtain professional help from specialists in the psychotherapy, financial, legal fields, and when needed, medical and child specialists to help them settle their case.

Collaborative Law: Collaborative Law is a new dispute resolution model in which each party retains their own attorney who has gone through specialized "Collaborative Law" training. The lawyer's only job is to help settle the dispute. All parties agree to work together respectfully, honestly, and in good faith to try to find "win-win" solutions to the legitimate needs of both parties. No one may go to court, or even threaten to do so, and if that should occur, the Collaborative Law process terminates and both lawyers are disqualified from any further involvement in the case.

Collusion: An agreement between two or more persons where one of the parties brings false charges against the other. In a divorce case, the husband and wife may agree to use adultery as a ground in order to obtain divorce more quickly, knowing full well that adultery was not committed. Collusion is illegal.

Common Law Marriage: A judicially recognized marriage in some states, usually based on cohabitation where no formal marriage ceremony has taken place.

Community Property: A form of co-ownership of property used in some states that, divides equally all property acquired during the term of the marriage, regardless of whose name it is titled. Inheritances and gifts are

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excluded in some jurisdictions. Currently, these eight states have community property laws: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. The Wisconsin system has similarities. Most other states follow the rule of Equitable Division of Property.

Complainant: The one who files the suit, same as plaintiff.

Complaint: This is a legal document filed by the plaintiff to start the divorce process. It states that the marriage has ended and lists the grounds and claims for the divorce. In some states it is also known as a petition.

Condonation: The act of forgiving one's spouse who has committed an act of wrongdoing that would constitute grounds for divorce. Condonation generally is proven by living and cohabitating with the spouse after learning that the wrongdoing was committed. It is often used as a defense to a divorce.

Contempt of Court: The willful failure to comply with a court order, judgment, or decree by a party to the actions. Contempt of Court may be punishable by fine or imprisonment.

Contested Divorce: Any case where the judge must decide one or more issues that are not agreed to by the parties. All cases are considered contested until all issues have been agreed to.

Corroborative Witness: A person who testifies for one of the parties and backs up their story.

Court Order: A written instruction from the court carrying the weight of law. Orders must be in writing. Anyone who knowingly violates a court order can be held in contempt of court.

Credit: The measure of trustworthiness of repayment of a loan based on income, past credit history, assets and liabilities. It should be noted that after the divorce the former spouses' past credit history might affect the ex-spouse.

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Cross Examination: The questioning of a witness presented by the opposing party on trial or at a deposition. The purpose is to test the truth of that testimony.

Custodial Parent: The parent with whom the child (ren) live the majority of the time. A distinction should be made between a Legal Guardian (who has the ability to make legal decisions on behalf of the child) and the Custodial Parent: Technically, a Legal Guardian may have no custody rights at all.

Curriculum Vitae: A resume that is prepared by an expert witness to show their qualifications in their area of expertise.

Custody: Usually refers to the parent's right to (1) have a child live with that parent and (2) make decisions concerning the child. Exact meaning varies greatly in different states. The court awards custody to one parent, which is called Sole Custody, or grants Joint Custody, allowing both parents, the right to physical care, control, or direct physical supervision of the children.

Debt: Services, money or goods owed by one party to another.

Decree: The final ruling of the judge on an action for divorce, legal separation, or annulment. Decree has the same meaning as judgment.

Decree Nisi / Rule Nisi: An order by the court stating that a conditional divorce will become absolute by a certain date, unless a party contests the order.

Default: A party's failure to answer a complaint, motion or petition.

Defendant: The partner in a marriage against whom a divorce complaint is filed. Defendant has the same meaning as respondent.

Deposition: The testimony of a witness taken out of court under oath and reduced to writing. Discovery depositions are the most common and are taken for the purpose of discovering the facts upon which a party's claim

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is based on discovering the substance of a witness's testimony prior to trial. The deposition may be used to discredit a witness if he changes his testimony.

Direct Examination: The initial questioning of a witness by the attorney who called him or her to the stand.

Discovery: Procedures followed by attorneys in order to determine the nature, scope, and credibility of the opposing party's claim. Discovery procedures include depositions, written interrogatories, and notices to produce documentation relating to issues, relevant to the case.

Dismissal: Occurs when a party voluntarily drops the case (in some states) or when a judge finds that a case totally lacks merit.

Dissolution of Marriage: The legal process of ending a marriage. In most states, the legal term for divorce.

Divorce: The legal proceeding by which a marriage is legally terminated. It may be contested (where one party denies the allegation or wants to keep the marriage in place) or uncontested.

Domestic Violence: The physical abuse of one family member by another.

Emancipation: The point at which a minor child comes of age. Children are emancipated in most states upon reaching the age of 18, 19 or 21, or upon marriage, full-time employment, graduation from high school, or entering the armed services. Emancipation is the point where parents have no further legal or financial obligations for a child's support.

Equitable Division of Property: Method of dividing property based on a number of considerations (such as length of marriage, differences in age, wealth, earning potential, and health of partners involved) to achieve an equitable and fair distribution – not necessarily an equal one. Eight of the western states use a different method of division called Community Property.

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Evidence: Proof presented at a hearing, including testimony, documents or objects.

Exhibits: Tangible things presented at trial as evidence.

Expert witness: In court proceedings, the expert witness is the professional whose testimony helps a judge reach a decision.

File/Filing: To place a document in the official custody of some public official. Every case brought to court must be filed with the court clerk in order for the court to take action upon the case. A case is filed when a party (plaintiff) writes a written complaint and brings it to the clerk, who files it. The plaintiff must also serve the opposing party with a copy of the complaint.

Foundation: The evidence that must be presented before asking certain questions or offering documentary evidence in trial. If a piece of evidence lacks foundation (proof, facts to back it up) it will not be admitted or considered as evidence in the court case.

Garnishing: The act by which support money is obtained from the non-paying spouse's employer, who draws that amount from his/her employee's paycheck.

Goodwill: The value of a business beyond its sales revenue, inventory, and other tangible assets: including prestige, name recognition, and customer loyalty.

Grounds for Divorce: Reasons for seeking a divorce, such as incompatibility, mental cruelty, physical abuse, or adultery. While some states allow fault grounds for divorce, all states have some form of no-fault divorce.

Guardian-ad-Litem: A person appointed by a judge to prosecute or defend a case for a person legally unable to do so, such as a minor child.

Hearing: Any proceeding before a judicial officer.

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Incompatibility: The inability of persons to get along; a ground for divorce.

Interest-Based Bargaining: A method of negotiation used in mediation. It starts with each party educating the other party about their interests. Ideally, the parties will work together until they find solutions that allow both parties to meet their needs.

Interrogatories: A series of written questions served upon the opposing party in order to discover certain facts regarding the disputed issues in a matrimonial proceeding.

Joint Custody: The children live with the residential custodian and visit with the non-residential parent. Both parents have an equal say in major decisions affecting the children and decisions can only be made with notice and consent. See also, Sole Custody.

Joint Property: Property held in the name of more than one person.

Judgment: The order of the court on a disputed issue; same as decree.

Jurisdiction: The power of the court to rule upon issues relating to the parties, their children or their property.

Legal Separation: Court ruling on division of property, spousal support, and responsibility to children when a couple wishes to separate but not divorce. A legal separation is most often desired for religious or medical reasons. A decree of legal separation does not dissolve the marriage and does not allow the parties to remarry.

Limited Divorce: Establishes certain legal responsibilities while the parties are separated but does not end the marriage. Also referred to as legal separation.

Lis Pendens: A piece of property cannot be transferred during a pending lawsuit that may change the disposition of it, once a notice has been filed in the public record.

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Litigation: The process by which a civil case settles parties' rights.

Maintenance: Same as spousal support and alimony.

Marital Property: Accumulated income and property acquired by the spouses during the marriage, subject to equitable division by the court. States will vary on their precise definition of what is to be included in marital property, sometimes excepting property acquired by gift or inheritance. (See community property and equitable division of property.)

Mediation: A non-adversarial process in which a husband and wife are assisted in reaching their own terms of divorce by a neutral third party trained in divorce matters. The mediator has no power to make or enforce decisions. Mediation differs greatly from Arbitration.

Modification: A change in the judgment, based on a change in circumstances.

Motion: An application or request to the court for an order. May be written or verbal.

No-Fault Divorce: A marriage dissolution system whereby divorce is granted without the necessity of proving one of the parties guilty of marital misconduct.

Non-Custodial Parent: The parent with whom the children do not live the majority of the time.

Nuptial: Pertaining to marriage.

Order: A ruling by the court.

Paralegal: A legal assistant to an attorney, usually certified by the state, who is trained in legal research.

Pendente Lite Support: A temporary order of the Court that provides support until the divorce is finalized. See also, temporary order.

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Perjury: The act of lying while under oath.

Petition: A written application for particular relief from the court. In some jurisdictions complaint for divorce is entitled "petition for dissolution."

Petitioner: The person who filed the Petition or Complaint. Also referred to as the Plaintiff.

Physical Custody: The parent with whom the children will primarily reside. See "Custodial Parent".

Plaintiff: The spouse who initiates the legal divorce process by filing a complaint or petition stating that the marriage is over and listing the grounds and claims against the other spouse. Plaintiff is the same as Petitioner.

Positional Bargaining: Positional bargaining starts with the solution. One party proposes a solution and the other party makes an offer. And then counteroffers are made until a resolution is found that works for both parties.

Precedent: Decisions found in other pre-existing cases which factor into the case at hand.

Prenuptial Agreement: Prior to a marriage, partners contractually agree how assets and liabilities will be divided in the event of a divorce. Prenuptial agreements are usually upheld, absent fraud, coercion, duress, or severe misrepresentation.

Primary Caregiver: A factor in consideration of who should be the custodial parent; the person who usually takes care of the children.

Privilege: The right of a spouse to make admissions to an attorney, clergyman, psychiatrist or others as designated by state law that are not later admissible as evidence.

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Pro Se Divorce: A divorce wherein the divorcing partners represent themselves in court (with or without a mutually agreeable separation agreement) without the assistance of attorneys. Pro Se is Latin for Proper Person.

Qualified Domestic Relations Order (QDRO): A court ruling earmarking a portion of a person's retirement or pension fund payments to be paid to his/her ex-spouse as part of a division of marital assets. The fund administrator makes payments directly to the non-employee ex-spouse at the time of the divorce or at the time the employee's retirement payments are to begin.

Quid Pro Quo: The giving of one valuable thing for another.

Rebuttal: The introduction of evidence at a trial that is in response to new material raised by the defendant at an earlier stage of the trial.

Reconciliation: When parties decide to get back together. They may sign a reconciliation agreement, which is enforceable by the court.

Respondent (Defendant): The party defending against a divorce petition (complaint).

Restraining Order: A court order prohibiting a party from certain activities. Issued in response to a motion. Restraining orders are often issued to protect against domestic violence or to protect marital assets. In many states, violating a "domestic restraining order" is a criminal offense.

Retainer: Money paid by the client to the lawyer or expert witness to obtain a commitment from the lawyer or expert witness to handle the client's case. A retainer can be a deposit against which the lawyer or expert witness charges fees as they are earned.

Rules of Evidence: The rules that govern the method of presentation and admissibility of oral and documentary evidence at court hearings or depositions.

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Section 71 Payments: Section 71 is a Section of the IRS Code, which states that alimony, and separate maintenance payments generally are taxable to the recipient and deductible from gross income by the payor. These payments can be treated as alimony for tax purposes if:

- 1) the payment is made in cash, check or money order;
- 2) there must be a written court order or separation agreement;
- 3) the couple may not agree that the payments are not to receive alimony tax treatment;
- 4) they may not be residing in the same household;
- 5) they may not file a joint tax return; and
- 6) no portion of the payment may be considered child support.

Additionally, Section 71 requires that if the payor of alimony wants to deduct alimony payments over \$15,000 per year, payments must last for at least three years. If this requirement is not met, payments are subject to recapture rules.

Separate Property: Generally considered any property owned before marriage (earned or acquired by gift or inheritance), acquired during the marriage by one partner using only that partner's separate property, or earned after a formalized agreement. This definition will vary from state to state.

Separation: The court grants a legal separation. It grants the parties a partial divorce. They must live apart, but the marriage is not dissolved until a divorce is granted.

Separation Agreement: The legal document listing provisions for peace between divorcing couples, division of property, spousal support, and responsibility for children of the marriage. The couple's agreement or court-ordered terms are part of the divorce decree.

Service: Providing a copy of the papers being filed to the opposing party.

Settlement Agreement: A written contract dividing property, spelling out rights and obligations, as well as settling issues such as spousal and child support and custody.

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Sole Custody: The custodial parent has the power to make all decisions, both day-to-day and major decisions concerning the child's health, education and welfare without consulting or notifying the non-custodial parent.

Spousal Support: Money paid by one spouse to the other for the recipient's support following the divorce. Support may be mandated for a specific period of time (long-term or short-term) and is based on the needs of the recipient, ability to pay, and economic differences between the partners. Also called alimony or maintenance.

Spouse: Husband or wife.

Standard of Living: A factor when determining spousal support, allowing the recipient an adequate amount to maintain their current lifestyle.

Stipulation: An agreement between the parties or their counsel, usually related to matters of procedure.

Subpoena: A court order requiring a person's appearance in court or at a deposition as a witness or to present documents or other evidence for a case.

Summons: A Summons notifies a spouse of his/her rights and obligations in responding to the Complaint for Divorce.

Temporary Orders: Orders granting relief between the filing of the lawsuit and the judgment. Temporary orders are automatic in some states. They are also called Pendente Lite Orders.

Testimony: Statements under oath by a witness in a court hearing or deposition.

Transcripts: The written record of the divorce proceedings, testimony or depositions.

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Trial: The time when a judge hears the contested permanent or temporary issues, with supporting evidence and witnesses, in a couple's divorce decisions. The judge may take a few hours or a few weeks to review the information presented and issue a court opinion.

Uncontested Divorce: When the defendant is not going to try to stop the divorce and there are no issues for the court to decide about the children, money or property.

Venue: The county in which the case is heard.

Visitation: The right of the non-custodial parent to see the children. Increasingly, states are granting this right to grandparents and close relatives.

Voir Dire: Where the opposing counsel has the opportunity to disqualify an expert witness.

Writ of Summons: A form issued by the court directing a party to respond to a complaint, motion or petition.