

# DIVORCE

## VENUE

- Plaintiff must be a resident of Ohio for at least 6 months [R.C. 3105.03]
- Plaintiff must be a resident of the county at least 90 days [Civ.R. 3(C)(9)]
  - This requirement may be waived if both parties consent.



Common law marriage is not valid in Ohio after 1991 [R.C. 3105.12]



A Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) affidavit must be filed in all cases involving allocation of parental rights and responsibilities. See Allocation of Parental Rights and Responsibilities Bench Card for more information.

## SERVICE

- Pursuant to Civ.R. 4 and 4.1, the clerk serves by certified mail or personal service.
  - If certified mail fails, service still must be perfected. If certified mail is unclaimed, it may be sent by ordinary mail. All mailing must be done by the clerk's office.
- Service by publication when residence is unknown [R.C. 3105.06; Civ. R. 4.4]
- Service by posting is available when party has filed an affidavit of indigency [Civ.R. 4.4(A)(2)]
- Service may be waived by the defendant. [Civ.R. 4(D)]



Out-of-state personal service must be ordered [Civ. R. 4.3(B)(2)]



Check that certified mail is not signed by the plaintiff spouse.

## GROUND [R.C. 3105.01]

### 1. No-Fault Grounds

- No-fault grounds often are stipulated by the parties. Fault-grounds cases require an evidentiary hearing. In all cases, a corroborating witness is required.
- No-fault grounds:
  - Living separate and apart without cohabitation for more than one year
  - Incompatibility, unless denied by either party



If the parties allege fault grounds, then consider setting a bifurcated motion hearing.

### 2. Fault Grounds:

- One party had a spouse living at the time of the marriage
- Willful absence of the other party for one year
- Adultery
- Extreme cruelty
- Fraudulent contract
- Gross neglect of duty
- Habitual drunkenness
- Imprisonment of adverse party in a state or federal correctional institution when complaint filed
- A divorce has been obtained outside of Ohio by either party, with remaining marital obligations (such as property and parental rights and responsibilities) to be determined by the court



The court may amend the complaint to conform to the evidence.

## CONVERSION

At any time before a final judgment is entered in a divorce action, the spouses may convert the action into an action for dissolution of marriage by filing a motion with the court that includes a petition for dissolution of marriage. [R.C. 3105.08]

## TEMPORARY ORDERS

*See Temporary Orders Bench Card.*

## FINAL HEARING

- Both parties must be present, or one party and a corroborating witness.
- Can you proceed? Things to consider:
  - Pending bankruptcy
  - Current pregnancy
  - Active military service
  - Filing of required affidavits
  - Completion of court-ordered parenting seminars
  - Restoration of former name shall be ordered if requested [R.C. 3105.16]
- Hearing Process
  - Hearing may take place 42 days after service of process or 28 days after the last publication [Civ.R. 75(K)]
  - If there is a counterclaim, then the hearing may not take place until 28 days after service of the counterclaim, unless there is a written waiver [Civ.R. 75(K)]
  - Notice must be sent seven days in advance to a self-represented party [Civ.R. 75(L)]
  - Attorney's fees may be awarded [R.C. 3105.73]
  - A final judgement entry must resolve all issues, including the division of property and debt (separate, marital and pre-marital, spousal support and the allocation of parental rights and responsibilities). [Civ.R. 75(F)]

- A final judgement entry that adopts a magistrate's decision shall include all of the findings.

## MARITAL PROPERTY [R.C. 3105.171]

For purposes of valuation of marital property, the duration of the marriage is presumed to be from date of marriage until date of decree, unless proven otherwise.

*See Equitable Division of Property Bench Card.*



All property is presumed to be marital unless and until proven otherwise.

1. Marital property includes real or personal property, including intangible property, acquired by either of the spouses during the marriage [R.C. 3105.171(A)(3)(a)]
  - Intangible property may include:
    - Retirement benefits
    - Stock options
    - Tax refunds or obligations
    - Cash value of life insurance
    - Bank accounts
    - Investment accounts
    - Debts
      - Credit cards
      - Loans, both secured and unsecured
2. Income or appreciation of separate property resulting from the labor, monetary, or in-kind contribution of either spouse during the marriage
3. Any money deferred during the marriage
4. Considerations during division of property:
  - Divide property equally unless it would be inequitable. [R.C. 3105.171(C)(1)]
  - May make a distributive award instead of, or in addition to, a division of property to achieve equity.

- Distributive award means any payments that are made from property or income that is separate from marital property [R.C. 3105.171(A)(1)]
- May consider financial misconduct in award of marital property
  - Financial misconduct includes dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets [R.C. 3105.171(E)(4)]

#### SEPARATE PROPERTY [R.C. 3105.171(A)(6)(A)]

- Property acquired prior to marriage or as a result of inheritance
- Passive income from separate property
- Property acquired by one spouse after a legal separation or excluded by an antenuptial agreement or postnuptial agreements.

*See Legal Separation Bench Card  
and Prenuptial Agreements Bench Card.*

- Compensation for personal injury, except for loss of marital earnings and expenses paid with marital funds
- A gift made after the marriage to only one spouse, if proven by clear and convincing evidence

#### SPOUSAL SUPPORT [R.C. 3105.18]

Spousal support includes payments both for sustenance and for support of the spouse or former spouse. It does not include any payment made as part of a division or distribution of property or a distributive award. [R.C. 3105.18(A)]

1. Considerations in determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, terms of payment, and duration. [R.C. 3105.18(C)]
  - Income of the spouses from all sources
  - Relative earning ability

- Age, physical, mental and emotional health of the spouses
- Retirement benefits of the spouses
- Duration of the marriage
- If it is not appropriate for a spouse to seek work because of caring for a child of the marriage
- Standard of living during the marriage
- Relative extent of education of the spouses
- Relative assets and liabilities of the spouses
- Contribution by the parties to a spouse's education, training, or earning ability
- Time and expenses of a spouse to acquire education
- Tax consequences of an award
- Lost income of a spouse resulting from marital responsibilities
- Any other factor

#### 2. Additional considerations

- Support may be an award of property, lump sum payment, or periodic payments [R.C. 3105.18(B)]
- Attorney's fees may be awarded as spousal support [R.C. 3105.73]

*See Allocation of Parental Rights  
& Responsibilities Bench Card.*

#### DISMISSAL [Civ.R. 75(P)]

- A dismissal of a divorce action by a court or one party, other than a denial on the merits, does not prevent a subsequent filing of the same action.

## DIVORCE CHECKLIST: WITHOUT CHILDREN

Complaint	<ul style="list-style-type: none"> <li>• Date of marriage</li> <li>• Jurisdiction: lived in Ohio for 6 months</li> <li>• Grounds stated</li> <li>• Relief requested/demanded (divorce, spousal support, etc.)</li> </ul>
Affidavit of Property	
Affidavit of Income	
Service of Summons/Waiver	
Divorce Decree with Praecipe	<ul style="list-style-type: none"> <li>• <b>Must find:</b> <ul style="list-style-type: none"> <li>○ What was present for hearing</li> <li>○ Date of hearing</li> <li>○ Service</li> <li>○ Jurisdiction</li> <li>○ Date of marriage/duration</li> <li>○ Full disclosure of assets/debts</li> <li>○ Wavier of valuation of assets/debts if applicable</li> <li>○ Grounds</li> </ul> </li> <li>• <b>Must order:</b> <ul style="list-style-type: none"> <li>○ Termination of marriage</li> <li>○ Divisions of assets/debts</li> <li>○ Allocation of tax liability</li> <li>○ Spousal support and address future jurisdiction</li> <li>○ Restore name if desired (Husband cannot force Wife to restore if she does not request to do so)</li> <li>○ Payment of court costs</li> <li>○ Effective date next to Judge's signature line</li> <li>○ Must have signature of parties and attorneys</li> </ul> </li> </ul>
Affidavit of Findings of Fact if division of assets and debts is not agreed (Separation Document)	

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Affidavit of Property	
Affidavit of Income	
Parenting Proceeding Affidavit	
Health Insurance Affidavit	
Service of Summons/Waiver	
Divorce Decree with Praeceptum	<ul style="list-style-type: none"> <li>• <b>Must find:</b> <ul style="list-style-type: none"> <li>○ What was present for hearing</li> <li>○ Date of hearing</li> <li>○ Service</li> <li>○ Jurisdiction</li> <li>○ Date of marriage/duration</li> <li>○ Full disclosure of assets/debts</li> <li>○ Waiver of valuation of assets/debts if applicable</li> <li>○ Grounds</li> </ul> </li> <li>• <b>Must order:</b> <ul style="list-style-type: none"> <li>○ Termination of marriage</li> <li>○ Divisions of assets/debts</li> <li>○ Allocation of tax liability</li> <li>○ Spousal support and address future jurisdiction</li> <li>○ Restore name if desired (Husband cannot force Wife to restore if she does not request to do so)</li> <li>○ Payment of court costs</li> <li>○ Effective date next to Judge's signature line</li> <li>○ Must have signature of parties and attorneys</li> </ul> </li> <li>• <b>Allocation of custody and parenting time – either:</b> <ul style="list-style-type: none"> <li>○ Parenting (separate document from the divorce decree)</li> <li>○ Shared Parenting Plan (school placement, parent possession, schedule)</li> <li>○ Shared Parenting Decree (will incorporate the Shared Parenting Plan. If the Plan is not filed more than 30 days ahead, must waive 30 day requirement)</li> <li>○ Sole Custody to One Parent (contained within the divorce decree)</li> <li>○ Name custodial parent</li> <li>○ Determine parenting time schedule</li> </ul> </li> <li>• <b>Both Shared Parenting and Sole Custody require:</b> <ul style="list-style-type: none"> <li>○ Allocation of Tax Dependency</li> <li>○ Health Insurance</li> <li>○ Uncovered medical expenses</li> <li>○ Child Support <ul style="list-style-type: none"> <li>• Deviation (entry)</li> <li>• Termination</li> <li>• Withholding Orders and Instructions for Service</li> <li>• Title IV-D Application</li> </ul> </li> </ul> </li> </ul>
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