

FAMILY LAW GLOSSARY
www.DivorceLawNC.com

- A -

Ab Initio: Latin for "from the beginning."

Abandonment: The action of one spouse leaving the marital home without consent of the other spouse. This is considered grounds for divorce in some states.

Abduction: Unlawfully taking another.

Absolute Divorce: Declaration by a court that the marriage has been dissolved so that the parties are no longer married to each other and are free to marry someone else.

Accrue: To propagate or build upon.

Action: Judicial proceeding.

Administrative Officer: The official who is appointed instead of a judge to preside over the child.

Admissible: Any form of testimony or evidence that is allowed into court.

Adultery: When one spouse has sexual intercourse with a third party. This is considered grounds for divorce in some states.

Adversarial Divorce: A divorce where each spouse is unable to come to any agreement.

Adversary: The opposing party in a lawsuit.

AFDC (Aid to Families with Dependent Children): Financial support in the form of cash given to a family with children in need of financial help.

Affidavit: A written statement of facts that are made under oath and which must be witnessed and signed by a notary or another official authorized to administer oaths.

Affirmative Defense: New facts or legal defenses in response to the opposing spouse's pleading.

Agreement: Mutual assent between two or more parties; normally leads to a contract; may be verbal or written.

Alienation of Affection: The defendant diminishes the marital relationship between the plaintiffs and the latter's spouse.

Alimony: Support paid by one ex-spouse to the other as ordered by a court in a divorce (dissolution) case. Alimony is also called "spousal support" in California in some states. Usually it is paid by the male to his ex, but in some cases a wealthy woman may have to pay her husband, or, in same-sex relationships the "bread winner" may pay to support his/her stay-at-home former partner. Many counties and states have adopted formulas for alimony based on the income of each party. Payment of alimony is usually limited by time based on the number of years of marriage. Lengthy marriages may result in a lifetime of payments. A substantial change in circumstance, such as illness, retirement, or loss of income, can be grounds for the court to grant a modification or termination of the payment. Failure to pay ordered alimony can result in contempt of court citations and even jail time. The level of alimony can be determined by written agreement and submitted to the court for a stipulated order. Income tax-wise, alimony is deductible as an expense for the payer and charged as income to the recipient. Alimony is completely different from child support.

Alimony Pendente: A pretrial order for spousal support.

Allegations: Claims made against the other spouse in the lawsuit.

Alternative Dispute Resolution (ADR): Methods, such as mediation and arbitration, couples can use to obtain a divorce settlement without a trial.

Annulment: A marriage can be dissolved in a legal proceeding in which the marriage is declared void, as though it never took place. In the eyes of the law, the parties were never married. It is available only under certain limited circumstances.

Answer: The formal response for a divorce, separation or annulment petition. The response or answer contains the admission or denial of the allegations made by the petitioner or against the petitioner.

Anetuptial Agreement: A legal contract signed by two people prior to marriage which states limitations to spouse's rights to property, support, or inheritance if the marriage ends in divorce.

Appeal: A request to the higher court for review of the lower court's decision and reversal of the judgment.

Appearance: A formal submission to the courts by the defendant (respondent) in response to a complaint or summons.

Appellant: The individual who brings the appeal.

Appellate Court: The court in which an appeal is heard.

Application: The primary step in all divorce proceedings and court order. (The standard forms are available from the court office.)

Apportion: To divide and assign according to a definite rule. The division is not necessarily equal but is fair according to the respective interests of the parties involved.

Appraisal: The procedure for determining the fair market value of an asset for equitable distribution in divorce.

Appraisal Report: A report of the results of an appraisal which begins with the definition of an appraisal problem and leads to a specific conclusion using reasoning and relevant descriptive data.

Arbitration: A legally binding, but not a judicial procedure. When a neutral third party makes judgment on a case. This is not permitted in most states or provinces.

Arrearages: A term used to describe the amount of money less the court order amount of support. If a spouse does not pay the full amount of support, the missing amount is considered the arrearages.

ASSETS - cash, property and investments along with anything else that may be of value to an individual or business.

Assignment: The release by an AFDC recipient of all rights to support arrearages owed the recipient and of the right to receive current child support as the result of the receipt of AFDC.

Attachment: The process by which the court seizes the property of a debtor.

Automatic Wage Deduction: A court ordered child support system in which the non - custodial parent has the support amount deducted directly from his or her paycheck which is then distributed by the employer.

Award: A decision made by a court to compensate a person for something.

- B -

Bailiff: The court attendant in charge of maintaining order in the courtroom.

Bankruptcy: A legal proceeding in which a person who is financially insolvent requests the federal bankruptcy court to determine his or her debts and use his or her assets to pay those debts. Property in bankruptcy usually is administered for the benefit of the bankrupt person's creditors. Some forms of bankruptcy seek to discharge all debt if there are no assets to distribute to the creditors. Child support obligations cannot be discharged by bankruptcy.

Bench Warrant: An order issued by a court for the arrest of a person who has failed to appear in court as ordered. A bench warrant can also be issued for a witness who has failed to appear in response to a subpoena.

Beneficiary: Person named in a document, such as a will or insurance policy that receives a benefit.

Best Interest of the Child: A discretionary legal standard that pertains to support, visitation and custody.

Bigamy: A criminal offense committed when one spouse enters a marriage when the previous marriage has not been terminated.

Bill of Particulars: The formal title for information attached to a complaint or petition.

Biological Parent: A parent by blood.

Blood Test: The process by which blood is drawn from a child and its parents and tested to determine biological parentage. It involves genetic HLA and DNA testing.

Bona Fide: Truthfully, honestly and without deceit.

Brief: A document presented to the court outlining one side's position.

Burden of Proof: One spouse must prove to the court any claims made against the opposing spouse. The claims must be supported with sufficient evidence.

- C -

Capias: An arrest warrant ordering the sheriff or another police officer to take a person into custody because he or she refuses to show up to court.

Capitalization: The conversation of income into value.

Caption: The heading of a motion or other document illustrating the names of the plaintiff and the defendant, the name of the court, the court term and the identification number.

Certificate of Mailing: A written statement proving to the court that a copy of a certain document was mailed to the person for whom it was intended.

Certificate of Service: A written statement proving to the court and completed by a process server that a copy of a document was served to the person for whom it was intended.

Certified Copy: A copy of the document contained in the court file. It includes a stamped seal confirming that the copy is indeed a true and correct copy of the document contained in the court file.

Change of Venue: A change of judges when one side one side feels the present judge is prejudice.

Chart Child Support Method: The method used to establish a basis for determining child support. It takes into consideration the gross income of both parents, less special adjustments such as support for children of a previous marriage, and a set amount of money to be allotted monthly for the child. The court has the authority to digress from the said formula as it decides is necessary in each case.

Chattel: Personal property.

Child Custody: A court's determination of which parent or relative should have physical and/or legal control and responsibility for a minor child(ren). However, child custody also can come up if a child, relative, close friend or state agency questions whether one or both parents is unfit, absent, dead, in prison, or dangerous to the child's well-being. In such cases custody can be awarded to a grandparent or other relative, a foster parent, or an orphanage or other organization or institution. While a divorce is pending the court may grant temporary custody to one of the parents, require conferences or investigation (in some states, if the parents cannot agree, custody is automatically referred to a mediator, commissioner, or social worker) before making a final ruling. There is a difference between physical custody which designates where the child will actually live and legal custody which gives the custodial parent(s) the right to make decisions for the child's welfare. If the parents agree, the court can award joint custody, physical and/or legal. Joint legal custody is becoming increasingly common. The basic consideration on custody matters is supposed to be the best interests of the child or children. In most cases the non-custodial parent is given visitation rights, which may include weekends, parts of vacations and other occasions. The court can always change custody if circumstances warrant.

Child Support Guidelines: A series of mathematical formulas that help derive the proper amount of child support that should be awarded.

Child Support Worksheet: A court form devised to calculate the child support guidelines.

Child Support: A legal responsibility that both parents have to provide adequate financial support for the children until each reaches the age of emancipation (In NC, this is at the age of 18). The goal is to keep the children in the same quality of lifestyle that they would have experienced had the divorce not taken place.

Citation: An order from a court requiring a court appearance.

Civil Court: The court which presides over non-criminal cases.

Claim: The charge by one spouse against another.

Clear Title: Transferring ownership of an asset without any encumbrances, obstructions or burdens that present any reasonable question of law or fact.

Clerk: The person responsible for keeping court records and procedures in an orderly fashion.

COBRA: Federal Legislation which guarantees that all individuals who are covered by medical insurance have the right to continue coverage for a monthly fee if employment changes or marital status changes.

Cohabitation: Two people living together. This can be grounds for terminating support in some states and provinces. Often time a period of cohabitation is written.

COLA: The cost of living adjustment (a COLA offset).

Collusion: An agreement between two or more persons that 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 a divorce more quickly, knowing full well that adultery was not committed. Collusion is illegal.

Common Law Property Distribution: The method of dividing property in a divorce according to who holds the title to the property.

Common Law Marriage: A common law marriage comes about when a man and woman who are free to marry agree to live together as husband and wife without the formal ceremony. To be common law married, both spouses must have intended to be husband and wife. Maryland does not recognize common law marriages.

Community Property: Property and profits received by a husband and wife during the marriage, with the exception of inheritances, specific gifts to one of the spouses, and property and profits clearly traceable to property owned before marriage, all of which is separate property. Community property is a concept which began in Spain to protect rich women from losing everything to profligate husbands, and is only officially recognized in some states which were once under or influenced by Spanish or Mexican control, including California, Arizona, New Mexico, Texas, Nevada, Idaho, Washington and Louisiana. Community property recognizes the equal contribution of both parties to the marriage even though one or the other may earn more income through employment. By agreement or action the married couple can turn (transmute) separate property into community property, including by commingling community and separate funds in one account. Community property is recognized based on fact or agreement of the parties, rather than holding of title. The state courts have wavered on what constitutes proof of community property, including the issue of whether joint tenancy is evidence of community property or not. Many states have adopted statutes which provide for equal distribution which parallel the community property system. Upon the death of one spouse all the community property goes to the other except in Texas surviving children get one

half and in obvious sexual discrimination Nevada and New Mexico allow the husband to will a half to someone other than his wife.

Comparables: A shortened term for competitive property sales, rentals, or operating expenses used for comparison in the valuation process.

Complaint: A pretrial document filed in a court by one party against another that states a grievance, called a “cause of action.”

Conciliation: The attempt to establish an agreement between the divorcing spouses concerning the children and any other areas in which they do not agree.

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

Conflict of Interest: When any professional is not capable of performing services due to previous relationships or present relationships and/or a situation where confidentiality can be broken.

Constable: A person who is given the legal right to serve process.

Constructive Abandonment: The refusal of one spouse to engage in sexual relations with the other spouse. In some states and provinces this is considered grounds for divorce if lasting for a certain length of time.

Constructive Service of Process: When the service of process is delivered through other methods such as a newspaper due to the unknown whereabouts of the spouse.

Contempt of Court: Obstructing the authority of the court by intentionally violating a court order.

Contempt: Failure to follow a court order. One side can request that the court determine that the other side is in contempt and punish him or her.

Contested Divorce: A divorce where at least one issue has not been settled before court. The court must decide the issue or issues.

Contingent Fee: An agreement which specifies that the attorney does not get paid unless the client wins the case. This type of arrangement is generally not allowed in divorce and custody cases.

Continue: The act of postponing a scheduled court hearing to a later time.

Convey: To transfer property to someone by selling it or by other means.

Co-Respondent: The individual who is targeted as the partner in an adulterous relationship.

Corroboration: Additional evidence (sometimes in the form of a witness) of a point beyond what is offered by the person asserting the point.

Corroborative Witness: A person who testifies for you and backs up your story. If you are asking the court to grant a divorce, you must bring to the hearing a witness who can corroborate your grounds for divorce.

Cost Approach: A set of procedures in which an appraiser derives a value indication by estimating the current cost to reproduce or replace the existing structure, deducting for all accrued depreciation in the property, and adding the estimated land value.

Count: A statement of facts that clearly defines the complaint.

Counter-Claim: A pleading filed by the defendant (respondent) against the plaintiff (petitioner).

Court Clerk: The administrative personnel of the court who handles the filings for court procedures and answers questions concerning them.

Court Order: A written document ordering a person to do something. It is issued by a court and signed by a judge.

Court Term and Number: An identifying date and number that appears on the captions of papers filed in court. The assignment is made by the clerk.

Courts of Common Pleas: The state trial-level courts that have the authority to grant divorce.

Coverture: The period of time a woman is married.

Creditor: A person to whom money is owed.

Cross Reference Case: A separate case involving one parent in common, but in which there are other children from a different mother or father. Either parent can have cross reference cases.

Cross Examination: The questioning of a witness of the opposing party in court or at a deposition. The purpose is to test the credibility or pursue advantageous avenues.

Cross Petition: A statement of the reasons for the breakdown of the marriage issued by the respondent. It will be different than that of the petitioner.

Curable Depreciation: Items of physical deterioration and functional obsolescence that is economically feasible to cure.

Custodial Parent: The parent a child normally lives with, and the one who makes legal decisions concerning the child. There are several different types of custody arrangements. (See child custody section in your state).

Custody- Sole and Joint: Refers to the legal arrangements for which a child will live with and how decisions about the child will be made. Custody has two parts: legal and physical. Legal custody is the decision-making part; physical custody refers to where the child lives on a regular basis. Generally, the parent the child does not live with will be allowed to have regular visits with the child. Parents can make any custodial arrangement that is in the best interest of their children. The standard for custody is "best interest of the child". Other factors that are taken into consideration may be:

- The age and health of each parent.
- The age and health of the child.
- The child's educational needs, higher education notwithstanding.
- The desire on the part of each parent to have sole or joint custody.
- The employment stability and potential of each parent.
- The financial resources of each parent and that of the child's.
- The impact on each parent maintaining two households.
- The income and earning capabilities of each parent.
- The possibility of the child obtaining employment.
- The tax liabilities of each parent.
- The willingness both parents demonstrate to allow visitation.

- D -

Damages: The monetary harm caused by the actions of another person.

Debtor: A person who owes money.

Decree: The final decision made on an action for divorce.

Deed: A written, legal instrument that conveys an estate or interest in real property when it is executed and delivered. There are numerous types of deeds.

Default Judgment: An order or judgment made based on only the plaintiff's (petitioner's) complaint, due to no response or presence of the defendant (respondent).

Defendant: The spouse who defends against the lawsuit brought against him or her by the other spouse.

Deferred Annuity: An income stream that begins at some time in the future.

Deferred Compensation Package: This includes all retirement assets (such as a pension, 401K, IRA) and any other saving or postponed income earned during the marriage.

Deposition: The testimony of a witness under oath and reduced to writing. It is also used to question opposing spouse. (See legal process section in your state).

Depreciation: In appraising, a loss in property value from any cause. In regard to improvements, deterioration and obsolescence. In accounting, an allowance made against the loss in value of an asset for a defined purpose and computed using a specified method.

Descent: The rules of inheritance established by law in cases in which there is no will naming the persons to receive the possessions of a person who has died. The rules of descent vary somewhat from state to state and will usually be governed by the law of state in which the deceased party lived. Depending on which relatives survive, the estate may go all, or in part to the surviving spouse, and down the line from a parent to children (or if none survive, to grandchildren), or up to surviving parents, or collaterally to brothers and sisters. If there are no survivors among those relatives, then aunts, uncles, cousins, nieces and nephews may inherit, depending on their degree of kinship (closeness of family relationship), state laws of descent and distribution, or whether the deceased person lived in a community property state (in which the wife has a survivorship right to community property)

Desertion: One spouse voluntarily leaves the other (without justification or consent from their spouse) for an uninterrupted period of time and with no intentions of returning.

Direct Examination: The capitalization method used to convert an estimate of a single year's income expectancy or any annual average of several years' income expectancies into an indication of value in one step, either by dividing the income estimated by an appropriate rate or by multiplying the income estimate by an appropriate factor.

Direct Payment: Child or spousal support paid directly to the parent who has custody by the parent who does not have custody.

Disbarment: The official seizing of an attorney's license to practice law.

Discounting: The procedure used to convert periodic income and reversions into present value: based on the assumption that benefits received in the future are worth less than the same benefits received now.

Discovery: Procedures used to absorb information that pertains to the credibility of the opposing party's case. The term may also be used for the interview procedure between the attorney and the client at the initial meeting. (See legal process and or the attorney section in your state)

Discretion of the Court: An area of choice available to a judge to make decisions after reviewing reasonable evidence.

Dismiss: The termination of a case without a final disposition of the matter.

Dissolution of Marriage: A legal judgment that severs a marriage relationship and returns each person to single status.

Dissolution: The legal end of a marriage.

Divorce: The termination of a marriage by legal action, requiring a petition or complaint for divorce (or dissolution in some states, including California) by one party. Some states still require at least a minimal showing of fault, but no-fault divorce is now the rule in which "incompatibility" is sufficient to grant a divorce. The substantive issues in divorces are division of property, child custody and support, alimony (spousal support), child visitation and attorney's fees. Only state courts have jurisdiction over divorces, so the petitioning or complaining party can only file in the state in which he/she is and has been a resident for a period of time (as little as six weeks in Nevada). In most states the period from original filing for divorce, serving the petition on the other party and final judgment (or decree) takes several months to allow for a chance to reconcile.

Docket: The calendar schedule of the court.

Docket Number: The number assigned by a court to a civil or criminal case. It is used to identify all court actions and it appears on all documents filed with the court in a specific case.

Domicile: The place where a person has been physically present with the intent to make that place a permanent home. A "residence," on the other hand, is the place where you are living at a particular time. A person can have more than one residence, but only one domicile.

Dower: A wife's common law right to inherit from her husband.

- E -

Emancipation: The point at which a minor comes of age. The age is typically 18 or 21.

Encumbered: When a lien, mortgage or other restraint is placed against a property.

Entrepreneurial Profit: A market - derived figure that represents the amount an entrepreneur expects to receive in addition to costs; the difference between total cost and market value.

Equitable Distribution: The fair, but not necessarily equal, division between former spouses of property acquired during the marriage.

Equitable Division: A system of dividing property acquired by spouses during their marriage in connection with a divorce proceeding.

Equity: The net proceeds from the sale of a home, minus the fees of the solicitor and the real estate agent and the satisfying of the mortgage.

Estate: A right or interest in property or the property of a deceased person.

Evaluation: A study of the nature, quality, or unity of a parcel of real estate or interests in, or aspects of, real property, in which a value estimate is not necessarily required.

Evidence: Documents, testimony or other informational material offered to the court to prove or disprove allegations in the pleadings.

Ex-Parte: Court relief that is granted due to the absence of opposing party.

Executed: Carried out according to the terms of an agreement.

Exhibit: An item of evidence presented to the court.

Expectancy: Future proceeds from an estate.

Expert Witnesses: A professional used to help a judge reach a decision. Experts can include: Appraisers, Counselors, Evaluators, and Accountants.

- F -

Family Court: A court with jurisdiction over child support, divorce and comparable issues. In Pennsylvania, Family Courts are part of the Court of Common Pleas.

Father's Rights: Legal principles and concepts promoting the idea that custody decisions must not discriminate against fathers.

Fault-Based Divorce: A type of divorce to be granted if one member of the marriage is guilty of some kind of marital misconduct.

Fault Grounds: Marital wrongs that will justify the granting of a divorce. An example would be adultery.

Fee Simple Estate: Absolute ownership unencumbered by an other interest or estate; subject only to the limitations of eminent domain, escheat, police power, and taxation.

File: To personally deliver a document to a clerk of a court so that the document can be included in the official records of a case.

Final Judgment: Re-litigation of a matter as the result of a judge's decision. It does not become final for purposes of appeal until the expiration of a certain amount of time.

Foreign Order: A court order issued by another county, state or nation outside of the jurisdiction in which the custodial parent lives.

Forensics: A general term sometimes used by a therapist hired to evaluate a family. The therapists will state in court which parent they feel should have custody of the child. This is known as a Custody Evaluation.

Fornication: Sexual relations between unmarried persons or between persons who are not married to each other.

Foundation: The evidence that must be presented before asking certain questions or offering documentary evidence on trial.

- G -

Garnishee: An insurance company, bank, employer or others upon whom a judgment creditor has placed a Writ of Garnishment because that person or entity holds assets due the original debtor.

Garnishment: A proceeding whereby a debtor's money, or other property, which is under the control of another is given to a third person to whom the debtor owes a debt. In family law this often applies to child support or alimony. One spouse may have their wages garnished to assure that a debt to the other spouse is paid.

Good Cause: A standard by which a recipient of welfare is excused from cooperating with the CSE agency because by doing so the recipient and the children could be in danger. A good cause finding usually results from ample documentation of violence and abuse by the non-custodial parent.

Good Faith: Absence of intent to commit fraud.

Goodwill: The value of a business that is beyond the market value of any tangible assets. It includes reputation, prestige, and company name.

Grounds: Acceptable reasons for seeking a particular result. In NC, there are only two grounds for divorce available: a one-year separation and incurable insanity. The grounds for a legal separation are: (1) abandonment (2) adultery (3) alcoholism and/or drug addiction (4) cruel and inhuman treatment (5) personal indignities rendering life burdensome and intolerable and (6) turning a spouse out-of-doors.

Guardian Ad Litem: An adult, usually appointed by the court, who represents the non-legal interest of a minor child in a divorce. He or she is a trained social worker, counselor or other professional.

- H -

Habitual Residence: The place where a person resides - 'as of habit ' or permanently, for the purposes of the law.

Hardship: The inability of a parent to support his or her children because of a financial strain.

Health Insurance Order: A court order that instructs the non - custodial parent to purchase health and dental insurance for the children and to add them to the policy.

Hearing: Any proceeding that takes place before a court where testimony is given and arguments are heard.

Hearsay: Something a person claims he or she was told by someone else. Often hearsay cannot be used as evidence in a trial.

Hold Harmless: A phrase used to describe an agreement by which one person agrees to assume full liability for an obligation and protect another from any loss or expense from that obligation.

Home State: The state where the child has lived for at least six consecutive months or since birth if the child is less than six months old.

Hostile Witness: A witness who shows prejudice during testimony that the party who called him or her will actually do a cross - examination

- I -

Impeachment: The act of proving a witness is not credible due to inconsistent statements or other conflicting evidence.

In Camera: When proceedings are held in the chambers of a judge without the participating parties. This is usually the procedure followed when children testify.

Income and Expense Declaration: The form completed by a parent under oath stating that parent's income, assets, expenses and liabilities. The document is used to help determine child support to be paid by the non - custodial parent.

Incompatibility: The state of a marriage in which the spouses no longer have the mutual desire to live together and/or stay married, and is thus a ground for divorce (dissolution) in most states even though the other spouse may disagree.

Incompatible: 1) Inconsistent. 2) Unmatching. 3) Unable to live together as husband and wife due to irreconcilable differences. In no-fault divorce states, if one of the spouses desires to end the marriage, that fact proves incompatibility, and a divorce (dissolution)

will be granted even though the other spouse does not want a divorce. The term also has the general meaning that two people do not get along with each other.

Incorporation: Part of civil law, making one document part of another. For example, the Agreement becomes part of the Decree in Divorce.

Injunction: A court order preventing someone from doing a particular act which is likely to cause physical, mental injury or property loss of another individual.

Intangible Assets: Items of personal property; examples; franchises, trademarks, patents, copyrights, goodwill.

Intangible Value: A value that cannot be imputed to any part of the physical property.

Intentional Infliction of Emotional Distress: Intentionally causing severe emotional distress by extreme or outrageous conduct.

Intercept: A process by which CSE agencies take part of a non-custodial parent's unemployment insurance payments, disability insurance payments, income tax returns and lottery gains to pay child support arrearages owed by the non-custodial parent.

Interlocutory Hearing: Any hearing at which a pretrial or court ruling is requested.

Interrogatories: A group of questions served upon the opposing party to gain knowledge pertaining to the issues in the matrimonial proceedings.

Inventory and Appraisal: A listing and valuation of properties owned by the parties seeking a divorce.

Investment Analysis: A process in which the attractiveness of an investment is measured by analyzing ratios.

- J -

Joint Custody: Each parent shares legal custody of their children.

Joint Legal Custody: A form of custody of minor children in which the parents share the responsibilities and major decision-making related to the child. (See child custody section).

Joint Physical Custody: A form of custody of minor children in which the parents share the actual physical custody of the child.

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

Joint Tenancy: A form of joint ownership in which each joint owner has an equal share.

Judgment: The ruling or order of the court.

Judgment of Divorce: A formal written document that states that a man and a woman are divorced. This is prepared by an attorney and presented to the court for the Judge to sign. In some states and provinces, this is recognized as the Divorce Decree or Decree of Dissolution.

Judgment: A court's decision.

Jurisdiction: The power of the court to rule on issues related to the parties, their children and their property.

Jurisdiction: The power of a court to act in particular case.

- K -

- L -

Law Guardian: An attorney that is typically assigned by the judge to represent the child or children in an intense custody battle.

Lease: A written document in which the rights to use an occupancy of land or structures are transferred by the owner to another for a specific period of time in return for a specified rent.

Leased Fee Estate: An ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others: usually consists of the right to receive rent and the right to repossession at the termination of the lease.

Leasehold Estate: The right to use and occupy real estate for a stated term and under certain conditions: conveyed by a lease.

Legal Custody: The authority of one parent or both parents to make legal decisions regarding health, education and welfare of the child.

Legal Separation: A declaration by a court that the parties can live separate and apart even though they are still married to each other.

Leverage Factors: Considerations made by each parties pertaining to the issues that are being disputed.

Lien: An encumbrance put on a property owned by a judgment debtor. It prevents the sale, transfer of title or refinancing of the property until the debt is satisfied.

Limited Divorce: Establishes certain legal responsibilities while the parties are separated but does not end the marriage.

Liquidation Value: The price that an owner is compelled to accept when a property must be sold without reasonable market exposure.

Litigation: The process of fighting a legal dispute in the court system.

Long Arm: The means by which a court can get jurisdiction over someone who lives outside the jurisdiction in which the court is located.

Lump Sum Alimony: A spousal support that is ordered to be paid in a fixed amount. The completion of the payment may be made in installments. (See spousal support section).

- M -

Magistrate: A person who performs the functions of a judge but does not have the power to issue a court order. Judges sometimes pass work, hearings and trials, to magistrates or masters who then in turn make recommendations to the judge as to the particulars of the case.

Maintenance: The same as spousal support or alimony.

Marital Property: Marital property is defined as all assets acquired during the marriage and prior to the date of separation. All marital property is subject to fair distribution between the marital partners. However, in NC, this right to equitable distribution is not automatic, so one or both spouses must specifically claim it prior to a divorce judgment.

Marital Settlement Agreement: A written agreement entered into by the spouses getting divorced stating their rights and agreements pertaining to property, support and custody.

Marketable Title: A title not subject to reasonable doubt or suspicion of invalidity in the mind of a reasonable and intelligent person: one which a prudent person guided by competent legal advice would be willing to accept and purchase at market value.

Master: Hears cases like a judge. A master's decision is reviewed by a judge before becoming final.

Mediation: A non-adversarial divorce procedure where the spouses are assisted in reaching a settlement by a neutral third party that is trained in the divorce process.

Mediator: A neutral person who presides over the mediation process.

Military Allotment: A deduction from child support from the salary of a non-custodial parent on active duty in the United States military.

Minor: Someone under the age of majority. In NC, a minor is defined as anyone who has not reached the age of 18.

Minute Order: An official record of a court proceeding. It is prepared by the court clerk and is not a judgment.

Mistrial: A trial that is terminated due to some kind of error that would declare the trial invalid.

Modification: An order changing the terms of another order.

Motion to Modify: A written request to the court asking to change a previous order regarding child custody, support, alimony or other divorce related decisions.

Motion: An application to the court requesting an order or rule in favor of the applicant.

- N -

Necessaries: Basic items needed to maintain a standard of living.

Neglect: Failure to provide support, medical care, education, moral example, discipline and other necessities.

No-Fault Divorce: A type of divorce that may be granted even though either spouse has not performed any kind of marital misconduct.

Non-Custodial Parent: The parent who does not have physical custody of the child, and who typically is paying child support to the child.

Non-Marital Property: Property considered by the courts to belong to one spouse or another and that which is not available for equitable distribution.

Nullity: A decree indicating that a marriage is null and void.

- O -

Objection: The verbal response of a lawyer when something inappropriate is happening during a trial or deposition. It is one of many steps involved in protecting the record.

Obligor/Obligee: The person who has an obligation is the obligor. The person to whom this obligation is owed is the obligee.

Obsolescence: One of the causes of depreciation; an impairment of desirability and usefulness caused by new inventions, current changes in design, improved processes of production, or external factors that make a property less desirable and valuable for a continued use.

Opening Statement: A lawyer's opening remarks in the beginning of a trial. They are addressed to the judge.

Opinion: A belief held by a person. In court, a witness is restricted to stating facts and is not permitted to give an opinion. They can, however, express an opinion if they are qualified as an expert witness.

Order: A court's specific ruling on a disputed issue.

Order after Hearing: A written order issued after a hearing and signed by a judge.

Order of Examination: A court proceeding during which a judgment debtor is questioned about his or her assets. The questioning is done under oath.

Order of Protection: An order assigned by the court to prevent one spouse from doing something. Typically, this is assigned in cases where one spouse is harassing the other. If the spouse refuses to abide by the order, he or she may be arrested and end up in jail.

Order to Show Cause: A court order requiring a party to a civil action to appear in court on a specific date and time. This is scheduled to explain why the court should not take a particular action in the case.

- P -

Palimony: Support paid from one person to another even though they were never married.

Paralegal: A trained person who assists a lawyer.

Parens Patriae: A doctrine whereby the state takes jurisdiction over a minor living within its border. It is the basis for deciding what state will assume jurisdiction in a child custody case.

Parenting Classes: Organized classes designed to teach parents how to minimize the negative aspects of divorce on their children.

Party: A plaintiff or a defendant in a legal proceeding.

Paternity: The legal biological relationship between father and child.

Pendente Lite: Latin for "while litigation is going on."

Perjury: The act of lying under oath in court.

Personal Jurisdiction: The power of the court to make orders regarding an individual and have them enforced.

Personal Property: Property that is not real estate.

Petition: A formal request that the court take some action; a complaint.

Petitioner: The person who initiates the divorce by filing the petition.

Physical Custody: It is in reference to the parent with whom the child resides. Depending upon arrangements, it may be joint or sole custody.

Plaintiff: The individual who files the divorce petition, thereby initiating the divorce.

Pleading: formal written application to the court which requests action by the court.

Postnuptial: A written contract between husband and wife that states all of their present and future rights in view of their impending divorce.

Praecipe: An order asking the court to act. It is addressed to the clerk of court.

Prayer: The portion at the end of the pleading which states the relief that is requested of the court.

Precedent: Something that has already happened that will influence how future similar events will be viewed by the court.

Prenuptial Agreement: A legal contract signed by two people before they get married. It typically involves limitations on a spouse's rights to property, support, and inheritance upon divorce.

Present Value: The value of a future payment or series of future payments discounted to the current date or to time period zero.

Primary Caretaker: The parent who provides majority of the child's day to day care.

Privilege: The right a spouse has to make admissions to an attorney or counselor that can not be later used as evidence.

Pro Se Divorce: A divorce in which each spouse represents themselves in court without an attorney.

Pro Se: On one's own behalf; not using an attorney.

Property Division: The distribution of property accumulated by spouses as a result of their joint efforts during the marriage. Sometimes referred to as a “property settlement.”

Prothonothary: The court clerk in charge of civil filings.

Purpose of an Appraisal: The states scope of an appraisal assignment, i.e., to estimate a defined value of any real property interest, or to conduct an evaluation study pertaining to real property decisions

- Q -

Qualified Domestic Relations Order (QDRO): A court ruling stating that a portion of one spouse's pension is awarded to the other spouse as part of the equitable distribution of the marital assets.

Quit Claim: To release legal claim. It is a document relinquishing claim, as in a quit claim to the dead to the marital house.

- R -

Range of Value: The range, or confidence interval, in which the final estimate of a property's value may lie.

Real Estate: Physical land and appurtenances affixed to the land: land.

Real Property: All interests, benefits, and rights inherent in the ownership of physical real estate.

Rebuttal: An introduction of evidence in response to a matter raised by the opposing party.

Reciprocity: The process of cooperation between states and countries to establish and enforce child support orders. Laws and court orders of each jurisdiction are recognized and enforced.

Reconciliation: Resuming the martial relationship.

Record: All of the testimony and evidence that is used in court to decide a case. What is on record is what the Judge will use to make his or her decision.

Recross: The second round of cross - examination that occurs after redirect in a trial.

Redirect: The second round of direct examination that occurs in the trial after cross-examination.

Registry: The entity through which the court receives and disburses money, as in child support payments.

Rehabilitative Alimony: Alimony intended to help the ex-spouse become financial self sufficient.

Reimbursement: A fixed amount stated in a judgment which would order the defendant to pay back to the government welfare which the government paid on behalf of the child.

Release: A document that frees up a person's right or claimed right to something. It is usually given in exchange for something else, typically another release or money.

Remand: The act of sending a case back to the judge to be retried because of a significant mistake made by the judge during the first trial.

Reproduction Cost: The estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout, and quality of workmanship, and embodying all the subject's deficiencies, superadquacies, and obsolescence.

Request for Production: Part of the Discovery process. One attorney asks that the other side produce financial documents he or she feels are necessary to the case.

Residence: The place where a spouse lives.

Respondent: The defendant in a divorce.

Response: The formal document filed by the defendant (respondent) to answer the complaint or summons.

Restraining Order: A court order restricting a person's actions. They are sometimes issued by one spouse to try to deter the other spouse from committing violent acts.

Retainer: A fee paid to an attorney to work on a case.

Retainer Agreement: A written contract between lawyer and client delineating their responsibilities to each other.

Right of Survivorship: The right of joint owners to receive the other's share of property upon the death of the other owner.

Rules of Evidence: The rules that pertain to the deliverance of evidence in hearings or depositions.

RURESA - Revised Uniform Reciprocal Enforcement of Support Act, which facilitates interstate enforcement of support orders.

- S -

Sales Comparison Approach: A set of procedures in which an appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments, based on the elements of comparison, to the sale prices of the comparables.

Sanctions: Court-ordered punishment.

Separate Maintenance: An action filed for support between two spouses not living together even though the spouse's are not actively seeking a divorce.

Separate Property: In community property states (California, Texas, Arizona, Idaho, Louisiana, New Mexico, Nevada and Washington), the property owned by one spouse which he/she acquired: a) before marriage, b) by inheritance, c) as a gift, d) assets traceable to other separate property such as money received from sale of a house owned before marriage, and e) property the spouses agree is separate property. State laws vary, but basically separate property can be controlled by the spouse owning it. The laws of descent applied to separate property and right to give separate property by will differ from the treatment of community property. For example a child may inherit part of one spouse's separate property if there is no will, while community property would pass automatically to the spouse. Upon divorce community property is divided equally, while separate property is kept by the owner without division with the other spouse.

Separation: When spouses no longer cohabitate or live together.

Separation Agreement: An agreement on support, child care and property covering the period before divorce but after separation.

Service of Process: Providing a formal notice to the defendant that orders him or her to appear in court to answer plaintiff's allegations.

Set Aside: To cancel, annul, or revoke a prior judgment of a court.

Set Off: A debt or financial obligation of one spouse that the court weighs against a debt or financial obligation of the other spouse.

Settlement Agreement: The written version of the settlement.

Severability: The understanding that one clause in a contract is independent of the others.

Sole Custody: A form of custody in which one parent is awarded both physical and legal custody.

Split Custody: A form of custody in which the actual time of physical custody is split between both parents, which gives both parents the right to make decisions.

Spousal Support: Payment for support of an ex-spouse (or a spouse while a divorce is pending) ordered by the court. More commonly called alimony, spousal support is the term used in California and a few other states as part of new non-confrontational language (such as "dissolution" instead of "divorce") now used since divorce is "no-fault" in all states but two.

Spouse: Husband or wife.

STBX: This is a common acronym which stands for, "Soon to be ex." It is the person to whom you're married now but are in the process of divorcing.

Stipulation: An agreement between the parties or their counsel.

Subpoena: A form issued by the court requiring someone to appear in court and/or bring documents. (May also be referred to as a "Summons.")

Summons: A written notification to the defendant or respondent that an action has been filed against him or her.

Supervised Visitation: Visitation by a parent with his child while another adult (other than the custodial parent) is present.

Support: Payment for housing, food, clothing etc.

Surrebutal: Evidence the defendant can present to counter rebuttal evidence

- T -

Tax intercept: The process by which a child support judgment debtor's federal and state income tax refunds are diverted to pay a support arrearage.

Temporary Custody: A spouse's right to have parenting time with his or her child. It includes extended stays and overnights.

Temporary Restraining Order: An order of the court prohibiting a party from acting - for example, threatening, harassing, or physically abusing the other spouse and/or the children; selling personal property; taking money out of accounts; denying the other spouse a motor vehicle.

Termination of Parental Rights: A judicial declaration that a parent shall no longer have a right to participate in decisions affecting the welfare of the child.

Testimony: Statements delivered under oath at a hearing or deposition.

Transcript: A written presentation of testimony given at a trial or at a deposition.

Transfer: To switch ownership from one person to another.

Transitional Child Care: A welfare program by which welfare recipients who stop receiving AFDC due to employment, but who can't afford to pay childcare costs, receive subsidized childcare assistance, usually for one year.

Trial: A formal court hearing to decide the disputed issues filed in the complaint or summons.

- U -

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.

Un-Emancipated: Legally dependent on one's parent or legal guardian.

URESA (Uniform Reciprocal Enforcement of Support Act): The statute which enables one state to request assistance from another state in establishing or enforcing a child support order against a parent located in the other state.

Use and Possession: The right of the parent who has custody of a minor child of the marriage to remain in the family home for up to three years from the date of the divorce, under certain circumstances.

- V -

Valuation Process: A systematic procedure employed to provide the answer to a client's question about real property value.

Venue: The place of trial.

Verification Statement: An oath stating that the information in a document is true.

Visitation Credit: The percentage applied to a child support calculation. It reflects the amount of time a child resides with the non-custodial parent.

Visitation Schedule: A list of dates stating times each parent may see each child.

Visitation: The right of a non-custodial parent to visit and spend time with his or her children.

- W -

Wage Assignment or Wage Withholding: A court order requiring the employer of a non-custodial parent to deduct a specific amount of money for child support from the wages of the non-custodial parent (also known as garnishment).

Waiver: A written document that relinquishes an individual's rights.

Witness: A person having knowledge of facts or other information pertaining to a specific situation.

Writ of Execution: A court order authorizing the seizure of an asset of a non-custodial parent who owes past due child support. The order usually authorizes the seizure of assets up to the total amount of past due child support owed under the judgment. It is also known as a levy.

- X -

- Y -

Yield Capitalization: A capitalization method used to convert future benefits to present value by discounting each future benefit at an appropriate yield rate or by developing an overall rate that reflects the investment's income pattern, value change, and yield rate.

- Z -

END