

Andreano & Lyons

*This checklist is informational purposes only and not meant as legal advice.
It does **not** create an attorney-client relationship between you and this firm.
We will only be your attorneys if a retainer is signed by you and the law firm.*

BASIC CHECKLIST FOR AN AGREED DIVORCE

Parenting Decisions Options:

- Parenting Plan – Parents must present to the judge a “Parenting Plan”. These were formerly done as “Joint Parenting Agreements” or “Sole Custody Judgments”. A Parenting Plan outlines how decisions will be made and how parenting time will be divided/allocated.
- Decision Making by Both Parents (*formerly Joint Custody or Joint Parenting*) is where both parents equally share decision-making responsibility with respect to major decisions relating to Healthcare, Education, Religion and Extracurricular Activities for the children.
- Decision Making Responsibility by One Parent (*formerly Sole Custody*) is where only one parent makes decisions on major decisions relating to children. This is more and more rare for involved parents.

Parenting Time (Visitation) Options:

- Regular (weekly) such as alternating weekends, extended weekends, midweek
- Holidays, school breaks, summer vacation. (will the parties alternate or)
- Transportation issues, pickup and drop off times and locations
- Moving with Children: “Relocation” (*formerly “Removal”*) has very specific rules on when a parent can move with the children based on how many miles the parent is moving.
- Equal Parenting Time: Parenting Plans that equally share of come close to equally sharing Parenting Time generally requires that the parents: a) live close to one another and b) have a high degree of cooperation on parenting issues. Equal parenting time may result in a situation where there is no child support or reduced child support – depending on how many over nights each parent has per year and the relative income of each parent.

Child Support:

- In July of 2017, Illinois had a major change in child support laws and has adopted an “income share” approach where both parents income are placed into a calculation. The prior law only looked to the income of the non-custodial parent.
- The amount of child is generally based on net yearly income from all sources minus certain tax and other allowable deductions (including but not limited to union dues, health insurance premiums). Under the new law, both parents net income will be placed into the calculations as will the number of over nights each parent has per year. Both parents need more than 40% of the yearly over nights before there is a direct effect on the child support calculations due to parenting time over nights.
- Will the parties exchange income information on an annual basis?

Dependency Tax Exemptions

- who gets to claim one or more of the children
- can agree to split them/alternate years
- beware of IRS rules and regulations <http://www.irs.gov/pub/irs-pdf/f8332.pdf>,
<http://www.irs.gov/publications/p501/index.html>,

Health Insurance

- who picks up coverage for kids? What is the cost difference between coverage for just the family, just the employee parent and then the parent plus children?
- who has a better or more stable plan?
- what about un-reimbursed medical expenses (usually split 50/50)?
- will other spouse have kids on their insurance as secondary ins.? (suggested if at no additional/low cost)
- coverage for each spouse after divorce. If you were on your spouse's health ins. then you will generally lose it the day of your divorce. You may have rights to get COBRA coverage.

Life Insurance

- types of policy (whole, term etc.), face amounts for each parent policy
- any policy carries a cash value?
- children will be placed as beneficiaries (person(s) to benefit from policy)
- spouse will be named as trustee? (person to manage funds for minors)
- annual proof of coverage required?

Real Estate/Marital Home

- Transfer, Buyout or Sale
- Possession issues - Who will move out and when? How will the mortgage get paid as well as real estate taxes, house insurance, utilities, etc. until the property is sold or refinanced.
- Separating Co-ownership – Separating co-ownership is rather easy (use of a quit claim deed) however, it is the mortgage that may be the problem if in both parties names. So unless you own your home outright (no mortgage or liens) you have to determine what works best: assumption of mortgage, refinance, buyout, sale & division of proceeds, and issues of mortgage interest/real estate tax deductions in years after divorce
- Other real estate? Timeshares, vacation homes, lots, camp grounds, etc?

Maintenance/alimony *(where applicable)*

- Entitlement to Maintenance - IMPORTANT: whether one party is entitled to alimony/maintenance can be a complex issue with a variety of factors to consider such as: length of marriage, age & health of the spouses, present & future income capacity of each spouse, education or training of each parent, standard of living maintained in the marriage, tax implications, time devoted to being a stay-at-home parent, etc.
- Guideline Maintenance: Illinois has adopted guidelines that set the length of maintenance based on the length of the marriage and the gross incomes of the parties. The court can deviate from the guidelines under certain circumstances. If there is a disparity in incomes, a careful analysis before maintenance issues are properly addressed.
- Waiver: each spouse must be extremely cautious of waiving any right to maintenance and have all the facts necessary before making a decision – once maintenance is waived, it is forever waived.
- Types of Maintenance - there are many options where maintenance is warranted: permanent or temporary; lump sum payout; money for school/training; modifiable, reviewable, reservation of maintenance for a certain time or even an award of a larger portion of property settlement spouse instead of maintenance
- Remarriage issues or if the spouse cohabitates (moves in with) a new partner, then maintenance usually ends. There are now automatic notification requirements if the parent

receiving maintenance gets remarried or lives with another person on a continuous conjugal basis (like husband and wife).

- Tax Issues – Historically, there have been specific tax benefits to the spouse paying maintenance and a corresponding tax liability to the spouse receiving maintenance. On this and other tax issues, you need to discuss it with the attorney AND a CPA. ALSO, 2018 and beyond there was a major overhaul of the tax code and it will affect the deductibility of spousal maintenance.

Personal Property

- Every meaningful asset must be addressed in the settlement including furniture, campers/boats, , bank accounts, investment accounts, jewelry, tools, 401(k) plans/pension and other retirement benefits, stocks/bonds, certificates of deposit, motorcycles, electronics, etc. I generally advise a client that anything with value over \$500 should be dealt with specifically
- Marital v. non-marital property – generally property acquired during the marriage (unless by inheritances or gifts) or placed into joint ownership during the marriage is considered marital property. However, each case is different so ask specifically about property one party may claim is non-marital. Also, there are some rather complex rules in place if non-marital property contributes to marital property and if marital property contributes to non-marital property. Sometimes a right of reimbursement is triggered.

Vehicles

- awarded to whom?
- loans? (need balances and account info)
- refinance if in both names?
- signing of title docs

Retirement monies: Pension/IRA/401(k)/403(b)/SEP

NOTE: pensions are especially hard to place a value upon and to figure out what the other spouse's interest is in it (if any). You may choose to have one spouse receive more in property settlement (cash/assets/home equity) to offset an interest in a pension but this must be done carefully and with knowledge of the value of the pension. The reason pensions are so difficult is because they are a future asset (generally only collectible when retirement age hits). Since so much can happen in between the time of a divorce and retirement (death, remarriage, company closings or company bankruptcy etc.), these become complex to properly handle.

- Beneficiary Check: Always make sure your beneficiary information is up to date on all retirement accounts before, during and after a divorce
- Pension Expert: Pensions are notoriously difficult to assess in value and to ensure your future rights are secured as best as possible. For most pensions and some 401(k) I suggest the retention of an expert to assist with a proper evaluation or division.

Division of ALL Debts

It is generally easier for each person to take the debts already in his or her respective name and/or to pay off all joint debts before the divorce is completed. Also if one person takes a debt, that person should generally get the asset tied to it (i.e. the person taking the car, should also take responsibility for the car loan associated with it). Keeping debts or assets in both names after a divorce is rarely ever a good idea but sometimes unavoidable. If unavoidable, there must be proper language to protect each other.

Division of ALL Assets

This should be done along with the division of debts. A useful tool may be a large ledger sheet listing all debts (current balances) and all assets (along with the value of the asset minus any debt with it). The goal may be a strictly even split or there may be some offset for other issues, like one spouse giving up a right to alimony/maintenance or a pension. I can provide a simple asset division tool if needed

NOTE: All debts and assets need to be discussed with the attorney – even ones you think are not part of the assets or debts related to or arising during the marriage

College Expenses for Children

This issue is typically reserved for a later time (especially for younger children) or there may be language stating that the parties intend to contribute but that the amount is reserved. You may also put in some generally agreed provisions (i.e. only state schools will be paid for by the parents or what do the parents expect the child to contribute when it comes time, etc.)

Modification and mediation issues. Usually the property settlement terms cannot be modified. Terms for custody or support can always be modified if certain circumstances happen. Terms for maintenance/alimony are usually modifiable but it can be based on what the parties agree to on modification.

Maiden Name: Is Wife to have the right to resume the use of her maiden name? There is never an obligation to change her name. If she ever wants this, divorce is the time to request it because it adds no cost to the divorce. If she wants to change it later then she would have to file a separate case, a “Petition for Name Change”, pay more in fees, etc.

OTHER ISSUES:

Financial Documents Generally Needed in Every Divorce Case: Discovery is the process by which both parties exchange financial information – this is needed particularly where spouses kept their information separate throughout the marriage. Whether by informal exchange or sworn under oath with written documentation, to finish a divorce attorneys generally need information on/copies of the last 1-3 years of:

- Federal and state income tax returns (personal and if applicable, corporate)
- Proof income: W-2's, 1099's, and pay stubs (year end and current) etc.
- Life insurance policies
- Bank and credit card account statements/info. account numbers, balances, and whose name each is in.
- Pension/401(k)/Investment account statements
- Stock certificates and info on options, bonds, mutual funds, annuities or any other asset
- Real estate documents including, mortgage/home equity line statements, deeds, lien information, closing statements, appraisals or market studies,
- Car, boat, motorcycle titles and any loan information
- Information on any other debt or asset held by either party even if you think it is not the other party's responsibility

ATTORNEYS: Because of professional ethical rules we can only represent one of the spouses, (generally the one that contacted us first). **NO ONE LAWYER CAN REPRESENT BOTH.** The other spouse should protect their own interests by either understanding all of what they are agreeing to or hiring their own attorney to review the settlement proposal. The basic idea here is that the more complex the issues, the more each spouse may need their own attorney so that each

understand what they are doing. Issues like maintenance/alimony, pensions, business interests, numerous debts, asset classification, obligations on prior marriages, taxes, proper calculation of child support generally require the assistance of an attorney or a mediator to do it properly.

MEDIATION OPTION: There is also the option to mediate your issues with a trained mediator who can assist the parties in coming up with a fair agreement. If mediation fails to get a result, then things said in the mediation can not be used later against either of you in court.

Suggested Mediators: Note: I do not receive any compensation or referral fee for recommending a mediator but these are a few I find have been successful:

- o Andy June, 1861 Black Road, Joliet, IL - (815) 725-8000
- o Kristie Breseman, 58 N. Chicago St., Suite 503, Joliet, IL – (815) 714-9863
- o Joseph P. Glimco, 8340 Lemont Rd Bldg F, Darien, IL - (630) 910-6400
- o Erin O'Brien, 56 North Chicago Street, Joliet, IL - (815) 727-2100
- o Joe Janusonis or Mary Szudarek, 6612 W. 159th Street, #202, Lockport, IL - 815-836-2600

ATTORNEY FEES & COSTS OF AGREED DIVORCE:

1) Attorney fees: start at \$1,900 (flat rate)

Additional fees charged when children/custody involved, joint custody sought, division of pension involved, sale of real estate, complicated debt/asset separation, spousal maintenance (alimony) sought or any other issue that requires more attorney involvement. I will fully discuss this with you and ultimately quote you a fixed fee. Note: my fees for an agreed case are paid on a flat-rate basis meaning you will not be billed additional amounts in attorney fees as long as the parties remain agreed on all issues throughout the case.

2) Will County filing fee: \$333.36 (paid to court, not attorney)

3) Service of papers: \$60-100 (paid to process server, not attorney)

Service of papers and the service fee is not necessary when your spouse files an "Appearance Form" – This is appropriate when your spouse wants to stay actively involved in the case, will directly pay a filing fee (\$188) and will definitely show up for the final court date.

4) Parenting Classes: \$90 The person filing the divorce MUST attend a 4 hour Parenting Classes. The other spouse MUST also attend if they want visitation/parenting time rights. Most judges reserve (suspend) parenting time rights of the parent not attending parenting class. If not done, it will likely delay the case. To register or for more information on Parenting Classes in Will County go to: <https://catholiccharitiesjoliet.org/project-protect/>

FINAL WORD

The above information is merely a starting point on basic issues and to provide some idea of how to resolve them – IT IS NOT COMPREHENSIVE – that will only happen if the firm is retained is retained and only once all issues are decided. There are many other ways to resolve a divorce other than those listed above and you should NEVER sign any agreement until it is fully reviewed by your own attorney. Again, any questions call me at **(815) 954-8175**.

revised February 21, 2018

Sincerely,



Anthony Andreano
Attorney at Law