



Conniff Law Offices

Introduction To Divorce: From Initial Filing To Final Judgment

The Illinois Department of Public Health reported that there were 72,821 Illinois marriages in 2009 and 32,460 Illinois divorces in the same year.¹ Yet, despite the frequency of divorce, most people are unfamiliar with the legal process and terminology. This is likely because the majority of divorcees have only experienced one divorce. When coupled with the stigma of divorce, it is easy to understand why most people do not read about dissolving their marriage until they are ready to begin the process. It is in the first few months of researching and initiating the legal procedure that the learning curve is the steepest. Fortunately, divorce is not an inherently complex process.

This article introduces the documents that appear in every divorce, namely the Petition for Dissolution of Marriage and the Judgment for Dissolution of Marriage, as well as the most common divorce documents, such as the Marital Settlement Agreement and Custody Judgment.

A Brief Outline

All divorces begin and end the same way: with a Petition for Dissolution of Marriage and a Judgment for Dissolution of Marriage.

A couple initiates the divorce process by filing a **Petition for Dissolution of Marriage** with the court. A petition is a formal request for the court to grant the requesting party (the **petitioner**) some form of relief. Therefore, a Petition for Dissolution of Marriage is a formal request, by the petitioner, to dissolve his or her marriage. The party who responds to the petitioner's request is called the **respondent**. The respondent will always be the other spouse.

The divorce process is complete when a **Judgment for Dissolution of Marriage** is entered by the court. A Judgment is a final order, entered by the court, that grants or denies relief to the parties in the case. Accordingly, a Judgment for Dissolution of Marriage is a judgment, entered by the court, that ends the parties' marriage. The Judgment for Dissolution of Marriage may incorporate the parties' Marital Settlement Agreement and Custody Judgment.

Do All Divorces End In Court?

The short answer to "do all divorces end in court?" is a qualified no. Not all divorces end in court, but all divorces must be approved by the court. Remember: regardless of who officiated your wedding, marriage is a legal status conferred upon two individuals by a state. The state must approve the dissolution of a marriage just like it must approve a marriage. That means the petitioner must show the court that he or she has a legally sufficient reason to get divorced. This legally sufficient reason is called

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P: (708) 763-0999

F: (708) 763-0911

the **grounds for divorce**. At least one party must appear before the court and provide brief testimony prior to the court approving the divorce settlement.

Illinois and many other states have what is called a “**no fault divorce**,” meaning that a couple may divorce simply because their marriage has failed, not necessarily because one party wronged the other. In these instances, a party would plead that the marriage had failed due to “irreconcilable differences.” In addition to no fault divorces, Illinois also recognizes the following grounds for divorceⁱⁱ:

1. The respondent was at the time of such marriage, and continues to be naturally impotent;
2. The respondent had a wife or husband living at the time of the marriage;
3. The respondent had committed adultery subsequent to the marriage;
4. The respondent has willfully deserted or absented himself or herself from the petitioner for the space of one year, including any period during which litigation may have pended between the spouses for dissolution of marriage or legal separation;
5. The respondent has been guilty of habitual drunkenness for the space of 2 years;
6. The respondent has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years;
7. The respondent has attempted the life of the other by poison or other means showing malice;
8. The respondent has been guilty of extreme and repeated physical or mental cruelty;
9. The respondent has been convicted of a felony or other infamous crime.

What Is A Judgment For Dissolution Of Marriage?

A Judgment for Dissolution of Marriage typically addresses: the division of property; the division of debt; child support; maintenance (formerly known as alimony); life insurance; health insurance; attorneys’ fees; and a variety of other case-specific issues.

There are typically three different paths to a Judgment for Dissolution of Marriage: a negotiated Marital Settlement Agreement; a Judgment resulting from litigation; and a Default Judgment.

A **Marital Settlement Agreement** is a written and signed agreement, entered into by the parties to the divorce, that settles the outstanding issues in their divorce (such as those listed above). Marital Settlement Agreements are the result of a negotiated divorce. A judge cannot force two parties to agree and settle their case. In Illinois, Judgments for Dissolution of Marriage can wrap around the Marital Settlement Agreement. A **wrap around judgment** is a judgment that incorporates another document or agreement, thereby giving that document or agreement the legal effect of a judgment. Once a Marital Settlement Agreement has been signed by the parties, it may be incorporated into a Judgment for Dissolution of Marriage and, if approved by the court, the parties may get divorced. This process may be more complicated if the parties have children.

A **Judgment for Dissolution of Marriage resulting from litigation** is as it sounds. In this scenario, the two parties are unable to agree on all the issues in their divorce and ask the Court to decide the issues for them. The parties will present their case through a series of hearings or a trial. At such hearings or trial, the parties present their evidence to the judge under oath. After considering all facts and evidence

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presented at the hearings or trial, the Court will memorialize its ruling in a Judgment for Dissolution of Marriage. The Judge will review the Judgment for Dissolution of Marriage prior to entering it and, if the Judge believes his or her rulings have been accurately recorded, he or she will enter the Judgment. While a Judge *may* draft the Judgment for Dissolution of Marriage by his or herself, more likely than not he or she will instruct one of the parties' attorneys to draft the Judgment.

A **Default Judgment for Dissolution of Marriage** is a Judgment for Dissolution of Marriage entered in a case in which one of the parties has not filed an appearance and has thereafter been found in default. When a case is initiated, the other spouse is served, meaning they are given notice that they are a party to a pending legal proceeding and they are provided with the initial filing in the proceeding, typically the Petition for Dissolution of Marriage. This procedure is formally known as **service of process**. Once the other spouse has been served, he or she will have thirty days to file an appearance with the Court and respond to the initial pleading. If he or she fails to file an appearance, then the Petitioner may file a Motion for Default, requesting that the Court find the other spouse in default. To be found in default is to be prohibited from participating in the underlying legal proceeding. Therefore, if a party does not file an appearance within thirty days of being served, and if the Petitioner's Motion for Default is granted, the other party may not come to Court and respond to the Petitioner's allegations or present any Motions or Petitions to the Court in that legal proceeding. A Default Judgment for Dissolution of Marriage is a Judgment for Dissolution of Marriage that arises from a case in which one party has been found in default and is typically based on the Petitioner's representations to the Court and the Judge's sense of fairness.

What Is A Custody Judgment?

A **Custody Judgment** is a judgment, entered by the Court, that addresses the parties' parenting and custody issues. Unlike a Marital Settlement Agreement, a Custody Judgment does not address any of the financial issues in the parties' divorce. Further, because a Custody Judgment is a judgment separate and distinct from a Judgment for Dissolution of Marriage, it is individually appealable. That is to say: you may appeal your Custody Judgment without appealing your Judgment for Dissolution of Marriage or vice versa.

A Custody Judgment will determine whether the parents will share joint custody of their minor children or if one of the parties will be granted sole custody. Further, the Custody Judgment will provide the parties with a comprehensive parenting schedule and general rules of parental conduct, such as prohibiting the parties from speaking negatively about the each other in front of the children.

A Custody Judgment is mandatory for divorcing spouses with children. While a Custody Judgment may be included as an article in the Marital Settlement Agreement, more often than not it is a standalone document.

ⁱ http://www.idph.state.il.us/health/bdmd/marr_div_annul.htm

ⁱⁱ 750 ILCS 5/401(a)(1)