

## **What Are Divorce Papers?**

By Amy A. Edwards

People frequently contact an attorney when they receive documents from an attorney or their ex. When someone uses the term *divorce papers* it can mean a variety of things. Although there are other possibilities, the overwhelming majority of people who receive what they call divorce papers have received one of two things: a proposed contract or a lawsuit. These two things are completely different, and anyone who receives divorce papers from an attorney (or the ex) should immediately consult with an attorney. The attorney will explain what the documents actually are, and advise you of your rights and responsibilities.

### **Separation Agreements**

When spouses can agree about dividing debts and property, alimony if applicable, or child support and custody, they may sign a Separation Agreement and Property Settlement. Attorneys sometimes send a proposed Separation Agreement to the other party to see if there is room to negotiate an out of court settlement. A Separation Agreement is a contract, not a court order. Because it is a contract, a person who violates it can be liable for breach of contract. Contrary to what most people think, there is really not a "standard separation agreement" although there are several paragraphs that are almost always included in most separation agreements.

Like all contracts, the parties must agree to be bound by the terms of the contract, and properly sign or "execute" it and any related companion documents such as deeds or car titles. There is no way to force the agreement if the other person is unwilling to negotiate. No contract can create an actual divorce, which must always be granted by a judge after a lawsuit is filed, even if the divorce is uncontested.

### **Lawsuits**

When people say they are going to get divorce papers that definition might mean they are filing a lawsuit and asking the court for any number of things. A lawsuit might be one for divorce after a separation of at least one year, an emergency domestic violence order, an order for alimony or child custody and support, or equitable distribution, which is the division of property and debts.

When there is no agreement on financial matters or issues concerning children, the only way to force a resolution is to file a lawsuit. In our state, *divorce papers* for a lawsuit consist of a complaint, which is the document that activates a lawsuit, and a summons. The summons gives the court jurisdiction or the right to order you to do something or stop doing something, like pay child support or divide property by signing a deed or paying a debt.

In family law cases, unlike criminal court, it does not matter if you are the plaintiff or the defendant. You will be asking the court to do the same things regardless of whether you file the lawsuit first. Lawsuits may or may not be related to the divorce itself, although a divorce operates as a deadline for certain claims. Unlike contracts, lawsuit documents must be "served" on the other person. Service is the act of a sheriff handing documents to you, or a few other alternatives. If you are served with a lawsuit, you have a specific deadline to respond. If you fail to act on the documents served upon you, or if you wait too long to act, you risk forever losing the right to file your claims or certain defenses.

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