

GLOSSARY - COMMON LEGAL TERMS

Matrimonial/Divorce Matters

NOTE: The following definitions are not legal definitions. Rather, these definitions are intended to give you a general idea of the meanings of common legal words. For comprehensive Definitions of legal terms, you may wish to consult a legal dictionary "Black's Law Dictionary" is one such legal dictionary which is usually available at most law libraries.

This glossary of common legal terms is also available on-line at:
<http://www.nycourts.gov/lawlibraries/glossary.shtml>



ADDITIONAL ON-LINE RESOURCES:

<http://www.nolo.com/glossary.cfm>

Nolo's on-line legal dictionary.

<http://www.law-dictionary.org/>

Free on-line legal dictionary search engine.

<http://www.law.cornell.edu/wex>

Legal dictionary and encyclopedia maintained by the Legal Information Institute at Cornell Law School.

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(Matrimonial/Divorce Matters)

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-A-

Abandonment: A reason or "ground" for divorce. Abandonment occurs when one party has left the other for a continuous period of one year or more, without the party's consent, and without justification (good cause).

Acknowledgment: A formal statement by the person authoring a document made in front of a notary public, who signs a document and confirms that the person's signature is authentic.

Action: A court proceeding to decide a legal claim .

Addendum: An additional document or phrase attached to the original document.

Adultery: A reason for divorce. Adultery is any sexual act, or deviate sexual act (as defined in the Penal Code), with another person (non-spouse) at a time when that person has a living spouse.

Affidavit of Service: A document signed by a non-party who has served any papers in a legal proceeding, such as the Summons and Verified Complaint containing an oath that the papers were properly served. When completed, it is submitted with these papers. Note: One party cannot serve another. This sworn statement must give the date, time, place, the way it was served, and a description of the person who was given the documents.

Agreement: A formal understanding, usually written, between two people concerning their respective rights and their duties to each other.

Ancillary Relief: In an action for divorce, additional or other help asked for beyond a judgment of divorce, such as maintenance (formerly called "alimony") payments, division of property, responsibility for debts (bills), child support, etc. (See Equitable Distribution; Maintenance; Marital Property).

Annulment: A court declaration that states that a marriage was never legally valid. After an annulment, the parties are free to remarry.

Answer: The response to the complaint. In a divorce action, the answer must be verified. (See Verified).

Attachment: Seizure of a debtor's property by order of the court . The court takes the property of someone who owes money to another to whom a debt is owed.

-B-

Burden of Proof: A party's duty to present evidence proving the truth of his or her claims (charges against someone else) in the legal action .

-C-

Calendar Number: The number assigned to a lawsuit by the court when the case is scheduled for trial by the court. It is different from the Index Number that is assigned when the first papers are filed with the County Clerk. A separate fee is charged for the Calendar Number. (See Note of Issue).

Caption: The title of a pleading, motion, or other court filing showing the names of the Plaintiff and Defendant, the name of the court, the court part and the Index Number.

Cause of Action: A claim or assertion of facts giving rise to one or more legal reasons for seeking judicial relief ; a factual situation that entitles one person to obtain a decision from the court against the other person (if proven in court).

Change of Venue: The transfer of a lawsuit from one County to another.

Child Support: Money paid by one parent to another for a child's living and other expenses during and/or after separation and/or divorce.

Child Support Standards Act (CSSA): The Law that specifies a party's child support obligation depending on his or her income. Charts are available to assist.

Clerk: A court official who handles filings, motions, pleadings, etc.

Cohabit: To live with, and usually have sexual relations with, another person (generally of the opposite sex).

Commingle: When one mixes separate funds or properties into a common fund or bank account.

Complaint: The initial pleading to a court in a civil matter, written by the Plaintiff or his/her attorney. In a divorce action, it contains the Plaintiff's allegations of his or her reasons for divorce and relief sought, and it must be verified. (See Verified; Summons).

Constructive Abandonment: A reason for divorce. This is when the one party has refused, without justification, to have sexual relations with the other, continuously for a period of one year or more, without that party's consent.

Contempt: The willful disregard, disobedience or disrespect of a court order or the judge's authority. Conduct that defies the authority or dignity of a court. It is usually punishable by fine or prison or both.

Contested Divorce: A divorce action which is opposed by the other spouse.

Corroborate: To prove a statement, argument, etc. with additional confirming facts or evidence.

Counterclaim: A claim by the Defendant against the Plaintiff written in the Verified Answer. A Verified Answer responds only to the allegations (charges) in the Verified Complaint. A counterclaim may be added to the Verified Answer to say that the Defendant also wants a divorce or other relief from the Plaintiff and states Defendant's reasons for the divorce or such relief.

County Clerk's Office: The office wherein an Index Number and Calendar Number for court proceedings are obtained, court filing fees are paid and court papers are filed and permanently maintained. In many counties, this office is located in the same building as the Supreme Court. If not, the Clerk in the Supreme Court building can direct you to the County Clerk's office.

Cruel and Inhuman Treatment: A reason for divorce. Cruel and inhuman treatment consists of cruelty, whether physical, verbal, sexual or emotional, committed by the Defendant, against the Plaintiff, that endangers the Plaintiff's physical or mental well-being and makes living together either unsafe or improper.

Custody, Legal: The legal right to make major decisions affecting a child under the age of 18.

Custody, Physical or Residential: The actual physical care and control of a child under the age of 18. The person with physical custody usually provides the child's primary residence.

-D-

Default Judgment: A divorce judgment that is obtained against the Defendant when the Defendant fails to respond to either: (a) the Summons and Verified Complaint; or (b) the Summons With Notice, for the divorce within the time allowed by law.

Defendant: The person against whom (the person who is served) the divorce action is brought.

Deposition: A person's out-of-court, sworn testimony that is reduced to writing (usually by a court reporter) for later use in the lawsuit. Except for a judge not being present, it is conducted in a manner similar to trial. Also known as an Examination Before Trial (EBT).

Discontinuance: A voluntary ending of a lawsuit.

Discovery/Disclosure: At a party's request, the furnishing of information and documents that relate to the court proceeding. In divorce cases, it usually relates to financial information. Upstate, disclosure can also relate to grounds for divorce and custody issues.

Dissipation: The wasteful use of an asset for an illegal or inequitable purpose, such as a spouse's use of marital property for personal benefit when a divorce is imminent. It is intended to deprive the other spouse of the use and enjoyment of the asset, and may result in a penalty in equitable distribution.

Divorce: The legal ending of the marriage between a husband and wife so that each is free to marry again.

Domestic Relations Law (DRL): Contains the requirements of New York State law that are followed for divorce and other related matrimonial actions and proceedings.

-E-

Earning Capacity: A person's ability or power to earn money, given the person's talent, skills, training and experience.

Egregious: Extremely or remarkably bad; shocking.

Emancipation: The release of a child from the responsibility and control of a parent or guardian. Under New York law, child support must be paid until the age 21. If a child marries, enters the military or becomes self-supporting, before turning 21, the court may consider the child emancipated, and child support may be terminated.

Enjoin: To legally prohibit or restrain by a court injunction (order).

Equitable Distribution: The way marital property must be divided by law in a divorce action in New York State. Equitable distribution does not necessarily mean 50% of one asset to one party and 50% to the other. Distribution is based on various factors presented to the court.

Evidence: Something (including testimony, documents and tangible objects) that tends to prove or disprove an alleged fact.

Exhibit: A document, record, or other tangible object formally introduced as evidence in court.

Ex Parte (Communication): An application or statement made to the court by one party (including counsel) to a proceeding without notice to, or in the absence of, the other party. This type of communication to the court is generally prohibited, except for scheduling issues.

Expert: A person who, through education or experience, has developed skills or knowledge of a particular subject, so that he or she may form an opinion that will assist the judge or jury in making a decision.

-F-

Family Court: The Family Court in New York State has the jurisdiction to hear cases involving child support, custody, visitation, spousal support and family offenses (Orders of Protection). A divorce action cannot be heard in this court.

Fiduciary: One who must use a high standard of care in managing another's money or property.

Finding of Fact: A determination by a judge or jury of a fact as proved by the evidence in the record, usually presented at the trial or hearing.

Forensic: In courts of law, it relates to the application of a particular subject of expertise such as medicine, science or accounting to the law.

-G-

Good Faith: Honesty of intention; absence of intent to defraud; opposite of bad faith.

Grounds: Legally sufficient reason for granting of divorce in Supreme Court.

Guardian Ad Litem: A guardian, usually a lawyer, appointed by the court to help a minor or incompetent person in a lawsuit. In a divorce case, the guardian ad litem does not act as an attorney for the child, but reports to the court on what is in the child's best interests. (See Law Guardian).

-H-

Hearsay: Testimony that is given by a witness who tells not what he or she knows personally, but what others have said which is therefore dependent on the credibility of someone other than the witness. That testimony is generally inadmissible under the rules of evidence, but there are many exceptions.

-I-

In Camera Inspection: A trial judge's private consideration of evidence, without public, parties or attorneys present. Typically, sensitive information about child custody or business records are reviewed in camera, not in open court.

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Index Number: The unique number assigned by the County Clerk's office to every action or proceeding commenced within the New York State Supreme Court. The number is used to identify a case in that court, and should be indicated on all papers served on the parties and filed with the court. The number is either: (a) purchased; or (b) obtained after a Poor Person Application is filed and approved by the court.

Injunction: A court order for a party to stop doing or to start doing a specific act.

Interrogatory: A written question or a set of questions given to the other party in a lawsuit as part of discovery.

-J-

Judgment of Divorce: A document signed by the court granting the dissolution of a marriage .

Jurisdiction: The authority of a court to act in particular matters. There must be authority over both the persons and the subject matter of the action.

-K-

None.

-L-

Law Guardian: An attorney for the child in contested custody matters who is appointed by the court to represent his or her interests.

-M-

Maintenance: Spousal support, formerly known as "alimony".

Marital Property: Any property, regardless of which person is named as owner, that the Plaintiff or Defendant obtained from the date of marriage to the beginning of the divorce action. A house, car, IRA, bank account(s), pension, annuity, business and advanced degree are all examples of marital property. However, an inheritance, a gift from someone other than your spouse, compensation for personal injuries, may be deemed separate property. (See Separate Property).

-N-

Notice of Entry: A form given to a party saying that the final judgment of divorce was entered in the County Clerk's Office. A copy of the judgment, date-stamped to indicate the filing, is also given to the party with this document. The time to file a Notice on Appeal commences upon service of the judgment of divorce with Notice of Entry.

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Note of Issue: A form filed with the court to notify the court that all documents are ready for the court's review or that the action is ready for trial. A separate fee is charged for filing and a Calendar Number is issued. (See Calendar Number).

-O-

Order: A direction of the court. Failure to comply may result in contempt. (See Contempt).

Order of Protection: An order issued by a court which directs one person to stop certain conduct, such as harassment, against another person. The order may also direct the person to be excluded from the residence and to stay away from the other person, his or her home, school, place of employment and his or her children.

-P-

Party: A Plaintiff or Defendant in a legal proceeding. Also Petitioner or Respondent in a Family Court proceeding.

Plaintiff: The person who starts the divorce action .

Poor Person Application: An application made to the court, by usually the Plaintiff stating that because of insufficient income he or she is unable to pay the court fees normally required for divorce actions. If the application is granted by the court, the usual court costs for the divorce action are waived.

Pro Se (aka Self-Represented): Appearing on one's own behalf without an attorney.

-R-

Removal of Barriers to Remarriage Form: This form is necessary when the marriage was solemnized in a religious ceremony by a member of the clergy, minister of any religion, or a leader of The Society for Ethical Culture. It requires the party obtaining the divorce to acknowledge that he or she has taken all steps to remove religious barriers to the other party's remarriage.

Request for Judicial Intervention (RJI): A form filed with the court to request to have a judge assigned to the case.

-S-

Separate Property: Property considered by the courts to belong only to one spouse or the other. It is not available for equitable distribution unless converted to marital property.

-7-

Separation: One spouse's absence or living apart from the marital household prior to divorce.

Separation Agreement: A written agreement providing that the spouses will live apart and specifying one or more of the following: support for the child(ren), spousal maintenance payments, division of marital property, responsibility for debts (bills), residence of child(ren), child care and related issues. This agreement must be formally signed and acknowledged and covers the period before divorce but after the separation. (See Acknowledgment).

Service: Formal delivery of a legal paper such as delivery of a Writ, Summons with Notice, or Summons and Verified Complaint officially notifying the recipient that he or she is a party in a legal action and subject to the court's jurisdiction .

Settlement Agreement: A formal, voluntary, written agreement on all or most of the issues surrounding divorce. It must be formally signed and acknowledged. (See Acknowledgment).

Spouse: Husband or wife.

Statute of Limitations: The time limit in which to assert a claim by bringing an action.

Stipulation: A voluntary agreement between parties on an issue or issues related to the divorce proceedings. May be oral or written.

Subpoena: A legal order requiring a person's attendance at a particular time and place to testify as a witness or to provide certain documents that are requested. Failure to comply can be contempt of court. (A judicial subpoena is issued by the court.)

Summons With Notice: A legal document which, when filed, starts the Plaintiff's action for a divorce and requires the Defendant to serve a Notice of Appearance in the action within a specific period of time. This document is initially filed with the County Clerk 's Office and a copy is then served upon the Defendant to give notice that the Plaintiff has started a divorce action. It states the reason(s) for the divorce and may also include requests for additional relief such as: child support, custody, visitation, spousal maintenance and equitable distribution.

Support: Payment for housing, food, clothing, and related living expenses.

Supreme Court: The highest trial-level court in New York State. Divorce actions may be started only in this court.

Supreme Court Clerk's Office: An office, separate from the County Clerk's Office, which provides clerical support to the Supreme Court.

-T-

None.

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-U-

Unemancipated Children: Children under the age of 21 who are supported by a parent or guardian. (See Emancipation).

Uncontested Divorce: A divorce action in which the Defendant does not respond to the Summons or otherwise agrees not to oppose the divorce even if financial issues are contested.

-V-

Venue: The permissible county for the trial of a lawsuit.

Verified: Sworn before a notary public that the facts made in that document are true. Most pleadings in a matrimonial action must be verified. (See also Acknowledgment; Answer; Complaint).

Visitation: The right of a non-custodial parent to be with a child for specified periods of time.

-W-

Waiver: Knowingly, intentionally giving up rights or claims.

Writ (also Writ of Habeas Corpus): A legal paper signed by a judge directing that a person (generally a child in divorce cases) be brought before the court.

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