

## **Uncontested Divorce in Rhode Island (RI) By a RI Family Law Attorney**

*Rhode Island Divorce Attorney, David Slepko, explores the different types of uncontested Divorce in Rhode Island (RI) and explains the process of obtaining an uncontested divorce.*

**Jan. 17, 2010 - [PRLog](#)** -- This article explores the different types of Uncontested Divorce in Rhode Island and explains the process of obtaining an uncontested divorce. Uncontested divorces should be much less expensive than contested cases. Article by Rhode Island Divorce Attorney David Slepko  
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It is a bad idea for someone to try to represent themselves without a Rhode Island lawyer in a divorce or family law matter.

The phrase "uncontested divorce" often means different things to different people. In my ten years of experience, I have seen many different types of cases in which people claim that the divorce is uncontested.

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There are three different paradigms that I have seen:

- 1) No assets and no children

This is a true uncontested divorce! The parties have no assets, no real estate, no children and no joint debt. No property settlement agreement is needed. However, a significant amount of work is still required by the lawyer. The parties still must go to court for a nominal divorce hearing. However, this type of divorce takes the least amount of time for an attorney. Therefore, it should be less expensive. I believe that attorneys should offer a flat fee divorce when there are no assets and no issues to resolve.

- 2) Property division and / or children involved

In an uncontested divorce, the husband and wife agree to all or substantially all of the issues between the parties including if applicable property division, child support, child custody, child visitation, alimony, automobile issues, real estate issues, debt issues etc. However, despite the agreements, there may still be details to iron out! The parties may need a property settlement agreement memorializing their agreements.

If there are assets that need to be divided then the family law lawyer may need to prepare a property settlement agreement, deeds, mortgages, promissory notes, qualified domestic relation orders (QDRO) etc. For example, if the parties need to divide a retirement account the lawyer must prepare a qualified domestic relations order.

Therefore, the cost of the divorce could vary depending on the circumstances. For example, if a lawyer has to draft a property settlement agreement then he/she will devote more time to the case.

What extra work is needed to divide a retirement account?

In order to split a retirement account, Individual Retirement Account (IRA), pension, 401k, 403b, defined benefit plan, defined contribution plan or stock options, the lawyer must prepare a qualified domestic

restraining order otherwise known as a QDRO so that there are no tax implications for the parties. That QDRO must be approved by the plan administrator for the retirement plan. A QDRO must be entered as an order of the Family Court as well as sent to the plan administrator for implementation.

3) "Uncontested" divorce which is really "minimally" contested

Some people claim that the divorce is "uncontested" but it is actually minimally contested. In this scenario, the parties agree to most major issues but have some minor issues to work out. For example, the parties may agree that there will be reasonable visitation but not agree as to the actual dates and times. The parties may agree to child support or child custody but not agree to all the particulars. The parties may agree that the marital domicile is to be sold as soon as possible by a Licensed realtor but have not agreed on the listing price of the home or have not agreed how the proceeds from the sale will be divided.

This type of case is usually more expensive than a true uncontested divorce because the Rhode Island lawyers will have to get more involved in negotiation and attempting to work out the points of contention. Furthermore, the Divorce Lawyer may need to draft a property settlement agreement setting forth in writing issue concerning the marital domicile, equitable division of property, child custody, child support and visitation issues.

4) "Uncontested" divorce which really is contested

I have seen countless times when a client says that the divorce is uncontested. I then ask them to explain the agreement. The response is sometimes: 'we agree that we will agree'. As we all know, the devil can be in the details! An agreement to agree is not necessarily an agreement because nothing has been agreed to except that the parties think that they will agree.

Often people claim that the actual divorce is not being contested. Whether or not a person will dispute the obtaining of the actual divorce is immaterial because Rhode Island is a "no fault" state. If one party wants to terminate the marriage and meets the residency requirements they can obtain a divorce whether or not the other party agrees to it or not.

#### Intake process, drafting divorce documents for filing and filing

There is typically an intake process in which the lawyer gets the basic information so that he or she can properly represent you. The attorney typically drafts the documents and you sign them in front of him/her or another notary. These documents include a complaint, DR(6) financial statement, statement of children of the marriage, counseling statement, summons and automatic divorce order etc.

It is important that the DR6 form otherwise known as financial statement is accurately filled out. After the documents have been signed and notarized, the case must be filed. A Court date of approximately 65 days will be set by the Court. The Defendant must be served by the constable. If the Defendant lives out of state he or she can be served by certified mail

#### Nominal or Contested Track

An uncontested divorce should be put onto the nominal track. Designation on the "nominal track" does not necessarily mean that the divorce will be uncontested.

If the case is put on the nominal track then the clerk will automatically set a nominal divorce hearing upon the Plaintiff filing. This hearing will typically be scheduled from 65-70 days after the Plaintiff files. In the event that the case is not settled by the nominal divorce date then the case will automatically be changed to the contested track

On the date of the nominal hearing, at the call of the calendar, the case will be either ready nominal or the parties will ask the judge to hold the case so they can try to resolve any remaining issues. If the parties cannot resolve the remaining issues they will inform the Court clerk or the judge that the case cannot be settled and the case track will be changed to the contested divorce track. If the case track is changed there will be no hearing that date and the court will inform the parties of a future conference date.

A hearing is required under RI law!

Pursuant to Rhode Island General Law a divorce cannot be resolved without a nominal hearing. At the nominal hearing certain testimony must be elicited in order for the divorce to be granted. In some circumstances, it is necessary to have witnesses to briefly testify to prove residency. If you don't have the required witnesses your case could be delayed or even dismissed and you may waste your time attending court.

#### Residency in RI

Is it necessary to prove compliance with the residency requirements at the "nominal hearing" in order to obtain an uncontested divorce? Yes!

In order to file for divorce you need to have been a domiciled inhabitant and resident of Rhode Island for one year prior to your filing of the complaint. If you have not been a domiciled inhabitant and resident of RI for one year prior to filing your complaint for divorce, you can file based on your husband's / wife's residency for one year prior to the filing.

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