



Can Delaying Divorce Cost You?

Know the possible consequences of waiting to file.

One of the first considerations after a married person decides to divorce is when to initiate the divorce process. For various reasons, a person may choose to delay filing a dissolution of marriage action. Delaying filing, however, can have severe negative consequences.

Consider the hypothetical case of Mr. and Mrs. Smith:

Mr. and Mrs. Smith have been married for 15 years and have a 13-year-old son. Mr. and Mrs. Smith agree that they are no longer compatible, but in the interest of their son will remain married until their son graduates from high school. Thereafter, Mr. Smith is severely injured at work and can no longer work. Mrs. Smith continues her full time employment, operates as the breadwinner of the household, and continues to contribute to her 401(k). Without consulting with Mrs. Smith, Mr. Smith withdraws \$60,000 from their joint savings account to buy a shiny new Camaro with all the options. Five years after deciding their marriage is over, after their son graduates from high school, Mrs. Smith files a dissolution of marriage action.

In the case of Mr. and Mrs. Smith, the delay in filing a dissolution of marriage action created severe negative consequences for Mrs. Smith. First, the cut-off date for whether an asset or liability is considered marital or nonmarital is generally the date of filing a dissolution of marriage action. Any nonmarital assets are distributed outright to the owning party and any marital assets or liabilities are typically distributed equally between the parties. For Mr. and Mrs. Smith, the presumptive date to determine what assets or liabilities are marital is the date Mrs. Smith filed the dissolution of marriage action. The 401(k) contributions that Mrs. Smith made during the marriage, including those made over the past 5 years, will be considered marital and distributed equally. The Camaro will also be a marital asset, but it will be valued as of the date of filing. As the car market goes, the Camaro will likely be worth significantly less than the



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purchase price. Additionally, the joint savings account, at its reduced value because of Mr. Smith's car purchase, will be distributed equally.

At the time of filing the case Mr. and Mrs. Smith were married 20 years. At the time they decided their marriage was over, however, they had been married 15 years. This is significant for purposes of alimony. Florida law defines a marriage of 7 to 17 years as moderate-term and a marriage of 17 years or more as long-term. The length of the marriage is determined as of the date of filing. Florida law provides more options and alimony potential for a long-term marriage versus a moderate-term marriage. Because she was married for 20 years at the time of filing, Mrs. Smith will have an increased risk of paying alimony to Mr. Smith.

There are a number of factors a court must consider when awarding alimony. The important factors in the case of Mr. and Mrs. Smith include the duration of the marriage, the age and physical condition of each party, and the earning capacity and employability of the parties. Over the 5 years preceding Mrs. Smith filing the dissolution of marriage case, the circumstances of the Smith marriage changed so that Mrs. Smith became the primary wage earner and Mr. Smith's income earning ability significantly diminished. These factors would support the position that Mrs. Smith should pay permanent periodic alimony to Mr. Smith.

While we cannot predict the future, it is important for people who know they want a divorce to be aware of the possible consequences of waiting to file. A marital and family law attorney can assist in understanding and evaluating the risks involved.

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