

# Phillips & Mille Co., L.P.A.

## **DIVORCE, DISSOLUTION, AND LEGAL SEPARATION**

**DIVORCE-** A legal action to terminate a marriage, which is initiated by the filing of a Complaint for Divorce in the Domestic Relations Court. The complaint must allege grounds for the divorce, which include: Either Party having a husband or wife living at the time of the marriage, a willful absence of the adverse party for one year, adultery, extreme cruelty, fraudulent contract, any neglect of duty, habitual drunkenness, imprisonment of the adverse party in a state or federal correctional institution at the time of the filing of the complaint, or the parties have lived separate and apart for one year. A “no fault” divorce may be granted for incompatibility.

In a Divorce, a Court looks to equitably divide the parties’ “Marital Property,” Marital Property includes all real and personal property owned by either party, which was acquired during the marriage, any interest in any retirement benefits or participant account, which were acquired during the marriage, all income and appreciation on separate property due to labor or monetary contribution of either party during the marriage. Property would not be marital if a party were able to show that the property was acquired before the marriage, or was obtained during the marriage through gift or inheritance.

**DISSOLUTION-** A Dissolution is a second alternative for terminating a marriage. In a Dissolution, the parties work to come up with an agreement for the termination of the marriage. The terms of the separation which equitable divides the Marital Property is agreed to by the parties prior to filing the petition with the Court. This option is beneficial when the parties are able to cooperate and work towards a resolution, while maintaining the status quo during their negotiations. A Dissolution does not allow for the Court to be involved preserving the marital assets, or obtain temporary support for a party during negotiations. In addition, if both parties are not in agreement at the hearing on the Dissolution, the matter is subject to dismissal by the Court, and would need to be refiled as a Divorce.

**LEGAL SEPARATION-** A legal action, which is initiated by the filing of a Complaint for a Legal Separation, or as a Counterclaim in response to a complaint for divorce. The grounds for a Legal Separation are the same as the grounds for divorce. A Legal Separation seeks to equitably divide the Marital Property, however, unlike a Divorce, a Legal Separation does not terminate the marriage. This is helpful for individuals who are looking to live separately, while staying on one spouse’s insurance, however, should either party wish to remarry, they would need to seek termination of the marriage.

**FOR INFORMATION:** Heather R. Johnston and P. Lynn Seifert are the P&M attorneys in charge of the Domestic Relations Department. Contact them to discuss any concern you have as to ensuring your assets and rights are properly protected. There are no legal fees for discussing a litigation matter until the scope of the needed legal services has been discussed and established.