

FAQs Separating and Divorcing Parents Ask about Legal Matters

Separation and divorce are emotionally and legally complicated events for most people, and they are often played out in an unfamiliar, intimidating legal arena. Laws, and how they are applied, vary from state to state and sometimes within states as well. No resource can give exact details about legal rights and responsibilities that apply everywhere. However, this brochure will present some general guidelines and answer, in a broad way, some of the most common questions you might have.

Q: What does “no fault” divorce mean?

A: Most states now have grounds for divorce such as “incompatibility” or “irreconcilable differences.” Other states may have a separate procedure for achieving the dissolution of marriage if both parties agree to end their marriage. When a divorce or dissolution of marriage proceeds in this way, it may be referred to as a “no fault divorce,” in that neither party must prove improper behavior on the part of the other to be granted a divorce. Proceeding with a divorce or dissolution of marriage on a no fault basis helps to reduce conflict between the parties, decrease stress on the children and avoid painful court battles which may exhaust much or all of the family’s resources.

Q: How will our property be divided?

A: You and your spouse may decide this for yourselves. If you cannot reach an agreement, the court will decide how to divide your property. Laws regarding the division of property vary from state to state.

Most courts attempt to equitably divide marital property—property obtained during the relationship that is not clearly the property of just one spouse, such as an inheritance. The court may consider marital property to be the result of the spouses’ joint efforts, regardless of who actually earned the money. Property owned by one spouse prior to the relationship and not combined during the relationship generally remains with that spouse.

It is important to understand that “equitable” does not necessarily mean “equal,” but something more like “fair” or “balanced.” The court must divide property in a way that is fair to both spouses. However, circumstances such as a significant difference in income, dissipation of marital assets by one spouse, or the prospect of generous legacies, may lead the court to determine that equality is not equitable. Complicated property issues may be difficult to settle on your own. A lawyer can assist you in ensuring that property is clearly and legally divided, and that the division is fair to you.

Agreeing upon a property division may be difficult and disputes regarding the division of property often interfere with parents’ ability to determine parenting arrangements or settle custody matters. Do not allow these disagreements to get in the way of making appropriate arrangements for your children. Doing so will only make things more difficult.

Q: What are the differences between alimony and child support?

A: Alimony (sometimes referred to as “separate maintenance” or “spousal support”) refers to payments made by one spouse (or former spouse) to the other to provide support for that spouse and the household. Sometimes the court may order that these payments be made directly to a third party, such as a mortgage holder, on behalf of the spouse receiving alimony. Child support is money paid by one parent to the other for the support and care of the children.

Q: How is the amount of alimony determined?

A: You and your spouse may decide this for yourselves or, if you are unable to do so, the court will make that determination for you. Laws regarding alimony are different in each state so you may want to consult a family lawyer where your case is being heard. Some alimony is permanent and some is temporary. For example, temporary rehabilitative alimony may allow a person who has been out of the workaday world an opportunity to obtain new job skills or update existing skills.

The length of the relationship is often a factor in alimony. Permanent alimony is more likely in longer marriages. Permanent alimony is also somewhat more likely if one spouse has substantially greater assets than the other, or if one spouse has a long-term disability or illness which prevents him or her from working or from being fully employed.

Alimony is generally tax deductible for the payor—the one who makes the payments—and taxable for the recipient or payee. You may wish to talk with a family lawyer, accountant or tax expert for details about how the payment or receipt of alimony may affect your taxes.

Q: How is child support determined?

A: All states have statutory guidelines that suggest or even direct how much child support will be paid. This may be a specific dollar amount based on one or both parents’ income, or a percentage of income.

Child support usually increases as parental income grows and as the number of children increases. It may be adjusted periodically. Child support generally continues until children reach a particular age, most often 18, or upon the completion of high school. In some special needs cases, such as when a significantly handicapped child requires extensive special services, child support may continue beyond this time. Child support payments are not tax deductible or taxable. There are other matters that should be discussed with your lawyer, such as which parent is entitled to claim the child as a dependent for income tax purposes, which parent must provide health insurance and how unreimbursed medical expenses will be divided. In some states there are additional options for determining financial support of the family following separation. Consult a family lawyer to be certain you fully understand your options.

Q: Where do the children live when parents live apart?

A: Ideally, parents make this most important decision, but sometimes they cannot. If the parties cannot agree, the court will decide. Most states have guidelines

for deciding custody or parenting arrangements. Others leave these determinations solely to the court. In all cases, however, courts attempt to establish an arrangement which is in the best interests of the children, and which fosters strong relationships between the children and both parents. It is always best if the parents can resolve children's living arrangements for themselves. You can expect the court to respect your efforts and decisions.

Q: Don't mothers always get the children?

A: This is an enduring myth that probably stems from the fact that mothers usually received custody through most of the twentieth century. In fact, most families arrive in court with their parenting plans already made. Those plans often make the mother the parent who will provide the majority of the physical care for the children. In disputed custody cases today, both parents are viewed as important to the children, and neither has an automatic edge in the legal decision.

Q: One of us must move so far away that our present schedule won't work. How can we decide whether the children will move or stay where they are?

A: Relocation questions are among the most challenging issues in family law. Unfortunately, no matter how these matters are resolved, children's relationships with both parents are almost always dramatically affected. That does not change the fact that children need those relationships. It is best if parents can negotiate arrangements that consider distance and the children's ages and needs, but the courts

will make a decision if parents cannot. Relocation disputes are handled differently in different states, and even in different jurisdictions in the same state. If you cannot resolve this issue with your former spouse, you may need to consult a family lawyer.

Q: How do my former partner and I know where to seek court help now that we live in different jurisdictions?

A: Jurisdictional problems can be quite difficult because each parent generally wishes to have the case handled near their own home, or in a state they perceive as favoring their interests. However, family law matters are usually heard where the children reside the majority of the time, or where issues were initially resolved even if neither parent currently lives there.

Many states have enacted some version of the *Uniform Code on Child Custody Jurisdiction Act*, which directs where cases may be heard. It is important to remember that filing legal papers in more than one jurisdiction is likely to lead to unnecessary expense, delay and confusion, because in the end, jurisdiction will be limited to one court.

Q: How can I find a good attorney?

A: Your best resource for finding an attorney is your circle of family and friends. Someone you know who was satisfied with a family lawyer may be able to refer you to that person. Many bar associations will provide names of family law attorneys. The yellow pages are another resource, particularly the section where lawyers are grouped by area of practice. Look for "family law" or "divorce and child

custody." If you are strongly motivated towards settlement, you may wish to hire a collaborative lawyer who will advise you and work with you towards settlement, but not litigate the matter in court. The yellow pages in larger cities often have a listing for "collaborative law."

Hiring an attorney is an important step so be certain your lawyer is knowledgeable and the two of you can communicate effectively. Meet with a prospective attorney to discuss your case, assess the lawyer's experience, learn if you can communicate easily and see if the lawyer understands your situation. Many attorneys provide an initial consultation at no charge.

Remember that lawyers may ethically represent only one party, even if some will agree to prepare papers for you based on a mutual agreement. It is always a good idea for each party to have an attorney to at least review a prospective agreement before any settlement papers are filed with the court.

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Additional copies of this brochure may be purchased from the Association of Family and Conciliation Courts

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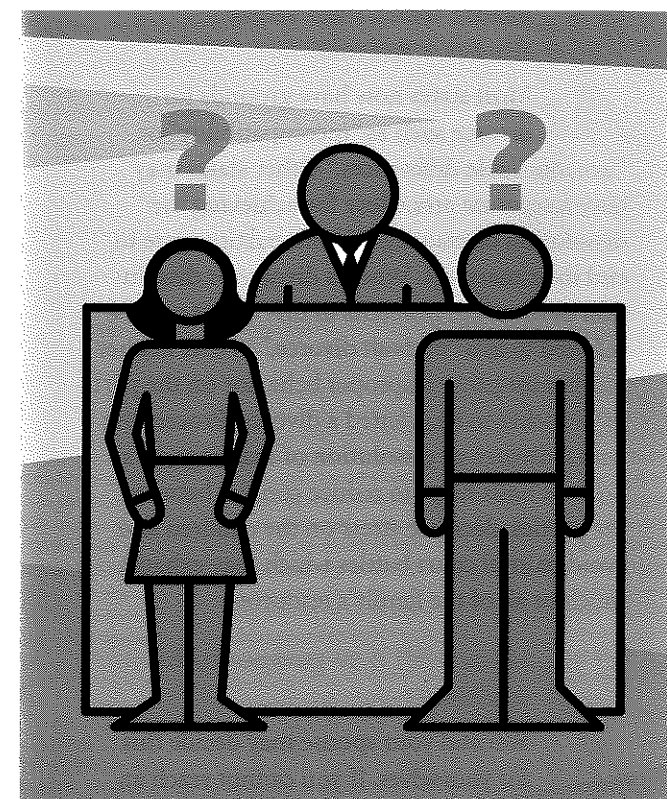
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