



## An Overview of Divorce





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No one goes into marriage thinking it will end in divorce. You get married and you picture a happily ever after. You realize you and your spouse will have problems, but you think you'll overcome them together. However, sometimes those problems amount to more than you can bear.

While our marriages and divorces have been on different grounds, we go through many of the same things, including the legal decisions about what to do with property, debt and most of all, children. This guidebook is designed to give a high level overview of the divorce process so you can make informed decisions.

# Options for Ending the Marriage

Before filing for divorce, you should be aware of all the different legal paths you can pursue. Below are descriptions of your options.

## Divorce

Divorce is the legal termination of a marriage and all rights and responsibilities associated with it. Divorce can be either contested or uncontested.



### Uncontested Divorce

- Couple generally agrees on terms of divorce.
- Court will not need to make decisions on how property is divided.



### Contested Divorce

- Couple does not agree on terms of divorce.
- Court will need to hear from both parties and make decisions based on law.

Whether you both agree on the terms of the divorce or have many items up in the air, it's generally wise to consult with an attorney when entering a divorce. State laws, as well as individual circumstances, vary greatly, and checking in with an attorney familiar with the laws in your state can save time, effort and money. If children are involved, it's important to work with someone experienced on the complicated issues regarding custody and the payment of child support. Each state has child support guidelines that need to be followed. (It is not simply up to the couple to decide on their own.)



### Take the time to find the right attorney

Divorce can be a difficult and emotional journey and the right attorney can help make that easier. Research divorce professionals in the area and find someone compatible who meets your needs.

## Separation

When a couple says they have “separated,” it typically means one of the following four different kinds of separations:

**Trial separation** is when a couple lives apart temporarily in order to decide whether to separate permanently. Even if they don’t get back together, the assets and debts accumulated during the trial period are usually considered marital property. Trial separation is not usually recognized as a legal separation; that is, the couple is still responsible for each other as if they were married.

**Living apart** is when a couple lives apart for a more permanent, prolonged period of time. In some states, separating without intending to reunite changes the spouses’ property rights, meaning property accumulated and debts incurred while living apart are considered separate property or the debt of the person who accumulated or incurred it.

**Permanent separation** is when a couple decides to permanently split up. In most states, assets and debts accumulated after permanent separation are the separate property of the spouse acquiring them. However, debts that happen after separation and before divorce may be joint debts if they are incurred for certain necessities, such as to provide for the children.

**Legal separation** results when the parties separate and a court rules on the division of property, alimony, child support, custody, and visitation — but does not grant a divorce. This isn’t very common, but there are situations where spouses don’t want to divorce for religious, financial, personal reasons or other reasons, but do want the certainty of a court order that says they’re separated and addresses many of the issues that would be decided in a divorce.



## Annulment

While divorce is a legal termination of a marriage, an annulment is a legal ruling that the marriage never existed. There are two types of annulment: civil annulment (granted by the state government after a court proceeding) and religious annulment (granted by a church). The grounds for religious annulments are different than the grounds for civil annulments.



In most states, the grounds for annulling a marriage are very limited. Grounds for civil annulment vary by state but generally include:

- Underage at the time of the marriage.
- Prior divorce within 30 days of the marriage.
- Intoxication.
- Impotence.
- Mental illness.
- Fraud, duress or force.
- The marriage occurred prior to expiration of state-mandated waiting period.

**Did you  
know?**

*How a couple is  
separated can have  
important effects on  
property ownership.*

## Mediation/Arbitration

When a couple decides to use a neutral third-party to negotiate an acceptable divorce agreement, they can choose either a mediator or arbitrator, depending on the jurisdiction. A mediator negotiates and eases communication but doesn't make decisions for either party. When states allow use of an arbitrator, he or she will listen to the facts and decide the case just as a judge would.

Mediation and arbitration in many cases may take less time, cost less and result in a more agreeable decision than going through the courts. Proponents of mediation in particular believe it helps improve communication and, if the couple has children, the future relationship.

In other cases, however, the couple may have a difficult time negotiating directly with each other, even with the help of a third party. If you decide to mediate or arbitrate, you may still be represented by or consult with an attorney and the attorney can play an active role in guiding the case through mediation or arbitration.

## Collaborative divorce

A new alternative in some states to ending a marriage is a method called "collaborative practice." Typically, each spouse retains an attorney and signs an agreement that the couple will not go to court but will share information openly to work toward a settlement.

This is a viable option for couples who want to avoid a costly, time-intensive court divorce yet who have issues to address. They may have complicated disputes that benefit from an attorney's advice on what's best for them. When each spouse finally agrees on the terms of their divorce, their attorneys typically draft the decree for signature by a judge.



*Many couples who go through mediation or arbitration find it helpful to work with an attorney who, at a minimum, can offer legal advice and review the settlement agreement before it is signed.*



**Did you know?**

*Collaborate divorce is not available in all states. Check with your attorney to see if it is an option in your state.*



# The Decision to Get Divorced

A divorce causes more than emotional trauma: it can often lead to financial devastation as well. Here are a few questions to ask that may help avoid some of the most common post-divorce financial problems. While the answers may not be quick or easy, working through them early in the separation process can help avoid bigger issues later on.

## Do you have supporting documentation if your reason for seeking a divorce includes verbal, physical or mental abuse of you or your children?

Consider documenting those specific events for potential use in the court case.

Documentation includes:



Police reports.



Medical records.



Photographs.



Written record of interactions with the abuser (dates, times, violations of court orders).

These issues can, in certain jurisdictions, make a meaningful difference in the result of the case, especially in determining child custody.

## Do you have copies of major financial documents?

Preparing for divorce requires gathering all relevant documents related to your bank and brokerage accounts, tax returns, mortgage loans, joint savings and checking statements, insurance policies, investment reports, credit card statements, retirement accounts and a recent credit report. Watch the mail for statements from banks, credit card companies and the like.

Once collected, make copies and store them somewhere secure in case the originals aren't accessible later. (Keep in mind that a safe deposit box may not be secure if you and your spouse both have access.)

## If There Is Domestic Abuse

Domestic abuse is never acceptable and will usually not stop on its own. While it may be difficult, if you or someone you know is in an abusive relationship, it's important to acknowledge what is happening and take steps to contact an attorney or a domestic violence counselor and follow his or her advice on approaching the abusive spouse. For local resources, check out what's available in your state.

## Free Annual Credit Report

It can be helpful to have a clear picture of your credit history in case you need to manage or improve your situation before you are on your own. Take the time to request a free credit report, which you are allowed once every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion. The only official site to help consumers to obtain their free credit report is [AnnualCreditReport.com](https://www.annualcreditreport.com).

**Have you done a new budget?**

Along with knowing the big financial picture, you will need to figure out a new budget. Be realistic about the amount of money required to cover ongoing expenses. You may want to create a spreadsheet to get a clearer picture. It's helpful to learn early on if your standard of living is going to decrease after the divorce so that you can plan and act accordingly.

**How can you reduce expenses now before divorce?**

It's generally in the best interests of both parties to reduce credit card debt and other liabilities before the divorce and establish individual credit histories. This includes closing joint credit cards and bank accounts, and if possible, opening separate personal accounts. Closing joint accounts will prevent one spouse from depleting the bank account or running up charges on a credit card and is a step toward protecting individual assets to prepare for being single.



# How Are Property and Debts Divided at Divorce?

If a couple doesn't agree on how to divide property, they can submit the property dispute to the court. The courts will treat both debt and property based on whether it is a community property state or equitable distribution state. Read below to learn more about these terms and what they mean.



## Property laws for your state

Only about a dozen states have community property laws. Visit [hg.org/property-division.html](http://hg.org/property-division.html) to see whether your state is one of them.

## Community property

In a community property state, all property of a married person is classified as either community property (owned equally by both spouses) or the separate property of one spouse. At divorce, community property is generally divided equally between the spouses, while each spouse keeps his or her separate property.

- Community property includes everything earned during marriage and everything acquired with those earnings. All debts incurred during marriage, unless the creditor was specifically looking to the separate property of one spouse for payment, are community property debts.
- Separate property includes gifts and inheritances given just to that spouse, personal injury awards received by that spouse, and the proceeds of a pension that vested (that is, the pensioner became legally entitled to receive it) before marriage.
- Property purchased with a combination of separate and community funds is part community and part separate property, so long as a spouse is able to show that some separate funds were used. Separate property mixed together with community property generally becomes community property.

## Equitable distribution

In non-community property states, assets and earnings accumulated during marriage are divided equitably (fairly), but not necessarily equally. Factors a judge might consider when distributing property include duration of the marriage, age and health of the spouses, as well as their earning power. In some equitable distribution states, the judge may order one party to use separate property to make the settlement fair to both spouses.

## Who gets to stay in the house?

If children are involved, there are a variety of factors considered in determining who, if anyone, will remain in the marital home. Many times, parents consider the impact on the children and consider options that provide the least amount of disruption.



If you don't have children and the house is the separate property of just one spouse, that spouse has the legal right to ask the other to leave.



If you don't have children and you own the house together, neither spouse has a legal right to kick the other out. One can request that the other person leave, but no one can require it. If you and your spouse don't come to a decision, the court will decide for you during divorce proceedings — or earlier, if you ask for a temporary order on the issue.







## Alimony

Alimony, also known as “spousal support” can be awarded when one spouse makes substantially more than the other. Laws vary by state, but the Uniform Marriage and Divorce Act recommends that states and courts take into consideration the following when deciding whether to award alimony:

- Physical, emotional and financial conditions of each spouse
- Length of the marriage
- Standard of living during the marriage
- Length of time receiver of support would need to become self-sufficient
- Ability of spouse earning more to support both him/herself and the other person

Alimony is less frequently awarded for couples who make similar incomes or who have been married for only a few years.



If alimony is ordered, it is generally a set amount paid monthly. Many factors are used in determining how long a party will be responsible for paying alimony. The following are some ways alimony can be ended:

- The judge sets a date several years in the future when the alimony will stop.
- The receiving party remarries.
- The children no longer need a full-time parent at home.
- A judge determines that, after a reasonable period of time, the receiving party has not made a sufficient effort to become at least partially self-supporting.
- Some other significant event — such as retirement — occurs, convincing a judge to modify the amount paid.
- One party dies.

As with most issues in your divorce, you and your spouse can typically agree to the amount and length of time alimony will be paid. But if you can't agree, a court will set the terms for you.

## Four Questions to Ask About Debt

How you handle debt during your marriage can make a big impact on your credit. Here are four questions to help you determine what to do in your situation.

1.

### How will your state laws affect you?

If you live in a community property state, both spouses may be held responsible for debts incurred during the marriage, regardless of whose name is on the account.

**What you can do:** Make sure you know what debts both you and your spouse have. If you think there may be accounts you are listed on, yet don't know about, get a copy of your credit report and ask your spouse about any accounts you don't recognize.

2.

### How much debt can you pay off while you're still married?

Ideally, try to pay off as many joint debts as possible before the divorce is finalized. This makes settlement negotiations easier and helps make for a cleaner break.

**What you can do:** Consider closing joint accounts (including credit cards and bank accounts) that were opened in both of your names and remove your spouse as an authorized user on your own accounts. You also may want to ask the creditor to convert these accounts to individual accounts. Remember, creditors aren't obligated to convert such accounts, so you may need to apply for credit on an individual basis. The creditor will then extend or deny you credit based on your new application.

3.

### How will you be affected by debt after divorce?

If paying off the debts or converting joint accounts to individual accounts during the divorce wasn't possible, be sure to monitor the accounts that you are responsible for. If you notice that payments are being made late, you might consider making the payments yourself to protect your credit. Bad marks can stay on your credit report for seven years.

**What you can do:** Talk to your ex-spouse to see if you can help with payments. While this may not always work, if you both can talk about it, it will save credit scores. If your divorce decree says that your ex-spouse has to reimburse you if you paid debt he or she was responsible for, then you can take them back to court to get that payment. Remember, however, that process will take time, energy and money paid for attorney fees.

4.

### What will you do with larger debts?

Don't expect a mortgage or vehicle lender to be willing to simply take your spouse's name off the loan. As long as your name appears on the original contract, both parties are legally responsible for making payments regardless of who possesses the property.

**What you can do:** Keep in mind that signing a quit claim deed or having a spouse sign one does not dissolve either party's obligation to pay a mortgage. When you sign a quit claim deed, you are signing away any legal rights to claim any equity in the home – you are not walking away from the responsibility to meet the payment obligations you originally agreed to. Many individuals have discovered the hard way that a quit claim deed does not protect them from credit damage when their ex-spouse defaults on the home loan they once shared.

## Did you know?

*Creditors do not have to follow your divorce decree. They can try to collect from anyone listed on the account.*

*Knowing this ahead of time may make you view the distribution of debt differently. Make sure your divorce decree includes a provision that will protect you and require that you're reimbursed if your ex defaults on a separate account.*

# Issues

## If You Have Children

### Child custody

There are a variety of child custody scenarios and it can be helpful to understand the different terminology used when this issue is discussed.

**Legal custody** refers to the right and obligation of a parent to make decisions regarding the child's upbringing. These decisions include where a child will attend school (private school, public education or home schooling), the medical care they receive and what religion they will be brought up with. It also relates to the general welfare of the child.

**Physical custody** refers to the day-to-day care of the child and where the child will live.

The rules regarding legal and physical custody vary by state and individual circumstance so it is generally wise to involve experienced legal counsel to ensure the best outcome for the children involved. When it comes to deciding legal and physical custody of the children, courts can and do make any number of arrangements. Some parents may share physical custody but not legal; some may share legal custody but physical custody may be split to accommodate living with one parent while going to school and visiting the other parent in the summer. Here are some of the terms related to how custody is commonly divided:



**Sole custody** means only one parent has the legal capacity to act on the child's behalf. In physical custody, this often means the child spends all, or a majority of time with this parent.



**Joint custody** means both parents share joint legal custody and joint physical custody. This arrangement can be established either by a parenting agreement or it can be ordered by the judge. The decree or agreement also typically outlines arrangements for financial support and expenses outside of child support.



**Split custody** is where custody is shared equally or at least one parent has substantially more time with the children than the other. In many cases this exists when one parent is the custodial parent during the school year and the other during summer vacation.

The guardian is required to make decisions and handle affairs in the best interests of your loved one. The court may appoint:

- A spouse.
- A professional guardian.
- An adult child.
- An agency.
- Another family member.
- A corporation, such as a bank trust department.
- A friend.

The extent of the authority granted to a guardian depends on the extent of the ward's incapacity as determined by the court.



## Child support

Child support is not the same as child custody or visitation. Every parent has an obligation to support his or her children. Rules vary by state, but typically parents must support a child until:

- The child turns 18 (and sometimes longer if the child has special needs or is in college).
- The child marries.
- The child is on active military duty.
- The parents' rights and responsibilities are terminated (for example, when a child is adopted).
- The child has been declared emancipated by a court. (Emancipation can occur when a minor has demonstrated freedom from parental control or support and an ability to be self-supporting.)

## Parenting agreements

A written parenting agreement or parenting plan defines how both parents are going to share time and decision-making regarding the children. It helps set the stage for a successful post-divorce relationship because it sets clear expectations, which in turn can reduce conflict. Creating an agreement allows both parents to discuss the issues and how you want to handle them.

Topics you should cover in writing your agreement include:

- Custody and living arrangements.
- Education.
- Visitation.
- Medical care.
- Financial issues (child support and expenses).
- Religious training.
- Holidays.

## How to create a parenting agreement

You can work with your ex-spouse to negotiate and write down a parenting agreement yourselves or you can seek the help of a child custody mediator or other specialist.

Once the agreement is complete, it's a good idea to make the agreement part of your divorce file and have the judge approve it. The document might be part of your final settlement agreement or you might file it separately but, either way, have the judge sign the agreement, making it a court order and, consequently, enforceable.

Each state has guidelines to calculate a range of child support to be paid based on the parents' incomes and expenses. These guidelines vary by state, but in all cases must be followed by both parents.

The guidelines generally help determine who pays child support and how much. Factors usually include:



Income or potential  
income of each  
parent.



Custody  
arrangements.



The number of  
children the parents  
must support.

## Did you know?

*Your parenting agreement can be made into a court order so that you can enforce it if your ex-spouse doesn't live up to its terms.*



### How parents can help children with the transition

Even in the most “friendly” divorces, children have no say in what’s going on, yet are greatly affected. Even if they know they are loved by both parents, it usually takes many years for children to understand the situation. The good thing is that the majority of children do adapt. Here are a few considerations for parents to help with the transition.

- Reliability and punctuality are of utmost importance to a child. Once visitation arrangements have been made, it’s important that both parents honor that commitment. If a parent doesn’t show up or creates reasons why the child can’t see the opposite parent, the child will feel let down and resentful. In children’s eyes it’s time with their parents that is most important — especially after a divorce.
- Never talk poorly about the other parent in front of your child. This creates resentment and bad feelings all around.
- Never think that gifts can make up for being consistently late or failing to follow through with your promises. Although you may think that you are doing well for buying your child a toy to impress them, it’s better to keep that special toy for a birthday or Christmas present. Your time with them is much more valuable than a toy.
- Negotiate custody with your child’s interests as the sole intention. One of the worst experiences a child can suffer in a divorce is when warring parents fight about him or her in a drawn out custody battle.

Initially, children likely wish that their parents were still together, but as time goes by, often they will accept the divorce. Be honest with your children. Watch for signs that they may be having a hard time with the issues and be open to counseling for that child or for you and that child when they need it. Being there for your child and understanding the situation from their perspective will help them move forward.



## Changing Your Name

In most states, you can request that the judge handling your divorce make a formal order restoring your former or birth name. You'll want to get certified copies of the order as proof of the name change. Once you have this official documentation, you can use it to have your name changed on your identification and personal records.

If your divorce decree doesn't contain an order restoring your former name, check to see if it can be modified to include language restoring your name. In some states, this is possible even after the divorce is final. Alternately, you can bring a separate action to restore your name.





# Seven Legal Documents to Update Now

Updating documents and named advisors after a divorce is important because so often the spouse is the named emergency contact (or the contact most state laws would default to). A current point-person needs to be named for decisions relating to minor children, health and finances. Update these seven legal documents:

- Standby guardian — Appoints a temporary guardian for minor children.
- Health care proxy — Appoints a person to make health care related decisions if you are unable to.
- Living will — Indicates end-of-life health care wishes.
- Funeral directive — Indicates funeral related arrangements and appoints a person responsible for enacting the plan.
- Durable power of attorney — Appoints a person to make financial decisions if you are unable to.
- Will or trust — Describes how property and assets will be distributed.
- Beneficiary designation forms — Names who will inherit life insurance policies, retirement plan assets and bank accounts.



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