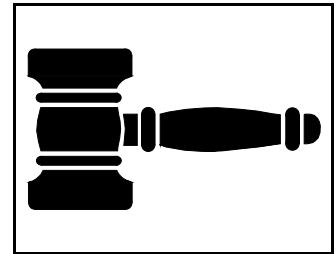


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## COMMON QUESTIONS ABOUT DIVORCE IN MINNESOTA

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GENERAL INFORMATION - If you have a specific question PLEASE ASK

### DIVORCE, SEPARATION, OR ANNULMENT?

**DIVORCE** is by far the most common way by which people alter their marital situation when they no longer wish to live together. A divorce "dissolves" the marriage and makes the former husband and wife single people again. As part of the process, every issue relating to the marriage is settled or specifically "reserved" for later decision by the Court. Any property is divided between them, as are any debts. If there are children, the custody, visitation, and child support issues are settled. When appropriate, alimony may be established for some period of time. Other issues, such as life or health insurance policies may also be covered.

**A LEGAL SEPARATION** is like a divorce in that similar issues are settled, but when the procedure is finished the parties are still married and cannot marry anyone else. Also, the property distribution is not completely final. As in divorce, the issues of property, children, and other matters may arise. If a person with a legal separation wants a divorce, he or she must start an action all over again. For this reason legal separations are uncommon in Minnesota. However, many people decide to separate for a period of time without going through a formal legal separation. This is not illegal, but it does leave unanswered questions as to who is entitled to the property, who is responsible for debts during the separation and the terms of custody and child support. It also prevents remarriage.

**ANNULMENTS** are extremely uncommon and appropriate only when there is a defect in the circumstances of the marriage or the understanding of the parties, or when the husband or wife lacks the legal capacity to married. Annulments can be used in such cases as "shotgun" weddings, under-age marriages, marriages done under the influence of drugs or alcohol and marriages where one party can't have sex and the other doesn't know it. Even if the parties decide ten minutes after the ceremony that they hate each other, the marriage cannot be ended by annulment unless one of these special circumstances occurred. An annulment may also become impossible because too much time has passed or the parties have acquiesced to the marriage.

### HOW IS PROPERTY DIVIDED IN A DIVORCE?

Minnesota is an "equitable distribution" state. This means that if the parties cannot agree on how to split up the property, the court will attempt to do it in a fair way. Very often this means a 50/50 split, but the Court sometimes thinks that it is fair that one party should get more than half of the property. Minnesota law says that marital misconduct shall not be a factor in dividing property. However, an exception to this rule may be made in the case of waste of assets or fraud.

**MARITAL PROPERTY.** Generally speaking, the only property divided is "marital property". "Marital property" is property acquired by either the wife or husband during the marriage and which was not received as a gift, inheritance, or covered by a valid pre-nuptial agreement. Certain types of damages recovered in some court cases may also be considered non-marital property. Non-marital

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property (owned before the marriage, received by gift, or inheritance, etc.) usually goes to the person who brought it into the marriage. The Court may give some (but not more than half) of your non-marital property to your spouse if your spouse's resources are so inadequate as to cause an "unfair hardship".

**REAL ESTATE.** Normally it makes little difference whether title is held jointly or individually. Real estate is a common example of this. Many people believe that if a spouse's name is not on the title, the real estate is not affected by the divorce. This is not true. At a minimum, a marriage is a cloud on one's title to the real estate. This is important when the real estate is sold. Beyond this, a spouse normally has an interest in the increase in equity of the real estate during the marriage.

**PENSIONS.** Many people do not realize that pension benefits are property. In some ways, Minnesota courts treat pension benefits like savings accounts. Pension benefits accumulated during the marriage are subject to distribution much as deposits added to a savings account during marriage. Courts generally prefer to award a pension to the spouse whose employment resulted in the pension. However, it is sometimes difficult to fairly divide the property if one spouse is awarded all of the pension he or she earned. Furthermore, the parties may both agree to split a pension between them. In these cases the Court has the power to award either spouse a share of the pension benefits earned by the other spouse.

## **DEBTS**

Generally, debts are divided using the same principles that govern property. They are treated almost like property with a negative value. For instance, if the property received by one spouse was more valuable than the property of the other spouse, the Court might equalize the shares by making the party with the more valuable property responsible for a larger share of the marital debts.

The ordinary assumption is that the spouse that gets a piece of property also gets the debts that go along with it. For example, if the wife gets the car, she usually pays the car loan.

Debts are often the worst problem in divorces involving people who don't have children. A divorce decree only affects husband and wife, NOT creditors. A divorce decree ordering husband to pay a loan does NOT prevent the creditor from seeking repayment from wife if husband fails to pay it. The decree CAN give wife the right to sue husband for reimbursement if she has to pay.

Debts may also impair your ability to borrow if both you and your spouse have signed for a loan. Unless the lender is cooperative, both of you have a legal obligation to pay the loan. Even though the divorce decree states that your spouse is responsible for the loan, you may find it difficult to borrow for a house, for example, because you are already responsible for another mortgage. Fortunately, many mortgage companies will disregard a mortgage your ex-spouse is paying.

One spouse is not liable for the other's debt(s). However, where the husband and wife are living together, they are jointly (and severally) liable for necessary medical services that have been furnished to either spouse, and necessary household articles and supplies furnished to and used by the family. And generally a spouse is liable if he or she signed on the debt or if a court orders a spouse to pay.

Unfortunately, most large debts seem to have both names on them. There are usually only three solutions to the problem: (1) someone pays the debt, (2) the creditor agrees not to seek payment, or (3) one or both parties file bankruptcy. Ask us about bankruptcy if debt problems are severe.

## **WHAT HAPPENS TO CHILDREN IN A DIVORCE?**

**CUSTODY.** A divorce dissolves your legal relationship with your spouse but not with your children. It is necessary to determine with whom the children will live. The parent the children normally live with is said to have PHYSICAL custody. The parent who makes decisions concerning the upbringing of the children, including school, church, and medical care is said to have LEGAL custody. At this time, the most common arrangement for children is for one parent to have sole

physical custody of all of the children and both parents to have joint legal custody.

The fact that many people are making these arrangements for the care of their children does not mean that you must. One parent may have physical custody of one child, and the other parent have physical custody of another. Also, joint physical custody may be ordered. Joint physical custody can be handled in many different ways, such as this week with mom, next week with dad, or school year with dad, summer vacation with mom.

**PARENTING TIME (formerly called Visitation).** It is normally assumed that a parent who does not actually live with the children will still have the right to see the children on a regular basis. You should think about whether you want to leave it open or set a schedule. Ask us about parenting time.

**CHILD SUPPORT.** It is also ordinarily assumed a parent who does not live with the children will contribute to the support of the children by paying money (called child support) to the parent who lives with the children. In Minnesota, a new child support law requires the Court to divide basic support between the parents based on their proportionate share of the parents' combined monthly income for determining child support (PICS). This income figure uses gross income as a basis, but makes a number of adjustments. Basic support is then computed using a child support guideline (*Minnesota Statutes*, §518A.35).

## OTHER ISSUES

**SPOUSAL MAINTENANCE** - also called alimony, is money paid by one ex-spouse to the other to help that person live, establish or maintain an independent life. Theoretically, there could be alimony in any divorce, but it is most common in longer-term marriages (eight years or more) where there have been children.

Alimony may be permanent, or it may last only a few months. It is closely related to income, earning ability, age, the property each party has and the standard of living enjoyed during the marriage. The number of factors involved make it necessary to discuss each case individually.

**NON CITIZENS** - If you are not a United States citizen, and your residence in the United States is related to your marriage to a citizen or a green-card holder, **GET IMMIGRATION ADVICE FROM AN IMMIGRATION LAWYER BEFORE YOUR DIVORCE.** We do NOT give immigration advice.

**TAXES** - There are often tax issues in a divorce. Child support is NOT deductible. Alimony is generally deductible to the payor and INCOME to the recipient. The tax exemptions and deductions for children go to the person having physical custody unless that person gives up the right or the court awards the exemption or deduction to the other party. If property is sold or otherwise transferred (stocks, real estate, etc.) or an IRA is cashed in, there may be taxes to pay. Various tax benefits such as the ability to avoid taxes on a gain when you sell your home may also be lost as a result of your divorce. Get advice from a tax expert unless you are SURE you know what the tax result will be. If a person is divorced before the end of the year he or she is considered to be single (unless remarried) and cannot file a joint return for that tax year.

**HEALTH INSURANCE** - Both federal and state statutes govern insurance for ex-spouses. However, the insurance may still be canceled at a later time if one of the conditions set out in the Minnesota law on insurance continuation occurs. **ASK YOUR LAWYER ABOUT THESE CONDITIONS IF YOU EXPECT INSURANCE TO BE PROVIDED BY YOUR SPOUSE'S INSURANCE CARRIER.**

**BANKRUPTCY** - By filing bankruptcy, your spouse may or may not be able to reduce or entirely eliminate his or her obligations to you. In some cases this might mean that he or she no longer has to make certain payments to you or to your creditors. Generally, the Bankruptcy Court will weigh the relative affects of the discharge of an obligation on both you and your spouse and determine if your spouse's obligation to pay you or a creditor should be discharged (eliminated) - if the obligation is considered part of your property settlement. However, obligations to pay alimony and child support cannot be discharged.

The combination of divorce and bankruptcy creates a complicated situation. PLEASE ASK if you or your spouse might file a bankruptcy petition in the foreseeable future. If you find out your spouse or ex-spouse is filing bankruptcy, contact us IMMEDIATELY. Some remedies have very short deadlines.

**WILLS** - A divorce is a significant change in your life, and is a good time to think about changing your will, or making one if you don't have one. If you or your spouse have a will, your divorce might change how some property would be distributed upon death.

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