
No-Fault Divorce

What is no-fault divorce?

No-fault divorce is divorce granted on the basis of a showing by either spouse a marriage is “irretrievably broken.”

As a practical matter, a couple agreeing to a divorce can now negotiate a property settlement and other details; the court will usually approve such an agreement in a short, simple hearing. The financial settlements regarding the divorce are now based on need, ability to pay, contribution to the family economy and special circumstances, rather than on fault as was common under previous law.

What is the lawyer’s role?

A lawyer’s job is to represent a client’s best interest by serving as an advocate and negotiator and by knowing the procedures to follow and the papers to file. Often, two people who are in the process of dissolving a marriage are unable to negotiate calmly and rationally. Sometimes they do not even agree a divorce is the best solution.

More importantly, neither party can knowledgeably agree to a divorce settlement without being properly advised on his or her legal rights and obligations. Both parties should fully understand the divorce settlement and how the court would likely proceed in the event no agreement is reached. By providing both practical and legal advice, a lawyer can help at all stages of the divorce proceedings.



How should I choose a lawyer?

Selecting a lawyer is a personal matter. You may want to ask a friend, relative or employer to recommend someone he or she knows and trusts. If you need help finding a lawyer, see the listing at the end of this pamphlet. Information about lawyers in your community can also be found in the legal directories or located in most public libraries. These provide basic biographical information about attorneys and often include the areas of law in which they practice. The internet may also provide information about lawyers and law firms.

For those who cannot afford a lawyer, Legal Aid offices are located in some Nebraska communities. These are generally listed in the Yellow Pages of telephone directories under “Attorneys.”



Can both spouses have the same lawyer?

One lawyer may not represent both parties in a divorce action. Only by having separate attorneys can the parties be sure their particular interests are asserted to the fullest extent possible in the process. In certain circumstances, (for example, when no aspect of the divorce is contested), a lawyer representing one of the parties may prepare all the paperwork and filings, but that lawyer does **not** represent both parties.

How much does a divorce cost?

The fee for divorce depends on a number of factors, including whether the divorce is contested, whether children are involved, property or debts to be divided, how willing the parties are to negotiate, and the amount of time the lawyer must spend on the case. Most lawyers have a specific fee for a simple, uncontested divorce. When you call for your first appointment, ask about the fee; your lawyer will be most willing to discuss the charges involved.

What is the legal procedure?

Initial Visit: During your first visit, your lawyer will request information about your situation. You should be prepared to provide at least the following:

- A comprehensive list of property owned by you, your spouse, you and your spouse jointly and by your children, including the value and the origin of that property.
- An itemization of any mortgages, debts, insurance policies or other factors regarding your financial status.
- Information about children affected by the divorce, including their full names, birth dates, social security numbers, places of birth, where they have resided for the past 5 years, and who they lived with. If the children have health problems or are under a doctor’s care, you should note that, too.

- Copies of your most recent pay stubs and your most recent year's income tax returns.

Legal fees should also be discussed at this initial visit.

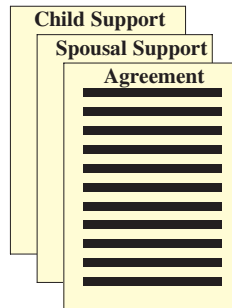
Filing the Petition: Once a petition for dissolution is filed by one spouse, the other will receive a copy of it and may then file a responsive pleading. It will be at least 60 days from the time of filing and service of summons until the actual court hearing. Of course, the period could be substantially longer depending upon the difficulty of reaching an agreement. During this time, the two parties should attempt to reach a settlement. During this time, one spouse may be granted temporary child custody, support or alimony, attorney fees and court costs prior to the time a final decree is entered.

Reaching an agreement: Parties are encouraged to enter into a written property settlement agreement containing provisions for the maintenance of either spouse, the disposition of any property owned by either spouse, the allocation of debts, and the support and custody of any minor children. The agreement of the parties is then presented to the court for its approval and a decree of dissolution is entered.

If the parties are unable to reach an agreement, the court will decide the issues of spousal support, property division and custody and support of the minor children at a trial where each party has an opportunity to present evidence supporting their positions. The judge's decision will be incorporated into a decree of dissolution.

Child Support: Child Support is determined according to the Nebraska Child Support Guidelines. The main principle behind these guidelines is to recognize the equal duty of both parents to contribute to the support of their children in proportion to their net incomes. The guidelines are intended to be used for both temporary and permanent support determinations. Contributions to child care and medical costs are considered independently of the order for child support.

Spousal Support: The court may order one party to pay spousal support to the other. The factors to be considered in making such



an award are the circumstances of the parties, duration of the marriage, a history of contributions to the marriage by each party, including contributions to the care and education of the children, an interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor child in the custody of that party. Any award of spousal support may be modified or revoked if good cause is shown. However, when spousal support is not awarded in the original decree, that decree cannot later be modified to award spousal support.

Changing the Settlement: A divorce decree may be vacated or modified for good cause any time before it is final. A divorce is final one month following the entry of the decree or upon the death of either of the parties if the death occurs during the one month waiting period. However, neither party to a divorce may remarry for six months after a decree is entered. In addition, for purposes of continuing health insurance the decree does not become final for six months. Issues of child custody, child support and visitation may be subject to modification at any time if the parties can show there has been a substantial change in circumstances since the entry of the decree.

Who gets custody of the children?

A contest over child custody is a difficult experience for all concerned. Therefore during the settlement negotiations, each parent should always consider what is in the best interests of the children in arriving at an agreement. The court will usually accept the parents' agreement as long as it meets the test of being in the best interests of the children. If the parties are unable to agree, the issue goes to trial and a judge decides. The court cannot give preference to either parent based on the sex of the parent or children and the court cannot presume either parent is more fit than the other to have custody. In determining the issue of custody, the court may consider some of the following factors:

- Relationship of the children to each parent prior to the start of the divorce action.
- Wishes of the children, if they are mature enough to express their wishes.
- General health, welfare and social behavior of the children; certain elements of the parents' and children's lifestyles.
- Each child's age and character, and the stability of each child and each parent.
- Credible evidence of abuse inflicted on family or household member.

The court may also award joint custody to both parents if the parties have agreed upon such an arrangement and the court finds



it is the best interests of the children. If a custody dispute cannot be resolved, the court may appoint an attorney to represent the best interests of the children, commonly referred to as a *Guardian Ad Litem*. The court may order one or both of the parties to share in the costs of the *Guardian Ad Litem*.

What does the divorce hearing (or trial) involve?

Before the hearing (or trial), your lawyer will review with you the questions you will probably be asked. Plan to discuss with your lawyer any concerns you have about the procedure at this time. In contested cases, a trial will be held. All issues have to be resolved on the basis of the evidence presented, and the amount of time spent in trial increases with the complexity of the issues. In most uncontested cases, however, all questions relating to the divorce are settled prior to the actual hearing. Thus the hearing may only last 10 minutes or so.

Following the hearing (or trial), the judge normally signs a decree dissolving the marriage and incorporating any property and support arrangements agreed to previously. At the wife's request, her maiden name or former name can be restored at this time. (A Nebraska Supreme Court case holds it is an abuse of discretion to deny her request.) With the exception of remarriage and continuation of health insurance, the decree becomes final one month after it is signed (or upon the death of either party). At the time the divorce is final, the marriage is legally terminated. Neither party may remarry for a period of six months after the decree is entered.

How is a divorce decree enforced?

A divorce decree is a court order, and a spouse who fails to pay the ordered amount of child support or alimony, or who refuses to pay a monthly judgment or to relinquish property awarded to the other party is in violation of that order. For assistance in obtaining what is rightfully yours under terms of your divorce decree, contact your lawyer. For assistance in collecting child support, contact your lawyer, the clerk of the district court, the local county attorney, or the local Child Support Enforcement Unit.

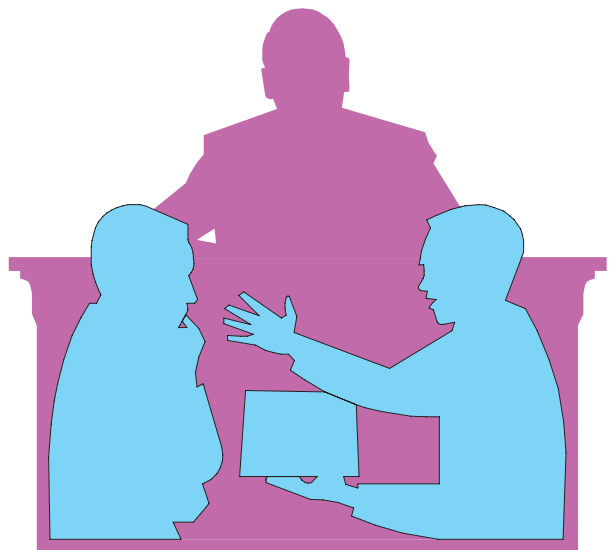
What is legal separation?

A legal separation allows two persons who are legally married to separate and thereafter live apart; the marriage itself, however, is not dissolved. A legal separation can be requested by either party and the decree can include appropriate provisions for adjustment of property rights, as well as provisions for support and/or custody of minor children.

Legal separation is also available when a party has not lived in the state long enough to meet the residency requirement, or if there are other reasons to maintain the marriage relationship, such as religion or health issues. The actions for legal separation can then be changed to a divorce action after one of the parties has resided in the state for at least one year.

What is an annulment?

An annulment, rather than a divorce, can be granted in situations where the original marriage was defective. Typically, annulments are available when the original marriage between the parties was prohibited by law or when either party had another spouse living at the time of the marriage. Annulment is also available if one of the parties were impotent or mentally ill at the time of marriage, or if one of the parties used force or fraud in coercing the other to marry. Generally speaking, the procedure for an annulment is the same as for a divorce, except an annulment becomes final immediately, with no waiting period for remarriage, and the right to file for an annulment is not limited by a one-year residency requirement.



Resources

Omaha Lawyer Referral Service (402) 280-3603

Nebraska Legal Services (877) 250-2016

NSBA – Volunteer Lawyers Project (800) 742-3005

Hotline Numbers

Abuse/Neglect Hotline (for either child or elderly adult abuse): (800) 652-1999

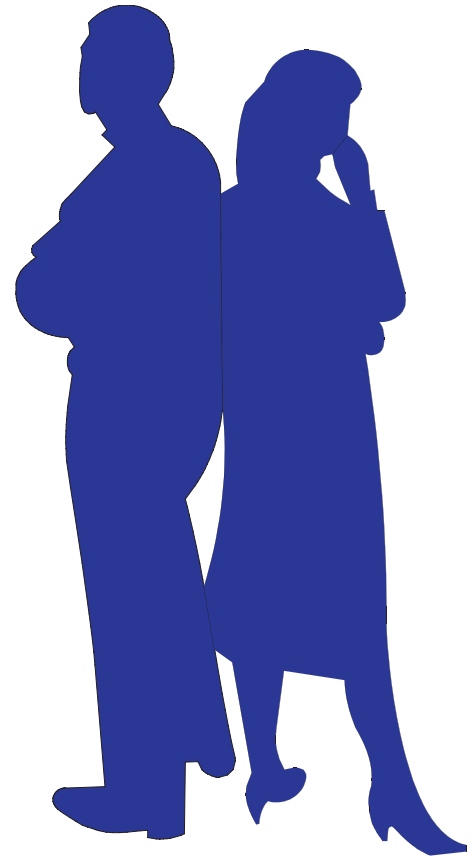
Child Support Hotline: (800) 831-4573

Parent Assistance Hotline: (800) 642-9909

Handicapped/Nebraska Childfind Hotline (assistance for the handicapped or those children who are handicapped): (800) 742-7594

Statewide Domestic Violence Hotline: (800) 876-6238

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This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.



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