

Frequently Asked Questions

Divorce

What is the difference between a divorce and a legal separation?

Divorce ends a marriage. Legal separation involves the same procedures as divorce, but the separated spouses can't marry others. Legal separation is an alternative for people who wish to avoid divorce for religious or other reasons. The court grants a legal separation on the ground that the marriage relationship is broken.

Like a divorce, a legal separation requires property division and determination of child custody and placement. The court may order maintenance and child support payments.

After one year, either spouse can seek to have a legal separation converted into a divorce without the other spouse's consent. Spouses who reconcile after a legal separation may apply to have the separation revoked.

What is a no-fault divorce?

Traditionally, divorce was granted on the basis of some marital misconduct such as adultery or physical abuse. In these cases, the spouse who engaged in the misconduct was punished by getting a smaller share of the marital property or by being denied custody of his or her children. In a no-fault divorce, however, both parties agree that there is no fault involved in the grounds for divorce. In fact, in no-fault divorce, any misconduct is irrelevant to the divorce proceedings, a marriage can be terminated simply because the couples agree that the marriage is no longer salvageable, and the marriage can be dissolved if either of the partners so chooses.

What is a fault-based divorce?

A fault-based divorce is one in which one party blames the other for the failure of the marriage by citing a legal wrong. Grounds for a fault-based divorce vary by state but typically include adultery, physical or mental cruelty, desertion, alcohol or drug abuse, insanity, impotence, or infecting the other spouse with a venereal disease.

What is an annulment?

An annulment dissolves a marriage that was invalid from the beginning. For instance, one spouse may have been too young, unable to have sexual intercourse, incapable of consenting to the marriage, or induced to marry by fraud or force.

How long does it take to get a divorce?

Unless the court makes an exception for an emergency, at least four months must pass between the serving of the initial papers and the final hearing. Most divorces take longer than four months. Several factors affect the length of the process: the complexity of the case, the ability of the spouses to agree on the issues, and the amount of other business before the trial court.

A divorce isn't effective until the final hearing. Once the divorce is final, both parties must wait at least six months before marrying other people.

Custody

What is legal custody?

This is the legal right to make major decisions about your children. Major decisions cover such matters as nonemergency health care and choice of school and religion. Others include parental consent to marry, obtain a driver's license, or join the military. Additional matters also could be major decisions, if the court so determines. Legal custody can be joint or sole, and it's different from physical placement.

How do joint legal custody and sole legal custody differ?

Joint legal custody means both parents have equal rights to make major decisions about their children. Sole legal custody means only one parent has the right to make such decisions. The court also may order that one parent or the other has the sole right to make certain types of major decisions, such as health care. Joint legal custody is presumed unless there is an agreement otherwise or specific reasons for a court to grant sole custody, such as domestic violence.

When parents can't reach an agreement on custody, what standards do courts use to decide with whom the children should live?

When parents cannot reach an agreement regarding child custody, most courts try to decide custody based upon an analysis of what arrangement is in the best interests of the child. While statutes and standards differ from state to state, a best interests determination is usually reached by reviewing the parents' wishes, the mental and physical health of the parents, any history of domestic abuse, the child's age and attachment to the parent who has been the primary caretaker, and the child's wishes.

What impact should a child's age have on custody and visitation scheduling?

Development experts generally agree that children of different ages have different needs regarding visitation scheduling. Experts generally recommend a visitation schedule based on a child's age, which may need adjustment for parents with either outstanding or limited parenting skills. When parents enter into a shared parenting arrangement, a different schedule may be used.

How is child support determined?

Each state has child support guidelines in place that are used as the foundation for determining the amount of child support. While child support guidelines vary from state to state, courts setting child support orders will generally follow the amount suggested by the guidelines unless a reason to depart from them exists. Most guidelines consider the needs of the child, the relative abilities of the parents to pay support, and the standard of living the child would have had but for the divorce.