

Minnesota Divorce Basics

Starting a dissolution (divorce) or being served with dissolution papers can be a very confusing matter. Below are some basic things to know and understand when dissolution of your marriage becomes a reality.

Dissolution (Divorce) Process in Minnesota

Initial Action – Before starting a divorce proceeding or immediately after being served with divorce papers, a party may want to:

1. Remove one-half (1/2) of the all funds held in joint bank accounts;
2. Close all credit accounts with joint names;
3. Open new credit and bank accounts in your name only;
3. Assemble a list and supporting documentation of all your marital and non-marital financial holdings;
4. Interview a few experienced divorce attorneys and hire the one you feel most comfortable working with.

Service of Process- To commence a marriage dissolution (divorce), legal separation, or annulment, in Minnesota, the Petitioner (one asking for the divorce) must have their spouse (Respondent) personally served with a Summons and Petition. Sometimes, service is accomplished by mail if your spouse is willing to sign an acknowledgment of service.

Summons and Petition for Dissolution – A Summons is a legal document which gives a party notice that a divorce has been started. The Petition for Dissolution is a legal document in the action for divorce, separation or annulment which accompanies the Summons. The Petition contains the general allegations in the divorce and requests general relief, such as custody, child support, spousal maintenance, property division and the payment of legal fees.

Parenting Education Classes – When there are children involved, Minnesota Courts generally mandate that each party attend a court approved parent education class prior to the divorce being granted. Each county has their own list of approved classes.

Alternative Dispute Resolution (ADR) – It is now required by Minnesota courts that all parties to a divorce must attempt to settle the issues prior to having a court hearing. The most common types of ADR process are Early Neutral Evaluation and Mediation.

Custody in Minnesota

Legal Custody - is the right of a parent to take part in a child's upbringing, including the child's health care, education and religious training. Minnesota has a statutory presumption in favor of parties sharing joint legal custody. However, if a parent can show that it is not in the best interest of the child for an award of joint legal custody, the Court will award one party sole legal custody. When the parties have a history of being unable to cooperate in the raising of the children,

or there has been domestic abuse within the family, then there is a presumption that joint legal custody is not appropriate.

Physical Custody - is the right of a parent to have the right to make decisions regarding the daily care of the child and to provide the child's primarily residence. In the past, Minnesota Courts had a presumption of a designation of a sole physical custodian. Recently, there has been a shift in Minnesota courts to award parenting time rather than label custodians.

Joint Custody – In order to have the courts award joint physical custody, the parties must be able to show: (1) the ability to cooperate in raising the children (2) they have methods to resolve disputes (3) that it would not be detrimental to the child and (4) that no domestic violence has occurred.

Factors When Determining Custody (Minn. Stat. §518.17, subd. 1.) - 518.17 CUSTODY AND SUPPORT OF CHILDREN -Best interests of the child. In evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the court will consider and evaluate 12 relevant factors, including:

- (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;
- (2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;
- (3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;
- (4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;
- (5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;
- (6) the history and nature of each parent's participation in providing care for the child;
- (7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's going developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;
- (8) the effect on the child's well-being and development of changes to home, school, and community;
- (9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;
- (10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;
- (11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent

and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Although it was common prior to the recent change in the custody statute language for courts to place a great deal of importance on which parent has been the primary caretaker, the new language of the statute places more emphasis on the needs of the child and how each parent has met those needs in the past, and their ability to do so in the future.

Child Support in Minnesota

Who has to Pay - Both parents have a duty to pay for the support of their children in Minnesota. Minnesota courts must include a child support order for the minor children as a part of all dissolution, legal separation, or annulment decrees when minor children are involved.

How is Child Support Calculated (Minn. Stat. §518A.35) - Child support is now calculated by the gross income of both parties, but includes adjustments which take into consideration the amount of parenting time. Gross income is a broad definition of income which includes but may not be limited to salaries, wages, commissions, spousal maintenance payments received under a previous order or the current proceeding, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, Social Security benefits received by a parent based on the parent's own eligibility, and income from self-employment or operation of a business.

- [Minnesota Child Support Calculator](#)

Deviation from Calculator - The Courts can deviate, up or down, from the calculator under certain circumstances which include: 1) the earnings of the parties including real and personal property; 2) the financial needs and resources, physical and emotional condition, and the educational needs of the child or children to be supported; 3) the standard of living that the child would have enjoyed had the marriage not been dissolved; 4) any government support that the child receives; 5) which parent receives the income tax dependency exemption; and 6) the parent's debts. However, it is only in very rare cases that Minnesota are found to deviate from the calculator. The courts do not want to create a situation where a child does not receive proper support.

Medical Insurance - Child support orders in dissolutions also address the issue of medical support for the child/ren. Under Child Support Calculator, the amount of medical support is determined by calculating the PICS (Percentage of Income to Determine Child Support). The total amount of medical insurance or costs is divided by the percentage of total combined income of the parties to determine the percentage each parent is to pay for medical support which usually also included unreimbursed costs for things such as copays, prescriptions, counseling, orthodontia, etc.

Modifications of Child Support - Minnesota courts have the authority to modify child support orders when there has been a substantial change in the earnings of a party, the need of a party, cost of living increase, medical expenses, or additional child care expenses that makes the original order unfair or unreasonable. Many individuals may be entitled to a modification if their child support order was based upon pre-2007 child support laws.

Length of Child Support- In Minnesota, child support terminates when a child turns eighteen (18) years of age; or twenty (20) if the child is still attending high school; or is emancipated and self supporting. However in a situation where a child is unable to provide for self-support due to a mental or physical condition, the courts retain the authority to order continued support.

Spousal Maintenance in Minnesota

Spousal Maintenance Awards in Minnesota – There is no set guideline or calculator for Spousal maintenance (alimony) in Minnesota like there is for child support. Spousal maintenance is generally awarded based on the need of one party and the ability of the other party to pay. Minnesota courts will look at numerous factors when awarding spousal maintenance such as: the standard of living during the marriage, the ability to pay, the education, the duration of the marriage, and the contributions of the parties during the marriage. Because there is no calculator or guideline, spousal maintenance awards vary greatly across the courts within the state as well as within each county.

Different Types of Spousal Maintenance- The Court has the ultimate authority to determine the amount and length of spousal maintenance in Minnesota. Generally, there are three different types of spousal maintenance the court may award.

Reserving Spousal Maintenance - If the court reserves the issues of spousal maintenance, no current amount must be paid, however, the parties may request the court to award spousal maintenance at a later date.

Permanent Spousal Maintenance - In a response to much litigation over judicial decisions on awards and denials of permanent spousal maintenance, the Minnesota State Legislature added Subdivision 3 to the Minnesota Spousal Maintenance Statute. Minn. Stat. § 518.552, Subd. 3 which reads: “Nothing in this section shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award. Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.” Courts are still able to exercise discretion based on the factors considered for an award of spousal maintenance.

Temporary Spousal Maintenance – Courts still are likely to award temporary spousal maintenance, also referred to as rehabilitative, when it is clear that a party who may have a current need for financial assistance due to unemployment, a need for further education to become employable, or other factors exist which are likely to be temporary. In these cases, it is determined by the Court that the party receiving

spousal maintenance has an obligation to become self-supporting within a specified period of time.

Factors Considered When Determining Amount and Duration of Spousal Maintenance - In determining the amount and duration of spousal maintenance, courts are to consider all relevant factors which include: 1) the financial resources of the party seeking maintenance, including property apportioned to the party, and the party's ability to meet needs independently; 2) the time necessary to allow a party to reintegrate into the work place in light of completing education or training to become fully or partially self supporting; 3) the standard of living during the marriage; 4) the duration of the marriage; 5) whether the person seeking maintenance was a homemaker and thus lost earnings, seniority, or benefits as a result; 6) the ability of the party to pay spousal maintenance while meeting their own needs; 7) the contribution of a party towards marital property including contribution of a spouse as a homemaker.

Modification of Spousal Maintenance Awards - Minnesota courts retain jurisdiction to modify spousal maintenance awards unless the parties expressly divest the Court of jurisdiction to modify the award. If a court has not been divested of jurisdiction, a party has a right to ask the court to review all of the above factors when a change of circumstances has occurred, such as an increase or decrease in earnings of either the party. To seek a modification, a party will need to schedule a motion with the court and serve and file the appropriate supporting documents.

Karon Waivers – In the past, parties that wished to divest the Court of any authority to award spousal maintenance now or at any time in the future, they had to include specific language developed by the Minnesota Supreme Court in a case ***Karon and Karon***. Such waivers are also known as a “Karon Waiver.” However, in order to be certain that the waiver is effective, the Legislature has now codified the elements of a valid waiver in **Minn. Stat. § 518.552, subd. 5** which should now be included in any stipulation to waive maintenance and divest the court of Jurisdiction.

Tax Consequences of Spousal Maintenance vs. Property - Spousal maintenance is tax deductible by the payer and taxed as income by the recipient. At times, certain cash property settlements are designated spousal maintenance payments in an effort to gain a tax advantage for the payer and spousal maintenance awards may be waived in consideration for a cash property settlements that would be tax free to the recipient.

Property Divisions in Minnesota

Division of Marital Property - Minnesota courts are to make a just and equitable distribution, not necessarily equal, of the marital property of the parties and are to make a decision based on all relevant factors including: 1) the length of the marriage; 2) any prior marriage of a party; 3) the age of each party; 4) the health of each party; 5) the station in life and/or occupation of each party; 6) the amount and sources of income of each party; 7) the employability of each party; 8) the estate of each party; 9) the needs and liabilities of each party; 10) the opportunities for future acquisitions of assets; and 11) the contributions made during the marriage, including contributions of a homemaker.

Marital vs. Nonmarital Property - All real or personal property acquired during the marriage is considered marital property and subject to division in the divorce. All real or personal property acquired as a result of a gift, bequest, devise, or inheritance made by a third party to one spouse but not the other, property acquired prior to the marriage; property acquired after the date of valuation; property excluded by a valid antenuptial contract; property acquired in exchange for nonmarital property; or the increase in value of nonmarital property is considered nonmarital property and not generally subject to division in the divorce. Because Minnesota is an equitable property state courts do have authority, in rare circumstances, to divide nonmarital property to prevent an unfair hardship to one party.

Debt – Debt is divided in the same way as that of property, in a just and equitable manner, generally equally, but in certain circumstances, the Court has the authority to make an uneven division of debt based upon one parties ability to pay and one parties inability to pay.

If you still have questions about your situation, or have issues that are not covered above, please don't hesitate to call for a free ½ phone consultation. Generally, we will be able to address all your questions at that time and can plan our strategy for how to best handle your case.