

Understanding Court Procedures and Financial Responsibilities

In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

(3)(A) Any auction sale of property ordered pursuant to this section shall be conducted in accordance with title 35, chapter 5.

(B) To this end, the court shall be empowered to effectuate its decree by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties.

(C) The court may order title 35, chapter 5 to apply to any sale ordered by the court pursuant to this section.

(D) The court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that such property is sold for its fair market value.

(b) For purposes of this chapter:

(1)(A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property;

(B)(i) "Marital property" includes income from, and any increase in the value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation;

(ii) “Marital property” includes the value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefit rights accrued as a result of employment during the marriage;

(iii) The account balance, accrued benefit, or other value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefits accrued as a result of employment prior to the marriage, together with the appreciation of the value, shall be “separate property.” In determining appreciation for purposes of this subdivision (b)(1)(B)(iii), the court shall utilize any reasonable method of accounting to attribute postmarital appreciation to the value of the premarital benefits, even though contributions have been made to the account or accounts during the marriage, and even though the contributions have appreciated in value during the marriage; provided, however, the contributions made during the marriage, if made as a result of employment during the marriage and the appreciation attributable to these contributions, would be “marital property.” When determining appreciation pursuant to this subdivision (b)(1)(B)(iii), the concepts of commingling and transmutation shall not apply;

(iv) Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire separate assets of the employee spouse shall be deemed to have come from the separate portion of the account, up to the total of the separate portion. Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire marital assets shall be deemed to have come from the marital portion of the account, up to the total of the marital portion;

(C) “Marital property” includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property;

(D) As used in this subsection (b), “substantial contribution” may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine;

(E) Property shall be considered marital property as defined by this subsection (b) for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division;

(2) “Separate property” means:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986, compiled in 26 U.S.C., as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5)(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.

(6) The value of the separate property of each party;

- (7) The estate of each party at the time of the marriage;
 - (8) The economic circumstances of each party at the time the division of property is to become effective;
 - (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
 - (10) The amount of social security benefits available to each spouse; and
 - (11) Such other factors as are necessary to consider the equities between the parties.
- (d) The court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to a spouse having physical custody of a child or children of the marriage.
- (e)(1) The court may impose a lien upon the marital real property assigned to a party, or upon such party's separate real property, or both, as security for the payment of child support.
- (2) The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support or payment pursuant to property division.
- (f)(1) If, in making equitable distribution of marital property, the court determines that the distribution of an interest in a business, corporation or profession would be contrary to law, the court may make a distributive award of money or other property in order to achieve equity between the parties. The court, in its discretion, may also make a distributive award of money or other property to supplement, facilitate or effectuate a distribution of marital property.
- (2) The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.
- (g)(1) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties regarding the division of property.
- (2) Nothing in this section shall affect validity of an antenuptial agreement that is enforceable under § 36-3-501.

The following are causes of divorce from the bonds of matrimony:

- (1) Either party, at the time of the contract, was and still is naturally impotent and incapable of procreation;
- (2) Either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting;
- (3) Either party has committed adultery;
- (4) Willful or malicious desertion or absence of either party, without a reasonable cause, for one (1) whole year;
- (5) Being convicted of any crime that, by the laws of the state, renders the party infamous;
- (6) Being convicted of a crime that, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary;
- (7) Either party has attempted the life of the other, by poison or any other means showing malice;
- (8) Refusal, on the part of a spouse, to remove with that person's spouse to this state, without a reasonable cause, and being willfully absent from the spouse residing in Tennessee for two (2) years;
- (9) The woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband;
- (10) Habitual drunkenness or abuse of narcotic drugs of either party, when the spouse has contracted either such habit after marriage;
- (11) The husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper, which may also be referred to in pleadings as inappropriate marital conduct;
- (12) The husband or wife has offered such indignities to the spouse's person as to render the spouse's position intolerable, and thereby forced the spouse to withdraw;
- (13) The husband or wife has abandoned the spouse or turned the spouse out of doors for no just cause, and has refused or neglected to provide for the spouse while having the ability to so provide;
- (14) Irreconcilable differences between the parties

Please click on the link below for court forms

https://www.tncourts.gov/sites/default/files/docs/final_div_forms_with_kids_effective_2018.01.11.pdf

The courts in this country are responsible for handling the legal aspects of divorce. In Tennessee courts will determine who will be the primary residential parent over the children. The court can order both parents to share parental responsibility or it can be ordered that one parent will have total parental responsibility. In making decisions, courts will consider best interest factors relevant to the specific situation.

One or both parents retaining an attorney or family mediator usually begins the legal process of divorce. Some couples inform their attorney from the start that they want a fair and equal settlement and to minimize conflict. This approach is recommended. To accomplish this, find an attorney accustomed to working this way, one who helps mediate differences and works toward collaboration and compromise. This will be in everyone's best interest. A way to choose an attorney is by getting a referral from a trusted friend or colleague. You will probably want to interview several attorneys, making sure you feel comfortable with their approach. Do not feel bullied into retaining an attorney not to your liking. Many attorneys will do an initial consultation for free, so you can decide if they will represent you effectively given the specifics of your situation.

Parents proceeding with the dissolution of marriage or legal parental responsibility requires that they begin dealing with some potentially challenging issues. These include financial support, visitation, and dividing up marital assets. In many instances, parents settle these issues on their own or with their attorneys' assistance outside of court. Family-court judges prefer that divorcing parents settle their issues before reaching the courtroom, reserving formal trials as a last resort.

The Guardian ad Litem

In determining the best interests of the child, courts often appoint a Guardian ad Litem to investigate the child's situation and make a recommendation to the court. The Guardian ad Litem (usually an attorney or specially trained layperson) has a duty to act on behalf of the child, advocating the child's wishes if the child is old enough to express a preference. He or she is responsible for protecting the child from the effects of adversarial court proceedings; monitoring agencies and individuals who provide health, education, and social services to the child; collecting records and reporting to the court; and ensuring that the child's wishes

are presented to the court. The Guardian ad Litem's recommendation is not binding on the court, but the court usually considers the Guardian's recommendation.

For more information please click on the link below.

<https://www.tncourts.gov/rules/supreme-court/40>

Child Support

Upon dissolution of a marriage, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control. Please click on the link below for detailed information of the statute.

<https://codes.findlaw.com/tn/title-36-domestic-relations/tn-code-sect-36-5-101/>

Who pays child support?

Regardless of who has parental responsibility, child support is based upon a shared income model of calculation. Therefore, the income of both parents will be factored into the determination regarding the amount of child support necessary to cover the basic needs of the child or children.

There are a few ways that the spouse that owes child support can pay the other spouse. You make your choice on the Parenting Plan form.

You can agree that the child support will be paid using one of the ways below.

- The spouse that owes child support will pay the other spouse directly, OR
 - The spouse that owes child support will pay the child support to the State's Central Child Support Receiving Unit. Then the Central Child Support Receiving Unit will send the support to the other parent, OR
 - The child support will be paid by Wage Assignment Order. A Wage Assignment Order is where the child support is automatically taken out of the paycheck of the spouse that owes child support, OR
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- The spouse that owes child support will set up a direct deposit to the other parent, OR
 - Other arrangements that the court can approve.

All divorcing spouses with minor children must complete the Child Support Worksheet. The Child Support Worksheet will tell you the child support amount. You can download the Child Support Worksheet at <http://www.state.tn.us/humanserv/is/isdocuments.html>.

Should a parent refused to allow parenting time if child support is late or unpaid?

No, it is never recommended child support and parenting time be contingent upon one another. Parents are not permitted to make decisions regarding withholding parenting time it has been previously ordered by the court.

How do I handle my ex's failure to make timely child-support payments?

One potential problem with respect to finances involves late payment or non-payment of child support. While it is tempting for parents to consider withholding visitation rights in this circumstance, it is never a good idea. Experts agree that withholding visitation does children more harm than good, and it risks getting yourself into legal trouble as well. Instead, you should attempt to resolve the matter with the other parent directly. If you are unsuccessful, consult an attorney to help enforce correct and timely child-support payments. Be aware that you still have a responsibility to your children as you are dealing with stressful financial situations. Realize that your children will be aware of your angry feelings, even if you do not openly bad-mouth the other parent. Children of all ages know how parents feel toward one another, regardless of what is said.

Final Judgment

The final judgment is a document signed by the judge, officially ending the marriage and defining the terms of the divorce by court order. This document specifies:

- *Division of assets and debts

- *Parenting time responsibilities

- *Alimony and child-support payments, where applicable

- *Responsibility for financial issues like provision of health insurance and life insurance

- *Financial and legal rights like visitation and tax exemptions

*Other issues that can vary from case to case

Parental Alienation

Parental alienation is a process that can occur between two parents who are consciously or unconsciously trying to influence the children at the emotional expense of the other parent. Named by Dr. Richard Gardner, Parental Alienation Syndrome (PAS) is a distinctive family response to divorce in which the child becomes aligned with one parent and preoccupied with unjustified and/or exaggerated denigration of the other parent. In severe cases, the child's once love-bonded relationship with the target parent is destroyed. If, however, the reason(s) for the alienation can be substantiated by documented abuse or neglect, then the alienation is necessary for the child's safety and well-being, and PAS would not be an appropriate designation or explanation for the children's feelings or the alienating parent's actions.

How do we begin to separate financially?

Divorce means more than physically separating as a family. It also means separating your family finances. Both types of separation can bring great emotional stress. You will be better off financially, however, if you can keep your emotions from influencing your financial decisions. At the very least, you will be able to make better financial decisions for yourself and your children. The following information will help familiarize you with some issues that accompany the division of finances during a divorce. It is not intended as a complete guide or as a substitute for legal or financial advice.

During a marriage, one spouse usually takes primary responsibility for managing finances and keeping financial records. If you are not well informed, this is your opportunity to be involved in your financial affairs. Many people feel anxious when considering finances, but realize that it is mostly about gathering information and making decisions. The sooner you begin participating in your financial decisions, the sooner you will have the peace of mind that you are taking the necessary steps. Remember, knowledge provides you with a more realistic view of your financial situation as decisions are made. Even in 'friendly' divorces, you should not rely on fate to determine what to do about shared property or joint accounts. Be aware that accounts shared jointly can be accessed by both parties. In addition, each person authorized to use a credit card can run up an extensive bill. Try to be objective about your situation and use some common sense. Your immediate goal is to reduce your financial ties to the person you are divorcing; your ultimate goal is to create two financially separate households. While it is usually impossible to sever all financial ties, you can greatly reduce the areas where you are at risk. Seek the advice of an accountant or financial planner to help you learn about various financial issues.

How do we divide property?

In general, each person is entitled to an equitable or fair distribution of the property. Property includes automobiles, homes, and furniture, in addition to possessions such as cash-value insurance policies, pension funds, savings accounts, etc. As you negotiate the division of property, think about your needs and the needs of your children, as well as the financial consequences of your decisions. Frequently, material items that you valued during your marriage may have little value once you are divorced. It is not uncommon for people to spend a great deal of time arguing over material possessions. It can also be a ready-made battleground for continuing past marital arguments. Choose your battles carefully, and realize that you will be making some concessions when it comes to material possessions. Ultimately, you and your children will be better off if you can minimize the conflict around dividing property and material possessions.

How should we deal with debt?

When you divorce, you divide not only property, but debt as well. In general, you both are responsible for paying any debts acquired during the marriage. Managing debt issues carefully during the divorce process may lead to less conflict and a more stable environment for you and your children. You should act promptly to close all joint credit cards or other lines of joint credit. Be sure to establish credit in your own name before doing so. Often, you can open an individual account when you close a joint one. A credit card can help you through some short-term emergencies during the divorce transition. However, avoid saying, "charge it," rather than making necessary cuts in spending after divorce. Make a list of the outstanding balances on any credit cards or other debts. Get the address of a credit bureau from the phone book and request a credit report to make sure you are aware of all open accounts. Once the divorce is filed, debts should be divided between you and your spouse, and each person should be responsible for payment of his/her debt.

Remember that even after the divorce is final, creditors may attempt to collect on debts from both partners. A divorce decree will be honored by the courts, but it may not matter to collectors—their goal is to collect the money. It is not always possible to remove your name from a joint debt until the debt has been paid in full. Finding out what your options are and remaining aware of your financial situation can help ease the financial separation that comes with the divorce process. This process will take time, but the payoff is a brighter financial future.

In summary, be aware that finances are a big consideration when divorcing. Parents who can discuss financial issues calmly and fairly will ultimately save money. Remember to get professional advice where appropriate. In addition, realize that your children will fare much

better and feel more secure when they see you handling adult matters (such as financial issues) with fairness, dignity, and respect.

Case Study

One of the most difficult issues to navigate when going through a divorce is the legal side of things. A few years back I had a case involving Damien (31) and Michelle (29). They had been happily married for seven years before it was discovered that Michelle had been having a long-standing affair with a co-worker. Damien was furious and underneath the anger, of course, was hurt. After a brief course of ineffective traditional marriage counseling, he decided to file for divorce.

Like many people in this situation, Damien sought out an attorney. However, he first asked his brother to act as a mediator since he wanted to reduce legal costs as much as possible. Fortunately for Damien, his brother was training to be a lawyer, and so had at least some familiarity with legal matters.

Damien and Michelle had just had a newborn baby a few months before the revelation of the affair, and so, on the suggestion of Damien's brother, they sought out counseling. Not to figure out how to stay together, but rather to figure out how to transition out of the relationship in a loving and healthy way. Although this was both of their stated wishes, their initial presentation was that they were headed for a very contentious divorce. It soon became apparent they had marital issues long before the revelation of the affair.

Like many couples, Damien and Michelle came in with their own ideas about custody. They soon learned that in their state, there was no such thing as sole custody but rather shared parental custody. We also discussed various issues related to visitation schedules and finances. I told Michelle, like I tell all couples in divorce counseling, they can decide some of these issues themselves, or pay to have attorneys help decide for them. I also reminded them that they would be more likely to stick with a system of their own construction, rather than one that was imposed on them from attorneys.

So much of Damien's initial anger and frustration was because he was hurt by Michelle's affair. We openly discussed the affair in ways that allowed Damien to express his emotions. At the same time, Michelle got the opportunity to discuss how she felt pushed to look outside the marriage to get her needs met. These were difficult conversations, fraught with a lot of intense emotion and they took a lot of courage to have. However, it was important that they arrive at some understandings to allow them to move past a very painful situation. It was through these conversations that this couple was able to realize the opportunities available to them as parents as they strive to be happy. They were able to clear away the hurt and frustration and this couple was able to make great strides toward providing a stable environment for their child, as well as themselves.

This couple also used our counseling sessions to talk about some serious issues concerning how best to raise their daughter. At first I was worried that they were a little immature, but I came to realize they were just in shock at how fast their marriage had disintegrated after making such a large commitment to raise a child together. Whenever I find myself judging clients, I am reminded that divorce takes people and sometimes causes them to do destructive things. It is the process itself, that can take otherwise responsible people, and reduce them to making poor choices for themselves and their children. Once Damien and Michelle both realized the severity of the situation, they decided it was best to divide up assets based on the needs of their newborn. This drastically reduced the tension between the parties, and from there, a firm basis for dialogue was soon established.

Damien set out immediately to find work in order to be able to pay child support, but to also clear the debt the couple had accumulated over the years. Although the parties retained a cold personal relationship, they had finally learned how to deal with one another in a formal, official capacity as the parents of a young child.

During my sessions with this couple Damien missed one payment, and Michelle feared he had gone off the rails. I arranged another meeting, and found out that Damien had lost his job. With a few more sessions he was energized again, and quickly found employment. Upon a 6-month follow-up, he had not failed to meet another obligation or payment related to his daughter Macy (now age 2).