

# GETTING A DIVORCE



## A BASIC GUIDE TO MINNESOTA LAW

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## Preface

This booklet explains your rights in a Minnesota divorce and includes information on custody, parenting time, child support, spousal maintenance, division of property and division of debt. It is a guide and is not meant to answer all questions. This booklet only gives general rules, which may or may not apply to your situation.

For legal advice, contact a lawyer. If you have a low income and need legal help, call your legal aid office at 1 (877) 696-6529 or look for help from other programs at <https://www.lawhelpmn.org/providers-and-clinics>

If you have a low income you can get a free copy of this booklet from your local Legal Services office. You can also find it online at [www.LawHelpMN.org](http://www.LawHelpMN.org) to view or print out. Others can purchase the booklet for \$7.48 (which includes applicable sales tax, postage, and handling) by going to [www.mnlegalservices.org/orderbooklets](http://www.mnlegalservices.org/orderbooklets). If you have questions about ordering a booklet, email us at [statesupport@mnlegalservices.org](mailto:statesupport@mnlegalservices.org).

For free information about this and other civil legal topics, visit <https://www.LawHelpMN.org>.

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# Chapter 1: Divorce Basics

## Definitions

### Dissolution of Marriage

In Minnesota the process to divorce is called a **dissolution of marriage**. The court "dissolves" or ends the marriage when the final papers are entered in the court's records. The final papers are called the **Judgment and Decree**. The Judgment and Decree contains the court's final decision on all issues of the divorce case. These include custody, parenting time, child support, spousal maintenance, and division of property and debt. Divorce cases are decided in family court.

This booklet uses "divorce" to talk about the dissolution of marriage process.

### Legal Separation

Many people think that when a couple wants to live apart they have to get a "legal separation." This is not true. Often couples live apart for a while before they decide to get a divorce.

Legal separations are for people who do not want a divorce (usually for religious reasons). But they need a way to settle custody, support, and property questions when they are not living together. The court makes the same kinds of decisions that it makes in a divorce. But the couple remains married and the division of property is not final.

A legal separation is like a divorce. It takes as long as a divorce. If the court grants a legal separation and the husband or wife decides later to get a divorce, a new case must be started. You do not need to have a legal separation before you start a divorce.

### Annulment

A **legal annulment** is a decision by the court that the couple was never married. Some marriages are against the law, such as marriage between close relatives. Annulments are not needed in those situations because, under the law, there is no marriage. Marriages can be annulled when

- one of the people could not consent to the marriage because of mental ability or the influence of alcohol/drugs
- one of the people was too young to marry
- the couple never had sexual intercourse



The steps for getting an annulment are similar to the steps for getting a divorce. Talk to a lawyer if you think you need an annulment.

A **legal** annulment is not the same as a **religious** annulment. A religious annulment is granted by a church and has no effect on legal marriages.

### **What are my rights before a divorce?**

Both spouses have the same rights. Your legal rights are the same whether you are living with your spouse or living apart.

If there are children of the marriage, each spouse has equal right to decide

- where the children live
- where the children go to school
- whether the children should see a doctor

If there is no threat of harm, you should think about the children's best interests. It is important for children to maintain relationships with both parents.

If you are worried your spouse will harm or not return the children, you do not have to let them go. But you do need a court order to keep them in your home.

Each spouse has the right to use or get rid of any property the couple owns. For example, either person can withdraw money from a joint bank account or charge on a joint credit card. Either spouse can use a car that is in both of their names. There are some exceptions to this general rule. Neither spouse has the right to cash checks made out to the other spouse. Neither spouse can withdraw money from a bank account if it is in the name of the other spouse only. Neither spouse can sell a vehicle that is in the name of the other spouse. Neither can sell real estate that is in both names or in the name of one spouse.



A spouse does not have the right to get rid of any property or money in anticipation of divorce. For example, if a spouse cashes out their retirement accounts because they don't want the other spouse to get it, the court can still make the spouses share the money from that account.

In most cases, the family court judge can require a spouse to share responsibility for the debts of the other spouse, even if he or she did not know about or agree to the debts.

## What are my rights if I am being abused, hurt or threatened?

**No one has the right to hurt or threaten you or your child— not even your spouse.**

If you are being threatened, hurt, or abused right now, call 9-1-1.

Get free, confidential help from Minnesota Day One Crisis Hotline at 1-866-223-1111 or [www.dayoneservices.org](http://www.dayoneservices.org).

You may be able to get an Order for Protection (OFP). An Order for Protection (OFP) is a court order to stop household or family violence (domestic abuse). It orders the abuser not to hurt you. It can also

- make the abuser leave your home
- keep the abuser away from you
- order temporary custody or parenting time (visitation)
- order temporary child support or spousal maintenance



**It doesn't matter whether you've started a divorce or if you're still living together.**

For information about how you can get an Order for Protection see our fact sheet “Orders for Protection and Harassment Orders” at <https://www.lawhelpmn.org/resource/orders-for-protection-and-harrassment-orders>.

## What are the grounds for divorce?

Minnesota has a "no-fault" divorce law. You do not need to prove a spouse did something wrong to get a divorce. You just need to say that there is an “irretrievable breakdown of the marriage.” This means that there is no hope that you and your spouse will want to live together again as spouses.

Because this is a “no-fault” state, a spouse who wants a divorce will be granted one even if the other spouse does not want a divorce. It does not matter who starts the divorce. The court must follow the law in deciding the issues.

It also means that when the court is deciding issues, it **cannot** consider whose fault it was that the marriage broke down. For example, when the court decides how to split up the couple’s money or who gets custody of the children, the court won’t base its decision on whether a spouse cheated on the other spouse.

## Who can ask for a divorce?

You must live in Minnesota for at least 180 days (6 months) before you can start a divorce. Members of the United States Armed Forces can start a divorce in Minnesota if they have kept their Minnesota residence.

## How much will a divorce cost?

There are court fees to get divorced. You have to pay a filing fee of about \$400 to start or respond to a divorce case. There can be other fees if you participate in mediation, have a custody evaluation, or if a guardian ad litem is appointed. These fees vary by county. Talk to the filing counter at your county courthouse for more information on court fees.



If you are low income and can't afford to pay the fees, ask the court for a fee waiver. This form asks the court to lower the fee or waive it so you don't have to pay. You can download the forms to fill out on the court's website at <https://www.mncourts.gov/GetForms.aspx?c=19>. You can also fill out and file your fee waiver forms online using the court's Guide and File interview. To start the Guide and File interview

- Go to <https://www.mncourts.gov/Help-Topics/Guide-and-File.aspx>.
- Click "Request for Fee Waiver"

## How long will a divorce take?

The length of time to complete a divorce depends upon several things. If both sides reach an agreement or if one spouse never responds to divorce papers, a divorce can be finalized in a few months. If spouses can't agree, then the judge has to decide. In this case it will take much longer because the court will need to gather information and schedule hearings in order to make a fair decision. If the parties disagree, the divorce can sometimes take 6 months to 2 years.

## Who can help me with a divorce?

There is no right to a free lawyer in a divorce case. There are non-profit law firms that provide free legal help for those with low incomes. Call your legal aid office at 1 (877) 696-6529 for more information. You can also check <https://www.lawhelpmn.org/providers-and-clinics> to see if you qualify for a free lawyer.

If free legal help is not available, or you do not qualify, you will need to hire a private lawyer or represent yourself. If you hire a private lawyer you have to pay their fees. Attorney fees can vary a lot. If the case is easy and the spouses can agree on how to work out the issues, it might be a few hundred dollars. If the case is difficult and there are hard custody and/or property issues, it might be thousands of dollars.



It is important that you understand the fees your lawyer charges before you hire them. Lawyers charge an hourly fee for their services. You are charged each time the attorney works on your case. Ask your attorney for a written “Retainer Agreement” or letter which explains how you will be charged for their services.

If you can afford a lawyer, but don't know any, you can contact the Minnesota Lawyer Referral and Information Service at <https://mnlawyerreferral.org/public-area>, or by calling [\(612\) 752-6699](tel:6127526699). The Lawyer Referral Service can give you the name and telephone number of a private lawyer in your area who may be able to represent you. When you call to make an appointment, ask the lawyer if the first appointment (called a consultation) is free. You may have to pay an initial fee for the first appointment with the lawyer.

## Can I represent myself?

**Yes. Many people represent themselves in divorce cases.** If you represent yourself, you may be called a “pro se litigant” or “self-represented litigant.” You can get all the forms you need to start or respond to a divorce case on the court’s website.

### Using the “Guide and File” Interview

You can fill out and file your divorce forms online using the court’s Guide and File interview. This program helps you create the forms to ask the court for a divorce. It works by asking you questions. It uses your answers to fill out the forms. You can file your forms with the court electronically. Or you can print your forms and take them in person to the courthouse to file.

To start the Guide and File interview

- Go to <https://minnesota.tylertech.cloud/SRL/SRL>
- Click “Starting a Divorce in MN”



### Downloading the Forms

If you don't want to use the Guide and File program, you can find the forms to download and fill out at <http://www.mncourts.gov/Help-Topics/Divorce.aspx>. At that website, click the “Forms” tab to see the different forms available for download.

### Getting help at the Self-Help Center

There are Self-Help Centers that can answer questions about how to fill out these forms or answer questions about the divorce process. Call the Statewide Self-Help Center (651) 435-6535 or find a Self-Help Center in your area at <http://www.mncourts.gov/selfhelp/>.

## Chapter 2: What Issues Does the Court Decide in a Divorce?

### Issues in a Divorce Case

These are all the issues that need to be decided in a divorce. If the parties cannot reach agreements on these issues, the court decides. If the couple does not have children, the first three issues do not apply to them.

1. Custody
2. Parenting Time
3. Child Support and Dependent Tax Exemptions/Child Tax Credits
4. Spousal Maintenance
5. Division of Property
6. Division of Debt
7. Insurance Coverage

Courts in Minnesota usually only have power over people and things in Minnesota. This power is called jurisdiction. If a spouse is served divorce papers outside Minnesota or could not be found and was served by publication, the court is limited in what it can decide. The court may only be able to

- dissolve (end) the marriage
- decide custody and parenting time for children living in Minnesota
- award ownership of property located in Minnesota

When a spouse is served in another state, a separate child support proceeding can be started with the help of the county child support office and the county attorney. In this proceeding, the Minnesota court tells the court in the other state that a parent who lives in the other state owes child support. See our booklet “Child Support Basics” for more information at [www.lawhelpmn.org/resource/child-support-basics](http://www.lawhelpmn.org/resource/child-support-basics).



### Custody

There are 2 parts to custody.

- Legal Custody
- Physical Custody

## Legal Custody

Legal custody could be called “decision-making custody.” This custody involves the right of a parent to make major decisions about the child’s life, such as

- where the child attends school
- religion
- major health care

The court can give legal custody to one parent or to both parents together. This is called **joint legal custody**. Joint legal custody means both parents have equal rights and duties in making major decisions. They need to agree when major decisions need to be made. The court prefers that parents have joint legal custody, unless the parties cannot work together to make decisions or there has been domestic abuse. **Sole legal custody** means one parent makes the major decisions.

Whether legal custody is sole or joint, both parents have the right to be informed about the child’s schooling, health care, and other major decisions. Both parents can attend school conferences, attend medical appointments, and have reasonable telephone or electronic contact with the child (for example, video calls).

## Physical Custody

Physical custody means living with the child and making day-to-day decisions about the child’s care. **Sole physical custody** means that the child lives primarily (mainly) with one parent. **Joint physical custody** means the child lives with both parents and shares time between the parents. Joint physical custody does not mean the parents will have equal time with the child. The schedule doesn’t have to be equal for physical custody to be joint. Parenting time is what controls how much time the child spends with each parent.



## How does the court decide custody if the parents don’t agree?

If the parties don’t agree on custody, the court must decide. The court looks at the following 12 factors to decide what is in the **best interests of the child**. The 12 factors are

1. The child’s physical, emotional, cultural, spiritual, and other needs. How does the parents’ plans for the child affect these needs and the child’s development?
2. Does the child have any special medical, mental health, developmental disability, or educational issues that need special parenting arrangements or access to services?
3. What does the child want? The child’s wishes may influence the court if the court decides the child is able, old enough, and mature enough to make a choice.

**Note:** Your child won't be able to testify at the trial. Be very careful how you talk about the court case with your child. It is very damaging for kids to get caught in the middle of their parents' fights. In some cases, a professional chosen by the court meets with your child to talk to them about their wishes.

4. Has domestic abuse happened in either parents' household or relationships? What are the details of what happened, and does it affect parenting or the child's safety or needs?
5. Does a parent have physical, mental, or chemical health issues that affect the child's safety or developmental needs?
6. How has each parent provided care for the child in the past?
7. The willingness and ability of each parent to keep caring for the child. How does each parent meet the child's developmental, emotional, spiritual, and cultural needs? Can the parent be consistent and follow through with parenting time?
8. Will changes to home, school, and the community affect the child's well-being and development?
9. The relationships of the child with each parent, siblings, and anyone else who is important to the child. Do the proposed custody plans affect these relationships?
10. It is usually better for the child to spend as much time as possible with both parents. The court looks at this and looks at if spending less time with one parent might harm the child in some way.
11. Will each parent help the child have contact often and regularly with the other parent? (except when there is family violence – see #4)
12. The willingness and ability of parents to cooperate in raising their child. Can the parents share information? Can they keep the child away from their conflicts? Do they have good ways to resolve arguments over big decisions about the child?

The court must write findings (reasons why they are deciding a certain way) on all of these factors. The court must say how it decided what is in the best interests of the child. The court must look at all the factors to make their decision, not just one.

In some cases, the court cannot make a decision about custody because the children do not live in Minnesota or have not lived in Minnesota long enough. In these cases the court has no legal authority to decide custody.

It is difficult for a parent convicted of certain crimes of violence or abuse to get custody or parenting time. A special person called a “guardian ad litem” will be appointed to look for the best interests of the children and to make recommendations to the judge.



## **Parenting Time**

When parents are separated, the court usually wants both parents to be involved with their child. Parenting time is the time that each parent spends with a child. It does not matter who has custody or what kind of custody. Parenting time is the same as visitation.

Parenting time can be set by the court. If the child lives primarily (mainly) with one parent, the other parent (also called the “non-custodial parent”) can be awarded parenting time. The court can also set a parenting time schedule when parents have joint custody. Parenting time must be in the child’s best interest.

To set parenting time, the court looks at factors such as the child’s age, the child’s safety, and the child’s relationship with each parent. There are 12 best interest factors the Court must consider. See the “Custody” section in Chapter 2.

In general, a non-custodial parent gets at least 25% of the parenting time. This is calculated by counting the number of overnights in a 2-week period. For example, 25% equals about every other weekend and one overnight a week. The court may calculate parenting time based on a method other than overnights if the child spends significant time with the parent but does not stay overnight.

Denying or interfering with a set parenting time schedule can cause more time being awarded by the court to the parent who was denied their regular parenting time. The court will look at the reasons why the parenting time schedule was not followed. If the court determines that a parent purposefully denies or interferes with parenting time more than once, the court will award more parenting time to the parent who was denied their regular parenting time. The only exception is if the denial of parenting time was to protect the child’s physical or emotional health. The court could also give a penalty to the parent who denied or interfered with the other parent’s regular time or consider it a factor when deciding a change of custody motion.

## **Scheduled Parenting Time**

If the parents cannot agree on a schedule, the court will set a parenting time schedule. The court will consider the age of the child, how far apart the parents live, school schedule, and after school activities when setting a parenting time schedule.

Parents can always agree to change parenting time, and it is always good to try to remain flexible. For example, either parent can ask the other parent to skip a day or make it up another time. But if the parents don't agree on the changes, they must follow the parenting time schedule in the court order.



### **Additional Parenting Time to Provide Child Care**

The court may give more parenting time to one parent to care for the child while the other parent works. This kind of plan has to be fair and in the best interest of the child. If you ask for this, the court looks at

1. How well the parents cooperate
2. How well the parents work together on parenting time issues
3. If there has been domestic abuse between the parents

Courts cannot lower child support payments because they order this kind of childcare.

### **Parenting Time Expeditor**

The court may appoint a parenting time "expeditor." This is someone who helps parents when they have a disagreement about parenting time. The expeditor listens to both sides of a disagreement and tries to help the parties resolve the disagreement. If the parents continue to disagree, the expeditor makes a decision.

The expeditor's decision is "binding" (has to be followed) unless one side goes to court and the court changes it.

The court can't require parents to use a parenting time expeditor if (1) either parent claims to be a victim of abuse OR (2) the court decides that a parent may have physically harmed or threatened the other parent or the child(ren).

The parents have to pay for a parenting time expeditor. The court will decide how much each parent pays before appointing the expeditor. If a parent cannot afford to pay the expeditor's fees, the court can't require parents to use a parenting time expeditor. Expeditors may not be available in all counties.

### **Restricted/Supervised Parenting Time**

The court can limit parenting time to less than 25% if it is likely to harm the child's physical or emotional health. The court can also limit parenting time if a parent breaks the court's order on parenting time without a good reason.

The court may restrict parenting time by

- limiting the hours of parenting time or not allowing overnights
- limiting the place where parenting time can happen
- requiring the parent only visit when another person is present (**supervised parenting time**)
- denying parenting time



The court can also put **conditions** on parenting time, like making the non-custodial parent be sober for a certain period before and during parenting time. The court can order drug or alcohol treatment.

If a parent asking for parenting time has been convicted of certain crimes, that parent must prove that parenting time with the child is in the child's best interest. These crimes include

- murder, manslaughter
- assault
- kidnapping
- depriving someone else of custodial or parental rights
- soliciting, inducing or promoting prostitution involving a minor
- criminal sexual conduct
- incest
- malicious punishment of a child
- neglect
- terroristic threats
- felony harassment
- domestic assault by strangulation

This rule applies only to certain degrees of some crimes and only in certain circumstances, like if the victim of the crime was a household or family member or if the conviction happened in the past 5 years.

### **Voluntary Parenting Plans**

Parents can agree to use a "Parenting Plan." They work on writing a plan that states the time each parent spends with the child and how they are going to make decisions about the child. The court must approve this plan and it must be in the best interest of the child. See the 12 Best Interest Factors in the "Custody" section in Chapter 2.

The Parenting Plan must have

- A schedule of the time each parent spends with the child **AND**
- Who will make certain decisions about the child **AND**
- A way to settle arguments

A Parenting Plan takes the place of custody and parenting time orders. It can be as detailed as the parents want. For example, you can make specific communication plans or goals for parenting. Your plan can explain the amount of phone and email contact with the child or the child's participation in activities such as sports and music. A parenting plan can often have more details than a typical parenting time schedule.

The Parenting Plan may use terms other than "physical" and "legal custody." But, it must clearly state if the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody.

Parents do not have to have a Parenting Plan. You and the other parent decide if you want to make a Parenting Plan. If there has been domestic abuse by one parent against the other parent or the child, the court cannot create a Parenting Plan on its own.

## Child Support

Child support is the money a parent pays to help support a child that does not primarily (mainly) live with them. Every child has a right to be supported by both parents. Buying gifts, food, or clothing for a child does not count as child support.

The term "child support" has three parts

1. Basic support
2. Medical support
3. Child care support



**Basic support** pays for your child's expenses like food, clothing, housing and transportation. It divides these expenses between the parents based on your incomes.

The parent paying child support is called the "obligor." The parent getting child support is called the "obligee." The amount of child support the obligor pays depends on both parents' incomes and how much parenting time they get with the child. The more overnights the obligor has with the child, the less support they pay. This is called a **parenting expense adjustment**. This lowers basic support to make up for money the obligor spends on the child during their parenting time.

If parents have equal parenting time and their incomes are equal, neither parent pays basic



support. If parents have equal parenting time and their incomes are not equal, the parent with the higher income is the “obligor.”

**Medical support** pays for the child’s medical and dental insurance and expenses. In addition to basic child support, the parents are each responsible for part of their child’s medical and dental expenses. This amount is based on their income. Medical support is ordered by the court to help pay for the child’s medical and dental insurance premiums. It also includes doctor’s office co-pays or other medical or dental expenses not covered by insurance.

Whenever a court decides about child support, it must also decide medical support. If the child gets Medical Assistance or MinnesotaCare, the court order may also include reimbursement to the county for this public assistance. If the other parent also receives Medical Assistance, they will not have to pay for the child’s Medical Assistance.

**Child care support** pays for child care costs when the parents are at work or going to school. If the county helps with child care costs, the child care support is paid to the state, not the other parent.

### Setting Child Support

In a divorce, the court sets child support based on the Minnesota Child Support Guidelines. The court considers the income or ability to earn income of **both parents**. This way of calculating child support is called **Income Shares**.

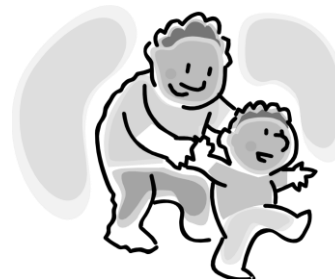
Child support is usually set at the guideline amount. But the court can set child support above or below the guideline depending on:

- the income, assets, expenses, and needs of both parents and
- the needs and expenses of the children

For example, child support may be set above the guidelines if the child has special health or education needs. It may be set below the guidelines if paying the set amount of child support would be too hard for the person paying child support.

To help figure out how much child support may be ordered, you can use the online child support calculator at <http://childsupportcalculator.dhs.state.mn.us/>.

You need to know your gross income, the other parent’s gross income, and parenting time schedule to use the calculator. Read the instructions. They will tell you how to use it and what



information you need. The more information you can fill in, the more accurate it will be. See booklet “Child Support Basics” for more information about child support [www.lawhelpmn.org/self-help-library/booklet/child-support-basics](http://www.lawhelpmn.org/self-help-library/booklet/child-support-basics).

### **Income Tax Dependency Exemptions**

If a parent has the child in their care for more than half of the year (183 days or more), they can claim the dependency exemption and child tax credit on their income taxes. The other parent (non-custodial parent) may not claim the dependency exemption unless

- there is a written agreement between the parties
- the Judgment and Decree orders that the non-custodial parent can claim the dependency exemption for the children on their income taxes. The custodial parent must sign a form from the Internal Revenue Service (IRS) that gives the dependency exemption to the non-custodial parent.

When deciding how to divide up the tax dependency exemptions and child tax credits, the court looks at:

- the finances of each party
- the effect of the tax exemption/credit on each parent AND
- if only one parent would benefit from the tax exemption or credit. For example, some parents earn low enough income that they do not have to pay taxes. This parent may benefit less from the tax exemption/credit than a parent with higher income. Note: Minnesota has passed an expanded Child Tax Credit for low-income families, providing up to \$1750 per child for some Minnesotans with an ITIN (tax filing number).

It is common for the court to order the parents to share or alternate claiming the exemptions. For example, Parent A might claim one child each year while Parent B claims the other child. Or the parents alternate claiming the child so that each claims them every other year.

The court may require a parent to be current on child support payments before they may claim the exemption.

### **Spousal Maintenance (Alimony)**

Spousal maintenance is money paid to support an ex-spouse. Either spouse can ask for spousal maintenance. **The court does not award spousal maintenance unless one spouse has a need and the other spouse has the ability to pay.** Spousal maintenance may be granted for several reasons. These include disability, illness, or if one spouse has not worked for many years to care for the couple’s children. If there is a large difference between your income and your spouse’s income, you may need spousal maintenance to help support you.

In some cases, the court may order spousal maintenance for a short time while the spouse returns to school or trains for a job. This is called temporary spousal maintenance. Permanent

spousal maintenance may be awarded if the court finds that the spouse in need will not be able to adequately support themselves. The court considers age, health, education, work experience, and job skills when deciding spousal maintenance.

If you agree to give up (waive) your claim for spousal maintenance, you cannot come back to court and ask for spousal maintenance later. If you ask the court to "reserve" spousal maintenance, the court does not award you spousal maintenance now, but may in the future.



## Dividing Property

All property that spouses got during the marriage is called "**marital property**." Marital property can be

- cars
- furniture, clothes, electronics, other household items (called personal property)
- money in checking/savings accounts, stocks, retirement accounts
- house or cabin (called real property)

It does not matter whose name is on the title or who purchased it. Both parties have an equal right to marital property. Marital property must be divided fairly. Usually, fairly means equally. The court decides the value of all the property and tries to divide it so that each spouse gets about half of the overall value. If one spouse has misspent the family's income, or misused or taken property, the court may award more property to the other spouse to make up for that. If one spouse has special needs, the court may award more property to the needy spouse.



For example, if there are two cars, each spouse usually gets one of them. This is especially true if the cars are nearly equal in value. If there is only one car, the court often awards it to the spouse who needs it more. Extra items of personal property may be awarded to the other spouse so that the overall value of each share remains the same. Retirement accounts and whole life insurance policies are property too.

If you own your home or other land, this property must also be divided fairly. The court may order the property sold so that each of you has your share as soon as possible. The court might award one spouse the home and give the other spouse other property, such as retirement accounts, that equal the equity in the home. Or the court may order the spouse who keeps the home to "buy out" the other spouse. This usually means that one spouse must withdraw equity through a refinance in order to pay the other spouse his or her share. If the court believes it would be better for the children to remain in the home, it may permit the children and the custodial parent to remain in the home until the children are 18 years old. Then the couple would sell the house and split the proceeds from the sale.

**“Non-marital property”** is property owned by a spouse before the marriage. A gift or inheritance to one spouse alone during your marriage is also non-marital property. For example, if a spouse’s parent dies and the spouse inherits a cabin, the cabin is that spouse’s non-marital property. That spouse would keep the cabin in the divorce. Portions of a personal injury or worker’s compensation award might also be non-marital.

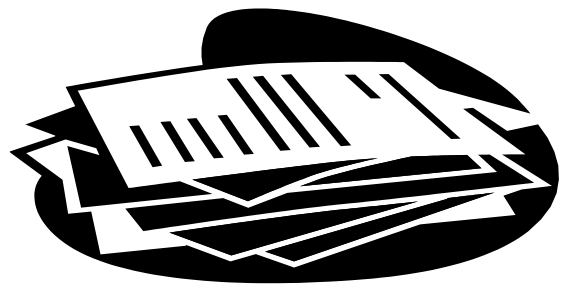
If you can prove that an item was your non-marital property, the court usually awards that property to you. The court may award non-marital property to the non-owner spouse in limited circumstances, like if it would cause unfair hardship.

Household goods are often divided by the couple or the court without deciding if they are marital or non-marital property.

## **Dividing Debts**

In a divorce the court decides which spouse pays debt incurred during the marriage. Debt is any money that is owed to another person or company. Debt can be

- credit card debt
- student loans
- home mortgage
- car loans
- medical bills



The law requires it be divided “equitably.” This often means equal, but not always. The court looks at several things when dividing debt

- Who made the debt?
- Who benefited from it?
- Was the debt out of the ordinary for the marriage? Or was it part of a pattern of spending?
- Was the debt made before the marriage, during the marriage, or after the parties separated? Debts made before the marriage are the responsibility of the spouse who made the debt.
- What are the parties’ incomes? Is one spouse able to pay more than the other?
- What are the parties’ assets? For example, if a spouse is awarded the car in the property division, they will likely be responsible for paying the car loan.

Generally, any student loan debt stays with the spouse that made the debt.

**Note:** Even if the court decides that one spouse should pay a debt, both spouses could still be sued by the person or business the debt is owed to (the creditor). The creditor can still take legal action against either spouse. If your ex does not pay the debt they were ordered to pay in the divorce, you can take legal action. See “What if my ex-spouse is not following the Judgment and Decree?” in Chapter 4 for more information.

## **If You Were Forced to Take on Debt by an Abusive Partner**

In 2023, Minnesota passed the “Coerced Debt Law” that could help a survivor of domestic violence if an abusive partner stole the survivor’s identity to take out credit or otherwise used force, threats, or intimidation to make the survivor take out unwanted credit. The law applies to coerced debts beginning in 2024.

The law makes it illegal to force a survivor of domestic violence to take out debt they didn’t voluntarily ask for. If a survivor has coerced debt, they can get a court to wipe out that debt. If a survivor provides evidence that the debt was coerced, the court can rule that

- The survivor does not owe the debt
- Any court order (“a judgment”) saying the survivor owes the debt is thrown out
- Any existing court case the creditor has taken against the survivor for the debt is dismissed.

Before going to court, a survivor of violence must first notify the creditor that the debt was “coerced” and include one or more of these documents

- a police report
- an Identity Theft Report to the Federal Trade Commission
- a divorce decree that shows the debt was coerced or a sworn certification from one of a variety of professional counselors or health professionals saying the debt was coerced.

After receiving the notice, the creditor must tell the survivor if the creditor will stop or not stop trying to collect the debt.

A judge can make findings in the divorce decree that address ‘coerced debt’ between the parties and can divide the debt based upon those findings. Remember a divorce decree by itself does not eliminate a spouse’s contractual obligation to repay a debt. This law allows survivors of violence an opportunity to avoid those repayment obligations if the debt was coerced by an abusive partner.

## **Insurance Coverage**

### **Medical Insurance for Children**

If both parents can get medical and dental insurance through their work or a union, the court orders the parent with better coverage to insure the child. If only one parent has insurance, the court orders that parent to insure the child. But the cost of the insurance is split between the parents as part of medical support. The amount each parent pays is based on their income.



Sometimes, neither parent can get insurance through work. Or the insurance a parent can get from work or a union is too expensive.

If there is no insurance available, the court may order one of the parents to apply for Medical Assistance (MA) or Minnesota Care for the child. These are public assistance programs that help pay the medical costs. If both parents receive Medical Assistance, they will not be required to pay back the State for medical support.

The court also orders the parents to pay anything not covered by insurance. The cost is usually divided between the parents. The amount depends on the parents' incomes.

### **Medical Insurance for Your Ex**

After a divorce, each spouse has to get and pay for their own medical insurance. The court may order one spouse to keep the other on their medical insurance, but this rarely happens. Most health insurance providers do not allow ex-spouses to be covered by their insurance plans. If an ex-spouse can't get medical insurance on their own **and** coverage is still available through their ex-spouse's employer, the court may order that the insurance continue. Either party may be ordered to pay the cost.

### **Life Insurance**

If the court orders child support or spousal maintenance, the court may also order the obligor to keep a life insurance policy in effect. If the obligor dies, the children or spouse get the insurance benefits to make up for the lost child support or spousal maintenance.

If the insurance policy has cash value, the court may give ownership of the policy to either party, the same as other property of the parties.

## **Chapter 3: The Steps in a Divorce Case**

### **What are the steps in a divorce?**

How many steps are in your divorce case depends on whether you and your ex agree on everything, whether your ex responds to court papers, and other factors. Below are the steps you would take for 3 common ways a divorce case can go. The Judgment and Decree is the last

step in a divorce case. Remember, these are just examples. Your case may be different.

**Example 1: You and your ex agree on all the issues**

- Step 1: Joint Petition signed by both parties
- Step 2: Joint Petition filed with the court
- Step 3: Final Hearing (if Necessary)
- Step 4: Judgment & Decree

**Example 2: Your ex doesn't respond when you file your papers**

- Step 1: Summons, Petition and Financial Affidavit Served
- Step 2: Default - No Answer Served or Filed
- Step 3: Default Papers Filed Requesting Hearing
- Step 4: Final Hearing (if needed)
- Step 5: Judgment & Decree

**Example 3: You and your ex do NOT agree on all the issues**

- Step 1: Summons, Petition and Financial Affidavit Served
- Step 2: Answer and/or Counter Petition
- Step 3: Initial Case Management Conference (ICMC)
- Step 4: Alternative Dispute Resolution (ADR): Mediation or Early Neutral Evaluation (ENE)
- Step 5: Temporary Relief (Motion) Hearing
- Step 6: Custody Evaluation, Discovery, Guardian ad Litem investigation
- Step 7: Pre-trial Conference
- Step 8: Trial
- Step 9: Judgment & Decree

**What if we agree on all issues of the divorce?**

If both spouses agree on all issues, you can put your agreements on a form and file it with the court for approval. The written agreement is called a Joint Petition. The Joint Petition must include your agreements on all issues of the divorce. See "Chapter 2: What Issues Does the Court Decide in a Divorce?" for the issues of a divorce.

The court has forms you can fill out and file with the court. See "Can I represent myself?" in

Chapter 1 for information on how to get these forms. If you do **not** use the “Guide and File” option, the forms you download are called “Joint Petition with Children” or “Joint Petition without Children.”

## Summons and Petition

The spouse who starts the divorce is called the **petitioner**. The other spouse is called the **respondent**. The petitioner and the respondent are the “parties” in the divorce.

To start a divorce the petitioner fills out a “Summons and Petition for Dissolution of Marriage.” The **Summons** is a legal paper telling the respondent to **answer** the Petition within 30 days. The **Petition** is a legal paper giving the court information about the parties and telling the court how they want the issues to be decided. The decisions the court will make are called **relief**. The Petition also tells the court the reasons for the relief they are asking for.

The Summons and Petition have to be given to the respondent in a certain way. This is called service of process, or **service**. This means that someone other than you personally hands the papers to the respondent. You have to ask the sheriff or an adult – other than you – to serve the Summons and Petition. There may be a fee if you use the sheriff. You need to take the forms to the sheriff or other adult yourself. The person who hands the documents to the respondent will need to sign a document stating the date they did the service. This is called an “Affidavit of Service.”

**A divorce officially starts when the respondent is served with the Summons and Petition.**

If the respondent does not respond within 30 days, he or she is in **default**. This means the petitioner (the spouse who wanted the divorce) may be granted the divorce without input from the respondent.

After the Summons and Petition is served both parties are forbidden from selling or getting rid of any property or harassing one another. Each party is required to maintain any insurance for the family. If one spouse spends money belonging to both parties after receiving the Summons, he or she may have to explain to the court why the money was spent.

### What if I don’t know where the respondent is?

If you don’t know where the respondent is and can’t find out, ask to have the forms served in another way. This is called “alternate service.” You can get the forms on the court’s website at [www.mncourts.gov/GetForms.aspx?c=15&p=60](http://www.mncourts.gov/GetForms.aspx?c=15&p=60). You can also ask the Self-Help Center to help you ask for alternate service. The court may allow you to serve the respondent by

- mailing the Summons and Petition to his home, a relative’s home, or a work address

**OR**



- publishing a notice in the newspaper

This special service starts the legal proceedings in cases where the respondent cannot be personally served. In order to use alternative service the court will ask about what was done to find and personally serve the respondent.

## **Answer and Counter-Petition**

If the respondent disagrees with the relief asked for by the petitioner, the respondent has to serve and file an **Answer and Counter-Petition**.

The **Answer** is where the respondent tells the court what statements in the petition they believe are true or false. The **Counter-Petition** tells the court what the respondent wants the court to decide and why. The Answer can be mailed to the petitioner (or petitioner's lawyer). It does not have to be personally served.

If the respondent gets the Petition and agrees with everything in it, the parties can write up an agreement (called a stipulation) and file it with the court.

## **Default**

If the respondent does not answer the Petition within 30 days after they were served, the respondent is in **default**. The petitioner tells the court their ex never answered the petition. If needed the court schedules a default hearing. The court schedules a default hearing if the parties have children and are not represented by lawyers. The petitioner is sworn under oath and testifies to all the facts necessary for the court to order the relief requested in the Petition. In most cases the hearing is very short and simple. Most of the questions can be answered "yes" or "no." The judge signs the **Judgment and Decree** that was prepared in advance by the petitioner or their lawyer.

The divorce becomes final when the court administrator "enters" the Judgment and Decree into the court system. The Judgment and Decree contains the final decisions of the court. Sometimes it is a week or more after the default hearing before the Judgment and Decree is entered. There is no waiting period in Minnesota—the divorce is completely final when entered.

To get a copy of the signed and entered Judgment and Decree go to the records department of your county courthouse.

## **Initial Case Management Conference (ICMC)**

After you file your papers for a divorce the court may schedule an Initial Case Management Conference (ICMC). You will get an ICMC data form. Different counties have different rules about the ICMC data form. Your county might want it mailed in ahead of time, or you may be able to just bring it on the day of your ICMC. Check your form for details about what you need to do. Remember to get a copy to the other person, or their lawyer too.



The ICMC is your first appearance in Family Court. It happens about 3 to 4 weeks after you file.

The ICMC is an informal meeting with the judge, you, the other person and your lawyers if you have them. The idea is for everyone to be able to speak freely and resolve as many issues as possible. It is not a time for the court to hear arguments or to make decisions. It is a time for you to meet the judge or referee assigned to your case.

If there are issues left that are not resolved at the ICMC, the judge may ask the parties to go to mediation or an Early Neutral Evaluation (ENE).

Some counties do not have ICMC's, so the court will schedule a different type of hearing called a Scheduling Conference. Sixty days after the case has been filed with the Court, each party must file a Scheduling Statement. You can get the forms on the court's website at <https://mncourts.gov/GetForms.aspx?c=18>. After the Scheduling Conference the court will issue a Scheduling Statement which will contain deadlines both parties must follow.

## **Alternative Dispute Resolution**

In any case where parties cannot agree about custody or parenting time, the court requires the parties to attend an orientation and education program. Some courts have programs for children to attend. The program covers the impact that divorce and the restructuring of families and legal proceedings have on children and families. It also covers methods for preventing parenting time conflicts and options for resolving disputes.

If you have a good reason for not attending, you can ask the court to excuse you.

If you claim that there has been domestic abuse, you do not have to attend the same parent education class as the other party. The court should enter an order describing how the parties may safely participate in the program.

There is a sliding scale fee for this program. However, it may be free if you were not required to pay the divorce filing fee.

Court rules now require both sides try other ways to resolve the issues in their case. Alternative Dispute Resolution (ADR) are different programs to help you reach agreements. It is important to try to reach agreements in your divorce. A judge will never know you and your family as well as you do. If you and your spouse make agreements then you have some control over the outcome of the case.

Agreements happen when each side gives a little. You should go into mediation or ENE with an open mind. You will spend less time and less money if you and the other party work together to decide the issues of your case.

ADR is voluntary and confidential. What you talk about in ADR, whether it is mediation or ENE, does not get shared with the court.

**Social Early Neutral Evaluation (SENE)** is a process some courts use to try to resolve custody and parenting time outside the formal court setting. The SENE is run by 2 neutral evaluators who are experienced family law professionals. They could be lawyers or psychologists. Each county sets up procedures, timelines, and fees and has lists of evaluators. You and your spouse choose evaluators from a list the court gives you. Each spouse tells the evaluators what they want in terms of custody and parenting time and why. After hearing from both spouses, the evaluators tell the parties what they think the court would order if the case went to trial.

**Financial Early Neutral Evaluation (FENE)** is a process to try to resolve financial issues outside the formal court setting. The FENE is run by 1 evaluator that is an experienced family law professional. The evaluator could be a lawyer or accountant. A FENE helps you figure out child support, spousal maintenance, division of property (like real estate, vehicles, or retirement accounts), division of debt, and any other financial issues you have.

**Mediation** is another ADR method. In mediation, the spouses try to work out an agreement between themselves with the help of a neutral third person called a mediator. The mediator helps the spouses discuss their issues, make compromises and reach their own agreement.

ADR can be helpful because both of you have agreed to the outcome rather than having a big fight and have the judge make decisions for you. Mediation about custody or parenting time can be helpful because you both continue to be parents to your children and together you can continue to work out parenting issues.

If you don't understand things or don't feel you have equal power with your spouse, the mediation is not fair. You can stop the process at any time without reaching an agreement. You only have to try to settle. **You can't be forced to agree to something.**

You may not want to agree to an ENE or mediation if

- You are scared of the other party.
- The other party has abused you.

- The other party has a lawyer and you do not.
- You feel you can't be honest about your concerns in front of the other party.
- You feel the other party will not be honest.

## Parent Education Program

In any case where the spouses have children and cannot agree about custody or parenting time, they have to attend a divorce education program. Some education programs are held online, and some are held in person. The court gives you information on where to find a program.

The program covers the impact that divorce and a court case have on children and families. It also covers methods for preventing parenting time conflicts and options for resolving disputes. If you have a good reason for not attending, you can ask the court to excuse you.

If you claim there has been domestic abuse, you are not required to attend the same parent education class as your ex. The court should enter an order describing how you can both safely participate in the program.

There is a sliding scale fee for education programs. However, it may be free if you were not required to pay the divorce filing fee.

## Temporary Relief Hearing

When an issue needs to be settled early in the case, a party can ask the court to schedule a **temporary relief hearing**. This is also called a temporary motion hearing. Some issues needing a temporary decision could be

- custody
- parenting time
- child support
- who will live in the home
- who will get to use the car(s)

The party bringing the motion is called the **moving party**. The other party is the **responding party**. The responding party must be served with motion papers, including a **Motion for Temporary Relief** and an **Affidavit**. The **motion** is the legal paper that tells the court what temporary relief they are requesting from the court. **Affidavits** are written statements signed under oath, telling the court why they are making their requests for relief.

There are certain time periods for giving notice to the other party **before the hearing** that must be followed when bringing and responding to motions. The motion papers must be mailed or handed to the other party by certain deadlines.

At the temporary relief hearing the judge looks at all of the papers both parties filed. The parties or their attorneys may give a brief argument about their requests. The court may ask the parties questions, but it is unusual for the court to take testimony at a temporary relief hearing.

After the hearing the court makes an order that sets the rules for the parties until the divorce is final.

The court has forms to ask for temporary relief

- Go to [www.mncourts.gov](http://www.mncourts.gov)
- Click on “Get Forms” on the menu
- Click on “Divorce/Dissolution”
- Click on “Temporary Relief with Children” or “Temporary Relief without Children”



## Guardian ad Litem

A guardian is a person who acts to protect or help someone. “Ad litem” means “for the lawsuit”. In some cases the court may appoint a guardian ad litem to investigate and stand for the child’s best interests. Guardians ad litem are not appointed in all divorce cases. When the court makes decisions about custody, **a guardian ad litem is only appointed if the court thinks the child has been abused or neglected.**

Guardians ad litem tell the court what is best for the child in things like custody and parenting time. They do an independent investigation. They talk to the child, the parents and other caregivers. They can talk in private to counselors, teachers, family members and friends, and court services and child protection workers.



They write a report to the court saying what they think the court should order. The court **does not have to** do what the guardian ad litem says, but it takes the report very seriously.

**It is important to cooperate with the guardian ad litem. Their report can help or hurt your case.**

Guardians ad litem may work for free or for a fee. If there is a fee, the court says who has to pay it. If you get MFIP or other public assistance, if you have a legal aid lawyer, or if you have a low income, you may get a reduced fee or you may not have to pay at all. Individuals who have a Fee Waiver in the file also may not need to pay.

## Custody Evaluation

If the parties cannot agree on custody, the court may order a custody evaluation. Custody evaluations are handled differently in each county. Some counties may have their evaluations done by court services, county services or a private evaluator.

The evaluator investigates each parent's ability to care for and raise the child. The evaluator interviews each parent. They contact friends and family, teachers, counselors, doctors, and other professionals who have seen the family. The evaluator then writes a report to the court and makes a recommendation about custody. The parties are usually required to pay the costs of a custody investigation based on their ability to pay. The court does not have to accept the recommendation of the evaluator but considers it very seriously. It is in your best interest to cooperate with the evaluator. Answer their questions honestly and give them any additional information they ask for.

## Stipulation

Throughout the divorce process, the parties should continue to try and settle the case. If the couple can agree on everything (through talking or mediation), they can file a written and signed agreement called a **Stipulation**. The court usually accepts the parties' agreement. Contact the court after filing the Stipulation to see if you need a hearing to finalize your divorce. If you have minor children and one or both parties does not have a lawyer, then the court will set a default hearing before approving the stipulation.

## Discovery

If the parties cannot agree, the case can only be finished with a trial. Before the trial, it may be useful to get the evidence and information the other party has. This is called **discovery**. Discovery is usually only done when the parties are represented by lawyers. There are several kinds of discovery, including

- taking testimony under oath from a party or a witness outside of the courtroom (called **depositions**)
- written questions the other party answers in writing under oath within 30 days (called **interrogatories**)
- a written demand that the other party allow the attorney to look at important papers before trial (called **requests for production of documents**)



## Pre-Trial Conference

If the parties still can't reach an agreement, the court sets the case for trial. Before trial, the court may set a pre-trial conference. A pre-hearing conference

- helps the parties settle the case and avoid a trial
- identifies the areas of disagreement and decides how much time you need for the trial



The pre-trial conference will be in person unless a party requests to appear remotely and it is approved by the court. Sometimes the parties reach an agreement at the pre-trial conference. If so, the parties tell the court their agreement “on the record,” meaning it is recorded. The parties or the court write the agreement into a Stipulation to finalize the divorce. Agreements read on the record are final. Make sure you understand all terms of an agreement.

If the parties don't reach an agreement, the case is set for trial.

If a party fails to attend the pre-trial conference the Court may consider the party who fails to attend to be in default and resolve the matter. See “Default” in Chapter 3.

## Parenting / Financial Disclosure Statement

At least one week before the pre-trial conference, each parent must file and serve a Parenting Financial Disclosure Statement. This document includes updated information about your assets, debts, and income. It also lets the court know if there are any recent agreements. There are important things you attach to the financial disclosure statement

- Your 3 most recent pay stubs
- a statement of receipts and expenses, if you are self-employed
- a copy of your most recent tax return including your W-2, 1099 forms and unemployment or worker's compensation statements
- other documents that show any other income

If you do not file the Parenting / Financial Disclosure Statement, the court may set your child support or spousal maintenance based on evidence from the other party.

You can access this document on the court's website

- Go to: [www.mncourts.gov](http://www.mncourts.gov)
- Click on “Get Forms”
- Click on “Family”
- Click on “Parenting/Financial Disclosure Statement”

## The Trial

Very few divorce cases go to trial because most cases are settled earlier. Before the trial, the court issues a Trial Order (which is sometimes called a Scheduling Order). This gives details about the date of trial, how long it will last, and when you and the other party need to exchange exhibits. The Trial Order also tells you when and how to give copies of your exhibits to the judge. **Pay attention to the deadlines in the Trial Order.** If you do not follow them, you may not be able to fully put on your case at trial. The trial will be held in person, so both parties must attend the trial in person, not remotely.

Exhibits are things you want the court to look at during the trial. You need to get your papers together before the trial and give copies to the other side. The Trial Order gives you deadlines on when to exchange exhibits and when to give copies to the court. Exhibits could be anything that supports the relief you are asking for like



- pay stubs to show your income
- copies of credit card bills or bank accounts
- your child's school or medical records
- your monthly budget

The petitioner presents their case first. The petitioner tells their story after taking an oath to tell the truth. They tell the court what they are asking for and why. This is called testimony. Be as specific as you can when you give testimony. If the petitioner has exhibits, they present them now.

When the petitioner is done telling their story, the respondent or their lawyer can ask the petitioner questions. This is not a time for the respondent to argue or tell their side of the story. The petitioner answers the respondent's questions truthfully. When you are answering questions, stay calm and stay focused. If you do not understand the question, ask the judge to ask the question again or in another way.

If the petitioner brought a witness, it is their turn to testify. The petitioner asks the witness questions. The witness cannot just talk to the judge on their own. When the petitioner and their witnesses are done speaking, the respondent or their lawyer can ask the witness questions.

After the petitioner presents their case, it is the respondent's turn to present their case. The respondent tells their story after taking an oath to tell the truth. They tell the court what they are asking for and why (testimony). They should be as specific as they can. If the respondent has exhibits, they present them now. If the respondent disagrees with the petitioner's testimony, they tell the court why they believe the petitioner's testimony was wrong.

After the respondent finishes their testimony, the petitioner can ask them questions. After the



respondent's testimony, the respondent's witnesses testify. The respondent asks the witnesses questions, and then the petitioner asks the witnesses questions.

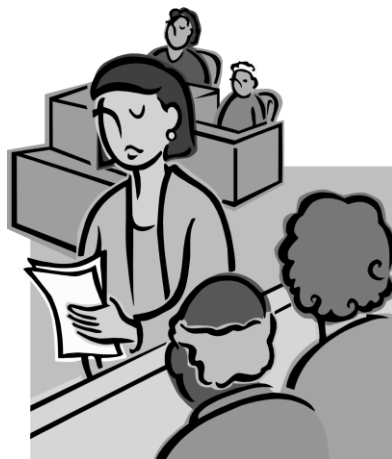
When all the testimony is done, the petitioner and respondent sometimes make final arguments to the judge about how they want the issues of the case decided. After the final arguments, the trial is over.

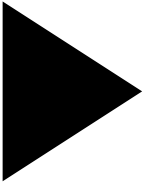
The judge may announce a decision at the end of the trial. Or he or she may take time to think about the case and make the decision later. By law, the judge has 90 days to decide the case. When the judge makes their final decisions, they issue the Judgment and Decree and send it to the parties. Usually the judge sends copies of the decision to the parties. The divorce is **final when the court clerk enters the Judgment and Decree for the court. The Judgment and Decree is the final decision in the case.**

### **Tips for your day in court**

How you act in the courtroom can make a big difference in your case.

1. Arrive early. Check with the court clerk. If your trial is happening by Zoom, log in early.
2. Pay attention. Be ready to start when you are called.
3. Do not bring children to trial. Children cannot testify at trial. Find someone to look after your children while you are at the hearing. If you do bring them, the judge will not let them in the courtroom.
4. Dress in neat and clean clothes. This shows respect for the court.
5. Be calm and polite with everyone in the courthouse, even the abuser.
6. Be serious at all times in the courthouse.
7. Don't say anything in the bathrooms or hallways that you do not want the respondent, or the respondent's lawyer or relatives to hear.
8. Treat the judge with respect. Say "yes sir" or "yes ma'am" to the judge.
9. Speak clearly. Answer questions by saying "yes" or "no". The court needs to make a record of everything happening in the courtroom. They can't record your answer if you shake or nod your head. Do not chew gum or put your hands in front of your mouth.





### **Do Not**

- argue with the judge
- interrupt the judge
- argue with the other party or their attorney
- interrupt the other party or their attorney

## **Chapter 4: After the Divorce**

### **What if I disagree with the decision?**

You can appeal the judge's decision. An appeal is when you ask another court to review the judge's decision. This court is called the Court of Appeals. **Act fast!** There are special time limits that apply. Filing an appeal can be difficult. Talk to a lawyer to see if you should file an appeal. There has to be a legal reason for appealing a judge's decision. For example, the judge did not follow the law.

For information and forms to file an appeal

- Go to the court's website: <https://mncourts.gov/CourtOfAppeals.aspx>
- Click "Appellate Forms & Instructions (for self-represented litigants)"

### **Can I change the Judgment and Decree?**

The decisions the court made are explained in the **Judgment and Decree**. If things change after the Judgment and Decree, some of the decisions can be changed after the divorce such as

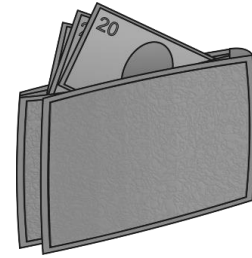
- custody
- parenting time
- child support
- spousal maintenance (unless the right to spousal maintenance was given up, denied, or you agreed in writing not to try to change the amount of spousal maintenance you were awarded)

Other decisions, like the division of property, can only be changed if there was

- fraud (false information was given)
- a mistake that could not have been discovered before the trial or default hearing
- a violation of your rights in the legal proceeding (for example, you were not properly served the Summons and Petition)

### **Fees to change your Judgment and Decree**

If you need to bring a motion to change your Judgment and Decree, you have to pay a motion fee of about \$100.



If you are low income and can't afford to pay the fees, ask the court for a fee waiver. This is called a Fee Waiver. This form asks the court to lower the fee or waive it so you don't have to pay. Download the forms to fill out on the court's website at <https://www.mncourts.gov/GetForms.aspx?c=19>.

OR you can fill out and file your fee waiver forms online using the court's Guide and File interview. To start the Guide and File interview

- Go to <https://minnesota.tylertech.cloud/SRL/SRL>
- Click "Request for Fee Waiver"

If you got a fee waiver during the divorce, you need to apply for a new one if it's been more than 1 year.

### **Changing Custody**

The court can change custody if the situation of the child or the parents changes, and a new order is needed for the best interests of the child. The court only looks at facts that have changed since the old order or facts that were unknown at the time of the old order. The court can only change custody when



- Both parties agree to the change OR
- The parent with custody has let the child become "integrated into" (fully part of) the home of the other parent OR
- The child's current home is a danger to their physical or emotional health, or growth, and changing custody does less harm than staying in an unsafe home OR
- The primary custodial parent asked the court to move with the child to another state and the court said no – but the parent moved anyway.

To change a custody order, the parent must bring a motion in court. The parent must have witnesses, affidavits or other documents to show one of the above reasons to change custody.

**Note:** A parent has to wait 1 year from the time custody is first decided in the Judgment and Decree before they can ask for changes. If there was already a motion to modify, a parent has to

wait 2 years from the time the motion is decided before they can ask for changes. It doesn't matter if the motion to modify was granted or not.

But these time limits do not apply if

1. A parent has again and again, on purpose kept the other parent from seeing the child,  
or
2. The child's present home is a danger to them

The court can also consider a change if the custodial parent has denied or interfered with the parenting time of the other parent. Denying or interfering with a parenting time schedule is a factor the court may consider when deciding a motion to change custody. The court looks at the reasons parenting time was denied.

## **Changing Child Support**

Either parent can ask for changes to child support at any time, by bringing a motion to modify (change) support. A judge or magistrate only modifies a child support order if there has been a "substantial change" in the needs of the child or the parents' finances that makes the order you have unfair. The court will not change the child support order unless the child support amount will go up or down by at least 20% and \$75.

Here are things that could change a child support order

- a big change in the income or needs of either parent
- a big change in the needs of the child
- getting public assistance
- high medical costs for the child
- new or changed child care costs
- a child becomes an adult

For more information about child support, see our booklet Child Support Basics (<http://www.lawhelpmn.org/resource/child-support-basics>).

## **What if my ex-spouse is not following the Judgment and Decree?**

### **6 Month Review Hearing**

If either parent is not following the Judgment and Decree, the other parent can ask for a review hearing. You have to **ask** for a review in the first 6 months. It is not automatic. The request form

to ask for a review is attached to your Judgment and Decree. You can also get one on the court website

- Go to [www.mncourts.gov](http://www.mncourts.gov)
- Click “Get Forms”
- Click “Family”
- Scroll down and click “Six-Month Review Hearing Request Instructions” under Form/Packet Name

At the hearing, the court looks to see if both parties are following the rules in the Judgment and Decree for child support, custody or parenting time. The court cannot change the order but can put penalties on the parents for not following the order.

### **Child Support Enforcement**

If child support was ordered but is not being paid, steps to enforce the order can be taken by the obligee or the county child support office. A parent can apply for help with child support even if they do not get public assistance. The county has ways to help make sure child support can be collected

- Collect child support directly from paychecks.
- Bring a court contempt action for non-payment.
- Take tax refunds for child support.
- Suspend professional licenses and driver’s licenses.
- Place liens on vehicles and other property.
- Deny the parent’s passport application.

To get contact information for your county’s child support office, call (651) 431-4400, or visit the Department of Human Services website at

<https://secure.childsupport.dhs.state.mn.us/mcso/participants/Action/Links/ChildSupportTopics>

For more information about child support services, read the state’s fact sheet, “Explanation of child support (IV-D) and income withholding-only (Non-IV-D) services in Minnesota” at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-2973-ENG>.

### **Bring a Contempt Action**

If your ex is not following the Judgment and Decree, you can bring a motion for “Contempt of Court”. Contempt is a civil remedy when someone has been ordered to do something, knew about the order, had the ability to follow the order, but has not followed the order. There are very strict procedures for a contempt motion, because if your ex is found in contempt and again

fails to comply with the order, they could be put in jail. Contempt or jail time is supposed to make the person follow the order. It is not meant to be used as a punishment for them not following the order.

- Go to [www.mncourts.gov](http://www.mncourts.gov)
- Click “Get Forms”
- Click “Divorce/Dissolution”
- Scroll down and click “Contempt Motion for Divorce Decree” under Form/Packet Name

Read the instructions. They will tell you how to fill out the forms and file them with the court.

### **Unpaid Debts**

If your ex is ordered to pay a debt but doesn't pay it, the creditor may force you to pay it if you originally signed for the credit. This can happen no matter what the divorce decree says. If that happens, you can ask the court to order your ex to pay you back. The court can also find your ex in contempt of court for violating the court's order.



### **What if I have problems with parenting time?**

If you are having problems with parenting time, try to work it out with your ex. If you cannot talk with them directly, think about going to a counselor or mediator before going back to court. The more you and your ex learn to talk about your issues and resolve them, the better your co-parenting relationship will be. If parents return to court every time there is an issue, you will waste a lot of your time, money, and the court will get frustrated with you.

You can go to court to get an order to change or set a parenting time schedule or for supervised parenting time. The court can order mediation before you are allowed to bring a motion. If one parent denies parenting time, the other parent can go to court to request more parenting time or even to change custody. The court looks at whether there was a good reason for denying parenting time. Abuse of the children would likely be a good reason to deny parenting time.

**Failure to pay child support is not a reason to deny parenting time.** The court may order additional parenting time if it decides that one parent unreasonably denied parenting time.

### **What if one of the parents wants to move out of state?**

If a custodial parent (who the child mainly lives with) wants to move out of state, they have to get permission from the other parent. The permission has to be in writing. If they leave without permission, it is a crime, and they could lose custody. If the other parent does not agree to the move, the parents will have to go to court.

The custodial parent has to show the court that the move is in the child's best interests unless the custodial parent was a victim of domestic abuse by the other parent. If there was domestic abuse, the abuser has to prove why a move is NOT in the child's best interests. The court looks at several things, like parenting time agreements, the emotional needs of the child, and if the move is a plan to keep the other parent from seeing the child. Then the court decides if the custodial parent and child can move. Generally it is very difficult to get the court to allow one parent to move with the child if the other parent is opposed to it.



## **Kidnapping**

Parents in child custody and parenting time disputes sometimes take matters into their own hands by taking a child away from the other parent. Taking or hiding a child, or not returning the child after parenting time, can be a serious crime.

Minnesota has a law that makes it a crime to deprive another of their custodial or parental rights. Under this law, you do not have to have a court order giving you custody or parenting time. If the other parent is hiding the child, you may be able to show that you have been deprived of your custodial or parental rights. Violation of the law can result in a prison sentence of up to two years and one day, a \$4,000 fine, or both.

If a parent takes a child to protect the child from abuse, or if the other parent consents, the law may not apply.

There is a law called the **Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)** that keeps parents from going to another state to try to get a different custody order. Under the UCCJEA, the courts of different states have guidelines to help decide which state's court should decide custody. The courts are encouraged to discuss the matter and avoid disagreements between states. Usually the court in the state where the children have lived most recently for the past six months has the authority to decide custody of the children. If a court in one state has already decided custody, the UCCJEA prevents a court in another state from changing the custody order, unless the first court refuses to act or no longer has enough connection with the child and parties.

**If your child is taken, or if the other parent refuses to return the child after parenting time, contact the police or a lawyer right away.**

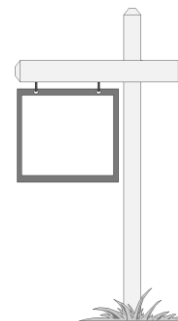
## **How do I transfer property?**

### **Real Property (Real Estate)**

If the court gives one spouse ownership of the home or other real estate, the Judgment and

Decree describes exactly how the transfer should happen. Many times, the Judgment and Decree orders the other spouse to sign a **Quit Claim Deed**.

A Quit Claim Deed transfers his or her rights in the real estate to the spouse who got the property. The Quit Claim Deed and the Judgment and Decree are filed with the County Recorder or Registrar of Titles. If the property is registered (called Torrens) property, you also need the owner's duplicate certificate of title. The Quit Claim Deed and Judgment and Decree are "memorialized" by the Registrar of Titles and a new title issued. If the Quit Claim Deed is not signed and provided, check with an attorney and/or the County Recorder or Registrar of Titles to find out what to do.

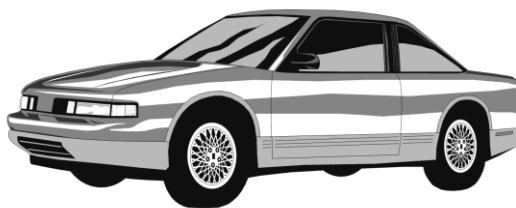


Sometimes, the Judgment and Decree says you don't need a Quit Claim Deed and the Judgment and Decree alone will transfer title. Three things have to happen in order to transfer a title after a divorce: you have to show proof the parties are divorced, you have to show that the property was given to the correct person, and you have to tell the court if either party has changed their name. A Summary Real Estate Disposition Judgement (SREDJ) can be used instead of a Quit Claim Deed to transfer the title of the property to the spouse who got the property. An SREDJ is granted by the judge in the divorce case and should be filed with the County Recorder or the Register of Titles.

The other spouse may be awarded a **lien** or a mortgage for a share of what the property is worth. A lien is a claim on the property. The spouse who got the real estate owes the other spouse the amount of the lien or mortgage. The Judgment and Decree usually sets a date the payment must be paid. If the lien is not paid when due, the spouse owed the money can ask the court to order the other spouse to pay the lien, or to change division of the property in the Judgment and Decree. In the case of a mortgage, the holder of the mortgage could foreclose.

### **Personal Property**

If you are awarded personal property that is not in your possession, your ex must deliver it or allow you to pick it up. Personal property includes money in a bank account, household goods and furniture, or a motor vehicle.



In some cases, the Judgment and Decree spells out how the property is exchanged or sets a time limit (such as 30 days) in which the transfer must take place. If the Judgment and Decree does not spell it out, the spouses make their own arrangements. The spouse who is ordered to give the property to the other spouse must let him or her get the property within a reasonable time after the Judgment and Decree is entered. It has to be a way that is convenient for both spouses. **If you are afraid of your ex-spouse, you**



**may ask a local law enforcement officer to help you get your personal property. Sometimes, law enforcement will not help unless the Judgment and Decree specifically orders them to do so.**

The title card for a car or a mobile home may be in both names or in the name of the spouse who was not awarded the property. In that case, the title card must be signed over to the spouse who was awarded the property.

If your ex-spouse will not give you the property, you can ask the court to order the sheriff to help you get the property. The court can also tell a bank to give you the money in the bank account awarded to you. It can also tell the state to change the title of the motor vehicle or mobile home.

Sometimes the Department of Motor Vehicles gives you a new title if you show the Judgment and Decree that awards you the car. The order must have the car's V.I.N. number in it.

A spouse who has been denied his or her personal property can also sue in Conciliation (Small Claims) Court for money damages up to \$15,000. The filing fee is small and the parties speak for themselves without lawyers. For more information about Conciliation Court, see the fact sheet "Conciliation Court" <https://www.lawhelpmn.org/self-help-library/fact-sheet/conciliation-court>



## **Education for Justice**

A project of the Minnesota Legal Services Coalition  
[www.mnlegalservices.org](http://www.mnlegalservices.org)