

DIVORCE

Deciding whether to hire an attorney

While it is possible to obtain a divorce without an attorney, such assistance is advisable in many cases, especially those that involve property division, child support, parenting time, or spousal maintenance. Divorce, which Colorado Courts refer to as dissolution of marriage, is painful and often complex. The sometimes overwhelming stress of a divorce may make it difficult for a person to cope or make rational decisions. Unfortunately, the decisions one makes may have emotionally-taxing or costly consequences that will last long into the future.

An attorney can provide sound legal guidance and counsel throughout the emotionally-charged divorce process. For instance, an attorney may bring to the client's attention matters that may otherwise go unresolved and promote sound decision-making at a time when some divorcing spouses may succumb to stress and exhaustion. Such involvement helps to assure a resolution that is fair, reasonable, and in the children's best interest. Such involvement can also help prevent future conflict and costs..

Alternatives to divorce

Colorado law allows spouses to become legally separated. A legal separation has the same formality as a divorce; however the Court does not enter a decree of dissolution. Under a legal separation spouses can divide property, debts, and assets, establish spousal maintenance, determine child support obligations, and establish a parenting plan as though the spouses were divorcing. So, while the issues in a legal separation are just as complicated as a divorce, when the legal separation is done, the parties remain legally married.

A legal separation is an especially important options for couples who are contemplating reconciliation and do not seek the finality of a divorce, are prohibited by their religion from divorcing, or are required to be married to establish or maintain a spouse's eligibility for health insurance coverage, retirement pay, or military benefits. A legal separation can be converted to a divorce 6 months after a decree of legal separation is granted, or at a later time.

No-fault divorce

Colorado is a "no-fault" state. Meaning, why the parties are getting divorce, such as infidelity, does matter. The only basis necessary for a Colorado Court to grant a divorce is that the marriage is irretrievably broken. It only takes one spouse to believe the marriage is irretrievably broken for the marriage to be irretrievably broken.

Protection order

Unfortunately, domestic violence does occur in some marriages. In some cases it is appropriate for the abused spouse to obtain a Temporary Protection Order (also known as a Temporary Restraining Order). A TPO or TRO may later be made permanent or converted into a No Contact Order through the dissolution action. However, it is important to realize that the issuance of a restraining order may have serious consequences, especially with respect to parenting time considerations. An experienced Colorado attorney will be able to guide you through these issues.

Time frame

Each divorce case is different. The particular circumstances and facts of each case will dictate the amount of time it will take to be for a divorce to be granted. Colorado has a minimum “cooling off” or waiting period. As a result, the Court will not enter a decree and finalize the divorce until ninety days has passed after the petition for dissolution of marriage was filed. In the interim, the parties may seek short-term solutions regarding child support, maintenance, and parenting time through stipulated agreements or having the Court issue temporary orders.

Separation agreements

A separation agreement is a legal document that governs many aspects of the parties’ relationship once they become legally separated or divorced. Parties may use the separation agreement to resolve a variety of issues, such as parenting children, division of marital property and debts, child support, maintenance, and tax considerations. All matters addressed in the separation agreement should be thoroughly examined before the document is signed and becomes legally binding. Entering into an agreement hastily, in order to put an end to a painful relationship may have grave consequences, often requiring future legal action.

Because entering into a separation agreement is voluntary, its terms may obligate a person to more than the law would require or cause a person to waive certain rights. This consideration may be especially important with respect to maintenance, child support, and division of certain assets such as retirement benefits, including military retired pay. It is critical to have an experienced Colorado attorney draft or review the separation agreement before the document is signed or submitted to the Court.

Enforcing a separation agreement

Once a separation agreement is approved by the Court, it becomes an order of the Court. In some cases ex-spouses do not comply with the order. In those cases, an attorney is needed to gain the ex-spouses compliance. In some cases, an attorney can help Court identify why the party is not complying with the order and help develop a solution to gain his or her compliance. However, in some cases the only option is to file a Motion for Contempt to force the ex-spouse to comply with the order. If the Motion for Contempt is granted, the Court will often impose sanctions, including jail and/attorney fees, against the ex-spouse.

The party seeking a contempt citation must demonstrate that the other ex-spouse has knowledge of the order, willfully violated the order, and has the ability to comply with the order. Contempt remedies can be punitive or remedial. In other words, the Court may enter a new order that requires some type of action by the offending party, impose attorney fees, or impose a jail sentence and/or a fine. An experienced Colorado attorney can help you file or defend a contempt action.

Common law marriage

Colorado is among the minority of states that recognize common law marriage. Unfortunately, Colorado statutes do not define what constitutes a common law marriage. Establishing a common law marriage is a facts intensive endeavor. There is no specific time requirement that transforms cohabitation into a common law marriage. Instead, a common law marriage requires the mutual consent of the parties to enter a marital relationship, along with their open assumption of a life as husband and wife. Consequently, Colorado Courts will consider the couple’s reputation in the community as “Mr. and Mrs.” The Court will also consider the parties actions. For instance, whether the parties wear any type of ceremonial rings, whether the parties filed joint tax returns, opened bank accounts together, purchased a home together, or did similar acts evidence a commitment to each other and/or recognized each other as husband and Wife.

There is a statutory age restriction that applies to common law marriages contracted after September 1, 2006. Under the law, both parties must be at least 18 years of age at the time of the common law marriage.

Dissolution of a common law marriage

Once established, a common law marriage bestows the same rights and responsibilities on the spouses as traditional (statutory) marriage. If a couple has common law marriage, the dissolution procedure for a common law marriage is the same as for a statutory marriage. An experienced Colorado attorney can assist you in this process.

Jurisdictional requirements for a Colorado Court to grant a divorce

In order to grant a divorce, the Court must have subject matter over the parties' marriage and personal jurisdiction over the parties. In some case, a spouse will claim that this requirement has not been satisfied and will challenge the Court's authority to proceed with the divorce action. An experienced Colorado attorney can help you determine whether Colorado is the appropriate jurisdiction to grant the divorce.

For a Colorado Court to exercise jurisdiction, at least one spouse must be domiciled in Colorado for at least ninety days prior to filing a petition for dissolution of marriage. "Domicile" is a matter of intent; hence, neither physical presence in the state nor lack thereof is determinative. What matters to the Court is the spouse's intent to reside in Colorado. Therefore, in order to decide someone's domicile, the Court may consider factors such as being registered to vote in Colorado, obtaining or retaining a Colorado driver's license or vehicle license plates, owning real estate in the state, and making representations to third persons about being a permanent resident of Colorado.

Second, the other spouse must be provided adequate notice of the divorce. A spouse is provided adequate notice if he or she is personally served in Colorado with a summons and a copy of the petition for dissolution of marriage or waives service in writing. Out-of-state service may be sufficient depending on the person's contacts with Colorado and his or her activities within the state. For instance, even if a spouse has left Colorado, the Court may find that he or she maintains a matrimonial domicile in the state if the other spouse and children have not moved away. It is important to note that in cases where one of the spouses is not a Colorado resident, a Colorado Court may lack authority to adjudicate all aspects of a dissolution proceeding.

Divorcing an out-of-state or absent spouse

A Colorado Court may obtain jurisdiction over an absent spouse by serving that spouse through publication. However, some effort must be made to locate the absent spouse. Sometimes a private investigator may help locate an absent spouse. An experienced Colorado attorney can assist you in this process.

As an additional consideration, if a spouse is in another state, that state may have jurisdiction over dissolving the marriage as well. If the out-of-state spouse meets his or her state's requirements for granting a divorce and decides to file a petition, additional issues arise with respect to which jurisdiction may proceed with the action.

Attorney's fees in domestic cases

A family law attorney will generally charge clients based on an hourly rate. The client pays the attorney a retainer. The retainer is deposited into the attorney's trust account. The attorney can only withdraw funds from the trust account after he or she has earned the fee.

Covering the spouse's attorney's fees

A Court may apportion the cost of attorney's fees between the parties, requiring one to pay a reasonable amount of the other's fees. The purpose of such an order is to place the parties on an equal financial footing with respect to the dissolution proceedings. Therefore, in deciding whether to award attorney's fees, the Court considers the parties respective economic circumstances.

Military couples

Although military couples who divorce are subject to Colorado law, a host of special considerations arise by virtue of one spouse serving in the Armed Forces. An experienced Colorado attorney can determine what military issues are relevant in your case.

For instance, an experienced Colorado attorney will be well-versed in the laws that apply specifically to service members and military families. Among such legislation are the Service members Civil Relief Act and the Uniformed Services Former Spouses' Protection Act.

Moreover, the military lifestyle and demands placed on service members and their families may have legal implications. For example, the need to make PCS moves may bring up jurisdictional issues. Military members are also subject to deployment with little, if any, notice. Therefore, parenting plans should take into account this exigency.

Military retired pay is an important benefit of service in the Armed Forces. In order to divide military retired pay, Colorado Courts have devised a formula, known as *Gallo*. The *Gallo* formula takes into consideration the length of a spouse's military service and the years of marriage that overlapped with the years of military service. If there is perfect overlap between the two, the other spouse is entitled to half of the military retired pay minus any qualified deductions. In some cases a veteran will receive veteran's benefits. The receipt of veterans' benefits can have a significant impact on the value of the military retirement. An experienced Colorado attorney can help preserve the spouse's interest in the military retirement and require the military spouse to indemnify the spouse for any loss of value.

PROPERTY DIVISION

Financial documents necessary in the dissolution action

Colorado law requires divorcing spouses to fully disclose their assets and property. Therefore, the dissolution process involves certain mandatory disclosures. Within 40 days of filing a petition for dissolution of marriage, both parties must exchange financial information regarding their assets, liabilities, income, and expenses. Part of these disclosures is a financial affidavit that summarizes all of this information.

Other relevant documentation may include tax returns, pay stubs, bank statements, real estate documents, and pension/retirement plan information. Additional discovery may become relevant later on in the proceedings and be requested by the other party and/or ordered by the Court. An experienced Colorado attorney can help you determine what documents you need to provide and assist you in preparing the required disclosures.

Marital property

Generally, marital property is all property acquired during the marriage. There are property categories, such as inheritance and gifts that are excluded from marital property. Additionally, any appreciation in value of separate property during the marriage may also be considered marital property. Furthermore, complications may arise if a spouse's separate property becomes so commingled over time with marital assets. Identifying what does and does not constitute marital property is an important step in the dissolution process. An experienced Colorado attorney can help you determine what constitutes marital property in your case.

Protecting marital assets and preventing adverse action

Once a party is served with a Petition for Dissolution or a Petition for a Legal Separation, a temporary injunction will go into effect to preserve the status quo. The temporary injunction: (1) prevents either party from transferring, encumbering, or disposing marital property; (2) prevents either party from harassing or

molesting the other party; (3) prevents either party from removing the minor children from the state without written permission of the other parent; and (4) prevents either party from cancelling, modifying, or withholding payment for insurance (health, home owners, renters, automobile, or life) without a 14-day advance notice and the written consent of the other party.

Additionally, the Court will conduct a status conference within 40 days of filing the petition for dissolution. At the conference, the Court will inquire whether the parties have any issues that need to be addressed. The Court may then enter any orders necessary to prevent harm, order property appraisal, and set a hearing to establish temporary orders that will govern the parties' conduct throughout the divorce proceedings. An experienced Colorado attorney can help you protect your assets.

Division of marital property

Divorcing or separating spouses should seriously consider how the property accumulated throughout the marriage will be divided. They should also take into account the impact that this decision will have on their finances. For instance, instead of one house payment, a divorced or separated couple will have to make two, which will dilute their resources. An experienced Colorado attorney can help you examine these issues and guide you through the division process.

The preferred approach to dividing assets is for the spouses to come to an amicable agreement. However, such a resolution is not always possible. The Court may give the parties some additional prodding by, for instance, mandating that the parties undergo mediation. Despite mediation, spouses may still disagree about the value of their assets, their fair division, or even whether an asset is marital property.

If disputes continue, contested issues are litigated before the Court. The Court will try to reach a fair and equitable, but not necessarily equal, division of the marital property. In order to do so, the Court will consider factors such as the age and health of the parties, the contribution of each spouse to the acquisition of the assets (working outside or in the home), dissipation or misuse of marital assets by either party, the duration of the marriage, the specific sources of income of the parties, the value of the parties' separate property, and the standard of living of the parties.

Division of out-of-state property

In cases involving a non-resident spouse, a Colorado Court may still divide marital property located within the state. However, in order to divide marital property located outside of Colorado, the Court needs to have personal jurisdiction over the absent party. For purposes of dividing property, personal jurisdiction over an out-of-state resident can be obtained through adequate notice of the dissolution proceedings, meaning personal service in Colorado or waiver of service.

Division of debt

Generally, marital debt is all debt acquired during the marriage. The Court will try to allocate the debt between the parties in a fair and equitable manner. t. A Court will consider the debt associated with a particular asset when it divides marital property; therefore, whichever spouse is awarded the property will also receive the corresponding debt. However, a Court may consider special circumstances that would render such a division unfair.

If the debt is not associated with a tangible asset, the Court may consider who created the debt, who is bound by the contract for its payment, who enjoyed the benefits of the debt, and who has the ability to pay the debt. Moreover, a Court may also apportion between the parties any tax liabilities. An experienced Colorado attorney can help you navigate these considerations and obtain an equitable distribution of marital debt.

MAINTENANCE

Awarding maintenance

Maintenance, also known as alimony or spousal support, offers ongoing support to a former spouse following the dissolution of marriage or a legal separation. An experienced Colorado attorney can help you determine whether a maintenance award is appropriate in your divorce.

Agreements between the parties regarding maintenance are subject to the Court's approval. If the parties cannot reach agreement on the issue, the Court may order that maintenance be paid. However, before addressing the need for maintenance, the Court is required to have divided the divorcing couple's property and debts.

A Court may award maintenance only if a spouse lacks sufficient property to care for his or her reasonable needs and is unable to support him or herself through appropriate employment. In making the decision the Court will take into account considerations such as the age, health, financial resources, employment prospects, and earning capacity of the party seeking maintenance, any child support awarded to the party seeking maintenance, along with the duration of the marriage, the standard of living established during the marriage, and the other party's ability to make the payments. Marital misconduct of either party is not a factor. A maintenance obligation expires upon the death or remarriage of the recipient spouse, unless ordered otherwise.

CUSTODY

Parenting time or custody

Divorce creates new living arrangements for the divorcing spouses and their minor children, which forces the parents to divide the time they spend with the children. Instead of using the terms "custody" or "visitation," Colorado law refers to "parenting time."

While parenting time is first and foremost the child's right, Colorado law recognizes the importance of both parents and encourages each parent's frequent and continuous contact with the children. Each parent is entitled to parenting time unless it would physically or emotionally endanger the child.

Parenting time arrangements or parenting plans can be established by agreement of the parties. Where the parties cannot overcome their differences unassisted, they may pursue mediation. Mediation allows a neutral third party to facilitate negotiations in the hopes of reaching a mutually acceptable agreement.

If the parties submit a contested parenting time matter to the Court, the judge will consider the child's best interests in making parenting time determinations. The Court, guided by a comprehensive set of rules, will take into account factors such as the desires of the parents and the child, the child's integration into the community, the location of the parents, credible history of domestic abuse, the parents' ability to place the child's needs ahead of their own, and each parents' ability to encourage love and affection for the other parent.

In order to establish a parenting plan, the Court may seek the assistance of independent experts such as Child and Family Investigators (CFIs). Such experts may be appointed either by the Court or at the agreement of the parties to render an opinion regarding the child's best interests.

An experienced Colorado attorney can advise you on different parenting plans and help you determine which plan is the best for your divorce.

Decision-making regarding the child's upbringing

Colorado Courts recognize joint and sole decision making responsibilities. Under joint decision making, the parties shall the responsibility to exercise decisions regarding the children s healthcare, education, religious training, or extracurricular activities. Under sole decision making responsibilities, one parent makes those decisions.

All agreements between divorcing spouses regarding children are subject to Court approval. If parental decision-making comes before the Court as a contested issue, the judge will enter orders based on the child's best interests.

An experienced Colorado attorney can help you formulate a decision-making arrangement that suits your situation.

Abduction prevention

Colorado has passed special legislation to prevent the abduction of children. The Uniform Child Abduction Prevention Act (UCAPA) is an emergency statute that allows for quick action in an abduction situation. UCAPA applies regardless of whether a divorce decree has already been granted or not. Its provisions are especially helpful in cases where there is no Court order of parental responsibility to enforce, because no such order has ever been entered.

UCAPA defines abduction as either the wrongful removal or the wrongful retention of a child. Wrongful removal means the taking of a child in violation of parental rights, while wrongful retention is keeping or concealing a child in violation of parental rights.

In order to grant relief under UCAPA, the Court must find a credible risk of abduction. In order to make this determination, the Court will consider the age of a child, the potential harm from the abduction, any evidence of domestic violence, and legal and practical difficulties of returning the child if abducted.

UCAPA provides a number of remedies in abduction situations. The Court has the statutory authority to enter orders that are reasonably calculated to prevent the abduction and give due consideration to the rights of the parties. The abduction prevention measures include limiting a party's ability to travel or leave the state or another geographic area, requiring a party to provide a travel itinerary or copies of travel documents, passport restrictions, ordering supervised visits, or the entry of an ex-parte Order of Custody (done in the absence of the wrongdoing party). If you suspect abduction, an experienced Colorado attorney can help you petition for abduction prevention measures pursuant to UCAPA or obtain other legal relief.

CHILD SUPPORT

Child support determination

A child has the right to child support, and both parents have the duty to provide that support until emancipation. Colorado has established child support guidelines that determine the minimum amount of child support due in a given case. An experienced Colorado attorney can apply the guidelines to your situation and calculate the correct child support amount.

Child support and parenting time are separate issues. In other words, the resolution of one issue does not depend on the other. Rather, the formula that calculates the amount of child support takes into account the standard of living during the marriage, the age and needs of the child, gross income of both parents and child, and the amount of time the child spends overnight at each parent's home. When calculating child support, the guidelines give credit for health insurance coverage and payment of daycare expenses.

The parties may agree on child support payments that exceed the guidelines; however, they may not agree to lower the payments. The parties may also, by agreement, extend child support past the age of emancipation. A child support calculation must be submitted for Court approval.

Non-payment of child support is a punishable act. Child support can be enforced through a motion for contempt. It cannot be enforced by denying a parent parenting time.

Enforcing a child support order

Past-due child support is referred to as child support arrears or arrearage. The Court takes non-payment of child support very seriously. Being found in contempt of a child support order may even result in punitive sanctions, including a jail sentence.

There are several remedies available for collecting child support arrearage. Income assignment or garnishment provides an effective tool for recovering past-due payments plus any accumulated interest. A less common and more extreme alternative is the attachment of non-exempt property belonging to the child support provider, which gives the Court control of the property. Moreover, the Court may order the posting of a bond or other security in order to ensure payment. An experienced Colorado attorney can help you access your options for enforcing a valid child support order.

POST-DECREE MATTERS

Maintenance modification

Unless expressly stated otherwise, Maintenance orders are modifiable m.. An experienced Colorado attorney can help you determine whether a modification of maintenance is appropriate in your case.

The party seeking modification must show a substantial and continuing change in circumstances that renders the initial award unfair. The frugality of the spouse receiving maintenance does not necessarily constitute proper basis for modification; however, the Court may consider the recipient's total living expenses including savings for emergencies, retirement, and replacement of automobiles or appliances.

A different standard applies if the Court previously reserved the right to review the maintenance provisions at a specific later time or upon the occurrence of an anticipated future contingency such as retirement or graduation. Under these circumstances, the order may be modified without the showing of unfairness. Instead, the same factors apply as in the original maintenance determination.

Child support modification

For a variety of reasons, Child support orders as also modifiable. An experienced Colorado attorney can guide you through the modification process.

The party seeking a child support modification must demonstrate a substantial and continuing change in circumstances or that the existing order does not address medical support issues such as health insurance or uninsured medical expenses. The alleged change in circumstances is substantial and continuing only if the application of child support guidelines, codified in Colorado Revised Statutes § 14-10-115, results in at least a 10% difference (either an increase or a decrease) in the monthly amount of child support owed.

Parents who are divorced in another state and move to Colorado, under certain circumstances, can have the out of state decree registered in Colorado.. As a result, a Colorado Court may have jurisdiction to enforce and modify a previous child support or parenting time order. . An experienced attorney can assist with registering an out-of-state decree in Colorado in order to proceed with the modification.

Modification of parenting time or parental decision-making

Colorado Courts have the authority to modify their orders regarding parental responsibilities (parenting time and parental decision-making). However, the applicable standards differ depending on the type of modification sought.

Decision-making authority can be modified if the Court finds any of the following: (1) the parties agree to the modification; (2) a modification of parenting time creates a need for a different decision-making arrangement; (3) with the other parent's consent, the child has been integrated into the home of the parent seeking modification; or (4) a change in decision-making practice warrants modification, or the current arrangement endangers the child.

In deciding the integration issue, the Court will consider the totality of the circumstances. This means that the Court will look at the frequency, duration, and quality of the child's contact with each parent, the identity of the person making the decisions, and the child's views regarding his or her attachment to each household.

A minor modification of parenting time may be made if the change would be in the child's best interests. The best interest standard applies in cases where the parties share parental responsibilities equally and neither was awarded the majority of parenting time.

However, the standard becomes much higher if a parent seeks a major parenting time modification. A major modification is one that would change the primary residential parent, awarding majority parenting time to the parent who originally had only minority parenting time. A party requesting to become the primary residential parent over the other party's objection must demonstrate that the current parenting time arrangement endangers the child's health or emotional development.

Parents who moved to Colorado after a divorce need to note that the state that issued the original orders allocating parental responsibilities retains the authority to modify them. This means that a Colorado Court has to establish jurisdiction over these matters before it may affect any changes. An experienced Colorado attorney can assist with registering an out-of-state decree in Colorado in order to proceed with the modification.

Jurisdiction to modify the parental responsibility provisions where parents live in different states

A majority of states, including Colorado, have enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which governs jurisdiction over custody determinations. The child's "home state" has priority in establishing jurisdiction. A home state is the state in which the child has lived since birth or for at least six consecutive months before initiation of the custody proceeding. If a child does not have a home state, the UCCJEA also provides other criteria for establishing jurisdiction, such as examining the significance of the child's connections to each state. The UCCJEA also allows for temporary emergency jurisdiction if a child is abandoned or needs protection from abuse. An experienced Colorado attorney can apply the UCCJEA provisions to your case.

Relocation outside of Colorado

Relocation can occur when one spouse wants to move out of the state with the minor child. All relocation cases are decided based on the best interests of the child. There is neither a general presumption in favor of the child relocating with the primary residential parent nor one in favor of the child remaining in Colorado close to the other parent. Therefore, the Court must consider the specific circumstances in each case and all of the relevant factors, among them. The burden is on both parents to demonstrate that it is in the child's best interests to either stay in Colorado or relocate. An experienced Colorado attorney can help you file or defend a motion for relocation.

Additionally, a parent choosing to relocate outside the state of Colorado with a child must notify the other parent of the relocation as soon as is practical. The notice must include the destination of the proposed

move, the reason for the relocation, and a proposed parenting plan that addresses the issues involved in long-distance parenting.

For more information, contact experienced Colorado Springs family lawyers at Anderson & Travis.

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