

Ten Things to Know about Divorce in Missouri



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TEN THINGS TO KNOW ABOUT DIVORCE IN MISSOURI

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Filing for Divorce in Missouri

✚ In Missouri, divorce is referred to by the legal system as a “dissolution of marriage.” You are eligible to file for divorce in Missouri as long as you or your spouse has been a resident of the State of Missouri for at least 90 days. Once this requirement is met, a “Petition for the Dissolution of Marriage” is filed with the court to initiate the divorce process.

✚ *Fault or No Fault?*

- While some states may require a showing of “fault” such as adultery or physical abuse, Missouri allows couples to get divorced without proving any “fault” of either party. All that must be proven is that the marriage is “irretrievably broken” and that there is no reasonable likelihood that it can be preserved.



How is property divided?

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✚ When a couple goes through a divorce, they must address the question of how their property will be divided. Missouri is known as a “dual property” state. This means that for purposes of divorce, property is separated into two categories: “marital” and “non-marital” property. Marital property is all of the property that was acquired by either spouse during the marriage. Thus, generally, even if a title is in one spouse’s name, as long as the property was acquired during the marriage, it is considered marital property. Non-marital property is usually property that was acquired by one spouse before the marriage. Inherited property or gifts, are also generally considered non-marital property. Prenuptial agreements entered into prior to the wedding may deem property non-marital as well. Non-marital property is usually not subject to division during a divorce.

✚ There are two basic ways that property can be divided during a divorce. The first and often most cost effective way to divide the marital property is for the parties to reach an agreement on how they want to divide the property. This is often done through mediation or through negotiation by the attorneys. The other option is to have a trial and let a judge decide using the “equitable distribution method.” This means that a judge will divide marital property in a fair and reasonable way. However, this does not mean that it has to necessarily be equal. A judge does not have to assign each spouse 50% of marital property and the judge can consider factors such as each of the spouses’ economic situations, the value of each of the spouses’ non-marital property, and even the spouses’ behavior during the marriage.

✚ Debts will also need to be divided in the divorce case. Debts can be divided by the agreement of the parties or divided by the court.





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Will I receive or have to pay spousal support?

- ✚ Spousal support in Missouri is called “maintenance.” Maintenance can be awarded to either spouse if the court finds that the spouse seeking maintenance lacks sufficient property to meet their reasonable needs or is unable to support themselves through appropriate employment. There is no master formula for the calculation of maintenance and it is determined on a case-by-case basis. Factors that a judge may consider include the financial resources of the party seeking maintenance, the time necessary to acquire appropriate employment, the comparative earning capacity of each spouse, the standard of living established during the marriage, and the duration of the marriage. The court has the discretion to award or not to award maintenance for as long or as little amount of time as deemed reasonable. This can be referred to as permanent or temporary maintenance.



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How is child custody determined?

- ✚ There are two types of custody in Missouri: legal custody and physical custody. Legal custody includes decision-making rights, responsibilities, and authority relating to the welfare of the child. Physical custody is the award of time during which a child resides with or is under the care and supervision of each parent. In Missouri, child custody is based on the “best interests” of the child. There is a presumption in Missouri that it is in the best interest of the child to award joint physical and joint legal custody to both parents due to “the child’s need for frequent and meaningful contact with each parent.” However, factors such as the parents’ wishes, the child’s wishes, either parent’s intention to relocate with the child, a history of abuse, and the child’s adjustment to home, school and community may be considered when the court is determining what custody arrangement is in the best interest of the child.





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How is child support calculated?

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- ✚ In Missouri, child support is generally calculated using a “Form 14.” The Form 14 is a set of guidelines that calculate a child support amount based on the number of children, and certain factors, which include the following:
 - ✓ Monthly gross income of each parent and any adjustments
 - ✓ Maintenance being paid or received
 - ✓ Child care costs
 - ✓ Health insurance costs
 - ✓ Agreed upon or court-ordered extraordinary medical or child rearing costs
 - ✓ Custody arrangement, including number of overnights with each parent
- ✚ While the Form 14 amount is the presumed amount of child support, the parties may agree on a different amount or the court may award a different amount if the amount is found unjust or inappropriate.

How long does it take to finalize a divorce?

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- ✚ Every divorce case is different. However, in an “uncontested divorce” case where the parties have already reached an agreement regarding the relevant issues in their divorce (property and debt division, custody, child support, etc.) prior to initiating the divorce process, the case can often be finalized within a few months of filing. Missouri requires a thirty day cooling off period before a case can be finalized. This means no divorce case can be finalized in less than thirty days from the date the other spouse has been served a summons or waives service.
- ✚ If the case is contested, meaning the parties can’t agree on how to amicably resolve the issues in their case, then the case will be decided by the court through a trial. This process can be time consuming and very expensive. The parties can anticipate the case generally taking a year or more to be finalized.
- ✚ Fortunately, many cases that start out being contested, can ultimately be resolved amicably through a negotiated settlement agreement.





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How much will it cost to get a divorce?



- ✚ The cost of divorce varies from case-to-case. The cost will depend on the complexities and issues with each specific case. A case that only deals with property and debt division will generally cost less than a case that also involves disputed issues of child custody, support and maintenance issues. However, the biggest factor in determining the cost of a divorce depends on whether the parties are able to reach a settlement without the need of a trial, and if so, at what stage of the court proceedings they are able to reach an agreement. The parties will save on attorney's fees if they can reach an agreement sooner rather than later. Be sure to talk with an attorney about how they handle fees and their hourly rate. Their fees should be based on their experience as a family law attorney.

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What is a parenting plan?

- ✚ A parenting plan is a document that outlines each parent's roles and responsibilities regarding the children. This document contains a detailed residential schedule including a holiday and summer break schedule and a custody agreement including times and places for exchanges, a transportation plan, procedures for schedule changes, and communication guidelines. This parenting plan must be approved by the court. If a plan cannot be agreed upon, the court will determine one based on the best interests of the children.

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What if I want to relocate to another state with my children?

- ✚ Missouri courts can be relatively strict about parental relocation. Generally, Missouri requires written notice and permission from the other parent prior to relocation to another state or city. If permission is denied, the parent seeking to relocate must prove to the court that the proposed relocation is in the best interest of the children. This can be a challenge because Missouri courts presume that "frequent and meaningful contact" with both parents is in the best interest of the children. Thus, because relocating to another state or city may make it more difficult for the child to have such contact with both parents, a court may find that the relocation is not in the best interest of the child. Nonetheless, the courts can do and grant relocations. If you have a relocation case, it is critical that you find a good family law attorney who has litigated many cases, including relocation cases.





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Do I need an attorney?

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✚ There is no requirement in Missouri to hire an attorney for a divorce. However, it is strongly recommended that you hire an experienced divorce attorney to represent you. Choosing to represent yourself may hinder you in negotiations and in the courtroom, especially if your spouse is represented by an attorney.



*Missouri laws regarding child custody, child support, maintenance, and property division can be complicated. Without the assistance of an experienced divorce attorney, you could be seriously disadvantaged. **Thomas Mingus** have been practicing family law for over twenty years, and would be happy to discuss the specifics of your case with you.*

*If you would like more information or you are ready to schedule a consultation, contact Thomas Mingus at **573-443-5202** or by email at **Tom@minguslaw.com**.*

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