

THE COMPLETE GUIDE



Domestic
Violence

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DIVORCE GUIDE

The purpose of this divorce guide is to give you information regarding significant issues and a legal road map to better help you understand the divorce litigation process.

You will want to meet with a competent Divorce Attorney who can advise you of your rights and obligations under Utah Law. Once you have retained an attorney the following steps would be the process to get a divorce in Utah:

LEGAL ROAD MAP:

First, the Complaint or Petition is filed. Then an Answer and Counter-complaint is filed within 21 days of being served. Our firm will ensure that we draft a Petition that protects all issues that might be pertinent to your case.

Is it important to be the first one to file? This is a question that is asked often when people inquire about getting a divorce. In Utah if you are the one to file first you are called the Petitioner. As the Petitioner you will be responsible for paying the initial filing fee of \$318.00. Also, once designated as the Petitioner you will remain the petitioner forever. Thus, if a modification is filed by an opposing party year later, you will remain the Petitioner. There is no compelling evidence indicating that being the petitioner helps your case. However, doing so allows you to control the beginning of the case. Therefore, if you have the opportunity to file first CoilLaw will support it.

Second, both parties will exchange documents called initial disclosures and the financial declarations. Ours will be due 14 days after your spouse's answer is filed. Our firm will send a letter with a blank financial declaration explaining exactly what documents are needed. After our financial declarations have been tendered, your spouse will have 28 days to submit their complete disclosures to us.

Third, set the mediation. Mediation is where both parties meet with their attorneys at a mediator's office. The mediator, tries to settle the entire divorce litigation at mediation. Mediation is a great opportunity to resolve many of the issues (or all of them); therefore, it will benefit us to be the utmost prepared. Our firm will set a meeting 2-3 days prior to the mediation itself to discuss more specifically what you will and will not be willing to agree upon. I will usually ask you to tell me in detailed terms not only what you want in an ideal world, but also what you are willing to accept as a compromise.

The mediator will place your ex-spouse and their respective attorney and/or us in another conference room another conference room to minimize potential conflict. The mediator will typically begin by obtaining a proposal from the party filing the Petition. He will

then confer with the opposing party, present our proposal(s) to them, and discuss whether they are willing to agree to the proposal(s)' terms. During Mediation, we are not required to agree to anything and the mediator has no authority to force us to do so. Their role is simply to be a neutral facilitator or go-between. In fact, the mediator is not permitted to be called by either party as a witness in the case and cannot be forced to disclose the negotiations during mediation to the Court. Likewise, we cannot discuss in Court what proposals either party made, as it is not permissible to talk about settlement negotiations in Court. The mediator will encourage you to settle outside of court, even if you have to make concessions, rather than putting it all in the judge's hands with no control over the outcome. This can sometimes make you feel as though the mediator is "ganging up" on you with the other side, but rest assured they are having the same conversation with them in the other room. If the parties can reach an agreement on any or all issues, we will typically write something up then and there for everyone to sign so as to avoid someone backing out of the agreement. We would then memorialize the agreement in a formal stipulation to be filed with the Court along with a proposed order and request that the Court enter the order.

Remember, a divorce can settle at any time in the proceedings. I always recommend that we prepare and exchange settlement proposals in an attempt to conclude the litigation peacefully. If we cannot reach an agreement, we will proceed to hearing.

Fourth, if mediation fails, and we cannot reach an agreement, we will begin the discovery process. During this process we can send Interrogatories and Request for Production to your ex-spouse (collectively called written discovery) and we can take their deposition.

Fifth, the parties update written discovery again and proceed to trial. Only about 2% of all cases in Utah go to trial. However, if either party unwilling to cooperate trial is necessary. It is imperative that you hire an attorney that is comfortable in the courtroom to best represent your interests and to advocate for what is fair and reasonable.

Temporary Orders, Of course, hearings and motions on various issues throughout the divorce, such as Motions to compel discovery, temporary support hearings, and temporary custody and parenting hearings happen within the road-map above. Guardian ad Litem, and experts can be retained at any time in the litigation. It is most common for one party or the other to request from the Court temporary direction on what should be done with your assets or children for the pendency of the divorce. At any time after step one; either party can make a Motion for Temporary Orders (MTO).

At the onset of your case our firm will discuss if Temporary Orders need to be filed immediately. Sometimes there are issues that need to be urgently addressed and cannot wait for an agreement by parties.

Divorce Education, everyone who has children must attend a parenting seminar prior to concluding their divorce litigation. Our firm will send you a calendar of the class time and schedule when you are ready to attend. The class must be taken prior to the court making Temporary Orders. We suggest all clients with children take the class immediately so that we do not prolong court hearings.

LEGAL ISSUES:

Additionally, with the Roadmap above I'd like to convey some general legal concepts that will apply to your case. Every case has different issues that they are facing. However, below are the most addressed issues facing you in your divorce:

Child Related Issues: When it comes to your children, the Court will determine both physical and legal custody., Physical Custody is when they are with you and when they are with your spouse. Legal custody is who should make major life decisions for them. The Court will endeavor to create orders that are consistent with what is in your children's best interest. In doing so, the Court will consider the following:

- Past patterns of interaction between parents and children
- Current circumstances
- The ability of the parents to put the children ahead of themselves and their own interests
- Level of conflict between the parties
- Each parent's ability to encourage the relationship between the children and the other parent
- What the child needs from both parents
- How close your former spouse and yourself live from one another
- Each parent's ability to safely parent the children

Begin thinking about this so you can consider what you would like in custody rights in the event that your case does not settle and we must proceed to court.

Our firm will discuss with you what you envision your parent time looking like with your children and what you believe the other party shall have. We will discuss issues that you may have with the other party exercising parent time and what can be done to alleviate some of the issues you may have.

Financial Issues: At the forefront are child support and alimony. Child support is a shifting of income between households so that the children do not see a decline in financial circumstances after the divorce.

- Child support is income driven and based on a calculation that incorporates you and your former spouse's income or potential income and the number of overnights you have with the children.
- Alimony is a shift of income from the higher earning spouse to the lower earning spouse, if the lower earning spouse is unable to meet their financial needs. As mentioned, income plays a part in both child support and alimony, and Utah allows us to argue that the Court should "impute" a higher income to a spouse when that spouse is not working at their capacity. We will continue to discuss these topics as we move forward.

Both these issues are very subjective in the court's eyes and can vary greatly depending on each case. Therefore, it will be necessary to hire a knowledgeable attorney that can go through each element to ensure that child support and alimony are determined fairly. Other than Custody, Child Support and Alimony are litigated greatly and one will want to ensure that their attorney has all the facts and information necessary to argue for the best result possible.

Property Issues: When dividing the property in the marital estate, the Court will endeavor to allocate it "equitably." This does not necessarily mean equally, but that is often the result. The marital estate should be distinguished from what is separate property. Generally marital property is anything accumulated during the marriage, regardless of how it was acquired or in whose name it was acquired or maintained, with only a few exceptions. The law does recognize "separate" property as well, and generally speaking, separate property is anything that you came to the marriage with as well as any inheritance or gift you received during the marriage. You should be thinking about what you might claim as separate property when you are working on your Financial Declaration. Keep in mind that even if separate property was kept separate, the increase in value of that property is also marital under most conditions. Sometimes, people take separate property and "gift" it to the marriage.

When separate property is gifted to the marriage it loses the protection of being yours alone and becomes "marital" and, therefore, subject to division. The most common way of gifting separate property to the marriage is by placing it in joint title. We will work on distinguishing between separate properties and marital when we are formulating goals and strategies.

Of course, we will also address the allocation of debt between you and your wife. Generally, secured debt will go with the asset it is attached to, and, therefore, is often paid by the person who is awarded the asset. Unsecured debt is allocated, also equitably, taking into account what the final financial circumstances are of each party.

We will also need to address how attorney fees and costs are allocated. The law allows an allocation of attorney fees based on disparity in incomes and overall financial circumstances. The point being that a financially advantaged spouse may have to share in the financially disadvantaged spouse's attorney fees or costs. These costs can be allocated while

the divorce is pending or at its conclusion. While men often feel that “they” are paying for their wife’s attorneys, essentially this is really just a tool for making shared marital resources available to each party. Right now, everything that comes into the home is marital, including incomes. Sometimes this perspective can help when it comes to cost and attorney fees. The other avenue is where attorneys’ fees come into play is at any hearing. If one party wins the issues requested, they can request that the losing party pay the attorney’s fees for that hearing. The purpose of this is to encourage parties to settle claims and not take unreasonable positions.

Necessary Research: In Utah, we deal with a wide body of case law and statutes that helps inform our goals and strategies generally and broadly. I rely on the language of the statute, case law, as well as my own understanding gained through experience litigating in order to help develop a strategy in your case. And of course, we both work together on developing a strategy.

Utah law is consistently changing and you want a law firm that is on top of the changing laws to advise you the best possible.

CoilLaw will continue to work toward reaching all reasonable agreements we can to avoid as much time and expense as possible; however, we also need to prepare fully. Therefore, remember to constantly communicate with your attorney so that they are aware of all facts and information necessary to provide the best care possible.

CoilLaw, LLC encourages and empowers clients to take control of their future. We approach your case with the complete understanding that the decisions we make together will impact YOUR family and YOUR financial life.



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