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## **Divorce: What Are the Issues?**

This brief summary of significant issues offers a basic review of Arizona's divorce law. Please note, however, that each case has its own particular variations that can require uniquely-suited solutions. Whether you decide to proceed with a divorce or legal separation, a thorough understanding of how Arizona law impacts your circumstances is important and should be fully discussed with your attorney.

Although the information in this section is discussed in terms of divorce, it pertains equally to legal separation. These two actions have identical issues. The important differences are that a legal separation allows either spouse to remain on the other's health insurance plan and you and your spouse may continue to file a joint tax return. Since these differences can be significant, you should carefully consider them before making a decision about how to proceed.

### **Marital Assets & Debts**

This can be a complex area of the law with multiple considerations. The completion of three distinct tasks helps to provide a road map for an appropriate distribution of the marital assets and debts:

- Identifying the Assets & Debts
- Valuing the Assets & Debts
- Dividing the Assets & Debts

#### ***Identifying the Assets & Debts***

Clearly identifying your assets and debts is the first requirement. This may be a relatively simple process if, for example, you and your spouse own a house, two cars and some furnishings. It may be more complex if you have retirement and pension plans, stock options, a business, an investment portfolio and unusual assets. Before the identification task is complete, all assets and debts must be fully disclosed and a determination made as to whether an asset is "community" property and, therefore, owned equally by you and your spouse, or whether it is "sole and separate" property and belongs to only one of you. Sometimes this is a straightforward assessment; however, there are times when it can involve complex tracing and accounting issues.



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### ***Valuing the Assets & Debts***

This task, like the first one, may be relatively simple or complex depending on the nature of your assets. Again, if you and your spouse own a house, two cars and some furnishings, the task of valuation is normally not difficult. However, to use the previous example, a valuation may be more challenging if your assets include retirement or pension plans, stock options, a business, an investment portfolio and unusual assets.

In situations where a valuation is complex, an expert is often hired to place a value on, for example, a residence, a business or a retirement plan. In dispute resolution processes like mediation and collaborative law, or when the attorneys agree to cooperate in the traditional adversary system, one expert is hired by you and your spouse. The situation can become problematic, however, when opposing attorneys fail to act cooperatively and hire their own experts. The expense in this situation is not only higher, but if the experts disagree, they can duel with each other regarding the disputed value of an asset. This is one reason why attorneys must use an array of strategies, including cooperative ones, if you and your spouse are to be well served.

### ***Dividing the Assets & Debts***

When Tasks 1 and 2 have been completed properly, the final task - dividing the assets and debts in an equitable way – can sometimes be more easily accomplished. Although there are exceptions, generally you and your spouse are each entitled to half the value of the community-owned assets, and each of you is responsible for half the community-incurred debts. There are many ways to divide assets and debts, and an attorney must be able to think creatively so that this division supports your particular needs. Before the property division occurs, your attorney may have to assist you with some general life planning so the assets you receive will support your life plan. This is another area where the attorney's skill in listening and understanding your underlying interests and needs becomes an invaluable tool.

### ***Parenting: Custody & Visitation***

As concerned parents will attest, the divorce arrangements for the children may have the greatest long-term impact on the newly-configured family. An attorney's role in guiding you through this sensitive area transcends that of legal technician. When it comes to helping you with decisions about children, your attorney should be part counselor and part child development expert, doing the utmost to understand and keep the children's best interests in mind. No area of domestic relations law requires more of an attorney than helping guide a parent in making the best possible arrangements for the children.



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The issue of parenting arrangements is complex and challenging and should be fully explored with an attorney experienced in custody and visitation matters.

### ***Questions to ask when determining parenting arrangements***

#### *How will the major decisions affecting the children be made?*

The issue of who makes the major decisions affecting the children falls into two categories - joint legal custody and sole legal custody. A court's joint legal custody order gives equal decision-making rights to both you and your spouse. It presumes you will communicate with each other and together make the major decisions that affect your children. A court's sole legal custody order may sometimes require both of you to first discuss major child-related decisions, but in the event disagreements exist, the final right to make these decisions lies with the sole custodial parent.

#### *When will the children spend time with each parent?*

Time Sharing schedules for the children - where they will live and how much time they will spend with each parent - can be relatively open-ended. For example, a court's time-sharing child access (visitation) order can range from a few hours on weekends with the non-residential parent to a schedule where the children spend 50 percent of the time with each parent. The latter arrangement is often called joint physical or joint residential custody.

If you and your spouse are communicating and cooperative, you may mutually change the schedule to reflect your children's changing needs whenever you wish. Problems arise when ex-spouses do not communicate with each other and significant tensions exist between them. In this circumstance, life can be filled with stress for you and your children. Whatever the unpleasant feelings you and your spouse may sometimes have toward each other, it is always preferable to put your differences aside when it comes to focusing on your children's needs.

Under the Arizona child custody statute, the general standards that are considered in making parenting arrangements for children are:

- The age of the children
- The parenting abilities of each party
- The quality of each parent's interactions with the children
- The parents' parenting history
- The wishes of an older child
- The mental and physical health of the parents



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- Which parent is more likely to support the other parent's frequent and meaningful contact with the children

### **Child Support**

Generally, Arizona law requires one spouse to pay child support according to a formula that is part of the Arizona Child Support Guidelines.

The primary factors included in the Arizona Child Support Guidelines formula are:

- The parents' gross incomes (or "adjusted" gross income if self-employed).
- How much time the children spend with each parent
- Whether the children have any special or extraordinary needs/expenses
- The cost of child care services
- The age of the children
- The cost of the children's medical insurance
- Whether alimony/spousal maintenance is being paid

While the Arizona Child Support Guidelines may seem fair or unfair to a paying or receiving spouse, for the most part the domestic relations judges closely follow these guidelines in determining the child support obligations.

### **Spousal Maintenance**

In a divorce or legal separation case in Arizona, spousal maintenance (also called alimony) can be awarded. In order for this to occur, the spouse who may receive spousal maintenance must meet certain criteria.

#### **Should Spousal Maintenance Be Paid?**

It may or may not be the case that you or your spouse meet Arizona's legal requirements for spousal maintenance. When the requirements for spousal maintenance are met, the spouse (who has a substantially higher income) will be required to assist the other spouse achieve reasonable economic independence. This may occur through the payment of short-term or long-term spousal maintenance, whichever may be appropriate under the circumstances. In Arizona, there is no formula to determine whether spousal maintenance should be paid. There are general legal guidelines, but at best they only point the way without providing specific answers. Because of this, an attorney must give your



circumstances careful consideration before making a spousal maintenance recommendation.

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The general legal guidelines that are used to decide whether spousal maintenance should be paid are:

- Does the potential receiving spouse have sufficient separate assets for economic independence?
- Is the potential receiving spouse able to be economically independent through appropriate employment?
- Is the potential receiving spouse taking care of the parties' small children?
- Has the potential receiving spouse contributed to the educational opportunities of the other spouse?
- Has there been a marriage of long duration?
- Is the potential receiving spouse of an age that precludes the possibility of economic independence?

#### ***How Much Spousal Maintenance Should be Paid?***

Since there is no formula in Arizona for determining the amount of spousal maintenance to be paid, answering the following questions may help you make that determination:

- What is the couple's standard of living?
- What are the potential receiving spouse's reasonable expenses?
- What portion of these expenses can the potential receiving spouse pay through his or her own employment or other income, including interest income earned from investments?
- What is the "shortfall" between the potential receiving spouse's expenses and what that spouse can independently contribute to meet these expenses?

Then consider:

- What is the potential paying spouse's income?
- What are the potential paying spouse's reasonable expenses?

Lastly:

- Can the potential paying spouse reasonably afford to pay the "shortfall" amount needed by the potential receiving spouse to meet his/her expenses and still have sufficient income remaining to meet his/her own reasonable expenses?



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If not:

- What other options are available to help the potential receiving spouse meet the "shortfall between income and expenses.

Your attorney should fully explore these questions to help you arrive at a reasonable spousal maintenance payment.

### ***How Long Will Spousal Maintenance Be Paid?***

In determining how long spousal maintenance will be paid, consider the following:

- What educational or employment plan will result in the potential receiving spouse either becoming employed and/or earning an income sufficient to support a standard of living reasonably similar to the one enjoyed during the marriage? You may need assistance from your attorney to help with this often-complex determination.
- How long will it take the receiving spouse to complete the plan?
- Is the plan reasonable given both parties' circumstances?
- Are the potential paying spouse's circumstances such that spousal maintenance can be paid for the time period requested?

### **Tax Consequences of Spousal Maintenance**

The spousal maintenance paid is considered income for the spouse who receives it, and that person must pay taxes on the amount received as if it were ordinary income. On the other hand, all amounts paid for spousal maintenance can be deducted from the taxable income earned by the paying spouse.

### **Effect on Child Support of Spousal Maintenance**

If the case involves children, the amount of spousal maintenance paid is also deducted from the paying spouse's income and added to the receiving spouse's income in calculating the child support obligation.

### **Consult Your Attorney about Spousal Maintenance**

Like parenting orders for children, spousal maintenance is an area of domestic relations law that requires an attorney's experience and skill in fashioning an order that is fair and workable. This means that a spousal maintenance obligation must be sufficient, if representing the receiving spouse, and it must not be overly burdensome, if representing the paying spouse.



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### **Other Common Issues**

In addition to the divorce-related issues previously discussed, there are a number of other common concerns and questions that should be addressed, answered and included in a final divorce or legal separation agreement.

The following issues should be considered in negotiating a divorce agreement:

- What about college or other higher education expenses for children?
- What about life insurance plans to ensure the payment of child support and/or spousal maintenance in the event of the paying spouse's death?
- Who will provide health insurance coverage for the children and what will the uncovered spouse do about health insurance after the divorce?
- After the divorce is over, what happens when the spouse who was responsible for a joint credit card bill does not pay it, and the credit card company tries to collect from the other spouse?
- What happens to the jointly held mortgage on a house if one spouse buys out the other's interest and becomes the new title holder?
- What are the relevant tax issues, including the following:
  - 1) Tax aspects of the transfer of property from one spouse to another.
  - 2) Tax ramifications for each spouse when spousal maintenance is paid.
  - 3) The most beneficial way to file income taxes.
  - 4) Who takes the child tax dependent deduction?
  - 5) Who has the responsibility for tax audits resulting in payment of back taxes or penalties for the years when the parties filed joint returns?
  - 6) Tax ramifications of dividing a retirement plan.
  - 7) What are the tax consequences of selling a house after a case is over?

### **Emotional Aspects of Divorce**

To one degree or another, there is often an emotional divorce happening at the same time a legal divorce is occurring. The dissolution of a marriage is a major life transition, and you and your spouse may handle it differently. Some people are quiet and deal with their thoughts and feelings internally. Others are demonstrative and lay everything out on the table. It may also be the case that you are in a different emotional stage of the transition process than your spouse. One of you may have been thinking about divorce for a longer period of time and already adjusted to the newly transitioning relationship, while the other is still coming to terms with the circumstances. Differing responses are to be expected and are considered normal.



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### ***The Grieving/Healing Process***

When it becomes clear that the relationship you counted on for love and support is no longer available, feelings of loss and grief can arise for you and your spouse. Being in denial that a divorce will occur, as well as having feelings of anger, confusion, sadness and eventually some level of acceptance are all part of the normal grieving and healing process. The time-line for getting through the emotional divorce is different for everyone. It is important that each of you respect and pay attention to whatever time-line is right for you in the emotional healing process. It is usually not helpful to compare yourself with others. Thinking "I am behind schedule" or "maybe I am missing something because I am not feeling this way or that way" can be an obstacle in the healing process. It is important for people who are moving out of a marriage relationship to honor their own unique way of handling the situation rather than thinking there is a "right" way to do it.

### ***Take Care of Yourself***

When going through an emotional divorce, it can be helpful to check in with a counselor, spend time with close friends or speak with those who have experienced this kind of loss. Taking care of yourself in emotionally and physically healthy ways can facilitate the healing process and reduce suffering.

### ***The Attorney's Role***

It is important within the context of a legal divorce that your attorney take into consideration your emotional response as well as the various "business" aspects of the situation. Pushing too hard or failing to sufficiently encourage you when support is needed can be confusing and make the settlement negotiations and legal issues more difficult to resolve. Your attorney's failure to listen can result in being at odds with you and this can be frustrating for both. Your attorney's listening skills and willingness to tailor the legal divorce to your emotional time table can sometimes be as important as the legal skills required in bringing the case to a satisfactory resolution.