

Frequently Asked Questions About Divorce

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Divorce is both an emotional and a legal process. Retaining the right lawyer to work closely with you to achieve your goals and help you to resolve competing interests concerning child custody, parenting time, child support and equitable division of assets (and debts) should help you to plan to satisfy current and future financial needs and those of your children.

This FAQ provides answers to commonly asked questions concerning family law, to help to inform you as you make your way through the stages of divorce. If you or a loved one have a question about divorce in New Jersey, please contact [Joe Russell](#) or another member of our [Family Law Team](#).

How Do I Decide If I Want a Divorce?

Whether or not to file for divorce is a very difficult decision. If you are considering divorce, we suggest that you consult with a family lawyer to determine your rights and best options regarding custody, child support, alimony and equitable distribution of marital assets. You may weigh various factors such as whether the marital discord is acute or chronic, whether you think marriage counseling or individual therapy could resolve your problems, and whether there is any history of domestic violence or substance abuse and its impacts. You should also consider the emotional and financial impact of divorce on you and your children.

How Do I Select the Best Divorce Attorney for Me?

Selecting the right lawyer can significantly impact the outcome of your case. Choose a lawyer who will be empathetic to your emotional needs and is dedicated to helping you to achieve your goals. When meeting with a potential attorney you should consider, among other things: (1) the experience, knowledge and reputation of the lawyer and the firm; (2) the rapport that you develop with the attorney (will you feel comfortable working with this attorney?); (3) the responsiveness of the lawyer; (4) consensus with respect to your legal goals; and (5) the fee arrangement.

How Long Does the Divorce Process Take?

Many factors impact the time it takes for a divorce to become final. Some cases are concluded in a few months while others take much longer. [Mediation](#) or arbitration of one or more issues can expedite a case. The extent and type of assets subject to distribution, complexity of the issues, the availability of the Court for conferences or trial, and how well both parties are able to cooperate in reaching an agreement are all factors that will impact on the length of the divorce process. In most cases your divorce will occur shortly after you and your spouse reach an agreement. Your case will then be deemed uncontested and the agreement will be incorporated in the divorce judgment.

How Can I Make My Divorce Happen Faster?

Be reasonable and be guided by the advice of your attorney. Your assistance in providing documents, cooperating with discovery, and responding promptly to your attorney's requests concerning motions and certifications filed by the other party will avoid delays and speed settlement. The sooner a settlement is agreed upon, the sooner the case can proceed to Court for a final uncontested divorce.

On What Basis May a Divorce be Granted?

N.J.S.A. 2A:34-2 provides the following grounds for divorce:

- Adultery.
- Willful and continued desertion for at least 12 months.
- Extreme cruelty (physical or mental).
- Separation, for at least 18 months in separate residences with no reasonable presumption of reconciliation.
- Voluntary addiction or habitual drunkenness for at least 12 months subsequent to the marriage.
- Institutionalization for mental illness for at least 24 consecutive months subsequent to the marriage.
- Imprisonment for at least 18 consecutive months subsequent to the marriage.
- Deviant sexual conduct.
- Irreconcilable differences that have occurred for at least 6 months with no reasonable prospects of reconciliation.

Does Fault Make a Difference in the Outcome of a Divorce?

New Jersey law (N.J.S.A. 2A:34-2) does not explicitly distinguish between “fault” and “no fault” grounds for divorce. The fault or wrongdoing of a party in a divorce action generally has no bearing on the way in which assets acquired during the marriage are divided. The Court may consider the grounds for divorce as a factor in determining alimony only if the behavior of the party at fault has negatively affected the economic status of the parties, or if “the fault so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice.” *Mani v. Mani*, 183 N.J. 70, 72 (2005). Even though marital fault is an emotional factor in a divorce, it has little influence on the terms of a final settlement or decision of a Court if a trial occurs.

What Are My Rights in a Divorce?

You have the right to seek custody of or parenting time with your children, alimony, child support, equitable distribution of a business or personal assets and debts, and counsel fees. You may also use the divorce as an opportunity to resume using your maiden name or otherwise alter your name. Depending upon individual circumstances, you may have additional rights, such as money damages for injuries inflicted on you by your spouse or the fraudulent transfer of assets.

What are the Child Support Guidelines?

The Court has adopted Child Support Guidelines, which assist in fixing the child support obligation of each party to a divorce. Because the Guidelines are intended to apply to families with a combined net annual income of \$187,200 or less, an adjustment may need to be made for families with higher incomes or where the children are attending college or have special needs. While the Court presumes that the Guidelines are correct, you and your spouse may negotiate child support amounts which are higher or lower. The Court may also modify the levels in the Guidelines if the Court decides that, due to the particular circumstances of your family, the amount is unjust or inappropriate. Child care costs and children’s healthcare expenses are also routinely allocated between the parties.

[More Information About Child Support](#)

What is Equitable Distribution?

Equitable distribution is a right to have a fair division of the assets and liabilities acquired during the marriage. A Court has the discretion to divide the assets and debts in any manner that it determines is fair — although not necessarily equal — based on the following factors set forth in N.J.S.A 2A:34-23.1:

- The duration of the marriage.

- The age and physical and emotional health of the parties.
- The income or property brought to the marriage by each party.
- The standard of living established during the marriage.
- Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution.
- The economic circumstances of each party at the time the division of property becomes effective.
- The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- The contribution by each party to the education, training or earning power of the other.
- The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, and the contribution of a party as a homemaker.
- The tax consequences of the proposed distribution to each party.
- The present value of the marital property.
- The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects.
- The debts and liabilities of the parties.
- The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children.
- The extent to which a party deferred achieving their career goals.
- Any other factors the Court may deem relevant.

With the exception of cases where the Court does not make an award concerning the equitable distribution of property pursuant to subsection h. of N.J.S.2A:34-23, the Court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

It shall be a rebuttable presumption that each party made a substantial financial or non-financial contribution to the acquisition of income and property while the party was married.

What is a Legal Separation?

Although New Jersey law does not provide for a formal legal separation, it is possible for you and your spouse to agree to live separately and to resolve all financial and child-related issues in a written agreement. This agreement may be incorporated into a Judgment of Divorce in the event you or your spouse file for divorce at a later time. It is also possible to obtain a divorce from “bed and board” pursuant to N.J.S.A. 2A:34-3, which allows you to continue to be married while still giving you and your spouse rights normally granted by the Court in a divorce, such as equitable distribution of assets.

Does Moving Out of the Marital Home Affect the Outcome of a Divorce?

You may leave the marital home before the divorce is final, but you should first discuss this, or any other major change of circumstances, with your attorney. In many cases, leaving the home may have serious negative consequences for you, particularly if you are seeking custody of your children and they remain with your spouse in the marital home. Your departure from the home may also create a financial burden for you and your spouse because you are duplicating the expense for housing and utilities. However, in some situations, particularly where there is violence in the home, physical separation is advisable if the safety of you or your children is in jeopardy. You also may file an action to remove your spouse from the home in the event of domestic violence.

Can I Force my Spouse to Leave the Marital Home?

The Court rarely orders one party to leave the marital home until the divorce is final, except in the event of [domestic violence](#). If you are the victim of physical abuse or harassment, you should call the police for protection. You may also obtain an emergent temporary order from either a municipal or Family Court judge to exclude your spouse immediately from the marital home if an incident of domestic violence occurs. A hearing will be held within ten days after the temporary order is entered. If the Court determines that there is sufficient evidence to restrain your spouse from returning to the home on a permanent basis, an order will be entered to that effect.

How Does the Court Determine Child Custody in New Jersey?

When you and your spouse cannot reach an agreement regarding physical custody and parenting time, the Court will determine which custodial arrangement is in the best interests of your children. To establish custody and parenting time, the Court often hears testimony from both parties, mental health experts, and any other persons who have direct knowledge of the ability of each spouse to parent the children and other evidence. Pursuant to N.J.S.A. 9:2-4, the Court considers the following factors in awarding custody:

- The parents' ability to agree, communicate and cooperate in matters relating to the children.
- The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse.
- The interaction and relationship of the children with their parents and siblings;
- Any history of domestic violence.
- The safety of the children and the safety of either parent from physical abuse by the other parent.
- The preference of the children when they are of sufficient age and capacity to form an intelligent decision.
- The needs of the children.
- The stability of the home environment offered.
- The quality and continuity of the children's education.
- The fitness of the parents.
- The geographical proximity of the parents' homes.
- The extent and quality of the time spent with the children prior to and subsequent to the separation.
- The parents' employment responsibilities.
- The ages and number of the children.

Gathering the factual underpinnings for each of these factors is critical to adequately presenting your case.

What Does a Typical Parenting Time Schedule Look Like?

Each parenting time schedule will be uniquely tailored as best as possible to the needs, ability and desires of both parents and the children. In a joint custody arrangement, one parent is typically designated as the parent of primary residence (PPR) and the other parent is designated as the parent of alternate residence (PAR). The PPR has physical custody of the children for at least 51% of the time. The parenting arrangements can range from equal time sharing to supervised parenting time. A general starting point for the PAR's parenting time is alternating weekends, with a weekly dinner visit and alternating holidays. When determining a parenting plan that is best for you and your children, it is also important to consider special circumstances that would fall outside of the typical parent plan such as holidays, birthdays, travel and school vacations.

What if I Want to Relocate Out of State With my Children?

During or after your divorce, if you are the primary custodial parent and want to move with your child to another state or country, pursuant to N.J.S.A. 9:2-2, you need permission of the child's non-custodial parent or a court order. Notably, N.J.S.A. 9:2-2, states:

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to

signify same, nor while under that age without consent of both parents, unless the Court, upon cause shown, shall otherwise order.

The Court may grant the primary custodial parent the right to relocate with the child upon analysis of the recent modification of the legal standard for such applications pursuant to *Bisbing v. Bisbing*, 230 N.J. 309, 312 (2017). On August 8, 2017, the Supreme Court replaced the previously applicable Baures test with a “best interests” standard to determine whether a primary custodial parent may relocate with a minor child. As a result, the Court is now compelled to conduct a factor-based analysis, with requisite fact-findings, pursuant to the best interests factors enumerated in N.J.S.A. 9:2-4.

These factors include:

- The parents’ ability to agree, communicate and cooperate in matters relating to the child.
- The parents’ willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse.
- The interaction and relationship of the child with parents and siblings.
- The history of domestic violence, if any.
- The safety of the child and the safety of either parent from physical abuse by the other parent.
- The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision.
- The needs of the child.
- The stability of the home environment offered; the quality and continuity of the child’s education.
- The fitness of the parents.
- The geographical proximity of the parents’ homes.
- The extent and quality of the time spent with the child prior to or subsequent to the separation.
- The parents’ employment responsibilities.
- The age and number of the children.

Can my Spouse and I Use the Same Divorce Attorney?

According to the rules governing lawyer ethics, the same attorney cannot ethically represent two clients with conflicting interests, including divorcing spouses. The only exception is if two parties hire a neutral mediator who will work with the parties in an effort to reach an amicable resolution. The mediator, however, is not “counsel” for either party. At the conclusion of a successful mediation, the mediator can draft the final agreement but must then instruct each party to consult with counsel of his or her own selection.

Will the Court Award Alimony and How is it Determined?

The Court may award one or more of four types of alimony to a spouse:

- open durational alimony;
- rehabilitative alimony;
- limited duration alimony; or
- reimbursement alimony.

Rehabilitative alimony is support for a fixed period of time, which is calculated to permit a spouse to re-enter the job market. Limited duration alimony is alimony for a fixed period of time and may be appropriate where the Court determines that an open durational award is not warranted. Reimbursement alimony may be awarded where one party supported the other while he or she obtained an advanced education. Open durational alimony may be awarded for marriages or civil unions lasting over twenty years and a former spouse has an unequal present or future earning capacity in comparison to the other spouse. Open durational alimony will automatically terminate on remarriage of the payee or the death of the payor or payee. Open durational alimony can also be subject to termination, reduction or suspension if the payee derives a significant benefit

from cohabitating with another party or the payor spouse offers proof of a significant change in circumstances, such as reduced income or retirement.

The Court may also combine the types of alimony. The following factors are considered by the Court in making an alimony award:

- The actual need and ability of the parties to pay.
- The duration of the marriage or civil union.
- The age, physical and emotional health of the parties.
- The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other.
- The earning capacities, educational levels, vocational skills and employability of the parties.
- The length of absence from the job market.
- Parental responsibilities for the children of the party seeking alimony.
- The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of training and employment, and the opportunity for future acquisitions of capital assets and income.
- The history of the financial or non-financial contributions to the marriage or civil union by each party, including contributions to the care and education of the children and interruption of personal careers or educational opportunities.
- The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair.
- The income available to either party through investment of any assets held by that party.
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment.
- The nature, amount, and length of pendent lite support paid, if any; and
- Any other factors that the Court deems relevant.

Gathering the factual underpinnings for each of these factors is critical to adequately presenting your case.

What is Complimentary Dispute Resolution or Alternate Dispute Resolution or Collaborative Divorce?

Complimentary Dispute Resolution (CDR) and Alternate Dispute Resolution (ADR) refer to alternative methods other than litigation which may be used to resolve all the issues in a divorce, including economic and custodial issues. These methods, which include mediation and arbitration, limit reliance on the Courts. They may permit you to retain more control over the expense, duration and scheduling of the divorce process. The parties typically pay the mediator and arbitrators and you can have counsel present during mediation.

In divorce mediation the mediator helps the parties settle their issues by acting as a neutral facilitator. These direct negotiations between the parties and the mediator limit reliance on Courts and adversarial attorneys. A mediator can, with the cooperation and consent of the parties, request discovery (investigation of relevant facts concerning assets or custody issues). If an agreement is reached in mediation, the mediator will prepare a memorandum of understanding to memorialize the agreement. The parties are advised that the memorandum is not binding until each party obtains independent counsel to review and accept the terms. If one party has a domestic violence restraining order against the other, or one party is overly dominant, mediation is not generally appropriate.

In divorce arbitration, the parties present evidence before a mutually chosen arbitrator who acts as a private judge. The arbitration process is much like a trial except it is more informal and is held in an office rather than a Court. However, like a judge, the arbitrator decides the issues. If the arbitration is binding, the decisions cannot be appealed to a Court unless the parties agree otherwise. Arbitration requires that the parties be represented by counsel, but the time involved is likely to be much less than is required for a court trial.

In a collaborative divorce, the parties agree not to go to Court until they have a signed settlement agreement resolving all issues. All participants, including the attorneys and other professionals, sign a Collaborative Participation Agreement, which makes the process confidential and requires all professionals to withdraw if either party decides to litigate the case. Collaborative Divorce takes a team approach to resolving the issues and involves open communication among the couple, attorneys, accountants, mental health professionals and any other professionals that may be necessary depending on the circumstances of the case. The professionals must have specific training in the collaborative model to participate.

What Can I Expect at an Early Settlement Panel?

The exact procedure for the Early Settlement Program (ESP) varies depending on the county where the case is venued. Some counties require that an ESP statement setting forth the issues in dispute and a proposed resolution be submitted to the panelists prior to the ESP proceeding. In some counties, a formal ESP statement is not required.

On the day of the ESP, the parties and the attorneys appear before the judge assigned to the ESP in the morning for the calendar call, during which time, the judge will address the benefits of the ESP and settlement with the litigants. Thereafter, each case is assigned to a panel of either one or two volunteer attorneys who regularly practice family law in that particular county. The panelists will then bring the attorneys and parties into a conference room, address the issues and provide the parties with a recommendation for settlement. If both parties accept the recommendations, they may be divorced that day. The recommendations, however, are non-binding. If a settlement is not reached, the parties must leave Court with a Court Order scheduling economic mediation with a neutral third party attorney or retired judge. The recommendation is confidential, non-binding and not provided to the Court.

How Much Will my Divorce cost?

The total cost of a divorce is impossible to predict. The emotions, reasonableness and cooperation of the parties, the nature and extent of the assets, and the complexity of the legal issues are all significant factors. Most attorneys require an initial retainer fee before commencing their representation. Usually, you are billed on an hourly basis against that retainer for legal services as they are rendered. You receive periodic statements advising you of the status of your account. If your initial retainer is insufficient to cover all legal fees and costs, you are expected to pay for services rendered to keep your account current. If, at any time, you have a question about your bill, you should discuss it with your attorney.