

## **DIVORCE SEPARATION ANNULMENT**

### **WHO CAN GET A DIVORCE IN NEVADA?**

To get divorced in Nevada, either spouse must have been a Nevada resident for at least six weeks before filing for divorce.

If there are minor children, the children usually must live in Nevada for at least six months before the divorce is filed.

Nevada is a “no fault” divorce state. This means the person asking for a divorce does not have to prove that anybody did anything wrong to cause a divorce. A person seeking a divorce only needs to allege:

- That the parties are incompatible; or
- That the parties have lived separate and apart for one year; or
- That the other party suffers from insanity which has existed for the two years prior to filing for divorce.

### **WILL I HAVE TO GO TO COURT?**

It depends. If the spouses can agree to all of the terms of the divorce, they can file a Joint Petition for Divorce that outlines their agreement. After filing the Joint Petition, the parties can submit a final Divorce Decree to their assigned judge for review. If the judge approves of the terms, the judge will sign the Divorce Decree. These divorces are typically granted within a few weeks and without a hearing.

If the spouses cannot agree to everything, one of them can file a Complaint for Divorce and have the other spouse formally “served” with the papers. The other spouse can then file an Answer and Counterclaim. These documents will tell the judge what each person wants out of the divorce.

After these papers are filed, the judge will set a Case Management Conference in about 90 days. At that point, both parties will have to appear in court so the judge can find out what the issues are. The judge can also issue orders to get the case moving forward.

## HOW WILL COMMUNITY PROPERTY AND DEBT BE DIVIDED?

Nevada is a community property state. This means that all property and debts acquired or incurred during the marriage are presumed to belong equally to both spouses. During a divorce, community property and community debts must be divided in a fair and equal manner.

Community property and debts include but are not limited to: bank accounts, personal property, a business run by a spouse, houses, investments, retirement plans, credit card debts, and vehicles. Generally, any property or debts owned by a spouse before marriage is separate property and belongs solely to that spouse. Separate property can turn into community property in some circumstances. Please consult with an attorney before agreeing to any significant property division.

## WILL ALIMONY (SPOUSAL SUPPORT) BE AWARDED?

One spouse may be entitled to ongoing financial support from the other spouse after a divorce. There is no precise formula for awarding alimony; it is decided on a case-by-case basis. In determining alimony, the court will consider:

- The length of the marriage;
- The earning disparity between the spouses;
- The financial circumstances of each spouse;
- The standard of living during the marriage;
- The spouse's need for financial support versus the other spouse's ability to pay;
- The receiving spouse's education during the marriage and current marketability;
- The receiving spouse's career prior to marriage;
- The income, earning capacity, age, and health of each spouse; and
- Whether the receiving spouse stayed at home with the children.

If alimony is awarded, a spouse can later ask the court to change the amount of alimony if circumstances change. To reduce or eliminate alimony, the spouse paying alimony typically needs to show a 20% or more reduction in income plus an inability to pay.

## WHAT IS A SEPARATE MAINTENANCE?

Sometimes couples want to separate but do not want to divorce. In a separate maintenance case the parties do not get "divorced." At the end of the case, the parties are still married but have financial and custody orders in place. Common reasons people seek separate maintenance instead of a divorce are:

- Religious beliefs;
- Not ready to go through the divorce process; and
- Need to keep medical benefits.

## WHAT IS AN ANNULMENT?

An annulment voids a marriage, which means that, legally, the marriage never occurred.

Unlike a divorce, a spouse asking for an annulment must prove to the court that he or she is entitled to an annulment. Grounds for annulment include:

- A spouse was already married at the time the parties attempted to marry;
- Lack of parent, guardian, or district court's consent for persons who married under the age of eighteen;
- Want of understanding, if either of the parties was incapable of agreeing to the marriage; or
- If a party's consent to the marriage was obtained by fraud.

To obtain an annulment in Nevada, one of the spouses must have lived in Nevada for at least six weeks before filing the complaint, or the marriage must have taken place in Nevada.

## HOW WILL CHILD CUSTODY BE DECIDED?

The court will award two different types of custody: legal custody and physical custody. By law, parents have joint legal custody and joint physical custody, unless the court orders otherwise.

Legal custody refers to the basic legal responsibility for a child and the power to make major decisions that affect the child such as decisions about healthcare, religion, and education. A court will grant a parent either joint or sole legal custody. There is a statutory preference for granting parents joint legal custody.

Physical custody refers to the amount of time the child spends with each parent. There are three different types of physical custody a court can award:

### • Joint Physical Custody


Joint physical custody generally exists when each parent has the child at least 40% of the time. There is a preference to grant parents joint physical custody.

### • Primary Physical Custody

If one parent has the child more than 60% of the time, that parent is usually considered to be the primary physical custodian. The other parent will have visitation.

### • Sole Physical Custody

Sole physical custody is when one parent has the child most of the time. The other parent may have some or no visitation.



When parents cannot agree on physical custody, the court refers them to the Family Mediation Center to negotiate their own custody agreement. If the parents still cannot agree, the court will decide custody based on the best interest of the child.

## HOW IS CHILD SUPPORT SET?

Child support is set based on the number of children, which parent has physical custody, and the parents' incomes. You can estimate the amount of child support that would be ordered with an interactive online calculator at <https://nvchildsupportguidelinescalculator.azurewebsites.net/>

Generally, if one parent has primary physical custody, the noncustodial parent pays child support based on a percentage of their gross monthly income. If the noncustodial parent earns \$6,000 or less per month, the parent typically pays:

- 16% of income for 1 child
- 22% of income for 2 children
- 26% of income for 3 children
- For each additional child, an extra 2%

If the noncustodial parents' income is 150% or less of federal poverty guidelines, the court can set child support at a lower percentage.

If the noncustodial parent earns more than \$6,000 per month, there are additional percentages added to the child support amounts above.

For parents who share joint physical custody, the court calculates both parent's incomes based on the guidelines above, then subtracts the lower amount from the higher amount. The parent with the higher income pays the difference.

The court can also adjust child support up or down based on the specific needs of the child and the economic circumstances of the parties.

## WHAT ABOUT CHILD CARE AND INSURANCE?

The court will consider any child care costs and insurance costs and who pays those costs. The court will enter an order equitably dividing those costs between the parents.



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