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Volunteer Lawyers Project  
Nebraska State Bar Association

# Divorce

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## What is “no-fault divorce”?

The official legal term for a divorce action in Nebraska is “dissolution of marriage.” “No-fault divorce” is a dissolution granted by the Court after either spouse proves a marriage is “irretrievably broken.” This means that the fault of either party that led to the breakdown of the relationship is generally not a relevant consideration for the Courts in dividing property, awarding custody of children, etc. It is sufficient for one spouse to testify s/he does not want to remain married.

## What is the lawyer’s role?

In divorce cases, the lawyer’s job is to advise and advocate for the lawyer’s client. The lawyer as adviser helps the client to understand the procedure and how the law applies to the facts of the client’s specific situation. The lawyer as advocate helps the client to present the arguments that support what the client wants to happen, whether by negotiating with the opposing party’s attorney or by presenting the facts and law to the Court for the judge to make decisions.

## How should I choose a lawyer for my divorce?

There are two important considerations when choosing a lawyer to help you with your divorce case. First, you will want to be certain the lawyer you choose understands the divorce laws and procedure in the court where your case will be conducted. Second, but even more importantly, you will want to choose a lawyer you trust, because the outcome of your case may depend on your ability to be fully honest with your lawyer even when discussing very personal information. You may want to ask someone you know who has been through the divorce process to refer an attorney; or, you can search online for information about attorneys practicing divorce law, family law, child custody, etc. To determine if you can work with a particular attorney, you should schedule an interview called an “initial consultation.” Most lawyers provide initial consultations at a reduced rate; and, some do not charge at all for this consultation.

## Can both spouses have the same lawyer?

One lawyer may not represent both parties in a divorce. Only by having separate attorneys can the parties be sure their interests are fully protected. In certain circumstances (for example, when the parties agree on all issues) a lawyer representing one of the parties may prepare all the paperwork and filings; but, that lawyer does not represent both parties.

## How much does a divorce cost?

There are many different potential expenses involved in any court case; and, divorce is no exception. For example, there may be a filing fee paid to the court, a fee for service on the opposing party paid to the sheriff, postage and copy costs, and fees paid to a lawyer for work

the lawyer does, either billed as a flat fee for certain services, such as drafting documents, or hourly based on the time the attorney is required to spend in court on the client’s behalf. The total amount a divorce will cost depends on the issues to be resolved, the documents required, the amount of time involved, etc. You should discuss setting a litigation budget with your attorney. Generally, the parties to the case can help reduce the costs if they are willing to gather and organize documents and other information themselves versus having the lawyer find information.

## What if I can’t afford a lawyer?

Parties to a divorce are not entitled to court-appointed counsel. However, depending on the facts in your case, you may have several options to assist you if you cannot afford traditional representation, including limited scope representation by an attorney or proceeding “pro se” (without an attorney) by using the forms provided by the Nebraska Supreme Court or Legal Aid’s Access to Justice program or by seeking “pro bono” (free or reduced cost) representation through Legal Aid of Nebraska. The following web sites provide useful information about these services:

- <https://supremecourt.nebraska.gov/self-help>
- <http://www.legalaidofnebraska.org/>

## What is the legal procedure for divorce?

Divorce cases have a beginning, middle, and end. The length of time each stage takes varies depending on the specific facts of each case, but generally the process follows the outline below:

**1. The Beginning - Initial Pleadings:** The case begins with one spouse, who has lived in Nebraska for at least one year, filing a Complaint for Dissolution of Marriage with the Court and providing proof that the other spouse has been notified of the filing (either by a return of service from the Sheriff or a signed Voluntary Appearance). The date the return or appearance is filed starts two important deadlines. The responding spouse has 30 days to file a responsive pleading. For both parties, the 60-day waiting period for divorce starts to run from the date of the return of service or voluntary appearance. Even if both parties reach agreements on all issues before the sixty days have passed, a divorce cannot be granted because the 60-day waiting period is mandatory.

**2. The Middle - Motions, Discovery, and the Parenting Act:** Sometimes there are matters that must be decided temporarily while the divorce is pending. If the Court must make temporary decisions in the interim, those matters are brought before the Court by filing motions and having a hearing, which may be “evidentiary” (with live testimony) or “on affidavit” (with written, notarized testimony). In some cases, one or both spouses need to conduct discovery (such

as interrogatories, records subpoenas, etc.) to get more information about the issues involved in the case. If the parties have children under nineteen years of age, both parties/parents must comply with the Parenting Act, which requires each parent to take a co-parenting class and file the certificate with the Court and requires the parents to mediate the parenting issues if they cannot otherwise agree.

### **3. The End - Settlement, Trial and the Decree of Dissolution:**

Divorce cases finish in one of two ways: either the parties reach agreements about dividing their property and debts, parenting their children, and any other issues; or, the parties present evidence to the Court at trial in the form of witnesses and documents; and, the Court makes decisions about these matters. The official document that grants a divorce is called a "Decree of Dissolution" which is signed by the judge and filed in the court's permanent file. If the parties were able to agree, the decree will incorporate the terms agreed to in the parties' written contract(s), which may include a "Property Settlement Agreement," "Parenting Plan," "Financial Plan (for minor children)" or similar. A divorce decree may be vacated or changed for good cause before it is final. A divorce is final 30 days after the entry of the decree or upon the death of either of the parties, whichever is earlier. However, neither party to a divorce may remarry for 6 months after a decree is entered. In addition, for purposes of continuing health insurance, the decree is not final for 6 months.

#### **How is spousal support determined?**

The court may order one party to pay spousal support to the other. There are no official guidelines for spousal support; but, the factors to be considered include: the circumstances of the parties; length of the marriage; history of contributions to the marriage by each party, including contributions to the care and education of the children; an interruption of personal careers or educational opportunities; and the ability of the supported party to be employed without interfering with the interests of any minor child in the custody of that party. If spousal support is not awarded in the original decree, spousal support cannot be awarded at a later date.

#### **How is custody of children determined?**

There are two types of custody to consider: legal custody and physical custody. Legal custody is the authority of a parent to make major decisions for a child including educational, medical, and religious choices. Physical custody refers to the right to having the child in the parent's physical care and control. Either legal or physical custody may be solely placed with one parent or the other or jointly shared between the parents. If the parents can develop their own parenting plan, the judge will usually accept and order the same if the parents' plan is in the children's best interests. If the parents cannot agree, the judge will impose a parenting plan based on what the judge believes to be in the children's best interests, considering the following:

- Relationship of the children to each parent prior to the start of the divorce action.
- Wishes of the children, if the children's wishes are based on sound reasoning.
- General health, welfare and social behavior of the children; certain elements of the parents' and children's lifestyles.
- Each child's age and character, and the stability of each child and each parent.
- Credible evidence of abuse, if any.

There is no preference given to either mothers or fathers when judges make child custody determinations. There also is no specific age at which children may decide to live with one parent over the other.

If a custody dispute cannot be resolved, the judge may appoint an attorney to represent the best interests of the children, referred to as a Guardian Ad Litem. The court may order one or both of the parties to share the costs of the Guardian Ad Litem.

#### **How is marital property and debt divided?**

If the parties cannot agree on these issues, the judge is tasked with determining what property and debt is marital; valuing the marital property and debts; and then assigning the rights and obligations of the parties to fully and fairly divide the marital estate. In Nebraska, it generally does not matter how title is held to property or which spouse's name is on the debt; most property/debt acquired during the marriage is held to be marital with some exceptions, such as gifts or inheritance.

#### **How is a divorce decree enforced?**

There are different ways to ensure the requirements of a decree are followed, but the most common way to enforce the decree is through the use of an Order to Show Cause (contempt proceedings). A lawyer can help you with this process. If you do not have a lawyer and are seeking enforcement of a child support order, you may apply for services through the Nebraska Department of Health and Human Services Child Support Enforcement office through their web site. The Nebraska Supreme Court Self Help site also has forms to assist with enforcement for both support and parenting time/visitation issues. Those web sites are listed below:

- [http://dhhs.ne.gov/children\\_family\\_services/CSE/Pages/CSEHome.aspx](http://dhhs.ne.gov/children_family_services/CSE/Pages/CSEHome.aspx)
- <https://supremecourt.nebraska.gov/self-help/families-children>

#### **Can a divorce decree be changed in the future?**

Certain issues decided in the divorce decree are modifiable in the future, namely, child support/spousal support, parenting time, and custody of minor children. To modify an order, the party asking for the change must file a Complaint to Modify and prove a material and substantial change in circumstances that was not contemplated in the making of the order currently in place. For parenting time and custody changes affecting children, the children's best interests are also considered in the making of any change. Particularly where a custodial parent seeks to move out of state following a divorce decree, a modification of the decree must be granted by the judge; and, very specific factors are to be considered.

#### **What is legal separation?**

A legal separation allows two persons who are legally married to separate and live apart; the marriage, however, is not dissolved. A legal separation can be asked for by either party; and, the decree can include provisions for adjustment of property rights, as well as for support and/or custody of minor children. Legal separation is also available when a party has not lived in the state long enough to meet the residency requirement, or if there are other reasons to keep the marriage relationship, such as religion or health issues. The action for legal separation can be changed to a divorce action after one of the parties has resided in the state for at least one year.

**What is an annulment?**

An annulment can only be granted when the original marriage was legally defective for a very specific reason, for example, if either party had another spouse living at the time of the marriage. Annulment is also available if one of the parties was impotent or mentally ill at the time of marriage, or if one of the parties used force or fraud in coercing the other to marry. Generally speaking, the procedure for an annulment is the same as for a divorce, with the following exceptions: 1) there is no 60-day waiting period required; 2) an annulment is final immediately, with no waiting period for remarriage; and 3) the right to file for an annulment is not limited by a one-year residency requirement.

**What if the spouses executed a premarital agreement?**

Nebraska has adopted the Uniform Premarital Agreement Act, which means that written premarital agreements that meet the statutory requirements will be upheld in issuing the divorce decree.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

**Nebraska Find-A-Lawyer**

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**Nebraska Free Legal Answers**

Visit [www.NE.freelegalanswers.org](http://www.NE.freelegalanswers.org) to learn how to ask a lawyer licensed to practice law in Nebraska a civil (non-criminal) legal question online. Qualifying users may receive free basic legal information and advice from an approved volunteer lawyer.

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