

Domestic Relations

What Is Domestic Relations?

Domestic relations means family matters – paternity, marriage and divorce – and they are governed by state law. You can look up Nebraska laws on the state legislature’s website at <http://www.unicam.state.ne.us/help/statutes.htm>.

MARRIAGE

How Do I Get Married In Nebraska?

Getting married may be a romantic endeavor, but it is also considered a civil contract requiring consent from both spouses. Therefore, to be married in Nebraska you need a marriage license.

Where Do I Get A License?

Go to the County Clerk’s office of the county in which you reside. You need to have a solemnization ceremony. There must be an official authorized by law presiding over the ceremony and witnesses to sign the marital license. The ceremony can be a religious wedding or a civil service with a justice of the peace.

What Requirements Are There For Getting Married In Nebraska?

You must be 17 years old. If you were previously married, you must wait six months before re-marrying.

Should My Fiance and I Write A Pre-nuptial Agreement?

What Is It? A Pre-nuptial Agreement is written before marriage. It is a way for a couple to contract on just about anything except custody of future children.

When Is It Useful? Choosing to write a pre-nuptial agreement is a personal decision that may or may not work for your relationship. It can be useful if it explains how property should be divided when a couple divorces.

What Does It Require? To be honored in Nebraska a Pre-Nuptial Agreement must be written, agreed to by both spouses voluntarily and cannot be unconscionable (i.e. one spouse lied about the amount of assets in his/her possession in order to not lose as much in a divorce).

What Is An Ante-Nuptial Agreement? These agreements are less common and are similar to Pre-Nuptial Agreements, but are entered into after a couple is married.

DIVORCE

Are there requirements for getting a divorce in Nebraska?

Yes. You and your spouse must have lived in Nebraska for at least a year immediately prior to filing for the divorce. The only exception is if you were married in Nebraska and you lived in Nebraska for the entire length of the marriage, even if your marriage was for less than a year.

Does My Spouse Have To Agree To The Divorce?

No. Nebraska is a No-Fault Divorce state, so neither spouse has to prove the other was at fault to obtain the divorce. One spouse needs to show the marriage is “irretrievably broken.” Before 1972 one spouse had to show the other was at fault based on a behavior such as adultery or abuse.

For more information on No-Fault Divorce visit The Nebraska State Bar Association’s website at: http://www.nebar.com/pdfs/public_info/brochures/no-faultdivorce.pdf.

How Do I Find An Attorney?

Finding the right attorney to represent you is important. Your attorney should always have your best interests in mind. You need to be able to communicate honestly and trust your attorney. Here are some suggestions for how to find an attorney:

- Ask your friends and family for recommendations.
- Contact the Nebraska State Bar Association at 475-7091.
- Schedule an appointment with Student Legal Services. Student Legal Services represents UNL students in uncontested divorces that do not involve children nor real estate. For other divorces SLS may be able to recommend attorneys for you.

Make sure the attorney has experience or specializes in domestic relations.

For more information on simple divorces visit the *Nebraska Judicial Branch's* website at: http://court.nol.org/public/self_help/SimpDiv/filing_index.htm.

Do Both My Spouse And I Need Separate Attorneys For A Divorce?

Yes. Your spouse and you should not share the same divorce attorney. It would be unethical for an attorney to represent two spouses.

What Does The Attorney Do?

An attorney guides you through the process and represents your interests in court by doing the following:

1. Meeting with you to gather information about the case and advise you on options.
2. Notifying your spouse about the pending divorce if you are the petitioner, or answering the petition if you are the respondent.
3. Contacting your spouses' lawyer and setting up necessary meetings, including negotiations, depositions and mediation.
4. Filing motions for you in court and appearing on your behalf in front of the judge who is hearing your case.

What Will The Attorney Ask Me?

You will be asked for personal information about you, your job, your married life and what you want out of the divorce. Your attorney will need information about your money, property, tax returns, insurance policies and bank statements. Documentation showing your debts, mortgages or credit card bills is also useful. Your attorney will also want information about any dependents you support and what kind of custody arrangement you want.

How Will The Attorney Notify My Spouse?

There are three forms of notification: "service," "voluntary appearance" or publication. Service of notice can be done through certified mail, delivery by a sheriff or through publication in a newspaper. Voluntary Appearance is authorization for the court to proceed with the case.

What Is A Petitioner And Respondent?

The "petitioner" is the person filing the divorce and the spouse is called the "respondent."

What Happens After The Petition Is Filed And Served??

You, your spouse and your attorneys will meet together and discuss the division of property, alimony, child support and custody. Issues you agree on are written down into a Settlement Agreement and incorporated into the Divorce Decree. The Decree states that the marriage is over and explains all arrangements for the property and children.

What If My Spouse And I Disagree On Issues of Property, Custody Or Support?

You can try to resolve these issues by having your attorney negotiate with your spouse's attorney. This can get very expensive very fast.

Some people try to resolve disputed issues through mediation. You and your spouse sit down with mediators and try to work out an agreement on as many issues as you can. If mediation fails you will have to negotiate through your attorney or go to trial on the disputed issues and let the judge decide for you.

In Lincoln, contact The Mediation Center at (402) 441-5740. For more information on how mediation can help separating parents develop a care-plan for the children, see: <http://court.nol.org/publications/parents/parent1.htm>.

How Much Does A Divorce Cost?

Attorney fees can be expensive so ask the attorney lots of questions about the costs before you agree to hire her. There are filing fees to file a petition for divorce. It also costs money to have your spouse served a divorce petition. If you cannot afford the filing fee a Judge may order the fee be paid by the county (*in forma pauperis*). To do this, you will need to sign an affidavit with your income and expenses so the Judge can determine whether or not you can actually afford the fees.

Will There Be A Trial?

If you cannot resolve the disputed issues in any other way there will be a trial. Each side is allowed to call witnesses to testify. You may also testify. You will be sworn in and questioned on the stand. Your attorney will prepare you beforehand by going over her questions and the potential questions the other attorney may ask.

If you and your spouse have reached agreement on all of the issues before the trial, you will only have a brief hearing for the judge to approve the Settlement Agreement and grant the Divorce.

What If I Disagree With The Judge's Decision? The Decree becomes final one month after the hearing. By showing "good cause," you may be able to get the decree vacated or modified before it is finalized. Otherwise, you can appeal the decision to a higher court. An appeal can be expensive and may take a long time, so talk to your attorney about whether making an appeal is a good option for you.

How Do I Get My Name Changed?

As part of the divorce proceeding you may request a name change to your original one if you changed your last name to be the same as your spouse's name when you married.

How Is Our Property Divided?

Divorces in Nebraska follow the "Common Law." All property bought or received after you were married is divided equally (i.e. 50/50) between divorcing spouses. Everything you and your spouse bought together such as homes, cars, furniture and stocks is included—even gifts that were given to both of you. Since many items (like cars) cannot be divided in half, usually an item of equal value is given to other spouse in its place.

Any gifts, inheritance or property owned before the marriage is not included in this 50/50 split.

Both child support and alimony can be modified after the divorce is finalized. However, property divisions cannot be changed.

No matter which spouse is ordered to pay a debt or a bill both spouses remain obligated to the creditor to pay any mutual debt. Creditors can come after both spouses when a bill goes unpaid.

Can My Spouse And I Start Dividing Property Before The Trial?

Yes, unless one party seeks a temporary order from the judge prior to the trial. The judge may order that no property be sold until the trial is held.

What Other Temporary Orders Are Possible? Other orders may prohibit one spouse from going into the other spouse's home or from contacting the other spouse or the children. There will also be temporary orders of custody, visitation and child support.

How Does A Judge Decide Which Parent Gets Custody Of The Children?

The judge considers what is in the "best interests" of the children. Best interests involves many different aspects of parenting, but basically the Judge is looking to see which parent is better suited to provide daily care for the child. Daily care involves the basic necessities like food and shelter, but also care for the child's emotional and mental needs.

Issues of a parent's "fitness" could arise in contested custody disputes. If fitness becomes an issue your behaviors and lifestyle will be used as evidence at trial.

Can My Child Choose Which Parent To Live With?

A judge will consider the age and maturity of the child when deciding whether to use the child's parental preference. Otherwise the judge makes the decision based upon what both parents say and takes into consideration the recommendation of the Guardian Ad Litem (GAL) or other expert opinions. A GAL is usually an attorney appointed by the judge to represent the best interests of the child.

What Is Joint Custody?

Joint custody is usually awarded in cases where the parents are able to work together in a manner suiting the best interests of the children. The Judge can grant one of two forms of joint custody:

Joint Legal Custody: Both parents have the ability to make long-term decisions for the children.

Joint Physical Custody: Parents share relatively equal amount of time with the children.

How Does Visitation Work?

A parent who is not granted custody of the children may be granted visitation rights. The Judge may order specific times you can see your children, such as every other weekend; or the Judge may order "reasonable rights" to visitation. Reasonable rights means the parents must work out a visitation schedule that best suits the child's and the parents' needs.

Can My Spouses' Grandparents Be Granted Visitation Rights?

Possibly. Nebraska does allow grandparents some ability to gain visitation rights. The law requires the grandparents seeking visitation to already have a significant and beneficial relationship with the child.

Can I Get Child Support Immediately After The Complaint For Divorce Is Filed?

Yes, if you have custody of the children then the court may order the other spouse (the non-custodial parent) to pay temporary child support each month. This support may change after the hearing is held and a final decree is entered.

How Is Child Support Determined?

The Nebraska Child Support Guidelines are used to set the monthly amount a parent must pay for child support. For more information on the guidelines, see the State's website at:

<http://court.nol.org/rules/childsupp.htm>

How Long Is Child Support Required?

Until age 19, which is the age of majority in Nebraska. Or some arrangements require support until the child finishes college. A parent may also be required to maintain health or life insurance for a child.

What Is Alimony?

Alimony is a form of spousal support and is not granted in all divorces. A spouse must request alimony in order for a Judge to consider it. Alimony amount is determined by evaluating each spouses' contributions to the marriage during its course. This includes economic contributions such as paychecks, but also contributions through housework and caring for the children. Alimony may expire after a certain amount of years, such as five years after the divorce is final. It may also expire once the spouse seeking alimony has "rehabilitated" himself by going back to school or finding a suitable occupation.

PATERNITY

What Can I Do If The Child's Father Claims To Not Be the Father?

You may sue a man whom you believe is the father of your child. The court may order the father to pay for reasonable expenses for the pregnancy and childbirth, along with monetary support for the child. The mother's attorney fees and court costs may also be paid by the father. If you file the suit you will have the burden of proving the father's identity. This can be shown through any admissions the father made, or through a blood test.

If the mother receives any public assistance and names the father of the child, the issue of paternity will be turned over to the county attorney and a paternity lawsuit will be filed against the father.

What If I Do Not Want The Child's Father Involved In My Child's Life?

If the father does not try to claim paternity then you may avoid the father's involvement in your child's life. You also will want to avoid applying for welfare. If you apply for welfare the State will try to find the father and bring suit against him for the costs of child support.

How Can I Get Rights To My Child If The Mother Claims I Am Not The Father?

You can sue a woman who you believe is the mother of your child. If you prove you are the father of the child you have a legal right to visit the child and may be able to gain full or joint custody.

ANNULMENT

What Is Annulment?

An annulment is another way to end a marriage. It differs from a divorce because an annulment means the marriage was never valid. There are limited reasons for getting an annulment in Nebraska. An annulment may be granted if the marriage was against the law (i.e. if siblings were married); if one of the spouses was impotent, mentally ill, or mentally handicapped at the time of the marriage; if a spouse had another living spouse at the time of the marriage; or if the marriage was consented to under force or fraud.

COMMON LAW MARRIAGE

What Is Common Law Marriage?

Common law marriage is when two people live together without obtaining a license or having a wedding and the legal system recognizes the relationship as a marriage. Common law marriage is generally not recognized in Nebraska. Some states recognize this as a form of marriage, but have requirements such as a setting a specific number of years the couple must live together. Common Law Marriages are only recognized in Nebraska when a couple previously lived in a state that recognized the relationship as valid. In these cases proceedings similar to a divorce are conducted to divide the property. Otherwise, you are on your own.

DOMESTIC VIOLENCE

What Is Domestic Violence?

Domestic violence is when a family member or someone close to you abuses you in a physical, sexual, verbal or mental way. An abuser can be male or female, and abuse can happen in heterosexual or gay relationships. Some examples of abuse are: your partner tries to control your life by taking your money, keeping you from going to work and school, or constantly criticizing and putting you down; your partner punches, shoves, or chokes you—or threatens to do so; your partner forces you to have sex with him/her or refuses to use protection when you have sex.

Where Can I Get Help If I Am The Victim Of Domestic Violence?

If you are in immediate physical danger call 911. If possible, seek help in a shelter immediately.

Where Are Shelters In Lincoln?

Contact the following services for assistance: The Friendship Home (402) 437-9302; or the People's City Mission (402) 475-1303.

What if I just need someone to talk to?

Counseling or Crisis Intervention Services are available in many forms.

UNL Organizations: Counseling is available through Counseling and Psychological Services on City Campus (Monday – Friday, 8:00 – 5:00) and on East Campus by appointment; Womens' Center Victim Advocate – Nebraska Union 340; 472-0203.

Local Organizations: Contact the Rape/Spouse Abuse Crisis Center at (402) 475-7273, or the Nebraska Domestic Violence and Sexual Assault Coalition at (402) 476-6256 or www.ndvsac.org.

National Organizations: Call the National Domestic Violence Hotline for support and guidance on what to do. The phone number is 1-800-799-SAFE or visit the website at <http://www.ndvh.org>.

How Can I Get A Protection Order?

Where To Go: Forms are available at the Clerk of the District Court's Office, which is located at 575 S. 10th in the Justice and Law Enforcement Center. The phone number is (402) 441-7328. Forms may also be available through local domestic violence programs.

What Do I Have To Do? You will need to explain why you are requesting the order, and include the dates, times, and locations of when you were abused or stalked.

How Is The Order Granted? A Judge looks at the form and decides if there is enough evidence to issue a protection order. If it is granted you will get a copy to keep and the sheriff's department will also get a copy to take to the abuser/stalker.

Protection Order Hearing: The abuser/stalker has five days from when he/she receives the order to request a hearing on the matter. If the hearing is scheduled you should attend because the abuser/stalker will try and show why the order is unnecessary.

How Long Does The Order Last? One year, but you can file for another order after the year ends.

What Is the Cost?: There is no cost.

How Do I Help My Friend Who Is In An Abusive Relationship?

Be Supportive. Let your friend know you are worried about the situation and why you think abuse is going on.

Be Understanding. Try not to judge your friend because it may be hard for your friend to believe he/she is a victim of abuse. It is frustrating to watch a friend go through unnecessary pain, but it must ultimately be your friend's decision to get help and leave the relationship.

Be a Good Listener. Listen to what your friend tells you, and encourage your friend to get help through counseling.

Be Active. Stay involved with your friend's life, so your friend does not feel so lonely and is if the abuser is the only person who cares what happens to him/her. Remain involved once your friend has the courage to leave the abuser because your friend will need continued support.

How Do I Protect Myself From My Abuser After I Have Left The Relationship?

Change your phone number and screen your phone calls.

Change your locks and always keep your house and vehicle locked.

Create a safety plan, including a place to go if your abuser returns and a list of people to contact for help.

Try to avoid being home alone or going to places where the abuser hangs out.

Do I Have To Report Any Suspicions I Have That Someone Is Abusing Children?

If you have reasonable cause to believe a child is being abused or neglected, you are under a duty of law to report your suspicions. (Neb. Rev. Stat. § 28-711)

Where Do I Report? Dial 911 if the child is in immediate danger. You can also call the *Child Abuse Hotline* at 1-800-652-1999. This phone number is available 24 hours a day.

What Happens After I Make My Report? Once you make a report, Child Protective Services makes an investigation into the charge. CPS notifies the person who is suspected of abusing or neglecting a child of the charge.