



# DIVORCE HANDBOOK

*"We Make Equal Justice Happen"*  
Legal Aid of Nebraska  
[legalaidofnebraska.org](http://legalaidofnebraska.org)  
Revised January 2021

This Divorce Handbook was developed by Legal Aid of Nebraska, a private, non-profit law firm that provides legal services to low-income Nebraskans. If you would like more information about Legal Aid of Nebraska, or if you would like to make a donation, please visit our website at [www.legalaidofnebraska.com](http://www.legalaidofnebraska.com). If you would like to apply for services please call:

<b>Statewide AccessLine®</b>	1-877-250-2016 For Spanish, Press 2	Monday & Wednesday 8:30 a.m. – 11:30 a.m. CST  Tuesday & Thursday 1:00 p.m. – 4:00 p.m. CST
<b>Elder AccessLine®</b> People Age 60+	1-800-527-7249	Monday – Thursday 9 a.m. to 12 p.m. CST 1 p.m. – 3 p.m. CST
<b>Native American AccessLine®</b>	1-800-729-9908	Monday – Friday 9 a.m. – 12 p.m. CST
<b>Beginning Farmer &amp; Rancher Development Program Hotline</b>	1-855-660-1391	Monday – Friday 8 a.m. – 5 p.m. CST
<b>Rural Response Hotline</b>	1-800-464-0258	Monday – Friday 8 a.m. – 5 p.m. CST
<b>COVID-19/Disaster Relief Response Hotline</b>	1-844-268-5627	Monday – Thursday 9 a.m. – 12 p.m. CST  Monday – Thursday 1p.m. – 3 p.m. CST
<b>Agricultural Worker Rights Program</b>	1-877-250-2016 Press 7	24 hours a day, 7 days a week.
<b>Legal Assistance for People with Developmental Disabilities (LAPDD)</b>	1-844-535-3533 Douglas County Only	Monday–Thursday 9 a.m. – 12 p.m. 1 p.m. – 3 p.m.  Friday 9 a.m. – 12 p.m.

## **Important Disclaimer**

Use of this informational Divorce Handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska's attorneys. The information provided to you through this Handbook is intended for educational purposes only. Nothing in this Handbook should be considered legal advice or as a substitute for legal advice.

Please understand that the information contained in this Handbook is based upon generally applicable Nebraska law. Some laws and procedures may vary depending on which county in Nebraska you live and the specifics of your case. If you want legal advice about your specific issue you must consult an attorney in your area.

# Divorce Handbook

In 2015 the United States Supreme Court held that the United States Constitution requires a state to license a marriage between two people of the same sex. *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). A state also must recognize a same-sex marriage legally performed in another state. All of Nebraska's laws and procedures about marriage and divorce now apply equally to same sex couples.

## PART I: THE BASICS

Before you can get a divorce in Nebraska, you must show the Judge two things:

1. You or your spouse has lived in Nebraska for a full year right before you filed for divorce.
2. Your marriage is over and broken beyond repair. This is called "irretrievably broken." You have tried, but there is no chance that you can make your marriage work.

If you lived in Nebraska three years ago and just moved back, you cannot file for a divorce until you have lived here a year. If your spouse continued to live in Nebraska while you were away, you could file for divorce here.

Nebraska has a "no-fault" divorce law. The Judge does not decide who was wrong. The Judge determines custody, property, debt division and alimony, not who is at fault.

A simple divorce can take about six months. A "simple" divorce is when the parties are not fighting about how to divide property, debt, or parenting time with children.

This handbook outlines the basic steps to get a divorce.

## PART II: YOUR DIVORCE--ONE STEP AT A TIME

### STEP ONE - CHOOSING A LAWYER

A lawyer can represent one spouse or the other. A lawyer cannot represent both spouses. Some people may tell you one lawyer did their divorce, but the lawyer was actually representing one spouse and not the other. Your spouse may suggest that it would be cheaper to let one lawyer handle the divorce for both of you. If you do choose to use only one lawyer, make sure he or she is representing you. This means that on the papers filed with the court, the lawyer is listed as your lawyer.

**Fees.** Some lawyers will charge a set fee for a divorce, but most will charge by the hour. Before you hire a lawyer be sure to ask about the lawyer's fee.

Some lawyers will meet with a potential client for a free initial consultation (but ask first to be sure!). The initial consultation is your chance to get to know the person who may be your lawyer in this very important matter. You should shop for a lawyer just like you shop for anything else. The choice of a lawyer is every bit as important as your choice of a house or car. You should check out several and choose the one with whom you feel most comfortable.

In addition to the lawyer's fee, there will be other expenses associated with the divorce. Those expenses will be discussed later. Once you have hired an attorney, you can keep your costs down and speed up the divorce process by preparing for meetings with your attorney.

When you meet with the attorney you hire, bring this information with you:

- a list of your everything in your house;
- the legal description of your real estate;
- vehicle identification numbers for your cars;
- copies of income tax returns;
- credit card statements;
- your spouse's social security number;
- your children's social security numbers;
- a list of the property you want; and
- a list of your monthly bills for food, rent, utilities, doctors and medicine, lunch money, bus fare, cleaning expenses, and everything else you must pay for each month.

Prepare for meetings with your attorney. Ask your attorney why you are meeting. Ask if you should bring anything with you to the meeting. When your attorney asks for information or documents, gather all the information and take it to your attorney. Help your attorney help you.

The legal system can be confusing. Lawyers speak their own language. You will hear new words and be put in new situations. A good lawyer will explain a situation for you *before it happens*. For example, a lawyer should explain what s/he expects to happen in a hearing and what you have to do in the hearing. Ask questions about things you do not understand. Your lawyer should be willing to explain.

If your lawyer is not willing to answer your questions, maybe you need a different lawyer. Just as you hired him or her, you can fire him or her. There are many, many lawyers who take divorce cases. Find the attorney who is the right one for you.

## IF YOU CANNOT AFFORD A LAWYER

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Please see the end of this handbook for places where you may be able to get help if you cannot afford a lawyer.

## STEP TWO - FILING YOUR DIVORCE CASE

Here are definitions for words you might hear during your divorce case.

- a. Plaintiff: the person who files for divorce
- b. Defendant: the person Plaintiff is divorcing
- c. Pleading: Any formal communication with or from the Court
- d. Caption: the top part of every pleading that shows what court you are in, your case number and who is involved in the lawsuit
- e. Complaint: a pleading that will contain all the facts you need to prove and tell the court it has the authority to hear the case
- f. Certificate of Service: a promise to the court that you have notified the other party of a hearing date and time
- g. Service of process: formal service of the complaint on the other party
- h. Answer: A response to a complaint
- i. Notice of hearing: a pleading notifying the other party when and where a hearing will take place
- j. Dissolution: means divorce
- k. Jurisdiction: means a court's authority to hear a case and issue a decision
- l. Decree: an order for divorce
- m. Parenting Plan: a document that spells out who has custody of a child or children and the visitation schedule

Every divorce has at least 3 stages. Many divorces have 4 stages. The stages are:

- a. Filing the Complaint for Divorce;
- b. Serving the Complaint for Divorce;
- c. Discovery; and
- d. A final hearing.

Divorces involving children have these stages:

- a. Filing the Complaint for Divorce;
- b. Serving the Complaint for Divorce;
- c. A temporary hearing to figure out custody and child support while the case goes on;

- d. Parenting seminar and Parenting Plans;
- e. Discovery; and
- f. A final hearing.

The divorce process starts by filing a Complaint. Your Complaint will tell the Judge:

1. When and where you were married;
2. Where you live now;
3. Where your spouse lives now;
4. That you or your spouse have lived in the state for the last year;
5. The names of your children, the years they were born, and where they have lived the past five years;
6. That you think the marriage is over (irretrievably broken);
7. Who should have custody of your children;
8. What you want to happen with your real estate, your furniture, your household goods, and your bills
9. Whether you want support (alimony) from your spouse;
10. That you want the judge to end the marriage;
11. That you want the judge to decide who pays child support; and
12. Anything else you want the judge to do. (E.g. wanting your last name back).

Usually some time will go by between your first meeting with your lawyer and the time the Complaint is ready to file. Your lawyer will ask you to read and sign the Complaint before it is filed with the court. Read the Complaint and all other papers carefully. Make sure all of the things said are correct. Once everything is correct, you will sign the Complaint before a Notary Public. This means that you are swearing that everything said in the Complaint is true. Make sure that it is!

After you sign the Complaint, your lawyer will file it at the courthouse. When the Complaint is filed the Clerk of Court will create a case file and give your case a number. This number will appear on all the papers filed from that point forward.

You have to pay a fee when you file a divorce complaint. The filing fee in a divorce case is \$158.00. This amount can change. You can find out the current filing fees by going to <http://supremecourt.nebraska.gov/rules/administrative-policies-schedules/fees>

If you cannot afford the filing fee, you can ask the court for an order excusing the fee and other costs. This process is called "*In Forma Pauperis*". To get fees excused you need to share financial information with the court. If the court agrees that you cannot afford the filing fee, it will enter an *In Forma Pauperis* order (IFP Order).

An *IFP* Order will cover the filing fee, the cost of serving your spouse with the divorce case, and the cost of a parenting class. An *IFP* Order will not cover the cost of mediation, witness fees or deposition costs.

## STEP THREE – “SERVICE OF PROCESS” --OR LETTING YOUR SPOUSE KNOW YOU HAVE FILED FOR DIVORCE

It is possible that you and your spouse have been talking about a divorce for some time. However, your spouse still must be given official notice that you have filed for divorce. There are three main ways you can provide legal notice to your spouse: a voluntary appearance; service by sheriff; or service by publication.

### A. Voluntary Appearance

The first way to give official notice is to have your spouse sign a paper called a "Voluntary Appearance." This is a paper which your spouse signs stating that he or she received a copy of your divorce complaint. Your spouse should only sign such a document after your lawyer provides him/her with a copy of the Complaint you filed with the court. Once your spouse signs the Voluntary Appearance, your lawyer will file it with the Court. The day your lawyer files the Voluntary Appearance with the court is the official day of notice.

### B. Service of Process

The second way to give notice is to have the County Sheriff provide “Service of Process”. This means the Sheriff will deliver a copy of your Complaint and a Summons to your spouse. A Summons is a paper which tells your spouse that he or she has been sued, and tells them how much time they have to file an "Answer" to your Complaint.

The Sheriff must give these papers to your spouse personally. The Sheriff cannot leave them with someone else to give to your spouse. You will need to know where your spouse can be found in order to have the Sheriff give your spouse the papers.

Your spouse can be served at home, at work, at his or her favorite hangout, or the place where it is easiest to find him or her. Tell your lawyer the best place and the best times. The Sheriff will charge a fee to serve your spouse. The minimum cost is usually around \$30 but some counties charge much more than that. If the Judge in your case has issued an *IFP* Order the county should pay this fee. Remember, the more times the Sheriff has to go out to find your spouse, the more it will cost.

Even if your spouse is not living in the same county or is not in Nebraska at all, you still can have a sheriff give your spouse the papers. The Clerk of the District Court in your county gives your lawyer the Summons. Your lawyer then will send the Complaint and Summons to the Sheriff in the county where your spouse lives. This type of service takes a little more time. If your spouse does not live in Nebraska, there also may be a problem with "Jurisdiction." This means that the Judge here may not have the power to make decisions about some of the things you asked for in your Complaint. There is a more complete explanation of Jurisdiction in Part III of this handbook.

A Sheriff must report back to the court whether he was able to find your spouse and give him or her the papers. The Sheriff only has a certain number of days to do this. This is called the "return" date. If the Sheriff cannot find your spouse the first time, your lawyer can ask that he try again. A new Summons has to be issued. You can keep trying to have your spouse served this way if you find new addresses for him or her. However, if the Sheriff is still not able to find your spouse, you will have to serve him or her (give notice) in another way.

If the Sheriff does find and serve your spouse, papers need to be filed with the court showing the judge that you have given your spouse notice. The day that the Sheriff serves the papers on your spouse is the official day of notice.

### C. Notice by Publication

The third main way to give your spouse notice is by newspaper publication. This is used only if you do not know where your spouse is. Your lawyer will prepare a paper called an "Affidavit" for you to sign. By signing it, you are swearing that you do not know where your spouse is.

Your attorney will attach your affidavit to a "motion." A "motion" is a formal request to the court. In this case, the motion would ask the judge to let you tell your spouse you have filed for divorce by placing a notice (like an ad) in a legal newspaper. Your notice must run one day a week for three weeks.

No one expects your spouse to see this notice and because of this, the judge cannot order your spouse to do certain things such as pay child support or alimony. If you serve your spouse using newspaper publication, the judge will be able to dissolve your marriage, award you custody of the children, award you property in your possession, but little else. That is why it is better to have your spouse sign a Voluntary Appearance or be served by sheriff.

Nebraska has a 60-day waiting period for divorces. The 60-day waiting period begins when your spouse was served with notice of the divorce. That means at least 60 days must go by after your spouse was served before your lawyer can schedule your final divorce hearing. The official day of notice to your spouse of the divorce in your case will be:

1. The date your lawyer files your spouse's signed Voluntary Appearance with the Court; or
2. The date the Sheriff hands a copy of your Complaint and a Summons to your spouse; or
3. The date your notice (ad) is in the legal newspaper for the last (3rd) time.

## STEP FOUR – THE WAITING PERIOD

You must wait at least 60 days from the day your spouse is given notice before you have a final divorce hearing. Very, very few divorces are ready for final hearing after 60 days and many take over a year. During this period of time, several things may happen.

One thing that will happen during the waiting period is that you will find out if your spouse is going to file an “Answer” to your Complaint. In an Answer, your spouse will tell the court if he or she agrees or disagrees with what you said in the Complaint.

If you have children, you and your spouse must complete a Parenting Class before the final hearing. You will probably receive a list of where you can attend court-approved classes from the court or your lawyer. If you do not receive a list, you should ask your lawyer or contact the court for information.

Another thing that may happen while you are waiting for a final divorce hearing is a temporary hearing. At this hearing, the judge makes “temporary” decisions about custody, child support, parenting time, alimony, and restraining orders.

If your spouse does not file an Answer they are “in default”. Default divorces are usually simple and easy. Your lawyer can schedule a default hearing. A default hearing may only take 10-15 minutes. You would testify at the default hearing but your spouse would probably not be present. If what you ask for is fair and reasonable, you will probably get it.

If your spouse does file an Answer, it probably means they have hired a lawyer. During the waiting period the lawyers will try to reach an agreement on the issues involved in the divorce, such as custody, parenting time (also called “visitation”), child support, division of property, division of debts, alimony, etc.

During the waiting period you and your spouse will work on a “Parenting Plan”. As part of this plan, you and your spouse can agree on the responsibilities for raising your children and how much time you will each spend with the children. Remember, there will need to be give and take on both sides. The Parenting Plan should be what is best for the children—not what is best for the parents. A proposed Parenting Plan is required to be submitted at the final hearing or trial in all divorce cases that involve custody.

If you and your spouse cannot agree on a Parenting Plan, you may need to go to Mediation. At Mediation, a neutral person will try to work out the differences you have with your spouse regarding custody and parenting time. Some lawyers attend mediation with their clients, but others do not.

You and your spouse know more about your children than a judge. You and your spouse know what is best for your children. Mediation gives parents a chance to come up with a parenting plan that serves their children.

A process called “discovery” also can take place during this waiting period. The parties want to “discover” the evidence the other party will introduce at trial. They do this by sending formal questions, called “interrogatories,” to the other party. During discovery each party also can ask for documents or that the other party admit something. The goal of discovery is to make sure no one is surprised at trial

If you cannot reach an agreement on all the issues in your divorce, your case will go to trial. At a trial, each party will present “evidence.” The evidence will be testimony and documents. The court will make a decision based on the evidence. You and your lawyer may use the waiting period to prepare for the trial. To prepare, your lawyer may need to review documents or talk with people. You can help by getting copies of important documents to your lawyer, and providing contact information for the people you think your lawyer should talk to.

## STEP FIVE-THE FINAL HEARING

The final hearing cannot be set up any sooner than 60 days from the date of notice to your spouse. Usually this means that several months will go by from the time you filed your Complaint before you go to court.

### Uncontested Hearings

If you have worked things out, or if your spouse never filed an Answer, your hearing will be simple. Your spouse does not have to be at the hearing. Only one of you must testify. Your lawyer will ask you to take the stand. You will be sworn in. Your lawyer will ask you a few simple questions, most of which will be about things you asked for in your Complaint and the Decree your lawyer prepared. Your lawyer will give the Decree to the judge. The judge will read it. If the judge agrees that the Decree is fair, he or she will sign it. Your lawyer should give you a signed copy of the Decree that has been file stamped with the court.

If both parties agree, in writing, it is possible to have the judge grant a divorce without a hearing. Both parties need to sign a document stating that they waive the requirement of the hearing and that the court has subject matter jurisdiction over the dissolution action and personal jurisdiction over both parties. The parties also must certify that the marriage is irretrievably broken; that they have made every reasonable effort to effect reconciliation; that all documents required by the court and by statute have been filed; and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their dissolution action.

### Trials

If you and your spouse have not been able to work things out, you will have to let the judge decide what is right and fair. This is done by going through a trial. Both you and your spouse may testify at trial. Testimony is given under oath. You and your spouse may bring people to court (witnesses) who can tell the judge things that will help your side. You and your spouse also will introduce documents into evidence. These documents are called exhibits.

A lawyer should prepare a client for trial. A lawyer cannot tell a client what to say but the lawyer can help you tell your story. Some of the ways a lawyer prepares a client for trial is by:

- Going over the questions your lawyer will ask you;

- Reviewing with you the documents your lawyer wants to introduce as exhibits;
- Explaining why certain witnesses will or will not be called to testify at the trial; and
- Going over questions the other attorney may ask you.

Your lawyer should prepare your witnesses for trial. Your lawyer will want to know if you know of any problems that may come up. Be honest with your attorney. Your lawyer cannot get ready to deal with problems if he or she doesn't know about them.

At the end of the trial, the judge may decide everything immediately. Or, the judge may say they want time to think about what everyone has said. When the judge makes a decision, your lawyer should tell you. You should be given a copy of your decree that has been signed by the Judge and file-stamped with the court.

## STEP SIX – THE DECREE

Your lawyer should give you a copy of the Decree as soon as it is signed. The Decree contains orders about all issues involved in your divorce. You and your spouse need to follow those orders. Some things may begin on a different date if the Judge said so in the Decree. For example, child support may begin the month after the Decree is signed. Read your Decree carefully so you know which dates apply.

If you do not understand something in the Decree, ask your lawyer to explain it. If you do not agree with something in your Decree, speak with your lawyer. There are short time frames if you would like to file a motion for a new trial or an appeal.

If you agree with the Judge's decision, wait for 30 days to go by. At the end of 30 days, your divorce will be final for purposes of appeal.

You need to wait 6 months from the date your divorce decree was entered before you remarry. Your decree was entered on the date your decree is file-stamped by the district court clerk. You cannot remarry anyone else anywhere in the world for a period of six months.

If you were covered on your spouse's health insurance, or you covered your spouse on your health insurance, the coverage may continue for 6 months after your decree is filed with the clerk of court. This will be spelled out in the decree. If the coverage continues, your spouse should not drop you from their health insurance until 6 months after the divorce decree was entered by the court. Your decree was entered on the date it was file-stamped by the district court clerk of court.

## STEP SEVEN - WHAT TO DO IF YOU DON'T GET WHAT YOU WANT

Talk to your lawyer right away if you disagree with something the judge has decided. Your lawyer can ask the judge to change his/her mind. If the judge will not change his/her mind you can ask

the Nebraska Court of Appeals or Supreme Court to listen to your case. To do this you have to file an appeal. The appellate court will decide whether the District Court Judge was right and fair.

An appeal can cost you a lot of money. It could take quite a while before the appeals court makes a decision. Your lawyer should talk to you about whether or not he or she thinks your appeal will be successful. The appellate judges will not change the District Court Judge's decision unless they feel he/she was clearly unfair or made a serious mistake. If your lawyer tells you that your chances of winning are not good, you may want to get a second opinion, but do it right away. There are short time limits that must be met.

### **PART III- COMMON TERMS THAT ARE USED IN DIVORCE**

We have arranged this section in alphabetical order. We have tried to use the most common terms so it will be easy for you to find what you need.

#### **ALIMONY**

Alimony is money one spouse is ordered to pay for the other spouse's support. Before a judge orders alimony, he/she will consider:

- How long you were married;
- If you are able to support yourself;
- Whether you interrupted your career to care for children;
- Your education;
- Your work history;
- Your earning capacity;
- Your health;
- Your need for support; and
- Your spouse's ability to pay support.

For example, say you have been married 25 years and have not worked for the last 20. It will be difficult for you to find a job. You may need to go back to school in order to learn skills that allow you to re-enter the job market. In this case, the judge could order that your spouse support you, at least until you are able to support yourself.

Here is another example. You may be disabled and cannot work at all. In that case the judge might order alimony.

Either spouse can be awarded alimony. Alimony almost always stops when you remarry.

You may not want alimony from your spouse. However, your lawyer may advise you to ask for a something (as little as \$1.00 per year). This is because there has to be alimony ordered as part of the original decree if you need it in the future. If alimony is not included in the original decree,

you cannot ask for it later. As long as there is some order for alimony, you can ask for an increase later on.

## ANNULMENT

To annul means to “cancel.” An “annulment” means there was a problem with a marriage that made it illegal from the beginning. For example, a married person got re-married before getting divorced. Because no one can have more than one spouse, the second marriage never was legal.

An annulment has nothing to do with how long you are married. The length of the marriage does not matter. An annulment proceeding has almost as many steps as a divorce proceeding.

A legal annulment is not a church annulment. If you want a church annulment, you will need to talk to your religious leader.

## CHILD SNATCHING

“Child snatching” happens when:

- There is no custody order;
- One parent takes the children to another state to get a custody order;
- Without the other parent’s permission; and
- Keeps the children from the other parent.

Nebraska and many other states have a law that helps take care of child snatching. The law is called the Uniform Child Custody Jurisdiction and Enforcement Act (The Act). “Jurisdiction” is a court’s authority to decide a case.

The Act sets out rules about which state has the authority to decide custody matters. In most cases, the Act gives authority to decide custody to the state where the child has the closest ties. A child usually has the closest ties to the state where he/she has been living for the last 6 months. When a child has lived in a state for at least 6 months, that state is the child’s “home state.”

The Act will not stop a parent from child snatching. The Act does provide a legal way to return children to their home state.

In Nebraska it is illegal to keep a child away from the parent who has custody of the child. If you already have a court order awarding custody to you, and the other parent keeps the child from you, contact law enforcement.

## CHILD SUPPORT

Both parents have a duty to support their children. Support for a child means providing the:

- Food;
- Shelter;
- Clothing;
- Education; and
- Health care

a child will need from birth to the age of 19. This is true whether parents live together or apart. When parents are separated, each parent must contribute to a child's support.

The Nebraska Supreme Court has created a set of rules called Nebraska Child Support [Guidelines](#). The Guidelines set out how much financial support each parent must a child when the parents are not living together.

It is assumed that these Guidelines are in a child's best interests. In Nebraska, child support must be set according to these Guidelines unless there is "good cause" to not apply the Guidelines.

How much each parent pays for support depends on a number of things:

- How many children a couple have;
- The combined net income of both parties; and
- How much time each parent spends with a child.

Gifts to a child do not count as child support.

Nebraska has a special office set up to enforce child support orders. The name of the Office is the "Child Support Enforcement Office." Call the Child Support Enforcement Office at 1-877-631-9973 if you are having trouble collecting child support.

## COMMON LAW MARRIAGE

There is no such thing as "common law marriage" in Nebraska. Some states recognize "common law" marriages. These states accept that people who have lived together for a long-time act married, so they should be seen as married.

Every state has different rules about "common law marriage." Some states recognize "common law marriage." Some states do not.

Nebraska will often recognize other states' laws. You may have a valid Nebraska marriage if you move from a "common law marriage" state to Nebraska.

## CONTEMPT OF COURT

Judges can order parties to do certain things. For example, a court can order a party to pay child support. When someone disobeys a court order on purpose they are in “contempt” of court. A person can be punished for contempt of court. Contempt hearings can be very serious. A Judge can put a person in jail for being in contempt of court.

Usually, a judge will start by giving the person a chance to make up for the contempt. This chance is called a “purge plan.” The judge can order a number of different punishments if a person fails to follow a purge plan. One example is jail time.

## CUSTODY OF THE CHILDREN

In divorce cases parents are given a chance to figure out how much time and when children will be with each parent. Parents have this chance after the case is filed with the court. The parents can make an agreement on their own. Sometimes a neutral third person can help the parents reach an agreement. This neutral third person is called a mediator.

Sometimes parents cannot agree on parenting time. In those cases, a judge must make a decision. A judge should look at all the evidence and decide what is in a child’s best interests.

A judge should not prefer one parent over the other just because a parent is a mother or a father. A judge must decide which parent can, on a day-to-day basis, best provide for the children. Providing means more than a house and food. It also means meeting the child's emotional needs and making sure the child grows up happy and healthy.

A judge must pay attention to all the evidence the parties present at trial. This could include:

- Reports from a psychologist
- Your testimony;
- Your spouse’s testimony;
- Your child’s testimony;
- Your child’s medical records; and
- Your child’s school records.

After listening to everything, the judge must decide what is best for the children. A judge considers a parent’s actions if those actions could affect the child. For example, a judge might think your child would not be safe if you were living with a registered sex offender.

## DIVISION OF PROPERTY

In general, property that you and your spouse bought while you were married is considered marital property and belongs to both of you. This property is called “joint property.”

Joint property can include:

- Real estate (your house);
- Appliances;
- Furniture;
- Cars and vehicles;
- Pension accounts; and
- Bank accounts.

In a divorce this property must be divided. Parties will have a chance to try and agree on how to split up the property. If the parties cannot agree the case will go to trial. At trial a judge will decide how to split up the property.

A Judge is supposed to divide the property in a fair way. Some things are not easy to divide; for example, your house or car. If something cannot be divided, the Judge can give something of equal value to the other person. The Judge also can order that property be sold and the profit divided.

You and your spouse may already have divided up your joint property. The Judge usually will not change this division unless one of you complains and the Judge agrees that the division was not fair.

## DIVISION OF DEBTS (BILLS)

In general, debts that you and your spouse ran up while you were married is “marital debt.” This could be credit card debt. You may have taken out a loan to pay for a house or a car. Someone has to continue to pay for these bills. If you and your spouse cannot agree on who should pay what, the Judge will have to decide.

If you have a lot of marital debt you should talk to your attorney about bankruptcy. If you want to file bankruptcy, it may be better for you to file it before your final divorce hearing. You need to talk to your attorney about this.

A divorce decree only affects your relationship with your spouse, not with your creditors. As far as the creditors are concerned, you and your spouse both owe them. Your divorce decree does not take your name off the bill. If the decree says your spouse should pay a bill, and your spouse does not pay, the creditors will want you to pay. If you do not, they may try to repossess whatever you named as security (collateral) on the loan. They also can sue you for the balance due on the loan.

If your spouse does not pay, you can ask your lawyer about a “contempt of court” hearing. The judge can punish your spouse for not paying the bills he or she was ordered to pay.

If you ever find out that your ex-spouse is filing for bankruptcy, talk to your lawyer. Your spouse cannot include alimony or child support in a bankruptcy.

## GUARDIAN AD LITEM

There are three parties in a divorce with children: each spouse and the child or children. Each spouse usually is represented by an attorney. Children cannot hire their own attorney.

In a custody dispute the court wants to make sure someone is focusing on the children. A Guardian Ad Litem, or GAL, is a person appointed by the court to represent what is best for the children. The GAL is generally an attorney who is supposed to look out for the "best interests" of the child/children. This may or may not mean doing what the child wants.

A GAL can be helpful. A GAL also can be expensive. The parents usually pay for the GAL's services. A GAL is an attorney, so that means another lawyer's fee needs to be paid. Sometimes a judge will not appoint a GAL until one of the party's deposits enough money with the court to pay for the GAL services.

If the parents do not have money to pay for a GAL, the judge may order that the GAL fees should be paid by the county.

## GETTING YOUR PRIOR NAME BACK

After your divorce, you may want to go change your last name. You may want to change your last name to your maiden name. You may want to go back to a former married name, especially if you have children with that name.

Be sure to tell your lawyer at your first interview that you want to change your name. Your request should be in your complaint for divorce. If it is not, you are sometimes allowed to add the request at a later date.

If you do get your former last name back, you will need a certified copy of your divorce decree to change your name on your driver's license, social security card, and other important papers. You can get a certified copy of your decree from the clerk of the district court. There is a small fee charged by the clerk to give you a certified copy of your decree.

## IN FORMA PAUPERIS

We mentioned that a filing fee must be paid when a divorce complaint is filed. The courts want to make sure people can get into court even when they are poor.

If you cannot afford to pay the filing fee a court might excuse the fees. To get the fees excused you must give the court information about your financial situation. You give the court this information in a sworn statement called an "affidavit." In the affidavit you give the court

information about your income, assets and expenses. The judge will look at the affidavit. This process is called “In Forma Pauperis.”

If the Judge agrees that you cannot afford to pay for the fees, the judge signs an Order excusing the filing fee. The order also will excuse costs involved in the lawsuit, like service fees. The court will order the county to pay the fees and costs. This does not include lawyer’s fees, deposition fees, witness fees, and other things.

## INSURANCE

*Life Insurance.* In a custody case one spouse might be ordered to pay child support. Child support continues until the youngest child turns 19 years old. If your spouse dies the child support would end. Your spouse might have a life insurance policy. If so, you can ask the Judge to order your spouse to make the children the beneficiaries of the policy. This would protect the children in case something happens to your spouse.

*Health Insurance for children.* Parents are required to get health insurance for their children if:

- It is available through an employer or other organization;
- At a reasonable cost.

“Reasonable cost” is defined as 5% of a parent’s income. The parent who carries health insurance for the children will get a credit on the child support worksheet.

Health insurance may not cover all expenses. A parent may have a co-pays for office visits or prescriptions. Generally, uncovered medical costs up to \$250.00 per child per year are included in child support. The custodial parent pays these expenses up to \$250.00.

Once the expenses go over \$250.00 per child per year, both parents contribute to uncovered medical costs. The parents pay according to what percent of their income makes up their combined income.

If a child is on Medicaid a parent may be ordered to pay cash medical support. Cash medical support helps repay the State’s Medicaid expenses. A cash medical support payment can be up to 3% of a non-custodial parent’s income.

*Health Insurance for Spouses.* Health insurance for a spouse might not end when a divorce decree is entered. The health insurance coverage may continue for 6 months. Tell your attorney if you need the health insurance to continue.

## CHILD CUSTODY

“Child custody” is a legal term. It means a court made a decision about where and with which parent children will live. When a parent has “custody,” a parent has authority to make decisions for his or her child. “Custody” can be divided into two kinds. The first kind is Legal Custody. The second kind is Physical Custody.

“Legal Custody” means having a say in all the basic and big decisions that affect a child during his or her life. For example, education, religion, health care, or sports.

“Physical Custody” means where a child lives. Physical custody also means making most of the little decisions for your child. For example, when a child is with a parent that parent decides:

- What the child will eat for breakfast;
- What the child will wear to school;
- When a child does homework; and
- What time a child goes to bed at night.

“Joint Legal Custody” means each parent has an equal say in making big decisions for their children. It means the parents share decision-making.

“Joint Physical Custody” means the children live at each parent’s home half of the time.

“Sole Legal Custody” means one parent makes all the basic and big decisions that affect a child during his or her life.

“Sole Physical Custody” means a child lives with one parent and visits the other parent.

Different kinds of custody can be combined. For example, parents will share Joint Legal Custody but one parent has Sole Physical Custody. Or one parent can have Sole Legal Custody but the parents share physical custody.

A judge’s decision about custody must be based on a child’s best interests. Parents must be able to get along with each other in order for joint legal or joint physical custody to work.

## JURISDICTION

“Jurisdiction” means the power or right to take action. Courts get their power from the State Constitution and laws passed by the legislature. Jurisdiction is the right or power of the court to hear and decide a case.

To get divorced in Nebraska you have to live here for 12 months before you file a complaint. The courts do not have the power or right to hear and decide a divorce case otherwise. Your child has

to live in Nebraska for 6 months before a judge can make a custody decision. The courts do not have the power or right to hear and decide a custody case otherwise.

## LEGAL SEPARATION

“Legal separation” means a couple has split up their household. The spouses live in different places but are still married. A legal separation is very much like a divorce. A legal separation costs as much as a divorce. In a legal separation a judge can:

- Make decisions about children if the children have lived in Nebraska 6 months;
- Make decisions about marital property;
- Make a decision about alimony; and
- Make decisions about marital debt.

A decree of divorce ends a marriage. A decree of legal separation does not.

You can file for a legal separation in Nebraska no matter how long you live here. That is not true for divorce. To get divorced in Nebraska you have to live here for 12 months before you file a complaint.

Some people confuse “Legal Separation” with a trial separation. They are not the same thing. A Decree of Legal Separation is a court order that divides up a household.

## MEDIATION

There are two sides to every argument. There are two sides in a divorce case. Usually these two sides see things differently. “Mediation” is a way to bring people with different opinions together to talk about those differences.

In divorce cases mediation involves meetings. You will be at the meeting. Your spouse will be at the meeting. The third-person at the meeting is the mediator. The mediator is trained to help people find common ground in the middle of conflict. A mediator does not take sides.

Nebraska law allows judges to order parents to attend Mediation to try and work out their differences.

There is usually a cost for mediation. Nebraska does have several Mediation Centers that offer services on a sliding fee scale. You can go to this link to find mediation center locations: <https://supremecourt.nebraska.gov/programs-services/mediation-restorative-justice/odr-approved-mediation-centers>

## MODIFICATION OF A DECREE

“Modification” simply means change. You can ask the Judge to change things that were ordered in your first divorce Decree. However, before the Judge will do this, you must prove that something has changed. You cannot ask the Judge to change the Decree just because you did not like what was ordered the first time.

Nebraska law says that before a Decree is modified, one parent must show that there has been a "material change in circumstances" since the Decree was entered. For example, say you want more child support. Inflation has made it more costly for you to take care of your children. This is one fact you can show to the Judge. But you probably will need more. You could show that your spouse is making more money now than he or she was at the time of the divorce, or perhaps, you are making less.

Whenever you feel that something in your Decree should be changed, think about how you can show the Judge that things have changed. Then talk with your lawyer.

## PARENTING CLASS

If a divorce involves children, parents have to attend a court-approved parenting class. That is the law in Nebraska. Both parents have to go to the class. The classes have to be approved by the courts. These classes are one session, lasting about 2-4 hours. There are many types of parenting classes available, but only some are approved for divorce cases.

The district court clerk will give or mail you a list of approved parenting classes when you file your complaint for divorce. If you do not get this list, tell your attorney. He/she should be able to get you a list of approved parenting classes. You can find a list of approved parenting education providers by going to this link: <https://supremecourt.nebraska.gov/programs-services/mediation/parenting-act-mediation/parenting-education-classes>

You will need to pay the cost of the parenting class. Once you complete the class, you will get a Certificate of Completion. Your lawyer needs to file that certificate with the court to prove that you successfully completed the class.

## PARENTING PLAN

A Parenting Plan is a document that lays out:

- Who has custody;
- When children are with each parent;
- Who drives children back and forth for visits; and
- What holidays children will spend with each parent.

A Parenting Plan is part of every divorce involving children. You and your spouse can try to come up with a plan together. You and your spouse can try to come up with a plan in mediation. If you and your spouse cannot agree on a parenting plan, the judge will make up a parenting plan. The judge will listen to both sides before making a decision. Each side can give the judge their suggested parenting plan.

For more information on parenting plans, mediation, and the Parenting Act, visit: <https://supremecourt.nebraska.gov/programs-services/children-families/divorce-parenting-support>

## PROTECTION ORDERS

A “protection order” is a court order. These orders are separate cases, and are not part of a divorce case. There are three types of Protection Orders in Nebraska: Domestic Abuse Protection Orders; Harassment Protection Orders; and Sexual Assault Protection Orders.

A Domestic Abuse Protection Order is for people who have been in close relationships (relatives, spouses or former spouses, people who have lived or are living together, etc). It is granted because someone attempted, threatened, caused bodily injury, or intimidated the other person by credible threat, or engaged in sexual contact or sexual penetration without consent. A Domestic Abuse Protection Order can also include a Temporary Custody Order for children of the parties that can last for up to 90 days.

The second type of protection order is a Harassment Protection Order. It does not depend upon relationships, but requires a number of telephone or personal contacts that seriously terrify, threaten, or intimidate the victim and serve no legitimate purpose.

The third type of protection order is a Sexual Assault Protection Order. It does not depend upon relationships and is granted because someone subjected or attempted to subject the other person to sexual contact or sexual penetration without consent.

If you file for a Protection Order, you should choose the one that best fits your situation. However, no matter which type you pursue, a judge may treat your request as a request for any of the three types of orders, and can grant whichever order is most appropriate. If the judge grants a request for a protection order, the person who hurt, threatened, harassed or assaulted the victim (the “Defendant”) can be ordered to stay away from the victim, and can also be ordered to stay away from a specific place, such as the victim’s home or place of work.

There may be a hearing on the protection order. The judge may want the hearing. The Defendant may want the hearing. The judge will listen to both parties at the hearing. The judge will decide whether to grant or deny the protection order. If the judge leaves a protection order in place after a hearing, the order can remain in effect for one year.

If the judge leaves a Domestic Assault Protection Order, or a Sexual Assault Protection Order, in effect for one year, the victim may request a renewal of the order at the end of the year. This request needs to be filed within 45 days of the expiration of the one-year Protection Order. A Harassment Protection order cannot be renewed.

Violating a protection order is a crime. Violation a Harassment Protection Order is a Class II Misdemeanor. Violation of a Domestic Abuse Protection Order or a Sexual Abuse Protection Order is a Class I Misdemeanor for the first conviction, and a Class IV Felony for subsequent convictions.

If you have concerns about your personal safety, your children's safety or have experienced domestic abuse, you can find contact information for services across the state by going to the following link <http://ndvsac.org>. The National Domestic Violence Hotline number is 1-800-799-7233. The Nebraska Spanish Helpline is 1-877-215-0167.

For more information about protection and harassment orders, read our Protection Order Handbook.

## RESTRAINING ORDERS

A “restraining order” can be issued in a divorce case. A “restraining order” is issued by a judge. The order tells one or both parties to “not do” something.

There are several types of restraining orders that can be issued within a divorce case. A judge can issue an order:

- Telling the parties in a divorce case to stay away from each other;
- Telling the parties to not sell or get rid of marital property;
- Telling the parties to not empty bank accounts;
- Telling one parent to stay away from the children; or
- Telling one party to leave the marital home.

It is a crime to violate a restraining order. There are many rules that have to be followed in requesting these types of orders so you should discuss those procedures with your lawyer.

## SPOUSAL SUPPORT

See the “ALIMONY” section above.

## VISITATION OR “PARENTING TIME”

The parent who does not have custody of the children still has the right to see and spend time with their children. This is usually called Visitation or Parenting Time. Please see the “PARENTING PLAN” section above for more information.

Children have a right to see and be with both of their parents. Research shows that children have fewer problems when both of their parents stay involved in their life. Children often feel that the divorce is their fault. If one parent seems to drop out of the child's life, it can increase the child's feelings of guilt and loneliness.

Try to keep your spouse involved in your child's life. Talk with him or her about decisions which need to be made. Encourage your spouse to keep their relationship with your child as unchanged as possible. This may not be easy. You may have very bad feelings about your spouse and the divorce. Get outside help if you cannot put aside those bad feelings. Remember, you divorced your spouse, but your children did not.

Children also have a right to be free from harm or abuse. If your spouse was abusive to you or your children, be sure to tell your attorney. You and your children's safety should be addressed when determining custody and parenting time.

A parent who does not pay child support still has the right to see his or her children.

## **WHERE TO GO FOR HELP IF YOU CANNOT AFFORD AN ATTORNEY**

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Some resources are:

### **LOW-INCOME LEGAL SERVICES**

#### **LEGAL AID OF NEBRASKA**

[legalaidofnebraska.org](http://legalaidofnebraska.org)

If you cannot afford an attorney, you can call any one of Legal Aid of Nebraska's AccessLines® on page 2 of this Divorce Handbook to see if you qualify for assistance. You can also apply online at [legalaidofnebraska.org](http://legalaidofnebraska.org).

### **LAW SCHOOL LEGAL CLINICS**

#### **UNIVERSITY OF NEBRASKA COLLEGE OF LAW CIVIL CLINICAL LAW PROGRAM**

<http://liferaydemo.unl.edu/web/law/academics/curriculum/clinics>

A limited number of cases are accepted by the UNL Civil Clinical Law Program. Clients are represented by students under the supervision of College of Law faculty. The telephone number is 402-472-3271.

#### **CREIGHTON UNIVERSITY SCHOOL OF LAW LEGAL CLINIC**

<http://www.creighton.edu/law/clinics/civillawclinic/index.php>

For Douglas County residents only. A limited number of cases are accepted by the Creighton Legal Clinic. Clients are represented by lawyers assisted by third year law students. To complete an application for assistance call the Clinic at 402-280-3068 between 9:00 a.m. and 4:00 p.m. Monday through Friday.

### **SELF-HELP RESOURCES**

#### **NEBRASKA SUPREME COURT SELF-HELP FORMS**

<http://court.nol.org/self-help/>

The Nebraska Supreme Court has developed a form to use for terminating a child support order.

#### **SELF-HELP CENTERS**

Several Courthouses around Nebraska have a "Self-Help Desk" staffed by volunteers to assist people representing themselves in court. The Douglas County Courthouse in Omaha, the Madison County Courthouse in Madison, the Hall County Courthouse in Grand Island, and the Scotts Bluff County Courthouse in Scottsbluff have all had Self-Help Desks. Typically, appointments are not needed at these Self-Help Desks, and people are seen on a first-come, first-serve basis. However, these offices may experience temporary closures or changes in office hours. You should contact the Clerk of the District Court in the appropriate county to see if a Self-Help Desk is available to help you.

## LEGAL AID OF NEBRASKA'S ACCESS TO JUSTICE (A2J) CENTERS

Legal Aid of Nebraska's A2J Centers are self-help centers where low-income people can access legal resources including computers, forms, and self-help clinics.

### Omaha

Located at 209 S. 19<sup>th</sup> Street on the second floor. The A2J Center is open:

**Monday – Wednesday 1:00pm to 4:00pm.**

Call 402-348-1069, or toll-free at 1-888-991-9921, or visit our website at [legalaidofnebraska.org](http://legalaidofnebraska.org) to find out more information. *The hours the A2J Center is open may vary.*

### Lincoln

Located at 941 "O" Street, Suite 800, Lincoln, NE. The A2J Center is open:

**Monday and Wednesday 1:00pm to 4:00pm**

**Thursday 9:00am to 12:00pm**

Call 402-435-2161, or toll-free at 1-800-742-7555, or visit our website at [legalaidofnebraska.org](http://legalaidofnebraska.org) to find out more information. *The hours the A2J Center is open may vary.*

## LIBRARIES

### STATE LIBRARY

<http://www.supremecourt.ne.gov/state-library/index.shtml>

You can go to the State Library if you need access to legal resources including using the internet to do legal research. The State Library is located in room 325 at the State Capitol Building in Lincoln. The telephone number is 402-471-3189.

### PUBLIC LIBRARIES

Your local public library may have some resources and public access to computers and the internet. To find your local library you can visit <http://www.publiclibraries.com/nebraska.htm>.

### UNIVERSITY OF NEBRASKA COLLEGE OF LAW LIBRARY

<http://law.unl.edu/library/>

The UNL College of Law Library is located on the east campus of UNL. The Law Library has one public access computer for members of the public to conduct legal research. The general telephone number to the law school is 402-472-2161.

### CREIGHTON UNIVERSITY LAW SCHOOL LIBRARY

<http://www.creighton.edu/law/library/>

The Creighton Law School Library has public access computers available for legal research. Reference assistance is also available. The general library telephone number is 402-280-2875. The Law Library is open to the general public with legal research needs from 7:00 a.m. to 7:00 p.m. Monday through Friday while school is in session. Hours may vary during breaks and over the summer. It is located in Omaha on the corner of 21st and Cass Streets on the second floor of the Ahmanson Law Center.

## **REFERRAL SERVICES**

Referrals to private attorneys are available. Private attorneys may charge for their services.

### **[OMAHA BAR ASSOCIATION LAWYER REFERRAL SERVICE](#)**

The service refers callers to private practicing attorneys in Douglas and Sarpy counties. For more information call 402-280-3603 or visit their website at:

<http://omahabarassociation.com/lawyerreferral.asp>.

