



THE ULTIMATE  
GUIDE TO  
FAMILY  
LAW IN  
NEW YORK

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After braving the brutalities life flings your way, going home to a warm and loving family is a blessing. However, not all families are alike. And not all of them are happy. Often, time might quiet the fray and return the family to a state of harmony. Other times, the situation requires the involvement of an objective external

agency: the law.

At the heart of family law is a strong moral code and a set of unwavering family values. However, while the objective is to uphold and promulgate these values as the case progresses, the process is arduous and fraught with emotional strife for those involved. It is times like these that the counsel of a dedicated family law attorney can ease your way through the entire process.

In this eBook, you will learn about the different arms of family law including divorce, spousal support, child support, child custody, visitation rights, marital property division, prenuptial and postnuptial agreements, paternity issues and adoption. The purpose is to educate and inform. Moreover, you will also better understand your own role and that of your lawyer during a court case. This in turn will help you realize the value of seeking sound legal counsel from a well-established firm like Cole, Sorrentino, Hurley, Hewner & Gambino, P.C., the authors of this eBook.

## FAMILY LAW

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Having a family is the most wonderful and fulfilling part of an individual's life. However, families sometimes break up, and when they do, it usually involves the courts and can the process can be contentious. In the sections that follow, the topics below will be expounded. The final section in the eBook will also provide you with answers to some of the most frequently asked questions. These answers were supplied by dedicated lawyers who are practicing in the field of family law.

## *Divorce*

Couples may grow apart; marriages might end. A divorce is not the tragic end of a family, for it is better to be happy apart than to be unhappy together. A divorce signifies the beginning of a different family; one that is happier. When this happens, the court system will be involved so it may grant the couple a divorce. Often, the court system will aid the couple as they determine how best to separate the various aspects of the life they created together. This include property, child custody and finances. While a family law attorney is not always required in order to get a divorce, an individual or couple contemplating it should consult with an experienced family law attorney to discuss the wide array of legal rights and options available to them.

## *Spousal Support*

Spousal support (officially called maintenance in New York, but sometimes referred to as alimony) is the financial support an ex-spouse with a lower income receives from an ex-spouse with a higher income. These payments can take place during the divorce, as well as after the divorce is finalized.

## *Child Support*

Child support refers to the financial obligation of the noncustodial parent towards raising a child. This comes in the form of regular payments to the custodial parent. New York state has a law called the Child Support Standards Act, which sets forth a specific formula for calculating the base child support obligation. However, this base amount is subject to adjustment, depending on specific facts of the case.

## *Child Custody*

When couples divorce, their cohabitation ends and they make separate and mutually exclusive living arrangements. This poses considerable challenges to their roles as parents and may also impose strain on their task of raising their child. Even though they may both have a say in how the child should be raised, the fact remains that the child can only live with one parent at a time. This is usually hardest on the child(ren) concerned. In other situations, only one parent may be legally permitted to make important decisions about the child even

though the child will spend a large amount of time living with each parent. New York State courts always work to put the child's interests first in all custody decisions.

## *Visitation Rights*

In certain situations, the court may grant one parent sole physical custody of a child following a divorce. Except in cases of domestic violence or other extreme circumstances, the court also grants visitation rights to the noncustodial parent. Parents decide the visitation schedule. However, in situations where they are unable to do so or where it is not possible, the court formulates the visitation schedule based on what it deems to be in the best interest of the child.

## *Marital Property Division*

New York state provides for equitable distribution of marital property during a divorce. The operative word here is "equitable". This means a court does not divide all relevant assets equally. Instead, it will divide assets as equitably as possible so that each spouse gets what the court believes is most fair. A court will look at the contributions each spouse made to the marital property and what each spouse may have given up during the marriage.

## *Prenuptial and Postnuptial Agreements*

The purpose of prenuptial or postnuptial agreements is to allow couples to decide for themselves how their property will be divided in the event of a divorce or upon the death of one of the spouses. Couples and their attorneys must take steps to ensure prenuptial and postnuptial agreements are enforceable. For instance, if the agreement is unjust or entered into under duress, a court will likely invalidate it.

## *Paternity Issues*

Children need the love and care of both parents. And as a result, they deserve to know who their fathers are. Thus, establishing paternity in New York is

important: it upholds family values. It also provides for a variety of rights and responsibilities for the legal father, such as child support, visitation rights, the right to make certain decisions about the child's life and the right to notification about things like medical events. Unfortunately, determining paternity is not as simple as taking a DNA test, as there are other factors a court must consider before establishing paternity.

## *Adoption*

New York state provides for two ways in which a family may adopt: private placement or agency adoption. Private placement occurs between the birth and adoptive family and does not require government involvement except for court approvals. In an agency adoption, a private or social services agency will facilitate and oversee the adoption process. Regardless of the method, the adopting parents, biological parents and any agency involved must observe certain steps. These include seeking certification from the court, terminating the parental rights of the birth parents and gaining final court approval.

## DIVORCE

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Marriage is one of the most hallowed and revered institutions in our society. Yet, many marriages fail to survive and sometimes result in a divorce. Most statistics show that 40 to 50 percent of marriages in the US end in divorce. Because a marriage is a legal contract, you cannot end a marriage "outside" of the law. Because the law views a married couple as one legal entity, things can get especially complicated when trying to separate two individuals' legal and property interests, and even more complicated when children are involved.

When couples are incapable of effective communication, divorce proceedings could spiral into long and costly battles. Even if a divorce is amicable, it will involve complicated legal considerations and important decisions that will affect both parties for many years to come. Hiring a skilled divorce attorney will help you no matter how friendly or hostile your situation might be.

A divorce lawyer recognizes the role emotional conflict plays in a divorce. Because of their professional training and legal expertise, we advise you to retain an experienced attorney. He/she will remain objective, work in best interest of your child and yourself, treat the matter with the sensitivity and confidentiality it requires and provide you with the guidance you need to see you through this troubled time.

One of our first duties to our clients is to clear up any misgivings or misconceptions they might be bringing to the separation and divorce process. Our goal is to explain the law to you and make a plan to achieve the best result possible, as quickly as possible.

Before you move forward into the process, it might help to educate yourself about some of the basics of asset distribution, alimony, child custody, and child support.

## *Understanding What a Divorce Is*

A divorce is the legal process by which a couple ends their marriage. Because of the legal status marriage enjoys, only a court order can end it. Generally speaking, the spouse who starts the divorce is the plaintiff, while the other spouse is the defendant.



## *Where to Get a Divorce*

A large number of divorces occur in court. The New York Supreme Court is the specific court that will oversee and grant a divorce. Specifically, New York residents will need to file for divorce in the county in which they reside. For Buffalo residents, it will be the Erie County Supreme Court.

It may surprise you to know that New York's Family Courts do not grant divorces. Rather, Family Courts usually deal with family law issues, such as child support, visitation rights, spousal support (also called maintenance), child custody and paternity issues.

Depending on how cooperative the couple will be during the divorce, divorce mediation or collaborative law could be other options. However, these out-of-court methods are not suitable for all divorces, especially those that involve abuse. These are also not suitable for spouses who are unwilling to compromise and work together to complete the divorce.

## *Requirements to Get a Divorce*

Someone filing for divorce must meet two requirements before the proceedings can begin. First, the couple must meet the residency requirement. In order to get a divorce in New York, the couple must have lived in New York for at least one year, without interruption. If only one spouse lives in New York, the residency time period extends to two years.

Second, there should be grounds for divorce. New York state recognizes the following as grounds for divorce:

- » Cruel and inhuman treatment
- » Abandonment
- » Prison confinement that exceeds three or more consecutive years
- » Adultery
- » Legal separation
- » Irretrievable breakdown lasting at least six months (also referred to as a “no fault” divorce)

The “no fault” divorce option is relatively recent, only allowed in New York state since 2010. One reason it is popular as grounds for divorce is that neither spouse must prove the other spouse did anything wrong. This makes the situation more amicable and can help keep costs down.

## *Contested vs. Uncontested Divorce*

A divorce is “contested” when:

- » One of the spouses does not want to get a divorce.
- » The couple disagree as to why a divorce should be granted.

- » The couple disagrees as to how their finances, property and child responsibilities should be divided among them.

A divorce is “uncontested” when:

- » Both spouses want the divorce, and
- » Both spouses agree on how their finances, property and child responsibilities should be handled.

## *Issues Decided During a Divorce*

The primary purpose of the court is to grant the divorce. Only when a judge issues an order dissolving the marriage is the divorce official. However, couples don't necessarily need the court to resolve the other issues that accompany a divorce, such as the division of marital property, child custody, and spousal support. The reason the court is often involved in these issues is because couples often disagree about resolving them.

## *Divorce vs. Annulment*

A divorce ends a valid marriage, while an annulment is a declaration that the marriage was never valid in the first place.

In order to get an annulment, a spouse has to prove at least one of the following:

- » One spouse was currently married to another individual at the time of marriage.
- » The marriage was entered into by force or duress.
- » One spouse became incurably insane for a period of five years or more.
- » The agreement to get married was made through fraud.
- » One spouse was mentally incapable of understanding the consequences of marriage.

If you are going through a divorce, you need experienced legal counsel. Even if you're in full agreement with your spouse as to the terms of the divorce and want to utilize mediation or collaborative law, you should still at least consult with an

experienced attorney to discuss all your legal options and answer any questions you're bound to have.

## SPOUSAL SUPPORT

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Like many other couples across the country, those in Buffalo and nearby areas are not immune to the fact that marriages end and divorces are granted. However, even though a couple gets a divorce, that does not mean their obligations to financially support each other come to an end. Like other states, New York state has laws that control how spousal support payments are to be made both during and after a divorce. The official term for spousal support in New York is "maintenance," but it's often referred to as "alimony", as well. Therefore, we may use all three terms interchangeably.

### *Spousal Maintenance*

The purpose of maintenance is to provide financial assistance to the financially dependent spouse in a divorce. During the course of a marriage, one spouse may come to rely on another spouse's income. When that marriage ends, the courts will expect the financially stronger spouse to support the financially dependent spouse. Exactly how much spousal support will be given and how long support will last is up to the court, which will consider many factors in making that determination.

Maintenance can be divided into two types: temporary and permanent. Temporary maintenance (sometimes referred to as pendente lite maintenance) is the payment of spousal support for the duration of the divorce only. Depending on the facts of the case, a court may choose not to award temporary maintenance.

Permanent maintenance is exactly what it sounds like. However, it does not commence until the divorce is complete. A spouse ordered to pay permanent maintenance will continue to do so until the spouse receiving the spousal support remarries (or cohabitates with another) or dies. Permanent maintenance

can also end if the court order finalizing the divorce places an ending date for the payments.

## *How Spousal Maintenance Is Calculated*

Since there are two types of maintenance, there are also two methods for calculation. For temporary maintenance, the court will use a special formula. It is not the simplest of formulas, but there is very little wiggle room for a court to adjust what is required. However, in limited situations, a court may decide that the formula requires a payment amount that is inappropriate or unfair, and adjust the amount of the temporary maintenance award.

As for permanent maintenance, there is no fixed formula, so calculating permanent maintenance is much more difficult. A court will look at 20 factors to determine how to calculate alimony payment amounts and how long those payments should continue. These 20 factors are:

- » The income and assets of each spouse
- » How long the marriage lasted
- » The health and age of each spouse
- » The earning capacities of each spouse
- » Whether a spouse will need to obtain education or training in order to become financially independent
- » How long couples lived together before marriage or lived apart before the divorce
- » Whether one spouse did anything to restrict the other spouse's ability to find gainful employment
- » The ability of a dependent spouse to become financially independent and how long that might take
- » Any future loss of earning ability due to a spouse having foregone professional or educational development

- » Which spouse will be taking care of the children
- » Whether there is a need for one spouse to take care of other family members
- » A spouse’s inability to find gainful employment due to being out of the workforce for an extended period of time
- » The need to pay for exceptional expenses for children
- » Tax considerations for each spouse
- » How marital property will be distributed
- » The nonmonetary contributions of each spouse made during the marriage
- » Any financial waste by a spouse
- » Financial transactions made by a spouse that occurred right before a divorce
- » Loss of health insurance benefits as a result of the divorce
- » Any other factors the court deems just and proper

Theoretically, there can be an unlimited number of factors since the 20th factor is a “catch all” that allows the court to consider almost anything else that might be relevant.



## CHILD SUPPORT

Divorces are unpleasant, but arguably a necessary step that some couples need to take. But even if the couple is better off with a divorce, the couple’s children, if any, are usually not. Eliminating any emotional harm to the children caught in the middle of a divorce is a noble but rarely achieved goal. However, the courts will attempt to minimize the impact and disruption

to the children due to a divorce. One way they do this is by ordering one of the parents to pay child support.

## *Understanding Child Support*

Child support refers to the financial support a noncustodial parent will pay to the custodial parent to help with the financial cost of raising a child until the child is 21 years of age. The noncustodial parent is the parent who has less than 50% of the physical custody of the child. If both parents have 50% physical custody, then the court will decide who the noncustodial parent is for the purposes of deciding who pays child support. This is usually the parent who earns the most money.

## *What Child Support Pays For*

Child support payments are for the purposes of raising a child. Child support covers the money needed to clothe, feed and house the child. Other needs of the child that are to be covered by child support payments include costs of child care, healthcare costs and health insurance premiums for the child.

## *How Child Support Is Calculated*

New York has a specific law, called the Child Support Standards Act, that calculates the basic amount of child support. The formula will calculate the noncustodial parent's child support payment by adding up the incomes of both parents, multiplying that amount by a certain percentage based on the number of children to be supported, then prorate that value based on the percentage of each parent's income. The final result will be how much the noncustodial parent is supposed to pay in child support for the year.

The following is the percentage value based on the number of children to be supported:

- » One child = 17%
- » Two children = 25%

- » Three children = 29%
- » Four children = 31%
- » Five or more children = at least 35%

Let's look at a hypothetical situation to make this easier to understand. Let's say you have a divorced couple with two children. The father is the custodial parent and makes \$35,000 per year while the mother makes \$45,000 per year. Since the mother is the noncustodial parent, she will make child support payments to the father.

The first step is to add up the parents' incomes, which totals \$80,000. Since there are two children, we will multiply that number by 25%. This results in an annual child support requirement of \$20,000. The father is responsible \$8,750 since his income only amounts to 43.75% of the \$80,000 total. The mother is responsible for \$11,250 since her income amounts to 56.25% of the \$80,000 total. Therefore, the mother will make \$11,250 worth of child support payments to the father throughout the year.

In the above hypothetical, \$11,250 is the noncustodial parent's base child support obligation. However, the base child support obligation can be adjusted by requiring the noncustodial parent to pay more child support for certain costs, such as child care, health insurance and medical expenses.

If the combined incomes of the parents exceed a certain threshold (it changes every two years, but is roughly \$141,000), the court may use the Child Support Standards Act formula only for the first \$141,000, and then consider a variety of factors to decide how to account for the combined incomes that exceed \$141,000. Or the court may just use the Child Support Standards Act formula on the entire combined income amount.

Contact Our Child Support Lawyers in Buffalo NY

If you are facing difficulties with child support, it is extremely important to speak with one of our Child Support Lawyers in Buffalo NY to guide you along the matter. Cole, Sorrentino, Hurley, Hewner & Gambino, P.C. are dedicated to helping clients in these situations and have four offices to make meeting our child support lawyers even easier.

# CHILD CUSTODY

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When a married couple with children obtains a divorce, one of the more complicated and contested parts of the divorce process is often child custody. Since the parents are no longer living together, they must split their time spent with the child.

New York law has no set rule for dividing. Instead, the court will follow the overarching principle of doing what's in the child's best interest. With no set "formula," it's easy to see how difficult it can be to determine child custody rights among parents.

As your attorneys, we understand that not only is it inherently difficult to decide how a child should be raised by parents living apart, but we know how personal and important this legal dispute can be. The following is an overview of New York's child custody laws to help you better understand how the process works.

## *Types of Child Custody*

There are two primary types of child custody in New York: physical custody and legal custody. Physical, or residential custody refers to where a child lives. Legal custody refers to a parent's right to make important decisions about the child's life. The three major types of decisions that usually fall under legal custody include the child's health, religious upbringing, and schooling.

Both physical and legal custody can be "sole" or "joint." Sole legal custody means only one parent can make the major decisions about a child, and joint legal custody means both parents have equal say in making major decisions about the child's upbringing. Similarly, sole physical custody means the child will spend all or a large majority of the time with one parent (the custodial parent) while the non-custodial parent has visitation rights. Joint physical custody means the child will spend an equal amount of time (or as close to 50/50 as possible) living with each parent.

## *How the Court Makes Child Custody Decisions*

While both parents have legitimate interests in a child custody battle, these come after the child's interests. What constitutes "best interests" will depend on the particulars of each case. Courts will consider:

- » The wishes of the child (the amount of weight the court will give to the child's wishes will depend on the child's age).
- » Which parent has served as the primary nurturer for the child.
- » The parenting ability of each parent.
- » Any history of child or domestic abuse.
- » Any history of substance abuse.
- » How well the parents get along with each other.
- » The physical and mental health of each parent.
- » Each parent's work schedule.

The court will not consider the following factors in determining child custody:

- » The parents' religion.
- » The parents' race.
- » Sexual orientation of the parents.
- » Sexual behavior of the parents, including situations where adultery served as the grounds for the divorce.

But if any of the above parental factors will adversely affect the child's best interest, then the court may consider it.

## *Custody Orders*

The court doesn't always have to get involved in custody decisions.

In an uncontested divorce, a court only has to grant the divorce, and there isn't any need for a judge to determine property division, spousal support, and child support. Likewise, if the parents can agree how to divide the child raising

time and duties, the court won't need to make a decision about child custody. But if the parents don't agree on child custody, then the court steps in and issues a custody order.

## *How the Court Issues a Custody Order*

In these cases, the court will order a hearing and take testimony from both parents. The court may also have other witnesses testify, such as mental health professionals who have treated the child or parents, relatives of the child, and the child's teachers.

If necessary, the court may conduct further investigation, such as sending mental health professionals or social workers to see the parents' homes and interview anyone else living there. After examining all the evidence, the judge will make a decision and issue the custody order.

In many situations, a court is in the difficult position of trying to figure out how to split a child's time between the parents, but it's not always easy to figure out what's in a child's best interests. If you're facing a child custody decision, seek an experienced attorney who understands the process and is familiar with the factors judges consider in these cases.

## VISITATION RIGHTS

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For the most part, courts in New York operate on the belief that a child will benefit from having contact with both parents. This is the principle underlying all decisions about visitation rights. However, in some cases the court will grant physical custody to only one parent. When this happens, the parent not granted custody, also known as the non-custodial parent, will have the right to visit his or her child. Most of the time, the court will issue an order setting up the visitation schedule and rules, if applicable.

## *Understanding Who Gets Visitation*

Usually, only the parent will be asking for visitation rights. However, grandparents and siblings can ask for visitation rights, too. As with all other decisions

involving children, the court considers the interests of the child, not the interests of the party requesting visitation rights.



## *How Courts Decide Visitation Schedules*

Ideally, the parents will agree on a visitation schedule. When this isn't possible, a judge will decide the visitation schedule (and any rules, if needed). The process in which courts decide visitation is very similar to the process for determining custody. In fact, when the court issues a custody order, it also issues a visitation order.

The court will have a hearing and gather evidence to make its visitation decision. The overarching principle guiding the court's thought process will be doing whatever is in the best interests of the child. In making this determination, the court will take testimony from the parents, people who know the child (such as teachers), and professionals like social workers, psychologists, and healthcare workers.

In the past, visitation was usually limited: a non-custodial parent might see the child every other weekend and on alternating holidays. The courts now are trying harder to allow both parents to spend time with their child. Courts may allow the non-custodial parents to spend evenings or afternoons with the child, pick the child up from school, or go on summer vacation with the child.

Except in very unique circumstances, a court will usually grant at least some visitation rights to the noncustodial parent. Even in instances where the non-custodial parent poses some threat to the child's emotional or physical well-being, the court will still usually grant visitation, albeit under close supervision.

## *Supervised Visitation*

Supervised visitation works only in cases where the court concludes that, despite risks, visitation would be in the child's best interest. Any history of domestic abuse, child abuse, mental illness, or substance abuse wouldn't immediately

disqualify a parent from visitation rights, though visitation would likely require supervision in any case involving those issues.

## *How Supervised Visitation Works*

The exact risk the non-custodial parent presents to the child and others will determine the nature of the supervision. In situations where the non-custodial parent isn't considered a significant risk, the third party supervising the visit can be court-approved neighbors or friends. In more extreme cases where the non-custodial parent is dangerous to the child, the supervising third party may be a professional with the physical ability to protect the child if necessary.

## *Enforcing Visitation*

Custodial parents do not always cooperate with the non-custodial parents, and allow them to visit the child according to the specifications of the court order. Should this occur, the non-custodial parent can ask the court to issue a visitation enforcement order.

In situations where the non-custodial parent is paying child support and the custodial parent is not allowing visitation, the non-custodial parent cannot withhold child support payments. The requirement to make child support payments or allow visitation are two separate legal issues. Only a court order can alter the non-custodial parent's child support obligations.

In some situations, however, the court may temporarily suspend the non-custodial parent's child support requirements if the custodial parent is interfering with visitation. This decision, though, isn't up to either parent. Additionally, if the custodial parent continues to interfere with visitation, the court may modify its original child custody order.

If you have an issue with your child's visitation schedule or want to gain visitation rights, you should seek professional legal help. You might be unaware of the legal options available to you.

# MARITAL PROPERTY DIVISION

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The separation of marital property is a significant part of the divorce process. New York State refers to this process as equitable distribution. This law provides that all assets and debt acquired during a marriage are considered marital property and are therefore subject to division among the spouses. The underlying principle of equitable distribution is that a marriage is an economic partnership with both spouses contributing. The extent and nature of this contribution, as well as other circumstances surrounding the marriage, will determine how marital assets are distributed during a divorce.

The court examines a number of factors in determining how to distribute property. They look at the type of property and the amount. They also consider the interests of the parties regarding the assets and property. There is no precise formula that tells a court how to divide marital property among divorcing spouses. Instead, a court will focus on doing what it believes is most equitable, or fair. Therefore, the more effective you are in explaining to the court why your proposal for dividing marital assets is the fairest option is critical. While you could try to do this alone, you'd be much better served having a skilled and experienced divorce attorney help protect your rights in marital property division proceedings.

## *Equitable Distribution*

During a divorce, the court won't necessarily divide all the property among the spouses so that each gets an equal amount. Note that this is called equitable distribution, not equal distribution. While the court will sometimes divide property equally, it will consider what each spouse contributed during the marriage as well as what each spouse will need in the future.

Also, the court is not required by law to order equitable distribution. If the couple can divide their assets themselves, they are free to do so. But the reality is that many couples will have at least a few disagreements as to how certain assets are to be divided during a divorce.

Finally, not all the property in the marriage is subject to equitable distribution. Only marital property will be, with other types of property, called separate

property, kept by each respective spouse. One of first things the court will do is figure out which property is marital and which is separate.

## *Separate Vs. Marital Property*

Marital property is basically all property acquired by the couple during the marriage. Marital property can include assets that are titled to just one spouse. Marital property includes all the income earned during the marriage, as well as the property obtained with that income. Even the appreciation of property during the marriage is subject to equitable distribution.

Unlike marital property, separate property will be kept separate during a divorce. However, if the other spouse has helped increase the value of the separate property, it may be subject to equitable distribution. Examples of separate property include:

- » Any inheritance or gifts received during the marriage, unless the gift came from a spouse.
- » Property owned by each spouse before they got married.
- » Any compensation due to personal injuries suffered by either spouse.
- » Any property subject to a prenuptial agreement.
- » Any appreciation in value of separate property, but only if the other spouse did not contribute to its appreciation.

## *The Equitable Distribution Process*

The first step in valuing marital property is identifying all property that belongs to the married couple. This means each spouse will need to disclose all their financial assets, sources of income and debts.

Next, the court will distribute the marital property by looking at 14 factors.

- » Duration of the marriage.
- » Income and assets of each spouse during the marriage and divorce.
- » Financial need of the spouse.

- » Loss of any health insurance benefits.
- » Any spousal support awarded to one of the spouses.
- » A spouse's contribution to marital property.
- » The form of the marital asset, i.e. whether it can easily be converted into cash.
- » The future financial outlook for each spouse.
- » How easy or difficult it will be to value or divide a marital asset, such as a business.
- » The tax consequences each party will face during the divorce.
- » Whether a spouse transferred or disposed of property at less than market value in anticipation of the divorce.
- » If a spouse wasted any marital property while the divorce was occurring.
- » Loss of pension or inheritance benefits because of the divorce.
- » Any other fact that the court deems relevant in determining equitable distribution.

Marital fault or misconduct is usually not considered in creating an equitable distribution. But in situations where the marital fault results in reducing the value of marital assets, the court may take that into account.

Since some marital property may not be easily split up, the court is allowed to order cash payments from one spouse to another to balance the equitable distribution of property. For example, if a court were to allow each spouse a 50% interest in the family home worth \$200,000 that neither spouse wants to sell, it may order one spouse to pay the other \$100,000 in cash to "buy out" the other spouse's interest in the home.

## *Property Division*

In short, any marital property (property acquired during the marriage) is subject to division during a divorce. Pensions, deferred compensation accounts and IRAs are all included in the definition of marital property even if they were

earned by one of the parties through employment and even if that property is not yet “vested.”

However, some property is considered separate and not subject to distribution by the court, including:

- » An inheritance
- » Proceeds from a personal injury lawsuit
- » A gift from a third party and property owned prior to the marriage

Property division issues can prove to be extremely complicated and are an integral part of all divorce proceedings. A good attorney can make sure that your property rights are fully protected during your divorce.

Compared to other issues that come up during divorce, equitable distribution can be a little more straightforward, since it deals with numbers. But in a contested divorce, one or both sides may fight very hard over every piece of property. Therefore, a family law attorney will be necessary to handle these conflicts. And even in an uncontested divorce, it’s extremely helpful to have an attorney to help account for and value the property to be distributed.

## PRENUPTIAL & POSTNUPTIAL AGREEMENTS

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If a married couple decides to get an uncontested divorce, it means they probably agree on the ancillary issues, such as spousal support, child custody, equitable distribution and other financial issues. But much of the time, the couple disagrees on some or most of these issues. As a result, a court must decide these decisions for the divorcing couple. When this happens, the divorce becomes more expensive and there is uncertainty as to what the court will do.

Couples can avoid much of this uncertainty by agreeing on what to do before the divorce takes place. These agreements are called prenuptial agreements if they are made before marriage and postnuptial agreements if they’re made during marriage; collectively, they may be referred to as marital agreements.

Besides reducing uncertainty, these marital agreements allow couples to divide their property in ways that New York law doesn't normally allow.

In order to make sure marital agreements are enforceable and likely to survive a court challenge, it's best to get legal help.

## *Prenuptial Agreements*

A prenuptial agreement, also called a preup, antenuptial agreement or premarital agreement, is a contract entered into by two people before they get married. This contract will lay out the property rights of each spouse during marriage and in cases of divorce or death. Many prenuptial agreements will cover the following topics:

- » Distribution of property acquired during marriage.
- » The right to spousal support, as well as the terms of any spousal support, such as amount and how long the payments should last. Exception: if the marital agreement's provisions leave one spouse so poor they are require government assistance, the court may modify the marital agreement's terms.
- » The state law that will control the prenuptial agreement.
- » Dictating who will be liable for which premarital debts.
- » Spousal rights to specific property, such as a family business.
- » Defining what will constitute marital property and separate property.
- » Some issues relating to the couple's children, especially those brought into the marriage.

Even though New York allows prenuptial agreements to cover some topics relating to children, a court will review the agreement and has the right to disregard those portions of the prenuptial agreement. Basically, a prenuptial agreement that has terms as to child support, custody, visitation, etc. will be viewed by a court as only a suggestion; courts do not enforce an agreement against a child (especially one that hasn't even been born) unless it's in the child's best interest.

## *Postnuptial Agreements*

Basically, a postnuptial agreement is the same as a prenuptial agreement, except it's entered into after the couple has been married.

## *Requirements of a Valid Marital Agreement*

In order for a marital agreement to be valid, the following requirements must be met:

- » The agreement must be in writing.
- » The parties must sign the agreement in the presence of a notary public.
- » The provisions of the agreement must be reasonable to both parties.

In the case of a prenuptial agreement, it will not go into effect until the couple marries.

## *How Marital Agreements are Enforced*

Even though marital agreements are presumed by the courts to be valid, they will not always enforce them. Marital agreements can be challenged in several ways, including:

**Fraud:** If one of the spouses fails to fully disclosure their assets, income, debts or other material facts, a court may invalidate the marital agreement.

**No legal counsel:** If one of the spouses does not have an attorney when signing a marital agreement, it will not automatically invalidate the agreement. However, a court will review the marital agreement more carefully to ensure it really is fair.

**Mental competence:** If one of the spouses was not mentally competent or under the age of 18 when they signed the marital agreement, it's unlikely it'll be enforceable.

**Unfair:** Parties have a lot of leeway as to what they want to agree to in a marital agreement. But if the contract is lopsided and unfair to one party, the court may

refuse to enforce the marital agreement. Conversely, the more fair and equal a marital agreement is, the more likely a court will enforce it.

**Duress:** A spouse who is pressured to sign the marital agreement or not given enough time to consider its provisions (such as having enough time to find his or her own attorney) will have grounds to have a court disregard the marital agreement.

If you're thinking about entering into a prenuptial or postnuptial agreement, you should seek legal counsel to help with preparing one or reviewing its terms.

## PATERNITY

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Children benefit from having both parents for support. However, it's not always clear who the biological or legal father is. Knowing the truth of paternity is important, because it establishes what rights a father will have with his child and the benefits available to the child. It also provides the child with the opportunity to grow up knowing his or her father. Despite the relative ease with which science can establish paternity, it is a bit more complicated in the context of family law.

### *Understanding What Paternity Is*

Within the context of family law, paternity refers to the legal father of a child. This is a very important designation, because only the legal father will have the right and responsibility to make decisions about how the child should be raised and cared for. The legal father will also be responsible for the financial support of the child. Under New York law, if a child is born to unmarried parents, the child will be initially viewed under the law as having no legal father.

### *Benefits of Establishing Paternity*

For the Mother

- » Having a father to share parental responsibility, including financial support
- » Having access to the father's medical history

For the Father

- » Having his name on the birth certificate
- » Having visitation and custody rights (if applicable)
- » Right to be informed about certain situations in the child’s life, such as the child being adopted by another family

For the Child

- » Growing up knowing the father cares enough to establish paternity
- » Having the father’s name on the birth certificate
- » Financial benefits, including child support, Social Security, Veterans benefits, inheritance rights and medical insurance

## *How Paternity Established in New York*

Paternity can be established in three ways: by Presumption, by Acknowledgement of Paternity or by Order of Filiation.

### **Presumption**

When a child is conceived and born to married parents, the law presumes the husband and wife are the father and mother of the child. Because this is a legal presumption, it can be rebutted in court in certain situations.

Rebutting this presumption is not always as simple as doing a DNA paternity test. While a DNA paternity test is commonly used, its results may be disregarded by the court when those results would result in an unfair or unjust situation. For example, a man who has held himself out as the father of a child since birth may be legally prevented from claiming he is not the father of a child later in the child’s life, even if a DNA paternity test were to prove he wasn’t the father.

### **Acknowledgement of Paternity**

When a child is born to an unmarried mother, the father can establish legal paternity by voluntarily signing a form called the Acknowledgement of Paternity. This form will be available at birth registrars and hospitals. Both the mother

and the father are required to sign the form. Once this form is signed by the parents (and two witnesses), the father will be considered the legal father and have the rights and responsibilities that come with it.

## Order of Filiation

An Order of Filiation is a court order that declares who the legal father is. Before such an order can be issued by the court, several things need to happen.

First, someone files a Paternity Petition with the court. Only certain people may file this petition, such as the mother, the man claiming to be the father, the child's guardian or the New York Department of Social Services (in limited circumstances). The Paternity Petition may be filed any time until the child turns 21, although there are some exceptions to this time limit.

Second, the court will hold hearings to figure out who the legal father is. The court will often order the mother, child and potential father to submit to a DNA paternity test. In order to establish paternity, there must be clear and "convincing evidence" to prove who the biological father is. Most of the time, as long as there is at least 95% certainty from a DNA paternity test that the man is the father, it will be enough to establish paternity. Sometimes a DNA paternity test won't be necessary, such as when the alleged father admits to the court he's the father of the child.

## ADOPTION

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The underlying principle of the adoption process for residents of Buffalo as well as the rest of New York is very straightforward. However, because the life of a person is at stake, special steps and procedures must be followed. Additionally, there may be situations where there is resistance to the adoption.

### *Understanding What Adoption Is*

Adoption is the legal process by which the parental rights of the birth parents are ended while another individual or couple takes on those parental rights. Generally, only children are adopted, but adults may be adopted in certain

situations. After an adoption is complete, the law will view the adoptive family and child as if they were biologically related.

In order for an adoption to take place, the parental rights of the birth parents must end. This can occur voluntarily or involuntarily. In cases of the voluntary relinquishment of parental rights, the birth parents believe their child will be better off with different parents. If the parental rights are terminated involuntarily, it's usually due to the death of both parents or by judicial order in cases of abuse or neglect.

In New York, adoptions will occur in two possible ways: private placement and agency adoption.

### *Private Placement Adoption*

During a private placement adoption, the legal custody of the child will transfer directly from the birth parents to the adoptive family. Even though government or private adoption agencies are not involved in a private placement adoption, court approval will be needed before the adoption is complete.

### *Agency Adoption*

Agency adoptions can occur when the child custody rights first transfer to an agency before transferring to the adoptive family or when an agency facilitates the adoption process. There are two types of adoption agencies: private and social services.



#### **Private Agency**

Private adoption agencies facilitate the adoption process between the birth and adoptive family. The private agency will have its own set of criteria for determining if an individual or couple may adopt a child and will conduct pre-placement certification requirements. Using a private adoption agency can be expensive, but makes it much easier to adopt an infant. Before using a private agency, adoptive families must make sure the agency has been approved by the state.

## Social Services Agency

If a private agency isn't used, a local department of social services may be used, such as Buffalo's Erie County Department of Social Services. In these types of adoptions, the custody of the child will often transfer from the birth parents to the social services agency before then going to the adoptive family. In many instances, children are being adopted out of foster care and are of toddler age or older. As with private agency adoptions, pre-placement certification requirements must be met, such as a home study.

## *The New York Adoption Process*

Whether a private placement or agency adoption method is used, there are four main steps in order to complete a New York adoption.

### Step 1: Pre-Qualification and Certification

The person or couple seeking to adopt will have to go through a home study. During a home study, a social worker or other official will confirm that the adopting family is suitable for adoption. They ensure the family will pass the financial, child abuse and criminal checks. If the family is determined to be adequate, the court will approve them in a process called certification.

### Step 2: Finding Birth Parents

Depending on the adoption process, the adoptive family may need to advertise the fact that they are looking to adopt. This can include notifying the local social services agency or alerting a private adoption agency of the family's wishes to adopt a child.

### Step 3: Working with Birth Parents/Consent

This step will vary widely, depending on how the adoption is taking place. For example, if a private adoption agency is used and the child has not yet been born, the adoptive family will want to help arrange proper prenatal care and ask the birth mother to sign a medical records release. And once the child is born, the birth mother (and father, if applicable), will sign papers terminating their parental rights. If a local social services agency is being used for adoption,

there may be an involuntary termination of rights hearing before the adoption can take place.

#### **Step 4: Adoption Finalization**

The appropriate documents must be filed and court approval obtained. A hearing may also be held, although this is an informal court proceeding that should take less than an hour to complete. Once the child is home with his or her new family, a social worker or private adoption agency representative will visit the adoptive family to see how the child is doing.

## **FREQUENTLY ASKED QUESTIONS**

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### *What is the first step in the divorce process?*

- » If you're contemplating a divorce, your first goal is to select your attorney.
- » Advice from co-workers, friends, or relatives who might have been through a divorce is of little value, because every situation is unique.
- » Meeting with an attorney ensures that you receive guidance tailored to your situation.
- » For a fee, most attorneys will offer a consultation which includes a personal meeting during which you will receive an overview of relevant New York State law, guidance in selecting options for how to proceed, and an estimate of the amount of retaining that attorney.
- » That initial fee will probably be the best money you spend because it will give you an opportunity to learn about divorce law and unload some of the stress in your situation.

### *How can I choose the best divorce lawyer for my case?*

- » In selecting the attorney who will represent you, interview more than one potential candidate and choose the one whose approach matches your needs.

- » It is important that you feel confident that you'll be able to work with your lawyer.
- » Hire a lawyer who will listen to you and be responsive to your questions.
- » You will be paying for your lawyer's time, so keep your interaction efficient by grouping your questions and limiting contact to once a week or once a month.
- » Constantly calling your lawyer with questions will cause your costs to mount up quickly.

### *How long does a divorce take?*

- » If the spouses are cooperative, their divorce can be completed in a few months.
- » When spouses are completely uncooperative, their divorce may drag on for years.
- » The longer your divorce goes on, the more money it will cost.
- » Based on what might be called a typical case, most practices are able to wrap up the majority of divorces in six to nine months. This is provided both parties are reasonable.
- » The process carries a certain amount of anxiety, but it can be shortened when both sides are willing to move forward toward a resolution.

### *How can we reach an amicable resolution in a divorce?*

- » People often say they have reached an amicable resolution with their spouse regarding their divorce.
- » No court proceedings may have taken place, but couples have discussed houses, children, and other important issues and believe they have reached a resolution, so we prepare an agreement for both sides to sign.
- » In New York State, a lawyer can represent only one spouse and, although it is not considered appropriate for both spouses to meet with one attorney, one spouse can meet with a lawyer and have a property

settlement agreement drafted, reviewed by the other spouse, and signed.

- » This cooperative approach, which can expedite matters and keep the couple out of court, still carries a certain amount of cost, along with certain costs involved in finishing the divorce process.
- » New York State requires specific filing fees and there is no way around paying a fee for the divorce; however, costs can be minimized by reaching such a resolution.

Can the couple make their own agreement about spousal support?

Of course. If a couple makes an agreement before their marriage, it is known as a prenuptial agreement. If the agreement is made during the marriage, it's called a postnuptial agreement. And if the agreement is made during the divorce, it's usually called a stipulation of settlement.

### *Can the couple adjust their maintenance award?*

Yes, but they will need the court to do so. A court will only agree to modify the maintenance award if there is a "substantial change in circumstances." The typical example of a substantial change in circumstances is where the party paying spousal support loses his or her job.

However, courts will be wary of individuals who try to avoid paying spousal support by deliberately making less income. If the court believes this is happening, it will base the individual's spousal support payments on what that individual could potentially earn, rather than what they actually earn.

### *What can you tell me about the contested divorce process?*

- » Most New York State divorces follow a contested track, but that doesn't necessarily indicate a major conflict.
- » A contested divorce is one in which both sides have hired attorneys and the parties have one or more unresolved issues.

## *What can you tell me about uncontested divorces?*

- » People often call to request an appointment to discuss an uncontested divorce.
- » The term, uncontested, applies only to cases in which one spouse is not present, not appearing in the divorce, or has withdrawn all opposition to the divorce.
- » Clients sometimes think their case will be uncontested, simply because both sides are in general agreement; however, during the course of actually formalizing the divorce, that may change.
- » You may resolve your case and reach an agreement in short order, but that is not, strictly speaking, an uncontested divorce.
- » If you can't find your spouse and are certain they will make no appearance in the court proceeding, yours may, in fact, be a true uncontested divorce.

## *What are grounds for divorce?*

- » In New York State, no-fault grounds mean you can get divorced because your marriage has been irretrievably broken for six months.
- » Prior to 2010, when New York State adopted no-fault grounds, people had to base their divorce on specific grounds such as cruel and inhuman treatment, adultery that could be contested by the other spouse.
- » Today's no-fault grounds mean that the responding spouse cannot contest the divorce. If one spouse wants a divorce but the other doesn't, the divorce will happen.
- » Rather than focusing on the grounds for divorce, make plans for moving forward by addressing such issues as children, houses and money.

## *Where do I get a divorce if I just moved to the area?*

- » People who have just moved into New York State from other places and members of military families that have separated sometimes consult with attorneys seeking a divorce.
- » It is important to remember that starting a divorce process in New York State requires the state to have jurisdiction.
- » Although every state's jurisdictional requirements vary widely, those of New York state are among the most stringent.
- » It is usually necessary for a person to live here at least a year in order to initiate a divorce.
- » New York State will not permit someone to come into the state and, after living here for a month, initiate a divorce proceeding.

## *How can I get divorced if my spouse lives in another state?*

- » After you have lived in New York State for at least a year, you can get divorced here, even if your spouse lives in a different state.
- » The fact that one spouse has left the state will not prevent the remaining spouse from starting a divorce process.

## *Can a divorcing couple live together?*

- » Simply put, the answer is "They don't have to leave."
- » Living together during a divorce can be extremely difficult and one or the other spouse may elect to live elsewhere.
- » In most situations, neither spouse will have to leave until the divorce is final, which may be up to a year or more.
- » If they cannot coexist during the process, one spouse or the other can leave, and people often agree to separate physically, but it is not required.

## *What should I bring to a divorce consultation?*

- » When you first meet with your divorce attorney, bring a list of questions. When they come for an initial meeting, many people are often nervous and, although they have a lot of questions, once they arrive, those thoughts may evaporate.
- » If you have access to the prior year's tax return, bring it with you, along with a recent pay stub if you have one.
- » That first meeting will primarily include a review of your specific situation and any questions you want to ask.
- » You may leave with a list of information to gather, but this initial meeting is essentially an information gathering session that will enable us to set a course for your divorce.

## *Do I have to go to court for a divorce in Buffalo NY?*

- » Nearly half of all divorces settle outside of court, and starting the process does not necessarily mean you must go to court.
- » Most lawyers try to keep as many cases as possible out of court by negotiating agreements and settling the case without the need for court appearances.
- » When people can reach an agreement, we can proceed "on papers," which simply means you can sign everything outside of a courtroom. Then, the papers are processed and you never set foot in the courthouse.
- » Sometimes a court appearance is necessary and can be helpful if you reach a point where things are not moving forward by providing assistance in obtaining temporary relief on some issues.
- » A court appearance can be very helpful, and the process shouldn't intimidate you.

## *Can I get divorced if I am unable to locate my spouse?*

- » Sometimes, people who have been separated for years have lost contact with each other, never having taken the legal steps to get divorced.
- » New York State requires personal service in order to start the divorce process, but if your spouse cannot be located, the court may permit alternate service via other means.
- » If you have at least an idea of the state where your spouse currently resides, it will help the court determine the appropriate method of service.

## *What is spousal maintenance?*

- » As you go through the divorce process, you will hear the term “maintenance,” or “spousal maintenance,” which refers to support for a spouse.
- » The court will consider a number of items in determining whether you are entitled to spousal maintenance.
- » Since January of 2016, New York State has followed a statutory guideline for deciding on spousal maintenance which contains certain recommendations that guide the courts in determining maintenance.
- » The courts consider disparity in income, length of the marriage, and other considerations such as your health, your age, your time in the workforce, the ages of your children, and any assets you might have.
- » Maintenance is never automatic, but it is usually a consideration, so you should discuss it with an attorney.

## *What is alimony during a divorce?*

- » The term, alimony, simply refers to post-divorce spousal maintenance.
- » That specific term has not been used in the New York State law for many decades, but you may still hear it, and it may be used in other states.

- » The term is synonymous with maintenance, and refers to support for a spouse.

## *Am I automatically entitled to receive spousal maintenance?*

- » Neither party is automatically entitled to receive spousal maintenance in New York State.
- » The court looks at the circumstances of each situation individually.
- » Although your lawyer may be able to give you an indication of maintenance entitlement or obligation, but neither is automatic.
- » Grievances of one party against the other, such as cheating, are not likely to affect the court's decision regarding maintenance.

## *How long will I need to pay spousal maintenance?*

- » Although there is no set answer, the primary consideration is usually the length of your marriage.
- » In early 2016, New York State enacted a new law that sets forth specific maintenance guidelines based upon the duration of the marriage, and the longer the marriage, the longer the term of maintenance.
- » In setting a term of maintenance, the court may consider other factors as well, including medical issues, available assets, job history, and ability to earn income.

## *Do I have to pay child support if we have joint custody?*

- » Simply put, child support will probably be involved in cases of joint custody with a primary residential parent.
- » Most people who have a 50/50 shared access schedule with their children will find that the higher earning parent will have a child support obligation – even with a 50/50 shared time schedule.

- » Asking for joint custody or half of the time with your children will not affect the parents' obligation to pay child support or right to receive child support.
- » Because the courts consider child support and custody as separate issues, they will not decide on custody based on its effect on child support, but on the needs of the child.
- » Talk with your attorney about this complicated area because it can significantly impact your children and your financial situation.

### *What happens if the court's child support calculation is too much for the noncustodial parent to pay?*

If the noncustodial parent feels he or she can't afford to make the child support payments, the noncustodial parent will need to provide a hardship to explain to the court why the child support payments should be reduced.

### *Can the child support payments be reduced?*

Yes. If the noncustodial parent has a significant change in income or financial situation, they can petition the court for a modification of child support payments. Since only the court can modify the child support payment obligations, the noncustodial parent must continue making the full child support payments until the court issues a new child support order.

### *Can the parents agree to their own child support plan?*

Yes, but it must be reviewed and approved by the court. The court will require the parents to explain why they believe their child support plan should replace the Child Support Standards Act formula. The court will also make sure that the best interests of the child are protected.

## *What happens if the noncustodial parent doesn't pay child support?*

If child support payments aren't made, the noncustodial parent is deemed to be in arrears. If this occurs, the child support enforcement agency can take collect the amount owed in child support using a variety of steps, such as intercepting tax refunds, suspending the noncustodial parent's driver's license and garnishing wages.

## *Can a parent change a custody order?*

Parents can change a custody order, but only after demonstrating a significant change in circumstances. Courts prefer not to have children go back and forth between parents more than necessary and will only modify its original custody order if it has a really good reason for doing so.

### **I am an unmarried parent. How do I handle child custody and visitation?**

- » Unmarried people who have children together want to know their rights regarding child custody.
- » The rights of unmarried parents are basically the same as those of married couples.
- » Cases involving unmarried parents will most likely be heard in Family Court.

### **How do judges determine custody?**

- » Custody decisions are based on many factors, especially the best interest of the children.
- » Discuss your specific custody situation with your attorney and learn what the courts will and will not consider in deciding where your children will live.
- » One of the court's most important considerations is whether or not the parent seeking custody can successfully facilitate a relationship between the children and the other parent.

- » Willful interference with that essential relationship will reflect poorly with the court and may cause custody to be granted to the other parent.
- » Custody is a very complex area, so review your history with your attorney and choose the best course to move forward.

### **What is the difference between joint custody and sole custody?**

- » Joint custody and sole custody are probably the two most common terms you will hear when discussing custody.
- » With joint custody, the court's most important presumption is that the two parents can communicate with each other and work together in raising their children.
- » Most cases involve a joint custody agreement, with one spouse being designated as primary residential parent with whom the child lives.
- » Sometimes, the primary residence may be shared, but one parent is usually designated as the primary residential parent and will probably receive child support.
- » Sole custody gives one parent authority to make all decisions for the child without consulting the other parent, although the sole custodian may consult the other parent.

### **Does joint child custody mean 50/50 access?**

- » Joint child custody does not mean parents will be sharing time with the children equally.
- » Joint custody assumes parents will work together, but does not assume a 50/50 schedule.
- » Most joint custody situations have one parent designated as the primary residential parent whose home is the children's primary address.
- » An access schedule may or may not provide for the children to spend 50% of their time with the other parent.
- » Time with the other parent may be based on the children's needs and ages, as well as the parents' work schedules.

## When going through a divorce, will I be able to spend as much time with my children?

- » Most people's biggest worries in divorce are about when they will see their children.
- » Whether you share joint custody or one parent has sole custody, there will be an access schedule.
- » Usually, parents will design a schedule that reflects the family's situation, including the parents' work schedules, children's ages, and school/activity schedules.
- » Each parent usually tries to set a routine that maximizes their time with the children.
- » The court will encourage parents to respect variable schedules and be flexible in accommodating each other's needs.

## What is marital property in a divorce?

- » Everything acquired during the marriage is considered marital property regardless of the name on its title.
- » A house purchased during the marriage, retirement assets, and personal property such as cars, bank accounts, or a vacation home are also considered.
- » With just a few specific exceptions, the court will consider items acquired during the marriage as such property.

## When can I resume the use of my maiden name?

- » If you choose to use your maiden name, or a prior surname, after your divorce, you will have that option.
- » Your divorce document will probably give you the right to resume use of a prior surname, and your identifying documents can be changed if you present your divorce document to Social Security and the DMV.
- » The name change process is very easy and costs no money.

## How does a qualified domestic relations order work with my divorce?

- » A qualified domestic relations order may be required as a couple divides their retirement assets.
- » After a divorce is complete, your agreement or decision will probably require a domestic relations order to claim your part of your spouse's retirement.
- » Your attorney can help you with this process, and should complete and file it as soon as possible.

## How are retirement plans handled in a divorce?

- » Retirement plans can be very difficult for lay persons to wrap their heads around.
- » During the course of a long-term marriage, one spouse may acquire substantial retirement benefits through his or her long-term employment and be surprised to learn that they must share that asset with their spouse – even though they were the ones who earned that asset.
- » Retirement assets are divided between the parties in a divorce, and are sometimes the couple's most valuable asset.
- » There will be some distribution, either in the form of a direct division or as a set-off against another asset.
- » One spouse may have worked and earned that asset but, even if the other spouse didn't work at all, it will have to be shared.

## Do I have to share marital assets with a cheating spouse?

- » If you're divorcing because your spouse cheated, emotions like hurt and anger can affect both your mind and body.
- » You may resent having to share marital assets with or pay support to your spouse, who is clearly in the wrong.
- » In New York State, fault has a very minor effect on the distribution of assets. Rather, your marital assets will be divided fairly (and most often equally).
- » You are also likely to be required to allow them to see the children.

## *What happens to a premarital home in a divorce?*

- » A premarital home is considered separate property rather than a marital asset.
- » Many people own homes before they marry and, sometimes, the spouses live in one or the other's home prior to the marriage, contributing to its upkeep.
- » The court will consider what happened beginning on the date of the marriage, so any claim the non-titled spouse may have will be limited.
- » No clear picture of one party's claim on a house owned by the other will be available when the divorce process begins.
- » It is important to remember that, although you may still own a premarital home, it may not have retained much equity. Many people own houses that aren't true assets and may, if they are heavily mortgaged, actually be debts.

## *When can I resume the use of my maiden name?*

- » If you choose to use your maiden name, or a prior surname, after your divorce, you will have that option.
- » Your divorce document will probably give you the right to resume use of a prior surname, and your identifying documents can be changed if you present your divorce document to Social Security and the DMV.
- » The name change process is very easy and costs no money.

## *Who may adopt a child?*

You do not need to be married to adopt. New York allows individuals and couples to adopt. Also, there are no rules restricting adoptions based on marital status or sexual orientation.