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Advancing Women's Rights

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Legal Resource Kit

Divorce Planning

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Please Note

The materials contained in this Legal Resource Kit provide general information. This Kit should not be used as a substitute for an attorney's services. The publications in this Kit are for informational purposes only. They do not constitute legal services or representation and are not to be used in place of a consultation with an attorney. The Legal Department at Legal Momentum updates the Legal Resource Kits as often as possible. However, it is best for you to contact an attorney in your state or city for the most current laws regarding your case.

Ending a marriage is rarely easy. Although divorce reflects many of the inequalities of our society, a woman contemplating divorce can do a lot to protect and empower herself. Knowing how the process works and actively asserting your rights can help to ensure that you begin your new future with hope and security. This Kit will help you learn many of your rights and identify the resources that are available to learn more.

This Kit was originally developed and produced in partnership with The Institute for Equality in Marriage in 2000.

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Considering Divorce or Separation

I. Ending a Marriage

A. Legal Separation

Legal separation was once the most common way for spouses to separate.[1] Today it is rarely used. In most states a legal separation does not divide property and in no state does it end a marriage.[2] It can, however, result in an award for custody, alimony, child support and continued health coverage. Generally, once a legal separation is granted, neither spouse is legally responsible for the other's debts. In states where this does not happen, a couple may be able to include a clause in their separation agreement about who is responsible for the debts. Legal separations are most often used by people who disapprove of divorce for religious reasons, as well as elderly individuals who wish to separate but maintain some of the benefits of marriage. Most people who get legal separations later return to court to get divorced. Only a few states will automatically turn a judgment for legal separation into a final divorce judgment upon request.[3]

B. Annulment

An annulment is a court or religious declaration that the marriage was never valid from its beginning. Annulments are only possible when one or both parties lacked the legal capacity to marry at the time of the marriage or one person committed a fraud that affected the "essence" of the marriage (*i.e.*, something so basic to the marriage that it is not valid because of this defect).

C. Divorce

A divorce is the legal dissolution of a marriage. Divorce is the most common way to end a marriage. This is done by filing a complaint for divorce at your local courthouse. You may file for divorce and then decide that you do not want to go through with it. If you file for divorce and later decide to just live separately or to reconcile, you must request a dismissal of your divorce action. If you fail to do this, your spouse may be able to go back to court for a final judgment of divorce without your knowledge.

Some states will require you to refile a divorce complaint or will delay a final judgment of divorce if you and your spouse later live together or have consensual sex. This is especially true if the divorce is based on the grounds of abandonment, desertion or irretrievable breakdown.[4]

It can be tempting to go to another country or state for an easier, faster or more favorable divorce. There are a few countries that will even divorce you in one day. Beware! Unless you actually live in that country, the divorce may not be recognized anywhere else. Therefore, if you later need to enforce parts of the divorce judgment, such as alimony or child support in the state where you actually live, a court may refuse. Similarly, you may find when you try to remarry that you cannot or that your new marriage is not valid because you were never considered legally divorced in the first place.

II. Do You Need A Lawyer?

Divorce tends to become more adversarial as it moves forward, so it is advisable to get legal representation from

the outset.[5] If you are not in danger of losing anything significant -- for example, you have been married only a short time, have no children, no significant assets (or debts) and no other issues -- you may not need a lawyer. Do not assume that you have nothing of value if you are not sure. Consult with a lawyer to see if you have assets worth pursuing. A lawyer can help you make a balanced assessment of your situation. The more assets there are to dispute, the greater your need to be represented.

A. Finding a Lawyer

Divorce lawyers differ greatly in quality, so shop around. Finding a good lawyer will depend on where you live, how complicated your divorce is likely to be, whether you can pay your divorce costs, whether the court is likely to order your spouse to pay your attorney's fees, and whether the lawyer thinks you will be a cooperative client. Many local bar associations have lawyer referral services to help you find a lawyer. Local women's bar associations or nearby women's organizations may also make referrals to good divorce lawyers. Divorced friends can also be a useful resource. No matter how you go about your search, remember you need a lawyer who will work wholeheartedly on your behalf. This is especially important if you have a lot of issues to resolve. Do not use an attorney who was recommended by your spouse, has ever worked for your spouse, his family or his business, has worked for the two of you in any capacity, or has community connections to your spouse. This caution is particularly important for middle income and wealthy women, who during the course of the marriage may have had a lawyer that handled the family's legal affairs. Such an attorney is unlikely to represent you well. Be prepared to consult with several lawyers until you find one in whom you have confidence.

Do not limit your search to your immediate locale. While a lawyer who regularly practices in the court where the divorce will take place has the advantage of knowing the judges, clerks and court practices, a lawyer whose practice is elsewhere may feel freer to push the court harder for what you want.

Your lawyer's duty is to advocate competently and zealously for your interest. In order to do this, the two of you must discuss your options, the likely consequences of the different options, and any decisions you need to make. Your lawyer should keep you informed about the progress of your case, give clear answers to your questions, and return your phone calls within a reasonable amount of time. In sum, the ideal attorney has good listening skills, will learn what you want, negotiate your interests competently, and act zealously on your behalf.

B. Attorney's Fees

Ask in advance about what fee the lawyer charges for a first consultation. Some lawyers charge a low (or even no) fee for an initial visit. Others charge their usual rate, which could be over $200 an hour. During the consultation ask the lawyer how many years s/he has practiced, how much experience s/he has in the area of family law, whether s/he will be able to represent your particular view, and whether her/his caseload is presently heavy, moderate or light. If you expect your spouse to fight your case bitterly, ask how many cases the lawyer has taken to trial and whether they were of the sort you might have. Also ask how many appeals the lawyer has handled. Determine how much the attorney will charge for taking your case and how often you will be billed. If a lawyer fails to tell you about his/her fee schedule, s/he may not be entitled to recover the fees through the court. Find out if the attorney will permit you to pay a set amount per month if you cannot afford to pay up front. Also ask what will happen if you get behind on your payments. (Some lawyers refuse to do any more work or to turn over your file to a new lawyer unless you have paid for all services and fees.) Ask about other services for which you will be charged, like phone calls or messages left on an answering machine. Also ask what work the attorney will do personally, what work (if any) will be given to other people in the firm or outside the firm and what it will cost you. Ask what other fees and expenses you should expect to pay.

If you will have to pay a retainer (i.e., a deposit to cover expenses in order for the attorney to start your case), ask how much the retainer will be, exactly what will it cover, what will happen if the retainer is used up, and whether any unused portion will be returned if you decide not to go forward with your case. See if the attorney is willing to ask the court to order your spouse to pay your attorney's fees. If you have little or no money now, but are likely to get a significant share of your spouse's assets, ask the attorney if s/he is willing to wait until the divorce is over to be paid.

Finally, the fee agreement should be put into a written retainer agreement. Be sure you fully understand all aspects of the retainer agreement before you sign it, and make sure to keep a copy of the agreement (as well as all other letters and court papers in your case).

C. Pro Bono Representation

The services of a free lawyer may be available through a local legal services office, legal aid office or law school clinic. Not all of these programs take divorce cases. Some only take select cases, and there may be a long waiting list. Do not assume that a free lawyer will not be good. Many are excellent. Free lawyers and free legal programs are a great resource for legal advice about divorce, as well as help with legal forms. Also consider resolving your divorce through the use of a mediator. Find out if free mediators are provided at the courthouse where your divorce will be handled. Note that mediation is not recommended for women whose husbands are abusive or who may have hidden marital assets. (For a more extensive discussion about mediation, see the section on Alternative Dispute Resolution below). There may also be attorneys in private practice who will take your case for free, permit you to do work in exchange for representation, or agree to charge you a reduced rate. Try contacting a local women's center or bar association to find them.

D. Filing A Petition Requesting That Your Spouse Pay Your Attorney's Fees

If you cannot afford to pay the fees for your divorce attorney, you can ask the court to order your spouse to do so. In your fee petition you must state that you are unable to afford to pay the divorce fees but that your spouse can. Do not be surprised if the court awards only part of what you need for fees. The practice of awarding attorney's fees differs from state to state and many judges cannot award fees unless a state statute permits such orders.[6] Others are simply not very receptive to the idea.[7] If a court does order your spouse to pay all or part of your attorney's fees, be aware that you are still responsible for paying the entire amount if your spouse fails to do so.

E. Using Your Attorney Wisely

Remember, any attorney's time is valuable. Being well prepared and efficient will save you money if you are being billed by the hour, since every minute you spend talking to your lawyer will be accounted for in your bill. Be on time for appointments and reschedule or cancel well in advance (except for real emergencies). Come prepared with whatever information or documents you have been asked to bring and write out your questions in advance before visiting or phoning. If the lawyer has asked you to prepare or review any documents in advance, be sure to do so. Exercise the best judgment you can with respect to calls and mail, as the billing clock is always ticking. Use the secretary or receptionist as a resource for how to get to the courthouse or information about appointments or court dates. Try to avoid bringing your children to the lawyer's office. Children can be a distraction and a baby sitter is far less expensive than the extra time you spend with the attorney because of interruptions due to the children. Listen carefully to what your attorney tells you. Once you understand what decision or action is at issue, if you are not ready to decide or act, tell the attorney that you will think about it and get back to her/him. You should only interact with your attorney as it directly relates to your case, such as to obtain concrete information about your legal rights and options, pick up or sign papers, prepare for mediation, prepare for a custody evaluation, respond to requests from

your spouse, or prepare for a court hearing. Your attorney may be very sympathetic, but s/he is not a trained therapist and should not be used for this purpose. Ask your attorney to help you find complementary supportive services if you need them.

Although what you tell your lawyer is confidential, even a lawyer must report threats to harm another person if they feel that the person is in danger. The same is true about threats told to therapists, mediators and clergy.[8] Be aware that what you say to other people about your spouse, your marriage or your divorce could be used against you in court. This is particularly true where child custody or property division is an issue. It is also true if your spouse alleges that you made threats against him. Your spouse may talk to other people, learn what you are saying behind his back, and then call those people into court as witnesses. Courts are permitted to make custody decisions based on your fitness as a parent, which includes your mental health as well as your behavior.

F. Recorded Conversations

Federal law makes it both a criminal and civil violation to listen in on a conversation or record anyone without the permission of at least one party to that conversation.[9] This means that you could be sued for such an action or subjected to criminal penalties if you listen in, or if you have someone else listen for you.[10] Likewise, it is illegal for you or your lawyer to use such illegally obtained evidence at trial. Some jurisdictions have held that Congress did not intend the wiretapping statute to apply in domestic cases, while others have held that it does. In addition, some states have made wiretapping a crime under state law and spouses have been successfully sued for tapping their spouse in these states.[11]

Federal law does not prohibit you from recording a conversation that *you* have with your spouse, although this could be illegal under your state law. For example, it is illegal under federal law to tape your spouse having a conversation with his girlfriend, but in some states it would not be illegal to tape him admitting to you that he has a girlfriend and that he just called her. (On a related note, what people tell you in a message on your answering machine is legal and can be used in court since they knew they were being recorded.)

III. General Advice

Dress neatly and simply when you go to court to meet with custody evaluators or others who will be judging you (for example, no jeans, but a skirt, dress or suit). If you are wealthy, dress well, but do not wear flashy jewelry. Do not allow your spouse, the judge or the lawyer to pressure you to accept an unfair settlement. Remember that what seems fair may not be everything you have a right to.

Do not allow the divorce to run your life. If you have a job, do not give it up. You will need the regular paychecks. Take care of your health and get a complete medical check-up to make sure that you are in good health. Maintain relationships with family and friends, but be alert to the possibility that some of them may remain loyal to your spouse or may be called to testify against you. Seek support from your family, friends, a support group or a therapist if you have trouble coping. Coping well will also make the divorce easier for your children.

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Dissolving the Marriage: Grounds For Divorce, Separation or Annulment

I. Divorce

There are two types of divorce, no-fault divorce and divorce based upon fault. No-fault as a ground for divorce exists in some form in every state[12] and is the only ground for divorce in fifteen states and the District of Columbia.[13] A no-fault statute usually requires one of the following: you and your spouse have lived physically apart for a certain amount of time; are incompatible; both consent to the divorce; and/or have an agreement settling all of your differences.[14]

Most states still have some fault grounds for divorce, which typically include some or all of the following: abandonment, cruelty, adultery, failure to support, imprisonment of one of the parties for a significant period, impotence and/or intoxication.[15] Louisiana, Arizona, and Arkansas have enacted "covenant marriage" statutes whereby couples legally agree, prior to getting married, to limit the grounds on which they can divorce.[16] A few other states have considered enacting such statutes.[17]

II. Legal Separations

Legal separations based on fault are rare and somewhat more difficult than getting a divorce based on fault grounds. In most states, a legal separation can only be obtained on fault grounds,[18] and the fault grounds may be limited and considerably harsher than those needed to get a fault divorce.[19] Sometimes only a spouse who is not guilty of any fault ground can obtain a legal separation. In addition, a legal separation can end automatically by an act of law if the parties ever live together or have consensual sex after the separation, or if the "wrongful" party offers in good faith to reconcile.[20] In states where legal separation is called "divorce from bed and board," "divorce a mensa et thoro" or "judicial separation," reconciling does not automatically end the legal separation, but either party may ask the court to vacate the order of separation based on a reconciliation.[21] With any type of legal separation, either party can later file for divorce, and all of the financial and custody issues that were previously resolved when the legal separation order was issued can be reopened.

III. Annulment

When a court grants an annulment, it finds that the marriage is void and concludes that "no valid marriage ever existed."[22] Annulments are governed by common law and statutory law.[23] Under the common law, there are three bases for an annulment: (1) fraud or misrepresentation; (2) duress; or (3) lack of mental capacity to enter the marriage.[24] The first basis for common law annulment, fraud, must occur "prior to or at the time of marriage in an effort to induce the other party to enter into the marriage and must involve a material

issue, one that goes to the essence of the marriage," in order for the court to grant the annulment.[25] A court may also grant an annulment based on a finding of duress.[26] Duress is present when a person has been forced into marriage against his or her wishes through threats of physical harm and is unable to get out of the situation.[27] Finally, a court may grant an annulment due to "lack of capacity" based on a party's age or mental incapacity.[28] In some states an annulment must be obtained before the "lack of capacity" has ended, so that the marriage is not later ratified after the "lack of capacity" ends.[29]

Some examples of situations that are usually recognized as grounds for annulment are a marriage that was never consummated,[30] or an immigrant marrying with no intention of staying married once s/he obtained permanent resident status. Also, many states will grant an annulment if one partner concealed the fact that s/he had a substance abuse addiction at the time of the marriage,[31] or if a woman concealed that she was pregnant by another man or falsely told the groom it was his child.[32]

Some religions require that a marriage be terminated either by death or religious annulment.[33] Once an annulment is granted, either party is free to remarry and courts can make custody determinations if there are children involved.[34] Only the innocent party who was the victim of fraud or duress or who lacked capacity to marry, can request a civil annulment.

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Supporting Yourself During the Divorce Process

I. Temporary Relief

A divorce or legal separation can take a long time. Therefore, you should consider obtaining temporary (often called "*pendente lite*") relief while the case is pending. This order will remain in effect throughout the divorce until the court either modifies it or issues a final judgment. It is best to obtain temporary relief at the time you file your case or shortly thereafter. To get an order of temporary relief, you must file a written request with the court. Typical temporary relief that you might seek includes:

- Child custody, child support, or visitation;
- An order prohibiting the removal of the children from the state or country;
- Permission to move with the children to a distant location;
- Alimony or maintenance;
- Medical or other insurance coverage for you and the children and/or payment of the non-reimbursed medical bills;
- Payment of your attorney's fees;
- An order that neither partner is to dissipate the marital assets -- for example, sell the house, remove any money from a specified bank account, or cash in any stocks or bonds;
- An order that your spouse move out of the home due to physical or emotional abuse;
- An order of protection for you and the children if you fear that your spouse is or might become abusive.

In some courts, alimony or maintenance will be a simple financial order for a certain sum of money to be paid by one spouse to the other at set times (for example, every week or month). In other courts, the order might specify which spouse will pay the rent or mortgage, the various utilities, medical costs, education costs, child care costs, after school activities and standard expenses. You will have to include a written sworn statement (called an affidavit) explaining why you need the temporary relief that you are requesting. It is very important to be truthful in your statement. You must also submit a recent financial statement showing how much money you have and what you need for temporary relief. Get an adult to serve your spouse with copies of the papers requesting relief.[35] Be sure to include a notice telling him when and where the temporary relief hearing will be. The adult can either mail the copies to your spouse's attorney (if he has one) or directly to him. There is no rule as to whether you should include as much relief in your request as is reasonable or only seek the relief that is urgently needed. The relief is only supposed to be temporary, but very often the order granted at this early stage closely resembles the final divorce or separation judgment, so consider your request carefully. Finally, it is possible to return to court while the divorce (or legal separation) is pending to ask for a modification or further relief if there is a change in circumstances later. (See the section on Preparing for Review of the Financial Issues in this Kit for a more detailed discussion about how the court will consider these requests.)

II. Ex Parte Orders

There are times when you may need to ask the court for emergency help without first telling your spouse. For example, if you learn that your spouse has obtained passports and airplane tickets for himself and the children to leave the country tomorrow, you need to go to court today to get an order giving you custody of the children and preventing him from removing the children from the state. Similarly, if he is about to make his relatives or new partner the beneficiary of his life insurance policy, or give another person the marital home or your valuable jewelry, you can and should go to court immediately, without giving him prior notice, to get an *emergency* order preventing him from doing so. These emergency requests for relief are called "*ex parte*" motions, which means that only one party in the case appeared in court to make the request. Once you receive an *ex parte* order you will then notify your spouse of the relief that you were granted, if any. The court will give him an opportunity on the same day or within a few days to be heard about the relief. After hearing his side (and possibly your response), the court will decide whether to continue the order for relief or to modify or revoke it. *Ex parte* relief requests differ from regular request for relief in that they are only for emergencies. They are not a substitute for regular requests, which are made with advance notice to the other spouse.

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Dealing With Child Custody and Child Support During the Divorce

It is not uncommon for one parent to seek custody of the children in a divorce. Sometimes there is a genuine dispute as to who should have custody. Other times, custody is sought only to use it as a bargaining chip during divorce settlement negotiations. Eighty-five percent of children remain with their mothers after divorce,[36] mainly because fewer fathers seek custody.[37] Although there is a continuing myth that mothers win most custody fights, this is not true and, in fact, has never been true. Until the end of the nineteenth century, fathers had an absolute right to custody of their children.[38] Later, courts did give the mother preference when children were of "tender years," but the father was still entitled to have each child back by the time the child reached age seven.[39] In recent years, studies have shown that fathers win sole or joint custody 50% to 70% of the time when custody is disputed.[40] Some fathers who fight for custody are abusive and controlling.[41] (For further discussion, please see the section on "Domestic Violence and Divorce" below, as well as Legal Momentum's Domestic Violence and Child Custody Legal Resource Kit).

When custody is disputed during a divorce, it is common practice for a court to decide the divorce and custody issues separately. This means that you could have a contested custody case occurring while your divorce case is pending. In the meantime, the court can issue a temporary order regarding custody, visitation and child support. Some courts that separate the two issues will decide the custody case first. Others will hear the financial and property issues first and reserve custody until the rest of the divorce has been decided. If custody is truly contested, the process can become quite lengthy, with evaluations, motions, and even a trial. If custody is not really an issue, it may be resolved as part of the divorce negotiations between you and your spouse.

I. Types of Child Custody

There are two general types of child custody. Physical custody refers to where the child lives. Legal custody refers to who makes the major decisions about the child's health, education and welfare. Both physical and legal custody can be given to only one person (called "sole" custody) or divided in some fashion (often called "shared" or joint" custody).[42] Visitation is when one parent is able to see the children at specified times. It is possible to have visitation, but not legal custody. Despite the terminology, the majority of "shared" or "joint" custody arrangements are more like traditional custody and visitation plans, where the child lives with one parent and the other has visitation. Courts today have a tendency to label every custody arrangement "shared" despite the fact that one parent provides the primary residence and the other has visitation, the most common arrangement between parents. The

hope is that by calling it "shared" custody, both parents will feel a close attachment to and responsibility for their child. Even custody arrangements that begin as "shared" tend to become more traditional over time. While most states have statutes discussing "shared" or "joint" custody, only a few states have a meaningful presumption in favor of it. Some states, such as California, Maine, and Nevada prefer joint custody only when the parents agree to it. Others, such as Mississippi, prefer joint custody, but only if it is in the child's best interests.[43]

II. Determining Custody: Best Interests of the Child

Virtually every state uses a "best interest of the child" standard in determining child custody.[44] This means that the court will make its decision based on the best interest of the child, not the best interest of the parents. Despite the many factors considered under this standard, courts sometimes place more emphasis on a parent's financial stability (a factor which may favor fathers[45] who generally tend to have more resources) or rule in favor of joint custody or shared parenting even when it may not be appropriate. States with a judicial or statutory preference for "joint" or "shared" parenting often place the child with the more "friendly parent"-- i.e., the parent presumably better able to foster a good relationship between the child and the non-custodial parent.[46] Gender bias studies have found that mothers are often held to higher standards in this regard.[47] In some states, domestic violence is one factor that courts must consider in custody decisions. In other states, there is a rebuttable presumption that a perpetrator of domestic violence should not receive custody of the children.[48] Over forty states have statutes requiring judges to consider domestic violence as a determining factor in custody disputes.[49] Nevertheless, women still find that judges do not want to hear about domestic abuse, discount its seriousness, find it too infrequent or too remote in time to be relevant, or discount it because they believe it did not affect the children.

If you are seeking custody of your children you should strategize with your attorney about how best to position yourself. If you work, you must be able to show that the children are well cared for while you are at work and that you still have the time and energy to meet their needs (for example, spending time with them and getting them to school and their social and/or extracurricular activities). Judges who are indifferent to allegations of marital infidelity on the father's part may hold you to be unfit if you have had several romantic partners or your boyfriend stays the night when the children are present. Sometimes it may be best to delay dating or romantic involvement, as dating may complicate the divorce negotiations if your spouse knows you are seeing another man. Also, judges are often hostile to mothers who say negative things about their spouses, particularly if they are said in front of the children. Be very careful not to say negative things to your children's father, to anyone he might use as a witness, or to anyone associated with the court case (for example, mediators, custody evaluators, attorneys for any other party or anyone representing your children or their interests). Speaking respectfully of the children's father is best. Likewise, you should speak of the children as "our children" rather than "my children" or call the children by their names if you cannot manage to say "our." Focus on the children's needs rather than on what you want or do not want the father to do. For example, "Suzie needs to get to bed by eight thirty on school nights, or she can't focus on her schoolwork the next day." This will be heard much better than, "I don't want my spouse to have visitation on school nights."

It is best not to move out of the marital home during the divorce if you want to continue to live in the home with your children after the divorce. If your spouse is abusing you, let your attorney know that you want the court to order your spouse to vacate the home. If you have to leave the home, try to take the children with you (but not if it means violating a court order). If you cannot take the children, maintain regular contact with them, their school, doctors and clergy. Monitor and participate in after-school activities and continue to provide them with love,

care, and guidance. If you decide to give up custody of your children because you think the children will be better off with their father, do not feel guilty about your decision.

III. Jurisdiction

Courts can make orders about custody and/or visitation only if there is legal authority (called "jurisdiction") over each child involved. Jurisdiction may be different for each child. It also may differ from the jurisdiction of the divorce case. If a custody proceeding is brought in one state, that will be the only state with the authority to later make a custody determination unless all of the parties, including the child, have moved from the state or the original state agrees to a change in jurisdiction. If no prior action for custody has ever been brought, various federal and state laws govern which state may decide custody. Generally, except in certain emergency situations, only a court in the state where the child has lived for the past six months (the child's "home state") has jurisdiction to decide custody.[50] If the child has no home state, then a court in the state where the child has the most significant connections will usually have jurisdiction.[51] Once a court has started a custody case, any subsequent custody or visitation disputes must go back to that court unless none of the parties involved or the child still lives in the home state. Here is an example. A child lives with her/his parents in Wyoming for two years. The parents separate. Father moves to Indiana. Mother files for divorce in Wyoming where she and the child live. Because Wyoming is the child's home state, the Wyoming court has jurisdiction to decide which parent gets custody. For more information, please see our Legal Resource Kit on domestic violence and child custody.

IV. Modifications

All custody determinations can be modified if a change in circumstances takes place after the court has determined custody. The change in circumstances must be something that affects the best interests of the children (including the fitness of the custodial parent). It must also be something that could not have been raised at a prior court hearing. In some states, the court will not consider a request for modification until a certain amount of time has passed since the prior custody order.

V. Child Support

Child support is supposed to provide the custodial parent with money for the basic living expenses of the children. In some states it is not meant to pay for childcare or for extraordinary expenses, like the costs of private school or college, large medical bills or orthodontia.[52] Child support orders and awards are within the sound discretion of the trial court.[53] Child support can be assessed against either or both parents[54] and may even be awarded to a parent who has the children for less than fifty percent of the time. However, a custodial parent may not withhold visitation if the non-custodial parent is not paying support.[55] Some states provide enough flexibility that a noncustodial parent could be granted child support to cover visitation expenses, but Florida and Pennsylvania are the only states in which this has actually happened to date.[56]

Child support orders may seem high to the parent who must pay them, but the amounts are usually far less than the costs of raising children. Child support comprises, on average, 13% of the income that custodial mothers receive.[57] For this reason, if you are a custodial mother, you should bargain hard for the maximum amount of child support to which your children are entitled.

The federal government requires states to set child support guidelines. While thirteen states use a fixed percentage of the noncustodial parent's income, most states consider both parents' income in assigning financial obligations.[58] Many states use different formulas for low-income and high-income parents.[59] The average child support award is usually less than half of what the children need.[60] Courts are supposed to order child support to be paid by wage assignment or deduction.

In calculating child support amounts, most states require both parents to submit proof of their earnings. If you have any documentation about what your spouse earns (for example, wage receipts, income tax records, an employer letter offering a job or giving a raise, a letter to a bank about earnings), bring this evidence with you to court in case your spouse does not show up, fails to bring any proof of earnings, or is not truthful about earnings. If he has other sources of income (such as trusts, pensions, or rental income), bring proof of these as well. You will have to submit to the court a form about your expenses as well. List any and all expenses and debts. There will be little reason to award you money if you appear not to need it. Remember too, that the judge will look to see if you are financially responsible as a mother. Sometimes a few words of explanation on the form can help clarify something that might make you appear irresponsible. For example, if you have temporary extraordinary expenses, such as needing to buy a new car because the old one broke down, note this on the form. Child support guidelines often make certain assumptions that may not apply to your family. For example, the guidelines may assume that there are inherent savings in families with two or more children because clothes and furniture can be handed down. However, if your two children are years apart in age (and you long ago gave away all the baby furniture and clothing) or are twins (requiring two sets of everything simultaneously), you might want to argue for a higher amount than what is called for under the guidelines.

Be sure to make medical insurance for the children a part of your child support order. In addition, when negotiating school fees, extraordinary medical expenses or other expenses for the children, a fifty-fifty division may sound fair, but it will hurt you unless you have equal income and resources.

Child support awards in recent years have not kept pace with inflation, although the total amounts collected have gone up because of better child support enforcement. See if you can include a provision in your agreement that allows for an automatic cost of living increase in child support each year. States are supposed to review child support awards every few years (somewhat more often for people receiving public assistance), but many states have failed to do so or have set standards that do not encourage easy modification.

Finally, every state has a child support enforcement agency which is supposed to help custodial parents obtain child support orders and enforce those orders for free or at minimal cost. The agency can help set a wage garnishment,[61] an interception of the paying parent's tax refund (if necessary for money owed to you),[62] seizure of bank accounts,[63] liens on property,[64] reports to credit bureaus,[65] revocation of driver's licenses or the commencement of criminal actions for nonpayment.[66]

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Mothers and Gender Bias in the Courts

While gender bias in the courts is an issue for all women with family law matters, some women are particularly vulnerable to gender bias in divorce and custody disputes. Consider carefully how you think a judge may regard you and your situation. Work with your attorney in troubleshooting any potential issues that may arise and act responsibly and reasonably to avoid giving the court any ammunition to use against you. If you have limited education and work experience (especially if you are married to an older man or a well-off man who has ready, responsible childcare), a court may view you as too unstable to parent as compared with your spouse. If you are a welfare recipient you may also be viewed with less favor. Career women are often accused of putting their career before the children's interests. (No matter how much of a workaholic a working father may be, few judges will consider his ambition and career a detriment to his fitness to care for the children.) Undocumented immigrants, especially when married to U.S. citizens or permanent residents, may also be viewed as unsuitable parents because they are at risk of being deported in the future. Undocumented immigrants should consult a good immigration attorney if during the course of the divorce they have problems with their immigration status.

I. Mothers with Disabilities

Courts may assume that a mother with a disability is unable to parent effectively. If you need help with your own care and are not able to tend to all of your children's physical needs, you are especially vulnerable to losing custody. Showing that you have other means available to attend to the children's physical needs can help show the court that your disability will not adversely affect the care of the children. Witnesses can also help convince the court that your children are well cared for despite your disability.

II. Mothers who Have Been Abused

Mothers who have been battered or sexually abused are often seen as unable to protect their children or otherwise parent effectively. If you have abandoned your children for any length of time, even if you were fleeing domestic violence, you are even more suspect in a custody dispute. The longer the abandonment, the harder it will be for you to get your children back. You may also have a hard time regaining occupancy of the marital home, and without a stable place to live you are unlikely to regain custody.[67] Similarly, it is much harder to be given custody if you place your children (even voluntarily) in foster care or with a relative. If you cannot temporarily care for your children, it may be wiser to seek out support with a nonprofit agency or church to try to ensure that your children will be returned.

III. Mothers with an Addiction

If you have a substance abuse problem, get immediate help with your addiction. The court can order the testing of blood, urine or hair without advance notice. The consumption of four or more beers a day (or its

equivalent) will be seen as having a drinking problem. Unless you acknowledge and treat your problem, you are unlikely to keep custody of your children.

IV. Lesbian Mothers

Lesbian mothers lose custody of their children due to homophobia and bias. Although no reliable study has ever shown that children who grow up in a household with same-sex parents are harmed, many judges are skeptical and treat these cases harshly.[68] In Mississippi[69] and Alabama[70] appellate court decisions have held that it is harmful for a child to grow up in a home with a same-sex couple. Furthermore, even when a state's highest court has ruled that living in a household with same-sex lovers is not in itself harmful to children, the courts have supported decisions holding that the particular same-sex relationship or notoriety in the community caused by an unconventional relationship may be harmful to the child. A custody dispute between same-sex partners might trigger a biological father to seek custody. If you are a lesbian mother, contact Lambda Legal Defense and Education Fund or the National Center for Lesbian Rights for assistance (see the section on "Groups and Organizations" for contact information).

V. Mothers Alleging Child Sexual Abuse

If you are a mother alleging child sexual abuse, be aware that courts are too often reluctant to believe such allegations, wrongly assuming that they are false or are made in an attempt to get an advantage in a contested case or to alienate the child's affection from the father.[71] (For more information, please see the section on "Parental Alienation Syndrome" in our Domestic Violence and Child Custody Legal Resource Kit.) Furthermore, conclusive medical evidence of child sexual abuse seldom exists, making courts further doubt these claims.[72] Once the allegation of child sexual abuse is raised, it is almost impossible to retract, and if the court does not believe the allegation, it almost always results in custody to the father. If you suspect that your child is being sexually abused, be sure you have a strong case before making such an allegation in court.

VI. Mothers Who Want To Relocate

Custodial mothers who need or desire to relocate before, during or after a divorce should be sure to have the court address this issue in its custody decision. (After the divorce, you must file to modify the divorce judgment and get written permission from the court or your spouse to move the minor children to another state.) Older children may be able to give their own consent to a move. The Uniform Child Custody Jurisdiction and Enforcement Act, adopted by all fifty states, the District of Columbia, and the Virgin Islands, contains provisions that do not penalize parents who move to protect themselves or their children from abuse.[73] To maximize your chances of relocating with your children, be able to demonstrate that the move has been well thought out, that it has real advantages for both you and the children (or at least will not be worse for the children), and that you will comply with a new visitation schedule with the father. If the children are old enough, noting that they consent may be helpful. Be prepared to discuss where you will work, how your financial situation will be improved, where the children will go to school, obtain medical care, day care, after school care, and religious instruction. Suggest reasonable alternative visitation arrangements between the children and their father. If you are moving for a job or school opportunity, discuss what other options you considered and why they were not possible or would be inferior to the one you have chosen. If you are leaving because of abuse, show why your physical and emotional support and safety (and that of the children) will be improved by moving. Discuss what visitation arrangement would be realistic and safe.

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Preparing For Review of the Financial Issues

I. Collecting Information on Financial Issues

You will need a considerable amount of information about finances -- both yours and your spouse's -- to get what you are entitled to in your divorce. The more information that you can obtain on your own, the more you will save in attorney fees or investigator costs. You can help prepare for the review of the financial issues that are a part of your divorce by doing the following:

- Review all mail and keep a list of return addresses. Pay close attention to mail from insurance companies, credit card companies, banks, courts, and the like. Make photocopies of the papers themselves if you can.

- Do not sign any documents (including tax records and especially not blank forms) without first reading them. Make copies of anything you sign.

- Go through any safe-deposit boxes and make a list of the contents. Consider opening a safe-deposit box in your own name. Store your valuables and important papers there.

- If you are still living with your spouse or he has access to your mailbox or home, get a post office box or have a trusted relative or friend receive your personal mail.

- Make copies of the following:
  - Bank statements and cancelled checks
  - Household expenses
  - Brokerage account statements
  - Credit cards, statements or applications
  - Loan documents and statements
  - Tax filings and refunds
  - Royalty statements and advancements
  - Wills and trust agreements
  - Mortgage applications and repayment records
  - Insurance policies
  - Safe-deposit box information
  - Information about your spouse's income, benefits, pension plan, fringe benefits
  - Appraisals
  - Debts
  - Medical and dental plans
  - Information about your or your spouse's business
  - Marriage certificate (and any prior divorce certificates)
  - Children's schooling and child care costs
  - Passports and immigration documents
  - Children's birth certificates
  - Children's after school activity costs
  - Church and charitable donations
  - Expense records for leisure activities and vacations
  - Clothing expenses
  - Laundry and cleaning expenses (including household help)
  - Transportation expenses (bus / subway / train, car payments, gas, insurance, garaging, maintenance)
  - Medical expenses (doctors, dentists, therapists,

physical therapy, prescriptions, equipment, eyeglasses).

Keep the originals or copies of these documents in a safe place at your home, office or with a trusted family member.

II. Marital Assets

Any marital assets will be split between you and your spouse. Some of the most common assets that a couple may have are:

- Motor vehicles of any type
- Furniture
- Bank accounts (including jointly held accounts)
- Real estate (marital home, vacation home, rental income, time-shares or other interest in real estate)
- Credit cards
- Expected tax refund
- Life insurance
- Pensions
- Retirement plans, IRA or Keogh or 401 (k) accounts
- Disability benefits
- Royalties
- Information or lawsuits that might result in financial gain
- Inherited money or property
- Businesses in which one or both spouses have any ownership
- Stocks, bonds, futures
- Frequent flyer miles
- Fringe benefits available to a spouse through work
- Boat
- Club memberships
- Cameras, computers, tool collections, inventory, prizes, lottery winnings
- Season tickets (sports, theater, opera)
- A business in which you or your spouse had an interest
- Anything else of major value (for example, jewelry, musical instruments, collections of paintings, stamps, weapons, coins).

Not every state will consider each of these items a marital asset. Also, most states see gifts between spouses as marital property, with the exception of engagement presents. Household items of little value are best divided by the couple. Children's items are usually given to the parent who will have primary custody.

As you plan for divorce (or when you are served with divorce papers), start a bank account in your name only. If you think you will have trouble obtaining credit in your own name, consider a bank that automatically offers credit cards to new customers. Also, think carefully before withdrawing large sums of money from joint bank accounts. Large withdrawals may anger the judge, and the judge may order you to return some or all of the money. If you do remove money from a joint account, be careful how you spend it to avoid accusations that you wasted joint assets. Keep receipts for cash expenditures to show you were responsible in spending the money (and to help you fill out the financial statement required by the court).

If you and your spouse have joint credit cards, contact the credit card companies and ask them to issue a new credit card in your name alone. Also, tell the company (in writing) that you will no longer be responsible for your spouse's charges. Have your name removed from joint cards so that you will not be responsible for future debts. Do not cancel the card without your spouse's knowledge since he may use it to pay for certain expenses.

It is illegal to be denied credit because of your race, gender, national origin, religion, color, marital status or age.[74] You do not have to answer questions about your marital status or your spouse on credit applications unless you will have to rely on child support or alimony to pay your debts. Also, companies are not supposed to rely on information that is more than seven years old.[75] If you have filed for bankruptcy within the past seven years, it

may be difficult to get credit, because the bankruptcy information will still be on your credit records.[76] (See "Filing For Bankruptcy" later in this section for further discussion).

Part of the financial pot to be divided at divorce includes joint debts (i.e., whatever debts you and your spouse incurred during the marriage until the time that you separate or file for divorce). Often things like the mortgage and credit cards are the biggest joint debts. (Legal fees may also be a big debt after you and your spouse separate. However, unless a court orders your spouse to pay all or part of your attorney's fees, you will be solely responsible.) Both of you are liable for anything you both sign like joint tax returns, joint credit card debts, joint mortgages, or loans. Both of you are also liable for any necessities like reasonable medical expenses, food, clothing, shelter, utilities, and transportation even if purchased solely for or by one spouse. If your spouse is spending money recklessly (particularly in violation of an order), some courts may be willing to assign your case for a hearing more quickly if you file a motion with an affidavit explaining the situation.

In states where all of the property acquired during the marriage is put in a pot to be divided (no matter who acquired it or whose name it is in), judges have enormous discretion as to how they divide marital debts so long as they consider all of the relevant mandatory factors. In states where only property acquired jointly by a couple is put into the marital pot, judges are increasingly permitted to use some discretion in apportioning marital debts and often do so by looking at who incurred the debt and who is in a better position to pay it. In other states, the law determines whether the debt will be the responsibility of one or the other spouse.

It is important to note that even though a court order (or settlement) may make only one party liable for a debt, a creditor may still demand payment from both spouses. (For example, a utility company may refuse to open a new account in your name unless a prior joint debt has been paid off or you agree to assume it.) If the debt is not large, it may be best to pay it and then either raise it in the divorce settlement negotiations or file a contempt motion if there is an order that says your spouse is responsible for the debt. Keep track of any money that you pay on joint debts, especially where the debt was your spouse's responsibility. This will allow you to argue at a settlement hearing or at trial that you be reimbursed for that payment.

You and your spouse can continue to submit joint tax returns even after you are separated and have filed for divorce. If you sign a joint tax return that is fraudulent**,** you are considered liable for any money owed unless you can show that you are an innocent spouse, which is not easy to do. To avoid these problems, consider filing a separate tax return. (See the section on "Tax Considerations" for more on tax issues.) A fair division of property requires that both spouses be honest about the extent of their assets. It is very important to determine all of the assets to be divided since a court cannot divide what it does not know exists. Both you and your spouse are required to disclose all assets to the court voluntarily. However, this is not always done. By doing some investigating on your own you can cut down on attorney and investigator costs. There are several ways to look for hidden assets**:**

- Check to see if real estate has been given away;
- Check the motor vehicle registry for evidence that a car has been given to someone else;
- Check credit card records to show money hidden by an overpayment to a credit card;
- Check bank and stock records for evidence of cashed-in stocks or bonds, withdrawals from a bank account, or receipt of money by a person who then deposited it, invested it, or used it to purchase something;
- Get a handwriting expert to show if your signature was faked on a deed or other asset that was given away.

An additional tool for finding hidden assets involved in a court case is "discovery." Discovery is where you or a lawyer asks someone written or oral questions to be answered under oath or demand that the person produce

certain documents for you to examine and copy. You may need the court's permission to get discovery from anyone besides your spouse, but courts usually give such permission if you can establish that there is a likelihood of learning information that may be relevant to your divorce.

It is sometimes necessary to hire a private investigator or forensic accountant (i.e., someone who is an expert in examining financial records and testifying in court) to discover hidden assets. This can be very expensive. It is usually much harder to find assets that have been hidden in another country or payments made to a spouse outside of the country. American courts have no authority to order foreign banks or businesses to comply with discovery requests. If you have to use professional services to discover hidden assets, ask the court to have your spouse pay for these searches and evaluations.

III. Filing For Bankruptcy

Bankruptcy proceedings occur when an individual or a corporation (known as the "debtor") does not have sufficient assets to pay the debts she owes to creditors.[77] When debtors cannot repay their debts, "[t]hey can file a bankruptcy petition, discharge their debts, and start over again."[78] Thus, bankruptcy is an attractive option because it essentially erases most debts. Divorce appears to drive many people into bankruptcy, especially if there are large debts and few assets.[79] Many divorcing women file for bankruptcy and succeed in having their debts resolved.[80]

You may want to consider filing for bankruptcy if you have incurred large debts that are likely to stop accumulating and for which you cannot negotiate a good resolution with your creditors. Some spouses are able to cooperate and do this jointly prior to a final divorce, which is ideal. But, keep in mind that bankruptcy law can be complex for individual debtors, because it attempts to safeguard the system from abuse.[81] To avoid problems, you should inform the court of any and all assets and truthfully answer all questions asked about your assets.[82] Courts will not grant a "fresh start" to debtors who conceal information about their assets.[83]

There are various chapters in the Bankruptcy Code under which debtors can file for bankruptcy. Individuals tend to file for bankruptcy under Chapter 7 or Chapter 13.[84] In Chapter 7 bankruptcy proceedings, the debtor hands over all non-exempt assets;[85] the court divides the debtor's assets among the creditors; and the court grants the debtor a "fresh start" without debt.[86] In order to begin a Chapter 7 case, a debtor must file, among other things, a petition with a bankruptcy court.[87] Additional information that the debtor must submit when filing for bankruptcy includes:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses.[88]

In order to file for bankruptcy, the debtor must pay court fees, but the fees may be waived "[i]f the debtor's income is less than 150% of the poverty level."[89] Once a debtor files for bankruptcy, a trustee is assigned to his or her case.[90] The debtor gives up most of her assets except exempt property which generally includes a car, clothes, furniture and appliances. Among other duties, the trustee will hold meetings with creditors and eventually will liquidate the debtor's assets and distribute the money to the creditors.[91] Once this process is complete, the debtor is discharged from most of his or her debts.[92]

Importantly, a court will dismiss a Chapter 7 case or change it to a Chapter 11 or Chapter 13 case where it determines that relief under Chapter 7 would be an abuse because of a debtor's "debt-repaying ability."[93] In order to find out a debtor's debt-repaying ability, a court must employ the means test described at 11 U.S.C. § 707(b). Basically, the means test requires the court to compare a debtor's income to the median family income from the state of residence and determine whether the debtor makes more money than most people.[94] If a debtor does not earn more than the median family income, the debtor's case will remain under Chapter 7. If the debtor's income exceeds the median family income, the court then

investigates whether the debtor's income allows him or her to pay back some of the debt owed to creditors.[95] If the debtor can pay back a certain amount of his or her debts, the court will not allow the debtor to file under Chapter 7.[96] Therefore, depending on your income, you may be ineligible to file under Chapter 7, and instead, may have to file under Chapter 13.

Chapter 13 differs from Chapter 7 in that the debtor does not give up his or her assets; instead, "the debtor keeps all assets except a portion of future wages," and those future wages are divided among the creditors.[97] Essentially, Chapter 13 allows debtors to create a repayment plan with their income over a period of three to five years.[98] In order to begin a Chapter 13 case, the debtor must file, among other things, a petition and must submit all of the same materials and information described above under Chapter 7.[99] Notably, married debtors must include their spouse's information with their petition, even if the debtor is filing separately from his or her spouse or if the spouse is not filing for bankruptcy at all.[100] Once the petition is filed, a trustee is assigned to the case whose duties include appearing and speaking at certain hearings, receiving and distributing money to the creditors, and making sure the debtor's payments are timely.[101] Also, once the petition is filed, the debtor has fifteen days to submit a repayment plan, and the debtor must begin making payments thirty days after filing the petition.[102]

A debtor is eligible to file for Chapter 13 bankruptcy where he or she has a regular income, does not have any unsecured (non-guaranteed) debts exceeding $307,675, and does not have any secured (guaranteed) debts exceeding $922,975.[103] The state decides which property is exempt from being seized (although a few states allow the debtor to choose).[104]

While most of an individual's debts will be discharged under Chapter 7 or Chapter 13, there are certain debts that cannot be discharged, such as domestic support, educational loans, and debts owed to a spouse, former spouse or child/children that are established through divorce, separation, or court order.[105]

If your spouse files for bankruptcy after a divorce has been filed but before the divorce has concluded, the divorce court will have to wait until the bankruptcy proceedings are finished to divide the marital property.[106] However, the divorce court can still award custody, visitation, child support, alimony and even grant your divorce.[107] If bankruptcy is filed after the final divorce judgment, your spouse will still have to pay child support and alimony if awarded. Although the bankruptcy court is bound by findings of the divorce court, the bankruptcy court is never bound by how the court *characterizes* a payment, division, or transfer.[108] For example, a court may characterize certain payments made by your spouse as alimony, but a bankruptcy court may conclude that they are just part of the property settlement.

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Dividing Your Property and Valuing Marital Assets

I. Community Property and Equitable Distribution

Courts use one of two approaches to divide property at divorce: community division, where each spouse is given half of the property acquired during the marriage, and equitable division, where the couple's property is divided fairly, but not necessarily equally. Originally, laws regarding these two approaches were entirely different. However, over the years, some of the concepts of one have crept into the other, somewhat blurring the distinction between the two.

A. Community Property

The law in the "community property" states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin[109] and Puerto Rico[110]) derives from Spanish, Mexican, and French law. These states generally give each spouse a one-half interest in most marital property (property jointly owned or acquired during the marriage, except gifts), regardless of which partner is listed as the owner. Anything that you or your spouse acquired before the marriage began, was given to you separately as a gift, was inherited by one of you, or was acquired by one you after the divorce has commenced is not considered community property. The exception is if property was co-mingled (put in the same account) with other joint assets or used to pay marital debts (debts incurred during the marriage). For example, money inherited by you that is used to pay household expenses would probably be considered community property. On the other hand, if you inherited money and let it sit in a bank account in your name alone, you will retain sole ownership of it. Disability awards are usually considered separate property. Awards for pain, suffering, and disfigurement would be considered separate property. Awards for lost earnings and medical expenses accrued during the marriage would be considered community property. A few states further distinguish different types of community property. For example, California has enacted a law creating "quasi-community property" to deal with real or personal property acquired while either spouse lived outside of California.[111]

Because husbands are more likely to manage wives' separate property than wives are likely to manage husbands' separate property, some women may find that their separate property has been co-mingled and turned into community property. Also, to the extent that money or an asset not originally in the "community" pot has increased in value because of the contribution of the other spouse, it is community property. Courts distinguish between whether this increase in value happened passively (such as the interest that accrues while a spouse's inherited money sits in his bank account) or actively (such as the increase in value to a spouse's inherited land because of a spouse's rehabilitation and landscaping). Passive increases in value do not become part of the "community" pot whereas active increases do.

B. Equitable Distribution

If your state is not a community property state, it is an equitable distribution state. The vast majority of equitable distribution states are "dual property" equitable distribution states, i.e., the courts divide only the property acquired by either or both spouses during the marriage. Most equitable distribution states only consider marital property in determining equitable distribution. However, in some states, including Massachusetts, Vermont, and Indiana, some separate property can be considered in determining an equitable distribution, and in Massachusetts the courts can even decide to award separate property to the other spouse.

In all equitable distribution states, the court determines a fair division of the property based on a number of common factors. These factors include:

- Length of the marriage;
- Age and health of each spouse;
- Occupation, income sources, and employability of each spouse;
- Contribution and services (including homemaking) of each spouse to the marriage;
- Opportunity for future acquisition of capital assets and income;
- Standard of living during the marriage;
- Economic circumstances of each spouse at the time of divorce;
- Whether a spouse contributed to the education, training, licensing, business, or increased earning power of the other spouse;
- Whether either spouse wasted, transferred, or encumbered assets without fair compensation in anticipation of the divorce.[112]

It should be noted that when assets are squandered by one of the spouses during the marriage, forty-two states and the District of Columbia permit the court to consider this when dividing the marital property.[113] This allows the court to compensate the non-guilty spouse for lost assets.

A minority of states forbid consideration of fault in any aspect of property or support distribution awards. Even when fault is not a permissible consideration, it may still be a relevant factor, particularly if it has resulted in an inability or a reduced capacity of one spouse to work. For example, a spouse who was badly injured as a result of abuse and is unable to work may be entitled to more of the marital assets.

II. Valuation of Assets

In order to divide property, courts must first determine how much it is worth. Rather than rely on the claimed value of an asset as stated by your spouse or his attorney, it is best to have assets appraised to determine their value. Property subject to valuation can be tangible or intangible,[114] including real estate (including time shares), jewelry, artwork, boats, event tickets, motor vehicles, frequent flyer miles, collections (coins, stamps, weapons), stocks, bonds, and stock options. Some of the more common assets subject to valuation are discussed below.

A. The Marital Home

The marital home is often the most valuable asset for families who own a home. If you plan to care for your children after the divorce, consider if it makes sense (and whether you can afford) to keep the home so that the children can grow up in it. Other options include buying your spouse's share of the home outright, refinancing, or trading off other assets for the house. You might also agree to sell the house at some point in the future, for example, after the youngest child grows up, finishes high school or turns eighteen, whichever happens last. If one partner is keeping the home (whether or not for the sake of the children) you will have to decide who pays the mortgage, taxes, insurance, repairs, and other household expenses. Real estate is most often valued by appraising it for its current sale value. However, sometimes the rental value or the amount of labor put into the house factors into how the court values the property or each spouse's share of it. Remember if the property is to be sold later, you will need an appraiser to determine the value of the property both at the time of the divorce and at the time of

its sale.[115] If you rented your home while married and if the court gives you the right to continue to live there, you may do so even after the children have grown up. However, if you live in public housing, management may have the right to move you to a smaller apartment when your family size decreases.

B. Businesses

The value of a business or professional practice is very difficult to determine. It is not uncommon in a divorce case for a spouse/owner of a business to try to hide the true value of a business. You will probably need an expert witness to assess the value of any business in which you or your spouse singularly or jointly own an interest.[116] In determining the value of the business, courts will look to financial statements, book value, capitalization of earnings and how much each spouse contributed to the business. Some courts may use a variety of formulas to estimate values.[117] For example, restaurants are considered to be worth 40% to 50% of annual gross sales plus inventory. Retail businesses are worth 25% to 40% of annual gross sales plus inventory. Accounting firms are worth the net assets plus 75% to 150% of gross revenues.[118] The value of partnerships is determined by subtracting the partnership's liabilities and the partners' capital accounts from the value of the assets. The court then determines the spouse's percentage share of the partnership and multiplies this by the value of the partnership.[119] It is not uncommon for two experts to place very different values on the same business or partnership (even if hired by the same party). Couples who are business partners may have additional problems. Unless one of you can buy the other out, you may find yourself having to cooperate during and even after the divorce for the sake of the business.[120]

C. Licenses, Degrees and Education

A few states, including Michigan and New York,[121] consider professional licenses or degrees marital property. This is especially true if one spouse helped to put the other through school or gave up educational or career opportunities to advance the career of the spouse who obtained the degree or license. Most states explicitly prevent courts from considering professional licenses or degrees to be marital property. Connecticut and North Carolina are examples.[122] Indiana permits awards that compensate one spouse who provided financial support to the other spouse by paying for educational expenses.[123] Whether a license or degree is considered marital property may depend on whether it can be legally transferred or sold to another person. Even if the court could not consider the license or degree as marital property, it is not uncommon for the license or degree to become an issue in divorce settlement negotiations, as professional licenses or degrees represent the present or future increased earning capacity of the holder.[124] A court may account for this future increased earning capacity by ordering an increase in future support or alimony or providing for further review if the income does increase.

D. Goodwill

Goodwill is the intangible measure of the good reputation of a business among its customers. Generally "goodwill" is divided in the same way that the value of a business is divided. An expert will attempt to value the likelihood of repeat patronage of the business and immunity to competition with respect to earnings.[125] In several community property states like Arizona and California, the goodwill of a business or professional practice is considered an asset to be divided upon divorce.[126] Some equitable division states like Colorado, Kentucky, Missouri, Montana, New Jersey, Utah, and Vermont have also held that goodwill is a marital asset.[127] An increasing number of states like Alaska, Arkansas, Florida, Maryland, and Nebraska say it depends on the circumstances and if the "goodwill" is marketable.[128] New York has held that celebrity status likely to generate future business is marital property that can be divided.[129]

E. Contribution of Wife to Husband's Career

Courts can consider the contribution of a wife to her husband's business or career when dividing marital property, including the role that she played as a homemaker which enabled him to be more effective.[130]

Thus, a wife who managed the household, put her husband through college, proofread or typed college or graduate school papers, assisted him in writing reports for work, entertained his business clients or associates, and/or gave up her own career for the sake of his may cite all of these factors for consideration by the court in awarding the corporate wife a more equitable share of marital assets.

F. Retirement Assets

Pensions can be divided as lump sumps, or each spouse can be awarded a share of each ongoing payment. The retirement plan and pension are usually the second largest assets in most families after the family home,[131] yet it is not uncommon for wives to have little knowledge about their husbands' pension or retirement plans. They are also less likely to know how much these assets are worth. A wife should learn if her husband has such assets and their value so she can seek her appropriate share.

Two common types of pensions are defined benefit plans and defined contribution plans, such as 401(k) plans.[132] The defined benefit plan is a pension that pays out a fixed amount of pension money (usually monthly) to the employee upon retirement until their death. This money is not kept in a separate account for the employee and must be taken as a fixed stream of income, usually in monthly payments. A defined contribution plan is a separate employee account, such as a 401(k) account, into which the employee elects to have a portion of his or her wage paid directly.[133] Income taxes on the wages in the account are deferred until the money is taken out of the account. Upon retirement, the employee is entitled to the cumulative value of her/his share, subject to income tax.[134] If it is subject to division during a divorce, it can either be withdrawn as a lump sum (usually with a penalty) or paid out as a stream of income over time.

Vested pensions (those which cannot be lost if the employee quits or is fired before retirement age) are also divisible. Employers must comply with the federal law in dividing such pensions by obtaining a court order called a Qualified Domestic Relations Order or QDRO.[135] Another federal law called the Employee Retirement Income Security Act (ERISA) of 1974 prevents a married employee from opting out of survivor's benefits without the written permission of her or his partner.[136]

Wives of highly compensated executives should conduct very careful discovery of retirement assets. Many executives have nonqualified compensation plans[137] through which their compensation payments are deferred for a period of time.[138] Nonqualified plans are attractive because they are not subject to the same rules and limitations as qualified plans (including vesting requirements), they are not restricted by type or amount of benefits given, and they can be reserved for only specific employees without violating non-discrimination rules.[139] Such plans include, among others:

(1) Top Hat Plans (deferred compensation plans reserved for "a select group"[140] of executives and that "are not subject to the participation, vesting, fiduciary responsibility and funding provisions…of ERISA but are subject to [ERISA's] enforcement provisions"[141]);
(2) Excess Benefit Plans (plans that provide benefits greater than those permitted in qualified plans and that are not subject to ERISA's requirements if they are unfunded[142]);
(3) Supplemental Executive Retirement Plans (a plan that is "related to an underlying qualified retirement plan" and that usually has a more expansive view of compensation and allows the funds to vest longer than the underlying plan would have[143]);
(4) Income Deferral (plans that put off taxes on the employee's income until that income is distributed[144]);
(5) Retention Agreements (plans that give some type of bonus or incentive to an employee to defer vesting[145]);
(6) Rabbi Trusts (plans in which the employee's deferred compensation is placed in an irrevocable trust with the goals of security and postponing taxation until the employee

receives the money[146]);

(7) Secular Trusts and Secular Annuities (irrevocable trusts whose assets are not reachable by employers' creditors[147]);

(8) Vesting Trust ("trusts that are not subject to the claims of creditors…but are subject to a reasonable risk of forfeiture"[148]).

These types of plans can be missed in normal discovery unless specifically sought. [149]

Military pensions are governed by the Uniformed Services Former Spouses' Protection Act (UFSPA).[150] The UFSPA gives states the discretion as to how to divide military pensions. Only those states where the military member resided (but not because of a military assignment), was domiciled, or consented to jurisdiction, can order the division of a military pension. The USFPA also sets some parameters on the discretion of the divorce court, for example, restricting the spouse's share to a maximum 50% of a retired military member's disposable pay and only allowing payment when the member has served for a minimum of ten years.[151]

Finally, if you are a divorced spouse who is aged 62 or over, has been married for 10 or more years before the entry of a final divorce, and who has not remarried, you may be able to collect Social Security based on your spouse's earnings.[152] It may be worth delaying your divorce if you have been married eight or nine years and your spouse has contributed to Social Security to enable you to receive part of your spouse's Social Security or military pension. [153]

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Seeking and Getting Alimony

Alimony (also called spousal support or maintenance) is a financial payment made by one spouse to the other, more financially dependent spouse after a divorce.[154] Virtually all states have statutes permitting alimony awards in appropriate cases, although states may use different considerations in determining such awards.[155] Originally, alimony was awarded to enable an ex-wife to continue living at the same standard she had enjoyed during the marriage, especially if she had been a loyal wife, married a long time, and had no marketable skills.[156] Increasingly, courts award alimony to enable an economically disadvantaged spouse to acquire marketable skills and become self-supporting. There are many different reasons why alimony might be justified:

- To provide further family support;
- To prevent the dependent spouse from becoming a public charge;
- To compensate a spouse for contributing faithful service to the marriage (particularly as a homemaker);
- To compensate a spouse for enabling the education or training of the other spouse and to enable the one who gave up educational or work opportunities during the marriage to become rehabilitated (i.e., financially independent).[157]

Alimony can be awarded to either spouse[158] as a one-time lump sum payment; periodic payments for a temporary amount of time; or periodic payments for an indefinite time (usually until the death or remarriage of the recipient). Courts often use factors similar to those governing the division of property in determining alimony awards.[159] The factors most used include: the length of the marriage; the respective earning capacities of the parties; the needs of each party; and whether one party sacrificed career opportunities for the sake of the family. Some courts will order a spouse to pay alimony (temporary or permanent) to reimburse the other spouse who lost income and opportunities by agreement of the parties (for example, to stay home with the children or to forego college and support a spouse advancing his career). Modest awards are the present-day norm, and some states will award only short-term, rehabilitative alimony to enable a spouse to establish a career or to obtain the necessary training, education, job skills, or experience. This is true even if a spouse had marketable skills before the marriage, but stayed home (or worked part-time menial jobs) for ten to fifteen years to raise the children. Some states permit only short-term alimony awards even if the results are very unfair.[160]

Half of the states permit the court to consider marital misconduct or fault generally in considering whether to grant alimony.[161] A small number of states prohibit alimony to an adulterous wife or spouse.[162] Some judges will not order husbands to pay alimony to adulterous wives or ex-wives who live with another partner.[163] (A few state appellate courts have ruled that a judge cannot automatically prohibit an alimony award for a cohabiting former spouse, but must look to see if the new cohabitant is contributing to the support of the former spouse.)[164] Even in states that do not end alimony payments for a spouse who lives with a new partner, many men insist on including a provision in the separation or divorce agreement that the alimony payments end if the

dependent spouse lives with a new partner.

In equitable distribution states, an alternative to alimony is to award a spouse a larger share of the marital property in lieu of alimony (as it is often better to receive property at the time of the divorce than to have to fight to get alimony each month). Courts can also order a spouse to pay health insurance or reasonable medical expenses otherwise not reimbursed as a form of alimony. (If your spouse's employer has twenty or more employees, you can obtain medical insurance through her/his workplace for up to three years after the divorce.) This may be an important option if you do not have access to medical insurance.

If your divorce judgment does not provide for alimony, most states will not permit you to go back after the divorce to get it unless the law allows this or the divorce agreement specifies that you may do so. Sympathetic judges may order a nominal amount of alimony (for example, $1 per year) just to preserve your right to ask for more money in the future. If you think you will want or need more alimony in the future, try to include a provision in your divorce judgment or settlement agreement for an automatic cost of living increase or a provision that any future award be based on a percentage of your spouse's current income.

"Palimony" is court-ordered support payments between unmarried partners who have lived together for a significant time and then break up. It is more likely to be awarded when one partner has considerable income or assets and the other, by mutual agreement, gave up financial or educational opportunities to support or assist the other.[165] Some courts will award palimony (or even alimony) when a marriage is annulled, though more often only to a spouse who was not at fault. Whether someone entitled to palimony could get medical insurance coverage through their former partner's employer is uncertain and will depend on state law and the agreement between the employer and insurance company. If state law allows, a court can consider a palimony award when a long-term, cohabiting gay or lesbian relationship ends, but usually only on a contractual or partnership theory. In some states, married couples that have lived together a long time before the marriage could be entitled to more of the property or a higher alimony award based on a palimony theory.[166]

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Alternative Dispute Resolution

Alternative dispute resolution has become a very popular way to handle divorces. Increasingly, states are requiring couples to participate in some form of alternative dispute resolution, such as mediation or arbitration,[167] before a judge will hear their divorce case.[168] Even when no statute or court rule requires such a referral for alternative dispute resolution, many judges strongly urge couples to resolve their divorce through mediation.[169] In most states, the parties must pay for dispute resolution services, although in some states, the court itself provides mediators as a free service.[170]

Mediation involves a neutral facilitator who will help you and your spouse discuss needs and wants in a confidential process with the goal of enabling you to reach a mutually acceptable agreement without going to trial.[171] Do not assume that a facilitator has legal knowledge just because s/he is mediating your divorce. The facilitator may or may not be a lawyer. S/he could be a social worker or someone with a mental health background. In some states mediation is unregulated so there are no required standards or training.[172]

There are a number of studies suggesting that mediation is usually less expensive than a trial, preferred by judges, more satisfactory to the parties, and fosters higher compliance.[173] Other research has found that compliance is neither better nor worse than adversarial outcomes in the judicial process,[174] and that while studies show a small increase in satisfaction among those voluntarily using mediation, people are less satisfied with mediation when required to use it.[175] Women are considerably less pleased with mediated divorce settlements than are men.[176]

Mediation requires a sensitive mediator, reasonable parties, good faith bargaining. and compromise. Any form of alternative dispute resolution assumes that both parties have equal bargaining power and will be open and honest about what they need and want. This assumption puts women at a disadvantage when it comes to mediation. In most marriages, women hold less of the money and power. Women often negotiate difficult marriages by making many compromises. They may be even more inclined to make such compromises to get out of a bad marriage.[177] Compounding the problem is the fact that mediators are often trained to believe that any bargain is fair so long as both parties are pleased with it at the time.[178] Many mediators have no sensitivity to gender imbalance and do not safeguard a woman's rights.[179] They also tend to hold women to higher standards[180] and have strong biases in favor of shared parenting,[181] which operates to further disadvantage women.

Men who are abusive or controlling are particularly unwilling to bargain in good faith or to live up to any fair agreement reached in mediation. If your spouse is physically, emotionally, sexually, or verbally abusive, mediation is *not* recommended and should be avoided.[182] Many states recognize that such cases should not go to mediation and prohibit the practice. However, they typically leave it up to the mediator to screen for such abusiveness or power imbalances, and unfortunately, mediators often lack knowledge about the dynamics of domestic violence. The result is that although mediators acknowledge that domestic violence occurs in at least half of all divorcing couples,[183] they exclude less than five percent of cases from mediation because of abuse.

Many mediators require that each party have an attorney to review the final agreement.[184] Lawyers retained solely to review mediated agreements may not scrutinize them by the same standards they would had they been involved in negotiating the settlement themselves, so be sure to monitor the review closely. In addition, mediated settlements can be harder to alter than a court judgment if you are dissatisfied. Furthermore, mediated settlements that include provisions mandating more mediation to resolve future disputes compound the situation when a bad agreement has been reached or a spouse is not abiding by the agreement.[185]

As soon as you know you will be going through a divorce, find out whether you will be expected to go to alternative dispute resolution. Try to obtain information about mediators that are recommended (or that should be avoided). Take time to define the issues you want or expect to be mediated. Know the value of anything that will be considered mutual property and think about your bottom line. What is the bare minimum that you would accept in terms of a settlement? What is the maximum you can realistically expect to get? In all likelihood, you will end up somewhere in between. Think about the areas of compromise keeping in mind what is realistic given your family situation. Mediation is forward-looking, so the mediator will not want to know what went wrong in the marriage or why. Be prepared to simply address your wants and needs. Think about the most persuasive arguments that best support your position. Also consider what your spouse is likely to ask for and why. Think about the arguments you may need to raise to show that his requests may not be reasonable. Determine where you could compromise in order to move the process forward.

If you have children, think seriously about their present and future needs. What will you need for child support? Do you need health insurance coverage for them? Do the children presently have other major expenses, such as day care, private schooling, therapy, or orthodontia that should be part of the agreement? Will they have such expenses in the future? If there are known special events to which the children are committed, consider dealing with these first before discussing what will become the usual visitation arrangement. Since the specificity of the agreement will depend on how well you and the other parent get along, it is best to build in flexibility. How will you and your spouse make arrangements for special days as they arise each year? Reasonable people need little guidance about these issues, but it is good to cover all bases. Also, remember that what children want and need at age three is not what they will want and need at age eight or fifteen.

If mediation is required by the court, opposing it outright could annoy a judge or make you seem uncooperative. However, if you really do not wish to participate in mediation you have several options, although none of them are guaranteed to work. The options are as follows:

- If you are worried about your safety, ask the mediator to do "shuttle" mediation, where the mediator meets separately with you and your spouse. Insist that the meetings be on separate days. Shuttle mediation is especially good where there are logistical issues such as who will move out and when, getting papers signed and closing bank accounts.

- Object to mediation on the grounds that a full and fair disclosure of financial assets or income has not occurred.

- If you are a domestic violence victim, have your attorney or a domestic violence advocate explain that you are afraid of mediation and do not believe it will work and ask the mediator to find that the case is not appropriate for mediation. This will put the mediator on notice and create some accountability should any violence result.

- Formally object to mediation (by motion) on the ground that it is not safe for you as a person abused by your spouse and ask the judge to excuse you from participating in mediation.

- File a motion objecting to mediation on constitutional grounds, i.e., that it is a denial of your constitutional right to counsel, that it interferes with your right to associate with your attorney (or your right to not associate with your spouse), that it forces you to participate in something based on a philosophy with which you

do not agree, that it impermissibly deprives you of the right to a free divorce (if you have no money but will have to pay for mediation),[186] that it discriminates against you as a woman and as a battered women (if you are one), and that mediation (or arbitration) is a denial of your right to resolve disputes in the courts.

- Go to the mediation, but do not participate after having agreed (preferably in writing) that if the mediation is unsuccessful the mediator will not make any recommendations or communicate anything said in mediation to the court except for threats of violence. This will end the mediation process. If the mediator or your spouse communicates anything said in mediation besides the threats of violence, ask for sanctions (a penalty against whoever misspoke), and request the judge turn the case over to another judge. Remember, successful mediation requires reasonableness, honesty, good faith bargaining and compromise to ensure a fair and successful result. Anything less and you and your spouse will probably have to go to trial anyway.

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Settlement or Trial

At some point you will have to decide whether to settle your case or go to trial. Here are some parameters in deciding if you should settle your case. Does the settlement at least meet your bottom line? Is the offer going to work or is it setting you up for failure? Is the offer reasonable given your situation? For example, if you had no assets as a couple, you cannot expect to get them at the time of divorce. Similarly, if your spouse of twenty-five years has an income of $700,000, a settlement whose only term is that you get $1,500 per month in alimony may not be reasonable.

In deciding whether you should accept a settlement (even a mediated one), you must also consider the risks of going to trial. Can you afford the financial costs of going to trial? Do you have the emotional stamina for a trial? Do your children? Who is your judge? Is the judge sympathetic to the position that you will be taking if you go to trial? Is s/he generally considered fair? Fair to women? The risks of trial may be worth taking if you have good law on your side and a very good chance of a considerably more favorable settlement. Limiting the trial to the areas where you and your spouse really differ will reduce trial time, cost, and risk.

A Warning About Waivers in Settlement Agreements

It is now possible to sue your spouse or former spouse in most instances where you could sue someone else.[187] This is particularly true if a spouse harmed you in an intentional and wrongful way. A few examples of a spouse's wrongdoing for which the spouse could be sued include: illegal wire- tapping;[188] assault;[189] stalking;[190] rape;[191] kidnapping or false imprisonment;[192] infecting you with herpes, HIV or AIDS;[193] or defamation.[194]

There are time limits (called statutes of limitations) that determine how much time you have to sue for a wrongful act. In most states, the time begins when the wrongful act is discovered.[195] For a wrongful action that occurred during the marriage, some states may require that you raise the claim as part of the divorce action.[196]

You should not sign any divorce or separation agreement that releases or waives *all past and present claims* against your spouse.[197] This is common language that many lawyers will insert in divorce settlement agreements. This language will prevent you from bringing other lawsuits, if they might be applicable in your case. Even if you know of no claims for which you could sue your spouse, you should at most waive only *known* claims in your divorce or separation agreement. Never sign away your right to future claims, since you do not know what they might be.

While nobody can predict how a judge will decide a particular case, if your spouse is offering no settlement or an unfair one, trial may be the only route to take. However, remember that going to trial is usually expensive, unpleasant, grueling and seldom a good way to resolve a case. Your spouse's lawyer is there to make him look more sympathetic than you. Seriously consider your strengths and weaknesses if the case goes to trial and how well you will stand up under the strain of a trial.

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Appealing or Modifying Your Divorce Judgment

I. Appeals

If you are unhappy with your final divorce judgment you can file an appeal.[198] (A few states also allow appeals of temporary or *pendente lite* orders, although such appeals are often more limited on the theory that a final hearing will correct any problems.) In most states you can only appeal if the judge made an error of law or abused her or his discretion. You cannot appeal determinations of a person's credibility (whether someone's testimony was believable) or a factual determination made by a judge. Errors made while the divorce case was pending (but not made at trial) can seldom be raised on appeal. If an issue was not argued during the trial, you cannot raise it on appeal unless you or your attorney attempted to raise it at trial and stated an objection to not being allowed to do so. It is not uncommon for an appeals court to find that an error was made, but conclude that the error was harmless because there was some other way the court could have reached the same result.[199]

Appeals can be very expensive and slow. It is common for them to last one or two years and sometimes longer. You may also be required to pay your spouse's fees and lawyer's costs, especially if the court thinks that your appeal is frivolous. If you win your appeal, all that you may get is the right to a new trial. Be aware that if the case does go back to trial, the court may be looking at a very different situation than at the time of the initial trial.

You are still required to obey the trial court's order while you are appealing its decision unless you get an additional order, called a stay, from the trial or appellate court postponing enforcement of the trial court's original order. In some states, a stay will not be issued unless you post a bond, especially if the issue appealed involves a financial interest, such as property division, child support, or alimony. If you are appealing a decision that gave custody to your spouse and a stay was not granted, the children will continue to live with him.

It is important to have an attorney file your appeal since the issues are more complicated and technical than at the trial level. Also, even if you liked your trial lawyer, you may find you need a different lawyer for the appeal. However, do not change lawyers without good reason, since the new lawyer will charge you just to become familiar with your case. The appellate attorney should be familiar with the appeals process and the intricacies of your case.

Occasionally, the trial court will accept a written request ("motion") for a new trial or rehearing on a particular issue. This is especially true if there was fraud, coercion, duress, or important information that you could not have known about at the time you had your trial (or if you were not notified about the case or trial). Getting something reconsidered in this way is usually faster and far less expensive than an appeal. There are court rules or statutes that set forth the circumstances and time periods whereby a divorce court can reconsider a case.

II. Modifications

A modification is a change in a settlement order or judgment based on circumstances that have changed since the order or judgment was made. An agreement made via settlement may be harder to modify than an order issued by the court, particularly one concerning property division or alimony.[200] Some decisions are virtually impossible to modify (for example, property distribution orders), whereas others may be somewhat easier (for example, custody and child support). Spousal support or alimony decisions lie somewhere in between. If you waived alimony in an agreement at the time of your divorce you may not be able to ask for it by way of modification, even if your circumstances change and you later need it. If you were awarded any alimony (even a nominal amount) be aware that upward modifications of alimony may be harder to get than downward ones. Requests for modification involve some risks. Some courts prohibit a party from returning to court within a specific time (for example, two years) after the court's final decision. Many women who received custody at divorce find that when they go to court for an upward modification of child support that their husbands seek to modify for custody. Women also find they get taken back to court for a modification after their ex-husbands remarry and have wives who can care for the children at home.

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The Aftermath of Divorce and Other Concerns

I. The Emotional Impact on Women and Children

Women facing divorce have many worries and there are many myths that contribute to these worries. Most women are concerned about how the divorce will affect them financially. Others wonder if they will ever find another partner. Mothers worry about how the divorce will affect their children. Victims of domestic violence have safety concerns. In addition, friendships may change for women whose social networks were strongly connected to their spouse's colleagues or clients. This is especially true for corporate, academic or military wives; wives of clergy; or wives who worked with or for their husbands. Wealthy women or those who moved for their husbands' jobs are also likely to find themselves cut off from their network of family and friends. Some religious communities frown on divorce. Family members can be unpredictable -- some will be supportive, others may be indifferent, hostile or even angry. Parents sometimes fear that extra financial or child-rearing burdens may fall on them at a time when they cannot afford or handle the additional strain. Parents may also feel guilty that somehow they have failed as a parent because they are divorced. All of these concerns and changes are common. The key to adjusting to life after divorce is proactively creating a new network of support, including counseling or therapy if necessary.

The emotional effects of divorce on children have been highly exaggerated,[201] particularly when adjusting to the financial changes.[202] Divorce certainly affects children less severely than persistent marital conflict, alcoholism or spousal abuse.[203] Parents should realize that most children of divorcing parents grow up with normal adjustment patterns.[204] Children who do badly after a divorce are almost always the same children who were doing badly before divorce.[205] Children who live with single fathers do not necessarily do better than those living with single mothers, even though they may be considerably better off financially.[206] Generally, when the parents get along, children fare better than when the parents do not get along.[207] If you find that your children are having emotional difficulties during or after the divorce, seek the services of a family therapist or counselor. If you cannot afford a therapist, consider joining or forming a support group with other divorced or divorcing mothers.

II. Domestic Violence

Almost half of all divorcing women claim to have experienced domestic violence in their marriages.[208] Indeed, separation and divorce are times when abusive men are most likely to seriously injure or even kill their partners and their children.[209] Seventy percent of marital violence occurs after separation.[210] Therefore, divorcing women who are abused should be aware of the risk of increased violence, the times when they are most in danger, and how they can keep themselves as safe as possible. They should also know that men who physically or emotionally abuse their wives sometimes shift their focus to the children after the parties separate, physically abusing many of the children and sexually abusing a

significant number of them.[211] Some of the warning signs that an abusive person may escalate his domestic violence to homicide or serious injury include the following:

- The victim has children whose father is not the abuser (the biggest risk factor);
- The abuser falsely accuses her of having children by another man;
- The abuser has access to firearms;
- The abuser has threatened to kill or seriously hurt the victim, her loved ones (including relatives, children and pets) or himself, or has actually done so (including deliberately or recklessly with a motor vehicle);
- The abuser is stalking the victim or obsessed with her or someone closely associated with her;
- The abuser has raped or forced the victim to have sex (including with others);
- The abuser has taken hostages in the past;
- The abuser intentionally or recklessly killed or seriously injured someone or a pet;
- The abuser has a drug or alcohol problem;
- The abuser has isolated his victim or turned other people against her;
- The abuser is considerably older than his victim, or the domestic violence has seriously escalated.[212]

The times when abusive spouses are most likely to become angry are when they learn that a woman has left, are served with divorce papers, realize they will have to pay child or spousal support, give up some of their assets, or learn or suspect that their wife has another lover.

Therefore, all divorce attorneys should ask their clients if they are in danger of being abused, or if they fear for themselves or their children. Women with controlling or abusive spouses will need to know in advance when their spouses are likely to be served with divorce papers so that they can find a safe, confidential location for a few days, in the event their spouses try to retaliate. Attorneys should also be prepared to deal with issues of domestic violence at every stage of the divorce proceedings. Clients experiencing domestic violence should avoid mediation, joint legal or physical custody orders, and couples counseling. If you are abused and need shelter call the National Domestic Violence Hotline at 1-800-799-SAFE. The hotline can help you with information about obtaining a protective order and other safeguards.

III. Remarriage and Cohabitation with a New Partner

Divorced women often find new partners, and many remarry. Depending on the state, cohabitation or remarriage may affect the terms of your divorce settlement, child custody arrangements, and alimony payments.

Prenuptial agreements (also called premarital or ante-nuptial agreements) are often used by people marrying later in life who have careers, significant assets, children from their first marriage, or who want to protect themselves in the event that they divorce again. Women with significant assets who are considering remarriage (or even a first marriage) might want to consider the advantages and disadvantages of having a prenuptial agreement.

Every state has adopted the Uniform Premarital Agreement Law[213] that governs when prenuptial agreements will be upheld. Although states and judges differ, the agreements are usually upheld if, at the time they were signed, each party fully and accurately disclosed the extent of their income, assets, and debts; each was represented by independent attorneys (or had an opportunity to be so represented) and did not sign the agreement under fraud, coercion, or duress. In addition, some courts will look to whether the terms of the agreement were unconscionable (highly unreasonable) at the time the agreement was signed.[214] A couple can waive their own rights, but not the rights of their children.[215] This means that any terms specifying who will get custody or how much child support will be paid (issues that

women may feel more strongly about)[216] will not be upheld. Terms governing property division and alimony, however, will be upheld in most states.[217]

Other types of useful agreements to consider include postnuptial agreements, i.e., those signed after a couple marries, and "reconciliation" agreements, which restore the marriage after a separation has occurred.[218]

IV. The Economic Impact of Divorce

Divorce has devastating effects on women's financial status. Most divorced women, including women who lived very comfortably or affluently while married, will find they must make a downward adjustment in their standard of living. For many women with new or additional expenses, such as childcare or therapy, curtailing expenses will be very difficult. Many feel resentful and frustrated when they realize that divorce actually improves the standard of living of their former spouses while lowering their own.[219] Numerous studies have shown that divorce has adverse economic effects on women and children. Per capita income and standards of living drop after divorce, especially for women who retain custody of minor children, due in part to inadequate child support.[220] Only extremely affluent families are likely to have enough income or assets to provide the ex-wife with adequate amounts of support. The average alimony payment, if even awarded, will not make up for the lost earnings and low child support awards that most wives receive after divorce.[221] In addition, welfare reform laws make it harder for poor mothers to receive public assistance[222] and may force many of them into low paying, dead-end jobs.[223]

V. Tax Considerations and Wills

With respect to alimony payments, a former spouse receiving alimony is taxed on the amount of alimony received. The ex-spouse who pays the alimony is allowed to deduct the amount of alimony paid to the former spouse.[224] On the other hand, a parent paying child support is taxed on the amount of the payments, but the parent receiving the child support does not have to count that money as taxable income.[225] In addition, federal law allows the custodial parent to take the children as tax deductions. Most state courts permit either parent to do so, as long as only one parent is getting the deduction.

The Internal Revenue Service (IRS) is not bound by what the parties or a court calls alimony, child support, or property distribution. It can make its own determination on these issues based on what it sees as the purpose of the payment, when the payment will end (for example, death or remarriage) and various other factors.

A property transfer by one spouse to the other as a result of the divorce and which occurs within two years of a divorce is not a taxable event (with the exception of transfers to a non-resident alien spouse). This means that the person who transfers the property is not burdened with a tax gain and the person who gets the property can keep whatever "carryover" basis (value) the property had without including the value as income.[226]

Finally, there are possible tax consequences regarding pensions. If the court awards you a share of your spouse's pension, you will have to pay taxes and penalties if you take possession of the money. However, if you are below retirement age, you do not have to pay taxes and penalties if you directly deposit the pension into an approved retirement account. A bank, accountant, or attorney can assist you with this and explain when you are permitted to make withdrawals and in what amounts.

The IRS issues a helpful guide called the Internal Revenue Service Publication 504, *Divorced or Separated Individuals* for help with tax issues.

Anyone going through a divorce should either have a will drawn up or update their last will and testament. It makes little sense to negotiate a divorce settlement and then leave most or all of your property to your ex-husband based on a will you wrote when you were married. If you

are not sure about what you want to have happen with your estate when you die, you may at least want to remove your spouse from your will. Once you know what you would like to do with your estate, write a new will. Also, consider writing (or rewriting, if you already have one) a living will or durable power of attorney to leave instructions about your wishes should you ever become incapacitated. In these documents you name who you would like to make decisions for you in the event you are unable to do so yourself. Give copies to a close friend or relative, as well as your doctors and clergy.

LEGAL momentum
Advancing Women's Rights
395 HUDSON STREET, NEW YORK, NY 10014-3684 (212) 925-6635 FAX: (212) 226-1066

Groups and Organizations

American Bar Association
Section of Family Law
(312) 988-5145
312 North Clark Street
Chicago, IL 60610
familylaw@abanet.org
www.abanet.org/family

American Academy of Matrimonial Lawyers
(312) 263-6477
150 N. Michigan Avenue, Suite 2040
Chicago, IL 60601
www.aaml.org
office@aaml.org

Divorced From Justice
www.divorcedfromjustice.com

The Equality in Marriage Institute
(212) 489-5590
250 West 57th Street
Suite 2404
New York, NY 10107
www.equalityinmarriage.org
info@equalityinmarriage.org

Financial Resources for Women and Children
645 Boylston Street
c/o PPUF at Old South Church
Boston, MA 02116
info@FRWC.org
www.frwc.org

Lambda Legal
(212) 809-8585
120 Wall Street, 15th Floor, Suite 1599
New York, NY 10005-3904
www.lambdalegal.org

Legal Momentum
(212) 925-6635
395 Hudson Street, 5th Floor
New York, NY 10014
www.legalmomentum.org
peo@legalmomentum.org

National Center for Lesbian Rights
(415) 392-6257
870 Market St. Suite 370
San Francisco, CA 94102
www.nclrights.org
info@nclrights.org

National Coalition for Family Justice
(914) 591-5753
cfjmailbox2@aol.com
www.ncfj.org

National Organization for Women (NOW)
(202) 628-8669 or (202) 331-0066
(202) 785-8576 fax
(202) 331-9002 tty
1100 H St NW, 3rd Fl.
Washington, D.C. 20005
www.now.org
now@now.org

National Partnership for Women and Families
(202) 986-2600
1875 CT Avenue, NW, Suite 710
Washington, DC 20009
www.nationalpartnership.org
info@nationalpartnership.org

Older Women's League
(703) 812-7990
(800) 825-3695
3300 N. Fairfax Drive
Suite 218
Arlington, VA 22201
www.owl-national.org

Parents Without Partners, Inc.
(561) 391-8833
1650 South Dixie Highway, Suite 510
Boca Raton, FL 33432
www.parentswithoutpartners.org

Pension Rights Center
(202) 296-3776
1350 Connecticut Avenue NW, Suite 206
Washington, DC 20036-1739
www.pensionrights.org

Women's Institute for Financial Education (WIFE)
(760) 736-1660
PO Box 910014
San Diego, CA 92191
www.wife.org

Women's Institute for a Secure Retirement
(202) 393-5452
1725 K St NW Ste 201
Washington, DC 20006
info@wiserwoman.org
www.wiser.heinz.org

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Advancing Women's Rights
395 HUDSON STREET, NEW YORK, NY 10014-3684 (212) 925-6635 FAX: (212) 226-1066

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Legal Momentum publishes several other Legal Resource Kits that you may find helpful, including guides on How To Find A Lawyer and Domestic Violence and Child Custody.

ENDNOTES

[1] Susan A. Lenz, *Revisiting the Rule of Thumb: An Overview of the History of Wife Abuse*, 10(2) WOMEN & CRIM. JUST. 9, 21 (1999).
[2] *But see Mercer v. Mercer*, 162 N.W. 2d 230 (Neb. 1968) (stating that the court has the power to adjust property rights in a suit for divorce from bed and board, which leaves the legal status of the parties unchanged but relieves them from the obligations and rights of cohabitation).
[3] *See, e.g.*, MONT. CODE ANN. § 40-4-108 ("No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage"). The Uniform Marriage and Divorce Act § 314, 9A U.L.A. 156 (1973) proposes that the decree can become final upon the motion of either party after six months, and that several states so provide by statute or under their case law.
[4] PATRICIA PHILLIPS & GEORGE MAIR, KNOW YOUR LEGAL RIGHTS: A LEGAL HANDBOOK FOR WOMEN ONLY 86 (1997).
[5] Studies of divorcing and divorced men find that whether or not they are physically abusive of their former wives, husbands greatly devalue their former wives and characterize them in highly negative and deviant terms. David Schuldberg & Shan Gussinger, *Divorced Fathers Describe Their Former Wives: Devaluation and Contrast, in* WOMEN AND DIVORCE / MEN AND DIVORCE: GENDER DIFFERENCES IN SEPARATION, DIVORCE, AND REMARRIAGE (Sandra S. Volgy ed., 1991).
[6] HARRIET NEWMAN COHEN & RALPH GARDNER, JR., THE DIVORCE BOOK FOR MEN AND WOMEN 37 (1994).
[7] New York is unusual in encouraging courts to consider awarding attorney's fees. The court considers factors such as the nature of the marital property involved, the difficulties in identifying and evaluating marital property, services rendered and an estimate of the time involved, and the applicant's financial status. N.Y. DOM. REL. LAW § 237 (2006).
[8] James T.R. Jones, *Kentucky Tort Liability for Failure to Report Family Violence*, 26 N. KY. L. REV. 43, 57 (1999); Fiona Furlan et al., *Ethical Guidelines for Attorney-Mediators: Are Attorneys Bound by Ethical Codes for Lawyers When Acting as Mediators?*, 14 J. AM. ACAD. MATRIMONIAL L. 267, 314-15 (1997).
[9] Title III, Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2511(1)-(2)(d) (1999).
[10] 18 U.S.C. §§ 2511(1)(d)-(e).
[11] *See* HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES, § 14.7 nn.86-87 (2d ed. 1988).
[12] Milton C. Regan, Jr., *Spouses and Strangers: Divorce Obligations and Property Rhetoric*, 82 GEO. L. J. 2303, 2313 (1994). A spouse can obtain a no-fault divorce unilaterally over the objection of the other spouse in all but two states. Stephane Mechoulan, *Divorce Laws and the Structure of the American Family*, 35 J. LEGAL STUD. 143, 150 n.6 (2006) ("All states now have some form of no-fault divorce. While divorce can be instantaneous for many fault grounds, a small number of states recognize a long waiting period of separation as the only no-fault ground for divorce. Other states require separation in addition to other no-fault grounds, or if the divorce is contested, one spouse can obtain a postponement"). In New York, parties to a no-fault divorce must enter into a separation agreement and live mostly by its terms, remaining physically separate for a year. *See* N.Y. DOM. REL. LAW § 170 n.31.
[13] States where no-fault is the sole ground for divorce are Arizona, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, Oregon, Washington, and

Wisconsin. Linda D. Elrod, et al., *A Review of the Year in Family Law: Children's Issues Dominate*, 32 FAM. L. Q. 661, 715 Chart 4 (1999), *cited in* Larry R. Spain, *The Elimination of Marital Fault in Awarding Spousal Support: The Minnesota Experience*, 28 WM. MITCHELL L. REV. 861, 862 n.18 (2001).

[14] SHARON NAYLOR, THE UNOFFICIAL GUIDE TO DIVORCE 89-90 (1998). If you were abandoned or driven from the home, this may also be a fault ground.

[15] *See, e.g.*, Jane Rutherford, *Duty in Divorce: Shared Income as a Path to Equality*, 58 FORDHAM L. REV. 539, 541 (1990).

[16] LA. REV. STAT. §§ 9:272-75, §§ 9:307-09 (2006); ARIZ. REV. STAT. § 25-901 (2006); ARK. CODE ANN. § 9-11-202 (2006).

[17] Colorado, Tennessee, Ohio, Indiana, Virginia, Georgia, and Nebraska have considered covenant marriage laws. *See* Heather K. McShain, *For Better or for Worse? A Closer Look at Two Implications of Covenant Marriage*, 32 FAM. L.Q. 629 (1999).

[18] *See e.g.*, *Hamel v. Hamel*, 426 A.2d 259 (R.I. 1981) (permitting a divorce from bed and board on the ground of "irreconcilable differences," but only so long as the parties do not reconcile).

[19] CLARK, *supra* note 11, at § 6.4.

[20] *Id.*

[21] *Id.*

[22] J. Jeffrey Gunn, *Utah's Annulment Statute: Are Annulments Underused as a Result of Liberal "No-Fault" Divorce Laws?*, 6 J. L. & FAM. STUD. 385, 385 (2004). *See* Laurence Drew Borten, *Sex, Procreation, and the State Interest in Marriage*, 102 COLUM. L. REV. 1089, 1094 (2002) (quoting 1 HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 221 (2d ed. 1987)) (indicating that an annulment is a finding that "no marriage ever occurred").

[23] Borten, *supra* note 22, at 1095.

[24] Gunn, *supra* note 22, at 390.

[25] Gunn, *supra* note 22, at 390.

[26] Gunn, *supra* note 22, at 393.

[27] Gunn, *supra* note 22, at 393. But note that "[c]ourts have been hesitant to grant an annulment based on claims of duress." Gunn, *supra* note 22, at 394.

[28] Borten, *supra* note 22, at 1096.

[29] CLARK, *supra* note 11, at § 2.10.

[30] Borten, *supra* note 22, at 1103 (stating that a court may annul a marriage where "one party secretly intends not to consummate" the marriage); Gunn, *supra* note 22, at 390-91 (indicating that a marriage may be annulled on fraud grounds if a party falsely represented that he or she would consummate the marriage or if a party did not disclose that he was impotent).

[31] Gunn, *supra* note 22, at 391.

[32] Gunn, *supra* note 22, at 390.

[33] An annulment granted by a religious group differs legally from a civil annulment. However, some religious groups will recognize civil annulments based on fault grounds since they are so difficult to obtain. M.A. GLENDON, THE NEW FAMILY AND THE NEW PROPERTY, 122-24 (1981), *cited in* IRA MARK ELLMAN ET AL., FAMILY LAW: CASES, TEXTS, PROBLEMS 234 (3d. ed. 1998).

[34] In some states, the status of any child born of an annulled marriage can be quite complicated. It is possible for the child to be legitimate as to the innocent parent, but not as to the deceiving parent. For this reason, some judges do not like to grant annulments if any children resulted from the marriage. In cases where there is domestic violence, states differ as to whether they will treat the parties of an annulled marriage as former spouses for

purposes of giving one of them an order of protection, with very few states having clear case law on this issue.
[35] Typically your lawyer takes care of serving any legal papers. However, if you do not have a lawyer, choose an adult who has no interest in your case (i.e., someone who is not a party and who will not be a witness) to serve your legal papers or use the services of a process server. You cannot serve the legal papers, because you are an interested party.
[36] LESLIE J. BRETT ET AL., WOMEN AND CHILDREN BEWARE: THE ECONOMIC CONSEQUENCES OF DIVORCE IN CONNECTICUT 30 (1990).
[37] MARY ANN MASON, THE CUSTODY WARS: WHY CHILDREN ARE LOSING THE LEGAL BATTLE, AND WHAT WE CAN DO ABOUT IT 22 (1999) (noting that a study of 900 divorcing families found that 82% of mothers wanted custody compared to only 32% of the fathers).
[38] LEORA N. ROSEN & MICHELLE ETLIN, THE HOSTAGE CHILD 137-38 (1996); MARIANNE TAKAS, CHILD CUSTODY: A COMPLETE GUIDE FOR CONCERNED MOTHERS 10-11 (1987).
[39] ROSEN & ETLIN, *supra* note 38, at 138.
[40] *See* Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 946 (2005) (citing Mary Ann Mason & Ann Quirk, *Are Mothers Losing Custody? Read My Lips: Trends in Judicial Decision-Making in Custody Disputes - 1920, 1960, 1990, and 1995*, 31 FAM. L.Q. 215, 228 tbl.2 (1997) (showing that in 1995 fathers won sole custody in forty-two percent of custody disputes)).
[41] Marsha B. Liss & Geraldine Butts Stahly, *Domestic Violence and Child Custody*, *in* BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 175 (Marsali Hansen & Michelle Haraway, eds., 1993); Martha McMahon & Ellen Pence, *Doing More Harm Than Good? Some Cautions on Visitation Centers*, *in* ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN 186-87 (Einat Peled et al., eds., 1988); DEMIE KURZ, FOR RICHER, FOR POORER: MOTHERS CONFRONT DIVORCE 151 (1995).
[42] 1-6 MODERN CHILD CUSTODY PRACTICE § 6-2 (Matthew Bender 2006).
[43] Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL'Y & L. 5, 21, nn.68-70 (2002); CAL. FAM. CODE § 3080 (2006); 19 ME. REV. STAT. § 1653 (2005); NEV. REV. STAT. § 125.490 (2006); MISS. CODE § 93-5-24 (2006).
[44] 24A AM. JUR. 2D DIVORCE AND SEPARATION § 931 (2006).
[45] TAKAS, *supra* note 38, at 7.
[46] Joan Zorza, *"Friendly Parent" Provisions in Custody Determinations*, 26 CLEARINGHOUSE REV. 921, 923 (1992).
[47] *See, e.g.*, Commission on Gender Bias in the Judicial System, *Gender and Justice in the Courts: A Report to the Supreme Court of Georgia*, 8 GA. ST. U. L. REV. 539, 661 (1992). *See also* GAYLE ROSENWALD SMITH & SALLY ABRAHMS, WHAT EVERY WOMAN SHOULD KNOW ABOUT DIVORCE AND CUSTODY 9 (1998).
[48] Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER & L. 101, 113 (2004). *See generally* Ben Barlow, *Divorce Child Custody Mediation: In Order to Form a More Perfect Disunion*, 52 CLEV. ST. L. REV. 499 (2005).
[49] *Id.*
[50] 1-3 FAMILY LAW AND PRACTICE § 3.04 (Matthew Bender 2006).
[51] *Id.*
[52] Paula Woodland Faerber, *Empirical Study: A Guide to the Guidelines: A Longitudinal Study of Child Support Guidelines in the United States*, 1 J. L. & FAM. STUD. 151, 154-55 (1999).
[53] 24A AM. JUR. 2D DIVORCE AND SEPARATION § 1020 (2006).
[54] Some states take this into account in their formulas for child support computation. *See* ELLMAN ET AL., *supra* note

33, at 524-34. Also, some states will suspend child support or even order the custodial parent to pay child support during long visits that the child has with the noncustodial parent (for example, visits of more than a month in the summer). *See, e.g.*, *Wilson v. Wilson*, 991 S.W. 2d 647 (Ark. App. 1999).

[55] 1-5 MODERN CHILD CUSTODY PRACTICE § 5-23 (Matthew Bender 2006).

[56] *See, e.g.*, *McKenna v. Fisher*, 778 So.2d 498, 499 (Fla. Ct. App. 2001); Jill Lipman, *Comment: A Parent with Primary Custody of the Couple's Children May Be Ordered to Pay Child Support to a Parent with Partial Custody Under Pennsylvania Law: Colonna v. Colonna*, 43 DUQ. L. REV. 481, 485 (2005).

[57] FRANK F. FURSTENBERG JR. & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART 50 (1991).

[58] NATIONAL CONFERENCE OF STATE LEGISLATURES, CHILD SUPPORT GUIDELINE MODELS BY STATE, *available at* http://www.ncsl.org/programs/cyf/models.htm (last visited August 10, 2006); Jessica Pearson, *Court Services: Meeting the Needs of the Twenty-First Century Families*, 33 FAM. L.Q. 617, 618 (2000); Faerber, *supra* note 52, at 160; Kathleen A. Hogan, *Child Support in High Income Cases*, 17 J. AM. ACAD. MATRIMONIAL L. 349, 350 (2001).

[59] NATIONAL CONFERENCE OF STATE LEGISLATURES, STATES' TREATMENT OF LOW INCOME AND STATES TREATMENT OF HIGH INCOME, http://www.ncsl.org/programs/cyf/glines.htm (last visited August 10, 2006).

[60] KURZ, *supra* note 41, at 80, 82.

[61] ELLMAN ET AL., *supra* note 33, at 583-86.

[62] *Id.* at 588-89.

[63] The Interstate Child Support Enforcement Act of 1993, 13 No. 5 FAIRSHARE 14, 18 (1993).

[64] ELLMAN ET AL., *supra* note 33, at 588-89.

[65] Nancy A. Wright, *Welfare* Reform Under the Personal Responsibility Act: Ending Welfare as We Know It or Governmental Child Abuse?, 25 HASTINGS CONST. L. Q. 357392 (1988).

[66] ELLMAN ET AL., *supra* note 33, at 589-90.

[67] COHEN & GARDNER, *supra* note 6, at 160.

[68] Gary Sanders, *Normal Families: Research on Gay and Lesbian Parenting*, *in* SELECTED READINGS IN MARRIAGE AND FAMILY 169, 171-72 (Lorene H. Stone, ed.,1999).

[69] *Davidson v. Coit*, 899 So.2d 904 (Miss. Ct. App. 2005) ("It is well settled that the court can consider a homosexual lifestyle as a factor relevant to the custody determination").

[70] *See, e.g., L.A.M. v. B.M.*, 906 So.2d 942, 946 (Ala. Civ. App. 2004) (upholding a prior ruling against an openly lesbian mother and declining to address the issue of *Lawrence v. Texas*, 539 U.S. 558 (2003)). *But see Jacoby v. Jacoby*, 763 So.2d 410, 413 (Fla. Dist. Ct. App. 2000) ("For a court to properly consider conduct such as a parent's sexual orientation on the issue of custody, the conduct must have a direct effect or impact upon the children. The mere possibility of negative impact on the child is not enough. The connection between the conduct and the harm to the children must have an evidentiary basis; it cannot be assumed.").

[71] JOHN E.B. MYERS, A MOTHER'S NIGHTMARE – INCEST: A PRACTICAL LEGAL GUIDE FOR PARENTS AND PROFESSIONALS 126 (1997); Joan Zorza, *Why Courts Are Reluctant to Believe and Respond to Allegations of Incest*, *in* THE SEX OFFENDER: THEORETICAL ADVANCES, TREATING SPECIAL POPULATIONS AND LEGAL DEVELOPMENTS 33-2, 3, 7, 8 (Barbara K. Schwartz ed., 1999); ROSEN & ETLIN, *supra* note 38, at 101-03. The theory that mothers alienate their children is sometimes referred to as Parental Alienation Syndrome, although the theory has little supporting evidence. *Id.*

[72] MYERS, *supra* note 71, at 159.

[73] 1-3 FAMILY LAW AND PRACTICE § 3.04 (Matthew Bender 2006).

[74] PHILLIPS & MAIR, *supra* note 4, at 113.
[75] *Id.* at 114-15. *See also* Fair Credit Reporting Act, 15 U.S.C. §§ 1681c(a)(4) & (5) (2006) (excluding from credit reporting "[a]ccounts placed for collection or charged to profit and loss which antedate the report by more than seven years [and] [a]ny other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years").
[76] PHILLIPS & MAIR, *supra* note 4, at 121.
[77] JAMES J. WHITE & RAYMOND T. NIMMER, CASES AND MATERIALS ON BANKRUPTCY 51 (3d ed. 1996).
[78] DOUGLAS G. BAIRD, ELEMENTS OF BANKRUPTCY 34 (4th ed. 2006).
[79] *See* Jean Braucher, *Personal Bankruptcy in the 21st Century: Emerging Trends and New Challenges: Theories of Overindebtedness: Interaction of Structure and Culture*, 7 THEORETICAL INQ. L. 323, 324 n.1 (2006) (citing TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 70-72, 81 (2000) (noting that divorce is one of the "common triggers for bankruptcy")).
[80] Peter C. Alexander, *"Herstory" Repeats: The Bankruptcy Code Harms Women and Children*, 13 AM. BANKR. INST. L. REV. 571, 575 (2005).
[81] Baird, *supra* note 78, at 35.
[82] *Id.*
[83] *Id.*
[84] *Id.* at 18.
[85] Note that which property is classified as exempt may depend upon the laws of the state in which the debtor files. *See* Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006) (stating that "whether certain property is exempt and may be kept by the debtor is often a question of state law").
[86] White, *supra* note 77, at 51; DAVID G. EPSTEIN, BANKRUPTCY AND RELATED LAW IN A NUTSHELL 124 (7th ed. 2005); *see* Eugene R. Wedoff, *Means Testing in the New 707(b)*, 79 AM. BANKR. L.J. 231, 232 (2006) (noting that under Chapter 7 of the Bankruptcy Code, "individuals may obtain a prompt discharge of their indebtedness in exchange for surrendering whatever property they own that is not exempt from debt collection").
[87] Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006). Additional materials that a debtor must file with the bankruptcy court include: "(1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) statement of financial affairs; and (4) a schedule of executory contracts and unexpired leases." *Id.* (citing FED. R. BANKR. P. 1007(b)). The debtor must also give the trustee tax returns. Further, individuals who have mostly consumer debts are required to submit: "a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts." *Id.*
[88] *Id.*
[89] *Id.* (indicating that there is a $245 filing fee, $39 miscellaneous fee, and a $15 trustee fee).
[90] *Id.*; EPSTEIN, *supra* note 86, at 129.
[91] *See* Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006); *see* EPSTEIN, *supra* note 86, at 129.

[92] *See* Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006).
[93] *See* 11 U.S.C. § 707(b) (2006); *see* Wedoff, *supra* note 86, at 234.
[94] Baird, *supra* note 78, at 37 ("The judge determines whether one makes enough to be subject to means testing by taking the debtor's 'current monthly income,' multiplying it by twelve, and comparing it against the 'median family income' of others in the same state.").
[95] Baird, *supra* note 78, at 38 ("Once a debtor is found to make more than most, we still must establish that the debtor earns enough to be able to pay something back to creditors.").
[96] Baird, *supra* note 78, at 38-39.
[97] Baird, *supra* note 78, at 56.
[98] Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006) (indicating that Chapter 13 "enables individuals with regular income to develop a plan to repay all or part of their debts").
[99] Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html (last visited Sept. 29, 2006).
[100] *Id.*
[101] 11 U.S.C. § 1302(b) (2006); Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/ chapter7.html (last visited Sept. 29, 2006); EPSTEIN, *supra* note 86, at 371.
[102] Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/ chapter7.html (last visited Sept. 29, 2006).
[103] 11 U.S.C. § 109(e) (2006); Chapter 7 – Bankruptcy Basics, *available at* http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/ chapter7.html (last visited Sept. 29, 2006)
[104] 11 U.S.C. § 522(b)(1) (2006).
[105] 11 U.S.C. §§ 523(a)(6), (8) & (15) (2006). *See* 11 U.S.C. § 523(a) for a complete list of the debts that are not dischargable.
[106] This is required by the automatic stay. *See* 11 U.S.C. § 362(a) (2006).
[107] 11 U.S.C. § 362(b)(2)(A) (2006).
[108] 11 U.S.C. § 523(a)(5)(B) (2006).
[109] ROBERT L. MENNELL, COMMUNITY PROPERTY IN A NUTSHELL 1 (2d. ed. 1998); Michael McAuley, *The Wanting of Community Property*, 20 TUL. EUR. & CIV. L. F. 57, 58 (2005).
[110] JOHN TINGLEY & NICHOLAS B. SVALINA, MARITAL PROPERTY LAW § 7.01 (2d. ed. 1995); Todd D. Kremin, *Note: Bongaards v. Millen: Who Do You Trust?*, 18 QUINNIPIAC PROB. L. J. 290, 291 n.10 (2005).
[111] TINGLEY & SVALINA, *supra* note 110, at § 7.05.
[112] CLARK, *supra* note 11, at § 15.3.
[113] Elrod et al., *supra* note 13, at 716, Table 5 (1999). The states that do not consider economic fault are Alabama, Georgia, Idaho, Louisiana, Nebraska, New Mexico, Washington, and Wyoming.
[114] 1-18 VALUATION AND DISTRIBUTION OF PROPERTY § 18.03 (Matthew Bender 2006).
[115] 2-27 VALUATION AND DISTRIBUTION OF PROPERTY § 27.03 (Matthew Bender 2006).
[116] 2-22 VALUATION AND DISTRIBUTION OF PROPERTY § 22.01 (Matthew Bender 2006).
[117] When valuing a company, courts can use a variety of methods, including: discounted cash flow, fair value, fair

market value, asset value, liquidation value, replacement value, going concern value, etc. Courts select from these methods or a mixture of methods to determine value of a business.

[118] *See* Harriet N. Cohen, *Using Rules of Thumb in Valuation, in* 101+ PRACTICAL SOLUTIONS FOR THE FAMILY LAWYER 301-303 (Gregg Herman ed., 1996).

[119] *Id.*

[120] NAYLOR, *supra* note 14, at 291.

[121] Jeffrey G. Sherman, *Prenuptial Agreements: A New Reason To Revive An Old Rule*, 53 CLEV. ST. L. REV. 359, 369 n.45 (2005) (citing *Daniels v. Daniels*, 418 N.W.2d 924, 927 (Mich. Ct. App. 1988); *O'Brien v. O'Brien*, 489 N.E.2d 712, 713 (N.Y. 1985)).

[122] *Simmons v. Simmons*, 708 A.2d 949 (Conn. 1998); N.C. GEN. STAT. § 50-20(b)(2) (2006).

[123] ARIZ. REV. STAT. § 25-319(A)(3) (2006); CAL. FAM. CODE § 2641 (2006)

[124] JOHN DE WITT GREGORY ET AL., UNDERSTANDING FAMILY LAW 326-27 (1993).

[125] Cohen, *supra* note 118, at 268-71, 272-74.

[126] *Mitchell v. Mitchell*, 732 P.2d 208 (Ariz. 1987); *Golden v. Golden*, 75 Cal. Rptr. 735 (Cal. Ct. App. 1969).

[127] GREGORY ET AL., *supra* note 124, at 331.

[128] *Id.* at 332-32. *See generally* Randall B. Wilhite, *The Effect of Goodwill in Determining the Value of a Business in a Divorce*, 35 FAM. L.Q. 351 (2001).

[129] *Golub v. Golub*, 527 N.Y.S. 2d 946 (Sup. Ct. N.Y. Cty. 1988).

[130] 2-13 FAMILY LAW AND PRACTICE § 13.04 (Matthew Bender 2006).

[131] SMITH & ABRAHMS, *supra* note 47, at 147.

[132] 3-36 FAMILY LAW AND PRACTICE § 36.13 (Matthew Bender 2006).

[133] *Id.*

[134] GREGORY ET AL., *supra* note 124, at 337.

[135] 29 U.S.C. § 1056(d)(3)(A) (2006); I.R.C. § 401(a)(13) (2006).

[136] 29 U.S.C. § 1056(d)(1) (2006); I.R.C. § 401(a)(13) (2006).

[137] JAMES F. REDA, STEWART REIFLER, & LAURA G. THATCHER, COMPENSATION COMMITTEE HANDBOOK 261 (2005) (noting that nonqualified plans "usually apply only to management"); Lester B. Snyder & Roger J. Higgins, *Evaluating the Consumption Tax Proposals: Changes in the Taxation of Interspousal Transactions, Use of Trusts, and Revising the Meaning of "Tax Planning,"* 33 SAN DIEGO L. REV. 1485, 1528 (1996) ("The employee is normally a highly-paid executive who is purposely not included in the qualified plan for the regular workers, in order to avoid the anti-discrimination rules.").

[138] GALE S. FINLEY, ASSIGNING RETIREMENT BENEFITS IN DIVORCE 90 (2d ed. 1999); MICHAEL J. CANAN & WILLIAM D. MITCHELL, EMPLOYEE FRINGE AND WELFARE BENEFIT PLANS 279-80 (2004). As a result of the employee deferring payments, the employer "cannot claim a deduction for contributions made pursuant to the plan until the year the contributions are includable in the income of the employee." *Id.* at 291.

[139] FINLEY, *supra* note 138, at 91.

[140] CANAN & MITCHELL, *supra* note 138, at 295.

[141] *Id.* at 297.

[142] *Id.* at 298. Note that if the excess benefit plan is funded, it is "subject to the reporting and disclosure requirements, administrative requirements, fiduciary requirements, and enforcement provisions of ERISA." *Id.* at 299.

[143] *Id.* at 302.

[144] *Id.* at 300.
[145] *Id.* at 301.
[146] *Id.* at 304.
[147] *Id.* at 306-313.
[148] *Id.* at 313.
[149] *See* Daniel J. Jaffe, *Do Not Miss the Nonqualified Deferred Compensation Plans*, *in* 101+ PRACTICAL SOLUTIONS FOR THE FAMILY LAWYER 272-74 (Gregg Herman ed., 1996).
[150] 10 U.S.C. §§ 1408 (c)-(e)(2006).
[151] *See* William C. Darrah, *Military Issues in Divorce, in* 101+ PRACTICAL SOLUTIONS FOR THE FAMILY LAWYER 272-4 (Gregg Herman ed., 1996); Mark E. Sullivan, *Military Pension Division: Crossing the Minefield*, 31 FAM L. Q. 19-48 (1997).
[152] NAYLOR, *supra* note 14, at 178 (noting that you must have no retirement plan of your own that is worth more than half of your former husband's Social Security benefits. Likewise, you will be entitled to receive full "widow's benefits" if you are over 60 years old (or over 50 years old, if disabled) and meet the other criteria noted for Social Security based on your husband's work history).
[153] RONALD FARRINGTON SHARP, WINNING THE DIVORCE WAR 21-22 (1998).
[154] D. KELLY WEISBERG & SUSAN FRELICH APPLETON, MODERN FAMILY LAW CASES AND MATERIALS 677 (2d ed. 2002).
[155] CLARK, *supra* note 11, at § 16.1.
[156] *Id.*
[157] *Id.* at § 16.4.
[158] *Orr v. Orr*, 440 U.S. 268 (1979) (overturning an Alabama law which only authorized awards of alimony to wives as a violation of equal protection under the law).
[159] CLARK, *supra* note 11, at § 16.4.
[160] *Id.*
[161] States considering fault for alimony purposes include Alabama, Connecticut, District of Columbia, Georgia, Idaho, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Mississippi, New Hampshire, New Jersey, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming. *See generally* Ira Mark Ellman, *The Place of Fault in Modern Divorce Law*, 28 ARIZ. ST. L.J. 773 (1996); Spain, *supra* note 13.
[162] Spain, *supra* note 13.
[163] Regan, *supra* note 12, at 2313.
[164] *See, e.g., Olson v. Olson*, 552 N.W.2d 396 (S.D. 1996).
[165] 5-62 FAMILY LAW AND PRACTICE § 62.02 (Matthew Bender 2006).
[166] SHARP, *supra* note 153, at 71.
[167] Arbitration involves the presentation of a case to a neutral party (the arbitrator) who will make a decision about what should happen in the case. The arbitrator has the power to compel decisions over the objection of one or both parties. An arbitrator's decision can be binding or non-binding. If the decision is binding, the parties are almost always bound by the decision unless the arbitrator was biased, made a gross error of law, or exceeded authority. While a party can appeal a non-binding arbitration decision, if the end result is the same as the first decision or one more favorable to the other spouse, the party who appealed can be ordered to pay the other's costs. The arbitrator acts like a hired judge, although s/he need not be a lawyer. Like judges, arbitrators make decisions,

but unlike mediators, they need not make decisions that the parties agree to or like. However, arbitration is more commonly used for commercial, labor, and consumer disputes, where there is an agreement or contract at issue. *See* ALAN SCOTT RAU, ET AL., PROCESS OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS 621-58 (4th ed. 2006). In fact, some courts do not even allow arbitration for dispute over settlement agreements. *Id.* at 794.

[168] *Id.* at 106; *Note, Mandatory Mediation and Summary Jury Trial: Guidelines for Ensuring fair and Effective Processes,* 103 HARV. L. REV. 1086 (1990).

[169] REGAN, *supra* note 12, at 1089-90.

[170] *Id.* at 1104 n.13.

[171] DIANE NEUMANN, CHOOSING A DIVORCE MEDIATOR 109 (1996).

[172] KAREN WINNER, DIVORCED FROM JUSTICE: THE ABUSE OF WOMEN AND CHILDREN BY DIVORCE LAWYERS AND JUDGES 183 (1996).

[173] SMITH & ABRAHMS, *supra* note 47, at 118.

[174] RUTH I. ABRAHMS & JOHN M. GREANEY, REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS 26 (1989).

[175] MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES 184 (1994).

[176] MARY PART TREUTHART & LAURIE WOODS, MEDIATION – A GUIDE FOR ADVOCATES AND ATTORNEYS REPRESENTING BATTERED WOMEN 72 (1990). Men and especially fathers are very satisfied, whereas women actually disliked the process. *See also* Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1601 (1991) (citing a study showing that women who rejected mediation stated reasons of mistrust, fear, and desire to avoid the ex-spouse).

[177] ABRAHMS & GREANEY, *supra* note 174, at 25 (finding that "women are disadvantaged in the mediation process. . . are more likely than men to bargain away property to get their preferred custody or visitation arrangements," and were far more likely to receive much lower or no child support awards when cases were mediated); Penelope E. Bryan, *Killing Us Softly: Divorce Mediation and the Politics of Power*, 40 BUFF. L. REV. 441 (1992) (discussing the many ways that women are less empowered, and how this affects their negotiating ability both in the marriage and during mediation).

[178] MASON, *supra* note 37, at 53.

[179] Bryan, *supra* note 177, at 499-500. Mediators typically receive a maximum of 40 hours of training, little if any of it spent on the power differential between men and women.

[180] ABRAHMS & GREANEY, *supra* note 174, at 72.

[181] Grillo, *supra* note 176, at 1594-95; Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7 MEDIATION Q. 347, 358 (1990); Bryan, *supra* note 177, at 496.

[182] AM. PSYCHOL. ASS'N, VIOLENCE AND THE FAMILY: REPORT OF THE AM. PSYCHOL. ASS'N PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 100 (1996); Anne E. Menard & Anthony J. Salitus, *Judicial Response to Family Violence: The Importance of Message*, 4 MEDIATION Q. 293, 299 (1990); Pagelow, *supra* note 181, at 347, 354.

[183] JESSICA PEARSON, DIVORCE MEDIATION & DOMESTIC VIOLENCE 3, 48 (1997).

[184] COHEN & GARDNER, *supra* note 6, at 31.

[185] *Id.* at 24.

[186] *Boddie v. Connecticut*, 401 U.S. 371 (1971).

[187] FREDRICA L. LEHRMAN, DOMESTIC VIOLENCE PRACTICE AND PROCEDURE § 2.75 (1998).

[188] *Id.* at § 2.26.

[189] *Id.* at §§ 2.3-2.9.
[190] *Id.* at § 2.27.
[191] *Id.* at §§ 2.28-2.30.
[192] *Id.* at §§ 2.59-2.64.
[193] *Id.* at §§ 2.36-2.49.
[194] *Id.* at §§ 2.152-2.184.
[195] 51 AM. JUR. 2D LIMITATIONS ON ACTIONS § 135 (1970).
[196] *See Brennan v. Orban*, 678 A.2d 667 (N.J. 1996) (leaving discretion to divorce court to decide whether the cases should be tried together); *Mogford v. Mogford*, 616 S.W.2d 936 (Tex. Civ. App. - San Antonio 1981, writ ref'd n.r.e) (permitting raising divorce and tort in same action, but stating that tort issues must be tried before a jury in Texas, a community property state).
[197] *See, e.g., Overberg v. Lusby*, 727 F. Supp. 1091 (E.D. Ky. 1990), *aff'd* 921 F.2d 90 (6th Cir. 1990) (dismissing wife's claim for infliction of a sexually transmissible disease because parties released the other from all claims arising in their martial relationship).
[198] The same applies if you are unhappy with a final legal separation judgment.
[199] 5-58 FAMILY LAW AND PRACTICE § 58.06 (Matthew Bender 2006).
[200] CLARK, *supra* note 11, at § 18.8.
[201] David H. Demo, *Variation in Child Outcomes vis-à-vis Family Structure*, 2-4, Testimony before the U.S. Commission on Child and Family Welfare, April 19, 1995, Cleveland, OH; JUNE STEPHENSON, THE TWO-PARENT FAMILY IS NOT THE BEST (1991).
[202] Demo, *supra* note 201, at 4 (finding no statistical differences when "[c]ontrolling for relevant variables, such as household income, mother's age, and number of children"); SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 94 (1994) (finding that income explained half of any disadvantage the children experience); STEPHENSON, *supra* note 202, at 3 (Throughout her book Stephenson found no advantage to children living in two-parent homes over one-parent homes).
[203] Demo, *supra* note 201, at 2; PAUL R. AMATO & ALAN BOOTH, A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL 219 (1997); FRANK F. FURSTENBERG JR., & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART 11 (1991).
[204] RONALD L. SIMONS & ASSOCIATES, UNDERSTANDING DIFFERENCES BETWEEN DIVORCED AND INTACT FAMILIES: STRESS, INTERACTION, AND CHILD OUTCOME 199 (1996).
[205] FURSTENBERG & CHERLIN, *supra* note 203, at 70.
[206] MCLANAHAN & SANDEFUR, *supra* note 202, at 72.
[207] *Id.* at 98.
[208] AM. PSYCHOL. ASS'N, VIOLENCE AND THE FAMILY: REPORT OF THE AM. PSYCHOL. ASS'N PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 100 (1996).
[209] Robin Hassler, et al., *Lethality Assessments as Integral Parts of Providing Full Faith and Credit Guarantees*, *available at* http://www.mincava.umn.edu/documents/ffc/chapter9/chapter9.html (last visited July 7, 2006).
[210] Marsha B. Liss & Geraldine Butts Stahly, *Domestic Violence and Child Custody, in* BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE 175, 179 (Marsali Hansen & Michelle Haraway, eds.,1993); Demie Kurz, *Separation, Divorce, and Woman Abuse, in* 2 VIOLENCE AGAINST WOMEN 61, 68-70 (1996) (also noting that 40% of divorced husbands admit they had threatened or used violence against the former wife since the end of the marriage, and 4% of the women reported that the abuse began after the couple separated).

[211] Liss & Stahly, *supra* note 210, at 183; Lee H. Bowker, Michele Arbitell, & J. Richard McFerron, *On the Relationship Between Wife Beating and Child Abuse, in* FEMINIST PERSPECTIVES ON WIFE ABUSE 158, 162 (Kersti Yllo & Michele Bograd, eds., 1988). *See also* Kenneth Waldron, *A Review of Social Science Research on Post Divorce Relocation*, 19 J. AM. ACAD. MATRIMONIAL L. 337, 371 n.60 (2005).
[212] *See also* JACQUELYN C. CAMPBELL, ASSESSING DANGEROUSNESS: VIOLENCE BY SEXUAL OFFENDERS, BATTERERS, AND CHILD ABUSERS 84 (1995).
[213] PHILLIPS & MAIR, *supra* note 4, at 63 (1997).
[214] *Id.*
[215] Katharine B. Silbaugh, *Marriage Contracts and the Family Economy*, 93 NW. U. L. REV. 65, 71, 90 (1998).
[216] *Id.* at 90.
[217] *Id.* at 71.
[218] *See Pacelli v. Pacelli*, 725 A.2d. 56 (N.J. Super. 1999), for a discussion of how states treat agreements signed after a marriage. *See also* Mark Hansen, *Split-up Insurance: Postnups are Gaining in Popularity for Couples in Property Predicaments*, ABA J. 30 (1999).
[219] *See, e.g.,* JUDITH AREEN, CASES AND MATERIALS ON FAMILY LAW 711 (3d ed. 1992).
[220] Penelope E. Bryan, *Symposium on Unfinished Feminist Business: Re-asking the Woman Question at Divorce*, 75 CHI.-KENT. L. REV. 713, 713 (2000).
[221] Child support is only 13% of the money received by divorced mothers with custody of minor children. *See* FURSTENBERG & CHERLIN, *supra* note 203, at 50.
[222] Ruth A. Brandwein, *Family Violence and Social Policy: Welfare "Reform" and Beyond, in* BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND 151 (Ruth A. Brandwein ed., 1999).
[223] *Id.* at 148-49.
[224] *Id.* at 322.
[225] *Id.*; IRS FAQ 4.5, Interest/Dividends/Other Types of Income: Alimony, Child Support, Court Awards, Damages**,** *available at* http://www.irs.gov/faqs/faq4-5.html (last visited June 30, 2006).
[226] NAYLOR, *supra* note 14, at 322-23.