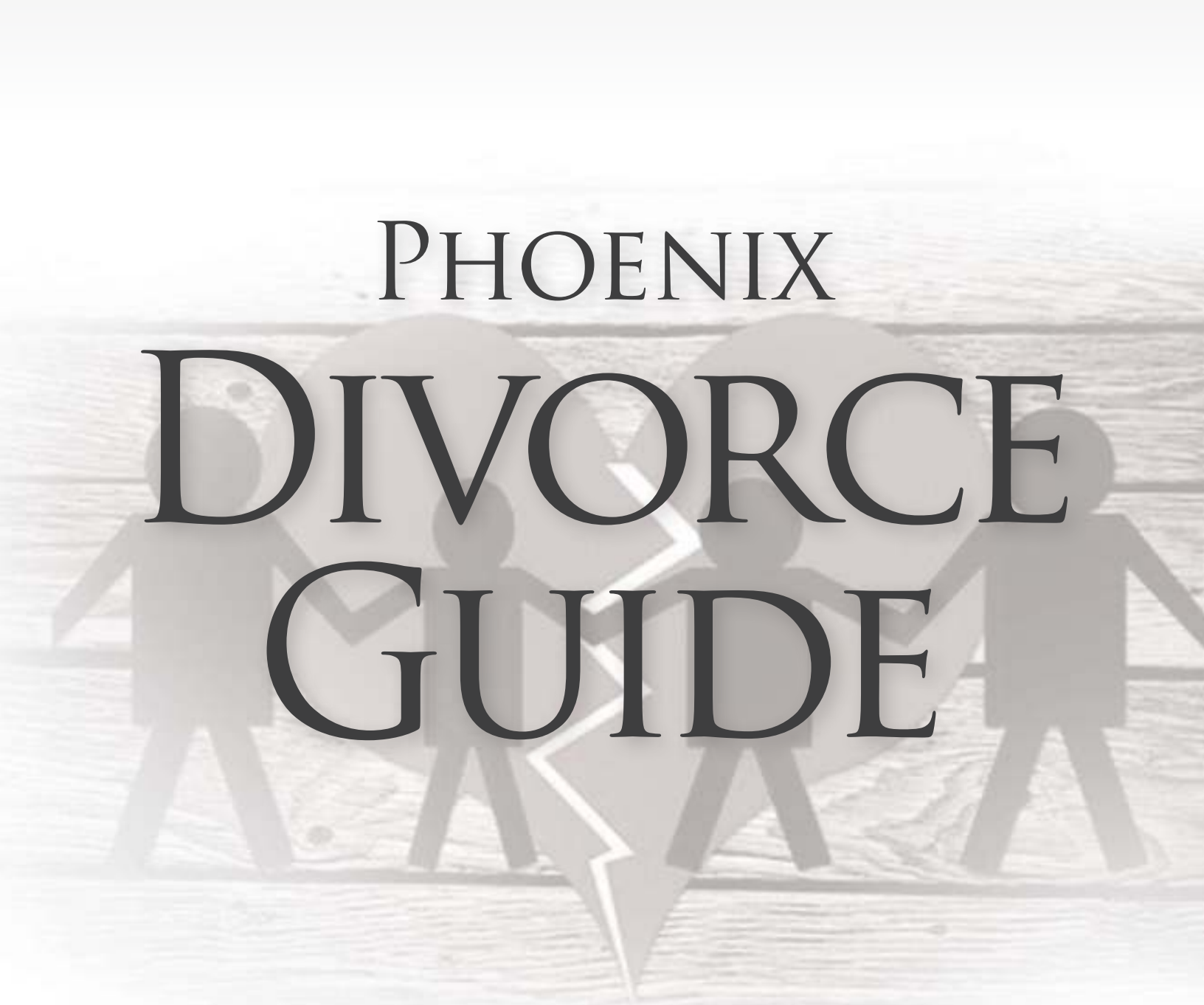

Phoenix Divorce Guide

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Divorce can make reasonable people act in unreasonable ways. Grief, anger, and shock can make it hard for you to know what to do. If you want to file for divorce or if you've been served with divorce papers, call an experienced and compassionate Phoenix divorce lawyer right away. While many of the issues that cause a divorce to become contentious can be settled before going to trial, it's still important that you're treated fairly. The best way to protect yourself during the process is to hire a Phoenix divorce lawyer to represent you through the process.

Arizona Is a Community Property State

Under state law, real and personal property that is purchased or otherwise acquired during the marriage is considered community property. This means that it is owned jointly (50/50) by the husband and wife. This isn't just limited to the marital home or the family car. It includes, but may not be limited to, the following items if they happened during the marriage:

- Starting a new business.
- Acquiring ownership interests in a business, land, real estate, etc.
- Investing accounts and brokerage accounts.
- Your salary, earnings, bonuses, or income.
- Your retirement accounts; including pensions.
- Dividends paid.
- IRAs.
- Real estate or raw land.
- Assets such as boats, cars, motorcycles, four-wheelers, art, furniture, and other property.
- Debts accumulated during the marriage.

Generally, the assets are divided 50/50. In instances where that isn't possible, such as a home or a car, one spouse may be required to buy out the interest of the other spouse. Equalization payments, a payment made to a spouse to represent 50% ownership, can also be used in business and real estate.

There are many instances, though, where assets or debts are held in just one name. This highlights the importance of a Phoenix divorce lawyer. In situations where one spouse received a substantial gift or inheritance, a Phoenix divorce letter can help you negotiate with your soon-to-be former spouse or represent you in the court room.

The Difference Between Contested and Uncontested Divorce

In Arizona, divorces may be contested or uncontested. When a divorce is uncontested, it means that the spouses both agree that a divorce is in their best interest and they agree to the terms of the divorce. This includes how assets and debts will be divided, whether alimony will be paid, and custody and visitation of any minor children.

When a divorce is contested, it could mean that one of the spouses plans to fight the divorce proceedings. It could also mean that the two spouses cannot agree on any of the matters that must be settled. It could be both. When a divorce is contested, a Phoenix divorce lawyer helps their client skillfully navigate the process to ensure that they end up in the best possible shape at the end of the divorce.

Spousal Support, Child Support, and Child Custody

Three of the most contentious issues that Phoenix divorce lawyers address are spousal support, child support, and child custody. Here's some basic information about each of those issues.

- **Spousal support.** Spousal support, also referred to as spousal maintenance or alimony, can be awarded to either the husband or the wife if the requestor can prove to the court that the money is needed for them to meet their financial obligations. Spousal support can also be awarded in legal separations, too. The court will consider several factors before deciding that alimony should be awarded.
- **Child support.** If you and your spouse have minor children together, child support will be another issue. Child support is a federal right of the minor child(ren). However, if the two of you agree on an amount (or agree to no child support), the judge may consider granting your request. Your Phoenix divorce lawyer can walk you through the child support guidelines established by the Arizona Supreme Court.
- **Child custody.** The court will look at the best interest of the minor child(ren) when determining child custody. It is certainly helpful if you and your spouse can get along and co-parent. Considerations for custody include sole custody, joint legal and physical custody, and primary physical custody being awarded to one parent while both parents get input on decisions. The court will consider many factors when making a decision related to child custody or agreeing to a proposed custody plan developed by both parties.

Collaborative Divorce

In certain situations, a Phoenix divorce attorney may be willing to assist with a collaborative divorce. A collaborative divorce is a form of alternative dispute resolution. It helps Arizona couples end their marriage without having to go to court. However, it does require that the couple work together and agree on how to split up the assets and debts and how child custody, child support, and possible alimony may be handled. It is not an option that works for every couple. Although the court is not involved, a collaborative divorce is a legally binding agreement. You can and should be represented by a divorce attorney.

A Phoenix Divorce Lawyer Can Help with High Net Worth

If you're considered an individual with a high net worth, you need a divorce lawyer to help you navigate the process and protect your best interest. The more assets there are in a divorce proceeding, the more complicated the process becomes. Think about other factors in your divorce aside from debts and assets. Think about your work and travel schedule. Think about whether you plan to move out. These are factors that affect child custody, child support, spousal support, and how the division of assets and debts are handled.

Legal Separation in Arizona?

In Arizona, couples who wish to separate but do not necessarily want to get a divorce have another option. They can file for a legal separation. This means that you remain married, but that you and your spouse have agreed that separation is best. It can be used as first step to divorce or it can be used as the couple sorts out their problems. If you and your spouse reconcile, the legal separation is easily ended. A Phoenix divorce lawyer helps those who are interested in pursuing a legal separation.

Contact a Phoenix Divorce Lawyer

If you have questions about the divorce process, child custody, or legal separation, contact a Phoenix divorce lawyer.

Frequently Asked Divorce Questions

What Are the Grounds for Divorce?

In Arizona, it's a no-fault state. Two people that have entered a marriage can go your separate ways. That's the benefit of living in a no-fault state.

While all those things will be, and could be, necessary in dealing with matters as it relates to the divorce, like custody, alimony, fitness to be a parent, and decision-making responsibility with the children, all of those things could weigh in at some other time. Broadly, to get a divorce, you don't have to prove that a person cheated on you or that they mismanaged the money or that they abused you because it is a no-fault state. There's a very fine line for covenant marriages but most people don't fit into that category. After speaking with one of our lawyers regarding it, we'd clear up that pathway, so that you understand that just like it was your right to enter a marriage, it's your right to get out of it.

What is the Cost of Divorce?

One of the first questions that we get from anybody that's considering a divorce is how much is this going to cost? That's a very difficult question; it's almost impossible for us to know, from the very beginning, how much it's going to cost. All divorces are different. Some divorces, there's not a lot of property involved. In some divorces, there's tons of property involve. Some divorces have kids, some divorces don't have kids. Some divorces, the two parties can get together and they can work out a reasonable agreement. In some divorces, they fight over everything. It really depends on your specific situation.

What I recommend that you do is contact an experienced divorce attorney. Come in for a consult and let us sit down with you and try to discuss what your specific situation is, and maybe we can give you a better assessment of how much it's going to cost.

What Are the First Steps in Divorce Process?

As you can imagine, divorces are very stressful. You have financial issues; in some cases, infidelity; in some cases, domestic violence, and so divorces can be very stressful situations.

If you're considering going that route, or leaning towards going that route, what I would recommend that you do is gather up all your financial information, all of your records. Get your banking records, your bank statements from your checking account, from your savings account. Find out what's in your retirement account. Find out what's in his or her retirement account. Find out all the information you can about your investments, any properties that you rent out, the current balance of your home, and whether you have equity in your home. Gather up all those statements and then come and see an experienced attorney to help you determine what course of action you should take.

How Should I Choose a Divorce Attorney?

To the surprise of many, lawyers often get asked what kind of divorce lawyer someone should look for when they're contemplating a divorce. I would say to any client, as I've said to many of our clients, and to their family members, when you're selecting a divorce attorney, you'll find a wide range of divorce lawyers. Should I get that aggressive, bulldog attorney? Or should I get the guy that specializes in fathers' rights, or that represents females, or abuse victims? You're going to see folks that profess to have a wide range of experience in all different kinds of law. When in actuality, divorce law, is just divorce law.

What's more important than any of that stuff, you need someone that has experience in the law. What's more important is that they understand that this is a family. It's two people's lives who have been joined together. They've in some cases have had children together. This is not just representing someone and collecting a paycheck. It is trying to piece together the family. Sometimes family lawyers forget that these people still have to be involved with each other, especially those that have children, have to be involved with each other long after the Decree of Dissolution has been issued by an applicable court of competent jurisdiction.

These people still have to get along, their children, their grandchildren, and their family members that don't go away. You have to have someone who understands the dynamic of the family, that are sensitive and empathetic to the issues, the concerns, and to the needs, but that has the ability to balance, and deal with the emotions that come along. Not only to counsel as it relates to arduous representation but sometimes to counsel the client. It's a very arduous process. It becomes an emotional process sometimes for even the lawyers. We have families ourselves. We have children ourselves and spouses ourselves. You really want someone that has that great balance, that legal prowess, that professional decorum to themselves, but that empathy that understands that this is the dynamic of a family, and that can meet that client where they are emotionally.

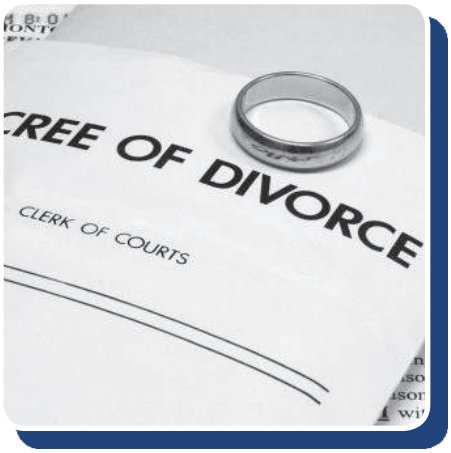
Oftentimes, that client being represented by that lawyer is a part of the healing process of them moving forward in their lives. I would always tell someone that's looking for family law, look at somebody that knows how to aggressively represent you, but that also knows how to walk that fine line and that balance into making sure that they are being holistic in their counsel to you, and they understand the dynamic of the family. Again, you'll have a spectrum of lawyers out there.

I think you want someone that can occupy that middle space and can represent you arduously, make sure your claims are forwarded, but understand that you at the end of the day are a human. This is your family whether you're glad to get out or whether you still have some hesitancy in getting out. Each case is different. Have that lawyer that you can connect with, that you understand, that understands where you are, and what your interests are. They can represent that interest and help you move forward to the next place of your life.

Can I Hire Smith & Green for Divorce on Contingency?

The simple answer to that question is no, we can't. There are certain laws in the State of Arizona that prohibit us from doing that, so no we can't take any cases on a contingency basis.

There are things that we can do, though, to help you with the costs. We understand that divorces are stressful and it's very expensive in a lot of cases. If you have concerns about having money upfront or how much you can afford and all those sorts of things, we can do our best to work with you.



Should I Leave the Marital Home?

The first thing that you must look at is safety. If there is a situation in the home where there is abuse, be it physical abuse, sexual abuse, mental abuse, those are personal considerations that are personal to the individual.

I would never tell anyone to stay in a marital residence if they're being abused in any type of way. Your personal security and safety are of great importance to us as a law firm. It should be to any lawyer that would be representing you in a family law matter. If your safety is at risk, I would advise you to consider being elsewhere while the divorce proceeds.

That doesn't mean that you lose any interest in the house that is owned or anything. The interest that you've acquired in the house would remain, whether you're living in the house or not. Most of the time, vacating the marital residence becomes an issue prior to divorce being filed if someone has vacated the marital residence for some period of time. That's the thing first thing, is your safety.

The second thing is that if the marriage involves children. In some states they call it custody; in Arizona, we call it decision-making responsibility, as it relates to the children. Where the children are; they're safe if the two parties can live in the house together while going through the divorce, for the sake of the children. Oftentimes, this looks good in front of the court because there are certain factors that the court is going to look at when it comes down to parenting time and decision-making responsibility. The children, are they safe? Is there a lot of bickering going back and forth because the well-being of the children takes priority?

The third area I would certainly advise anyone to look at is the financial resources of the parties, based on the standard of living. If you're used to living in a mini mansion in Scottsdale and you're leaving and the other party is the sole breadwinner and you have no resources to move, well you're not used to living in a Motel 6 or an extended stay. These are all things that you have to consider. The financial resources, of course, do not outweigh your safety and security.

Some of it can be addressed with temporary orders from the court, should you have to leave the marital residence and one party is the dominant breadwinner. The court can issue temporary orders, temporary spousal maintenance, temporary child support, to make sure that you have enough resources to provide for yourself, should you have to leave the marital residence. This is something that you would certainly want to talk with your lawyer about.

It's important that your lawyer is not only interested in the legal matters and underpinnings of the court, but they have an understanding and a grasp of life, and that this is your life, it's your family, it's your children. This is where you've raised your children. Someone that is empathetic and sympathetic to the entire situation that could counsel you accordingly. An experienced compassionate attorney that cares about their clients would do just that.

Should I File for Uncontested Divorce?

What one would presume that most divorce cases are arduous, tensions, fighting, there are several divorces that proceed through the courts here in Arizona that are uncontested divorces.

An uncontested divorce is when the petitioner files the claim for a divorce. You must state what you want and how you want the property divided, it relates to children that are involved, division of property and community property and personal property. That complaint is served on the respondent party. If the responding party does not contest any of those issues, virtually that is what becomes an uncontested divorce. The other party is saying I agree with everything that was filed in the petition; give them what they want. They sign off on it and it becomes an uncontested divorce.

That divorce sits with the court for the statutorily mandated timeframe, after which the divorce decree is issued, and the divorce becomes final; the two

parties go their ways. That, in a nutshell, is an uncontested divorce. These are wonderful for parties that are getting divorced because one party walks away with everything that they want, and the other party doesn't contest it. Apparently, they even have some agreement to it.

Where uncontested divorces become an issue is later down the line, when the person could possibly have second thoughts about what they did not contest. In some of those matters, you have to attempt to bring those matters up again, but, again, those are the least expensive divorces and there's a fine line of that process through courts here in Arizona.

What Should I Know About Children in Divorce?

This is a very tough process for the parents. It's a very tough process for the children regardless of their age range because things are about to change for those children. Things are about to change for those parents. Arizona has codified, within its revised statute, certain requirements that even attempt to speak to that arduous effect that this would have on children. For example, in Arizona, if there are children involved in a divorce, there's a mandatory parenting class that you have to take. If you don't take that parenting class, you could waive your right to parenting time, and/or decision-making authority with your children. That's how strict Arizona is because it becomes a tough process with the children.

Some people ask, will my children have a say who they stay with? Who's going to pay child support? Who are the kids going to spend the night with? Who's going to be the custodial parent? All these are answered during the divorce. There're several factors that are considered.

Oftentimes, they don't understand that broadly you cannot delineate out certain things as it relates to the kids in the Prenuptial Agreement. The court decides for what's in the best interest of the child. What you agree to in a Prenuptial Agreement may not be what's in the best interest of the child now.

There are certain things that the court will want to see: A Financial Affidavit of Records. They would want to get information with the child. There's no hardline rule as to what the court would do. The framework is what's in the best interest of the child, making sure that the child's life stays as consistent as possible.

You would want to sit down with the lawyer. They would do a thorough interview with you about the child, about where the child goes to school. Do the parents live in the same neighborhood? Do they live in the same state? There is a myriad of things that must be looked at when deciding about the children. What's important to the divorcees that are going through the process is that divorce can have a long-lasting, substantial, and negative impact on children if not handled properly. We try to walk our clients through that process with a great decree of sensitively but also representing the interest that our clients want. You want to sit down and discuss all these factors with an attorney and come up with a strategy that's in the best interest of the child because that is what the court is going to use broadly as a standard in making its decision as it relates to the parenting time, and as it relates to decision-making authority, or what's commonly known as custody in other jurisdictions.

What is Equitable Distribution?

When it comes down to divorce, Arizona is a community property state. That virtually means that any property that is acquired during the marriage becomes property to the community, or the two parties. It belongs to the two parties; it becomes the community property. That includes things like wages. If you're working a job, even though the paycheck comes in your name, your wages during the marriage is considered community property. If you bought a home, the marital residence or a subsequent property elsewhere, rental property, so as long as that property was purchased with funds that were from the marriage, from employment or some type of asset from the community, it becomes community property.

There's an exception to that. Say for instance, you owned a piece of property that's sold as separate property prior to the marriage. You sold the property and you intended that money to remain separate property, then there could be some division of property. Broadly, anything that was acquired during the marriage is going to be considered community property. That's income, properties,

assets, boats, cars, jet skis, businesses, all that stuff's going to be considered community property.

This is important because the other party has an interest in community property, whether the other party is a stay-at-home parent, whether it was income that they earned, so it could be a retirement account. That is community property. It's a part of the assets of the community and the other party to the divorce has an interest in that, so you would want to keep track of all those things.

Do I Keep Property Purchased Prior to Marriage?

Oftentimes, we see clients that come in for counsel regarding a dissolution of marriage and as it relates to that marriage, one party, or both parties, had property, be it through an inheritance, or they won the lottery or they were just well off before they got married, it's property that they accumulated prior to the marriage; that's their persona property. Then they're married for whatever period of time and then they go through a divorce. While they're married obviously they have some community property; their job, they may buy another marital residence, a house, a boat, motorcycle or whatnot. The question becomes when one party states a claim against, or claims to have some interest, if you will, in the personal property of the other party that was owned by them prior to the marriage.

The broad rule is that your personal property prior to the marriage remains your personal property, unless it was transmuted into community property and it was based on that understanding. That's the broad rule. Obviously, sometimes there's co-mingling of the personal property and the community property. This is why I encourage people early on to make sure they trace the property. If the co-mingled property can be traced back to personal property, then broadly it would be separated out and remain personal property. It's without controversy in this jurisdiction that what's community property remains community property.

You would want to list out what is personal, what you believe to be personal property. If there is an interest that the other party claims in something that you deem to be personal property, then the lawyer would look at that and then they

would go through tracing process and trace that property back, to see if it was transmuted into community property, or if it in fact remained persona property.

This requires the skill of a lawyer to look at that and determine whether that remains personal property or if it's been transmuted to community property. You would want to seek out a skilled family lawyer to help you through that process, to make sure that you don't lose any interest in property that is actually a personal property and should remain personal property.

Will I Go to Court for Divorce?

The broad answer to it that I tell them when someone asks me am I going to have to go to court, believe it or not, I say it depends. There have been plenty of divorces that have been resolved without making a single court appearance. Those are the divorces that are more amicable; those non-contested divorces, or things that could be resolved in mediation. The court appearances are a whole lot less than those appearances that involve multiple petitions for contempt, evidentiary hearings, status hearings, return hearings, all the various hearings that could be ordered by the court all the way up to trials. Some divorces go all the way to trial.

You don't get a jury in a divorce trial; you get a bench trial. It's just with the judge because, of course, the sensitive nature of the information that is being shared. Are you certainly going to have to go to court? Maybe not, it depends on your divorce, how your divorce proceeds to the court. Is there a possibility that you will have to go to court? Absolutely, there's a possibility, but the beauty of going to court, it's when you represented. You're not representing yourself. You go in with a skilled lawyer that does the majority of the talking for you, except in cases where you will have to testify.

Again, in less contentious divorces, or those that are less contested, the probability of that happening is a lot less. With the highly contestable and contentious divorces, there's a high probability that you will have to go to court; you will have to testify. It's a case-by-case basis. There's no definite yes; there's no definite no. It depends on your case, but having great representation is necessary either way. Great representation can alleviate some court appearances, but it also can provide that screen of safety during those court appearances, to

make sure that you're ready when you have to make an appearance before the court.

Can I Get Spousal Maintenance?

In the initial discussion with the clients regarding dissolutions of marriages, one of the questions that often come up early on is about spousal maintenance. Spousal maintenance is not to be used for division of property, broadly, as it relates to division of property of community property. Two separate concepts.

During this marriage, whether it was two years or 20 years, these parties have become accustomed to a certain standard of life, a certain standard of livelihood. One of the concepts of spousal maintenance is to address that.

Then also if there was a party that was the non-dominant party in the relationship, or not the breadwinning party. If the person was a stay-at-home mom or stay-at-home dad while the other party worked or went to school and got a doctorate degree. The court looks at all these things to determine, what does it take to get this party, the non-dominant party, if you will, up to the standard of living that they had become accustomed to for this particular period of time, or to get the, to where they can care for themselves.

What the court's interest is, is not leaving one party out in the wind while the other party runs away with the bag and runs off. That's the concept of spousal maintenance. What is the maintenance that is needed to ensure that this spouse gets to the place where they can care and provide for themselves? Sometimes as it relates to spousal maintenance, the parties agree on spousal maintenance for a certain amount of money for a certain term of years. That could be agreed to in a pre-nuptial agreement, a post-nuptial agreement or in a divorce settlement decreed pursuant to some type of mediation or procedure. They could come to some agreement as to what the spousal maintenance should be.

Oftentimes, you see spousal maintenance being awarded half the term of the marriage. If you were married for nine years, by the time you see it for four and a half years or half the term of the marriage, or what's reasonable. In some cases, that's not reasonable and so you see a myriad of things.

Your lawyer will craft a framework to forward the arguments that you would want to make, as relates to your need for spousal maintenance or the other party's request for spousal maintenance being unreasonable and being too much.

Can I Change My Last Name?

Most of our female clients that come in for a divorce want their maiden name to be restored to them after the closing of divorce. That's a very simple process and we don't see much contention involving that. In fact, you'd be surprised that most men want their spouses to take back on their maiden name and not keep the family name. We don't necessarily see a lot of contention involving that. It's a simple request that's made to the court for the name to be restored. It's issued as a part of the Divorce Decree. Then, of course, that female client would go through the process with Social Security, and the Motor Vehicles, and the other appropriate government agencies to get the name restored back to the maiden name.

If there becomes a contention involving the name where the husband wants the name removed from the spouse and her name restored to her maiden name, but the female spouse does not want to give up the married name, then that's a separate analysis. We must determine what interest she has in the name. There're legal underpinnings that have to be addressed with that you would obviously need a lawyer for to help you get through those process. Largely, we don't see a lot of those cases. It's a simple request that's made to the court in the process of the divorce. We don't see a lot of pushback with those. That's something you want to discuss with your lawyer to make sure early on that that's understood that you want your maiden name restored to you.

How is Child Support Calculate?

One of the main questions that we're often asked by clients regarding divorces involving minor children is how much child support they're going to have to pay. We are fortunate here in Arizona. The court virtually uses a child support calculator. It's accessible on the court's website. It's the same one that we use as lawyers. It involves inputting some information that is requested regarding the financial status of both parties: how much they paid, who is the child staying

with, what's the division of the parenting time, who's paying for medical insurance, health insurance, school, extracurricular activities, who's paying spousal maintenance or not. There are several things put into this formula and it spits out a number of who's responsible as it relates to paying child support.

If the numbers are greatly skewed or they don't come out as reasonable as one party thinks they should because of income disparity, sometimes a party can request a deviation from the child support calculator if they figure the amount should be more or should be less. There are some things that must be worked through with that. Again, one of the big factors is parenting time. If you don't have any parenting time with the child, there's a high proclivity that you're going to have a higher child support amount. The more parenting time you have, there's a great proclivity that the child support amount is going to be less. There are several moving pieces that must be analyzed to determine how child support is calculated.

The incomes of the parties and the like all must be analyzed and determined. There is no blanket number that can be given. It's not that simple. The factors must be put into the formula and the formula gives an answer. Then arguments are made based on whether that number should be increased or decreased based on external existential circumstances early in the process. Either party can motion the court for temporary orders as it relates to a child support. Again, those are temporary. This is something that the court puts in place for now until the final numbers come out later on with the Divorce Decree. In any case, there would be a number of factors that could be considered. You want to sit with your lawyer. They will ask you the appropriate questions to determine what information needs to be gathered and input into this formula and give you an idea of what the court would order as it relates to child support.

How Do I Handle Court Order Violations?

After divorces, lawyers are often revisited by former clients because the former spouses in the divorce proceedings have violated the court's order. They're not paying child support. They're not paying the required spousal maintenance. We often have clients ask, what are our remedies? What do we do?

The broad answer is you file a petition for contempt or if it's at the end of the divorce, a petition to enforce the court's order. That brings the matter before the court, to say that either this person has violated an injunction that the court has issued, or if that's subsequent to a divorce, that there was an order issued by this court that this party has not abided by, and you want the court's intervention to force that party to obey the court's order. That process would proceed through court on the tracks, as appropriate.

Ultimately, if it's not able to be resolved or the person doesn't bring themselves into compliance, would be heard before a judge. There could be sanctions set in place. The person could be held in contempt of court. There could be interest added to whatever fees or process. They could be required to pay attorney's fees. The issue is, is that if the court has issued an order, a preliminary injunction, it should be abided by. These are courts of law; they can hold you in contempt of court or hold you in violation of the court order. Of course, it doesn't look good for that party in front of the court.

If you feel like you have some type of concern, where a court order is not being followed, or an injunction has been violated, you should probably contact your attorney immediately, so that they can look into it, find out if, in fact, that order has been violated, or if that injunction has been violated, so that they could either pursue the other person and tell them to come into compliance or get the court involved in making sure that the court orders are followed or the injunction is kept by the order.

About the Authors

Quacy L. Smith

Dr. Quacy Smith is a founding partner of Smith & Green who serves as the Office Managing Shareholder of our Arizona operations. He also serves as the CEO/Chairman of the Board of Directors. His legal prowess and corporate experience has proven to be invaluable to Smith & Green, as well as our diverse clientele.

Graduating from Phoenix School of Law with a juris doctorate in 2013, Quacy is admitted to practice in the state of Arizona and the United States District Court for the District of Arizona.

Dr. Quacy L. Smith is actively involved in the leadership of his church and community. He is a highly sought-after public speaker. He resides in Litchfield Park, Arizona with his wife and their children.

James M. Green

James M. Green primarily focuses on labor and employment law; however, he has expanded his practice to include other areas of law, including family law, and personal injury.

After working with the United States Air Force for eight years, he graduated from Arizona State University Sandra Day O'Connor College of Law with a juris doctorate in 2015. James is admitted to practice in the state of Arizona and the United States District Court for the District of Arizona.

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