Brown Family Law

UTAH DIVORCE FAQS

Answers to the Most Frequently Asked Questions About Getting a Divorce in Utah

Brown Family Law

We Provide Affordable, Compassionate, Divorce Attorney Services in Utah.

8915 South 700 East
Suite #203
Sandy, UT 84070
801-685-9999
www.BrownFamilyLaw.com

Affordable, Compassionate, Divorce Attorney Services in Utah

We're Dedicated to Helping Remove the Fear Associated with Getting Divorced, by Protecting Your Finances and Maximizing the Time with Your Kids.

Call Us 24/7 For A Divorce Consultation: 801-685-9999

Please Note: These FAQ answers are not meant to convey specific advice about your situation or anyone else's, and they do not create an attorney-client relationship between you and Brown Family Law. For that to happen, you will need to pay us and sign our agreement.

My Story (Why I Became a Divorce Attorney)

Years ago, and long before I was voted the Divorce Attorney of the Year by my Utah Bar Association peers, a friend called me out of the blue.

She asked me to help her get divorced. Hers was a difficult situation, and while I had never done a divorce before, I knew I had to help her.

The night before we met, I stayed up until 3 a.m. reading everything I could about divorce law.

When we met the next morning, we talked for a long time about her situation, her kids, how she felt betrayed, isolated, and scared. We talked about what would happen next. By the end of that conversation, we had a plan, and we stuck to it.

In the end, the plan worked. We got a great result for my friend and her kids. To this day, we keep in touch. She and her kids are happy and doing well.

When I figured out I could help real people and real families, I was all in. I found what I had been looking for in the law.

At this point, **I made it my mission to begin focusing solely on helping people through divorce and getting the best results for them**. Today, divorce and child custody is all we do. We focus on one thing so we can help our clients achieve the best outcome for them and their families.

Marco Brown
Managing Partner
Brown Family Law, LLC

"Our goal is to remove the fear associated with divorce and custody issues – and protect you by helping to maximize your time with your kids and your money, all within 3-6 months." – Marco Brown

Table of Contents

www.BrownFamilyLaw.com
801-685-9999

Money and Property:

Mediation:

How Do Courts Work?, A.K.A., Divorce Court Procedure:

Miscellaneous:

What Does it Cost to File for Divorce in Utah?

We all know divorce costs, and one of those costs is the divorce filing fee you pay to the court.

As it stands now, the filing fee for a divorce in Utah is **$333**.

That's not all though, you also have to pay $8 to file a divorce certificate with the Utah Department of Vital Records. That $8 is paid to the court, so **the total is really $341**.

There are also costs associated with service.

See, once you file your initial divorce documents with the court, you have to have someone serve your soon-to-be ex with those documents. The Utah Rules of Civil Procedure specify you can't do that personally (too much room for monkey business), so you should have a professional process server do it.

That might be a constable with the sheriff's office, or a company that serves these sort of documents regularly. Either way, the cost will likely range from **$50 to $80**.

All told, the Utah divorce filing fee and service costs average around $400-$500.

How Long Do I Have to Live in Utah Before I Can File for Divorce?

Say you just got to Utah and you want to file for divorce. How long do you have to wait until you can actually file?

This is a great question and it has to do with something called jurisdiction.

Jurisdiction is the idea a particular place can make judicial decisions only when it has proper authority over a person or thing. In divorce, a state has to have jurisdiction over at least one of the spouses to make decisions about the couple's divorce.

In Utah, we have a specific law — Utah Code, Section 30-3-1(2) — that answers this "how long" question:

"The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action."

That's a long way of saying you have to live in Utah for **three months** before you can file for divorce. In every divorce case we have litigated, three months actually means **ninety days**.

On a side note: the language "actual and bona fide resident of this state" is legal language that is designed to ensure only actual residents of Utah can file for divorce. In other words, you can't live in California, come to Utah, stay in a hotel for ninety days, file for divorce in Utah, then go back to California. You actually have to be in Utah ninety days, intend to remain in Utah, and behave like you will remain in Utah.

We have litigated some "actual bona fide resident" cases, but they are very rare. Really, if you've been in Utah for ninety days, you're good to file.

Divorce with Kids

If you have children, the answer becomes slightly more complicated, but the **basic rule of thumb is this: you can file for divorce after only ninety days, but Utah will address child custody matters only if the children have been in Utah for at least *six months* before you file for divorce**.

What if We Agree on Everything?

Divorces come in two types: contested and uncontested.

If you disagree about things, your case is contested. If you agree about everything, your case is uncontested.

When you agree on everything, you simply bring your agreement to an attorney who turns that agreement into an agreement. When everyone reads and signs the agreement, the case is effectively done.

And when I say done, I mean done in the legal sense of the word, which means it still takes a while to get divorced. (Nothing happens quickly in the law.)

After you sign, your attorney will need to complete a number of documents required by the court. In addition, you may need to provide tax and pay records if child support is involved. You may also need to complete a divorce education course if child custody is involved.

When all the documents are filed and served on your spouse, and all other requirements are met, your judge will wait out Utah's 30-day waiting period and then sign your divorce decree. When that's signed, you're divorced.

Now, there's obviously more to the process than I'm letting on.

The process actually has a number of steps and requires a lot of care to get right. Still, when you hire a good law firm, the process is pretty seamless because the firm has systems in place to shepherd your agreement from beginning to end.

And, in addition to being a straightforward process, uncontested divorces cost less. If you can come to an agreement on everything, do it.

Can I Stop my Utah Divorce from Happening?

Imagine the scene: your husband comes home after work and tells you he wants a divorce. He tells you he hasn't been happy for quite a while and wants out.

You're floored. You had no idea. I mean, you had problems like everyone else, but not this bad (or so you thought).

And you don't want to get divorced. You still love your husband. What can you do?

Unfortunately, there's not much under Utah divorce law. Since Utah is a no-fault divorce state, **you can't legally stop a divorce from happening**. You might be able to delay the divorce, but you can't stop it.

Since you can't stop a divorce legally, your only real recourse is to find some way to reconcile.

Now, I'm a divorce attorney, so I might not be the best person to ask how one successfully goes about reconciling. That heavy lifting is done by you, your family, your religious leader, and your marital therapist.

Ultimately, though, the law cannot save your marriage if your spouse wants out.

How Do I Evaluate Divorce Attorney Reviews?

Finding a good Utah divorce and family law attorney is difficult. If you don't already have an attorney you trust, then you have to find one.

Usually, people search for attorneys by talking to friends who have used an attorney. They ask about their experience and if they would recommend that attorney.

This type of finding is called word-of-mouth, and it's actually how most people find everything from attorneys to plumbers to doctors. And it works because we trust the person we're asking.

In the internet age, there is a new form of word-of-mouth: online reviews. Online reviews act in the place of our friend, but only to the extent that there are enough reviews to make us feel confident in them.

See, if a business only has one positive review we don't trust it because we don't know the reviewer. If there are fifty positive reviews, though, then we assume by sheer numbers that we can trust the reviewers.

So, how should you evaluate online reviews concerning Utah divorce attorneys? Specifically, how can you know if they're accurate?

Things to Consider About Reviews

Here are a few things to consider and look for:

1. Put more trust in reviews where the reviewer posted his/her name.

It's easy to write untrue garbage if you don't attach your name, but it's much harder to make stuff up (either good or bad) if you tell everyone who you are.

2. Be wary if reviews are 100% positive.

We'd all love to please everyone all the time, but it doesn't happen like that in any human business. If all reviews are positive, it might mean a business is cherry-picking only those with good experiences.

3. Don't disregard a business because of a bad review.

Again, no business can please everyone all the time, so don't expect perfection in online reviews.

4. Use reviews as a first step.

One really important aspect of choosing an attorney is fit. As in, how well do you and the attorney get along. Reviews can tell you an attorney gets along (or doesn't) with others, but they can't tell you if you will get along with that attorney. So, use reviews as a first step, then meet with the attorney as see if you fit.

Do Your Homework

Keep in mind: reviews are just one part of the decision-making process.

Personal fit, legal knowledge, customer service, focus on divorce and family law. These all should factor in to your decision. Once you have brought all of these factors together, you will be able to make a good decision regarding whom to hire.

How Do Lawyers Bill?

Imagine you've hired an attorney and you receive your first bill for work done.

If you're like most people, you look at the bill and it's like reading Chinese.

You don't know what the entries mean or why they're billed the way they are. And your attorney has never explained how billing works, except to tell you you'll be billed.

Well, let's talk about how most Utah divorce lawyers bill for a minute.

The billable hour — line-item billing

The most common type of billing is the billable hour. Essentially, lawyers bill for time spent working on a case.

When lawyers bill for time spent, they usually do so by breaking down every task completed on a case — i.e., they line-item their time. So, a bill might include entries like this:

- Receive and review and prepare correspondences from and to client regarding parent-time dispute
- Travel to and from hearing regarding temporary orders
- Attend trial

The nice thing about this type of billing is you know exactly every task your lawyer has completed on your case, and the amount of time a particular task took.

The billable hour — block billing

Some attorneys, by contrast, use what is called block billing. This means they smash together a whole bunch of activities in to one paragraph (usually all stuff done on the same day) and then provide a total time spent on everything.

Block billing might look something like this:

Receive and review and prepare correspondences from and to client regarding alimony, strategize regarding child support calculations, prepare temporary orders, teleconference with opposing counsel regarding parent-time issues

Personally, we're not fans of block billing because it makes it impossible to tell what time was spent on which activity. In other words, it makes it harder for the client to evaluate how efficient the work being done on their case is. (And, to be honest, that might kind of be the whole point of block billing.)

Additional thoughts

If you don't know what something is on a bill, ask. Your attorney should be able to easily (and willingly) explain any time entry.

Who Is the Best Utah Divorce Attorney?

When people search on the internet for divorce and family law attorneys, they often type in something like “best utah divorce attorney” or “best utah family law attorney.”

The results that pop up on Google usually pop up because a page on a website contains the words “best” “utah” “divorce” and “attorney” in close proximity. So, you’re not really getting an assessment of who is the best attorney at all. What you’re getting is an attorney who wrote the phrase “best utah divorce attorney” on his or her webpage.

So, how do you determine who is the best divorce attorney in Utah? The answer to this question is pretty personal and depends on some different factors. Let me address a few as we see them.

Factors

1. Fit.

What I mean by fit is how you and your attorney get along. You can have the most brilliant divorce attorney in the world (and there are some amazingly brilliant attorneys), but if you can’t stand to be in the same room with him or her, all that brilliance won’t get you good results. Find someone you get along with and with whom you feel comfortable working.

2. Focus on your area of need.

If you have an intellectual property issue, don’t hire a divorce attorney. Likewise, if you have a divorce, don’t hire someone who does ten divorces per year. If you hire a part-time divorce attorney, you’ll get part-time results. Find a full-time divorce attorney.

3. Online reviews.

Online reviews are helpful (but not sufficient) in choosing an attorney. If you approach them correctly, they can help guide you to attorneys who provide good customer service. And good customer service is not the norm among attorneys, unfortunately.

4. Reputation with colleagues and the courts.

If an attorney is disliked by his or her colleagues and the courts, then you will have an uphill climb in your case. It will be harder to negotiate, and the courts are less likely to accept arguments from an attorney with a bad reputation.

5. Price.

Price is always a consideration. If an attorney charges more than you could possibly afford, then it won't do you much good to hire that attorney. This said, hiring an attorney who way undercharges for legal services is an indication that attorney is wildly inexperienced.

In the end, realize legal services are an investment in your future and your family's future. Plan accordingly, and find a good attorney who will charge fairly.

6. Feel.

Feel is a bit like fit. You have to feel comfortable with your attorney. You have to feel that your attorney is knowledgeable and will represent you with respect in and out of the courtroom.

So, Who Is the Best Utah Divorce Attorney?

Considering all of this, who is the best Utah divorce attorney?

The answer is: it depends on you.

It depends on your situation and who you feel you fit with best. Google can't make this decision for you. You have to do the research and make the determination for you. There are no shortcuts in hiring a good divorce attorney.

What Is a Retainer?

When you start researching which divorce attorney to hire, you'll happen on the word "retainer."

What is a retainer?

It's an upfront amount you pay when you hire an attorney that ensures there is money to cover at least a portion of the work you have asked an attorney to do.

It's important to keep in mind an attorney only gets to keep retainer money if the attorney earns that money by helping you and working on your case.

Retainers vary from law firm to law firm. Some law firms require $5000–$7000 retainers, while some require $3000 or around there.

Keep in mind: a retainer **is a minimum** amount you'll pay, **not a maximum**.

When you pay a retainer and **get billed by the hour** (like 96% of divorce attorneys do), **you have no idea how much you'll pay for your divorce**.

How Is Brown Family Law Structured?

Law firms are kind of like those secret CIA facilities you always hear about but never get to see. The only people who seem to know what goes on in there is the people who work there.

And when people don't know what's going on inside, they become suspicious and untrusting. This is how it is for many people when they interact with attorneys. They don't trust lawyers because they don't know how law firms are structured and they don't know what lawyers do.

This is a tragedy. It's a tragedy because it's so easy to fix the problem. Just explain what's going on inside.

Here's how Brown Family Law Is Structured.

We work as a team and individually.

Concerning the team part, what I mean is we talk with each other about cases all the time. We strategize with each another. We quality control each other. We read each other's documents to ensure everything is up to our standards. We discuss each case as a firm at least once a week, although we talk about our cases on a daily basis. We see each other's activities and workflow on a daily basis. We do all of this to ensure we're running our system correctly.

As in any functional team, there is someone who leads. As the firm's founder, that responsibility falls on me (Marco Brown). My job is to ensure we run our system, take care of our clients, and help them obtain the ideal results they are looking for.

Concerning the individual part, each case is assigned a primary attorney. He or she answers calls and emails, drafts court documents, puts together litigation plans, provides clients with regular case updates, appears in court, and accompanies clients to mediations. In essence, primary attorneys provide the individual attention and care every case and every client needs.

We also use **paralegals** to help make things more efficient. Paralegals assist the attorneys and accomplish many of the more day-to-day tasks it wouldn't make sense for a lawyer to do.

How Do We Keep Clients Informed About Their Case?

I recently met with a potential new client. She was a software engineer, and she talked like a software engineer. At one point, she asked, "So, what's your feedback loop?"

I didn't know exactly what she meant, so I told her I didn't understand the question.

She said, "What I mean is, how do you keep your client's informed about their cases?"

This I understood, and here's how I (more or less) responded:

"That's a great question, and one people don't normally ask for some reason. We do a few things to keep our client's informed about their cases. For example:

• **First**, we talk with our clients and promptly answer their emails and phone calls.

• **Second**, we send our clients copies of every document filed with the court. If they have questions about any of these documents, they can always call us.

• **Third, we send** our clients case status update emails twice per month. In these emails we tell our clients what has happened over the last two weeks, where things stand now, and what the game plan is for the next two weeks. These emails pretty often lead to follow-up emails and phone calls with our clients about what's going on, so, really, they're often the beginning of an ongoing conversation.

• **Fourth**, our paralegals systematically call and email to see how are clients are doing and to see if our clients have questions we can answer. This is **in addition to** all the communication a client has with his or her attorney.

Why Does Brown Family Law Only Take Divorce and Child Custody Cases?

I don't know how many times people have come up to me and asked, "You're an attorney. Do you know about defamation/car accidents/land sales/assault/DUI/business formation/etc."

I politely tell them I have absolutely no idea about any of those things because I'm a divorce attorney.

Many will respond with, "But you're an attorney aren't you?"

At this point, I usually smile.

What many people may not understand is law is a very, very big profession. Some lawyers (like us) go to court all the time. And some attorneys have literally never seen the inside of a courtroom. Some attorneys know how to structure big corporate stock swaps. Some of us know how to navigate the emotional and legal landscape of divorce. Each legal discipline has its challenges and its rewards.

So, Why Do We Limit our Focus to Divorce and Child Custody Cases?

There's a lot of wisdom in this old saying: jack of all trades, master of none.

In essence, when you try to be all things to all people, you end up sucking at everything.

We, on the other hand, want to be the best at what we do.

And to be the best, we have to focus on one thing and go deep, which is what we do.

All our systems are built to help people through divorce and child custody case. Our trainings are all about divorce law. Our communication system is optimized for clients going through divorce. All our connections are with lawyers, commissioners, and judges who do divorce cases.

Everything we do is designed to better serve people with a very specific need: divorce and child custody.

How Often Do You Go to Trial on Divorce Cases?

Nationally, about 1%–2% of all cases go to trial. Of those that go to trial, about 85% of those trials last one day.

In Utah, divorce cases go to trial about **2%** of the time.

The majority of those cases are one-day trials; although, if you discuss both financial issues and child custody issues, then two-days is pretty standard.

At Brown Family Law, we have found that about 2%–3% of our cases go to trial.

How We Assess How Well We are Serving Our Clients

Being a divorce attorney is an interesting thing.

We are expected (and rightly so) to be experts in the law, superior legal technicians, if you will. We're also expected (and rightly so) to be confidants, counselors, life coaches, and much more.

Doing any one of these things well is difficult. Doing all of them well simultaneously is exponentially more difficult.

So, how do we at Brown Family Law determine how well we're doing these things, i.e., how well we're serving our clients?

Simple: we ask.

On a regular, systematic basis, we ask our clients how well we're serving them.

If our clients tell us they're very satisfied, we know we're on the right track and should keep doing what we're doing.

If, for whatever reason, a client tells us they are not likely to recommend us, we see that as an opportunity to ask follow-up questions, figure out what's going on, and improve the quality of our service to that client.

We take this feedback and discuss it in our weekly firm meeting. During our discussions, we will formulate a plan to better serve a particular client. And, when necessary, we discuss how to retool our system to make sure the problem the client identified doesn't happen again.

This is how we have honed our system to help our clients obtain the ideal results they're looking for.

Why Are Divorce Cases Assigned to One Primary Attorney?

Our system at Brown Family Law is unique.

First, the Team

We work every case as a team. This means we all contribute our ideas and expertise to the case. We work together to develop schedules and litigation plans. We exchange ideas about how to handle situations. We quality control each other to ensure quality is a high as possible.

This team aspect is integral to the way we do things. We developed this system after looking at experts in other fields and seeing that when those experts work as a team, they end up providing a better service (or product) to the client.

For example, doctors work as teams; dentists work as teams; engineers work as teams; scientists work as teams.

Lawyers, for the most part, haven't figured out this team thing. About 60% of all attorneys in America work alone.

This "solo" system is pretty inefficient and tends to lead to low quality legal services.

Our clients deserve excellent results, so we created our team-based system to deliver those results.

Second, the Primary Attorney

Each case has a primary attorney, and this attorney works directly on your case. He or she knows the case intimately, works on a daily basis with you, answers emails and phone calls, goes to mediations and court hearings, and provides the **individualized service** you need.

Primary attorneys are the ones who do the bulk of work on any case. Doing the work and being so directly involved in each aspect of the case allows your attorney to know you and your family and how best to obtain your goals.

Without a primary attorney to take the lead on your case, there would be too many cooks in the kitchen and quality would suffer. With one cook, as it were, supported by a team, the system creates a great dish.

This is why every divorce case has a primary attorney supported by our team.

What Are Parent-Time Holidays in Utah?

Holidays, holidays, what are the holidays? In Utah divorce, the answer to that question isn't as easy as you would think.

Sure, all the major ones are there: Christmas, Thanksgiving, Fourth of July, spring break. But there are lots of others Utah throws in for good measure, for example: Martin Luther King Day, President's Day, Memorial Day, and Columbus Day (really?).

In total, there are about fifteen holidays included in Utah's parent-time holiday schedule. Unfortunately, the law laying out all these holidays (Utah Code, Section 30-3-35(2)(c)–(h)) is not the easiest to read.

Because of this, we put together a grid that helps Utah parents better understand how holidays work in divorce.

When you read the grid, keep this in mind: The **custodial parent** is entitled to the "odd numbered years" holidays designated in the schedule below in even years and the "even numbered years" holidays in odd years.

This way, holidays rotate year after year and each parent ends up with equal holiday time.

ODD NUMBERED YEARS	EVEN NUMBERED YEARS
Child's Birthday: on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday.	**Child's Birthday:** on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday.
Martin Luther King Jr.: beginning 6 p.m. Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled.	**President's Day:** beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled.

Spring Break: beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes.	**Memorial Day:** beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled.
July 4th: beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday.	**July 24th:** beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday.
Labor Day: beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled.	**Columbus Day:** beginning at 6p.m. the day before the holiday until 7 p.m. on the holiday.
Fall School Break: if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled.	**Halloween:** on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.
Veteran's Day Holiday: beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday.	**Thanksgiving Holiday:** beginning Wednesday at 7 p.m. until Sunday at 7 p.m..
Christmas School Vacation: the first portion of the Christmas school vacation including Christmas Eve and Christmas day continuing until 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period, or until 7 p.m. if there are an even number of	**Christmas School Vacation:** the second portion of Christmas school vacation beginning 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire

days for the holiday period, so long as the entire holiday period is equally divided.	Christmas holiday period is equally divided.

Father's Day: with natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday.

Mother's Day: with natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday.

Last thing: you can always do holidays like you want as long as you agree. This is the schedule only if you can't agree on something different.

How Does Christmas Work?

Christmas visitation in Utah is handled in one of two ways.

The **first way** is by how you spell it out in your divorce decree.

Your decree might reference the Utah holiday statute (Utah Code, Section 30-3-35). If it does, we'll talk more about what that means in a minute.

Your decree might also designate Christmas parent-time different from the law. For example, John may have agreed to let Jane always have Christmas Day because John and his family celebrate Christmas on Christmas Eve. That's just one example, but if you have something similar in your decree, then follow that.

The **second way** is your decree references the holiday statute. Here is the Section 30-3-35 Christmas schedule:

(f) **In years ending in an odd number**, the noncustodial parent is entitled to the following holidays:

. . . .

(viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) including Christmas Eve and Christmas Day, continuing until 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period, or until 7 p.m. if there are an even number of days for the holiday period, so long as the entire holiday period is equally divided.

. . . .

(g) **In years ending in an even number**, the noncustodial parent is entitled to the following holidays:

. . . .

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), beginning 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period, or at

7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday period is equally divided.

To figure out when Christmas school vacation begins and ends, you have to know the school calendar for your child. If your child isn't in school yet, then follow the calendar of the school he or she would attend where you live if your child went to school. (You can find these calendars online by Googling your local school.)

Couple things to remember about the Christmas holiday. **First**, the person who has the first half of Christmas will always get Christmas Day. Always. **Second**, the second half of Christmas break will usually begin on December 26 or right around there. You have to do the math to figure out the exact date.

How Does Thanksgiving Work?

As a Utah divorce attorney, I've noticed there are holidays, and then there are *holidays*.

Parents don't much care about Martin Luther King Day, Columbus Day, Pioneer Day, and the like.

They do, however, care about holidays like Christmas, Spring Break, and Thanksgiving.

I've talked about other holidays before (e.g., Christmas, Martin Luther King Day, and holidays in general), and I want to talk about Thanksgiving specifically.

Thanksgiving, along with Christmas, is *the* major parent-time holiday. If there are fights to be had over scheduling, they will happen 95% of the time in conjunction with either Thanksgiving or Christmas. This is why is so important to know when the Thanksgiving holiday begins and ends.

Thankfully, this one's super simple.

Thanksgiving begins Wednesday (the day before Thanksgiving) at 7 p.m. and ends Sunday at 7 p.m.

That's it.

What Income Counts Toward Child Support in Utah?

Child support is one of the most common issues addressed in Utah divorce cases, and it's really one of the most straightforward aspects of most divorce cases.

Child support is really a function of **(1)** how many overnights a child spends with each parent every year, and **(2)** the parents' gross monthly incomes.

As you can guess, gross monthly income is income before you take out taxes. That part's easy. What's not so easy is figuring out which money sources are included and which are excluded.

Utah Code, Section 78B-12-203(1) says gross monthly income includes

> prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from 'nonmeans-tested' government programs.

Essentially, any income from any source will count toward child support. Now, most of the time people don't have royalties coming in, and they don't have five properties paying them rent, or trust income from a rich deceased uncle. No, most people have jobs and earn all their money from those jobs.

For normal job-workers, income that can be counted toward child support is limited

> to the equivalent of one full-time 40-hour job. If and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

Utah Code § 78B-12-203(2).

So, one 40-hour per week job is really the max. If you worked consistent **overtime** before the case began, the average overtime pay will be included.

Likewise, if you received regular **bonuses** are part of your pay, those will probably be included as well.

If you are self-employed or own your own business, gross monthly income is calculated by "subtracting necessary expenses required for self-employment or business operation from gross receipts. . . . Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts." Utah Code § 78B-12-203(4)(a).

Keep in mind, **necessary expenses are different than tax deductions**. For example, you can take a tax break on depreciation on your work car, thereby lowering your taxable income. However, depreciation is not necessary to keep most businesses operating at a reasonable level, so it will likely not be a deduction when calculating child support.

Gross monthly income can also include imputed income — i.e., income someone should earn but doesn't. Imputed income is most common when someone is capable of working a full-time job, but chooses not to. What it comes down to is you can't deprive your child of support by choosing not to work. When you do that, you're essentially stealing for your child, so the court will impute a wage and use that imputed wage to calculate child support. Utah Code § 78B-12-203(6)–(7).

Yes, I know, I said child support was straightforward. Well, it's pretty straightforward for divorce law.

Honestly, how most child support calculations work is you take each parents' gross monthly wage from their one job, plug it in the Utah child support calculator, and it provides the child support obligation for each parent.

Can I Withhold Visitation if my Ex Doesn't Pay Child Support?

Imagine the scene. You're a mom with two children. Your husband left you two months ago and hasn't paid child support. He won't pay for anything, but he still wants to have time with his kids.

Your first thought, because it's everyone's first thought, is to keep the kids from him until he pays. This makes total sense: he has the responsibility to provide for his kids; and, if he doesn't, he doesn't get the privilege of seeing his kids.

Sometimes, there's what makes sense, and then there's what's legal.

You *can't*, I repeat *can't*, withhold parent-time (i.e., visitation) from your ex because he or she won't pay child support.

Child support of visitation are two unrelated things in the law. This means if someone doesn't pay child support, you can't keep them from parent-time. It also means if someone withholds parent-time, you still owe child support. Legally, one does not depend on the other.

Beyond the legal reasons, there are also some **practical reasons** why you shouldn't withhold parent-time:

1. **You would be using your kids as pawns in a battle between you and your ex**.

That's not fair or good for your kids, and it will damage them.

2. **You don't want to screw up your custody case when you divorce**.

Judges hate it when people withhold kids to get child support out of their ex. And I mean hate it. If you are the one taking care of the kids, and your ex isn't paying child support, you have the moral high ground when you divorce and ask for custody. Don't give up that high ground. It's not worth it in the end.

3. **It leads to an ever-escalating fight**.

If you refuse to give the kids, your ex will find new and creative ways to make your life hell. You'll then retaliate, and so will your ex. It will keep getting worse and worse.

Please, don't withhold parent-time

Don't refuse parent-time. There are other and much more productive ways to address the problem of your ex not paying child support.

Can I Waive Child Support if We Agree not to Collect it?

People fight about two things in divorce: kids and money.

Child support is the intersection of those two things. So, as you would expect, there are some fights about child support in many Utah divorces.

Sometimes, to lessen the fight, people will try to agree to waive child support (i.e., not put child support in the court paperwork).

But, can you actually do this? Can you just waive child support?

The answer is a pretty resounding "no." The reason for this is child support doesn't belong to you or your spouse. Child support belongs to your kid(s), so you can't bargain it away.

Judges guard child support very jealously. This means if you try to agree in divorce papers to not collect child support, your judge will not accept the agreement and will not finalize your divorce.

(I know this because I tried it a few times. Every time, the judges would send back the agreements and tell me to rework the agreement to include child support.)

What all this means is you have to include child support in a Utah divorce agreement. There's simply no way around that.

Possible Solution

Now, a possible solution is this: you could have a gentlemen's agreement that, even though child support is in the divorce decree, that the person owed child support will not collect it.

You really need a lot of trust in a situation like this because the person owed child support can turn around at any moment and go collect all the child support you haven't paid. If you don't have complete confidence you both will abide by the gentlemen's agreement, don' do it.

Honestly, this is the best solution I've found to address this problem. It's far from perfect, but it's really the best you got.

How Does Child Support Work for Children with Disabilities?

When you think of child support, you think of a child, or someone under eighteen years old.

Turns out the law is a strange thing sometimes. In Utah a child for the purpose of child support might just be an adult. Let me explain how this works.

There are certain categories of adults who can receive child support. The most common is a child who has turned eighteen but hasn't graduated from high school. In this case, child support ends when the eighteen-year-old graduates.

Another less common category is adult children with disabilities so severe they are legally incapacitated. In fact, Utah law defines a "child" who can receive child support as:

> [A] son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

Utah Code § 78b-12-102(c).

What this means in real life is a parent can be obligated to pay child support for an incapacitated child. Unlike the high school student, however, there is no age limit on this potential obligation.

So, depending on the level of disability a parent could end up paying child support for a disabled child for the length of that child's life.

This usually doesn't happen, however, because most incapacitated children end up receiving some sort of disability benefits, whether from Utah or from the federal government (e.g., Social Security Disability).

Most of these benefits are means-tested, which means if the incapacitated child makes too much money, he or she will lose benefits or benefits will be decreased by the amount of money made.

In light of this, many parents choose not to require child support because those child support payments would decrease or preclude benefits. That's not a good

deal for cash-strapped families, so they allow their children to receive the maximum amount in disability payments.

So, if you have a child with serious disabilities, you need to look and see if continuing child support into adulthood is an appropriate option.

Do I Have to Pay Child Support if I'm not Getting Visitation?

Let me describe a scene.

You pay your child support every month like clockwork. You always take your parent-time (i.e., visitation) with your son. Then, you get a new girlfriend. Your ex doesn't like her at all and says she won't have her son around the new girl. So, she doesn't allow you visits anymore.

This sort of thing happens more than you think. Things go well in divorces — until they don't. And when they go bad, they usually go bad hard.

So, how do you deal with it? Your first thought may be to stop paying child support. Makes sense, right? You don't get to see your son, so why should you have to pay?

Yeah, *not* a good idea. Let me explain why.

First, the legal.

Child support and visitation are two unrelated things in the law. This means if someone doesn't pay child support, you can't keep them from parent-time. It also means if someone withholds parent-time, you still owe child support. Legally, one does not depend on the other.

And if you stop paying child support, you are in contempt and the court will sanction you for your contempt. Sanctions usually include paying attorney fees, and can include jail time. Not good.

Second, the practical.

1. **Children need child support**.

Child support never actually covers half the cost of raising a child. Taking away child support usually means there is a severe shortage of funds, which hurts kids first and worst.

2. **You would be using your child as a pawn in a battle between you and your ex**.

That's not fair or good for your child.

3. **You don't want to screw up things when you file to hold your ex in contempt for refusing your parent-time**.

The way you should handle things is to file for contempt of court. You'll be on firm footing. I can guarantee you, however, if you stop paying child support, it will make things much more difficult. The judge won't like that you stopped paying, and your ex will probably file for contempt against you because you haven't paid child support.

4. **It leads to an ever-escalating fight**.

If you refuse to pay child support, your ex will find new and creative ways to make your life terrible. You'll then retaliate, and so will your ex. It will keep getting worse and worse. Break the cycle.

Please, pay your child support, no matter what

Don't stop paying child support. There are other, much more productive, ways to address the problem of not getting your parent-time. Choose the higher ground; you'll be glad you did.

How Should I Pay Child Support?

If you have a child and you don't live with your child, chances are you will pay child support. If you get divorced and have kids or have a paternity case, in Utah you'll surely pay child support.

If you do pay child support, how should you pay child support? What I mean is, in what form should you pay child support? There are a couple options, and one non-option. First, the non-option.

Non-option: **Do not, do not, do not pay child support in cash!** If you even think of paying child support with cash, slap yourself. You can't trust the other parent to tell the truth about you paying child support. I can't tell you how many times my client has paid child support in cash for years, and the other parent says he/she has never received a dime. Since it's your burden to prove you paid child support, and since paying in cash makes proving payment almost impossible, you will end up paying child support twice. So, again, don't pay in cash.

Option 1: **Pay child support through Utah Office of Recovery Services (ORS)**. ORS is a clearing house for child support payments. You pay child support to ORS, then ORS logs the payment and sends the payment to your ex. The beauty of this system is ORS's accounting. ORS keeps meticulous detail of each payment, and its accounting is accepted by Utah courts as accurate. We recommend that every client goes through ORS because it simplifies everything and removes the risk of not being able to prove payment.

Option 2: **Pay with check or money order**. Some people, for whatever reason, simply don't want to work with ORS. If you are one of these people, you can still pay your child support and keep yourself safe: pay with a check or money order. If you choose this route, keep copies of every check you write or every money order you send. Keep a copy of every envelope in which you send the check or money order. Also, keep a copy of every bank statement, highlighting where your child support check was cashed. I know this sound like overkill, but you'll be thankful when your ex says you have paid child support for five years.

After reading Option 2, you should understand why we recommend everyone pay through ORS. In any case, Rule #1 for paying Utah child support is: keep record of every payment. Oh, and don't pay cash.

When Do I Stop Paying Child Support?

You pay child support in Utah for your kids. They're fourteen and sixteen. You're cool with child support (or you should be), but you want to know when will it end?

Now, these are kids we're talking about, so even when you stop paying child support, you won't actually stop giving them money. But, at that point you can choose the when, the why, and the how much. And there's something to be said for that.

So, let's see what Utah law has to say about when you stop paying child support for your kids:

When a child becomes 18 years of age or graduates from high school during the child's normal and expected year of graduation, whichever occurs later, or if the child dies, marries, becomes a member of the armed forces of the United States, or is emancipated in accordance with Title 78A, Chapter 6, Part 8, Emancipation, the base child support award is automatically adjusted to the base combined child support obligation for the remaining number of children due child support, shown in the table that was used to establish the most recent order, using the incomes of the parties as specified in that order or the worksheets, unless otherwise provided in the child support order.

UTAH CODE § 78B-12-219(1).

In other words, **child support stops when a few major things happen**:

1. **When your child turns eighteen or graduates from high school, whichever happens later**.

(Note: the language "normal and expected year of graduation" refers to kids who are held back a grade. So, if you get divorced, and then your kid has to be held back a year, you don't have to pay child support during that extra year of high school.)

2. **When your child passes away**.

3. **If your child gets married**.

4. **If your child joins the armed forces**.

5. **If your child emancipates**.

By far, the most common event that stops child support is a child turning eighteen or graduating from high school.

How Do We Split the Cost of Extracurricular Activities?

There are very few things that make you realize just how expensive kids are than divorce.

When you're married, the true cost of children is masked and subsidized by the coordinated contributions of both parents. For example, daycare costs are minimized because parents work together to minimize those costs.

Then divorce happens, and people stop living together (which incurs a lot of additional costs) and stop coordinating. Costs for kids in situations like this tend to go up.

In Utah divorce cases, we always deal with the basic kid costs, such as: child support, insurance, and daycare. What people sometimes miss is another cost, but a significant one: extracurricular activities.

"Extracurricular activities" refers to activities outside normal school activities. The most common examples are things like dance lessons; music lessons; football, baseball, or other sports; and summer camps. These activities don't fall under basic necessities (which are covered under child support), nor do they fall under school fees (which should be addressed separately in a divorce decree anyway). They are an expense unto themselves.

So, how do you split extracurricular activity fees in Utah divorces?

Option 1

The most common way is to share costs equally. Specifically, you share costs equally if you agree on the activity or activities. So, if you both agree Johnny should play competitive soccer, you would both share those costs. However, if you can't afford to put your daughter in competitive dance, then you wouldn't share costs.

If parents can't agree and don't share costs, what happens is the parent who really wants the activity pays 100% for it. (Note: you can't put a kid in an activity during the other parent's visitation time, thus taking away that time. That's dirty pool.)

Option 2

Sometimes, parents will agree that they have to share the cost of at least one extracurricular activity, even if they don't agree on the activity. This takes away the

"No, I won't pay," veto power some parents try to exert. And, to be honest, this tends to work pretty well. However, if one parent has expensive tastes, you could be on the hook paying lots of money for that one extracurricular activity.

Option 3

Sometimes, families know exactly which extracurriculars their kids will engage in, so they negotiate how a child will progress through that extracurricular. Gymnastics is a great example of this. Parents know the progression of competitions and the like, so they plan cost sharing and schedules for the future.

Option 4

Sometimes, one parent makes so much more money than the other that the richer parents agrees to pay all extracurricular activity costs. This rarely happens.

And How Do We Actually Pay the Extracurricular Costs and Fees?

When you share costs, you usually pay separately. In other words, each parent would pay the dance studio operator independently of the other.

If there is a history of a parent paying late, we sometimes have one parent pay and the other parent will reimburse. This ensures payment is made on time, but it also often means the paying parent doesn't get reimbursed. There is no perfect system, unfortunately.

How Far Apart Can Parents Live and Still Have 50/50 Custody?

When people divorce, they fight about two things: money and kids. Money, honestly, is relatively easy most of the time. Kids, not so much.

One of the most sought after parent-time arrangements is 50/50. This is where both parents share an equal number of overnights with their children.

There are a few ways of splitting overnights equally. The simplest way is probably week-on-week-off. Another way is what's called a 2-2-5, where one parent always has Monday and Tuesday, the other parent always has Wednesday and Thursday, and both parents rotate the weekends. (The five in 2-2-5 means every week, one of the parents has the children five overnights.)

Whatever 50/50 arrangement you're contemplating, you first have to answer a fundamental question: do we live close enough to make 50/50 custody work?

From my experience in many Utah divorce cases, I would say *twenty miles* is about the max for 50/50. If you live more than twenty miles away from each other, some difficult problems arise, such as:

1. **School**.

If your kids are in school, you generally have to take them to school. You might think, "Hey, twenty miles to school is a sacrifice I'm willing to make." That's well and good, and it turns out it's really hard.

Think about it. You have to drive twenty miles out of your way (it's always out of the way) to school, then twenty miles back for work. And you have to do this half of every week. That sort of thing really wears on a parent over time.

2. **Activities**.

If your child has dance, football, soccer, debate, whatever, you will run into the same problem with those activities as you do with school. It would be wonderful if parents could find activities exactly in between their homes, but that's not how life works. One parent, invariably, ends up driving way farther than the other parent for activities.

3. **Friends**.

Your children will almost certainly have more children in the neighborhood in which they attend school. This means one parent will end up trucking their kids to that neighborhood

to play with their friends. That's fine if you live two miles apart. If it's twenty, though, that's not an easy thing.

4. **Church**.

Same with church. A child will be more involved with one congregation than another. It's just how they work. If this is the case, and you want your child involved in the weekly activities offered by that congregation, one parent will always be traveling.

There are many more things I could mention, but you get the idea.

Now, this doesn't mean you can't do 50/50 if you live more than twenty miles from each other. Some people can make it work — just not many.

We always tend to overestimate our ability to deal with adversity. If there is one thing I've learned as a divorce attorney it's this: to make 50/50 custody work, it has to be easy for both parents. Once things become significantly more difficult for one parent than the other, that parent tends to back off and become less involved in their kids' lives.

Don't let this happen to you and your family. If you want 50/50 custody, plan accordingly. Find a place close to the other parent. Make things as easy on yourself as possible. Your family is too important to do otherwise.

What About Overnights and Taking Kids to School?

If you have any more than the minimum parent-time (click here to see what that is for kids over five), then you'll probably be taking your kids to school.

Yes, you'll have the privilege of that morning ritual that includes waking up kids who have overslept, and then nagging them until they get in the car. And why not just get them out the door and to the bus?

The reason is you're the non-custodial parent (i.e., the parent with less parent-time), and you probably don't live on the bus line for your kids' school. Don't feel bad, almost no one does, which is why most everyone has to drive their kids to school.

This reality brings up an interesting question: how far from your kids' school can you live and still drive them every week?

My rule of thumb is **twenty miles**, and here's why.

Twenty miles is deceptively far. What I mean is twenty miles doesn't seem very far. When you think about it though, twenty miles takes a good long time in the morning. You have traffic from all the other parents, you have to navigate the school parking lot, half the time you're running late, and it always seems that school is in the opposite direction of every parent's work.

Now, none of this matters if you don't work in the morning; but you, like most everyone else, probably do.

This means that twenty-mile trip will take you lots of time. If you do it consistently (especially multiple times per week), it begins the wear on you.

And wear is not something you want if you are a parenting after divorce. The harder parenting is, the less likely you are to do it well. There's just so much stress that making things harder can't work well.

So, what should you do?

So, what should you do about driving the kids to school? **Honestly, the best thing is to live near your kids' school**. If you do that, it will solve the time issue and decrease your stress tremendously.

Another idea is to have someone drive your kids to school for you. This often happens when people remarry. And sometimes a grandma will take on the duty, but not often. (The grandma thing is usually a temporary situation anyway.)

Whatever you do, make sure you try to make it as easy on yourself as possible. You'll be grateful you did.

How Does Supervised Parent-time Work?

Most divorce and child custody cases involve relatively normal people who simply don't get along anymore. Neither person is particularly bad; instead, the relationship just doesn't work and everyone wants out.

Then there are those cases in which someone has done something particularly egregious that really affects the children's safety. In these sorts of cases, supervised parent-time is an option.

It used to be you could ask for and be granted supervised parent-time in Utah for any number of mildly bad (but not particularly egregious) behaviors. The supervision requirement would stay in place for months, and many times years.

This all changed in May of 2014 when the Legislature passed Utah Code, Section 30-3-34.5. Section 30-3-34.5 was passed specifically to address the problem of courts being a little too free in ordering supervised parent-time. To underscore the right of a parent to unsupervised time with his or her child, Section 34.5 states supervised parent-time is available only when "necessary to protect a child and no less restrictive means is reasonably available." On top of this, courts must find "evidence that the child would be subject to physical or emotional harm or child abuse . . . from the noncustodial parent if left unsupervised with the noncustodial parent."

This is a high bar to hurdle. **First**, you must prove — not just allege, prove — to the court the noncustodial parent would physically abuse or emotionally harm your children if left alone with them for any significant period of time. **Then**, you must prove no less restrictive means is available for keeping your kids safe. "No less restrictive means" is legal code for, "the court will only do this if you prove every other option won't work."

What all this really means is supervised visitation is reserved for the worst situations involving actual danger to children. So, if your husband is addicted to porn, but the children have never been exposed, he won't have supervised parent-time. If your wife gets her third DUI, but she has never driven impaired with the children and has no means to drive because her license is suspended, she won't have supervised parent-time. On the other hand, if your spouse has an ongoing, untreated drug problem, and has done drugs in the home when the children were around, then there's a good chance for supervised visitation.

But, even if supervised parent-time is ordered, the court must develop a specific plan to lift the supervision requirement. The court must also schedule follow-up hearings to assess the parent's progress toward the goals and expectations laid out in the plan. When the goals are met, supervision will end. And if a parent feels he or she has met the goals, the parent can request a hearing at any time to discuss lifting the supervision requirements.

In the end, if you want your spouse to have supervised parent-time, you need a good reason and a good attorney. It is very difficult for people representing themselves to prove all everything required. If you do have a good reason, however, then supervised parent-time could be a very effective tool for keeping your children safe until the other parent overcomes whatever is putting the children in danger.

What Is the Minimum Parent-Time a Parent Can Get in Utah?

Custody and parent-time is one of the most common issues fought over in Utah divorces and child custody cases.

And for good reason: kids and their futures are really important.

In divorces and custody cases, it's always good to know what is the least amount of parent-time you can expect?

Not that you want the least amount, but you have to know the bottom so you can tell how well you're doing in relation to the bottom.

Schedule

In Utah, the least amount of parent-time given to noncustodial parents (i.e., parents that don't have their child as much as the other parent) is laid out in a specific law, which says, essentially:

1. Every other weekend from school getting out on Friday until Sunday night at 7 p.m.

2. One evening a week from about 5.30 p.m. to 8.30 p.m.

3. Split holidays.

4. Two weeks of summer parent-time.

(Now, there's a bit more to it than this, but you get the gist.)

Bottom Line

The bottom is really four overnights out of every twenty-eight overnights. This isn't much, so you'll have a lot of room to move up if you're the non-custodial parent.

Click here to read the law containing the entire schedule.

How Much Parent-Time Do We Each Get?

When people envision life after divorce, their minds turn to two main areas: kids and money.

Money is incredibly important, and often intertwined with custody, but I want to talk specifically about kids for a moment. Where the kids live (custody) and how much time they spend with each parent (parent-time) are the most important issues in any divorce.

Because these are the most important issues, parents always ask: how much parent-time do we each get with our kids?

No Easy Answers

There are no easy answers here. It depends on so many factors: who is the primary parent, who is more stable, who is the children bonded to more, who can provide economically for the children, is there any criminal history or history of drug abuse, does one parent have a mental illness, etc.

It takes a pretty well developed system to gather and evaluate all of these factors, and then distill and present them to a judge. This is what our firm's system is built to do, and this is why we only take divorce and child custody cases. We want to focus on one type of law so our system is finely tuned to maximize our client's chance for success.

Agreements

Usually, parent-time is decided between the parents. What I mean is we get together in mediation or other negotiations and work out parent-time. Sometimes, this is an easy process because everyone's on the same page. Sometimes, it's a bit more difficult because there's a dispute about what parent-time is best for the children.

Even when there's a dispute, we can usually work through differences and come up with a parent-time plan both parents can live with. People instinctively know long drawn-out legal battles aren't great for kids.

Doing What's Right

What parent-time really comes down to is what's best for children. Sometimes, parents get so caught up in what they want, that they don't really think through what's best for their kids.

We try to work collaboratively with our clients to determine what's in their children's best interests and work toward that goal. If that means the other parent gets minimum time, then

that's the goal we work toward. If, after talking with our clients, we agree 50/50 is best for the kids, then that's what we strive for.

Since there is no one-size-fits-all when it comes to parent-time, we work with our clients to do what's right for their kids in their particular situation.

How Does Summer Parent-Time Work?

How does summertime work?

This is one of the questions people ask most often. Thankfully, the answer is pretty straightforward.

Standard Summer Parent-Time Schedule

The standard summer parent-time schedule keeps the same schedule you usually follow, and then allows each parent a two-week uninterrupted period for vacation.

So, if you share a 50/50 schedule, you would keep that schedule. However, each parent would have the opportunity to have two weeks for vacation.

(Note: you usually designate vacation times about **thirty days** before school ends. That way everyone can plan their summer.)

Little Less Standard Summer Parent-Time Schedule

If one parent has minimum parent-time (i.e., every other weekend and one evening a week), then summer is slightly different than what I laid out above.

For the most part, you keep the same every-other-weekend schedule, but the non-custodial parent (i.e., the one with the least amount of parent-time) has **(1)** a two-week uninterrupted period for vacation, and **(2)** another two-week period in which the custodial parent only has parent-time one evening per week.

(2) is tricky, so let me flesh it out a little. During this period, the noncustodial parent would have parent-time. The custodial parent would be able to see the child twice during this period (one evening per week, usually from 5 p.m. to 8 p.m.), but no more. No weekend visits for the custodial parent, just one weekly evening visit.

Week-on-Week-off Summer Parent-Time Schedule

A schedule that's becoming more popular is the week-on-week-off summer schedule.

The premise is no matter what parent-time schedule you have during the school year, you switch to a week-on-week-off schedule during summer.

This works because, schedules are pretty important during school to ensure things are done, but summer just isn't that way. And, let's face it, kids usually don't notice where they are during the summer anyway.

You can include a two-week vacation period in this schedule if you want, but many times parents don't because a week is long enough for their family vacations.

How Do We Exchange our Kids When Visitation Changes?

There are moments in divorce that are danger zones. Parent-time exchanges (i.e., when your kids go back and forth between you and your soon-to-be ex for visitation) are one such danger zone.

Unless you're really careful, things can get heated during exchanges. Tempers flare and not-so-nice words are often exchanged, and all of this happens in front of the kids.

It doesn't have to be this way.

We often counsel clients to do **curb-side pickups**. In essence, one parent drives to the other parent's home and parks near the curb. The kids leave the home with their stuff and walk to the car. The other parent doesn't walk with them; they walk alone from the house to the car. It's that simple.

By doing this, you cut down on tension. There are no more awkward confrontations at the car and no more yelling.

Of course, if you don't have problems with exchanges, **then you can simply walk the kids to the car, or to the other person's front door, during exchanges**. This is really the situation you want to have because it's best for your children.

If there are serious safety concerns, then you can exchange the children at a designated place that is not your home. We sometimes use **gas stations** as the exchange point because they have video cameras. If there's every any question what happened, we can simply ask them for the security footage and see.

Some people want to do parent-time exchanges at the **police station**. I don't recommend this unless it's a very extreme case. The reason is kids know somethings wrong when they go to the police, and it causes them anxiety every time. If you can avoid this scenario, please do.

How Do We Split Travel Costs for Parent-Time?

When we're negotiating parent-time in divorces, this question always comes up: who pays for travel for parent-time?

It's a good question because travel can, depending on the situation, be expensive.

Here are a few **rules of thumb** regarding travel costs:

1. **If you live more than 150 miles apart when you divorce, then you will split travel costs 50/50**.

Usually, however, if you live this far apart, you are only exchanging the kids for parent-time about three times per year, so travel costs are limited by that number.

2. **If you live near each other, then one parent moves more than 150 miles away, the parent who moves will pay 100% of travel costs, except summer, which is split 50/50**.

So, if you figure you exchange the kids three times during the year for parent-time, the parent who moves will pay 83% of total travel costs.

3. **If you live near each other and share regular parent-time, then the person picking up the kids for parent-time will provide travel**.

Really, this means parents split the cost of travel 50/50. But, travel isn't expensive in these situations because parents live so close.

There are nuances to these rules of thumb. For example, if you live in Salt Lake and your ex lives in Provo, you might well pick a halfway point (Bluffdale or Lehi maybe) and exchange the children there.

When Can Kids Say where They Want to Live?

Child custody is the hardest part about almost any divorce.

Parents, both sincerely believing they are doing what's best for their kids, sometimes fight about where kids live and how much time they spend with the other parent.

And when parents fight, they sometimes try to win by involving their kids. They ask their kids where they want to live; and, when kids tell a parent what that parent wants to hear (that's what 99% of kids do), the parent uses that as ammunition in the custody battle.

You see the problem with this scenario, right? Please, tell me you see the problem.

It's unfair for parents to use their kids this way and make them choose between parents. Involving children in their parents' fight in such a direct way ends up harming kids.

Please, don't do this to your kids. Let them be kids.

But What about Kids Who Really Know Where They Want to Live?

There are situations in which kids' opinions need to be heard. This is especially true when kids are a bit older and more well-reasoned about things.

In these types of situations, a judge will often appoint a "guardian ad litem" (GAL) to talk with the children and conduct an independent investigation about what's going on. If the kids are mature enough, the GAL will ask them what their preferences are and then relay those preferences to the judge.

A GAL is much more than an information conveyor, though. A GAL will also tell the judge what he or she believes is in the kids' best interests. That might be the same as the kids' preferences, and it might not be. A lot of it depends on how thought out the kids' preferences are.

Specific Utah Law about at what Age Judge's Should Consider Children's Preferences

There is specific language in Utah law regarding when a court will give added weight to a child's preference about where to live and what type of time to spend with each parent.

The language is found in Utah Code 30-3-10(1)(e):

> The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the
>
> expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. **The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor**.

So, there is a line at fourteen where a judge will give a kid's opinion added weight, but it will never be the single controlling factor in the judge's decision.

Of course, all this assumes the judge even considers a child's preference. Like it says in the law, the judge doesn't have to ("[t]he court ***may*** inquire").

And, many times, the judge, even after being told a child's preference, will specifically say that preference had nothing to do with the ultimate decision. (Candidly, judges will often do this to ensure there is no retaliation against kids for "taking sides" in the divorce.)

What Does All This Mean?

What all this means is your kids' preferences may not play a big role in determining the outcome of child custody.

Other considerations may, and probably will, play a much bigger role.

This said, a child's preference can be an important factor in some cases. How to address those preferences is something you'll really need to talk through with your attorney.

Why Joint Legal Custody in Utah Divorce Cases?

People fight about two things in divorce: kids and money.

People spend more money fighting about kids than they spend money fighting about money.

The most contentious part about the fight over kids is figuring out physical and legal custody. Physical custody is where kids physically spend their time, and specifically where they spend their overnights. Physical custody is often called visitation or parent-time. The other aspect of custody is legal custody. Legal custody relates to who gets to make big life decisions for kids. It's legal custody I want to talk about for a minute.

The first thing to understand about legal custody is it only applies to certain big aspects of kids' lives — decisions regarding religion, schooling, medicine and healthcare, and extracurricular activities. So, if one parent were to have sole legal custody, that doesn't mean that parent gets to make every decision imaginable and cut out the other parent. That's not how parenting works, even among divorced parents. Divorced parents are still parents, and they have to work together for the good of their children.

In Utah joint legal custody is the norm, and there's good reason for this. Human minds work better as a team, and we usually come up with better ideas when we work in conjunction with others. Even parents who don't like each other will almost always come together, discuss what's best, and do what's right for their kids. Because this is the reality of most Utah divorces and break-up situations, joint legal custody makes a lot of sense and is best for kids.

A prime example of this is braces. Braces are usually not medically necessary. Despite this, almost every divorced couple I know talks to each other cordially and comes up with a plan to get Junior his braces when the time comes. They talk about the who, the when, the cost, and they do it for the good of their child.

As with anything in divorce and child custody cases, there will be bumps in the road. Parents won't always agree about everything. **This is why, even when you share joint legal custody, one parent is usually awarded final decision-making authority**. This means parents still discuss all major decisions, and talk through any disagreements, but when there is a serious disagreement that cannot be solved

through discussion (and many times mediation), then one parent is able to make the final decision.

Judges will almost always designate a final decision-maker simply because judges do not want parents coming before them whenever a disagreement arises.

If one parent really feels the other parent's decision hurts the kids, then there is always the option to take the matter to court to have it reviewed. In our office we have seen thousands of cases, and maybe a handful (three to five) have gone back before a judge to address legal custody issues. It just doesn't happen that often. (When it does, it's usually a situation in which one parent wishes to change schools and the other parent disagrees with the change.)

So, again, joint legal custody is the norm in Utah. It requires parents to discuss major life decisions and work with each other for the good of their kids. Even though it may be hard, this process usually creates the best results for families, even divorced families.

What Is the Right of First Refusal and How Does it Work?

The right of first refusal (sometimes called the "first right of refusal") is a long name for a pretty simple concept, namely: **parental care is better than non-parental care**.

Really, the right of first refusal means that if a parent cannot watch a child for more than a certain period of time, then the parent must offer care to the other parent.

So, say the right of first refusal period is four hours and you'll be at work for eight hours when you have your child, you would need to tell your ex and give him or her the opportunity to provide care of your child while you're at work. Simple concept, but in reality it's a bit more complicated. Let's go over a few of the most common issues surrounding the right of first refusal.

Time period: You need to have a well-defined time period. A pretty standard time is three or four hours. Personally, we think this is way too short a period. Three hours means you have to contact the other parent every time you go to dinner or to a movie without your child. It's just unrealistic. And it creates all sorts of conflict because people don't offer time when they should, then the other parent finds out and gets upset, and then retaliates and refuses to tell the other parent when they're gone. It's a vicious cycle.

Transportation: Who provides travel for the right of first refusal? The parent who wants to exercise parent-time needs to provide transportation. This means if your ex calls and says she'll be at work and you want to exercise parent-time, you will have to go pick up your child, then drop him or her off when your ex gets back from work. (This might be different if you specifically lay out all transportation in your divorce decree, but that usually isn't the case.)

Step-parents: The right of first refusal refers to "parental care" and "surrogate care." Parental care is presumed to be better than surrogate care (i.e., care by anyone that isn't a parent), which is why you have to offer care to the other parent if you, as a parent, cannot provide it. **This always brings up the question: can a step-parent provide parental care? Some judges differ on this, but the general answer is no**. This means when you draft a right of first refusal clause, you need to specifically include step-parents as parental care.

(Sometimes people want their new boyfriend/girlfriend to be considered parental care. That's stretching things a bit too much. Boyfriends and girlfriends almost never last very long, so they shouldn't be considered parental care.)

Honestly, **we don't usually include the right of first refusal in divorces because it creates more problems than it solves**. Most people don't honor the right of first refusal if it's only a few hours, which creates serious contention over time. In fact, the only time we really include these clauses is when there are concerns for the safety of our client's child.

And, usually, when we do include the right of first of refusal, we make it a longer period (e.g., eight hours or overnight). We have found when the period is longer, people honor it more and it creates less contention.

How Do We Share Medical Costs for our Kids?

When you're married, you share costs. It's what you do. You need food; the money comes from both spouses. Your car breaks down; you both pay for it. Your kid gets sick; you both contribute money to pay for doctors and medicine.

And then you divorce, and everything changes.

Suddenly, no one wants to pay for anything. Child support is like pulling teeth. Alimony, well, no one wants to pay alimony.

But while no one wants to pay, kids still get sick and need medical care. So, how do divorced couples share medical costs for their kids?

Utah Law Regarding Sharing Medical Costs for Children

Let's see what Utah law has to say. First, the law lays out a few things that have to go in divorce decrees:

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non IV-D Cases.

UTAH CODE § 78B-12-111.

So, you have to assign responsibility to pay for medical expenses, and you must purchase medical insurance for your kids (provided the cost isn't prohibitively expensive).

Now that we understand what must be included in a divorce decree or paternity order, the law also tells us how medical costs should be shared:

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance unless the court finds good cause to order otherwise.

. . . .

(6) The order shall, in accordance with Subsection 30-3-5(1)(b), include a cash medical support provision that requires each parent to equally share all reasonable and necessary uninsured and unreimbursed medical and dental expenses incurred for the dependent children, including but not limited to deductibles and copayments unless the court finds good cause to order otherwise.

UTAH CODE § 78B-12-212.

So, the law mandates parents will share equally medical costs for children.

How Medical Costs Are Split in Real Life Utah Divorce and Child Custody Cases.

We talked about the law, but how does all this work out in most Utah divorce and paternity cases?

You end up sharing equally medical costs for your kids — almost always.

There are some select situations in which one person makes so much more than the other that one person pays 100%. This really only happens in negotiation though; I have never seen a judge order someone to pay 100% of medical costs on a permanent basis.

What if We Both Have Medical Insurance for our Kids?

Ah, medical insurance. If your anything like me and my family, you put off purchasing health insurance as long as possible. (We don't use medical services ever, really, so our dollars were better spent elsewhere.)

You're probably not like me and my family, though, which means you have health insurance. And, if you get divorced in Utah, you have to have it for your kids.

How this breaks down normally is one parent provides the medical insurance, and the other parent reimburses half of the insurance premium costs and reasonable out-of-pocket medical expenses (e.g., copays, medications, etc.).

The Skinny on Double Insurance

But what if things aren't normal? **What if both parents have medical insurance for their kids?**

This issue of double insurance isn't addressed in Utah law, nor is it ever addressed in Utah divorce decrees. So, there's not a lot of guidance on the subject.

Our experience has been that when double coverage exists, neither parent reimburses the other for the child's share of the medical monthly premium. **In other words, each parent pays their own medical insurance premium**.

This makes a lot of sense. Reimbursing each other for half of the child's portion of each medical insurance premium would be overly complicated. And since most insurances are about the same price, there isn't much difference in price between reimbursing and everyone paying their own.

(Note: the only time I haven't seen parents pay their own is when one plan is significantly, and I stress *significantly*, more expensive than the other. This has only happened maybe two or three times in my career, however.)

But What About Out-of-Pocket Costs?

When there's double coverage, out-of-pocket costs are treated the same way as when there is single coverage: **each parent shares the cost equally**. (This is assuming, of course, the divorce decree says you share costs equally, which 99% of them do.)

Where double coverage gets a little tricky is when the two insurances fight with each other about who's going to pay for the child's medical procedure. These inter-insurance squabbles can go on for a while, but they always seem to get worked out.

In any case, when things do get worked out and final payment is due, whatever that may be, parents share the out-of-pocket costs.

Designating a Primary Insurance Provider

Because of the squabbles mentioned above, it's important to designate a primary insurance provider for your kid(s). This alleviates a lot of headaches and saves time.

My advice for choosing a primary insurance is to sit down and compare plans. The best plan (a combination of best coverage and lowest out-of-pocket cost) should be designated as the primary insurance.

Last piece of advice: if there is ever a situation in which the secondary plan would be better, make sure the medical provider runs things through the primary insurance plan first, then runs it through the secondary plan. You may have to call and remind them to do this.

How Do We Share Child-Care Costs?

One of the great things about marriage (among many) is you always have a built-in babysitter. Whether it's mom staying home with the kids, or dad caring for the kids while mom is at work, you adjust schedules so you don't incur child-care costs.

And then you divorce, and everything changes.

Sometimes, you can still make schedules work so you don't pay for babysitters, but this is exponentially harder than during your marriage. In Utah divorces, almost invariably, there is not enough money to go around, so both parents have to work. And when both parents work, people pay for child care.

Recognizing this fact about Utah divorce, how do you address child-care costs?

Utah Law Regarding What Child-Care Costs to Include in Divorce Decrees and Paternity Orders

Here's what Utah law has to say about what child-care costs should be included in divorce decrees:

Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended parent-time, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

(3) The court may impute a monthly obligation for child care costs when it imputes income to a parent who is providing child care for the minor child of both parties so that the parties are not incurring child care costs for the child. Any monthly obligation imputed under this section shall be applied towards any actual child care costs incurred within the same month for the child.

Utah Code § 78B-12-215.

So, the law really breaks child-care expenses into two categories.

1. **Child-care necessitated by work**.

If work requires child-care costs, then it is presumed those costs will be included in a divorce decree.

2. **Child-care necessitated by career or occupational training of the custodial parent**.

This really refers to schooling (e.g., college) or other occupational training. While including these costs is not required, they are almost always ordered by a judge or included in a negotiated settlement.

Utah Law Regarding Sharing Child-Care Costs.

Now that we've established what category of costs will be included in divorce and paternity, let's see what Utah law has to say about how parents share those costs:

Child care expenses

(1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2)

(a) If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b)

(i) In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii) In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

(3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with Subsection (2)(b).

UTAH CODE § 78B-12-214.

So, the law mandates parents equally share work-related child-care costs.

You can always bargain around a 50/50 split, but if you go to trial, you can count on a judge ordering 50/50.

Notice the laws talk about "actually incurring child care costs" and "actual expenses incurred." **This refers to out-of-pocket costs. You only have to share and reimburse monies actually paid for child-care services**.

So, if your ex-mother-in-law watches the kids every day, you don't have to reimburse her for that.

(Now, if your ex-mother-in-law ran a legitimate daycare and she was watching your kids as part of that, and you ex is paying for those services, then you may have to pay. Honestly, though, what I just described is way less than 1% of cases.)

How Child-Care Costs Are Split in Real Life Utah Divorce Cases

We talked about the law, but how does all this work out in most Utah divorce and paternity cases?

You end up sharing equally work-related and school-related child-care costs — almost always.

There are some select situations in which one person makes so much more than the other that one person pays 100%. This really only happens in negotiation though; I have never seen a judge order someone to pay 100% of child-care costs on a permanent basis.

How Do We Handle Tax Exemptions for our Kids when We Divorce?

Everyone knows when you have kids and you divorce in Utah, someone's going to pay child support. What everyone doesn't know, however, is what that means for their tax exemptions and deductions.

Someone has to be awarded tax exemptions for dependent children, so the question becomes how you award the exemptions. Here is what Utah law has to say about this:

Award of tax exemption for dependent children.

(1) No presumption exists as to which parent should be awarded the right to claim a child or children as exemptions for federal and state income tax purposes. Unless the parties otherwise stipulate in writing, the court or administrative agency shall award in any final order the exemption on a case-by-case basis.

(2) In awarding the exemption, the court or administrative agency shall consider:
(a) as the primary factor, the relative contribution of each parent to the cost of raising the child; and

(b) among other factors, the relative tax benefit to each parent.

(3) Notwithstanding Subsection (2), the court or administrative agency may not award any exemption to the noncustodial parent if that parent is not current in his child support obligation, in which case the court or administrative agency may award an exemption to the custodial parent.

(4) An exemption may not be awarded to a parent unless the award will result in a tax benefit to that parent.

Utah Code § 78B-12-217.

So, the statute says everything must be decided on a case-by-case basis, unless a parent is not current on child support or the tax exemption will not result in a tax benefit to a parent.

With so much discretion provided by the statute, here's how tax exemptions work out in real life.

If a parent pays child support, that parent will be able to claim his or her kids on taxes every other year. **It's really that simple**. **That's what Utah judges order at trial, and it's what almost every couple agrees to in mediation**.

Now, there are exceptions to this (there are exceptions to everything), but if someone pays child support, and that someone is current on child support, that someone can expect to claim the kids every other year.

(Note: the law only talks about "exemptions." It does not address deductions and credits. I'm not sure why this is — I think it's an oversight by the Legislature — but it is. When we write agreements, we always include deductions and exemptions with exemptions. That way there is no confusion or game playing when it comes to taxes. Although, all of this talk about deductions will become moot since the new 2017 tax bill essentially removes individual deductions for kids, while leaving exemptions.)

Is Child Support Taxable Income?

There are a couple main questions people ask about child support and taxes:

1. Is child support deductible? (You ask this if you **pay** child support.)

2. Is child support considered income and taxed? (You ask this if you **receive** child support.)

Thankfully, the answers are straightforward: **no and no**.

Here's a slightly expanded explanation straight from the IRS:

"**Question**: Are child support payments considered taxable income?

Answer: No, child support payments are neither deductible by the payer nor taxable to the payee. When you calculate your gross income to see if you are required to file a tax return, do not include child support payments received."

What Happens if One of Us Wants to Move?

Life is not static. Stuff happens, things change, and, sometimes, people move. And, as if life weren't complicated enough, divorce really messes up moving plans.

Honestly, moving is one of the most difficult issues to deal with in divorce. Well, let me take that back, it's difficult if you have kids (if you don't have kids, by all means move away). Here are a few reasons for the difficulty.

Moving Creates a Win-Lose, instead of a Win-Win, Dynamic

In our office, about 80% of divorces are successfully negotiated during the first mediation. This is because we use good mediators, prepare well, and negotiate creatively to find solutions. It is also because mediation is about compromising and finding win-win opportunities for both parents. (In other words, you don't get exactly what you want, but you get a good part of what you want (a win) and your spouse gets a good part of what he or she wants (a win).)

When one parent wants to move with the kids, this creates a win-lose dynamic. It's almost impossible for a parent to see how living far away from children is a win.

Many times, if people don't feel like they can create a win-win situation, they lash out and fight, and fight hard. And this leads us to my next point.

Moving Creates Intense Battles Between Parents

You want to see an acrimonious divorce? Try to move and take children away from a parent.

Nothing invokes more fear and anger in a parent than taking kids away. Many see it as the ultimate betrayal and will do anything to keep it from happening.

(Note: this isn't to say one parent won't be able to move. There are situations that absolutely warrant moving. Even in those situations, however, you have to expect a fight.)

It's Very Difficult to Move During a Divorce

Unless both parties fully agree, it's very difficult to move during a divorce.

In our experience, **commissioners and judges will almost never allow a move during a case**, even if the reason for moving is really compelling. They want parents and children to stay in the same place until the divorce is finished and it's decided how parent-time will be shared.

So, Will I Be Able to Move after the Divorce?

Being able to move after a divorce really depends on what happens during the divorce. **The general rule of thumb is this: the more parent-time you are awarded in your divorce, the more likely you will be able to move**.

So, if you have primary physical custody, and your spouse has minimum parent-time, then it is quite likely you'll be able to move. If, however, you share 50/50 parent-time, then you'll be able to move, but the kids will stay.

How Do We Split Up the Money in our Bank Accounts?

When you divorce in Utah, you have to extricate your entire lives. This means you have to split everything you have in some form: kids, money, cars, toys, homes, etc., etc., etc.

One of the most common things divorcing couples have to split is bank accounts. And splitting bank accounts is tricky because it happens at the very beginning of the divorce process. In fact, it almost always happens long before people file for divorce in Utah.

The reason for this is people usually split the account when they separate. They don't wait to finalize their divorce to take money out of the accounts.

So, this leads us to the question: **how do we split up the money in our bank accounts**?

The answer is pretty straightforward: **you divide it equally**.

I have never had a judge get mad at my client for taking 50% of the money in a bank account when they separated from their spouse. Now, I have had a judge very upset when the other side took 95% of the bank account. That sort of behavior will get you judge-slapped (as it were) every time.

So, if you're going to leave your spouse, take 50% of the joint accounts and put them in a separate account. Separate as in your spouse's name is not on the account and he or she cannot access it. And don't feel bad about doing this; it has to happen at some point anyway.

But what if my spouse and I kept separate accounts in our marriage?

Sometimes people are married but have their own accounts and do not mix monies.

In situations like this, the money will still — almost certainly — be considered marital funds subject to 50/50 division. Just because marital money is in separate accounts does not mean it isn't marital money.

What Happens to Assets and Debts in Divorce?

People fight about two things in divorce: kids and money.

People fight over these things because they're ultra-important. Nothing is more important than ensuring children are taken care of in a healthy, nurturing environment where they can grow up and be successful.

And to create such an environment, you need money. You need money for a good home, money for healthy food, money for education, and on. So, money and kids are intertwined. You can't deal with one and not the other.

Equitable Division of the Assets and Debts

Utah is an equitable division of the assets and debts state. Equitable means fair. Fair has been interpreted by the Utah courts to mean equal, unless there is a good reason it shouldn't mean equal.

So, the **general rule is all debts and assets will be split evenly between husband and wife**.

For example, if a couple owns a home, sells it as part of the divorce, and pockets a total of $100,000 in equity (after paying realtor fees, etc.), they will each receive $50,000.

Likewise, if a couple has $20,000 in credit card debt, they generally will each have to pay $10,000. (For the most part, it doesn't matter who actually purchased stuff with the card, just that it was bought when you were together during the marriage.)

Post-Separation Debts and Assets

So, what happens if people have been separated for a while and they incur debt or accumulate assets?

If someone incurs debt, that debt will usually be theirs 100%. The logic is you can't separate from a spouse, run up massive debt on your stuff, then make your spouse pay for it. (A common exception to this is if the debt was incurred to maintain marital property, like the home, or to pay for children's necessities.)

Now, if marital property increases in value after separation, both parties will usually share that increase equally. For example, if the marital home goes up in value after separation but before you sell it, everyone will get their equal share of that increase.

And what if you win the lottery or get a huge raise at work after you separate? Honestly, that will depend on a lot of factors, like the total time of separation. In fact, there are way too many factors to list here. If you have a situation like this, let's talk about it.

What Do We Do About Our Home?

If you own a home and are divorcing, there are two primary ways to handle the situation:

1. **Sell the home**.

This is the most common approach because there is almost never enough money to keep the home after divorce. You have to remember that after divorce, there will be two households, two residences, two sets of utilities, two sets of everything. Most marriages can barely handle the bills needed to pay for one household, so two is usually impossible.

If you sell the home, you will most likely evenly split the positive equity remaining after the sale. So, if you make $50,000 after paying the realty, title company, etc., each person would keep $25,000.

(Note: home equity doesn't have to be split equally, but it usually is. There are many situations, however, in which home equity is used as an offset against something else — for example, retirement investments — and split unevenly.)

2. **Someone keeps the home and refinances it**.

Sometimes, one person has the means to refinance the home and stay in it. While this is definitely the vast minority of cases (again, there usually just isn't enough money to go around), it is a great option for those who can.

One of the great advantages of refinancing and staying in the home is children don't feel so displaced after divorce. They have the constancy of staying in their home at least part of the time.

One of the primary difficulties with refinancing is equity. The other spouse is still entitled to his or her share of the home's equity, even though the home wasn't sold. So, the person keeping the home has to cash out that equity and pay the other person. Honestly, this is really difficult to do since almost no one has and extra $25,000, $50,000, or $75,000 laying around.

What happens most often is the person refinancing takes out a second mortgages equivalent to the amount necessary to pay the other person's share of the equity. Thus, the other person gets his or her share. The real problem with this approach

is the person keeping the house has to take out a thirty-year mortgage on that money.

From a financial perspective, taking out a second mortgage is a horrible decision, which is why we counsel our clients not to do it. If you don't have the means to outright pay your spouse's share of the equity, sell the home.

Other Options

The two options above represent what happens in about 95% of divorces, but there are other options, like:

1. Sometimes there is enough money in retirement assets to offset someone's share in equity. In essence, you're trading money you would get from the sale of the home for money contained in a 401(k) or pension. Depending on your situation, this might be a good deal.

2. Allowing one person to refinance the home, and the other person takes a lien against the home for his or her share of the equity. When the home is sold, equity would be paid out. Honestly, this option is terrible for the person taking the lien (it could be years or decades before the home is sold), so it almost never happens.

Should I Move out of the Marital Home Before Filing for Divorce?

Remember Rudy Giuliani, the mayor of New York during 9/11? Rudy went through a nasty divorce. During his divorce, he ended up living on the first floor of his home (with his mistress no less), while his wife lived on the second.

No one wants to pull a Rudy Giuliani during their divorce.

It's weird to live in the same home when you know you're splitting up. And by weird I mean totally uncomfortable. You avoid each other at all costs. You set up little fiefdoms in the house and try to keep your spouse from invading your space. Like I said, uncomfortable.

Because of this, people always ask: should I move out of the house before we file for divorce?

Our answer is almost always "no," and here's why:

1. **You set a precedent that makes it difficult to ask to live in the home when you get to temporary orders**. If you move out and let your spouse live in the home for a while, then ask to move back in, you'll have a tough time convincing a judge to let that happen. It's much easier to ask to stay in the home if you've lived there the entire time.

2. **Depending on the situation, you may end up paying the mortgage for your spouse without getting any benefit**. Many times, the primary bread winner will move out of the house and will continue to pay the mortgage. Problem is the person who moved out doesn't get any benefit from paying the mortgage, which usually means that person has to live in a tiny apartment (or rent a single room), while the spouse gets the home.

3. **If you have kids, the person staying in the home usually keeps the kids**. This means the person leaving the home would have a difficult time asking for primary custody. (If you let your spouse exercise primary custody for a time, and then you ask for it, it's automatically an uphill battle.)

So, unless there is a domestic violence situation, or you simply cannot deal emotionally with being in the home with your soon-to-be ex, our advice is to stick it out until temporary orders. Your commissioner will almost always let one person

live in the home and order the other person to move out. This is especially true if you have kids.

How Do Utah Divorce Courts Calculate Alimony?

One of the most common questions asked during initial consultations is: "What about alimony? How does that work?" It's a good question. Let's talk about it for a minute.

Determining alimony is really a function of two things: time and need.

If you haven't been married long, you really haven't gotten used to a married lifestyle, so a court is unlikely to award alimony. For instance, if a couple has been married for two years, and both worked before the marriage, then alimony is unlikely. This is because each spouse can easily go back to his or her single life. The length of the marriage is so short it hasn't really changed much for either spouse.

Our rule of thumb is: if your marriage is less than four years, it will be very difficult to obtain alimony. Four or five years, it really depends on the circumstances. More than five years, it's much more likely to end up with an alimony award.

Also, **alimony can really only last for the length of the marriage**. In other words, if you were married for six years, the longest you could expect to pay or receive alimony is six years. So, that's time, now need.

A spouse must show need in order to receive an alimony award. Here's how Utah courts normally calculate need.

First, you look at the spouse who makes the least amount of money and determine what his or her income is (income is really any money coming in from any source) and what the reasonable monthly expenditures are (e.g., debts, mortgage, daycare, food, etc.). If that spouse runs in the red (i.e., more goes out than comes in), then there is a need for alimony.

Second, you do the same calculation for the spouse who makes more money and you see if that spouse has more money coming in than going out. If so, then that spouse has the ability to pay alimony. If one spouse has a need, and the other spouse has the ability to pay, then an alimony award is likely.

Here is an **example** illustrating how alimony might work. Alice and Tom have been married for seven years. They have one child, Matthew. Alice works and makes $15 per hour. Tom works and makes $25 per hour. When you look at Alice's net monthly income, it's about $2100 per month. Her reasonable monthly expenses are

calculated to be $3100 per month. (I'm making up numbers here for the sake of the example.) Tom nets about $3600 per month from his job. His reasonable monthly expenses will be about where Alice's are, $3100 per month. This means Alice has a need of $1000 per month, and Tom has the ability to pay of $500 per month. So, Alice would be awarded $500 in alimony for up to seven years.

(Note: Very often there is simply not enough money to go around in divorce, so alimony awards are often capped by a spouse's ability to pay, even if need is greater than the ability to pay.)

What I've described above are some rules of thumb and the most common method of calculating alimony. Alimony can be complicated and is really pretty fact dependent, so use what I've written as a general guide. If you want hard, realistic alimony projections, you'll need to get down the nitty-gritty numbers.

Does Adultery Affect Alimony?

Alimony is a tricky subject in Utah divorces. Usually, determining alimony is a function of two things: time and need. The longer the marriage, the more likely a court will award alimony and the longer alimony will last. The more need the less-well-off spouse has, the larger the average alimony award.

In some cases, there is another factor that comes in to play: **adultery**. Adultery is a possible factor because of Utah Code, Section 30-3-5(8)(b)–(c)(1), which says:

(b) The court may consider the fault of the parties in determining whether to award alimony and the terms thereof.

(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

(i) engaging in sexual relations with a person other than the party's spouse.

But, just because the law says adultery is a possible consideration in awarding alimony ("the court may consider"), it doesn't mean the court *will* consider adultery. In fact, it usually doesn't. The reason is because alimony is a monetary award, and how does one quantify adultery? $10,000 per incident? $50,000 per affair? Quantifying adultery is like trying to figure out if a rock is heavier than a line is long. It's an impossible task.

We've talked with many Utah judges about adultery and alimony, and pretty much all of them have said the same thing: they will only consider adultery as part of an alimony award if you can actually quantify the effect of adultery. But how do you do that? Well, it's not particularly easy. Let's run through a couple scenarios.

Imagine if you will that your spouse cheated on you, and when you found out about the affair, you had a nervous breakdown, and this caused you to lose your job. In this scenario, you could actually quantify the effect of your spouse's adultery because you could show how much you lost in wages, how much you spent in therapy, etc.

Another scenario (this one shared by a commissioner) is your spouse cheats, contracts an STD, and passes that STD on to you. You could quantify the effects by

showing doctor bills and estimates from doctors regarding how much that STD will cost over your lifetime.

Now, admittedly, these types of situations don't arise very often. And because quantifying the effects of adultery is so hard and so rare, in reality, adultery isn't a factor in alimony awards. This seems unfair, especially when one spouse has been completely faithful. It seems unfair because it is; but, unfortunately, the law isn't always designed to right every wrong. For the most part, courts believe the real remedy for adultery is divorce, not money.

So, while adultery may be a factor in alimony, it almost never is. **Time is much more effectively spent determining a spouse's every dollar of need**. **That is what will maximize alimony**.

(Note: because of some recent Utah cases, I've started to think adultery will play a bigger role in determining alimony. You can read more about that here.)

Can Alimony Affect my Ability to Buy a Home after Divorce?

People fight about two things in divorce: kids and money.

Dividing assets and debts is usually a pretty straightforward process. (You can read about the basics here and here.) So, you usually don't fight about that a ton.

Child support is also pretty straightforward and unobjectionable. I mean, honestly, who fights against paying to help their kids? (You can read more about how child support is calculated here and here.)

Same goes for child-care costs and sharing insurance and out-of-pocket medical expenses for your kids. They just aren't that controversial, so people tend not to fight about them much.

And then there's **alimony**.

This is where it can get contentious.

No one likes to pay alimony. Men don't like to pay it because they feel like they're paying their ex-wife for the privilege of being their ex-wife. And, if men don't like to pay alimony, women like to pay it even less. (Women paying men alimony is pretty rare, by the way.)

The reality is, though, that alimony is a regular part of divorce. What I mean is it's pretty common that one party pays another party alimony for a while. (For a primer on alimony calculations, read here.)

Alimony and Mortgages

Because alimony is a regular part of Utah divorces, and because people usually buy homes after divorce (you should wait a little while before buying a home), we get asked pretty often **if and how alimony affects buying a home**.

There are two angles to this question.

First angle is from the point of view of the person **paying** alimony.

If you pay alimony, you almost always pay it every month for a period of time (e.g., every month for five years). This means you have a monthly debt obligation that must be paid before paying a mortgage. **This increases your debt load when you**

apply for a mortgage, which means you'll qualify for a lower loan amount or a higher interest rate.

You can still qualify for a mortgage if you pay alimony, but it will be at a decreased amount or higher cost.

Second angle is from the point of view of the person **receiving** alimony.

If you receive alimony, that monthly amount will be counted as income when you go apply for a mortgage loan. (It's also considered income for tax purposes.) **This means your alimony will help you qualify for a higher loan amount or lower interest rate**.

Ultimately, how alimony affects particular mortgage loan amounts and interest rates is dependent on the company you choose to finance your mortgage. Shop around.

Will my Insurance End if I Get Divorced?

Couples deal with a lot of stuff in divorce. They deal with kids and alimony and child support and the house and the cars and the retirement accounts and on and on and on.

One thing that people sometimes overlook in Utah divorces is insurance. Specifically, whether their insurance will end and they won't be covered when the divorce is finalized.

The sad reality is insurance *will* end. So, if you are on your spouse's insurance and you divorce, you will no longer be insured.

Conversely, if your spouse is on your insurance, and you divorce, your now ex-spouse's insurance will end.

Even if you have a clause in your divorce decree stating insurance will continue, insurance will end. **Insurance companies are not bound by what you put in the decree, and they drop ex-spouses like a hot rock the day divorces are finalized**.

Kids and Insurance

This rule does not apply to children. **Kids' insurance coverage will continue because you and your ex still have legal full legal obligations to them**.

Workarounds

Just because insurance coverage is one of those bright-line rules in Utah divorce doesn't mean there are some possible workarounds.

The most common workaround is alimony. If you have to provide your own insurance, that will be a monthly cost included in your alimony calculation. So, if you have to pay $300 per month for your personal insurance, you add that to your monthly expenses when calculating alimony.

Another possibility is negotiating something that obligates your ex to maintain a separate insurance policy for you. Really, this is alimony with another name, so we usually just do alimony. (And, besides, who wants their ex in charge of their health insurance?)

A last, worst possibility is Medicaid. Sometimes, this option is inevitable. When you divorce and there simply isn't enough money to go around, Medicaid becomes a viable option.

Alimony is designed specifically to avoid situations like this, however. This means you should do everything possible to provide for health insurance in any alimony settlement.

Am I Responsible for My Spouse's Medical Bills when We Divorce?

Utah is what's called an "equitable division of the debts" state.

Equitable means fair, and Utah courts have interpreted fair to mean 50/50, unless there are circumstances that necessitate something different.

One of the **most common debts** couples have to divide in divorce is **medical bills**. Medical insurance is expensive, and medical bills, even if you have insurance, can break the bank. Because this type of debt is so common, we often have people ask us something like this: Is medical debt incurred for one spouse a marital debt that will be split in divorce?

To answer this question, we first have to see what Utah law says about marital debt. Utah Code, Section 30-2-9 reads:

(1) The expenses of the family and the education of the children are chargeable upon the property of both spouses or of either of them separately, for which expenses they may be sued jointly or separately.

.. . . .

(4) For the purposes of this section, family expenses are considered expenses incurred that benefit and promote the family unit. Items purchased pursuant to a written contract or agreement during the marriage that do not relate to family expenses are not covered by this section.

So, family expenses are joint (i.e., 50/50) expenses, and family expenses are those incurred to "benefit and promote the family unit." It's hard to imagine how most medical treatment wouldn't fall under benefitting and promoting the family.

The Utah Supreme Court has talked about this very question, and has said: "It is well established that the costs of . . . medical services . . . are family expenses for which both spouses are liable." *Outsource Receivables Mgmt. v. Bishop*, 2015 UT App 41, ¶ 4, 344 P.3d 1167, (quoting *N.A.R., Inc. v. Elmer*, 2006 UT App 293, ¶ 4 n.2, 141 P.3d 606).

So, yes, without much doubt, medical expenses are marital debt.

Now, in the law there are exceptions to every rule, and here it is no different.

Think about a situation in which a spouse has an affair, contracts an STD, and needs medical treatment. That cheated-on spouse will almost certainly not be on the hook for the cheater's treatment.

So, while there are some limited exceptions, the rule is medical treatment will be divided evenly between people getting divorced in Utah.

How Do We File for Taxes if We're Separated but Still Married?

So, you're taking a break from each other. In other words, you're separated from your spouse.

Then April rolls around and (if you're anything like me) you start thinking about filing taxes for the first time. And then the question comes: how do we file for taxes if we're not living together?

Great question. You have a couple options.

Options

First, you can file "married filing jointly." This is what the vast majority of married couples do because it usually minimizes taxes and maximizes any returns you'll receive.

Second, you can file "married filing separately." This is the least popular option because you usually don't get the same tax breaks as married filing jointly.

But, there are exceptions to this rule. Sometimes, one spouse runs up a huge tax debt during the year (for example, he takes too many deductions and has to pay the tax piper), and filing jointly will make the other spouse responsible for that payment.

Rule of Thumb

If there is a rule-of-thumb in filing when separated, it's this: file jointly.

CPAs

That said, what you really should do is take your taxes to a CPA (accountant) and let the CPA tell you what your best options are. A good CPA will let you know what your taxes will look like under a number of scenarios. It will cost you some money, but it's better to spend money on an expert than to make the wrong tax choice.

And Don't Forget

If you get a tax return, don't forget to have it split between the two of you. I can't tell you how many times someone told me they prepared taxes while separated and

the other spouse kept the entire return. If that happens, you usually won't see that money again.

Make sure any return is split between the two of you (i.e., two checks are cut and sent to each of you separately), or that the return is placed in a joint account. When the return hits the joint account, take half (unless you've agreed otherwise). You'll never get in trouble for taking half of marital money.

Do I Pay Taxes if I Receive Alimony in Utah?

Ronald Reagan once said: "Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."

His statement is kind of tragically funny because it's true. So much of our everyday lives are taxed to the hilt.

This taxing, unfortunately, includes alimony. **Yep, the government taxes alimony.**

The government sees alimony as income, which makes a bit of sense when you think about it. If alimony weren't paid out, it would count as income to the spouse who made the money. So, really, the tax payment is transferring from the spouse who pays alimony to the spouse who receives alimony.

Makes sense but still sucks because alimony (along with child support) is often the only source of income someone has after they get divorced.

What the IRS Says about Alimony and Taxes

The IRS has some guidelines about alimony and taxes (I'm going to quote from IRS Topic 452 — Alimony Paid). It sets out the requirements for something to be considered alimony:

"Amounts paid under divorce or separate maintenance decrees or written separation agreements entered into between you and your spouse or former spouse **are considered alimony** for federal tax purposes if:

- You and your spouse or former spouse do not file a joint return with each other
- You pay in cash (including checks or money orders)
- The payment is received by (or on behalf of) your spouse or former spouse
- The divorce or separate maintenance decree or written separation agreement does not say the payment is not alimony
- If legally separated under a decree of divorce or separate maintenance, you and your former spouse are not members of the same household when you make the payment You have no liability to make the payment (in cash or property) after the death of your spouse or former spouse, and Your payment is not treated as child support or a property settlement

And here are some things **not** considered alimony:

"Not all payments under a divorce or separation instrument are alimony. Alimony **does not** include:

- Child support
- Noncash property settlements
- Payments that are your spouse's part of community property income
- Payments to keep up the payer's property, or
- Use of the payer's property

Child support is never deductible. If your decree of divorce or separate maintenance provides for alimony and child support, and you pay less than the total required, the payments apply first to child support. Any remaining amount is considered alimony.

Noncash property settlements, whether in a lump sum or installments, do not qualify as alimony.

Voluntary payments (that is, payments not required by a divorce decree or separation instrument) do not qualify as alimony."

How much you end up paying in tax on alimony received will depend on overall income at the end of the year. You'll need to see an accountant to figure out exact numbers so you can plan.

Conclusion

In the end: **(1)** the person receiving alimony will pay taxes on alimony, **(2)** the person paying alimony will receive a tax deduction for alimony paid, **(3)** property settlements and child support are **never** considered alimony, and **(4)** you cannot change any of this by writing in your divorce decree that alimony will not be taxed (nice try, but the IRS doesn't take too kindly to people trying to rewrite the tax code on their own).

Finally, if you would like to read more of what the IRS has to say on divorce and taxes, click here. **(Note: the answer to this question only applies until December 31, 2018. The 2017 tax legislation changed the taxing of alimony greatly.**

What About the Cars?

One of the questions I get asked most often is something similar to: What do we do about the cars?

It's a great question because, after a home, cars are usually the most expensive items people own, and they're necessary to function normally in normal society. (Sorry Manhattanites who don't even have driver licenses; you're not normal.)

Law

In a strictly legal sense, cars are split in a divorce like every other asset (or debt, depending on whether you owe money on the car or not): equitably. Equitably means fairly, which usually means equally.

Real Life

In the real world, **cars are almost always go to the person who drives them most**.

This approach makes a lot of sense. Most families have at least two cars, and while couples share cars on occasion, one person drives a car much more than another, and vice versa. For example, women usually have larger cars because they transport the kids more often.

When you get a car in divorce, you take over the payments for that car if there are any. This means you may need to refinance the car loan in your name.

(Note: if you are entitled to alimony, the car payment will one of the monthly debts you'll include as part of your overall need for alimony.)

You also need to insure the car separately, as well as remove your soon-to-be ex from the car's title.

What About the Equity if the Cars Are Already Paid Off?

If you've already paid off your cars, you'll have some equity in them. If this is your situation and you're dividing up cars in divorce, then what we usually do is determine what the cars are worth and split the value down the middle.

Example: Wife's car is paid off and worth $10,000. Husband's car is paid off and worth $15,000. Total value is $25,000, and each is entitled to $12,500. This means Husband will have to give Wife $2500 to equalize things out. Normally, this is done by giving an extra $2500 from a 401(k) or taking $2500 less from the sale of the marital home, or finding some similar offset.

What Do We Do About our Personal Property (Clothes, Furniture, Jewelry)?

There's a hierarchy of issues you deal with in divorce. First: children. Second: the home. Third: debts and assets. Then, way down at the bottom of this list: personal property.

The reason for this is most people take care of personal property when they separate. When your spouse leaves the home, he takes with him most of his stuff. Then, over time, he comes back and gets more of his stuff until everything is more or less divided to satisfaction.

Law vs. Real Life

In a strictly legal sense, each item of personal property should be divided like all other property: equitably. And equitably, for the most part, means equally.

In real life, however, the **general rule is that you keep what's in your possession when you settle your case**. If that's during mediation, then it's what each of you have at the time of mediation.

Exceptions

There are times when the general rule breaks down. This usually happens when there are very expensive items of personal property — think lots of gold jewelry, or very expensive furniture (especially beds, people fight about beds a lot) — or personal property with extreme sentimental value. Family photo albums are a great example of property with serious sentimental value.

When it comes to expensive personal property, we usually address the issue by estimating the property's value, and then giving half the value to the person not taking the property.

As an example, if someone had $20,000 of jewelry, he or she would have to give the other person something equaling $10,000. This might be cash (but usually isn't), or it might be more money from a 401(k) or more money from the sale of the home.

When it comes to personal property with sentimental value, we try to give it to the person who it means more to. That's easy if what we're talking about is a painting by someone's Aunt Sally. Things are much trickier when the item is something like a

photo album everyone is equally attached to. In that case, we usually try to duplicate the album (or item) so everyone has an equivalent copy.

What Almost Always Happens

We've gone over some exceptions, but 98% of the time, people don't need to and don't want to fight about personal property. Instead, they come together and decide who gets what, and that's the way it should be.

How Do We Address Retirement Savings?

Other than people's homes, their greatest assets are their retirement savings.

So, when we help people through divorce, we usually sell the home and split the equity, and then we move on to the retirement.

Retirement savings are usually things like company pensions, 401(k)s, 403(b)s, military pensions, Thrift Savings Plan, IRAs, and Roth IRAs, annuities, whole life policies. There are lots of other retirement vehicles I could name, but you get the idea.

Woodward

The **general rule with retirement is each spouse gets half of the accrual during the time of the marriage**.

This rule comes from a case named *Woodward*. *Woodward* deals specifically with pensions, but judges and lawyers tend to use it for any type of retirement vehicle.

An example of this general *Woodward* rule would be something like this. Wife works at the same job, which provides her with a pension, for twenty years. She marries Husband ten years after she starts working at her job. They get divorced at the twenty-work-year mark.

Husband would be entitled to half of the pension accrual during the ten years of marriage (i.e., five years' worth). He would have no claim to the ten years of accrual during the first ten years Wife worked at her job.

(Note: when we say accrual, we mean any money invested (principal), plus any increase from that investment.)

Splitting Retirement Savings

Once we figure out how to split up retirement savings, we have to actually split them up. You do this using what are called qualified domestic relations orders (QDROs).

Upon presenting the retirement provider (pension company, etc.) with a QDRO, that company will divide the retirement between the spouses. If it's a pension, the company will send one pension check to the pension holder, and another check to

the spouse. If it's a 401(k), we use different paperwork, and the 401(k) provider will create two separate accounts, and people can do whatever they want with their account.

How Do We Actually Divide Retirement Accounts, A.K.A., What Is a QDRO?

So, you've agreed on how to divide retirement accounts. Now, the question becomes: how do we actually divide the accounts?

Depending on what type of account it is (401(k) vs. pension), the answer is different. Let's talk about the most common scenarios.

First, 401(k)s. Splitting a 401(k) is an administrative task. In essence, you give the 401(k) company the retirement account division, and paperwork is generated to reflect that division. Once the paperwork is finalized, the company will create a new 401(k) account. In this new account is placed the share of the 401(k) of the spouse whose name is not on the 401(k).

Sorry, that got a little complicated. Let me give an example. Husband has a 401(k) worth $100,000. Wife is awarded half of the 401(k). After the paperwork is finalized, the 401(k) company created a separate 401(k) account for Wife and places in it $50,000.

Second, pensions. To split a pension, you need a qualified domestic relations order (QDRO). A QDRO is an order from a court splitting up a pension, or other certain retirement funds, and directing the pension company to make the split as ordered.

When a pension company gets a QDRO, it notes the division in its system. When the pension starts paying, the payments go out to each spouse according to the split in the QDRO.

Let me give an example. Wife has a pension that pays out $5000 per month when she retires. Husband is awarded 50% of the pension and a QDRO is done. When Wife retires, the pension company will send $2500 per month to Wife and $2500 per month to Husband.

Unlike a 401(k), Husband will not have his own pension account. Instead, he will simply receive whatever cut of the retirement he is awarded in the QDRO.

(Note: when there's a pension, everyone has to wait to get paid until retirement. There is no real way to cash out the pension, or receive payments, before retirement takes place.)

There Are Other Scenarios

We've explained the two most common scenarios for how retirement accounts are actually split. Some more exotic types of retirement accounts require different types of court orders to split, but even those tend to follow the same procedure as QDROs.

What is Mediation?

If you were to ask me my honest assessment of mediation, I'd say this: mediation is horse trading. It's where you go to wheel and deal to get an agreement made. Now, there's much more to it than that, but at the end of things, mediation is all about negotiating anything and everything until you get a deal you can live with so you don't have to go to trial.

Now that I've given you my practical assessment, let's discuss mediation in more lawyerly terms.

Mediation is an alternative dispute resolution process, and is mandatory in divorce cases in many parts of Utah. Mediation in contested divorce cases is required by specific rule in Salt Lake and the surrounding counties.

While the court might order mediation, mediation is ultimately a voluntary process based on good-faith negotiation. The parties come together (usually not in the same room; that's just awkward), and with the help of a mediator, discuss their situation and negotiate toward a settlement everyone can live with.

All aspects of divorce are negotiated during mediation: children, money, property, etc.

The mediator is a neutral third-party and not a judge. He or she does not hear evidence or testimony and render a decision as a judge would. Instead, the mediator listens to the parties and helps facilitate communication in order to negotiate a settlement based on their particular circumstances.

Attorneys are usually there during mediations (1) to ensure the parties negotiate effectively, and (2) to ensure the parties' rights are safeguarded. Other people may attend (e.g., new spouses, significant others, parents), but many times — if not most — their presence is counterproductive. Too many cooks in the kitchen makes for bad food.

If mediation is successful, you'll sign a settlement agreement. If you sign an agreement during mediation, you have to assume you will be bound by that agreement. Attempting to change a signed mediated settlement after you have agreed to it in writing is very, very difficult. Usually, forcing the change of a mediated settlement can only be done if the other person committed some sort of fraud, and you would need to go to court to force any change. Of course, this

applies to the other side as well, which means if you don't want to change a mediated settlement, your soon-to-be-ex can't make you.

Mediation is confidential. This means what is said during mediation cannot later be used in court, and the mediator cannot be forced to testify. Mediation is confidential because the courts want the parties to speak and negotiate as freely as possible.

Plan on at least four hours for mediation, although it may take longer. Sometimes mediations only last two to three hours, but mediations that short usually aren't successful.

How Much Does Mediation Cost?

Mediators usually cost between $100 and $250 per hour, split 50/50 between the parties. You will need to pay your portion of the mediator's fees at the end of mediation.

Do I Have to Sit in the Same Room as my Ex During Mediation?

Mediation is an interesting animal. In Utah divorce and child custody cases, mediation is all but mandatory (and is actually mandatory in some Utah jurisdictions). This means almost every contested divorce and child custody case will go to mediation.

People ask us all sorts of questions about mediation. One of the most common questions people ask is, "**Do I have to sit in the same room as my husband/wife/ex?**"

This is a great question, and the answer is "no."

We have been part of I can't even count how many mediations. Never once have we actually stayed in the same room as the other person. We have started in the same room so we can save time while the mediator gives his or her opening spiel about mediation, but then we promptly go to another room.

Honestly, we almost never even start in the same room. Our clients don't like the stress of seeing their ex, and we don't particularly like seeing our clients stressed. People tend to be more focused and at ease when they mediate in separate rooms, so that's what we do.

It's funny. When we meet with people and explain we'll be in different rooms during mediation, there is this sense of relief and gratefulness that washes over their faces. This is followed by a sentence like, "Oh, good. I was afraid I'd have to be across the table from him/her for hours." If being in separate rooms brings that much relief to people, there's no way we're sitting in the same room.

Is Mediation Confidential?

In Nevada, what happens in Vegas stays in Vegas. In Utah, what happens in mediation stays in mediation.

What this really means is mediation in Utah is confidential. **What you say in mediation, with a few exceptions I'll talk about in a minute, cannot be discussed outside mediation**. This also means you cannot talk about what the other person said during mediation, or what the mediator said. And you cannot force the mediator to testify about anything that went on during mediation.

(If you want to read the law I'm paraphrasing, it's Utah Code, Section 78B-10-104.)

The Utah Supreme Court explained why mediation is confidential, saying a "candid exchange of information and ideas can be achieved only when the parties are assured that their communications will be protected from postmediation disclosure." *Reese v. Tingey Construction*, 2008 UT 7, ¶ 8.

In other words, you won't talk and negotiate as freely in mediation if you know the other side will use it against you after mediation.

There are a **few exceptions** to mediation confidentiality:

1. **Everyone could agree to talk about what went on in mediation**. (As far as I know, this has never actually happened.)

2. **Written agreements produced during mediation are sent to the court, so the court does see that end product of mediation**.

3. **If unreported incidents of child abuse, elderly abuse, or abuse of an incapacitated person come out during mediation, those will be reported**.

4. **Computer crimes will be reported**. Most common computer crimes are identity theft, filing false tax returns online, and child pornography. (I've never had this come up in any of our cases, but some mediators have had it happen.)

5. **If one party engages in fraud or duress (threats), that may, may be brought up after mediation**.

Really, when you think about these exceptions, they don't affect many mediations (like, hardly any), so almost every mediation will be completely confidential.

Utah courts take mediation confidentiality so seriously that if a judge even reads documents discussing what went on in mediation, the judge will likely have to stop working on the case and transfer it to another judge, and the documents will be sealed. *Lyons v. Booker*, 1999 UT App 172 ¶ 9.

The big takeaway from this is mediation is a safe space. You can say what you need to, and make whatever offers you want, and know that the other person cannot use it against you in court.

What Happens if We Reach an Agreement in Mediation?

If you reach an agreement in mediation, the mediator (or the attorneys and the mediator) will write an agreement. You and your soon-to-be ex will then read and sign the agreement.

(Note: this is how it usually goes. There are some situations in which people don't want to sign during mediation and want to take a few days to think about things. The main problem with this approach is people start trying to change things after mediation, which never works well, and you end up not signing the agreement.)

If you do negotiate and sign an agreement during mediation, you have to assume you will be bound by that agreement.

Attempting to change a signed mediated settlement after you have agreed to it in writing is very difficult. Usually, forcing the change of a mediated settlement can only be done if someone committed some sort of fraud during mediation, and you would need to go to court to force a change.

After an agreement is signed, your case is effectively finished. The attorneys will put together a few documents the court requires so the judge can sign the final documents, but you won't need to go to court. When the judge signs everything, you'll be done.

Who Will We Use as a Mediator?

Choosing a mediator is one of the most important decisions you will make in your divorce.

Because of this, we as a team, spend a good amount of time deciding on a mediator. We take a wide-open approach and consider lots of factors, like:

1. **Which mediator will mesh with our client's personality**.

If personalities clash during mediation, we are less likely to get a good outcome.

2. **Do we need a mediator with particular strengths to help in the negotiations**.

Mediators have strengths and weaknesses, and sometimes we need a mediator with a particular strength-set. For example, if a divorce is all about numbers, we will choose a mediator more geared toward systematically crunching numbers. If a divorce is all about custody, we will want a mediator more geared toward addressing emotional needs and thinking creatively about parent-time schedules.

3. **Mediator's willingness to be creative**.

One of the primary reasons you use a mediator is to help come up with creative solutions to complex problems. The more creative solutions you can get in mediation, the more likely mediation will be successful.

4. **Cost**.

We try to always pick the best mediator for a particular case, regardless of the cost. While a mediator might cost more, if that mediator is right for the case and will get the job done, then we will save months of time and stress and thousands of dollars. Sometimes, however, cost is a limiting factor, so we will choose the best mediator at the price our client can afford.

After considering these factors, and many others, and coming to a consensus as a team, we decide which mediator will best serve our client and work on scheduling that mediator.

What Are Irreconcilable Differences and How Do I Allege Them in my Divorce?

In Utah if you want to divorce, you don't need to give a reason for wanting the divorce. This is because Utah has a no-fault system.

Because of this no-fault system, almost every divorce complaint filed in Utah cites "irreconcilable differences" as the basis for divorce. Here is what we write in our complaints:

> During the course of the marriage, Parties have experienced difficulties that cannot be reconciled that have prevented Parties from pursuing a viable marriage relationship; therefore, a divorce should be granted on the grounds of irreconcilable differences.

Irreconcilable differences is really just a way to say the marriage is bad and I want out. You don't need to elaborate on it because the court doesn't much care. As long as one person wants out, the divorce will end.

And why not cite some sort of fault (e.g., adultery, drunkenness, abuse) as the basis for the divorce? We have a couple reasons:

1. **Alleging fault doesn't get you anything more**.

Fault will not get you anything more in your divorce. People think that by alleging adultery in their divorce complaint that it will get them more money. It won't. (Let me clarify: it could in one out of a thousand cases, but the chance is so low as to be negligible.)

Ultimately, the remedy for adultery is divorce, which you will get if you cite irreconcilable differences.

2. **Alleging fault just upsets everyone and creates needless contention**.

Alleging fault in all its gory details in the first document filed with the court sends the other person in to a rage. I know because it's happened to my clients many times. Honestly, it makes people really upset and less likely to negotiate a settlement. So, if you want to spend more money on your divorce, then alleging fault is a good way to go.

What Does No-Fault Divorce Mean?

People often ask if they have to prove fault to get a divorce in Utah. The answer is "no."

Instead, you can simply say the marriage relationship is "irretrievably broken," or there are "irreconcilable differences" (lawyer speak for "our marriage is really bad"), and that is good enough grounds for a divorce. This type of system in which you don't have to prove any fault at all in divorce is called "no-fault."

No-fault systems haven't always been a thing. Years ago (or until recently if you lived in New York State), you had to prove fault to obtain a divorce. This means you would have to prove abandonment or adultery or something else so you could divorce.

Utah did away with the fault system decades ago.

One effect of the no-fault system is that if a spouse doesn't want to divorce, he or she cannot stop the divorce. That's right, one spouse can force through a divorce. There is no veto in Utah divorce law.

(A piece of quick advice: when you file for divorce, don't actually write why you want to divorce. It does no good to write in the court documents that your spouse cheated on you and is horrid human being. It will just embarrass your spouse and make it much harder to negotiate and settle your case later on. Let sleeping dogs lie and cite "irreconcilable differences.")

What Is a Divorce Complaint?

Starting the Utah Divorce Process

You may have received a court document from your spouse recently. If that document was a divorce complaint (also called complaint for divorce or petition for divorce), then you have started the divorce process.

In Utah, a divorce complaint is the document that lets the court and a spouse know that someone wants a divorce.

Wish Lists

Divorce complaints are odd things, to be honest. They are more like wish lists than anything else. They lay out what one person wants in the divorce if that person could get everything magically handed to them on a silver platter. They are, in a word, unrealistic.

This is important to keep in mind for a couple reasons. First, unless you do nothing and default (very bad idea), your spouse will not get all the stuff he or she asks for in the divorce complaint. Second, if you filed first, you won't get all the stuff you ask for.

So, a divorce complaint lays out the extremes in a divorce. And because most divorces are mediated, good attorneys use divorce complaints (and the counter-claims) as markers for negotiation.

Non-Negotiables

Sometimes there are things in a divorce complaint that are non-negotiable. This often happens with kids. For example, you may feel very strongly that your kids need to be with you most of the time, so you ask for primary physical custody (this is a fancy lawyer way of saying your kids are with you more than 70% of overnights in a year).

If you have some non-negotiables, make sure you tell your attorney about them up front. That way your attorney knows what is most important to you and can talk you through what it means for that issue to be non-negotiable (costs, processes, etc.).

And, please, try not to have too many non-negotiables in your divorce complaint. The more you have the more you will spend on your divorce case. Principles matter, and they cost.

Time to Respond to a Divorce Complaint

If you receive a divorce complaint, a clock starts ticking and you have a certain amount of time to respond — **twenty-one days** if you were served in Utah.

What Is a Summons?

When your spouse files for a Utah divorce, or your ex files for custody, you will receive a few things.

First, you'll receive a complaint for divorce. We all kind of know what those are right because they're pretty self-explanatory.

Second, you'll receive something called a summons. This is not so self-explanatory, so let's discuss what it is.

A summons is a document that tells you you are being sued (in your case for divorce). It also gives you instructions how to respond to the complaint.

In Utah, a summons will tell you you have either twenty-one or thirty days to respond. Twenty-one if you were served inside Utah, and thirty if you were served outside Utah.

A summons will tell you where you can send your response (i.e., what courthouse), as well as consequences if you don't respond (hint: they're not good).

Don't ignore a summons. You'll regret it.

I Was Served Divorce Papers; Now What?

So, you're at home one day, minding your own business, maybe watching some *Downton Abbey*. You hear a knock at the door, so you answer it. There you find a nice man holding some papers.

The nice man extends his hand and says, "You've been served."

And so it is. **You have been served. Now what happens?**

Your first option is to do nothing. Yeah, this is a bad idea. In Utah, once you've been served with divorce or child custody pleadings, you have twenty-one days to respond. If you don't respond by filing an answer, then you default.

In case you were wondering, defaulting is bad. Bad like you lose and the other person gets everything he or she asked for bad. Don't default.

Your second option is to respond within twenty-one days (thirty if you were served outside Utah) by filing an answer. An answer ensures you will not default. It does not, however, tell the court what you want. To do that you will need to file an answer & counter-claim.

The third option is to contact the other person, or the other person's attorney and negotiate. If you do this alone, you might as well default. I have seen countless people try to negotiate with a divorce attorney, only to sign essentially what the attorney filed in the first place.

If you do not hire an attorney, please request mediation. At least in mediation there's a third-party there who can provide you with a little bit of guidance.

If I were you, I'd take the papers that nice man served, go to a Utah divorce attorney, and get some representation. Nothing is more valuable to you and your family than a good attorney.

What Happens if I Don't Answer a Divorce Complaint?

You're sitting at home on a Thursday night, and there's a knock on the door. You answer it and find a woman who hands you papers.

You've been served with a complaint for divorce.

On the first page of the papers, there's something called a summons. The summons tells you you're being sued for divorce. It also tells you that if you have been served for divorce in Utah, you must respond within twenty-one days. It also tells you that if you have been served for divorce outside of Utah, you must respond within thirty days.

What happens if you don't respond?

The answer's pretty simple: you default. Losing by default in divorce is the same as losing by default in sports. If you don't show up, you don't play the game, and you lose automatically.

In divorce, however, the stakes are a little higher. **Defaulting means your spouse gets whatever he or she asked for in the complaint**. If she asked for sole custody of the children, she gets it. If he asked for you to be responsible for 100% of the debt, you take it. Whatever is asked for is received.

So, don't default. You will regret it every day of your life if you do.

Last Piece of Advice

If you can't hire an attorney or don't have time to right now, file an answer to the complaint. If you file an answer, then your spouse can't default you and have bought yourself some good time to hire an attorney.

Simplest way to file an answer is to deny every allegation in the complaint. All you have to do is write something like, "I deny every allegation and prayer for relief contained in petitioner's complaint for divorce."

This isn't the best way to answer, but it will do in a pinch.

What Is an Answer?

Imagine you just received a Utah divorce complaint from your spouse.

You're understandably nervous because probably don't know what to do. How do you respond? Do you have to respond? What does a response look like?

Maybe you take to the internet and figure out you have to file what's called an answer. But what is an answer, really?

In essence, an answer is a set of reactions to the allegations and requests your spouse made in the divorce complaint.

In an answer, you either "admit" or "deny" each separate allegation and request made.

And when I say each separate allegation and request, I mean it. If you do not address each allegation and request, a judge will assume you admit that allegation or are okay with that request.

Answers require pretty specific language so you are clear about what you are denying and what you are admitting. Here is a sample of the language we use in our answers (keep in mind: you, as the answering party, are the Respondent):

Admit All

Respondent admits the claims and allegations contained in ¶ X of the Divorce Complaint.

Admit All (Multiple Subparts)

Respondent admits the claims and allegations contained in ¶ X and subparts X(x) through X(x) of the Divorce Complaint.

Admit Part, Deny Part

Respondent admits (explain what is admitted), but denies all other allegations contained in ¶ X of the Divorce Complaint.

Admit Part, Deny Part (Multiple Subparts)

Respondent admits the claims and allegations contained in ¶ X and subparts X(x) through X(x) of the Divorce Complaint. Respondent denies the claims and allegations contained in ¶ X(x) of the Divorce Complaint.

Deny All

Respondent denies the claims and allegations contained in ¶ X of the Divorce Complaint.

Deny All (Multiple Subparts)

Respondent denies the claims and allegations contained in ¶ X and subparts X(x) through X(x) of the Divorce Complaint.

Without Knowledge

Respondent is without knowledge sufficient to either confirm or deny the claims and allegations contained in ¶ X of the Divorce Complaint; and, therefore, denies them.

Legal Conclusion

The allegations contained in ¶ X of the Divorce Complaint represent a legal conclusion and not an allegation of fact; and Respondent, therefore, denies the allegations.

Exhibits

Respondent denies the claims and allegations contained in Exhibits X–X.

Prayers for Relief

Respondent denies Petitioner's Prayers for Relief X–X.

Hope that helps explain what an answer is and the type of language and structure it requires.

What Are Temporary Orders?

Utah divorces have distinct steps to them.

First, you start with a divorce complaint. The complaint lays out what you want in the divorce (e.g., how custody will work, how you will split up assets and debts, how much will be paid in child support).

Second, you go one of two ways. Either you go to mediation (where you negotiate directly with your spouse attempting to finalize things without going to court), or you go to temporary orders.

Temporary orders are just like they sound. They are temporary orders made by a judge or decree that govern divorcing spouses until their divorce is finalized.

What can you address in temporary orders?

Temporary orders can address any issue in a divorce or child custody case, including:

(1) child custody,

(2) child support,

(3) alimony,

(4) parent-time,

(5) payment of debts, and

(6) possession of the marital home.

When a court hands down temporary orders, you should plan on those orders *not* changing before you get done with your divorce. (Judges and decree don't like to change things once a decision has been made.)

This means you should take temporary orders seriously because they can affect your case and your family for quite some time.

How do you file for temporary orders?

You begin the temporary orders process by filing a motion for temporary orders. This motion is accompanied by a sworn declaration (i.e., affidavit).

This sworn declaration, which is based on a person's direct observations, explains (1) the situation, and (2) why a spouse deserves what he or she is requesting.

Once you have filed, your spouse can respond and file his or her own counter-motion for temporary orders.

All parties have the opportunity to provide the court with documents, such as bank statements, parent-time calendars, and photographs.

Don't chance it with temporary orders

Temporary orders can be quite complicated. Don't chance it and argue them alone. Too many things can go wrong. Find someone to help you through the process.

What Is a Guardian ad Litem?

If you have a high-conflict Utah divorce or child custody case, you might well encounter a guardian ad litem.

Guardians ad litem (GAL or, plural, GALs) are attorneys who work for your children.

There are two types of GALs in Utah.

The first type is a **public GAL**. Public GALs are lawyers who are state employees. They investigate cases of abuse and neglect. These types of GALS are usually appointed in protective orders and child protective order cases.

The second type is a **private GAL**. Private GALs are not state employees; they are private-practice attorneys. Private GALs are those appointed in high-conflict divorce and child-custody cases.

Each type of GAL conducts an independent investigation and make recommendations regarding the best interests of your children.

The investigation process might take any number of forms, but it almost always includes, at a minimum, the GAL sitting down and talking with your kids about how things are going.

Depending on the child's age, the GAL will ask what the child wants to do (e.g., where he or she wants to live, etc.).

(To read the statute governing private GALs, click here.)

Who pays for a GAL?

Who pays for a GAL depends on a couple things.

First, it depends on the type of GAL. You don't pay for public GALs since they are government employees. You do pay for private GALs.

Second, who makes what is important. If one parent makes vastly more money than the other, judges and commissioners will often have that person pay more of the GAL fees.

(Note: Usually, parents end up splitting the GAL fees equally.)

Third, bad behavior can affect payment. If one party did something that necessitated a GAL (e.g., child abuse), then that person might be ordered to pay 100% of the GAL fees.

What Is a Protective Order?

Restraining order/protective order/civil stalking injunction. These terms are used pretty interchangeably by most people, and with good reason. They're all pretty similar.

But, in the law, similar is not the same. Each is a little bit different, and you use them differently to fit particular situations and to address particular problems.

A protective order is used when you need to keep someone away from you because that someone has harmed you, or has threatened you and you have a legitimate fear of being harmed.

The nice thing about protective orders, as opposed to a restraining order, is a protective order has teeth to it. What I mean is if you get a protective order and the other person violates it, he or she can go to jail for that violation and face criminal charges.

(Restraining orders don't have teeth like a protective order because if you violate a civil restraining order, you will be punished civilly. This really means you won't be charged with a crime or go to jail.)

Who can get a protective order?

So, who can get a protective order?

The vast majority of the time it's people who: **(1)** are related, **(2)** live with or used to live with each other, **(3)** are parents of a child together, or **(4)** are pregnant by the person against whom the protective order is sought.

What do you have to prove to get a protective order?

Say you qualify as a person who can get a protective order; what do you have to prove to get one?

You have to prove you were harmed or you have a legitimate fear of being harmed. (Keep in mind that this fear can't be a fear about way in the future. It has to be fear of pretty immediate harm.)

Harm can include:

- Hitting, kicking, pushing, pulling hair, using a weapon, or other types of physical attacks.
- Stalking, harassing, kidnapping, sexual assault.
- Restricting movement, or stopping someone from calling for help.
- Breaking things or throwing things to intimidate.
- Trying or threatening to do any of these things.

What do you have to fill out to get a protective order?

To get a protective order you start by filling out a request for protective order.

In your Request, you tell the court what you want (e.g., that the other person stay away from you and your home) and why you think a protective order is necessary.

The explanation must lay out specific facts and incidents that prove you have been harmed or have legitimate fear of being harmed. Be specific and detailed in what you write.

What happens after you file for a protective order?

After you've filled out your Request, you file it with the court. If a judge thinks what you've written is sufficient, the judge will grant what is called an ex parte protective order. Ex parte means "without a hearing."

You will then need to serve the other person with your request and the ex parte protective order. If you do not serve him or her, the court will not grant a permanent protective order.

Within about **two weeks** of receiving your ex parte protective order, you will have a **hearing in court** to discuss making your protective order permanent.

Before a hearing, the person you want the protective order against will have the opportunity to respond in writing to the allegations made.

At the hearing, you and the person you want the protective order against will have a chance to explain what happened. You will argue why you think a protective order is necessary, and the other person will have an equal chance to say why it's not.

If the court agrees with you, it will enter a permanent protective order. If the court agrees with the other person, then the protective order will be dismissed.

What Is a Commissioner?

When you file for a divorce in Utah, you'll notice you've been assigned a commissioner.

We're used to hearing about judges, but commissioner is a word almost no one ever uses. So, what is a commissioner?

A commissioner is not quite a judge, but acts as something like an under-judge in family law cases. What this means is a commissioner handles almost all aspects of a family law case, but he or she does not actually have decision-making authority.

What a commissioner does is hear disputes and make recommendations to a judge, then the judge signs off on those recommendations which makes them an order of the court.

So, commissioners hear temporary orders, motions for order to show cause, protective orders, temporary restraining orders, pretrials, etc. Essentially, they hear and make recommendations on every aspect of a case until trial. **Judges handle trials**.

In reality, commissioners exercise a lot of power. They hear the vast majority of disputes in family law cases, and judges almost always accept their recommendations. This means having all your ducks in a row and arguing well in front of a commissioner is incredibly important to the ultimate success of your case.

Really, the only time you won't have a commissioner in Utah divorce and family law cases is when you find yourself in an area of Utah where they don't have commissioners. This only happens in smaller Utah counties.

What Is a Custody Evaluation?

You have a custody battle on your hands. You've moved past mediation and temporary orders.

If this is your case, then you are probably moving on to a custody evaluation.

But what is a custody evaluation?

Well, in Utah a custody evaluation is an evaluation made by a trained psychologist or licensed clinical social worker. **It provides the judge on your case with an expert opinion about child custody and parent-time so the judge can make good decisions about those issues**.

Custody evaluators make their recommendations by evaluating the parents' ability to parent; the parents' criminal history, psychological stability, work history; as well as the needs and preferences of the child(ren), and the fit between each party and child(ren).

Custody evaluations are invasive. The evaluator has access to a person's entire medical, psychological, criminal, work, and relationship history. Nothing is off-limits in a custody evaluation. And if you try to hide something, the evaluator will assume you are playing games, which is not good.

Custody evaluators interview parents individually and listen to their concerns about their child(ren) and the soon-to-exes.

They will also go to people's homes and observe them with your child(ren). This gives them an idea how parents interact with their children and whether they parent effectively.

If people are in new relationships or are remarried, evaluators will talk with the "new people." (Advice: be careful who you hang out with.)

What Is Bifurcation?

When you start the divorce process, you aren't really sure when it will end. Usually, divorces are relatively (by legal standards) fast moving. However, if there are big issues that need to be worked out, or one side likes to fight, divorces can take time.

When Utah divorces take time, it might pay to think about bifurcation.

Bifurcation allows you to get legally divorced without resolving all the issues in your case. **In other words, you still have to finish your divorce case, but you are divorced**.

There are some advantages and disadvantages to bifurcation.

First, the advantages.

Advantages of bifurcation

1. **You're divorced right now**.

Even if you have to wrap up the rest of the divorce issues, sometimes, you just need to be divorced from that other person.

2. **You can get remarried**.

You'd be surprised how many people get divorce already eyeing their next marriage. If you've been separated a while, and you're ready to get married again, bifurcation will allow you to move forward.

3. **You can get your spouse off your insurance**.

Insurance companies drop exes like hot potatoes the day you become legally divorced.

Now, to the disadvantages.

Disadvantages of bifurcation

1. **Your divorce will probably take longer**.

When people are legally divorced, they oftentimes don't feel the need to finalize their divorce, so the case lingers. This is one major reason courts don't like to grant bifurcations.

2. **You won't be on your spouse's insurance anymore**.

Contrasting with #3 above, if you bifurcate and are dependent on your spouse's insurance, you'll find yourself out in the cold.

3. **Cost**.

You will need to have your attorney motion for bifurcation, and you'll need to appear before the court for a hearing. Since this takes time, it also costs money.

One good way to save money and increase the likelihood your motion for bifurcation will succeed is to agree with your spouse on the bifurcation. That way, you could file a stipulated (agreed-on) motion. Courts are much more likely to approve a stipulated motion without a court hearing.

Courts Don't Usually Like Bifurcations

Keep in mind that courts don't normally like to grant bifurcations. Most judges think bifurcations elongate the divorce process.

Now, this doesn't mean you can't get a bifurcation. It just means you have to have good reasons for the bifurcation. The stronger the reasoning, the more likely you'll be successful. Make sure you and your attorney spend time developing your arguments well.

Does Utah Have a Waiting Period for Divorce?

So, the Utah Legislature doesn't like divorce. And to show how much it doesn't like divorce, Utah used to have a 90-day divorce waiting period.

On May 8, 2018, the Utah Legislature shortened the 90-day waiting period to **30 days**.

So, now a divorce can be finalized 30 days after it's filed.

In reality, it'll probably be more like 45 days, because divorce documents tend to sit around on a judge's desk for two weeks before they are signed.

Either way, it's a lot shorter waiting period than it used to be.

Do I Have to Take a Class to Get Divorced in Utah?

It's a lot harder to get divorced than it is to get married.

Getting married is cake. You go to a church, get hitched, and you're on your merry way. (I know, I know, it's never that simple. You have to plan the wedding and the reception and the like. But still, if you're going minimalist, it's pretty easy.)

By contrast, when you divorce, you have divide all the assets and debts, figure out how to handle custody and parent-time, sell the home, find new places to live, change schools, and on and on.

And, to make things ever more complicated, you may have to take a class to get divorced in Utah.

Yep, if you have kids, then you will need to take two classes. (**If you don't, the court will *not* finalize your divorce**.)

The **first** is a divorce orientation class. The **second** is a divorce education class.

These classes are usually taught at the same time, so you can fulfill the requirement in one sitting. I believe both total between two and three hours.

The classes cost, but not much. If you take the classes within the first month of filing your Utah divorce, the cost is $15. If you take it after the thirty days, the price increases, but it's still around $50.

What if I don't live in Utah?

If you don't live in Utah, you still have to take the classes.

The State offers the classes online (click here), so it's easy to take them if you're not in Utah.

Where do I go to take the classes, and when are they offered?

In Salt Lake, most people go the Matheson courthouse (450 South State Street) to take the courses. They have courses in English and Spanish at Matheson.

Outside of Salt Lake there are a number of locations where the courses are offered.

Where can I find more information about these divorce classes?

The best place to go for more information is the Utah courts webpage. Here's a link.

How Long Does a Divorce Usually Take?

There's an old joke about lawyers that goes a little something like this: "When you ask an attorney any question, the answer is always the same: 'It depends.'"

There's a lot of truth in that joke. Personally, I always tell people "it depends" when they ask how long a divorce will take, because, honestly, it really does depend.

The absolute minimum you can expect from filing divorce documents to the judge signing the divorce decree is 30–45 days.

That's the shortest amount of time you can expect. And this only happens if someone **defaults**, or if you agree on everything before filing anything with the court.

On the other hand, divorces very often take longer than 45 days to finalize. Here are a few scenarios and time lines:

1. If we go to **mediation** and get an agreement there, file the necessary paperwork, and have the judge sign everything, that process takes, on average, between **4 and 6 months**.

2. If we go to court for **temporary orders, then mediation** and come to an agreement in mediation, that process usually takes around **6 months**.

3. If we go to **trial**, it will take at least 1 year, and often longer.

What Is the Best Way to Save Money on Your Divorce?

I get asked a lot how to save money on divorces. And the reason why is, honestly, divorce can be expensive.

If you have more than a car and $10 in the bank, those online self-help divorce tools are worthless. I can't even count how many people come in our office to fix their do-it-yourself divorces. And, when they do, they spend way more money fixing it than they would have spent if they hired an attorney in the first place.

On the other hand, lawyers can be expensive.

So, how do you make sure you and your family are taken care of (by hiring an attorney) and keep costs down? I have many suggestions, but I'll give my number one here.

#1 Suggestion for Saving Money on Your Divorce

Be nice.

Yep, be nice.

No, honestly, be nice.

If you're nice to your soon-to-be ex, then things will go so much smoother and cost so much less.

Being nice doesn't mean rolling over and playing dead on issues ranging from child custody to alimony. (You have an attorney to make sure that doesn't happen.) It does mean, however, that you treat your spouse with respect at all times.

And, yes, I mean at all times. If your spouse is being a jerk, you follow the Lord's admonition in Isaiah 61:3 to give "beauty for ashes." In other words, don't take the bait. Return kindness when confronted with hate.

Yes, I know, you don't like your spouse anymore. That's why you're getting divorced. Because of this, and rightly so, it might be difficult to be nice. But being nice will pay dividends for the rest of time.

Think about the life you want to have with your ex. Do you want it to be contentious and horrible? No, of course not. So, don't start out by being contentious and horrible. Instead, start out by being nice. Always.

When people are nice, divorce costs decrease. They decrease because there is less fighting, which means attorneys spend fewer hours on a case. And, when people are nice, they negotiate better and work through solutions better. This all means less time in the courtroom, which translates in to less cost.

Be nice. You will never regret it.

What About Pets?

Usually, people fight about two things in divorces: kids and money. Then, sometimes, people fight about something almost (or more, depending on the circumstance) as important: pets.

This actually makes sense. A pet is a part of the family. For many people who don't have children, they take on an even more special significance.

So, how do you handle things when you both want the family dog/cat/pet in your Utah divorce?

Let me begin this discussion by talking about how courts determine custody of children. Utah law contains a number of factors a judge has to consider when deciding which parent a child lives with. Many times, there are trials with experts who testify, character witnesses, etc.

Yeah, that's just not the case with pets. No matter how much you love Fido (or Tristan if it were my childhood yellow lab), you don't go to trial and call witnesses and offer documents to prove what is in his best interests.

Instead, you negotiate. Yes, you negotiate who gets the family pet.

I know this might seem crass to those who love their pets, but it just is.

Honestly, what has happened every time I have had a family pet case is we get in mediation and talk about who will keep the pet. And every time but one case, one spouse ended up with the family pet.

This is because one spouse tends to be more attached to a pet than the other. Now, if you had kids, you would never just give a child to the other parent because he/she liked the child more. But pets aren't children, and people will admit the other person should have the family pet because the other person likes it more.

Now, this isn't to say negotiation is always easy. Many hours have been spent talking about who gets the pet, but one side always relents.

I did have one case in which we negotiated a visitation schedule for the family's dog. Both spouses were very attached to the dog, which had taken on a child-like role in

their marriage. It was actually a pretty good visitation schedule too because everyone was reasonable and realistic.

So, if you have a pet involved in your divorce, be prepared to negotiate.

When Does my Divorce Become Final?

You've been going through a divorce in Utah for a while now, and you're wondering when it will end.

Maybe you just can't wait to be divorced. Maybe you can't wait to date or get remarried. Whatever the circumstance, your real question is: when will my divorce become final?

Let's see what Utah divorce law has to say:

When decree becomes absolute.

(1) The decree of divorce becomes absolute:

(a) on the date it is signed by the court and entered by the clerk in the register of actions;

(b) at the expiration of a period of time the court may specifically designate, unless an appeal or other proceedings for review are pending; or

(c) when the court, before the decree becomes absolute, for sufficient cause otherwise orders.

(2) The court, upon application or on its own motion for good cause shown, may waive, alter, or extend a designated period of time before the decree becomes absolute, but not to exceed six months from the signing and entry of the decree.

Utah Code § 30-3-7.

Honestly, (1)(a) is really the part you should focus on. **This says your divorce becomes final when the judge signs your divorce decree and the clerk files it. For all intents and purposes, these things happen on the same day, especially now that judges electronically file divorce decrees.**

In all the divorces we have done, divorces are final the day they're signed 99.9% of the time. The only real exception we've seen is if the other side appeals the court's judgment.

In this sort of appeal situation, the judge will usually grant a bifurcation so everyone can stay divorced while the appeal process plays out.

If a judge were to suspend a divorce from becoming absolute under 30-3-37(1)(b), (1)(c), or (2), he or she would let you know in writing. Judges aren't going to hide the ball when it comes to this sort of thing.

So, in almost every divorce situation in Utah, your divorce becomes final the day the judge signs your divorce decree.

If I'm Getting Divorced, when Can I Get Married Again?

So, you find yourself getting divorced.

Problem is, you also find yourself wanting to get remarried. Like, remarried right now.

So, when can you get remarried in Utah?

Well, couple considerations. **First, you have to wait until you are actually divorced to remarry**:

"Neither party to a divorce proceeding which dissolves their marriage by decree may marry any person other than the spouse from whom the divorce was granted until it becomes absolute. If an appeal is taken, the divorce is not absolute until after affirmance of the decree."

Utah Code § 30-3-8.

When you are actually divorced is usually pretty straightforward. It's almost always the day the judge signs the divorce decree. Sometimes, however, the water gets muddied a little.

Sometimes, a divorce decree won't become absolute until some point after your divorce decree is signed. This usually happens if you went to trial and the case is appealed. (If this does happen, the judge will tell you the divorce is not absolute until whatever date in the future. Judges don't hide the ball about things like this.)

Even when a case is appealed, though, the judge will almost always grant people a bifurcated divorce. This means the judge will order that a couple is legally divorced, but the case will go forward on appeal and people will fight over everything but the actual being divorced part.

So, the rule of thumb is that you're divorced and able to remarry when the judge signs your divorce decree.

Who Gets the Wedding Ring(s)?

People fight about two things in divorce: money and kids. On the money side, people will fight about some interesting things. (Once, we had to divided cows. We've even divided a lawn gnome collection.) No fight, however, is as silly as a fight over wedding rings.

Now, there are times when it's advantageous to recite statutes and case law when addressing a divorce asset division issue. This is not one of those times.

Wedding rings (which are obviously assets) are a matter of common sense. So, while I could tell you about the Court of Appeals and Supreme Court cases in which people have fought about forcing the other person to return a wedding ring (and those cases are out there), I won't.

Here's the simple rule when it comes to wedding rings in divorce: everyone keeps their own. You will not force your spouse to give you back her (because, let's face it, guys are the only ones who want the ring back) ring. Yes, I know you've only been married for a year; it doesn't matter. Yes, I know the ring belonged to your grandmother; it doesn't matter. Yes, I know you she once said during an argument she didn't want the ring anymore; it doesn't matter. Everyone keeps their own ring.

The only real exception to this rule is if she committed fraud by never intending to stay married just to get the ring. **The problem with this exception is you can never prove it**. And when I say never, I mean never. It may happen in the movies, but it simply doesn't happen in real life.

What this issue comes down to is guys spend way too much money on wedding rings. I mean, honestly, one quarter of your yearly income on a ring? Take a moment and think about how irresponsible that is. You're putting yourself in a hole right at the beginning of your marriage, and for what? A diamond and some gold? Your money is much better spent ensuring you, as a couple, are free from debt. That will decrease the stress in your marriage and minimize conflict.

So, lesson learned if you bought her a $15,000 ring and you want it back now: you shouldn't have bought a $15,000 ring.

Do I Have to Let my Spouse See my Medical, Psychological, and other Records?

It's a funny thing. When people get married they share everything. They share dreams; they share expenses; they share kids; they share religious experiences.

Then divorce happens, and the sharing goes away.

Only problem is: sometimes, you still have to share.

When Do I Have to Share Medical, Psychological, and other Records?

The **general rule** about sharing medical records, psychological records, psychiatric records, and all other records that would normally be privileged, is this: **if it's relevant to a claim or issue in the case, then you have to share**.

Let's see how that rule pans out.

Example 1: couple has no children, no assets, and there is no alimony claim. Only thing to do is divide debt, personal property (clothes, jewelry, etc.), and the marital home. Neither person has ever alleged that mental illness should play a part in any property division.

In this example, medical, psychological, and psychiatric records are not relevant. They have nothing to do with dividing up debt in this situation. So, if one person asked the other person for privileged documents, the person asked wouldn't have to share them. They're privileged, and without good reason, you can't get to them.

Example 2: couple has twins, boy and a girl who are seven years old. Dad wants full custody because mom is disabled and, he says, physically incapable of caring for the children without assistance. Mom is also asking for full custody, says dad is physically and emotionally abusive, has committed domestic violence, and suffers from bipolar disorder for which he is being treated by a psychiatrist.

In this example, both parents are making claims about medical and psychiatric issues. Since both are making these claims, and the parents' medical and mental health is pretty relevant to who should have these twins most of the time, each will very likely have to share medical and psychiatric records.

Example 3: couple has already divided all debts and assets, but they are arguing about alimony. Wife argues she is disabled because of severe and ongoing back

problems that have necessitated multiple surgeries, and because of that disability she needs alimony. Husband says that she might be able to do manual labor and lift heavy things, but she could do clerical work, so she doesn't need alimony.

In this example, Wife's medical condition is an issue, and both have made claims about it. This mean Wife would very likely be required to share her medical records concerning her back, as well as everything surrounding her claims of medical disability.

What if my Spouse Says "No" and Refuses to Share?

I've had many a case in which I asked for therapy records or psychiatric records and the opposing side said "no" and refused to provide anything. (Usually someone refuses to share because he or she have something to hide, so we always go after those records.)

When this happens, we have to file a motion with the court to force the other side to produce the documents. If the documents requested are relevant to the issues in the case, we'll get them.

Our Proven-Process For Helping You Through A Divorce

Our proven-process is designed to protect your money and maximize the time with your kids.

Brown Family Law