

DIVORCE IN DENVER

1.) If we live together, are we common law married?

Many people are under the misconception that if they live together for a certain period of time, they are common law married. That is definitely not the case in Colorado. The courts apply a subjective test and look at several factors to determine whether or not the couple "holds themselves out" as a married couple. Some of the factors the Courts consider consist of the following:

1. Does the couple introduce themselves as husband and wife?
2. Does the woman use the man's last name?
3. Does the couple file joint income tax returns?
4. Does the couple have joint bank accounts?
5. Is the couple listed as married on health insurance policies?
6. Is the couple listed as married for car insurance purposes?
7. Do they name each other as spousal beneficiaries for life insurance purposes?
8. Do their family, friends and co-workers consider them husband and wife?

Frequently Asked Questions:

1. If we are not common law married, and all of the property and bank accounts are in both of our names, how do we split them up legally?
2. If we are not common law married, and we own a house together, what do we do if one of us wants to sell and the other doesn't?
3. If we are not common law married, and the house is in her name even though we purchased it together, can she kick me out? What rights do I have in regard to the money that I invested?
4. If we are not common law married, how do we determine custody, visitation and child support for our children?
5. If we are common law married, does she have a right to everything that I own?
6. If we are common law married, how do we get a divorce?
7. If we are not common law married, can she still sue me for maintenance (formerly alimony)?
8. If we are not common law married, how do we split everything up?
9. If we are not common law married, and she used my credit cards, can I make her pay me back?
10. Is there such a thing as a Co-habitation agreement, and how can it protect me?

2.) Can I afford to get divorced? Am I going to lose everything?

The answer depends on numerous factors. Colorado is an equitable division state. This means that not everything is automatically divided equally. The Courts will award each of you your separate property, which is property that you had prior to marriage, property that you inherited, or property that you received as a gift. The Courts must divide all marital property equitably. Marital property includes everything that you purchased as a married couple, regardless of how it is titled or who paid for it. It also includes any appreciation in property that you owned prior to the marriage, and property that you inherited or received as a gift. This will usually take the form of real estate, or investments such as stocks, bonds, certificates of deposits, money market accounts, IRAs, pension plans, insurance, and the like.

Unless you entered into a prenuptial or post-nuptial agreement protecting your property from being considered marital and subject to division in the event of a divorce, essentially everything is up for grabs.

The court will consider equitable factors including length of the marriage, relative incomes of the parties, and how each person contributed to the marriage.

The longer you have been married, the closer to a 50/50 split the court will make. Courts usually consider a marriage of at least 10 years in duration to be a longterm marriage, and the 50/50 rule is likely to apply.

Although it is unlikely that a person will lose everything in a divorce, they may lose things, which are very valuable to them, and it is not uncommon to see an award where the lesser wage-earning spouse receives more in property and less in debt than the higher wage-earning spouse. It is common for courts to obligate debt to each spouse in proportion to their gross earnings. So, if the husband earns for example, 70% of the combined gross income, he most likely will end up with 70% of the debt unless some of the debt was clearly for the wife's personal use.

Frequently Asked Questions:

1. If I was the only one making the mortgage payment, is she still entitled to 50% of the equity in the marital home?
2. If I paid for her car payment and cell phone, do I have to continue paying it?
3. If I paid all of the bills, and she didn't work or worked for her own spending money, is she still entitled to 50% of what I own?
4. If she walked out on me, and moved in with another guy, why do I have to give her anything?
5. I moved out and left her everything pending final resolution of the divorce. Now she says that she can't find most of the things that I want. What recourse do I have?
6. Can I get the engagement ring back?
7. Can I prevent her from keeping my last name?
8. What can you do when your spouse kicks you out, and doesn't let you collect your personal belongings?
9. What happens when the court rules your spouse to give you your stuff back and they return it in damaged condition?

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3.) If I get divorced, can she take my kids?

No. The woman will never be able to take the kids. The issue is parenting time, decision making, and with whom the children will primarily reside. Colorado is a very progressive state. The courts are recognizing that men play an extremely important role in their children's lives. Although more often than not, women are usually awarded the primary care of the children, men are gaining significant ground and are getting substantial amounts of parenting time (40-50% of time). Courts also have a preference for joint decision-making. This means that the parties together make major decisions concerning the health, education, and religious issues regarding the children.

Frequently Asked Questions:

1. If my wife is refusing to talk to me about major decisions, what can I do?
2. If my wife is refusing to let me see my kids, what can I do?
3. If my wife wants to move out of state with my kids, can I stop her?
4. If my wife is the primary residential custodian, can I become the primary residential custodian after a couple of years?
5. What can I do if my wife is alienating the kids from me?
6. My wife says the kids don't want to see me. Can I force them to have visitation with me anyway?
7. If I am not paying child support, does my wife have the right to withhold my kids from me?

4. Will I have to pay my wife maintenance (alimony) if we divorce, and for how long?

Maintenance, formerly called alimony is a minefield and is an area where nice guys can finish last. Maintenance is based on an ex-wife's needs vs. the ex husband's ability to pay. The law states that she has a right to be supported in the life style to which she had become accustomed.

Frequently Asked Questions:

1. She had a free ride the entire time we were married, why do I have to pay her maintenance (alimony) now that we are getting divorced?

2. How much will I have to pay her and for how long?
3. What happens if I refuse to pay her?
4. If she lives with another man, does my obligation to pay maintenance terminate?
5. Can she take me back to court to get periodic raises?
6. Is there a certain amount of time I need to be married for my wife to collect alimony after a divorce?

5. I am a man and getting divorced, what rights do I have?

Many men are clueless as to the rights and obligations that they have in a divorce. Many think that they will get taken to the cleaners like all of their friends, and simply have to accept the terms that the wife offers. This is a common misconception and simply is not true. Men have all of the rights that women have including the right to custody and visitation of their children, a fair distribution of assets, fair distribution of all debts, maintenance and child support.

The problem lies in the factual reality that most men are the primary breadwinners, and most women have been the primary caretakers of the children. Under the law, the spouse who is financially dependent and unable to independently take care of his or her financial needs, will have at least a claim to temporary maintenance. Debts are often split in proportion to the party's gross incomes.

Similarly, because most women have been the primary caretakers of the children regardless of whether or not they have been stay at home mothers, in applying the best interest standard to custody issues, the children will most likely remain with the primary caretaker.

If the roles happen to be reversed, it is not uncommon for the man to remain the primary caretaker of the children and to seek maintenance from the wife. Each situation is different and is factually driven. In "traditional" families, the trend in divorce cases has been for the man to receive substantial parenting time and get joint decision making of the children. The trend has been away from granting the wife permanent maintenance unless there are unusual circumstances such as a marriage of long duration, an uneducated wife who is a low wage earner as contrasted with a high wage earning husband, or a party who is permanently physically or mentally disabled and unable to support themselves.

Frequently Asked Questions:

1. If I know that a divorce is imminent, can I position myself so that I won't have to pay any or very little maintenance?
2. How do I position myself so that I get joint custody of the children?
3. Will I get stuck with all of the bills?
4. After we have separated, she ran up thousands of dollars in credit card bills, would I be responsible for those too?
5. Will I have to pay her attorney's fees?
6. Can I force her to sell the house?
7. Is there an advantage to serving her, before she serves me? Can you get the upper hand if you serve her first?

6. Beware of child support traps.

Child support is based on a formula established by the Colorado legislature. It is based on the combined gross incomes of the parties, and includes costs for work and education related childcare, health insurance, private school, and extraordinary expenses. If either parent has a prior born child, they will get credit for that child. The child support is offset by the number of overnights the noncustodial parent has with the children.

Frequently Asked Questions:

1. Does the Court take into consideration my living expenses?
2. What happens if I can't afford to pay my child support?
3. Can my wife refuse to let me see the kids if I am not paying child support?
4. Can the court put me in jail if I don't pay child support?
5. Can I stop my wife from garnishing my wages?
6. What happens if I lose my job? Does my ex-wife still have the right to collect the entire amount of child support?
7. Can I lower my child support if I lose my job?

8. If my ex-wife informally agrees to not make me pay child support while I am unemployed, is that agreement enforceable?

7. Legal Separation vs. Divorce

Legal Separation and Divorce follow the exact same process, and resolve the same issues including custody, visitation, property division, maintenance and child support, but a decree of legal separation results in the partners still being married rather than divorced. Some reasons why people choose to remain legally separated rather than divorced include religious opposition to divorce, retention of health insurance coverage, and indecision as to whether or not they want to actually terminate the marriage but want to protect themselves in the meantime.

If you choose to file for legal separation, once a decree of legal separation is issued, you must wait 6 months prior to converting it to a decree of dissolution of marriage.

Frequently Asked Questions:

1. Do I automatically have to convert a legal separation to a divorce after the 6 months passes?
2. What if I change my mind during the process and want to proceed with a divorce rather than a legal separation?
3. Can I change my mind and not go through with the legal separation?
4. Are there any benefits to getting legally separated first as opposed to going straight into a divorce?
5. If I get legally separated, then 6 months later decide to go for a divorce, do we have to re-litigate everything?

8. Perils of Restraining Orders.

Restraining Orders are incredibly easy to obtain, and almost impossible to defend against. If the wife goes to court and alleges that her husband has threatened to harm or in fact has harmed her or the children, she can obtain a temporary restraining order removing him from the home, and keeping the man away from her and the children. A hearing to make the restraining order permanent is set within 14 days of the temporary restraining order. A violation of the restraining order will result in arrest and a charge of domestic violence. If convicted of a

domestic violence charge, federal law prohibits the person from ever owning a handgun.

Frequently Asked Questions:

1. Since she called me up and asked me to come over, is it a violation of the restraining order if I go over to her house?
2. Isn't she violating the restraining order by calling me or coming over?
3. If she gets a restraining order against me, will I still get to see my kids?
4. What happens if I am restricted to supervised visits with my kids? How long does that last? Who pays for it?
5. If I get thrown out of my house, will I get back in? How do I get my things?
6. Can my live in girlfriend get a restraining order and get me thrown out of the house that I own? What if we own it together?
7. My "x" kept extending our court date for the restraining order, would there have been anything I could do to get her in court earlier?

9. Do I Need a Prenuptial Agreement?

If you have substantial premarital assets, have children from a prior relationship, intend to receive a substantial inheritance, or make a large income, and don't want to have to share it all with your spouse if you divorce, you definitely need a prenuptial agreement.

Everything that you bring into a marriage is your separate property. However, if those assets appreciate during the marriage, your spouse is entitled to a share of that appreciation. Similarly, all gifts and inheritances received during a marriage are considered separate property. However the appreciation is considered marital and subject to division.

If you want to protect the inheritance rights of your children from a prior relationship, or want to limit the amount of maintenance or property your spouse receives in a divorce, you can limit your exposure by signing a prenuptial agreement.

Frequently Asked Questions:

1. Are prenuptial agreements enforceable?
2. How do I protect my children?
3. How do I protect my assets and make sure that she can't take 1/2 of everything that I own or will own in the future?
4. Can I decide in advance how much money she will receive in the event of a divorce even though I have no idea of how much I'd be worth at that time?
5. What happens if I am worth a lot less at the time of the divorce than I anticipated, and can no longer afford to pay her what I've agreed? Do I have recourse?