

Illinois Divorce

Generally, there are six main legal issues in a divorce;

1. The dissolution of the marriage, based upon certain “grounds,”
2. The division of property and debts between the parties,
3. Maintenance,
4. Child Custody,
5. Visitation,
6. Child Support.

Dissolution

In Illinois, a divorce is commenced by the filing of a Petition for Dissolution of Marriage. In this petition, the Petitioner (formerly called the Plaintiff) asks the court to dissolve his or her marriage, among other things. The court must be given a reason to dissolve the marriage and that is what “grounds” are.

By far, the most common grounds for dissolution in Illinois are Irreconcilable Differences, sometimes thought of or referred to as no-fault, because neither party needs to be found to have done any particular thing wrong. If the court finds that the spouses have lived separate and apart for a continuous period in excess of 2 years and irreconcilable differences have caused the irretrievable breakdown of the marriage and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not in the best interests of the family, the court may grant a dissolution on that basis. If the spouses have lived separate and apart for a continuous period of at least 6 months, the 2 year requirement may be waived by written agreement between husband and wife. It is not necessary that husband and wife live in separate places to meet this requirement. They may live under the same roof, but must not live as husband and wife, which means no physical contact, freedom to come and go without explanation, separate bank accounts, etc.

The other grounds for dissolution of marriage in Illinois all require some form of fault. If Irreconcilable Differences is not applicable, then the petition must state other grounds. For the court to grant a dissolution, it must be shown that, *without cause or provocation by the petitioner*, the respondent

- a) was at the time of the marriage, and continues to be naturally impotent;
- b) had a wife or husband living at the time of the marriage;
- c) had committed adultery subsequent to the marriage;

- d) has willfully deserted or absented himself or herself from the petitioner for one year;
- e) has been guilty of habitual drunkenness for the space of 2 years;
- f) has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years (use of the drug must be a dominant or controlling purpose of the users life);
- g) has made an attempt on the life of the petitioner with malice;
- h) has been guilty of extreme and repeated physical *or* mental cruelty;
- i) has been convicted of a felony or other infamous crime, or
- j) has infected the petitioner with a sexually transmitted disease.

It is important to note that none of the aforementioned grounds have anything to do with the other legal issues in a divorce. Property division, maintenance, custody, support and visitation are entirely separate and decisions regarding these issues are not affected by the grounds for dissolution. In other words, no matter how egregious the sins of one of the parties, they do not get punished by a disproportionate property settlement, higher maintenance or child support. It is possible however, that if one party is guilty of an infamous crime or found to be a danger to children in some other way, that could have an impact on child custody and / or visitation. Generally though, grounds bear only on the dissolution issue and are the reasons that the court may grant a dissolution of marriage.

Division of Property

Marital Property is all property acquired by either spouse subsequent to the marriage, regardless whose name the property may be in, except for the following, which is known as *non-marital property*:

- a) Property acquired by gift, legacy or descent (inheritance);
- b) Property acquired before the marriage and not commingled with marital property;
- c) Property acquired in exchange for property acquired by gift, legacy or descent or in exchange for property acquired before the marriage;
- d) Property acquired by a spouse after a judgment of legal separation;
- e) Property excluded by valid agreement of the parties;
- f) Property obtained by judgment awarded to a spouse from the other spouse;
- g) Any increase in value of property acquired by the above methods and
- h) Income from property acquired by the above methods.

The marital property is divided, *without regard to marital misconduct* in “just proportions” considering all relevant factors, including:

- 1) the contribution of each party to the acquisition, preservation or increase or decrease in value of the marital or non-marital property, including *the contribution of a spouse as a homemaker or to the family unit*;
- 2) the dissipation by each party of the marital or non-marital property;
- 3) the value of the property assigned to each spouse;
- 4) the duration of the marriage;
- 5) the future income earning potential of the each spouse;

- 6) whether the apportionment is in lieu of or in addition to maintenance;
- 7) the custodial provisions of any children and
- 8) the economic circumstances of each spouse, including the desirability of awarding the family home or the right to live in it to the spouse having custody of the children and the tax consequences of the property division.

Note that, as mentioned previously under “Dissolution,” marital misconduct has no bearing on property division. A spouse is not to be punished for his or her misdeeds by receiving less of the marital property than they would otherwise be entitled to.

Also, note the words “just proportions.” In Illinois, there is no fixed percentage of marital assets that either spouse gets, unlike states with Community Property laws. The courts have wide latitude and discretion to divide marital property as they see fit, taking into account all of the “relevant factors” that include the above. There is no guarantee of a 50 / 50 split or a 60 / 40 split, or anything of the sort. In most divorces, the parties come to some kind of an agreement as to how the marital property is to be divided. A so-called “pre-trial” with the judge assigned to the case can provide valuable insight as to how the judge would rule, given all of the facts of the case. The attorneys for the parties can then advise their clients of the likely outcome of a trial and facilitate a settlement and an agreement regarding the division of property and any other unresolved issues.

The debts of the marriage are divided between the spouses on the same basis as the division of property.

Maintenance

Maintenance is the contemporary term for what used to be called alimony. It is spousal support, which may be awarded to the dependent spouse. Again, the court may grant a maintenance award, *without regard to marital misconduct*, for either spouse in amounts and for periods of time that the court deems just. The period of time could be indefinite but is more often for a fixed period of time. It may also be paid in one lump sum. The relevant factors that the court takes into consideration when awarding maintenance include:

- a) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
- b) the needs of each party
- c) the present and future earning capacity of each party;
- d) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;
- e) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;
- f) the standard of living established during the marriage;

- g) the duration of the marriage;
- h) the age and the physical and emotional condition of both parties;
- i) the tax consequences of the property division upon the respective economic circumstances of the parties;
- j) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse and
- k) any valid agreement of the parties.

Maintenance and Property Division are closely related, in that the factors that the court considers in awarding each are similar and they are occasionally combined. Depending upon the relevant factors, the party seeking maintenance may receive a larger share of the marital property as a form of lump sum maintenance payment and in lieu of maintenance for a period of time.

The important difference between Maintenance and its predecessor, Alimony, is that Maintenance is usually temporary and for the purpose of helping a dependent spouse get on his or her feet so that they can become self sufficient and independent. By contrast, Alimony used to be generally until the death or remarriage of the recipient.

Child Custody

Who the children will live with is often the most emotional issue of them all. The courts determine child custody in accordance with the best interests of the child. The relevant factors include:

- a) the wishes of the parents;
- b) the wishes of the child (this becomes more important as the child gets older);
- c) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
- d) the child's adjustment to his home, school and community;
- e) the mental and physical health of all individuals involved;
- f) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
- g) the occurrence of ongoing abuse, whether directed against the child or directed against another person and
- h) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

The court shall *not* consider conduct of a present or proposed custodian that does not affect his relationship to the child.

Joint Custody is custody that is determined by a Joint Parenting Agreement. Such an agreement specifies each parent's powers, rights and responsibilities for the personal care of the child and for major decisions such as education, health care and religious training. The agreement must specify a procedure by which proposed changes, disputes and alleged breaches may be mediated or otherwise resolved and provide for a periodic

review of its terms by the parents. The court may order mediation, evaluation or investigation to assist in determining whether joint custody should be awarded.

Joint Custody may be awarded by the court if the court determines that it is in the best interests of the child, taking into account:

- a) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child, or the parents capacity to substantially comply with a Joint Parenting order;
- b) the residential circumstances of each parent and
- c) all other factors which may be relevant to the best interest of the child.

Joint Custody does not necessarily mean equal parenting time. There is still a single physical residence for the child. That is determined by agreement of the parties or the judge.

Joint Custody does mean access to records, information pertaining to a child, including medical, dental child care and school records by the non-custodial parent.

Visitation

Visitation is very closely related to the subject of custody. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral or emotional health. Reasonable visitation privileges are also available to grandparents, great-grandparents, siblings and, under certain circumstances, stepparents.

Child Support

The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the child's support, without regard to marital misconduct. The duty of support owed to a minor child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child. Generally, the parent not granted custody has the duty to pay child support to the custodial parent.

The court determines the minimum amount of support by using the following guidelines:

<u>Number of Children</u>	<u>Percentage of Supporting Party's Net Income</u>
1	20%
2	25%
3	32%
4	40%
5	45%
6 or more	50%

“Net Income” is defined as the total of all income from all sources, minus the following deductions:

- (a) Federal Income Tax
- (b) State Income Tax
- (c) Social Security (FICA payments)
- (d) Mandatory retirement contributions required by law or as a condition of employment
- (e) Union dues
- (f) Dependent and individual health/hospitalization premiums
- (g) Prior obligations of support or maintenance actually paid pursuant to a court order
- (h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts.

Generally, the supporting party will be required to carry health and life insurance for the benefit of the minor child or children, in addition to paying for child support. If the custodial parent incurs child care expenses, the non-custodial parent may be ordered to pay for half of the child care expenses.

Child Support, under Illinois law, is supposed to terminate when a child is emancipated, or turns 18. If a child has a mental or physical disability, child support may continue beyond the age of 18.

The court may also make provision for the educational expenses of the child or children after they have attained the age of majority. Educational expenses may include room, board, tuition, dues, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses and living expenses during the school year and periods of recess. The court shall consider the financial resources of both parties, the standard of living the child would have enjoyed had the marriage not been dissolved and the financial resources of the child.