

CWEALF Publications: Divorce

Introduction

Most of us, at one time or another, need to seek legal advice. This booklet is intended to provide general information to help you answer some basic questions about the process of choosing and working with an attorney. It also includes a section on how to deal with disputes with attorneys over fees or the handling of your case. This publication is not equivalent to legal advice, and should not be relied upon as such. Any specific questions concerning your legal rights should be presented to an attorney.

Divorce in Connecticut

What are the grounds for divorce in Connecticut?

Connecticut has a “no fault” provision in its divorce laws. This means that neither spouse has to prove that the other was at fault in causing the marriage to break down. You can get a divorce if the “marriage has broken irretrievably” and there is no hope of reconciliation.

Are there other legal grounds for divorce?

Yes. In Connecticut, you can get a divorce on the following grounds in addition to irretrievable breakdown:

- a separation for 18 months or more;
- adultery;
- fraudulent contract;
- willful desertion for one year;
- seven years absence when the spouse has not been heard from;
- habitual intemperance (i.e., active alcoholism);
- intolerable cruelty;
- sentence to life imprisonment;
- conviction of a crime involving conjugal duty which is punishable with imprisonment for at least a year (these are sex crimes);
- legal confinement in a hospital or institution for mental illness for an accumulated period of 5 years within the last six years.

Each of these grounds has a specific legal definition. Most people choose not to file under one of these specific grounds because of the necessity of proving it.

How does the court take the grounds of the divorce into consideration?

The court may take the grounds of the divorce into consideration when deciding issues of custody, alimony, child support, and division of property. This is true even in the case of “irretrievable breakdown.”

Do both spouses have to agree that they want a divorce?

No. It is possible for only one spouse to claim that the marriage has irretrievably broken down, while the other claims it has not.

If you* want a divorce and your spouse does not, he/she can request that the court order both of you to attend conciliatory meetings during the three month waiting period (See the *Divorce Process* p.11) with a family or religious counselor mutually acceptable to both of you, or a Family Relations Officer. Conciliatory sessions may serve a variety of purposes from reconciling the marriage to agreeing to the divorce. If you and your spouse cannot agree on a counselor, the court will appoint one. There must be at least two sessions, and failure of either partner to attend both sessions will delay any action on the divorce for six months. The court will direct one or both of you to pay the counselor's fees. Family Relations Officers do not charge a fee, so if neither of you can afford a counselor, you can use their services. Normally, attorneys do not attend these sessions.

**"You" refers to you in conjunction with your attorney. Your attorney will make requests, file papers, etc. as your legal representative, but remember that the decisions are yours.*

**If, after attending the conciliatory sessions, you still want a divorce and your spouse does not, the court will probably agree that the marriage has "irretrievably broken down" and grant the divorce.*

Is there a residency requirement?

Yes. You or your spouse must have lived in Connecticut for the 12 months before filing a complaint or for 12 months prior to the date the divorce is granted. You can also fulfill the residency requirement if you (or your spouse) had your home here when you got married and returned here with the intention of living here or if the grounds for the divorce arose here.

Do I need an attorney?

In all but the simplest divorces you will need to hire an attorney. Simple divorces generally are defined as those in which the couple has no children, the couple has divided property and assets to their satisfaction, neither spouse wants any monetary settlement from each other, and the couple has settled any disruptive emotional issues between them. (See *Pro Se Divorce* pg. 13.) For assistance in choosing an attorney see CWEALF's booklet *How to Choose An Attorney*. For a referral to an attorney you may want to contact CWEALF, the Connecticut Bar Association Referral Service, local women's centers or local county bar associations. (See *Resources*.)

Can my spouse and I use the same attorney?

No. Ethically, an attorney cannot represent more than one client in a case where there is the possibility of a conflict of interest between those clients. In a divorce case, each spouse has his or her own demands and concerns regarding custody, support and the property settlement. It is impossible for one attorney to represent the interests of both parties.

Occasionally, if both spouses have worked out all the details of their divorce (for example, in cases where the spouses have lived apart for several years, have already agreed upon division of their property, and have made arrangements for child custody, visitation, and support), one attorney may agree to prepare the paperwork only. Ethically, however, that attorney can only represent one of you. The other spouse has no legal representation, so in the case of conflict, that spouse must obtain her/his own attorney.

How much will a divorce cost?

The costs for a divorce include the fee for filing the papers with the court (approximately \$185), the fee for the sheriff to serve the papers (approximately \$50-\$75), and approximately \$15 for a certified copy of the judgment. Attorneys' fees for a divorce start at \$750-\$1500 and increase. Many attorneys require a retainer fee for divorce cases before they will begin the work. Because attorneys are usually paid by the hour, the cost is greater if your divorce is complicated. A divorce where child custody and property settlement(s) are

contested would be considered complicated. When you select an attorney, s/he should give you an estimate of the cost. However, if you had originally told the attorney that it would be a simple uncontested divorce and later it becomes contested, the cost may be considerably greater than the initial estimate. (For more information on costs and fees see CWEALF's booklet *How to Choose an Attorney*.)

Can I get my spouse to pay my attorney fees?

Generally, no. You are responsible for the legal fees and costs that you incur. It may be possible for your attorney to request some fees from your spouse, but some attorneys do not want to be in the position of negotiating for their fees.

What if I don't have the money to pay for an attorney?

Unfortunately, this is a common problem and there are not many alternatives. If your divorce will be very simple, you may want to consider representing yourself through a *pro se* divorce. (See *Pro Se Divorce* pg. 13.) If you are receiving state or federal assistance or qualify as "low income" you may be able to get legal representation from a legal aid program. (See *Resources* for a list of legal aid offices.) Some legal aid programs do not handle divorces, and some handle them only if there is domestic violence. Some legal assistance programs work with cooperating attorneys, but there is usually a waiting list. You should also look in newspapers for low cost legal clinics. You can try asking the court to make your spouse pay your attorney fees as part of the settlement, but the amount of legal fees the court orders may not cover the entire cost. You may be able to persuade an attorney to work for reduced fees. You may also call CWEALF and ask for an attorney referral. Many of CWEALF's attorneys offer sliding scale fees, payment schedules and reduced rates.

How long does it take to get a divorce in Connecticut?

There is a **90-day** waiting period which begins on the "return date." (See *The Divorce Process* pg. 11) After **60 days** a hearing date can be scheduled. The actual meeting cannot take place until the **90 days** has lapsed. The length of your divorce process depends on how quickly the complaint is served on your spouse, how soon the hearing is scheduled after the 90-day period, and whether the divorce is contested. If the divorce is not contested, the process will take a minimum time of approximately six months. If the divorce is contested, you must schedule a hearing or trial which will greatly increase the length of the process. Courts in some judicial districts are backlogged with cases, and it may take longer to schedule a hearing or trial in those areas. Check with the court clerk for your judicial district to find out how long trial scheduling will take.

What is the difference between a contested and an uncontested divorce?

In an uncontested divorce both spouses, with the help of their attorneys if they are retained, negotiate a settlement on all aspects of the divorce. The issues that are negotiated include property division, child custody and visitation, support payments and/or alimony. They present the settlement to the court, the judge reviews it and grants the divorce. Most divorces are settled this way.

In a contested divorce, the spouses and their attorneys are unable to reach an agreement on all or some of the aspects of the divorce. They must then go to a hearing or trial. The judge makes the final decision. It is important to remember that contested divorces take more time and are therefore more expensive. In a contested divorce the judge has enormous discretion in making decisions about contested and uncontested issues. If you are not satisfied with the decision there is often very little you can do about it.

What is an annulment?

An annulment ends an invalid marriage, whereas a divorce ends a valid marriage. An annulment is legal recognition that the marriage is void. Annulments are rare in Connecticut. In order to get an annulment you must prove that the marriage is illegal or "void or voidable under the laws of this state or of the state in which the marriage was performed." For example, if the person who performed the marriage is not legally allowed to perform a marriage, the marriage would be illegal in Connecticut and you could get an annulment. The process for an annulment is similar to that of a divorce except there is no 90-day waiting period. If you are seeking an annulment you will need the advice and representation of an attorney.

A legal annulment is different from a religious annulment. In a religious annulment, your marriage is declared invalid by clergy from your faith, but you are still legally married according to state law and would have to obtain a divorce or annulment before remarrying.

What is the difference between legal separation and a divorce?

The grounds and procedure for a legal separation are the same as those for divorce. However, at the end of a legal separation you are still legally married. You must agree on custody, property settlement, support and/or alimony, just as in a divorce. Legally separated couples may not remarry without first obtaining a divorce. Social Security considers you to be married. This is important because, if you divorce after ten years of marriage, you may receive social security benefits based on your ex-spouse's earnings. The tax, estate, and insurance consequences may differ from those of a divorce. If, at any time after the legal separation, one spouse decides to get a divorce, a simple motion to the court along with an affidavit stating that the parties have not resumed marital relations, will convert a separation into a divorce without the participation of the other spouse. After the legal separation process has been completed, the court does not require a 90-day waiting period to grant a divorce.

If my spouse leaves are we legally separated?

No. If you are simply living apart, you are not legally separated regardless of the length of time. You do not have the benefits of any court orders regarding property, children, or support. Enforcing informal agreements may be difficult.

What is divorce mediation?

In divorce mediation the mediator helps the two parties reach an agreement about the issues in their divorce which are in dispute. The mediator does not make any decisions or judgments. Divorce mediation works best when both parties are able to sit in the same room and talk to each other, and neither feels intimidated by the other person. Divorce mediators may be counselors or attorneys, or a team of both. If the mediator is an attorney, ethically s/he cannot represent either party. You should seriously consider consulting an attorney prior to finalizing any agreement. Mediation may be private or handled by the Family Relations Division of Superior Court.

Can I change my name after the divorce?

Under Connecticut law, you have the right to decide whether you want to use your maiden name or your married name after your divorce. If you want to resume using the name you used prior to your marriage, the easiest method is for you (or your attorney) to ask the judge for a "change of name" as part of your divorce agreement.

If you do not change your name at the time of your divorce, you may still change it later. You can either go back to court to have your name changed or do it by "common law" method, i.e., using the name you choose consistently and changing all your official documents to that name.

Can I change my children's names?

The judge in a divorce court does not have the authority to grant a name change for your children. This has to be done in Probate Court. If the children's father agrees to the name change, the judge in Probate Court will probably grant your request. Ask your attorney about the procedure.

I have lived with the same person for many years. Is this a common law marriage?

The State of Connecticut does not have common law marriage. Even if you live with someone for many years, you are not considered married. However, if this relationship is ending and you have children together, you will have to decide the same legal issues of custody, visitation, and child support as couples who are divorcing. It would be wise to consult an attorney. If you have bought property jointly or there is a lot of money involved, you may also want to consult an attorney about your legal rights.

The Divorce Process

What is the process for obtaining a divorce in Connecticut?

Outlined below is the basic process for obtaining a divorce in Connecticut. It is only a general overview. There are many factors that can complicate your case, for example if you do not know where your spouse is, or if temporary custody is contested. If your case is complicated by any number of different factors, you may have to take different steps, and the time required to complete your divorce may vary.

- Spouse A (or her/his attorney) draws up a formal court document called the “complaint” stating that the marriage has irretrievably broken down or stating other grounds and lists what he or she seeks in the divorce. This may include custody, property, change of name, etc.

The complaint is given to Spouse B by the sheriff or process server with a summons to “appear” in court on a specific day, the “return date.” The complaint can be sent by certified mail if Spouse B lives outside Connecticut, or published in a newspaper if you do not know where Spouse B is.

- Once you sign the complaint, or are served the complaint, certain automatic orders go into effect. Automatic orders offer protection to the individuals involved in the divorce (you, your spouse, children). These orders prohibit divorcing couples from certain activities such as going into unreasonable debt, changing medical or life insurance, forcing the other person out of the home, or moving out of state with the children.
- Spouse B (or her/his attorney) must fill out and file a printed form called an “appearance” with the court on or before the “return date.” Spouse B does not have to actually appear in court, but s/he must file the form. If Spouse B does not file an “appearance,” s/he will have no further notice of what happens in the case and will be subject to court orders without an opportunity to be heard.
- There is a mandatory 90-day waiting period after the “return date” before either spouse can seek to have the marriage dissolved. During this time most couples, with their attorneys, try to work out an agreement. It is also the time when either spouse can ask for conciliatory meetings, temporary orders of custody, support, visitation, use of the family residence, alimony, or ask the court to resolve any disagreements.
- The case is assigned a date for a hearing if the divorce is uncontested, or a trial if it is contested.
- If the case is uncontested, only Spouse A is required to appear at a hearing. However, it is advisable that Spouse B appear in court to verify her/his agreement regarding her/his obligations according to the settlement. If the divorce is contested, both parties have to appear at the trial. If you go to trial in a contested divorce, the judge makes the final decision on the contested matters. You no longer have the ability to negotiate, and if you do not like the judge’s decision there is very little you can do. Appeals in family law cases are expensive and rarely successful. You cannot modify or change property settlements. Child support, custody, and visitation can be modified if there is a significant change of circumstance. (See *After the Divorce* pg. 42.)

***Pro Se* Divorce**

Pro se means that you are representing yourself in court rather than having an attorney represent you. You follow the same procedure, but you must fill out and file all of the legal forms yourself.

Can anyone do a *pro se* divorce?

People who are in the best situation to proceed successfully in a *pro se* divorce are those:

- who know where their spouse is;
- whose children are not involved;

- who have divided whatever property or money they have to each person's satisfaction;
- who do not want any monetary settlement from each other; and,
- who have settled most of the otherwise disruptive emotional issues between them so they can cooperate with each other.

Is it possible to do a divorce *pro se* if I have children?

The *pro se* process includes forms to use if you have children, but all people with children should at least consult with an attorney before attempting to proceed *pro se*.

What if my spouse lives out of state?

If you have your spouse's address, it is possible to have the sheriff serve her/him by certified mail.

What if I do not know where my spouse is?

If you do not know where your spouse is, you cannot serve him/her with papers. Your spouse must be notified by "publication," a series of legal notices in the newspaper. You must follow specific rules about when and where to publish a legal notice in the paper and you must get documents to prove that you have taken these steps. You will also have to pay for printing the notice in the paper.

What are the advantages of a *pro se* divorce?

The primary advantage is that it is less expensive. If you do a divorce *pro se*, you must pay only the court costs and the sheriff's fees which total about \$200-\$250. Attorney's fees are a great deal more.

Is a *pro se* divorce as legal as having an attorney do it?

Yes. The process is the same and the end result is the same. The only difference is that you are responsible for filing forms, finding the sheriff, etc. rather than paying an attorney to do it.

What resources are available to assist in a *pro se* divorce?

Occasionally, classes are offered in Connecticut to help people who are doing a divorce *pro se*. To see if there is a class available near you call CWEALF, Infoline, or the nearest Legal Aid office.

You may also pay an attorney to advise you on the *pro se* process. The attorney can provide you with information about the process and help you prepare the documents. In addition you may call CWEALF's Information and Referral Program for assistance (see *Resources*).

Children

Often, the greatest conflict in a divorce arises from the spouses' disagreement about the best interests of their children. At the time of the divorce you and your spouse will try to come to an agreement on:

Custody - With whom will the children live most of the time, who will have major responsibility for them, and who will make the major decisions about their lives?

Visitation Rights - When and where can the person who does not have custody see the children? Should other parties such as the children's grandparents be granted visitation rights?

Child Support - How much money will the non-custodial parent (the one who does not have physical custody) pay to the custodial parent to support the children? (See *Money* pg. 33.)

Custody battles can be ugly, angry, and emotionally upsetting for you and your children. If at all possible, do not use your children's lives as a battleground. There are many possible ways to arrange custody and

visitation. With your attorney's help, try to reach a settlement that is truly in the best interest of your children.

Custody

What will happen if we cannot reach an agreement about the custody of our children?

If you and your spouse cannot come to an agreement, the judge:

- will probably order a study by Family Relations of the spouses, their home life, and the children. Judges often depend heavily on the recommendations of Family Relations in making a decision about custody;
- “shall be guided by the best interest of the child;”
- shall give “consideration to the wishes of the child if he/she is of sufficient age and capable of forming an intelligent preference;”
- may take into consideration the grounds for the divorce if they are seen as relevant in determining the best interest of the child.

Under Connecticut law neither parent has a presumed right to custody of the children. In trying to decide the “best interest of the child” the courts have looked at:

- who has custody now and for how long;
- the home environment of each spouse;
- the economic status of each spouse;
- the “fitness” of each spouse;
- the age of the children; and,
- the attachment or relationship of the child to each parent.

The court may appoint an attorney to represent your children in order to protect their interests. It may also appoint a guardian for the duration of the proceedings. You or your spouse may be responsible for paying your children's attorney's fees. The judge can also award custody to a third party (neither natural parent), if that is seen to be in the child's best interest.

Can I appeal the judge's decision?

Yes. However, your appeal must be based on more than just the fact that you do not like the judge's decision. The appellate court must find that the judge clearly abused her/his discretion in deciding the case. As you can see from the factors above the judge has a lot of discretion in deciding a custody case. Appeals can be very expensive and time consuming and you must have an attorney to appeal.

Can a custody decision ever be changed?

Yes. If there are “substantial changed circumstances” such as income, employment, illness, living situation, etc., you can go back to court and ask to have the custody decision altered. However, courts are often reluctant to change custody decisions unless the circumstances have changed fairly drastically.

Does it make any difference who has custody during the 90-day waiting period?

It may. If there is a custody battle, the courts may weigh in favor of the person who assumed temporary custody during this time, regardless of how s/he got custody at the time.

What is joint custody?

In Connecticut, joint custody is a broad term meaning that both parents continue to share decision-making responsibilities and rights regarding the children's upbringing. It may also, but not necessarily, mean that physical custody is shared. The court may award joint legal custody but not joint physical custody (or you may agree to this in your settlement). The court favors joint custody when both parties agree to it. If both parties do not agree to joint custody, the court will probably not order it.

I presently have legal custody of our children. If I die will my ex-spouse get custody?

Probably. You can name a guardian for your children in your will and request that the guardian have physical custody, but if your ex-spouse is found fit by the probate court he/she will probably be appointed as the children's legal custodian. You may appoint a trustee to protect the assets of your children.

What happens if my husband says that our child is not his?

Any child born in a legal marriage is considered to be the husband's unless he can prove through paternity proceedings that it is not. He would have to get a court order for blood tests for you, the child, and himself and use that as evidence that the child was not his.

Any child who is born to a couple who later marry is considered to be the legitimate child of both spouses. Adopted children are considered to be the same as biological children.

Will custody or visitation decisions be affected if I am a lesbian or gay man?

They may. This depends on the facts of your case and the attitude of the judge. Again, the court is guided by "the best interests of the child" and can take any factors into consideration. Some lesbians and gay men have retained or been awarded custody of their children; others have lost custody. (See CWEALF's booklet *Legal Rights of Lesbians, Gay Men and Bisexuals in Connecticut*.)

Visitation

What are visitation rights?

Visitation rights are the non-custodial parent's rights to spend time with their children. The parent (or third party) that does not have physical custody may ask for a time when s/he can see the children. This may be for a few hours, days, weekends, holidays, summers, or some other arrangement. Visits can take place at the custodial parent's home, in the other parent's home, or in some other place acceptable to both parents.

Will the court grant visitation rights to my spouse if s/he has abused the children?

The court is again guided by "the best interests of the child" when deciding visitation rights. The court generally assumes that both parents have a right to see their child, but if the court is convinced that it is not safe for one parent to be with the child, visitation rights may be denied or severely limited. The court can also order that visitation be supervised by a third party.

What can I do if I do not want my spouse to come to my home?

You can request that the visitation take place in a neutral place and that someone else pick up and bring the children back to your home. This may be done informally, using friends or relatives, or formally with the help of a cooperating social service agency. You may want to speak with someone at your local battered women's shelter about how other women have made these arrangements

I do not like the way my ex-spouse treats the children when they visit. Can I get her/his visitation rights stopped?

Disagreements about visitation rights are a common post-divorce problem. In order to change visitation rights, you would have to go back to court and show a substantial change of circumstance. If you can prove some kind of physical, sexual, or emotional abuse, or if you can show negligence, you may be able to get the visitation restricted, supervised, or stopped. If the differences concern values or lifestyles, the court will probably not stop a parent from seeing her/his children. When conflicts about visitation arise, you may want to look for some non-legal help such as a counselor or a mediator. Try to remember that visitation is for the benefit of the children and most children want to see both parents.

Our divorce judgment allows me “reasonable visitation” with our children. My ex-spouse has put a limitation on what days and times I can see the children and how much notice I have to give before visiting. Is this “reasonable”?

It depends on the circumstances. One of the biggest post-divorce problems is deciding what “reasonable visitation” is. If you are having trouble with your spouse in this area, it may be possible to consult with Family Relations for mediation. If all else fails, you will have to go back to court to try to clarify your visitation rights. Given the problems ex-spouses have with visitation, it is usually better to be specific in the visitation agreement to begin with in order to avoid problems later.

Do grandparents or other family members have any rights to visitation during or after the divorce?

Maybe. If there is an ongoing custody or divorce case Connecticut state law allows grandparents and other family members to ask the court to grant them visitation rights. If the court feels it is in the “best interest of the child,” it will grant visitation.

Child Support

What is child support?

Child support is money that the non-custodial parent gives to the custodial parent to pay for food, clothing, and other expenses required to raise children.

How is the amount of child support determined?

Connecticut has Child Support Guidelines (CSG) to determine how much a child needs for her or his support. The Guidelines are based on how much the non-custodial parent can afford to pay. The support amount varies depending on the number and age of the children involved. The Guidelines are subject to change. In general, judges cannot award a different amount than the one stated in the Guidelines, unless the Guideline amount is unfair or inappropriate in a particular situation.

What factors might the court consider to determine if the Guidelines amount is unfair?

Most judges routinely use the Child Support Guidelines to determine the amount of child support. In rare cases the court will consider the child’s special needs and will balance them between both parents, depending on their ability to pay. The court may look at many factors: each parent’s age, health, occupation, earning capacity, amount and source of present and future income, estate size, vocational skills and employability, other dependent’s needs, property division at divorce, and health care costs not covered by insurance; custody and visitation arrangements, extraordinary visitation expenses; to determine how much each parent will have to cover. The party who wants an amount of support different from the Guidelines must prove to the court why the Guidelines should not apply. The Guidelines outline the grounds for exceptions. The other party is then required to show the court why the Guidelines should be considered applicable. The court will balance the needs and abilities of the parties to arrive at a fair amount.

Can we decide on the appropriate amount of child support ourselves?

Courts encourage parents to reach a voluntary child support agreement. However, if the amount you agree upon differs from the amount required by the Guidelines, the court will have to decide whether the new amount is fair and appropriate and does not disadvantage your children.

What if I am on welfare and have custody of the children?

If you are on welfare, the State of Connecticut has a financial stake in how much child support and/or alimony you receive.

If you are receiving TFA (formerly known as AFDC) and have custody of your children:

- After the state receives support payments, the Bureau of Child Support Enforcement (BCSE) will send you what they call a “disregard”- up to the first \$50 of current child support collected each month for your child. This is usually sent to you in the second month after the payment is made.
- After you have been paid your disregard, the state keeps as reimbursement an amount of support, up to the TFA payment made to you that month.
- BCSE will pay you any child support collected which is more than the amount of your (TFA) benefit and the up to the amount of the support order.
- Any amount collected above the current support is applied to what a parent owes in back support, and is kept by the state as reimbursement for AFDC and or TFA payments made in prior months.
- After all past AFDC and TFA are reimbursed, BCSE will credit any remaining child support amounts against future support payments due.

If you received AFDC and/or TFA in the past:

Effective October 1, 1997, the state distributes child support collections (other than those made through Federal Income Tax Refund Withholding) in former assistance case as follows:

- First, you receive child support collected in any month up to the amount of current support order.
- Second, any amount collected above the current support obligation is sent to you to satisfy any arrearages the non-custodial parent owes to you for periods after you stopped receiving assistance (post-assistance arrears).

Effective October 1, 1997, the state distributes child support collections made through Federal Income Tax Refund withholding in former assistance case as follows:

- First, the state keeps all collections up to the amount necessary to reimburse the state for the assistance you received.
- Second, the amount collected above the amount of assistance you received is paid to you.

Is child support considered taxable income?

The IRS does not consider child support to be income. If you receive child support you will not have to pay taxes on it. If you pay child support it is not tax deductible. If you receive child support, you can list it as income when you are applying for credit in your own name. “Unallocated” support and alimony are considered income by the IRS. Since tax laws change you should consult a tax accountant or tax attorney about deductions

What happens to my child support payments if I remarry?

Parents are responsible for supporting their children until they are 18. If the child is still in high school and living at home, Superior courts can now make child support orders for children until a child completes the 12th grade or reaches 19, whichever comes first. This means that the person paying support is legally responsible to continue these payments until the children are 18, regardless of whether you remarry. However, no support or custody decision is final. If the spouse paying support feels that the circumstances have altered substantially, he/she can go back to court and ask for a modification. (See *After the Divorce* pg. 42.)

Enforcing Child Support Orders

How can I make sure my ex-spouse pays child support?

The law requires an immediate wage garnishment. This means that payments are taken directly out of his/her paycheck. You can ask the judge to order that your child support be paid to you directly or through the Family Division of the Superior Court.

If your spouse does not have a bad payment record, you may request a contingent wage garnishment in your agreement or court orders. If your ex-spouse is 30 or more days late in paying child support, you can follow the process (described on pg. 21) for notifying him/her and filing an affidavit with the court. He/She has 15 days to pay all the money or to request a hearing as to why his/her wages should not be garnished. If this is not done, his/her employer will be notified to garnish his/her wages and send the money to the Family Division for you. You also may be able to get a property lien, income tax refund intercept or security bond to insure payment of your child support. (See *After the Divorce* pg. 42.)

Some people use private child support collection agencies. In order to protect individuals from the high rates charged by the private child support collection agencies, these agencies must be licensed by the State Banking Department, which can then limit the fees charged to collect the support.

The court awarded me child support, but my ex-spouse has not paid me anything in six months. Is there anything I can do?

Yes. For help with questions on child support or with any of the processes described here, we recommend that you first call the State of Connecticut Child Support Information & Problem Resolution Unit (IPRU) at 1-800-228-5437. They can guide you through the system.

The State of Connecticut, through the Department of Social Services (DSS) and the Family Division of Superior Court, offers four main child support services. DSS offers services that will help with the location of absent parents and establishment of paternity and support. The Family Division of Superior Court is primarily responsible for the enforcement of child support.

If you are on public assistance (now called TFA but formally known as AFDC), you automatically become part of the child support system by referral from DSS. If you are not on TFA, you can apply for support enforcement service through the local offices of DSS. You should call the Child Support Information & Problem Resolution Unit (IPRU) at 1-800-228-5437 for guidance as to which office to apply. A one-time \$25 application fee may be charged if your income exceeds a certain amount, although it may be waived in certain circumstances.

The support enforcement service requires that your child support payments be paid through the Family Division of Superior Court. They will make a record of payment and non-payment of your support and forward the check to you. This service provides you with an impartial record of support payments or non-payments which is admissible in court.

If your spouse has not paid you support, you can get a wage garnishment. If your divorce agreement includes a contingent wage garnishment, follow the steps below. If not, the support enforcement service will help you take him/her into court for contempt of a court order and to request a wage garnishment.

How do I get a wage garnishment?

A wage garnishment means that a specific amount of money will be deducted directly from your ex-spouse's wages and paid to you. Mandatory wage garnishments should be ordered in all cases since 1990.

If you have a contingent wage garnishment and the support payments fall behind for 30 days or more, you must send a notice (available from the Family Division) by certified mail or by a sheriff to the delinquent spouse. This notice tells your ex-spouse that his/her child support is delinquent, and that he/she has 15 days to pay the total amount due or to request a hearing on why a wage garnishment should not be issued.

If the delinquent ex-spouse requests a hearing, the court's clerk sets a date, and the judge or family support magistrate listens to arguments from the two parties and decides whether a wage garnishment should go into effect. If the spouse does not pay the back support or request this hearing, the wage garnishment goes into effect once you file the proper affidavit with the court. The delinquent spouse's employer is then served with notice of the wage garnishment. You do not need an attorney for this process.

If you are granted an immediate wage garnishment, an order is entered right away and the delinquent spouse's employer is notified of the wage garnishment. If the court or family support magistrate issues a garnishment to be effective immediately against a non-appearing delinquent parent, then he/she is informed of the wage execution and given the opportunity for a hearing to explain why the garnishment should not continue.

If the employer fails to follow through on execution of the wage garnishment, he/she is subject to a finding of contempt of court and is liable for the full amount of earnings not withheld since receipt of the proper notice.

Is there anything else I can do?

You may file a motion for contempt at the clerk's office. The motion must be served by a sheriff on the ex-spouse. The court will then ask the ex-spouse to justify the non-payment and order payment and even jail if necessary.

If your ex-spouse owes more than \$500 in past due support, you can request that a lien be placed on any real or personal property in Connecticut in which your ex-spouse has an interest.

It is also possible for the state to intercept your ex-spouse's tax refund from the Internal Revenue Service. You are eligible for the tax intercept program if your ex-spouse owes you more than \$500 for child support, your child is under 18, and your payments are monitored by the Family Division of Superior Court. Unfortunately, if the absent parent also owes child support to the state, the state's debt will get priority in the tax intercept process.

In addition, you may be able to get a security bond from your delinquent spouse, garnish his/her military salary or report him/her to the Credit Bureau, which will effect his/her credit rating. (See the CWEALF booklet *Child Support in Connecticut* for more information.)

Can I enforce an order if my ex-spouse is an independent contractor?

Yes. Employers must report "independent contractors" as new hires so the state may enforce child support orders.

My ex-spouse lives out of state and has not paid child support for several months. Is there anything I can do?

Yes. Many states, including Connecticut, have reciprocal enforcement of support laws. These laws require child support orders of one state to be recognized by another state, and require both states to assist the complaining spouse in obtaining child support. The information will be forwarded to the state where the non-paying spouse is living, and that state will attempt to enforce the order. You can also ask for interstate wage withholding if you know your spouse's place of employment. This service may be slow but is covered under the \$25 application fee.

What can I do if my ex-spouse is laid off and not paying child support?

Contact the support division of Family Services and ask them to attach her/his unemployment check. Support payments can then be sent to you, through the Support Enforcement Services (SES).

My ex-spouse is in the military and is behind in child support payments. Is there anything I can do?

If your ex-spouse is on active duty in the military, you may be able to use a new remedy called Statutory Required Allotment or "SRA." A court or state agency must notify the military finance center for the Army, Navy, Air Force or Marines of delinquencies that equal or exceed the amount of support payable for

two months. This remedy is only available for delinquent support payments. Contact CWEALF's Information and Referral Service or the Child Support IPRU for more information about this procedure. (See *Resources*.)

Money

Aside from children, most disagreements in a divorce case are about money. There can be disagreements about:

- alimony;
- the division of money, property, and other assets;
- child support.

Before you begin the process of making financial agreements, you should become familiar with all aspects of your financial situation. This is especially important if you have not been the person primarily responsible for the finances of your household. It may require looking at past tax returns, unpaid bills, old checkbooks, and whatever can help you understand the money aspects of your marriage. You should identify all property accumulated during the marriage and its value.

You should also make up a budget, which indicates your income and projected expenses. You may want to have several versions of the budget to consider. You will have different expenses if you decide to keep a house or move into an apartment, for example. If you are thinking of changing residence, check with realtors in the area to which you wish to move in order to estimate your housing expenses.

Be thoroughly prepared to be questioned regarding all financial matters. It may be a good idea to consult a financial counselor for help in doing this. It would be helpful for your spouse to go through the same process separately. You will be required to file a financial affidavit with the court, which asks for income, assets, and expenses. It is important to talk with your attorney about the tax consequences of any property division and support agreements you and your spouse are considering. CWEALF, your local women's center or your attorney may be able to refer you to a financial counselor if necessary.

Alimony

What is alimony?

Alimony is money paid by one spouse to help support the other spouse. It is considered separate from child support.

Who can get alimony?

According to Connecticut law either spouse can ask for and be awarded alimony.

How is alimony paid?

Alimony can be paid in three ways:

- a lump sum paid at one time (for example \$10,000 paid the day the divorce is final);
- a lump sum paid over a period of time (for example: \$10,000 to be paid as \$2,000 on January 1 every year for five years); or,
- a periodic payment of a specific amount (for example: \$200 a month to be paid on the fifteenth of every month).

What factors does the court consider in awarding alimony?

Under Connecticut law, the judge has discretion and may consider:

- the length of the marriage;
- the cause for the divorce;
- age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, and needs of each spouse;
- the settlement of property, money, and assets; and,
- the impact of the custodial parent's employment on minor children.

Do most women receive alimony these days?

If alimony is awarded, it is usually awarded for a short, specific time. Periodic alimony is being awarded much less frequently, and generally only in cases where the couple has been married for many years.

I don't want alimony but my lawyer said I should ask for \$1 a year. Why?

If you do not receive alimony as part of your divorce settlement, you can never modify the settlement to include alimony. If you ask for as little as \$1 a year, you have the option of going back to court should your circumstances change drastically, to ask the court to award you more alimony.

Why should I do that?

It is impossible to predict ways in which your needs or your ability to provide for your children may change. For example, suppose you are working now and have custody of your children who are ages one and three. You receive child support and with your income you feel financially able to support yourself and children. You do not want alimony. However, if five years from now you are in an accident and are unable to work, you may need to ask for support for yourself as well as for the children.

What will happen to my alimony if I remarry or live with someone?

If you marry or cohabit with someone, the person paying you alimony may ask the courts to modify the alimony agreement. The courts, in most circumstances, do not consider you entitled to alimony if you remarry or cohabit with someone. If you die, alimony will not be paid to your estate or your survivors.
Division of Property/Assets

What happens to our property if we get divorced?

You have the option of agreeing on how to divide your property between you. If the court thinks that the agreement is fair, the court will incorporate your agreement into the divorce decree. If you cannot agree on how to divide your property, the court will divide it for you in a process called "equitable distribution." This means that the court tries to divide your property fairly based on a number of factors.

In Connecticut, the court can give any or even all of one spouse's property to the other spouse, if the court decides that is the fair thing to do. In dividing a couple's property, the court considers a number of factors, including the length of the marriage, the cause of the divorce or separation, the age, health, lifestyle, occupation, job skills, amount and sources of income, and the opportunity to acquire property in the future. The court also considers each person's contribution to the marriage, including non-monetary contributions such as homemaking and childcare. Under this principle, a "non-earning spouse," such as a wife/homemaker, may be entitled to a significant portion of the family property. Because these factors vary from case to case, the results will also vary.

What property is subject to division?

Basically, anything you own at the time of the divorce. This includes real estate, personal property (cars, clothes, jewelry, furniture, art), retirement funds, bank accounts, stocks, copyrights, patents, and even pets.

This includes property that you acquired before you got married. It does not matter whether the property is in your name alone or both of your names. Even if you own property with another person, such as a friend or relative the court could give your share of the property to your ex-spouse. In other words, if you cannot decide who gets the house, the car, and other property, the court has a tremendous amount of discretion in deciding the division of property.

What can I do if I do not like the judge's decision?

You can appeal to a higher court, but appeals are not often successful and they are time consuming and expensive. Property settlements are not modifiable after the divorce. If you wish to file an appeal, you must do so within 20 days of the date on which the decree was issued.

Who will live in the house while the divorce is in progress?

Most couples decide between themselves who will live in the house. If you and your spouse cannot agree, you can go to court and ask for a temporary order for sole use of the family residence. If there is no domestic violence, the court may allow both parties to stay.

Will the court's decision be influenced if one of us moves out while we are waiting for the divorce?

The court rarely takes this into account when deciding the property settlement, but it may make a difference if child custody is contested.

What other things are considered property?

One reason for consulting with an attorney is that laws change. For example, in a few cases outside of Connecticut, the courts have held that a medical degree is "property." These are questions you should ask your attorney.

Debt/Credit/Pensions/Insurance

What should we do about debts and unpaid bills?

Each of you is legally responsible for any debts you incurred before you got married and for any debts you incur while married, EXCEPT that you are both responsible for debts incurred for supporting your family as outlined above. Your financial settlement should include an agreement about who is responsible for which bills and debts. If you do not agree and a bill is not paid, both credit ratings will be affected. Joint debts remain the responsibility of both parties.

Can my spouse take all of our money out of our joint account?

Maybe. It depends on whose name the account is listed in. If the account is listed as "John Smith and Mary Doe," then neither spouse may withdraw the funds without the other's signature. If the account is listed as "John Smith or Mary Doe," then either spouse may withdraw funds. We recommend you consult an attorney to decide on the best way to handle any joint accounts.

What should I do about my credit cards?

If you have credit cards in both of your names, you should terminate them. If you have credit cards in your name alone, make sure that you have all of the cards for that account. Write the card issuers and tell them that no telephone charges should be made against your cards so that your spouse cannot charge purchases to your account without your knowledge. Then have new credit cards issued with different account numbers, if possible. If you ask for new credit cards in your name, the bank or store will do a credit check based on your income alone.

Do I have any rights to my spouse's pension if we divorce?

In certain circumstances you may have rights to your spouse's pension. Under state law the court may, at its discretion, consider pension, profit-sharing stock, bonus plans, or marital property to be divided in a divorce proceeding. If the pension is a qualified plan under the federal ERISA, the Employment Retirement Income Security Act statutes, you should not be afraid to ask for a Qualified Domestic Relations Order in

order to get your share of the benefits. You should discuss this with your attorney and remember to consider the tax consequences of any agreement reached.

If I depend on my spouse's insurance, will I still be covered after the divorce?

Under Connecticut State law, the employer must allow you to keep the same coverage at the group cost for 156 weeks after the dissolution. If he/she works for a company with a group health plan, which covers 20 or more employees, a new federal law has extended this coverage to three years. Usually this means that you must pay your spouse's employer for your portion of the insurance. You may be able to negotiate with your spouse to cover this cost as part of the divorce settlement for a period of time. Insurance coverage for the children should certainly be part of the working spouse's coverage.

After the Divorce

Many problems can arise after the divorce is final, including custody, support, visitation and credit issues. Unfortunately, these can often be difficult to solve, and you may need to consult an attorney.

Can the custody, child support, or alimony decisions be changed?

Decisions about custody, visitation, child support, and alimony are never final, except in cases where you specifically waive rights to modify alimony. The rest of these items are subject to modification if there has been a substantial "change of circumstances." DO NOT sign an agreement that is unacceptable to you under the assumption that you can get it changed. The courts do not like to change divorce settlements unless a significant change of circumstance has occurred. To modify a custody decision, you would have to convince a judge of two things. First, you must convince the judge that there have been major changes in the home or lifestyle of the custodial parent. Second, you must convince the judge that these changes make it no longer in the best interest of the children for that parent to retain custody.

Since 1990, child support orders can also be modified if they substantially deviate from the Child Support Guidelines. Substantial deviation is defined as a deviation of more than 15%. A modification of support payments might be made if there is an increase or decrease in the income of either spouse, if the needs of the child change substantially, or if there is a change in the ability of either spouse to work.

Resources

*All phone numbers published in this booklet are subject to change

Connecticut Women's Education and Legal Fund

(CWEALF)
135 Broad Street
Hartford, CT 06105-3701
(860) 247-6090 (Administrative Office)
Fax: (860) 524-0804
Email: cwealf@cwealf.org
www.cwealf.org

Information and Referral Service:

(860) 524-0601 (Greater Hartford)
1-800-479-2949 Toll Free
Monday – Friday
Spanish speaking staff are available.

Permanent Commission on the Status of Women (PCSW)

18-20 Trinity Street
Hartford, CT 06106
240-8300

Legal Assistance

Greater Hartford Legal Assistance, Inc
Hartford (860) 541-5000

New Haven Legal Assistance Association, Inc.
Main number (203) 946-4811

Statewide Legal Services of CT, Inc.
Main number (860) 344-0380
Toll-Free (800) 453-3320

Connecticut Legal Services, Inc.

Administrative Office (860) 344-0447
Bridgeport (203) 336-3851
New Britain (860) 225-8678
New London (860) 447-0323
Stamford (203) 348-9216
Waterbury (203) 756-8074
Willimantic (860) 456-1761
Willimantic (LAMP) (860) 456-1761

Family Relations, Superior Court

Bridgeport (203) 579-6513
Putnam (860) 928-0478
Hartford (860) 566-3140
Rockville (860) 643-2481
Middletown (860) 344-2957
Stamford (203) 965-5282
New Haven (203) 503-6826
Waterbury (203) 596-4018
New London (860) 443-2826

Domestic Violence

Connecticut Coalition Against Domestic Violence
100 Pitkin Street
East Hartford, CT 06108
(860) 282-7899
Statewide Hot Line Number: 1-888-774-2900

Child Support Information & Problem Resolution Unit
1-800-228-5437