

DIVORCE AND MONEY MATTERS

INTRODUCTION

Aside from children, most disagreements in a divorce are about money. You may both want to make sure you get what you think is right and emotions often come into play.



You need to determine how to split what you own (assets) and what you owe (debts). This booklet is about the financial matters to think about as you are going through your divorce, including

- Alimony, and
- The division of
 - money, property and other assets,
 - debts

Before you begin the process of making financial agreements, you should become familiar with all parts of your financial situation, especially if you have **not** been the one handling them. (*See Tips at the end of this booklet.*) Consider postponing if you need more time to do so.

It is essential to talk with an attorney about the tax consequences of any property division and support agreements you and your spouse are considering.

ALIMONY

What is alimony?

Alimony is money paid by one spouse to help support the other spouse during or after the divorce on a temporary or permanent basis. It is usually a specified amount paid at scheduled times (weekly, monthly, etc.), but it sometimes is paid as a lump sum.

If you and your spouse cannot agree on alimony, a judge will decide for you.

How does the judge decide alimony?

The judge must consider:

- The length of the marriage;
- The cause for the divorce;
- The age, health, station, job skills, occupation, income, education, employability, earning capacity, and needs of each spouse;
- The agreement on the division of money, property and assets; and
- *If there are children:* The impact of the custodial parent's employment on minor children, and the feasibility of the custodial parent obtaining employment.

I don't want alimony now, but I heard that I should ask for \$1 a year. Why?

If you don't receive alimony as part of your divorce settlement, you can never receive alimony in the future. What would you do if your situation changed and you could no longer work or support yourself and your children? You could protect yourself by asking for

alimony as little as \$1 a year. If you receive alimony, you would be able to go back to court to ask for more alimony if your situation changes substantially. See "After the Divorce."

Deciding Alimony - Judge Considers:

Marriage	<ul style="list-style-type: none">•Length•Cause for ending
Job & Earnings Outlook	<ul style="list-style-type: none">•Age and health•Skills, education, occupation, income potential, etc
Agreement on Financial Issues	<ul style="list-style-type: none">•Division of money, property and assets
Children?	<ul style="list-style-type: none">•Impact of custodial parent's job or finding a job

Can I get married again or live with someone and still get alimony?

If you get married or live with someone, the person paying you alimony may ask the court to change (modify) the alimony agreement if the living arrangement has caused a change to your financial needs. In most cases, the language of the divorce agreement would end the alimony if you remarry.

Is alimony taxable?

In general, alimony is considered income so it is taxable for the person receiving it. It is usually deductible for the payer.

Tax laws are very complicated so it is a good idea to talk with a tax attorney or accountant to understand the tax consequences. Visit the IRS for their free bulletin, "Tax Information for Divorced or Separated Individuals."

DIVIDING PROPERTY AND ASSETS

Connecticut is considered an "equitable distribution" state when it comes to dividing property. This means that a judge can distribute property to either spouse -- regardless of when, how, or who acquired the property. All property, including property that was acquired before the marriage or by inheritance of only one spouse, can be divided by the judge. Equitable does not mean equal. Therefore, the division of property does not have to be 50/50.

How will the property be divided?

It depends on the situation.

If you had a prenuptial agreement, that will control how property is divided, unless the agreement is found to be unfair. You may wish to consult an attorney in that case.

If you did not have a prenuptial agreement, you can make your own agreement about how to divide the property, or do this through negotiation or mediation.

If you cannot agree, the judge will have to make the decision.

***All property
can be divided by the court.***

It does **not** matter

- **When** (before or during marriage),
- **How**, or
- **Who** acquired it.

How does the judge decide how to divide property and assets?

In making a decision, the judge has a lot of discretion. The judge will look at:

- The length of the marriage and the reason for divorce,
- The number of children,
- The age, health, and station of each spouse,
- The incomes, occupation, earning potential, vocational skills, education, employability, and the opportunity to acquire assets and income in the future by each spouse, and
- The contribution each spouse made to the family property – both financial and non-financial. (This allows the judge to consider the nonfinancial contributions made by a stay-at-home parent or homemaker.); and
- Other items.

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 is the difference between separate and marital property?

Separate property: Property acquired *before* the marriage is often (but not always) considered as *separate property* of the person who acquired it. *Gifts* and *inheritances* are also viewed as separate. The judge still has the ability to draw on “separate property” in dividing property.

Marital property: Property acquired *during* marriage is considered **marital** property – regardless of who earned it and whose name is

on the title. Keep in mind this includes debts, too.

My spouse has earned most of the money and has bought most things in his own name. Am I entitled to any property in the divorce?

Yes, you probably are entitled to some of the property. Regardless of whose name is on the property, like all marital property, both spouses have an interest in it, and it could be divided between both of you.

Even if your name is not on the title of the house, you still may have a claim to the marital home.

If my spouse inherited the house we lived in during our marriage, do I have any rights to it?

The court will consider the origin of the family home. But even though the house is in your spouse’s name, the fact that you jointly lived in it and that you helped maintain it, means that the house may be considered part of the property to be divided.

What can I do if I do not like the judge’s decision dividing the property?

Property settlements **cannot** be changed after the divorce is final. The only exception is when an appeal is granted. Be aware that appeals are expensive, time consuming, and not usually successful. (Appeals must be filed within 20 days of the date of the divorce decree.)

Who will live in the house during the divorce process?

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 home. The court may allow both of you to stay as long as there is no domestic violence.

When deciding the property settlement, the judge will **not** take into account which spouse is living in the house. (However, if child custody is contested and one of you moves out, the judge may take that into account.)

DEBT, CREDIT, BANK ACCOUNTS, PENSIONS & INSURANCE

What should we do about debts and unpaid bills?

Generally you and your spouse are both responsible for debts acquired **during** the marriage, including credit cards and mortgage. Debts acquired **before** the marriage (like student loans) are typically the responsibility of the spouse who acquired them.

Your financial settlement should include an agreement about who is responsible for paying certain bills and debts. If a bill is not paid --no matter who is supposed to pay-- your credit rating (and your spouse's) will be affected.

You both must share the financial support of the family including expenses for

- Housing,
- Medical and dental care and insurance, and
- Other items to support the family

***If a bill is not paid
(no matter who is supposed to pay)...
both your credit rating (and your spouse's)
will be affected.***

What should I do about my credit cards?

Joint credit cards. If you have a joint credit card, **each of you is responsible** for paying the debt – ***even if*** the divorce decree states the debt should be paid by the other. If the debt is not paid, both spouses are still responsible for it and the non-payment will make it harder to get credit in the future. If there is no balance, you may choose to close the account.

Credit cards in your name alone. Make sure you have all of the cards for those accounts.

- Write the card issuers and tell them that no telephone charges should be made against your cards. (This way your spouse cannot charge purchases to your account without your knowledge.)
- Then, if possible, have new credit cards issued with different account numbers. When you ask for new credit cards in your name, the bank or store will do a credit check based on your income alone.

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

Beware that if both names are listed on the account, typically one spouse can take everything in the account. If you and your spouse cannot agree how to handle the money in the short-term, consider dividing the money equally between spouses. Otherwise, you may need to ask the court for a temporary order to prevent your spouse from clearing the account.

You may wish to consult an attorney to decide the best way to handle any joint accounts.

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

You will likely have rights to your spouse's pension, but the court will have to calculate the value of the pension, using several factors.

A judge has discretion to consider how pensions, profit-sharing stocks, bonus plans, etc. are to be divided. If the pension is a qualified plan under the federal ERISA (Employment Retirement Income Security Act) statutes, you may ask for a Qualified Domestic Relations Order to get your share of the benefits. We recommend you discuss this with an attorney and/or tax expert to find out the tax consequences.

Do I have any rights to my spouse's social security benefits?

You can collect social security based on your spouse's income if

- (1) You were married at least 10 years;
- (2) You have been divorced for two years (unless the ex-spouse was already receiving social security before the divorce); and
- (3) Your ex-spouse is eligible to receive benefits.

If you remarry, you lose the right to your ex-spouse's social security benefits.

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

While the divorce is pending, the automatic orders go into effect. (See our "Divorce Basics" booklet). This means that one spouse cannot remove the other spouse from health insurance, or any other insurance policies, while the divorce is pending.

Under Connecticut state law, the employer must allow you to keep the same coverage at the group cost for a certain amount of time (*see below*). You may need to pay your portion of the insurance or the cost of the COBRA. However, you can try to negotiate to have your spouse pay for this cost for a certain length of time as part of the divorce settlement. If the group cost is too expensive, visit Connecticut's marketplace for health insurance at www.accesshealthCT.com.

Usually one parent must maintain health insurance for the children, if it is available at a reasonable cost. This is usually worked out in the child support agreement. If it is not available at a reasonable cost, you might be ordered to apply for the child to be covered by HUSKY, the state insurance health plan for children. Call 1-877- CT HUSKY or visit www.huskyhealth.com

AFTER THE DIVORCE

Many problems can arise after the divorce is final, including issues with alimony, money and credit, custody, child support and visitation. The situation may have changed or you may need help because your ex-spouse is not following the court orders. Unfortunately,

these issues can often be difficult to solve, and you may need to consult an attorney.

Can the judge's decisions be changed?

Alimony

Alimony might be changed if you have a court order for alimony **and** you have had a "substantial change in circumstances." It was recently held that a substantial change in income is not reason enough alone to change an alimony order. There must be other factors, such as a change in health circumstances or an increased need for the person receiving alimony.

Custody, Visitation & Child Support

Decisions about custody, visitation and child support are never final, but you must show there has been a "substantial change of circumstances" to get it changed. Judges will look to see whether circumstances have changed substantially and affect the best interests of the child. (See our "Divorce and Children" booklet.)

How do I change a court order?

To ask for a change (modification), you must file a court form (Motion to Modify). A hearing would be held and you would have to prove to the judge that a change is needed. You may represent yourself in court or hire an attorney. CWEALF's I&R Line can explain the process to you. Also see the Resources section at the end of this booklet.)

What can I do if the court orders are not being followed?

Alimony Orders

You can get help enforcing the alimony order by asking the court for a "contempt" order or asking the court's Court Support Services Division (CSSD, formerly Family Relations) to help you. (*Contempt* means disobeying a court order.) When you ask the court for a contempt order, the court will make the other parent go to court to explain why he or she has not followed the court's orders.

Note: In some courts, CSSD is called Family Relations or Family Services.

Custody or Visitation Orders

See our "Divorce and Children" booklet.

RESOURCES

LEGAL ASSISTANCE

CT Women's Education and Legal Fund

Information & Referral (I & R) Line

1-800-479-2949

860-524-0601 www.cwealf.org

Statewide Legal Services

(information and referrals to free legal aid)

1-800-453-3320

860-344-0380 www.ctlawhelp.org

Children's Law Center

(provides legal advocates to children in family court cases with chronic conflict)

1-888-529-3667

www.clcct.org

GLAD (Gay & Lesbian Advocates & Defenders)

1-800-455-GLAD (4523)

617-426-1350

CHILD SUPPORT

CT State Government Agencies

Judicial Branch:

Support Enforcement Services (SES)

www.jud.ct.gov/childsupport

Child Support Call Center: 1-800-228-5437

Executive Branch:

Department of Social Services (DSS)

www.ct.gov/dss/childsupport (for local offices)

DOMESTIC VIOLENCE

Domestic Violence Programs in CT

24-Hour Statewide Hotline: 1-888-774-2900

(Emergency shelter, crisis intervention, information, and referral services)

FAMILY RELATIONS - SUPERIOR COURT

For a list of Family Relations Offices, addresses, and phone numbers throughout the state, visit: www.jud.ct.gov/directory/directory/family.htm

Tips to help you get prepared to make an informed agreement:

- Look at past tax returns, unpaid bills, old checkbooks.
- Make copies of important financial documents.
- Identify all property accumulated during the marriage and its value.**
- Make up a budget that 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 about moving, check with realtors in the new area to estimate your housing expenses.
- Be prepared to answer questions regarding all financial matters.** You will be required to file a financial affidavit with the court which asks for income, assets, liabilities, and expenses.

It may be a good idea to consult an attorney or a financial counselor for help in doing this. CWEALF, your local women's center or your attorney may be able to refer you to a financial counselor.