

HANDBOOK FOR SEPARATION AND DIVORCE IN MARYLAND

Fourth Edition



STUART K. SKOK, ESQUIRE



STUART SKOK LAW LLC

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SEPARATION AND DIVORCE
IN MARYLAND**

FOURTH EDITION

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Handbook for Separation and Divorce in Maryland

Stuart Skok Law, LLC

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Book layout and publishing by Andy Grachuk - www.JingotheCat.com

Book cover by design25graphics - www.d25g.com



Matrimonial and Family Law

Stuart K. Skok, Esquire, has developed this *Handbook for Separation and Divorce In Maryland Fourth Edition* to assist her Firm's clients and others going through divorce to better understand the process and the law. The process of separation and divorce can be overwhelming and complicated. This *Handbook* is designed to provide basic information that answers commonly asked questions about divorce in Maryland.

This *Handbook* is not intended to replace or serve as legal and/or tax advice about your particular situation. Rather, it is intended to serve as a starting point and reference guide for individuals as they go through divorce.

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Chapter I: Marriage



DO I NEED A PRE-NUPTIAL AGREEMENT?

A Pre-Nuptial Agreement is a contract negotiated and signed by a couple prior to their marriage. It is recommended that a couple have a Pre-Nuptial Agreement in situations where one or both have children from prior marriages and/or one party has substantially more assets than the other.

Pre-Nuptial Agreements usually address what happens in the event of a divorce (such as alimony, division of retirement benefits and other assets and liabilities), as well as what happens in the event of death (how the decedent's estate will be divided, life insurance, and payment of certain expenses for the surviving spouse).

When negotiating Pre-Nuptial Agreements, it is essential that a full and truthful disclosure of assets and liabilities be made by each party; that the Agreement be entered into voluntarily; and that each party have independent legal counsel during negotiation of the Agreement.



DOES MARYLAND RECOGNIZE COMMON LAW MARRIAGES?

Common-law marriages may occur in some states when individuals agree to reside together as husband and wife and publicly hold themselves out as husband and wife without a marriage ceremony and certificate.

Couples in a common-law marriage have the same rights as other married couples, including the right to divorce.

Maryland law requires a religious or civil ceremony to create a valid marriage. Couples cannot live together in Maryland to create a valid marriage.

However, if a common-law marriage is established in a foreign jurisdiction that accepts such marriages as valid, such as the District of Columbia, Maryland will recognize that marriage as a valid marriage.

For example, if a valid common-law marriage exists in the District of Columbia and the couple later resides in Maryland, the foreign common-law marriage will be recognized as a valid marriage under the laws of Maryland.



CAN I LEGALLY RECORD COMMUNICATIONS OF MY SPOUSE?

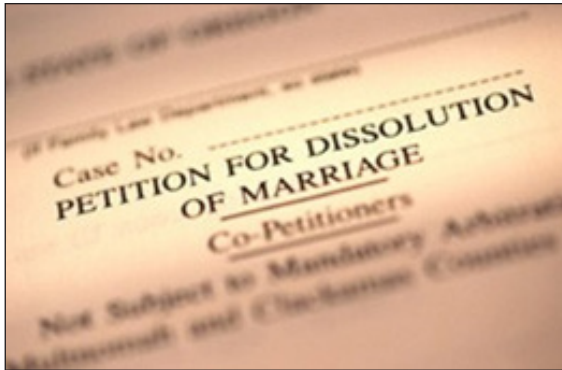
Under Maryland Wiretap law, it is illegal for ordinary citizens to willfully intercept, endeavor to intercept, or procure another to intercept or endeavor to intercept, any wire, oral or electronic communications, absent consent of the parties involved.

There is no Wiretap exception for nonconsensual oral surveillance between spouses. However, video-only surveillance or “Nanny-cams” are legal in Maryland.

A person who leaves a voicemail or knows they are recorded is deemed to consent to the recording. Except for telephone conversations, all oral conversations must have a reasonable expectation of privacy to be protected from interception (e.g. conversations in a place and manner where one expects not to be overheard). However, overhearing a private conversation with the use of one’s senses alone, without an electronic device, is not an illegal interception.

Emails, instant messages and the like are deemed to have been illegally “intercepted” only if they are electronically intercepted during the transmission of the communications.

Chapter II: Separation/Divorce



WHAT ARE GROUNDS FOR ABSOLUTE DIVORCE?

The Maryland Court of Appeals in *Ricketts v. Ricketts* has carved out an exception to the separation requirement to allow for divorce on grounds of constructive desertion with cessation of marital relations when spouses reside under the same roof in separate bedrooms.

In Maryland, there are 7 grounds for divorce (to terminate the marriage): adultery; desertion for 12 continuous months; separation for 12 continuous months; conviction of a felony or misdemeanor with incarceration for at least 1 year under a sentence of 3 or more years; insanity, with the spouse institutionalized for at least 3 years and the insanity is incurable; cruelty of treatment or excessively vicious conduct; and mutual consent.

To be “separated,” spouses must live in separate residences. With limited exception, the separation is interrupted if spouses have sexual relations with one another, resume living together, or even spend one night together under the same roof, regardless of whether or not they sleep in separate bedrooms.



CAN I FILE FOR DIVORCE WHILE LIVING WITH MY SPOUSE?

Under certain limited circumstances, you can file for divorce while still living with your spouse. For example, a spouse can file for an absolute divorce on grounds of adultery by the other spouse while still living together.

A spouse can file for a limited or absolute divorce on grounds of abuse by the other spouse (known as “excessively vicious conduct” or “cruelty of treatment”) or constructive desertion (e.g., refusal of marital relations) while still living together. Under *Ricketts v. Ricketts*, spouses can file for a limited or absolute divorce based on constructive desertion (e.g., refusal of marital relations) while still living together under the same roof in separate bedrooms.

However, in Maryland, before parties are granted a divorce, the Court does not have jurisdiction to grant child custody, support or use and possession of the family home while the parties reside together. Therefore, if a spouse needs to obtain custody, support or use and possession relief before the divorce, the parties must live in separate residences.



IS MY DIVORCE CASE UNCONTESTED?

Your divorce case is uncontested if you and your spouse agree to divorce and all issues related to the marriage have been resolved. A contested divorce is where the grounds for divorce and/or any issues related to the marriage are in dispute, such as child custody, child support, spousal support, and property disposition.

If you have a contested divorce, you may need to seek relief from the Court, either from a Judge or a Family Division Magistrate. This process can be very complicated, lengthy and expensive.

If you and your spouse agree on the grounds for divorce and all issues incident to the dissolution of the marriage, it may be advisable to negotiate and enter into a Separation and Property Settlement Agreement. Once all issues are settled, the divorce becomes uncontested and obtaining a final divorce can be expedited.



WHAT IS A “NO FAULT” DIVORCE?

A “no fault” divorce is where neither spouse is considered responsible for the breakup of the marriage.

Technically, Maryland does not have a no fault divorce. The closest thing to a no fault divorce in Maryland is when spouses are divorced on grounds of a one-year separation or by mutual consent.

Under a one year separation ground, if you and your spouse have lived separate and apart in separate residences without interruption and without sexual relations for one year, you can obtain an absolute divorce.

It is not necessary to show that the separation was voluntary. Nor is it necessary to show that either spouse deserted the other or was otherwise at “fault” for the dissolution of the marriage. Under mutual consent, if there is a written agreement resolving all issues, you can obtain a divorce without any period of separation.



HOW DO I PROVE ADULTERY?

To obtain a divorce on the grounds of adultery in Maryland, you must prove that your spouse had the “opportunity” and “disposition” to commit adultery. Proof of sexual intercourse is not required.

“Opportunity” may be shown by your spouse spending time alone with a member of the opposite sex in a residence or hotel. “Disposition” may be shown by some public display of affection or intimate correspondence.

There are 2 defenses to adultery which are not an absolute bar to granting the divorce: condonation (forgiveness) or recrimination (adultery by the claiming spouse).

Adultery is a misdemeanor crime in Maryland. Therefore, a spouse has the right to plead the 5th Amendment and refuse to answer questions about adultery. In such event, the Court may infer that the adultery occurred.

Unlike other grounds for divorce, adultery allows for an immediate divorce, without any minimum period of separation required.



WHAT IS A SEPARATION AGREEMENT?

A Separation Agreement is a permanent contract between spouses, generally negotiated with assistance of independent counsel, which resolves all issues related to the dissolution of the marriage.

Provisions of a Separation Agreement may include the date of separation, child custody, access, child support, alimony, college contributions, use and possession of the family home, disposition of the family home, division of assets and liabilities, health insurance, life insurance, waiver of inheritance rights, attorney's fees and costs.

It is important to consider the tax consequences of a proposed Separation Agreement, such as the after-tax effect of alimony and child support, and to seek legal advice prior to signing a Separation Agreement.



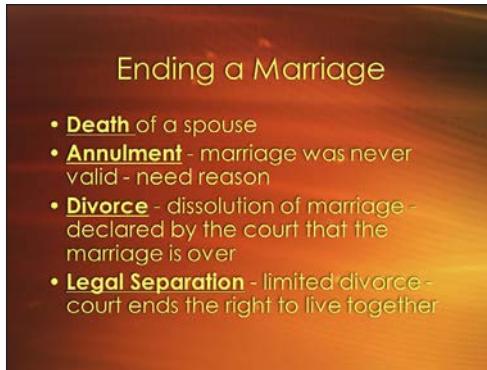
DO I NEED A SEPARATION AGREEMENT TO GET DIVORCED?

Although a Separation Agreement is recommended in many cases, it is not required in order to obtain a divorce.

A written Separation Agreement may be necessary to address the disposition of the family home because any agreement relating to real estate must be in writing in order to be binding and enforceable.

A Separation Agreement serves to resolve all issues related to the divorce and family so that the Court does not have to decide those issues. A Separation Agreement can call for obligations beyond which the Court can order, such as college expenses, life insurance or allocation of tax obligations for support and property. If such provisions are included in a Separation Agreement, they will be enforced by the Court.

If properly drafted, a Separation Agreement can also minimize or preclude future disputes between spouses.



WHAT IS A LIMITED DIVORCE?

A limited divorce is a divorce from bed and board. It grants spouses the right to live separate and apart from one another, although they remain as husband and wife and cannot remarry.

A limited divorce may be sought for religious purposes when spouses do not have grounds for an absolute divorce (which terminates the marriage). Filing for a limited divorce will allow the Court to decide custody, support, use and possession of the home and personal property, as well as to resolve disputes regarding ownership of personal property or order the sale of jointly owned personal property.

However, under a limited divorce, the Court cannot equitably divide the parties' marital property or order the sale of jointly owned real property, such as the family home.

Although spouses cannot remarry under a limited divorce, for tax purposes, spouses granted a limited divorce may file as single taxpayers.

In addition, a limited divorce allows the continuation of health insurance benefits to a spouse until the absolute divorce.



CAN I FORCE MY SPOUSE TO LEAVE THE HOME?

If the home is jointly titled or leased, you cannot “force” your spouse to leave the home (e.g. by changing the locks and precluding access). Each spouse has an equal right to stay and live in a jointly owned or leased home.

Under circumstances of domestic violence, the Court can order one spouse to vacate the home for a period of time in order to protect the safety of the other spouse and/or child of the parties.

When a Court decides residential custody of a minor child, the Court can also award use and possession of the family home to the custodial parent. The other spouse is then required to vacate the home during the use and possession period.

At the time of divorce, the Court can either order the sale of the home, transfer the home to one spouse, or award the custodial parent use and possession of the home for up to 3 years. Upon termination of a use and possession order, the home will be sold or transferred.



WHERE CAN I FILE FOR DIVORCE?

You can file for divorce in Maryland if you or your spouse have resided in Maryland for at least 6 months prior to the filing of the Complaint for divorce or if the grounds for divorce occurred in Maryland.

For example, if adultery is your ground for divorce and the adultery occurred in Maryland, neither you nor your spouse need to be a Maryland resident for one year prior to filing for divorce.

However, at least one spouse must be a “bona fide” resident of Maryland when the Complaint for divorce is filed. Thereafter, either spouse may change residences and still maintain the divorce action in Maryland.

Whether someone is a “bona fide” resident is determined by the person’s intent, best shown by where they live and vote.

Maryland divorce actions in Montgomery County are filed in the Circuit Court for Montgomery County, 50 Maryland Avenue, Rockville, Maryland 20850.



WHAT IS A PENDENTE LITE HEARING?

*P*endente lite is Latin for “pending litigation” and refers to temporary relief the Court can award to spouses while their divorce litigation is pending.

A *pendente lite* hearing is typically scheduled within 3-4 months of the filing of the initial Complaint. At the hearing, the Court can award temporary relief to either party, including access, child support, alimony, attorney’s fees, litigation costs, maintenance of health insurance and use and possession of the family home (if residential custody is not disputed).

A *pendente lite* hearing is heard before a Family Division Magistrate in the Circuit Court, who makes recommendations to a Judge. Either party may file exceptions if they object or disagree with the recommendations. The exceptions are then ruled upon by a Judge.

Once a *pendente lite* Order is issued by a Judge, it will stay in effect until the parties’ custody trial and/or divorce trial.



CAN I CHANGE MY WILL PRIOR TO DIVORCE?

Yes, you can change your Will at any time. If you are contemplating divorce, you should update your Will before the divorce so that your desires are in effect upon divorce.

If you do not update or have a Will, your surviving spouse may be named to manage your estate and may receive up to 100% of your property, even if you are separated from your spouse.

If you disinherit your spouse before divorce, without a Separation Agreement in place, your spouse may be able to successfully challenge your Will. However, if you and your spouse enter into a valid Separation Agreement that waives inheritance rights, your spouse cannot assert any elective share.

In addition, effective estate planning tools can remove substantial property from your estate to avoid estate claims.



HOW CAN I SETTLE MY DIVORCE?

Your divorce can be settled (e.g. resolving custody, support, property division, etc.) in 4 ways.

First, “litigation” involves legal decisions made for a couple by a Judge after a lengthy and often costly adversarial process, including discovery, motions, evaluations, mediation, pre-trials, trial and any appeals.

Second, “negotiation” involves couples negotiating an Agreement directly with each other or with assistance of counsel. Agreement terms are reduced to writing and filed with the Court upon divorce.

Third, “mediation” involves couples negotiating an Agreement with a neutral mediator who meets with them alone or with counsel present. The mediator prepares the Agreement for couples to review with their respective counsel before execution.

Fourth, “collaborative divorce” (the newest way) involves spouses using a team approach to reach an agreement out of court, enlisting legal, mental health and financial specialists trained in Collaborative Law to address the unique needs of their family. Spouses are committed to cooperating to achieve the best resolutions for their family and agree in writing not to litigate the divorce.

Chapter III: Child Support



HOW IS CHILD SUPPORT DETERMINED?

In 1990, Maryland enacted Child Support Guidelines in order to have appropriate and consistent child support awards. In 2010, Maryland updated the Guidelines to revise the schedule of basic child support obligations. Unless application of the Guidelines would be unjust or inappropriate in a particular case, the Court will apply the Guidelines when establishing child support.

The Guidelines calculate child support based on each parent's respective gross income (before taxes), the number of children, and other expenses, such as work-related child care, extraordinary medical costs and private school expenses.

There are 2 formulas for Child Support Guidelines: Formula A for sole custody and Formula B for shared custody. The "shared" Formula B applies to reduce the child support obligation when both parents have the children overnight for more than 35% of the year (or 128 overnights per year).

However, under Formula B parents are required to contribute to the expenses of the children in addition to child support.



WHEN DOES CHILD SUPPORT END?

If a child turns age 18 while still enrolled in high school, the child support obligation continues until either the child graduates from high school, or age 19, whichever is first. Otherwise, child support terminates when the child turns age 18.

Although the law sets limits on the duration of child support, parents can agree to go beyond those limits in a Custody or Separation Agreement, such as by agreeing to contribute toward college education expenses. In such event, the Court will enforce the parties' agreement to pay child support beyond what is legally required.



WHAT HAPPENS IF CHILD SUPPORT IS NOT PAID?

In Maryland, if child support is not paid, one can seek to establish or enforce the obligation by filing an action in the Circuit Court or with the Maryland Child Support Enforcement Agency – (www.dhr.state.md.us/csea).

Once a child support Order is entered, the recipient parent is entitled to receive child support by Earnings Withholding Order (an Order directing the obligor's employer to deduct child support from the obligor's earnings).

Support Orders may also be enforced across state lines under the Maryland Uniform Interstate Family Support Act (UIFSA). This Act allows the recipient parent to file for child support in Maryland and collect support from a non-resident obligor.

When child support arrearages accumulate, the Maryland Child Support Enforcement Agency has certain administrative remedies to collect arrearages, including notifying authorities to intercept the obligor's tax refund or suspend the obligor's driver's license or U.S. passport.



IS CHILD SUPPORT MODIFIABLE?

Child support can be modified by the Court if there is a “material change in circumstances” since the last Order for child support.

For example, if a Separation Agreement providing for child support is incorporated into a Divorce Decree, the parent seeking a modification of child support must prove a material change in circumstances since the date of the Divorce Decree (not the date of the Separation Agreement).

A material change in circumstances would include a change in either parent’s income, a change in certain expenses of the children, such as work-related child care, extraordinary medical or private school expenses, or a child reaching age of majority.

When a court modifies child support, it can only make the modification retroactive to the date of the request for modification. If you believe your child support should be modified, you should not delay filing the request.



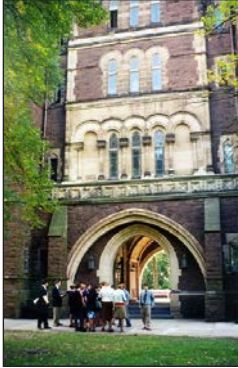
WHERE CAN I FILE FOR SUPPORT?

If both parties are Maryland residents, the Plaintiff (person seeking support) may file for child support or alimony in the county where the Defendant (intended payor of support) resides, carries on business, is employed or habitually engages in business.

In addition, in a divorce action, the Plaintiff may file for support in the county where the Plaintiff resides or, in a custody action, the Plaintiff may file for support in the county where either parent or child resides.

If the Defendant is not a Maryland resident, the Plaintiff can seek support in Maryland if:

1. The Defendant is personally served with suit papers;
2. The Plaintiff resides in Maryland when suit is filed; and
3. Maryland was either the matrimonial domicile of the parties immediately before their separation or the obligation to pay support arose under the laws of Maryland or under an Agreement executed by one of the parties in Maryland.



CAN THE COURT ORDER COLLEGE CONTRIBUTIONS?

In Maryland, the Court cannot order either parent to contribute towards college expenses of a child, since the obligation to pay child support terminates when the child attains age 18 (unless the child is enrolled in high school, then in that circumstance, child support continues until the child graduates from high school or attains age 19, whichever is first).

However, if parents have a written Agreement to contribute to college expenses of a child, the Court will enforce the terms of that Agreement.

In addition, if the Child Support Order was originally established in another state, the laws of that state, rather than Maryland, will control when child support terminates and the extent to which college contributions are required.

For example, in the District of Columbia, child support terminates when a child attains age 21, without any obligation to pay for college. Therefore, an obligor parent residing in Maryland with a child support order originally established in the District of Columbia must pay child support until the child attains age 21.

Chapter IV: Custody



HOW IS CUSTODY DETERMINED?

The Court determines custody based on what is in the best interest of the child. This determination depends entirely on the particular facts of each case.

The Court will consider many factors when deciding residential custody (where the child should reside): fitness of the parents, character and reputation of the parents, desire of the parents, any agreement between the parents, potential to maintain family relations, child's preference, material opportunities affecting the child, age and health of the child, suitability of each parent's homes, whether the non-custodial parent will have adequate opportunities for visitation, how long the child has been separated from a parent seeking custody, effect of any prior abandonment or surrender of custody of the child, and any other relevant fact.

In Maryland, there is no longer a maternal preference favoring mothers in custody cases.

Before deciding custody, the Court will order the parents to attend custody mediation in an effort to resolve the case.



WHAT IS LEGAL CUSTODY?

Embraced within the meaning of “custody” are the concepts of “legal” and “physical” custody.

Legal custody gives the right to make decisions regarding matters of major significance in a minor child’s life. Physical custody controls where the child resides each day. A parent with legal custody may make decisions about the child’s education, religion, discipline, and medical care. The Maryland Courts may grant parents joint legal custody, an equal voice in decision making, if they can demonstrate, among other factors, an ability to communicate effectively in reaching decisions about the child. The Court may also designate one parent as the tie-breaker or appoint a parent coordinator if the parents cannot reach shared decisions. The Court cannot assign tie-breaking authority to a third party, such as a parent coordinator, without the parents’ consent.

Even if one parent has legal custody, the parent who has physical custody of the child may make day-to-day decisions regarding the child’s care and well-being while the child is in his or her care. In addition, the parent without legal custody still has the right to access a child’s medical, school or other records.



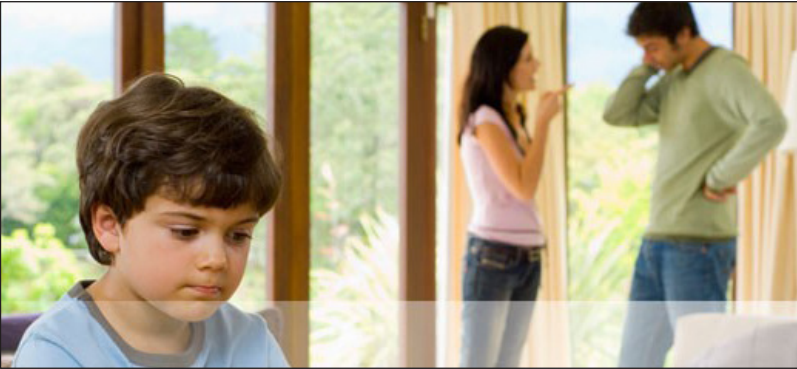
WILL AN ATTORNEY BE APPOINTED FOR MY CHILD?

An attorney may be appointed for a child in custody cases for 3 reasons.

First, a *Best Interest Attorney*, formerly called *Guardian ad litem*, is appointed to protect a child's best interests, regardless of the child's desires and even if disclosure of confidential information is required to serve the best interests.

Second, a *Child Advocate Attorney* is appointed to provide independent counsel for a child and owes the child undivided loyalty, confidentiality and competent representation. Such attorney is appointed when a child needs a voice in court, such as relocation cases, when there are allegations of abuse or when a child is sufficiently mature to have distinct interests.

Third, a *Child Privilege Attorney*, formerly called a *Nagle v. Hooks Attorney*, is appointed to decide whether to assert or waive the child's privilege of confidentiality with a psychiatrist, psychologist and/or social worker. If the child's privilege is waived, the health care provider may be allowed to testify and release confidential treatment records in the custody proceeding.



IS CUSTODY MODIFIABLE?

Custody and access are always modifiable by the Court if there has been a “material change in circumstances” since the last Court Order, and the change “fundamentally affects the best interests of the child.”

The Court retains the power to modify Custody and Visitation Orders for children until age 18.

When one parent relocates to another state, affecting the custody or visitation rights of the other parent, the relocation will be considered a *per se* “material change in circumstances” warranting a request for modification of custody or visitation. Other material changes in circumstances may include a change in the child’s needs, a change in a parent’s schedule or a change in a parent’s treatment of the child.

When the Court modifies custody, the Court may also reconsider the child support obligation if requested by one of the parties.



WHAT IS “REASONABLE CHILD ACCESS”?

In Montgomery County, Maryland, the Court typically considers “reasonable child access” for the non-custodial parent to be alternating weekends from Friday to Sunday, alternating holidays, at least 2 weeks of summer vacation and a midweek visit for dinner or overnight.

When parents do not live in the same geographical area, reasonable access may include 1 weekend per month, alternating holidays and extended access up to 7 weeks during the summer.

The Court can also require parents to share transportation responsibility and costs to exchange custody when parents do not live in the same geographic area, including airfare, hotels or other reasonable expenses.

Keep in mind that the Court determines reasonable visitation case-by-case based on the best interests of the particular child.



WHEN IS SUPERVISED ACCESS REQUIRED?

In Maryland, if the Court has reasonable grounds to believe that a child has been abused or neglected by a parent, the Court can require supervised access to protect the future safety, physiological, psychological and emotional well-being of the child.

In extreme cases, the Court can deny custody and access rights entirely to protect the child.

When the Court restricts or denies access, the restriction can only be lifted if the Court finds that there is no likelihood of further child abuse or neglect.

The Children's Rights Council in Washington, D.C., www.gocrc.com (<http://www.info4parents.com>), offers Child Access and Transfer Centers throughout Maryland to provide monitored centers to exchange custody (on alternate Fridays and Sundays) or for supervised visitation (on alternate Saturdays).

There is no fee for this supervised service program. When parents cannot agree upon a supervisor, the Court may also offer Court-sponsored programs at no charge.



CAN A CHILD DECIDE WHERE TO LIVE?

Under Maryland law, a minor child who is 16 years old or older may petition the Court, on their own, to change an existing Custody Order.

After a hearing, the Court may modify the existing Custody Order if the Court finds the modification to be in the child's best interest.

The Court is not obligated to follow the desires of a child who petitions the Court, but will do so in many cases if it finds the child's basis for seeking a change in custody to be reasonable.

For a child under age 16 who has strong feelings about custody, a Judge or Magistrate may interview the child in chambers (outside of the courtroom) regarding their desires and concerns. Unless waived, the Court must make a record of the interview for the parents.

In custody cases, calling a child to testify as a witness is extremely discouraged by the Court and may reflect negatively on the fitness of the parent seeking to have the child testify.



WHERE CAN I FILE FOR CUSTODY?

Generally, a custody action should be filed in the “home state” of the child. The “home state” of a child is where the child has resided with a parent or guardian for at least 6 consecutive months immediately before filing the custody action.

For example, assume the child resided in Maryland with one parent for more than 6 months before the other parent moved the child to Virginia. The custody action may still be filed in Maryland as the child’s “home state” (where the child most recently resided for 6 consecutive months). After the child resides in Virginia for 6 consecutive months without a custody action filed in Maryland, Virginia would become the child’s “home state.”

The rationale for “home state” jurisdiction in custody cases is to prevent forum shopping and to allow the custody case to be heard where there are significant connections and evidence of the present and future care, protection and welfare of the child.



CAN A THIRD PARTY BE GRANTED CHILD CUSTODY OR VISITATION?

In a dispute between a parent and a non-parent third party, there is a presumption that the best interest of the child is served by awarding custody to the parent.

This presumption can only be rebutted if: (1) the parent is unfit; or (2) exceptional circumstances exist so that custody with the parent would not be in the child's best interest.

A third party seeking custody must rebut the parent presumption by a *preponderance of the evidence* (a more likely than not or more than 50% standard).

When a third party is granted custody, it is always subject to modification based on a material change in circumstances.

Caselaw in Maryland provides that the same strict standard for custody is applied to cases where a third party is seeking only visitation.

A parent's custodial rights are not terminated by the award of custody to a third party, nor is the parent precluded from seeking custody in the future. The parent may also be granted the right to visit and/or communicate with the child as part of a third party custody award.



CAN A PARENT RELOCATE WITH A CHILD?

In Maryland, when a parent desires to relocate with a child, the other parent has the right to object to the relocation for any reason (e.g., if the move would interfere with non-relocating parent’s custody rights).

When parents cannot agree on whether a child should be relocated, either parent can request the Court to modify custody and visitation.

In Maryland, a relocation of a child is a *per se* “material change in circumstances” warranting the Court’s review of custody. However, the relocation must be of sufficient distance to interfere with the current custody arrangement to be considered “material.”

As with any custody case, the Court will ultimately consider what is in the child’s best interest when determining whether or not to allow the relocation. The Court cannot, however, deprive a parent of the right to relocate. The Court can only decide whether the child can relocate with the parent.



WHAT IS A “NESTING” CUSTODY AGREEMENT?

“Nesting” or “bird’s nest” custody is a joint custody arrangement where the children remain in the family home and the parents take turns moving in and out of the home into separate residences.

In other words, the parents are “visiting” the children instead of the children visiting the parents. The children’s schedules, schools, friends and routines can be maintained without the stress of adjusting to a custody schedule as soon as their parents separate.

Nesting arrangements are often used as the first step in moving toward divorce, allowing the couple to physically separate before they are ready to resolve disposition of the family home, finances and custody. Nesting allows a family to “try out” a custody schedule to consider in their final settlement.

Although nesting can be very beneficial to families in transition to divorce, it is important to have the nesting agreement in writing to corroborate the separation date and detail the custody schedule, responsibilities and duration of the nesting period.

Chapter V: Insurance



CAN THE COURT ORDER HEALTH INSURANCE FOR A CHILD?

Yes, in Maryland, the Court can order either parent to include a child on their health insurance policy if the child can be included at a reasonable cost to the parent.

Whether the cost is “reasonable” will depend upon the facts and circumstances of the particular case, including which parent’s policy is most affordable and which parent’s policy offers the most beneficial and accessible benefits to the child.

If a parent is required to cover a child under their health insurance policy, that parent will receive a credit for the cost of the child’s coverage (e.g. the difference between individual and family coverage) when calculating child support under the Maryland Child Support Guidelines.

In Maryland, parents can typically cover their children under their health insurance policies until age 18 and thereafter until age 26, so long as the child is a full-time student. However, the Court can only order such coverage for the duration of child support.



WHO IS RESPONSIBLE FOR A CHILD'S UNINSURED MEDICAL EXPENSES?

Typically, in Maryland, the custodial parent is responsible for payment of a minor child's uninsured medical expenses (e.g. co-payments or deductibles) from child support paid by the non-custodial parent.

However, if the child's uninsured medical expenses are "extraordinary," such expenses are added to the basic child support obligation under the Maryland Child Support Guidelines and divided between the parents in proportion to their adjusted actual incomes.

"Extraordinary" medical expenses means uninsured expenses over \$100 for a single illness or condition, including reasonable and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.



CAN THE COURT REQUIRE HEALTH INSURANCE FOR A SPOUSE?

Yes, in Maryland the Court can require one spouse to continue or reinstate (if cancelled) the other spouse on their group health insurance policy.

A spouse can usually be included under a group health insurance policy until the date of the parties' divorce. Upon divorce, a former spouse typically has the right to elect up to 3 years of continuing coverage under the group policy or indefinitely under Maryland law (also known as "COBRA" coverage). Often, COBRA coverage costs substantially more than the group coverage provided before the parties' divorce, and military coverage has special rules.

Under Maryland and Federal law, the Court has the discretion to allocate the costs of providing spousal group health insurance benefits between spouses, either *pendente lite* (while the divorce litigation is pending) or at the time of the divorce. Such an allocation can be required in addition to any alimony or child support awarded by the Court.



CAN THE COURT REQUIRE LIFE INSURANCE FOR A SPOUSE OR CHILD?

Absent a written Agreement between the parties, the Maryland Court cannot require either spouse to maintain life insurance for the other spouse's benefit or for a child's benefit.

However, for government employees who are eligible to receive FEGLI life insurance benefits, the Court can order the assignment of a policy from one spouse to the other by way of Court Order. The spouse receiving ownership of the policy pays the premiums.

In addition, parties are free to enter into a written Agreement which requires life insurance, typically done to insure against the loss of child support or alimony. In such event, the Court will enforce the terms of the parties' Agreement.

When establishing life insurance for the benefit of a minor child, it is important to establish a Trust to name a Trustee who is responsible for receiving the proceeds on behalf of the minor child.

Without a Trust, the Court can order life insurance proceeds payable to a minor child to be held in a financial institution until a guardian of the property is appointed by the Court or the child attains age 18, when the funds will be paid to the child.



CAN MY SPOUSE MAKE HEALTH CARE DECISIONS FOR ME BEFORE DIVORCE?

Yes, your spouse may be able to make your health care decisions before divorce, absent a health care directive naming someone other than your spouse.

Regardless of your marital status, you can execute an Advanced Medical Directive (Health Care Power of Attorney) at any time to name *anyone* you desire to act as your health care agent.

Health care professionals are required to follow the terms of your written Health Care Power of Attorney, which provides your personal guidelines and desires for treatment and specific authority for your agent to act.

In the absence of a Health Care Power of Attorney, health care providers will often look to your spouse to make your health care decisions before your divorce.

Therefore, if you are contemplating divorce, you should review and/or establish directives that protect your needs and desires in the event of your disability.

Chapter VI: Alimony



WHEN IS ALIMONY AWARDED?

The Court can award alimony to either party on a Complaint for Alimony or as part of an action for Annulment or Divorce.

Depending on the facts of a particular case, alimony can be awarded to one spouse while the action is pending (called *pendente lite* alimony) as well as at the time of the final divorce trial.

If the parties have resolved alimony by written Agreement, the Court will be bound by that Agreement as it relates to alimony. If the parties' Agreement states that alimony is "not modifiable by any Court", then the Court cannot modify the alimony. However, if alimony is awarded by the Court, it is always modifiable.

The spouse seeking alimony does not need to have grounds for divorce. Further, grounds for divorce against the party seeking alimony (e.g. adultery) does not preclude the Court from awarding alimony to that party.

The Court is required to consider a list of statutory factors before awarding either rehabilitation or indefinite alimony.



HOW IS SUPPORT DETERMINED WHEN A PARENT IS UNEMPLOYED?

In Maryland, a Court may order an unemployed or underemployed parent to pay support (child support or alimony) based on the parent's income potential, rather than actual income.

If the Court believes the parent has made a free and conscious choice to reduce his or her income, not compelled by factors beyond their control (such as the care of a young or disabled child), the Court may calculate child support or alimony based on the parent's earning potential.

Factors the Court considers in determining whether a parent is "voluntarily impoverished" and their potential income include: physical and mental health, education, efforts to find employment or obtain retraining, the timing of the change in employment relative to the divorce proceedings, status of the local job market, recent work history and occupational qualifications.

In many of these cases, the Court will rely upon expert testimony from a vocational rehabilitation expert to give an opinion on the earning capacity of the parent.

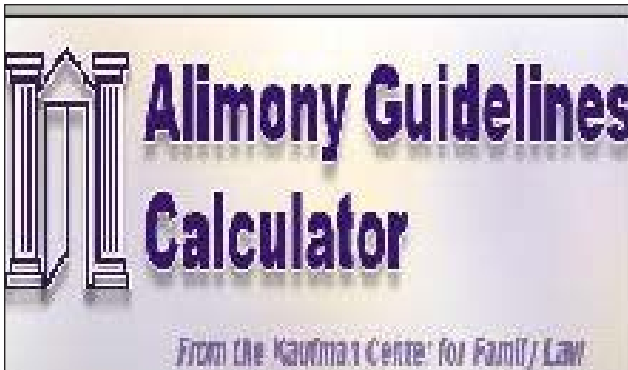


HOW LONG CAN ALIMONY BE AWARDED?

In Maryland, alimony is typically awarded for a period of “rehabilitation” until the spouse receiving alimony can be expected to become self-supporting through education, training or work experience (e.g., 3 – 5 years).

The Court can award indefinite alimony if it finds that: (1) due to age, illness, infirmity or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

Indefinite alimony is typically awarded in cases with a long-term marriage (e.g., 20 years) where one spouse will always earn substantially more than the other spouse.



ARE THERE GUIDELINES FOR ALIMONY?

Yes, there are alimony guidelines. But they are not mandated by the Maryland Legislature like child support guidelines. In, *Boemio v. Boemio* (2010), the Court of Appeals held that it is permissible for the Court to consider alimony guidelines from a reliable and neutral source so long as they do not undermine any of the other statutory alimony factors the Court must consider (outlined in this Handbook). Thus, alimony guidelines are just one more factor, having no greater weight than any other factor.

At present, there are two alimony guidelines from entities considered reliable and neutral. The American Academy of Matrimonial Lawyers (AAML) issued alimony guidelines in 2007. In 2009, the Women's Law Center of Maryland issued alimony guidelines using a different formula than the AAML. With the passage of *Boemio*, clients in divorce cases should be advised on both of these guidelines in order to be aware of what the Court may consider awarding.

The trend toward guidelines for alimony has been slow because of political controversies surrounding the public policy behind alimony. But the benefits of this trend to litigants is the same as child support guidelines – a better certainty on what will happen in Court so that parties can reach a compromise out of Court.



WHEN DOES ALIMONY TERMINATE?

Unless the parties agree otherwise, alimony terminates: (1) on the death of either party; (2) on the recipient's marriage; (3) if the Court finds termination is necessary to avoid a harsh and inequitable result; or (4) on a date specified by the Court or by the parties' written Agreement.

If alimony is awarded by the Court, keep in mind that it is modifiable upon request of either party, based on a material change in circumstances, until the termination date specified by the Court.

The Maryland Court of Appeals held that alimony under a parties' written Separation Agreement terminated upon the recipient party's remarriage, *even though the Agreement did not specifically provide for termination of alimony upon the recipient party's remarriage.*

Therefore, if parties intend to agree for alimony to continue after the remarriage of the recipient, it must be specifically stated in their Agreement.



WHAT ARE THE FACTORS FOR AWARDING ALIMONY?

In Maryland, when awarding alimony, the Court must consider all factors necessary for a fair and equitable award.

The factors for alimony include: (1) the ability to be wholly or partly self-supporting; (2) the time necessary to gain sufficient education or training to find suitable employment; (3) the parties' standard of living during the marriage; (4) the duration of the marriage; (5) each party's contributions, monetary and non-monetary, to the well-being of the family; (6) the circumstances that contributed to the parties' estrangement; (7) each party's age; (8) each party's physical and mental condition; (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony; (10) any agreement between the parties; (11) the financial needs and resources of each party; (12) whether the award would affect State Assistance; (13) whether due to age, illness, infirmity, or disability, the recipient cannot make substantial progress toward becoming self-supporting; and (14) whether even after such progress, the respective standards of living of the parties will be unconscionably disparate.

Chapter VII: Property



IS MARYLAND A “COMMUNITY” PROPERTY STATE?

No, Maryland is not a “community” property state. It is an “equitable distribution” state, which does not mean “equal.” Equitable is defined as fair and just under the facts of the particular case. Therefore, the Court has discretion to evaluate each party’s needs and entitlements.

When determining the equitable distribution of property upon divorce, the Court must perform 3 steps:

1. Identify the marital property;
2. Value the marital property; and
3. Decide whether or not to grant a monetary award and/or divide certain assets as an adjustment of the equities and rights of the parties.

Although equitable does not mean equal, often the equal division of assets in divorce is found to be the equitable result.



WHAT IS MARITAL PROPERTY?

Marital property is property, however titled, which is acquired by one or both of the parties during the marriage, up to the date of divorce (not the date of separation).

Marital property does not include property:

1. Acquired before the marriage;
2. Acquired by inheritance or gift from a third party (other than your spouse);
3. Excluded by valid agreement (e.g. Pre-Nuptial or Separation Agreement) or;
4. Directly traceable to any of these sources.

Absent a valid agreement, marital property automatically includes real property held as “tenants by the entireties,” such as the family home. However, the Court will consider any non-marital contributions made toward the purchase of the home when determining an equitable division of property upon divorce.

It is important to distinguish between marital and non-marital property because the Court can only divide “marital” property between spouses.



IS MY BUSINESS MARITAL PROPERTY?

In Maryland, the value of a business interest acquired during the marriage is considered marital property, even if it is owned and operated by only one spouse.

Upon divorce, the Court must determine the “fair market value” of a spouse’s business interest, which is what a willing buyer would pay a willing seller, neither being under the compulsion to act and both having reasonable knowledge of all relevant facts.

However, a spouse’s “personal goodwill” in the business is their non-marital property, not subject to equitable distribution by the Court. “Personal goodwill” is the part of the business value which is directly attributable to the reputation and success of the spouse owner.

Business valuation is a complex issue in divorce cases, often requiring forensic analysis of business records and expert testimony.



WHAT IS “DISSIPATED” MARITAL PROPERTY?

“Dissipated” marital property involves monies or assets which have been wrongfully disposed of before the divorce trial.

In Maryland, where one spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown with the intent to reduce funds available for equitable distribution, the Court may find the property is “dissipated.” The Court may also find dissipation simply when a spouse spends marital funds without the consent or knowledge of the other spouse for items that are not considered family use.

If the Court finds dissipation, it can include the dissipated property as “extant” marital property owned by that spouse and subject to equitable distribution.

The spouse claiming dissipation must establish a *prima facie* case [sufficient on its face] that marital monies were improperly used (e.g. payment of living expenses for someone other than your spouse or children). The burden then shifts to the spouse who spent the monies to show the expenditures were proper family use expenditures.



CAN I KEEP MY ENGAGEMENT RING UPON DIVORCE?

Whether you can keep your engagement ring upon divorce depends on when it was acquired.

If the engagement ring was acquired prior to the marriage, the spouse who received the ring will be entitled to keep the ring upon divorce as non-marital property, free from equitable distribution or sale by the Court.

If the ring was acquired after the marriage, its value will be marital property. Or, if the ring was upgraded during the marriage, it will be partly marital property. However, because it was a gift to one spouse, the recipient spouse is entitled to keep the ring and, therefore, the ring will not be sold upon divorce.

Keep in mind that an engagement ring is a conditional gift, conditioned on the promise to marry. Therefore, if there is no wedding, the condition for the gift has not been met and the ring may need to be returned.



WHAT IS NON-MARITAL PROPERTY?

“**N**on-marital” property in Maryland is property:

1. Acquired before the marriage;
2. Acquired by inheritance or gift from a 3rd party (other than a spouse);
3. Excluded by valid agreement (e.g. a Pre-Nuptial or Separation Agreement); or
4. Directly traceable to any of these sources.

When property is considered non-marital, the property is excluded from division by the Court upon divorce. However, the value of the property can be considered by the Court as a factor when determining alimony or equitable distribution of marital property.

The burden of proving the existence of non-marital property, and tracing the property to its original source, is on the party asserting the claim. When non-marital property has been commingled with marital property (e.g. with funds in a joint account or by improving or purchasing a marital home), the ability to directly trace the non-marital property is more difficult and may require expert tracing analysis.



WHAT IS A MONETARY AWARD?

A monetary award (judgment against a spouse) occurs upon divorce after the Court determines which property is marital and the marital property value. After taking these steps, a Court may grant a monetary award to one spouse as an adjustment of the parties' equities and rights in marital property.

In addition to, or in lieu of, a monetary award, the Court may transfer ownership of an interest in a pension, retirement, profit sharing or deferred compensation plan owned by either party, including any survivor benefits. The Court may also transfer ownership of a family home or family used personal property subject to the consent of lienholders or other conditions set by the Court.

The purpose of a monetary award and/or transfer of property is to correct any inequity created by the division of marital property based on property title. Therefore, if one spouse has more marital property titled in his or her name, a monetary award may be awarded to the other spouse to adjust any unfairness which would result from each spouse simply retaining property titled in his or her name.



WHAT ARE FACTORS FOR A MONETARY AWARD?

Before granting a monetary award to one spouse, the Maryland Court must consider:

1. Each party's monetary and non-monetary contributions to the family's well-being;
2. The value of all marital and non-marital property;
3. Each party's economic circumstances;
4. The circumstances contributing to the parties' estrangement;
5. The length of marriage;
6. Each party's age;
7. Each party's physical and mental condition;
8. How and when marital property was acquired and each party's effort to acquire the property;
9. Either party's non-marital contribution to tenants by the entirety real property;
10. Any award of alimony or use and possession of the family home or property; and
11. Any other factor necessary to make a fair and equitable monetary award.

No one factor is considered paramount. Rather, the totality of the circumstances determines whether a monetary award is appropriate.



CAN THE COURT DIVIDE DEBTS UPON DIVORCE?

The Maryland Court cannot divide debts between spouses upon divorce. Therefore, one spouse cannot be held liable for the other spouse's debts. Spouses are jointly liable for debts in their joint names, although the Court cannot require either spouse to satisfy joint debts.

Debts of both spouses will nonetheless be considered by the Court as a factor when determining the amount of any monetary award to either spouse. When making a monetary award, the Court must consider as one of several factors each party's economic circumstances at the time of the award, including all income, expenses, assets and liabilities.

Even if a spouse's debts are non-marital or unrelated to the acquisition of marital property, the debts will be considered by the Court upon divorce in order to determine what is a fair and equitable monetary award under the parties' circumstances.



CAN THE COURT TRANSFER PROPERTY UPON DIVORCE?

Upon divorce in Maryland, the Court may transfer ownership of an interest in: (1) a pension, retirement, profit-sharing, or deferred compensation plan; (2) family use personal property, subject to the consent of lienholders; or (3) the family home (as of October 1, 2006).

The Court cannot order the sale of individually owned property. The Court can order the sale of any jointly-owned real or personal property.

For example, if a car is jointly owned, the Court can order its sale and division of the proceeds. If the car is titled in one spouse's name, the Court cannot order the sale or transfer of the car. However, the Court can award the other spouse a monetary award to adjust the parties' equities in property ownership.



CAN A SPOUSE FORCE A JOINTLY OWNED HOME SOLD BEFORE DIVORCE?

In Maryland, prior to divorce, one spouse cannot force the sale of a jointly owned home, which spouses typically own as tenants by the entireties.

“Tenants by the entireties” property entitles each spouse to use of the entire property and no right to lease, dispose of or encumber the property without both spouses’ consent.

Upon divorce, the Court can order the sale of a jointly owned home or transfer of the home to one spouse as part of a monetary award. The Court can also award use and possession of the home to a spouse who has custody of a minor child for up to 3 years after the divorce. The home would then be sold or transferred upon expiration of the use and possession period.

After the divorce, if there is no use and possession or transfer Order, one spouse can force the sale of a jointly owned home because it is no longer owned as tenants by the entireties.

Upon divorce, title held as tenants by the entireties converts to tenants in common.



HOW ARE PENSIONS DIVIDED UPON DIVORCE?

Maryland Courts use different methods to divide pensions between spouses, depending on the type of pension.

Upon divorce, the Court can transfer ownership of an interest in a pension, profit sharing, 401(k), IRA, stock option or other deferred compensation plan owned by either spouse.

For pension plans with a present value (e.g. 401(k)), the Court may order a portion of the account transferred to a qualified account for the other spouse.

For pension plans without a present value (e.g. government pensions with monthly benefits upon retirement), the Court may divide the pension by a formula: total months of marriage during employment divided by total months of employment, multiplied by 50% or other percentage set by the Court. Under this formula, the non-employee spouse receives a percentage of the benefits if, as and when the employee receives or is eligible to receive benefits, rather than immediately. The Court may also award survivor benefits payable on the employee spouse's death, and assess the costs to one or both parties.



ARE MY STOCK OPTIONS MARITAL PROPERTY?

In Maryland, stock options granted during the marriage are considered marital property subject to equitable division upon divorce, regardless of whether they are vested or non-vested.

A stock option is a contractual right to purchase company stock for a specific price at a specific time.

Upon divorce, the Court can divide stock options between spouses under the *Otley v. Otley* formula where the options are divided “if, as and when” they are exercised by the employee spouse. However, the Court cannot require the employee to ever exercise the options. The Court can alternatively value the stock options and grant a monetary award to the non-employee spouse to adjust the parties’ equities in property ownership.

Division of stock options in divorce is a complex area of family law, often requiring expert analysis on valuation and tax impacts.

Tenancy by the Entirety

Definition: A tenancy by the entirety
Is a joint tenancy between husband
And wife that automatically arises
When property is conveyed to both of them

Rule: Each spouse has the right of survivorship
In the property, which cannot be defeated
Through one spouses unilateral conveyance
Of her share to a third party. Upon the death of
One spouse, the decedents share passes
Automatically to the surviving spouse.

Creditors CANNOT attach interests held in tenancy by
The entirety of only one spouse



WHAT IS TENANCY BY THE ENTIRETY?

Tenancy by the entirety is a type of joint tenancy of property that provides extra protections for married persons. If a husband and wife own real property, Maryland law presumes a tenancy by the entirety unless the deed states otherwise. However, creation of the tenancy by the entirety occurs only if the five (5) unities of time, title, interest, possession, and marriage are met. In essence, owners must be married at the time of the deed to create tenancy by the entirety.

Tenancy by the entirety has all the benefits of joint tenancy, i.e. right of survivorship, plus additional protection against creditors. Such property is subject only to creditors of joint debts of a married couple. Sale of the property may not occur for individual debts of either spouse, except pursuant to the federal tax-lien statute. Neither spouse can convey their half-interest without the consent of the other spouse.

Under family law, tenancy by the entirety property is considered marital property, regardless of the source of funds used to purchase the property.



HOW LONG CAN I HAVE USE AND POSSESSION OF THE FAMILY HOME?

In Maryland, the Court can award exclusive use and possession of the family home and family use personal property (e.g. household furnishings, family car) to a custodial parent for up to 3 years from the date of divorce.

Absent agreement of the parties, use and possession Orders automatically terminate upon remarriage of the party awarded use and possession or upon the youngest child of the parties attaining the age of majority.

The Court must consider certain factors to award use and possession, including the child's best interests, a spouse's interest in using the home for business and any hardship on the other spouse.

In order to be awarded use and possession, the home must have been the parties' principal residence before separation, be owned or leased by one of the parties, be used by one of the parties and a minor child of the parties, not including a step-child, and the parent awarded use and possession must have custody of at least one minor child of the parties.

Chapter VIII: Tax Issues



WHO CAN CLAIM THE DEPENDENCY EXEMPTION?

Under Federal law, the custodial parent is entitled to claim the dependency exemption on their tax returns, absent an agreement or Court Order to transfer the exemption to the non-custodial parent. The custodial parent may still claim head of household, earned income and dependent care credits even if the exemption is transferred to the non-custodial parent.

The dependency exemption may be claimed for a child under age 19 or, if the child is a full-time student, under age 24, regardless of the child's income.

The "custodial" parent is the parent who has physical custody of the child for the greater part of the year. If the parents separated during the tax year, after having joint custody, the "custodial" parent is the parent who has physical custody of the child for the greater part of the rest of the year. If a child resides with each parent for an equal amount of time during the year, the parent with the higher adjusted gross income is treated as the custodial parent.

In Maryland, the Court has the authority to order the custodial parent to waive the dependency exemption and allow the non-custodial parent to claim the exemption.



WHO CAN CLAIM THE CHILD CARE CREDIT?

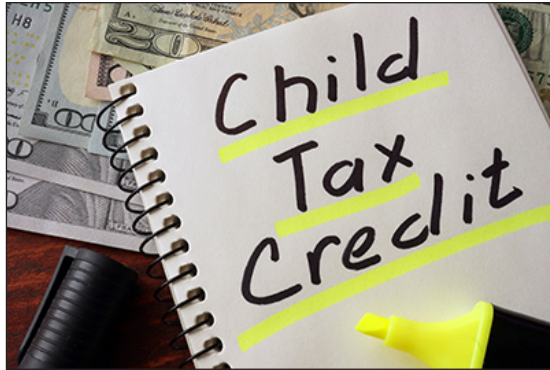
Under Federal law, the child care credit may be claimed on either a joint tax return or on a separate return by a person eligible as “Head of Household.”

The child care credit provides tax credits based on income levels for employment-related child care expenses up to \$3,000 for 1 child or \$6,000 for 2 or more children.

This credit is separate from the “child credit” of up to \$1,000 per child per year, which is provided to the parent who claims the dependency exemption.

To qualify as “Head of Household,” you must maintain a home that was the principal home of your child for more than one-half of the tax year, be eligible to claim the dependency exemption for that child, furnish more than one-half of the costs to maintain the home and must not have resided with the other parent for the last 6 months of the tax year.

Unlike the dependency exemption, the custodial parent cannot transfer the child care credit to the non-custodial parent.



WHO CAN CLAIM THE CHILD TAX CREDIT?

The parent who claims the dependency exemption for a child under age 17 is entitled to claim the child tax credit of up to \$1,000 per child.

However, the child tax credit is phased out for taxpayers with certain adjusted gross incomes. For married taxpayers filing joint returns, the phase out begins at \$110,000, and \$55,000 for separate filers.

For unmarried/head of household taxpayers, the phase out begins at \$75,000.

When parents separate, the custodial parent has the right to claim the dependency exemption for a child, and therefore the child tax credit, unless the custodial parent transfers the exemption to the non-custodial parent.



WHO CAN CLAIM THE ADOPTION CREDIT?

A taxpayer who adopts an eligible child can claim a tax credit up to \$13,750 per child for qualified adoption expenses, plus cost-of-living adjustments.

An “eligible child” includes any person who is under age 18, is physically or mentally incapable of self care or is a special needs child (as defined by the IRS). There are special rules for foreign adoptions.

“Qualified adoption expenses” include adoption fees, attorney fees, court costs, travel expenses (including meals and lodging) or other expenses directly related to, and for the principal purpose of, the legal adoption.

Qualified adoption expenses do not include step-child adoption expenses. Adoption expenses reimbursed under an employer benefit program are also not qualified expenses, except for a special needs child.

Typically, the adoption credit is claimed in the year the adoption becomes final and is reduced for taxpayers with certain adjusted gross incomes. Generally, if you are married, you must file a joint return to take the credit.



WHO CAN CLAIM THE SAVINGS BOND INTEREST EXCLUSION?

A person who cashed Series EE or I U.S. Savings Bonds issued after 1989 may be able to exclude all or part of the interest on the bonds from their gross income.

To take the exclusion on qualified Savings Bonds, one must:

1. Have paid “qualified” higher education expenses (as defined by the IRS) for themselves, spouse or dependent, excluding room and board;
2. Have a filing status other than married filing separately; and
3. Have an adjusted gross income that does not exceed the phase out rules (\$145,750 for married filing jointly or widow(er), \$92,000 for other filing statuses).

The Savings Bonds must be issued in the taxpayer’s name or jointly with their spouse. The taxpayer must also have been age 24 or older when the bonds were issued. Therefore, if a parent purchases a bond in their child’s name who is under age 24, the parent will not qualify for the exclusion.



WHO CAN CLAIM THE STUDENT LOAN INTEREST DEDUCTION?

A taxpayer who paid interest on a student loan may be able to claim a tax deduction up to \$2,500.

The deduction is phased out for individuals filing single tax returns with income of \$80,000, and for couples filing joint tax returns with income of \$160,000.

However, the deduction is only allowed for a taxpayer claiming the dependency exemption for the student. If the parent paying the student loan transfers the dependency exemption to the other parent, neither parent can claim the student loan interest deduction.

For married taxpayers, even if they are separated, a joint tax return must be filed to claim the deduction. The only exception is for separated individuals qualifying as head of household under the abandoned spouse rule.

For those saving and/or paying for college, proper tax planning can help maximize the resources needed for college.



WHO CAN CLAIM THE HOPE OR LEARNING CREDITS?

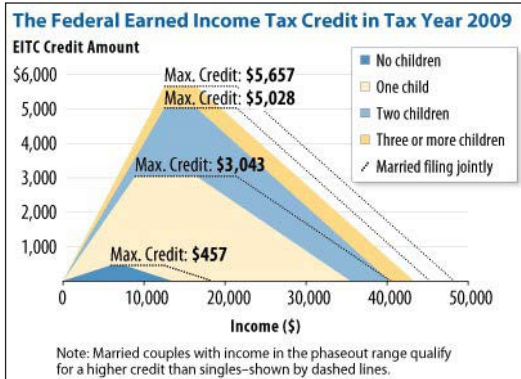
A taxpayer who incurs qualified higher education expenses for themselves, a spouse or dependent child may be able to claim the Hope Scholarship Credit or the Lifetime Learning Credit.

The Hope Scholarship Credit is up to \$1,500 (plus cost-of-living adjustments) per child for the first two years of qualified higher education expenses (tuition and fees required for enrollment).

The Lifetime Learning Credit is up to \$5,000 (plus cost-of-living adjustments) per tax return (not per child) for qualified college or graduate expenses.

A taxpayer cannot claim the Hope and Lifetime Credits for the same student in the same year. Both credits also phase out at certain income levels.

If married, a taxpayer must file a joint tax return to claim the Hope or Lifetime credits (except under the abandoned spouse rule). For a child student, only the parent claiming the dependency exemption for that child can claim the credits.



WHO CAN CLAIM THE EARNED INCOME TAX CREDIT?

The earned income tax credit is a refund that can be claimed by certain low-income individuals who have earned income from employment.

If married filing jointly, earned income and adjusted gross income must be under \$45,207 with one “qualifying” child (as defined by the IRS); under \$50,597 with more than two qualifying children; and under \$20,600 with no qualifying child.

Generally, for married taxpayers, a joint tax return is required to claim the earned income credit. A separated spouse may be able to file a separate return to claim the earned income credit if certain conditions are met.

“Income” for the earned income credit excludes child support but not alimony. Non-taxable income, such as certain retirement income or contributions to a retirement plan, is also excluded income.

Chapter IX: Domestic Violence



WHAT IS A PROTECTIVE ORDER?

A “Protective Order” is a form of relief available from the Court for victims of domestic violence. In Maryland, a person is eligible for a Protective Order if they: are the current or former spouse of the alleged abuser, have a child with the alleged abuser, had an intimate relationship and lived with the alleged abuser for 90 days within the last year or are related by blood or marriage to the alleged abuser.

To obtain a Protective Order, the victim must prove one of the following acts occurred: an act that causes serious bodily harm or places the victim in fear of imminent serious bodily harm, assault of any degree, rape or sexual offense or attempted rape or sexual offense, false imprisonment, child abuse, or stalking.

Under a Protective Order, the Judge may order: the alleged abuser to stop the abuse, stay away from the victim, children or other family members, stop contacting the victim, vacate the family home, pay emergency financial support, attend counseling and surrender firearms. The Judge may also award temporary child custody, visitation and use and possession of the family home, family pet, and/or jointly owned car. Protective Orders may be issued for up to one year on an initial Order or up to two years for active abuse committed within one year after the initial Order. Permanent Orders are permitted under limited circumstances, Under Temporary or Final Protective Orders, it is mandatory for the respondent to surrender all firearms to law enforcement.



WHAT IS A PEACE ORDER?

A “Peace Order” is a form of relief available from the Court when a person has problems with another individual, such as someone the person is dating, a neighbor or a stranger. If a person is eligible to file for a “Protective Order” against domestic violence, he or she is not eligible to file for a Peace Order.

In Maryland, a person eligible for a Peace Order must prove one of the following acts occurred within the last 30 days: an act that causes serious bodily harm, an act that places the person in fear of imminent bodily harm, assault in any degree, rape or sexual offense, false imprisonment, harassment, stalking, trespassing, misuse of telephone facilities, misuse of electronic communication, revenge porn, visual surveillance, or malicious destruction of property. One must also show that the act is likely to happen again.

Under a Peace Order, the Judge may order an individual to refrain from threatening or committing an act, end all contact, stay away from the victim’s home, place of employment or school. The Judge may also order the parties to participate in joint or individual counseling and/or joint mediation. Peace Orders may be issued for up to 6 months.

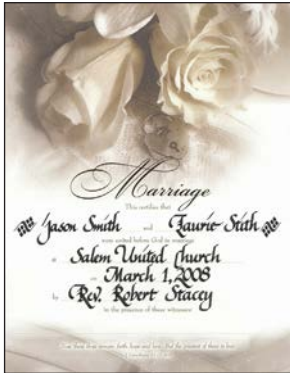


WHAT IS CONSIDERED STALKING?

Under Maryland law, “stalking” is defined as approaching or pursuing another where one *knows or reasonably should have known* the conduct would place another in reasonable fear of serious bodily harm, assault, rape or sexual offense or attempted rape or sexual offense, false imprisonment or death. Stalking is also conduct that will likely cause another to suffer the above offenses, regardless of what the alleged stalker knew or should have known.

Proof that the alleged stalker had the specific intent to cause harm to another is not required.

Violation of the stalking statute is a misdemeanor, punishable by fine and/or imprisonment, and can be used as grounds for a Protective Order or Peace Order.



WHAT IS INTERSPOUSAL IMMUNITY?

Interspousal immunity is a common law doctrine which prohibits spouses from suing each other.

The Maryland Court of Appeals in *Bozman v. Bozman* joined the majority of states in abolishing interspousal immunity.

Now, spouses in Maryland may sue each other for any injuries they incur, such as injuries resulting from stalking or domestic violence.

Prior to the abolishment of interspousal immunity, spouses in Maryland could only sue each other in cases involving “outrageous” or “negligent” conduct. Therefore, injured spouses were barred from any recovery in cases where the conduct causing the injury was severe but not “outrageous” or “negligent.”

In *Bozman*, the Maryland Court of Appeals stated that “interspousal immunity is unsound in the circumstances of modern life.... It is a vestige of the past.”



About the Author

Stuart Skok is owner and principal of **Stuart Skok Law LLC**, with offices in Montgomery and Frederick Counties. She is licensed in Maryland and Washington D.C., certified in Collaborative Divorce and divorce mediation, and has particular expertise in cases with special needs children. Her firm's mission is to offer innovative approaches to the challenges that matter most.

She frequently lectures on family law issues, has twice served as Co-Chair of the Family Law Section for Montgomery County Bar Association, and named Co-Chair of the Year for each term. She has served as President of the Montgomery County Women's Bar Association and Collaborative Divorce Association, Inc., has testified before the Maryland Legislature on family law legislation, is on the Peer Review Panel for the Attorney Grievance Commission of Maryland, and is Bar Leader for the Montgomery County Bar Association.

Stuart is a member of the Maryland State and Federal Courts, District of Columbia State Bar and United States Supreme Court. *Super Lawyers*® named her as one of the Top 25 Female Attorneys in Maryland and Top 50 Female Attorneys in Washington, D.C., *Best Lawyers*® named her Top 100 Attorneys in Maryland and she is rated AV Preeminent by Martindale-Hubbel.

Stuart grew up in Maryland and received her undergraduate degree from the University of Denver and her law degree from West Virginia University College of Law. She lives in Gaithersburg, Maryland with her husband and children.



Divorce is not easy or simple. Individuals going through divorce must somehow learn what they need to know about the law in order to make the best decisions for their future. This *4th Edition Handbook on Separation and Divorce* is not intended for lawyers – it is a practical guide for anyone who wants simplified answers to the most common questions in family law cases.



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Stuart K. Skok, Esquire has practiced matrimonial and family law for over 20 years. Her firm's mission is to assist clients in looking forward and visualizing the path ahead through innovative thinking and collaborative approaches.

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ISBN 000-0-00-000000-0

