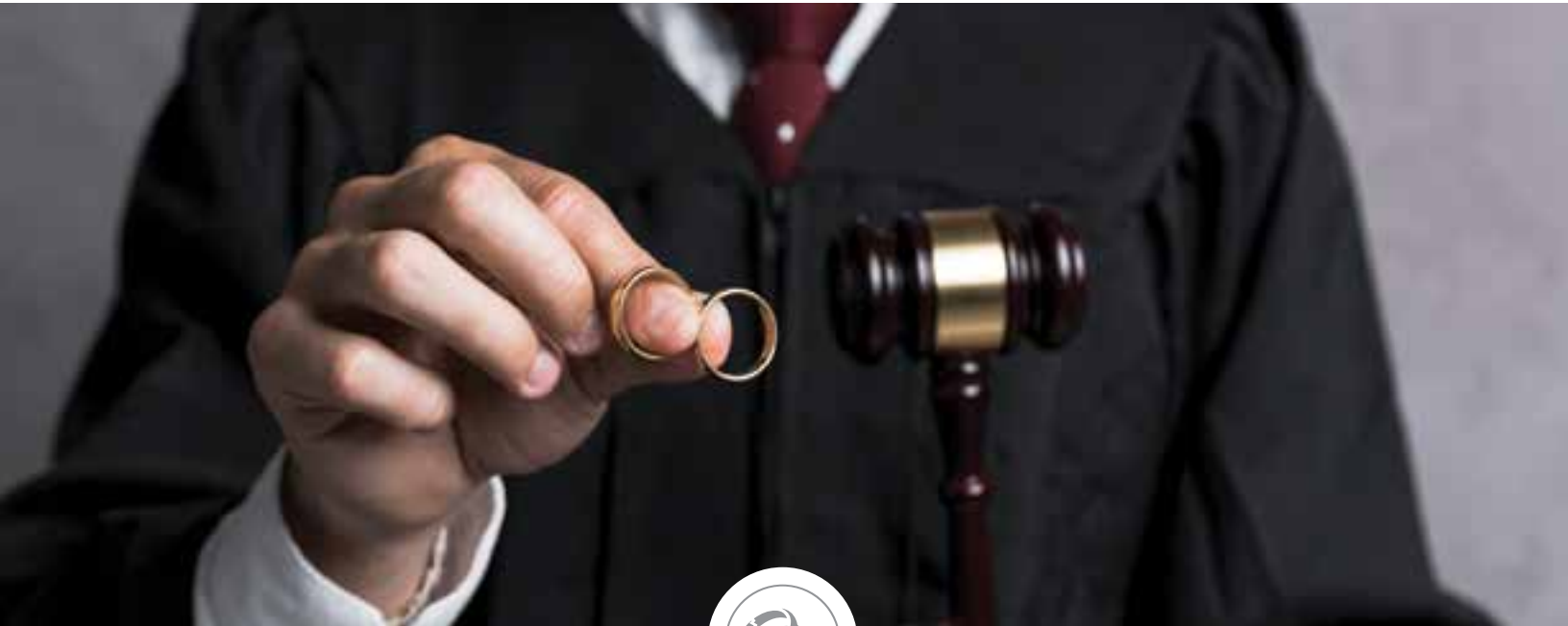




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INSIDER'S GUIDE TO *DIVORCE*

From the Family Law Attorneys at Johns, Flaherty & Collins, SC



*Insider Tips to Help You
Move Through Divorce*

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Realistic Expectations



Believe it or not, marriage and divorce have a lot in common. While anticipating either, we tend to view them as solutions to all our problems. But in both cases, they rarely (if ever) are, and you'll survive your divorce much better if you enter with realistic expectations.

With that in mind, here's what you can and cannot expect a divorce to do.

Divorce can

For some couples beginning a divorce process, the first step is requesting a temporary hearing to obtain a temporary order. That order sets the ground rules for who does – and gets – what until the divorce is complete.

The temporary order can establish the following:

- Legal custody of children.
- Physical placement with parents.
- Maintenance (sometimes called alimony) arrangements.
- Child support.
- Which party pays which debts.
- Who continues to reside in the family home.
- What happens to health care insurance.

Temporary orders can also result in a requirement to attend counseling for anger management, substance abuse and other issues. Many counties, including La Crosse, require couples with children to attend counseling focused on the younger family members' well-being.

As the name implies, the order stands just until the divorce is finalized and you have a final judgment.

The final judgment in divorce can:

- Rule on the division of real estate, personal property and other assets.
- Allocate debts and liabilities to the parties.
- Dictate legal custody and physical placement of children.
- Determine child support and maintenance, along with which party may claim the children as dependents on income tax returns.
- Require continuing counseling.
- Require one of the partners to maintain health insurance for minor children.
- Change your legal surname so you won't have to petition the court separately.

It's always best when couples can make these decisions for themselves. Not only will they save time and money during the divorce, but they will also help you avoid a situation where the court comes in and decides for you.

Divorce cannot

Just because the divorce is final, dealing with your ex and finalizing some other arrangements isn't necessarily over. And that's where some couples struggle most. Divorce cannot:

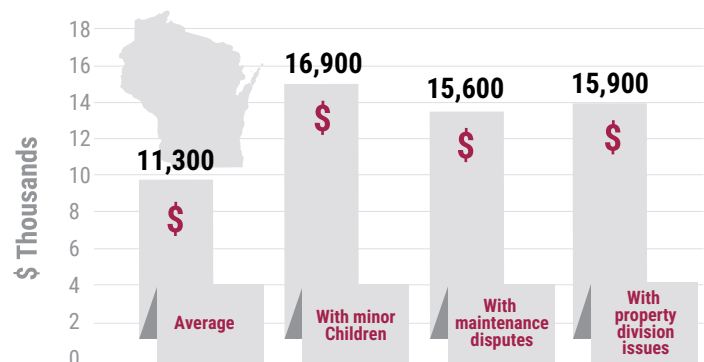
- Revoke a will naming your spouse as beneficiary, so be sure to update your will if you want it changed.
- Automatically change beneficiaries on accounts. You'll need to change those designations (retirement accounts, insurance policies and the like) with the companies that hold those accounts.
- Stop a creditor from going after either party to repay marital debt. Even if the divorce decree says one specific spouse is responsible for it, the creditor can seek repayment from both.
- Guarantee a civil relationship. It's important to understand that the relationship may worsen after divorce. You just won't necessarily have to deal with each other every day.
- Ensure standard of living will remain the same. With two separate households to maintain, couples often find themselves struggling more financially after divorce than they did when they were together.

If you're wondering more specifically what you can and cannot expect in your situation, an experienced family law attorney can help.

How much does divorce cost in Wisconsin?

One of the first questions asked by someone contemplating divorce is how much does it cost? The cost can vary greatly depending on where you live and your specific circumstances. But research from Mardindale-Nolo suggests that in Wisconsin, it averages around \$11,300, though that number may be lower in areas like La Crosse.

Factors that affect the cost include minor children, maintenance (alimony) disputes and issues surrounding property division. This chart shows how the averages change in light of those factors.



Source: [lawyers.com/legal-info/family-law/divorce/how-much-does-divorce-cost-in-wisconsin.html](https://www.lawyers.com/legal-info/family-law/divorce/how-much-does-divorce-cost-in-wisconsin.html)

Be Smart About It



Getting through a divorce is about much more than the legal proceedings. And often, it's what you do outside the legal arena that can have the biggest effects on your final divorce settlement. While your attorney works on the legal aspects, here's what you need to know to increase your odds of getting what you want.

Five things you can't do during divorce

The divorce process is an emotional gauntlet that can be tough to navigate. After all, nobody walks down the aisle expecting their marriage to someday end. If you do find yourself at the end of your marriage, avoid further friction by considering the following don'ts during your divorce.

Don't try to bury money. Once the divorce procedure has begun, leave all your assets where they are. Attempting to shift or hide funds or cash in retirement accounts or selling property could get you in legal trouble. You could be held in contempt of court if it looks like you're trying to pull a fast one and tuck something away for later. This can put you back in court and draw out the divorce process.

Don't do things out of spite. Divorce usually involves strong emotions: betrayal, hurt, anger. The revenge factor is tempting, especially when you're wondering how your spouse's new truck would look with some choice words scratched into the shiny paint. But remember that the image you want to present to the judge in any legal case is that of a rational adult. Leave the revenge to your fantasies.

Don't date. One of the worst choices you can make during an already volatile situation is to bring another partner into it. Dating before the divorce is final can put you at risk of being accused of cheating on your spouse, which is a definite loss of leverage as you figure out the intricacies of issues such as child custody. Put away the little black book until you are officially divorced.

Don't fight over things you don't care about. Remember the story about the couple who spent court time counting and dividing their beanie baby collection? Before you make a big deal over getting something just for the sake of getting it, ask yourself how important it is to you. Focus on the central issues and remain level-headed when it comes to the small stuff.



Don't be passive. Sometimes, the idea of getting it over with is so much more attractive than the thought of negotiating to get what you deserve. Keep in mind that you have invested time and energy to build whatever you have with this other person; it will take some time to dismantle it as well. Work with a good attorney to advocate for yourself and your own future.

Even in the most amicable of splits, emotions can run high. Throughout the process, keep your head straight, and remember: don't give up what you want most for something you want right now.

Social media proves not so friendly to family relations

Social media is playing a bigger and bigger role in relationships today, and we see that play out more and more in divorce proceedings. According to Divorce-Online, one in five divorces stems from a social media-related activity. Many of those issues arise from spouses reconnecting with old flames or merely paying more attention to social media contacts than to current partners.

Making matters worse, your social media activities can also be used against you in a divorce proceeding. Family courts increasingly use evidence from Facebook and other social media when making child custody and placement decisions. In fact, four in five attorneys from the American Academy of Matrimonial Lawyers have used or encountered evidence taken from social media, with two-thirds of that evidence coming from Facebook alone.

You may think your security settings protect your posts from being seen by people who are not your Facebook friends. But remember, the average Facebook user has around 340 friends, and when you narrow users down to one country, Facebook Data Science shows only three intermediate connections separate most pairs of people. All it takes is for one of your friends to share a post, even innocently, and it's out of your control.

If you're going to use Facebook or any other social media leading up to or during a divorce, these five tips can help – both with maintaining amicable relations with your spouse and ensuring a smooth legal proceeding.

- Remember, everything you post may be used against you.
- Update your privacy settings, rechecking them periodically for changes.
- Vent privately, not on social media.
- Don't post anything you wouldn't tell your grandmother.
- Avoid partying photos (both on your page and your friends' pages).

Property Considerations



Maintenance myths

Many people just assume that there will be alimony in any divorce, but that line of thinking is as passé as the term 'alimony' itself.

In today's statutes, alimony is referred to as maintenance. The philosophy is that maintenance is used in divorce to help both parties maintain as close to the same standard of living they had while married.

Still, a lot of myth surrounds the notion of maintenance. That's dangerous for people contemplating a divorce because bad information can lead to bad decisions. False beliefs about alimony could lead someone to stay in a marriage because he doesn't want to pay it for the rest of his life or, conversely, for someone to leave because of a false sense of security.

Here are the facts about maintenance.

Maintenance is not awarded in every divorce.

Estimates suggest maintenance is awarded in very few cases these days, possibly as few as 15 percent. Maintenance decisions are based on many factors, and often, couples will choose an unequal property division or increased child support instead of maintenance.

Maintenance is not permanent.

It's very rare for people to pay maintenance to ex-spouses until the ex-spouse dies. Generally, courts will try to help the person with less income maintain a standard of living on their own for a specified number of years. The length of the marriage is an important factor in determining the duration of maintenance. The amount and length of time paid also depend on the number of children and other factors that may affect a person's lifestyle and monetary requirements. It is also true that if the person receiving maintenance remarries, the maintenance ends.

Wives pay, too.

The belief that men always pay maintenance is a remnant from a different era when men were the providers, and women were the homemakers. With more and more women in the workforce, wives often make more money than their husbands. Again, maintenance is about maintaining a standard of living, and equity may be achieved in various other ways outside maintenance payments.

Maintenance is neither taxable nor deductible.

As of 2019, maintenance is no longer tax-deductible for the person who pays it, nor is it deemed taxable income for the person who receives it. You still have options, however, to bring maximum benefit to both parties. You may want to consider, for example, providing an IRA in place of regular maintenance payments. That way, you can still shift the tax burden from the higher-income spouse while offering the lower-income spouse a more livable financial package.

Length of marriage matters – a lot.

For courts, the length of the marriage is the most significant factor in determining maintenance. It is rarely awarded in short-term marriages (marriages lasting fewer than ten years), but after 20, time weighs heavily in maintenance decisions. Courts will also consider, for example, situations where one party stayed out of the workplace to support the other's career or to rear children. Both parties' age, physical health, earning capacity and education levels are also factors.

It's best for couples to decide for themselves.

With so many variables at play, including jurisdiction and personal discretion, it's difficult to guess how a judge may rule when it comes to maintenance. Plus, that judge most likely has no first-hand knowledge of the intricacies of the couple's lives. It's almost always better for parting couples to reach their own agreements – agreements grounded in reality, not myth.



Spousal Support (Maintenance)



It used to be that women stayed home to care for the house and children while men went out and earned a paycheck. Times have changed, and two-income households are more common for married couples.

It's one area where the law has kept pace with society's changing demographics, and in more and more cases, maintenance today looks very different than it did even 30 years ago.

Top four spousal support questions

That probably leaves a lot of questions in the minds of people who are considering divorce or who are actually going through one. Here are the four most common spousal support questions, along with the answers.

#1 How is maintenance calculated?

While there is no mathematical formula, we do know that courts will consider the following factors:

- Length of the marriage. The longer the marriage, the more likely maintenance will be granted.
- Ages of the payer and recipient, along with their physical and financial conditions.
- Length of time the recipient would need for job training or education to become financially self-sufficient.
- Standard of living during the marriage.
- Paying spouse's income and ability to support both parties.

The amount is generally determined by how much money is needed for food, shelter, transportation and household expenses.

#2 Are there different types of maintenance?

The four most common types of support include:

- Permanent spousal support – Typically lasts until the payee remarries or either party dies.
- Temporary spousal support – Generally used with temporary orders set in place at the beginning of the divorce process and ending with the divorce decree.
- Rehabilitative spousal support – For maintenance only during the time it takes the recipient to get the training or education needed to support themselves.
- Spousal support "buyout" – A lump sum payment made at one time or in installments in a specific time frame.

#3 Are maintenance payments taxable?

Maintenance is neither taxable nor deductible.

#4 Can I change my spousal support arrangement?

It's important to understand that if you do not request maintenance as part of the divorce decree, you cannot return to the court later to request it. If maintenance was granted in the divorce decree, it can be changed only if (1) either party has a significant "change in circumstances" that was not expected when the original support was given and (2) the party requesting the adjustment can prove the change in circumstances and show how it justifies the requested change.

Even when both parties are working, maintenance can be an issue, and it makes sense to look at it in divorce cases. If you want to assess the possibility of you paying or receiving alimony, an experienced divorce attorney can help.



Dividing Property



Estimates suggest that 2,400 couples divorce each day in the United States. While that represents a lot of heartache, it also represents a lot of headaches when it's time to divide the household. And often, couples find that the more the heartache, the bigger the headache.

That's because decision-making can be difficult when emotions run high. It's important to be able to think rationally about property division. If you can't, you'll have a third party – the courts – making those decisions for you.

The basics you need to know.

Wisconsin is a community property state. That means all property, with limited exceptions by statute or prior agreement, is jointly owned by both partners. It also means that both partners are jointly responsible for debt.

The filing date matters. Even though both parties are jointly responsible for marital debt until the divorce is finalized, courts will take note of debt accumulated between the filing date and the divorce date. In fact, the divorce filing requires neither party to incur debt or dispose of property until the divorce is final.

Use doesn't mean ownership. Wisconsin has a statutory 120-day waiting period before divorces can be finalized. During that time, couples will have rules (sometimes imposed by a family court-issued temporary order) concerning use of certain property. One partner may have use of the family home or use of the truck, but that's "allocation of use," not ownership.

Exceptions apply. As with any rule, there are exceptions. One of the clearest exceptions to community property is inherited property. If one of the partners receives a gift through inheritance and never commingles it with marital property, it is not subject to division. For example, if you receive a \$5,000 inheritance from a parent and use it as a down payment on a house you purchase with your spouse, it becomes marital property. If, instead, you deposit the \$5,000 into a separate account in your name and keep it there, it would typically remain your individual property.

Short-term marriages are different. Though short-term is not well defined, couples married fewer than five years may be able to retain ownership of property they brought to the marriage. If you own your own home and bring a well-funded IRA to the marriage, for example, you may be able to retain ownership of that property after the divorce.

If your spouse, however, sold property upon entering the marriage and you together used the proceeds of that sale for travel, home improvements or some other joint purpose, the court wouldn't likely let your partner walk away empty-handed.

Income is income; property is property. When it comes to property, the court will want to ensure it is divided evenly. When it comes to income, however, the court will want to see that it is divided fairly. Income is relevant for issues of maintenance, debts and especially child support. In a shared placement situation, child support is set by an established formula based on the income of both parents. If one parent has the majority of the placement, the other parent will pay a set amount of child support based upon a percentage of their income regardless of the other parent's income. In determining maintenance and debt, courts will look at each partner's income, self-sufficiency, age and financial condition, along with the couple's standard of living during the marriage and other factors to attain fairness.

If you can't agree, the court will decide for you. Much like parents with squabbling siblings, family courts would rather see couples negotiate their own property settlements. But when you can't, the court will intercede and decide for you. Clearly, it's in your best interest to figure out what's best for you.



Dividing Property



Who gets the dog?

If you've ever had a pet — or been an animal's human — you know they're like family. Dog lovers often are the most rabid in their affection, dressing their dogs in designer apparel, referring to themselves as mom and dad (or 'pawrents') to the animal, even carrying around those thin plastic bags (enough said).

That makes deciding who gets the dog in a divorce situation especially difficult. While many dog owners view their animal companions as children, the court views them as property. That means dogs will be treated as property should you go to court over your precious pooch. If you want to continue to treat your dog as part of the family, you'll want to work that out on your own.

Squabbles over pets tend to come up early in the split because it's such an emotional time anyway. Looking at placement and custody options just as you would for human offspring may offer some solutions.

Often, couples will choose to keep the dog with whichever partner stays in the house, with the other partner arranging visitation times. Other families with children will have the dog go between homes on the same schedule as the children. Still others will split the time on a routine basis, with the dog going to one party's home one week and the other's the next.

If you can't resolve the question yourselves, courts will consider issues of space for the dog to run around, attachment to human children and where they'll be, and lifestyle. For example, do you work 12 hours a day while your ex works part-time? The courts will decide based on where the dog can be best cared for.

Regardless of who makes the decision, remember that shared custody and placement also means shared expenses for everything from dog food and grooming to veterinary care. Figuring out those issues has been the subject of litigation on plenty of occasions.

Divorce is hard enough on its own. Most lawyers will recommend that one party keep the dog. It's simpler, involves less fighting and lowers legal fees.



Decisions Regarding Children



Three essential tips

Breaking up is hard. Breaking up with someone you had children with is impossible – especially when the children are still at home. Slogging through issues of discipline, finances and schedules can be tough when you have bad feelings toward the other parent.

But your children will be healthier during and after the breakup if they can see parents talking through issues rather than being adversarial all the time. It will also dissuade them from trying to play you and the other parent against each other.

#1 Treat it like a business relationship. Remove emotion (and discussion about emotions) from the communication and stay focused on the children and problem-solving for their benefit.

#2 Don't use the kids as messengers. If you want to switch placement times or have questions, go directly to the other parent. If you can't do it verbally without getting emotional, use email or text.

#3 Use modern technology. "Our Family Wizard" is an app available for iPhone and Android devices that allows parents to share children's calendars and send messages to each other. It's a good resource for parents who can't communicate productively. In fact, it's so helpful that courts are increasingly ordering it for parents working to resolve placement and other issues.

Above all, take the high road. Even if you know the other parent is speaking negatively about you in front of the children, don't do it in return. Your children are watching.

Decisions need to focus on the child

When couples with children separate, they often want to know how to "win" custody of their children. But the key is to figure out how to help the children. Parents don't win custody cases; custody cases are about helping children to survive.

Parents sometimes confuse custody and placement, which are separate issues. Legal custody carries the right to make major decisions for the child regarding education, health care, religion, and general welfare. Placement refers to when each parent will have the children in their care. In both cases, parents can find it difficult to make good placement decisions for their children because of anger or other difficult emotions accompanying breakups.

When couples aren't able to work out custody and placement issues on their own, the family court commissioner determines a placement schedule that allows a child to spend meaningful periods of placement with each parent and that maximizes the amount of time a child may spend with each parent, taking into account geographic separation and accommodations for different households. That doesn't mean the court will give parents equal time or an equal number of overnight visits.

Those decisions have more to do with how actively involved both parents have been in their child's life before the breakup. If your work schedule or other circumstances have prevented you from spending as much time with your child as you would like, it's best to change that situation before the divorce action begins. The family court commissioner tries to model what the parents have done during the partnership to minimize disruption for the child.

With placement and support issues, realistically, neither parent will get 100 percent of what they wish, so compromise will be necessary. The third-party objective perspective of mediators can help parents communicate through these difficult negotiations. La Crosse County offers several programs to help parents work out plans that are best for their children and themselves.

Breaking up is a no-win situation. But parents who can separate the anger and sadness from discussions concerning their children come away with the best possible outcomes. The less the court is involved in making decisions for them and their families, the more control they have over their own – and their children's – lives.

Parenting agreements can help families through divorce

Parents often wait until the end of the divorce process to develop a parenting agreement. But putting at least a temporary agreement in place at the outset of the action can help ease the pain throughout the proceeding.

Parenting agreements can establish

- Legal custody, which is almost always both parents.
- Placement schedule between the parties.
- Which holidays each parent will have the children.
- Placement for summer months and vacations.
- Communication between the child and both parents when they are apart.
- Childcare arrangements.
- Religious upbringing.
- Where the children will attend school.

Child Custody and Placement



Having those set expectations can help manage emotions for the parents and stability for the children by diminishing disputes about those issues and establishing a routine for the kids.

When developing a parenting agreement, it's important to make it as specific as possible. Sometimes, couples leave it vague, planning to figure it out as they go, but that opens the door to continued arguing and stress.

If you can't reach an agreement, try working with a mediator. If you're still stuck, the family court commissioner will make a decision for you. But no one knows your children, your schedules, or your overall family needs better than you.

Primary custody, shared custody, and split custody: understanding the differences

For parents navigating divorce, the question of how the children will be impacted is often a serious concern and, frequently, the most contentious matter between the splitting parties. When parents decide to share the custody of their children, there are differing ways to approach an arrangement – among them primary, shared, or split custody. You may wonder what the difference is between the arrangements since they have similar definitions. Here's a basic breakdown.

Shared custody

Shared custody is an arrangement in which the court awards both parents legal and physical custody of their children. That means both parents share in the decision-making and rearing of the children. In a shared custody arrangement, parents work to raise their children in the same way they would if they were still married. This is where the parenting agreement mentioned earlier becomes especially important.

With shared custody, parents must cooperate on many issues, and each parent gets about the same amount of time with their children. To simplify this arrangement, parents sometimes choose to live near one another and forgo any child support payments, particularly if both parents earn comparable incomes. Both parents shoulder the costs of caring for the children when they are staying with them. For major expenses, parents will often work together to arrange a way to split costs.

Split custody.

Very different from shared custody, split custody is an agreement that essentially allows the children in a family to be split up, with some of the children living with each parent. The agreement is often reached to minimize the time children spend traveling between their parents' homes; it also allows the separation of siblings who do not get along. Split custody often allows visitation time with the children for the parent who does not live with them.

Primary custody

When parents agree on primary custody, one parent is considered the chief custodian of the child and typically has more parenting responsibilities and time with the child. That means the noncustodial parent is often required to pay child support to the parent with primary custody, as the parent with primary custody shoulders the day-to-day expenses of raising the child.

In these instances, parents will most likely share joint legal custody, providing that both parents will make decisions about their children's religious upbringing, health care, education and rearing, and the decision-making is to be shared equally. Even if parents disagree, they must compromise. This arrangement does not address the amount of time each parent spends with the child. Instead, joint legal custody focuses on the legal responsibility of each parent in making parenting decisions for their children.



Child Custody and Placement



Renegotiating child placement

When parents divorce, lawyers will likely advise them on developing a child placement schedule. On even years, you get the kids on Thanksgiving and Christmas Day; on odd years, you get them for their birthdays and Christmas Eve. Sounds good, right?

The problem is that people are not clairvoyant. They don't know that in two years, their work schedule will change, that they'll have a best friend's (or their own) wedding to attend, that they'll be required to attend an out-of-town professional conference.

Most divorced parents find themselves renegotiating placement on a monthly basis. The ones who do it most easily are the ones who follow these two rules.

#1 Remember, it's about the kids.

As a parent, your number one priority is your children. When you (or your ex) want to renegotiate placement, let what's in the best interest of your children be your guide. If your placement agreement says the other parent gets one seven-day vacation per year, but they now have an opportunity to take your children on a 10-day trip to Europe, think about what's best for the kids. It's probably going on that 10-day trip.



#2 What comes around goes around.

If you give up a week with your kids, you should pick up a week somewhere else, and vice versa. Just as certainly as your ex will need at least an occasional modification, you will, too. If the other parent wants to have the children on both Christmas Eve and Christmas Day this year, you should have both next year.

If you follow those rules and cannot successfully renegotiate placement – and you believe renegotiation is in the child's best interest – you can take the issue to the family court.

The family court will want you to attend a mediation session. In mediation, it's just you, the other parent (sans divorce lawyers), and the mediator. The mediator will listen to concerns from both of you and try to help you reach an agreement. If it's going well, you can choose to continue with the mediator if you wish.

If mediation is unsuccessful, you must file a motion to change placement. This is where it gets more complicated. A guardian ad litem (attorney) will be assigned to represent your kids. That person will investigate and submit recommendations to the court, and the court will hold a hearing to determine whether the recommendations will be adopted or a custody trial is needed.

In La Crosse County, courts may also appoint a custody assessment team, usually consisting of a mediator, guardian ad litem and child psychologist. They investigate and make recommendations together.

In making decisions, Wisconsin courts will look at several factors, including:

- Wishes of the parents
- Wishes of the children
- Emotional health of all the family members
- The amount and quality of time each parent has spent with the children in the past, along with each parent's plans to spend time with the children
- Children's ages and developmental needs
- Whether mental illness or substance abuse affects the children's well-being
- Whether child abuse or domestic abuse has occurred in either home
- The cooperation and communication of the parents

Courts also focus on what is in the children's best interests, but if you let a court decide, you stand a much greater chance that neither of you will get a satisfying outcome.

Child Support



How child support is determined

In determining child support amounts for basic costs, such as food, shelter, transportation, personal care and incidental recreational costs, the court relies on mathematical calculations established by the Wisconsin legislature. The calculations are based on the belief that both parents – regardless of marital status – are responsible for supporting their children.

- Calculations are based on
- The parents' incomes
- The time a child spends with each parent
- Whether a parent is supporting other children

Primary Placement

In Wisconsin, when a parent spends less than 25 percent of the time with the child (equivalent to 92 nights per year), the court considers that primary placement and the noncustodial parent will pay:

- 17% of income for one child
- 25% of income for two children
- 29% of income for three children
- 31% of income for four children
- 34% of income for five or more children

Wisconsin Child Support Calculation (Primary Placement)

Monthly Income	1 Child (17%)	2 Children (25%)	3 Children (29%)	4 Children (31%)	5 Children (34%)
\$1,500	\$225	\$375	\$435	\$465	\$510
\$2,000	\$340	\$500	\$580	\$620	\$680
\$2,500	\$425	\$625	\$725	\$775	\$850
\$3,000	\$510	\$750	\$870	\$930	\$1,020
\$3,500	\$595	\$875	\$1,015	\$1,085	\$1,190
\$4,000	\$680	\$1,000	\$1,160	\$1,240	\$1,360

Source: Wisconsin Department of Children and Families

Shared Physical Custody

When parents share physical custody, Wisconsin family courts adjust child support according to the time each parent has with the children, so the more parenting time accrues, the more the child support amount decreases.

If the parents share physical custody of the children, each with court-ordered placement of at least 25 percent of the overnights (again, 92 days per year), the court will also determine how variable expenses are shared. Variable expenses cover costs such as child care, tuition, special needs and other activities that can involve a substantial cost.

Division of the costs is based upon the amount of time the child spends with each parent, so if you have your child 70 percent of the time, you pay 70 percent of the variable costs. It's uncommon, but courts have discretion to deviate from the formula in situations involving shared placement, split placement, high-income cases and low-income cases where the payer may have insufficient income to pay court-ordered support.

Modifying child support

The standard requirement for a modification to child support is a "substantial change in circumstances." A substantial change would be considered something like a job loss, a substantial increase or decrease in income or a change in how often a child stays with one parent or another.

School Decisions



Newly divorced parents face complicated school decisions

In addition to all the custody, placement and child support issues, divorcing parents also face a new, fundamental question: which school their child should attend – the school in this one's boundaries or that one's.

If you have **joint legal custody**, you'll need to decide on a school together. Otherwise, you'll need to return to family court, where a commissioner or judge – again – will decide for you.

If you **share physical placement and have joint legal custody and want to switch schools** from your child's former school (where your ex is) to the one where you now live, it's best to work it out with your ex-spouse. If the matter goes to family court, there's a good chance the commissioner will rule that the child stays in the school they have been attending.

If you have **sole legal custody**, you may make the decision yourself, without input from the other parent, but if the change in school means a change in placement for the other parent, you have to agree on the placement change or return to court.

If you anticipate **homeschooling**, a disagreement about public vs. private school or another school placement issue, it's best to avoid joint legal custody arrangements at the time of divorce or custody hearing. If that isn't possible, you may be able to be designated as the major decision-maker for the choice of school in the custody agreement. Then, if you can't agree, you would have the right to make the decision.

Whatever your circumstances, the best advice, as with all divorce decisions relating to children, is to set aside your marital issues and focus instead on what is best for your kids.





Filing during a pending divorce

Taxes are another important detail to be negotiated during divorce, and it can be confusing if you recently divorced or face a tax deadline during a divorce. Do you file jointly? Do you file as a married couple? Who claims the kids? Here's a primer to explain the basics.

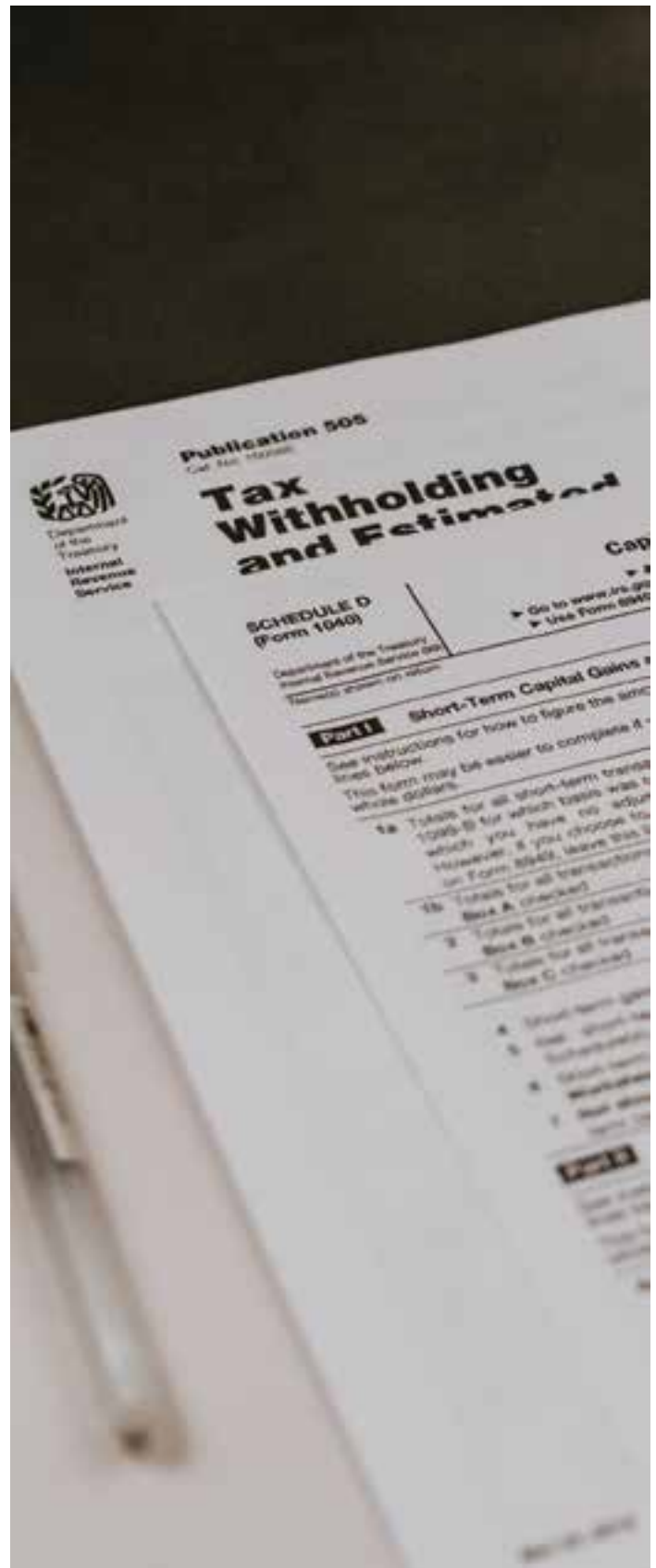
For people who divorced after their last tax filing:

- Your filing status is determined by your status on the last day of the year for which you're filing. If you were divorced as of Dec. 31, then you must file singly. If you were still married on Dec. 31, then you must file as married, filing either jointly or separately.
- Wisconsin is a community property state. That means that unless you opted out through a classification of income form, each partner receives half of any return or pays half of any taxes due. For couples who divorced last year, that holds true only through the date of divorce. From that time forward, each party is responsible only for their own tax liability and keeps 100 percent of any return.
- Child support is not income to the person receiving it, nor is it deductible to the person paying it.
- Maintenance or spousal support is neither taxable nor tax-deductible.
- In most divorces, the marital settlement agreement or divorce judgment includes a provision (previously determined by the couple) indicating which party may take exemptions for dependent children. If this is not included, IRS rules will determine who gets the exemption. Those rules indicate that the custodial parent (the parent with whom the child spends the most nights during the year) may claim the exemption. If parents share equal custody, the custodial parent is the one with the higher adjusted gross income.

For couples divorcing during a tax filing:

- Tax decisions are best made when developing your temporary order. You can indicate there what happens to a refund, if there is one, or how to handle taxes due if needed.
- In most cases, it's advantageous to file jointly, an option since you were still married on Dec. 31 last year. That way, you can claim exemptions for all dependent children on one return to maximize your refund.
- Income tax refunds are considered a marital asset and will be accounted for when marital property is divided.

An experienced family law attorney can help divorcing couples prepare for and navigate these decisions, assuring optimal outcomes. You can also find more information in IRS Publication 504 – Divorced or Separated Individuals at irs.gov.



Insurance

Three important considerations

As if there isn't enough to worry about when divorcing – child placement and support, maintenance, dividing assets and liabilities – you also need to consider insurance. In fact, insurance can be a key to determining equitable outcomes in all those other areas. For many couples, the most important insurance decisions surround three specific issues.

The first relates to **health insurance**. Divorce decrees typically require the party who has carried health insurance for the children to continue that coverage, but it's not uncommon for both spouses to share the financial burden to do so. In most cases, each party is expected to be responsible for their own health insurance coverage.

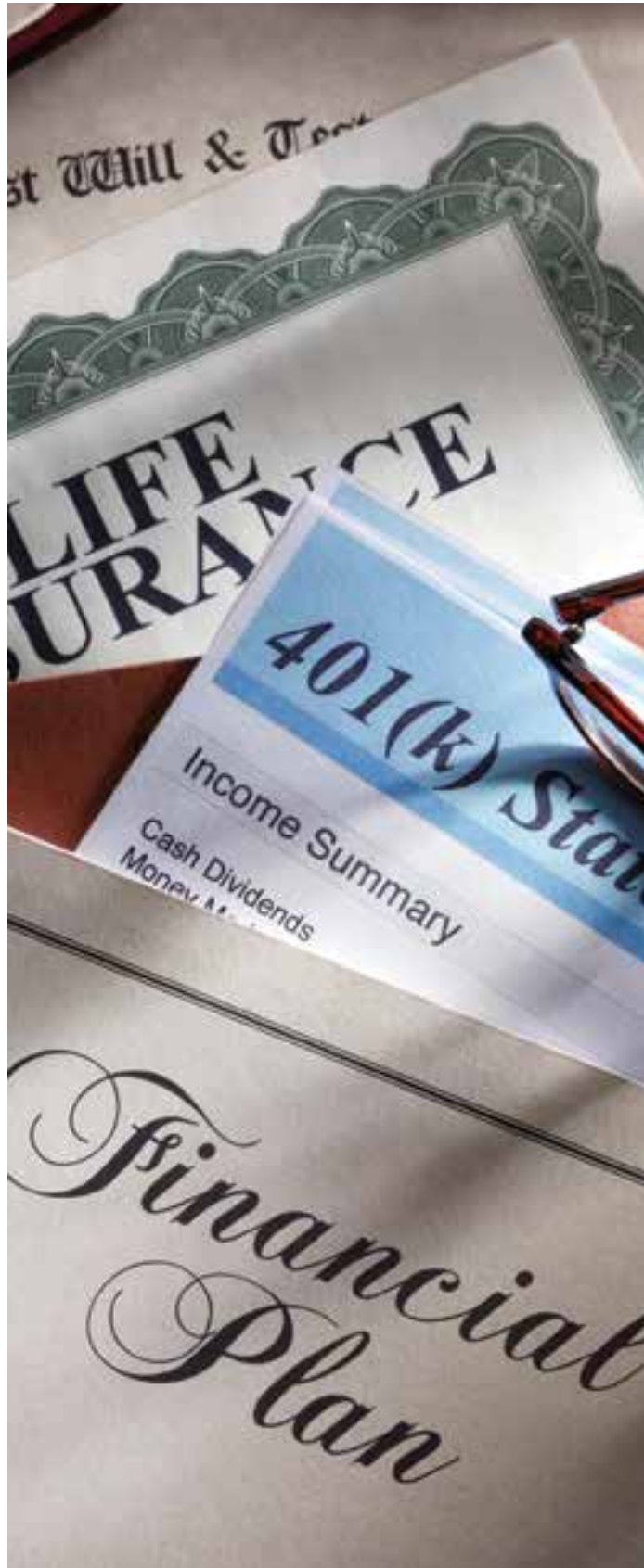
The second issue concerns **child support** and maintenance payments. In cases involving child support or maintenance, life insurance policies may be needed to ensure the support continues should the payer die. For maintenance, the beneficiary would be the ex-spouse; for child support, the parents should have estate planning done to ensure the children are cared for.

Finally, life insurance policies may also be required to cover the **family home**. Often, couples delay selling the family residence until the children are grown, planning to sell the home at that later date and split the equity then. Again, a life insurance policy can guarantee payments continue in the event of either party's death and ensure children can remain in the family home.

To ensure the party carrying the insurance keeps up on payments and maintains the policies, you may want to include stipulations in the divorce settlement requiring annual proof of premium payments and prohibiting borrowing against the policies.



Estate Planning



Don't forget to revise your estate plan

During divorce

You are separated. Is this the time to change beneficiaries on life insurance and your retirement accounts?

You are still married until the court enters a judgment of divorce. In most cases, a temporary order is issued in a pending divorce prohibiting either party from removing a person's name from the title to the house, cutting off utilities, or moving minor children out of the state permanently. The law also prohibits changing beneficiaries on life insurance policies, retirement accounts, and other assets during a divorce.

Before the divorce is final, however, you can change the designated person under your power of attorney for health care and durable power of attorney for finances, as well as who decides what happens to your body if you die. Your spouse is still next of kin until the divorce is finalized and, therefore, would still have the authority to make decisions on funeral and burial issues unless you appoint someone else.

After divorce

Soon after the divorce is final, be sure to make changes to wills or other estate planning documents, as well as beneficiary designations. If you have minor children, make sure your will is updated to indicate who you want to list as guardians for the kids if both of you die. If there is a surviving spouse, that parent would retain custody of the kids. If you don't feel the other parent would be able to care for the children properly, you need to put the reasons in your will, list another guardian and hope your family would then take appropriate steps to challenge the right of the surviving parent to custody. Potential reasons could include the lack of a meaningful relationship with the kids, a history of drug or alcohol abuse or a history of child neglect or abuse.

Other changes are important as well. Although a divorce causes an ex-spouse to be removed as a beneficiary under a will by law, a divorce typically does not affect beneficiaries on life insurance policies, retirement plans, investment accounts or bank accounts. In most cases, you must remove an ex-spouse as a beneficiary if you no longer want them to receive those assets or funds after the divorce.

Gray Divorce



Important considerations when divorcing later in life

There's a reason gray hairs are sometimes referred to as "wisdom threads;" they tend to appear just as we're gaining hard-won wisdom about life and love. It turns out some of that wisdom compels us to change direction in our love life, which is perhaps why the divorce rate among baby boomers is climbing. In fact, the U.S. Census Department reports that Americans over age 55 are divorcing at more than two times the rate of any other age group they surveyed. And that's certainly a trend in the Coulee Region as well. The trend is known as "gray divorce." So if you're contemplating divorce after 55, you're certainly not alone.

No matter how old or young we are, divorce typically comes with substantial legal and financial implications. But when it comes later in life, it can be even more complicated. Keep in mind the following considerations.

#1 Maintenance (also called alimony in other states)

Gray divorce couples are typically late in their careers, which can mean multifaceted compensation packages. Consider an individual's full compensation: are they eligible for bonuses and travel perks? Do they have stock options, ownership stakes or other special benefits? All of these and a person's salary can count in the total compensation considered when determining the amount and duration of maintenance.

#2 Premarital assets, property, and inheritances.

In Wisconsin, the division of marital assets and liabilities falls under equitable distribution, according to Gingrasso. That means in the case of divorce, marital property and assets should be divided equitably, which does not always mean an equal division, as the court will consider the parties' full financial circumstances.

There are some exceptions, including property received as a gift to one of the partners or property that an individual inherited. You may also be able to prove some of your property is a premarital asset.

Your divorce lawyer can help you better understand what falls under equitable distribution, what property may be excluded, and what is required to prove the property is a premarital asset.

#3 Social Security.

Many gray divorces are among people who have been married for at least 20 to 30 years, sometimes longer. In some cases, an individual may be able to collect Social Security from their former partner's earnings.

It's important not to assume this will be true in your case. Your divorce attorney can advise you on how to proceed with Social Security as it relates to your maintenance agreement.

#4 Life insurance.

If you're the individual required to pay maintenance, you may have one more expense to think about: life insurance. Not just any life insurance will do. Anyone required to pay maintenance may have to carry life insurance for a time and amount that covers the terms of your alimony agreement. Be aware that life insurance policies secured as we age could come with high annual premiums.

#5 Pensions and retirement accounts.

Whether you are in retirement or nearing that transition, dividing your retirement accounts can be incredibly complicated. Even more complex than corporate pension plans and government pensions.



5 CLASSIC DIVORCE MISTAKES



#1 Not anticipating divorce as a possibility some day

Prenuptial agreements are like estate planning, important even if they are uncomfortable. They are especially helpful for second or later marriages.



#2 Going straight to a lawyer

Early agreement with your spouse on some basics can smooth the process and avoid more time-consuming and expensive divorces.



#3 Waiting too long to see a lawyer

Working early with an attorney can help you save costs and more complicated issues later on.



#4 Trying to DIY

Forms are available to do-it-yourself, but they sometimes result in major problems.



#5 Moving out too soon

Moving out of the house before reaching agreement about the children. You could be considered to have abandoned your kids, which means a lengthy legal process to get regular visits again.

Many people worry about legal costs, but an attorney's objective should be to protect their client's interests in a cost-effective way. If you need help navigating divorce, call Johns, Flaherty & Collins, S.C.

INSIDER'S GUIDE TO *DIVORCE*

Researchers rank divorce as the second most stressful life event, second only to the death of a spouse. In most cases, it's painful, highly emotional, even devastating at times. One decision that can substantially reduce your stress is knowing you have an experienced divorce lawyer behind you.

The divorce lawyers at Johns, Flaherty & Collins, S.C., offer combined experience of more than 100 years. If it can happen in a divorce, we've likely seen it, and we can help you steer clear of common problems and work through complicated details.

If you're contemplating or facing divorce, call us to see how we can help you achieve the best possible outcome.

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