Getting Divorced In Arizona?

Useful Info That May Be Helpful For You

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TESTIMONIALS

"My brother was appreciative of your help and thinks highly of you. My parents were set at ease when you met them by the window and gave them a thumbs up kind of assessment (after trial). And I am of course extremely grateful for how attentive and open-minded you have been in my brother's unique case. Thanks for understanding the depth and gravity of his situation. I know everyone talks about all the money lawyers make and joke about this and that, but you were a key component in my brother's life. We called October 22nd his Independence Day! You're part of a much bigger thing than just a legal case and the extra hours and extra effort are not sized up in a monetary balance. Thanks again Ron." ***- A.H.***

"I want to thank you for consulting with me in regards to my lawsuit. That last piece of information you gave me was vital to my case. I would definitely call you again, should I have to and would highly recommend you. You have been one of the only attorneys I have dealt with that showed patience, a listening ear, and answered clearly, slowly, and concisely regarding my questions and concerns." ***- G.B.***

"Thank you again for everything, sir! I will be going everywhere online to put a great review for you. You did a truly amazing job, Ron, and we got everything we asked for. Everything that mattered. I do appreciate all the time you put in my case! Thank you again!" ***- D.D.***

"Thank you for the great result, for caring about my situation, and for always returning my calls right away. I hope I don't need legal services again but if I do, you will be the first person I call." ***- J.G.***

"The other side never saw you coming. You did a great job on my case. I've told many of my friends and my own clients they should see you for their divorce and custody battles." ***- M.T.***

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AUTHOR INTRODUCTION

North Phoenix Arizona divorce, custody and bankruptcy attorney Ronald V. Thomas is the sole owner of Thomas Law Office, which he established in 1996. Mr. Thomas was born in Providence, Rhode Island and spent his childhood there. He then pursued his college education in California, earning a B.A. in Psychology in 1993 from the University of Southern California and his Juris Doctor degree in 1996 from Southwestern University School of Law in Los Angeles.

While attending law school, Mr. Thomas clerked for a personal injury law firm that actively litigated many of its claims. Mr. Thomas was heavily involved in assisting the lead trial attorney in preparing cases for trial. Later in his law school career, Mr. Thomas clerked for a trial judge in the Los Angeles County Superior Court, in Burbank, California. Mr. Thomas had the opportunity to research legal issues and to observe hearings in various high-profile cases. Mr. Thomas and the trial judge would discuss various aspects of each case, including what the trial attorneys in those cases did well and not so well.

After graduating from law school in 1996, Mr. Thomas moved to Arizona to form the entity of Thomas Law Office

after passing the bar exam in 1996. Mr. Thomas' practice grew quickly and he hired his first staff member in 1998. Mr. Thomas got married in 2000 and resided in Maryland for three years. There he obtained certification to practice law in Washington D.C. and Maryland and started to focus his career on representing bankruptcy, personal injury and family law clients. He also got admitted to litigate in front of the Supreme Court of the United States. After returning to Arizona in 2003 Mr. Thomas re-established the Arizona branch of Thomas Law Office and focused his efforts almost exclusively on handling Arizona family law matters and Arizona bankruptcy cases. In addition, Mr. Thomas has successfully handled a variety of personal injury cases.

As Thomas Law Office, PLC continued to grow, Mr. Thomas welcomed his first associate, Timothy R. Geiger, in early 2009. Mr. Geiger brought with him considerable experience from his former employment at the Attorney General's office and now handles many aspects of the firm's bankruptcy cases. Mr. Geiger was a full-time associate at Thomas Law Office, PLC, before transferring to Of Counsel status. This enabled Mr. Thomas to focus his skills and efforts almost entirely on family law cases in Arizona. Mr. Thomas has handled a plethora of Arizona

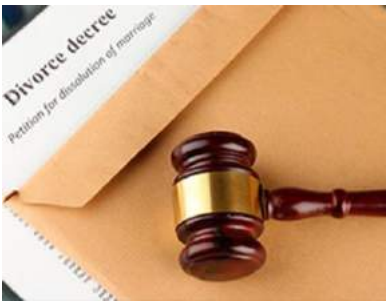
cases involving divorce, custody, child support, adoption, prenuptial agreements, grandparent rights, paternity issues, cross-state custody disputes, mediations, relocation cases, international divorces and custody battles, support enforcements, appeals, and high-asset dissolutions. He is particularly adept at handling high-conflict divorce and child custody cases.

Mr. Thomas has shared his legal expertise on radio programs (KTAR and others) and in newspapers (such as the Arizona Republic). Mr. Thomas is an active member of several bar associations and is an active participant in discussions regarding recent legal changes and tips on litigation tactics. In addition, Mr. Thomas was appointed as a Pro Tempore Judge of the Maricopa County Superior Court in 2010 and served in that capacity until returning to exclusively working in his private practice in 2014.

Mr. Thomas has been blessed with two wonderful sons. In his spare time, Mr. Thomas likes to spend time doing things with his boys, read on wide variety of topics, and watching college football games. He is a rabid USC Trojans fan.

Is It Easy To Get Divorced In Arizona?

It is very easy to get divorced in Arizona. Anyone can ask for a divorce and receive one, without having to provide a reason why the divorce is desired. The exception is if you have what is referred to in Arizona as a "covenant marriage." Covenant marriages are rare; it is unlikely that you have one. If you have one, you would know it, because you would have had to opt-in to the covenant marriage status.



If you have a covenant marriage in Arizona, obtaining a divorce is more complicated because your situation must fit within one of the special categories for obtaining a divorce. Notwithstanding any law to the contrary, if a husband and wife have entered into a covenant marriage in Arizona the court cannot enter a decree of dissolution of marriage unless it finds any of the following:

1. The respondent spouse has committed adultery.

2. The respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, county or municipal correctional facility.

3. The respondent spouse has abandoned the matrimonial domicile for at least one year before the petitioner filed for dissolution of marriage and refuses to return. A party may file a petition based on this ground by alleging that the respondent spouse has left the matrimonial domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the matrimonial domicile for the required period at the time of filing for the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on abandonment, except that the court may enter and enforce temporary orders pursuant to section 25-315 during the time that the action is pending.

4. The respondent spouse has physically or sexually abused the spouse seeking the dissolution of marriage, a child, a relative of either spouse permanently living in the matrimonial domicile or has committed domestic violence as defined in section 13-3601 or emotional abuse.

5. The spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage. A party may file a petition based on this ground by alleging that it is expected that the parties will be living separate and apart for the required

period. If the parties have not been separated for the required period at the time of the filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on separation, except that the court may enter and enforce temporary orders pursuant to section 25-315 during the time that the action is pending.

6. The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation was entered.

7. The respondent spouse has habitually abused drugs or alcohol.

8. The husband and wife both agree to a dissolution of marriage.

As long as you fit within one of those categories, you can obtain a divorce in Arizona even if you have a covenant marriage. If you do not have a covenant marriage, as stated earlier, it is very easy to obtain a divorce. However, the more important and complicated aspect of a standard divorce in Arizona is how the court will divide assets and debts and whether spousal maintenance (alimony) will be ordered.

What Is Spousal Maintenance And How Is It Determined?

Spousal maintenance is one of the most complicated areas of divorce law. The reason for that is the wide discretion Arizona judges have in determining the amount and duration of spousal maintenance and if a spouse qualifies for spousal maintenance in Arizona. You can avoid this financially devastating situation in the first place by obtaining a prenuptial agreement, or what in Arizona we now call a premarital agreement. Using a prenuptial agreement, you can eliminate entirely the need to pay your spouse anything in the event of a divorce.

There are some exceptions, but for the most part the most important way you can protect yourself from financial slavery for years after your divorce is to make sure you do not get married unless your fiancé is willing to sign a prenuptial agreement. But assuming you do not have a prenuptial agreement, you will be subject to the Arizona statutes that pertain to spousal maintenance. The terms alimony and spousal maintenance mean the same thing in Arizona. In order to qualify for spousal maintenance in

Arizona, you must be married and seeking a divorce or legal separation.

An unmarried person has no right to spousal maintenance in Arizona. That could change as fewer and fewer people get married and instead choose to live together. But assuming you are in a proceeding for dissolution of marriage, legal separation, or a proceeding for maintenance following dissolution of the marriage by a court, that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons below, if it finds that the spouse is seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.

2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.

3. Contributed to the educational opportunities of the other spouse.

4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

The spousal maintenance order will be in an amount and for a period of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

1. The standard of living established during the marriage.
2. The duration of the marriage.
3. The age, employment history, earning ability, physical and emotional condition of the spouse seeking maintenance.
4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.
8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
9. The financial resources of the party seeking maintenance, including marital property apportioned

to that spouse, and that spouse's ability to meet that spouse's own needs independently.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought, if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

If both parties agree, the maintenance order and a decree of dissolution of marriage or of legal separation may state that its maintenance terms shall not be modified. This is an important consideration to keep in mind. If you agree on a spousal maintenance amount, you can also agree that it can never be modified. In some cases, this is a good idea, because you will know that your spouse can never go back to court and request more money or a longer duration of support because circumstances have changed.

For example, you end up making far more money after the divorce is final, if your spousal maintenance agreement does not state that it is non-modifiable, your ex could go back to court and say that she needs more money because you are now able to pay far more than you could when you were earning far less money. On the other hand, making your spousal maintenance award non-modifiable can also backfire. One such scenario is if you lose your job or have other major financial commitments. If that happens, a judge will not care and cannot change things even if the judge wanted to.

You will be stuck with what you agreed to, and if you do not pay, you could even be incarcerated. This is a very complicated decision to make, and it is a decision you and your attorney will discuss at length in order to explore all the future possibilities and consequences. Another way you can make a mistake is if you make your spousal maintenance agreement non-modifiable and your ex ends up making far more money or inherits assets or otherwise has a financial situation that greatly improves, you will be unable to go back to court to get the spousal maintenance lowered or stopped altogether. Your ex will have a windfall while you slave away and deprive yourself of savings, purchases, or other things you could do with that money that your ex no longer really needs.

Pre-Nuptial Agreements And The Protections That They Offer

Prenuptial agreements are also known as premarital agreements in Arizona. These are contracts that are formed between people intending to be married. These contracts determine what will happen if the parties get divorced or legally separated.

The premarital agreements can determine things such as whether spousal maintenance (alimony) will be paid and if so, how much and for how long; how assets and debts will be divided; whether income earned during the marriage will be considered community property or separate property; whether contributions to retirement accounts will be considered community property or separate property; whether any business formed during the marriage will be considered community property or separate property; whether one spouse will have any interest in the business formed before marriage by the other spouse.

If so, how much of an interest; whether the spouses will waive certain inheritance rights so that the step-children can inherit those assets instead; and many other important determinations. It is well known that half of all marriages end in divorce. Therefore you should consider a premarital agreement to be liking an insurance policy. It will protect you from unknown outcomes in a divorce without a premarital agreement. It is important to note that a premarital agreement, at least in Arizona, cannot address in a binding way things like child custody, parenting time, or child support.

Pre-marital agreements can be attacked. That is why it is important to have your attorney prepare the premarital agreement for you; to make it as airtight as possible. Some penny-wise but dollar-foolish people have pulled premarital agreement forms from the web, only to find out that those documents are legally deficient, causing them potentially hundreds of thousands of dollars in lost assets. In Arizona, premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration (something in exchange). The agreement becomes effective on marriage of the parties.

The agreement is not enforceable if the person against whom enforcement is sought proves either of the following:

1. The person did not execute the agreement voluntarily.
2. The agreement was unconscionable when it was executed and before execution of the agreement that person:
    a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.
    b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.
    c. Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary

to avoid that eligibility. So in summary, a premarital agreement is a good thing for all men to have.

It is especially important to have one if a man is a high-earner or is likely to become a high-earner, or if he has a high net worth or is likely to have a high net worth in the future. If your spouse-to-be becomes offended at the suggestion of using a premarital agreement, you should stand your ground. It is better to have a bitter ex-girlfriend to whom you owe no money than to have a bitter ex-wife to whom you may be in financial slavery for many years.

Post-Nuptial Agreements And The Protections That They Offer

A postnuptial agreement is a written contract executed after a couple gets married, or have entered a civil union, to settle the couple's affairs and assets in the event of a separation or divorce. It is normally "notarized" or acknowledged and is usually the subject of the statute of frauds. Like the contents of a prenuptial agreement, provisions vary widely, but commonly includes provisions for division of property and spousal support in the event of divorce, death of one of the spouses, or breakup of marriage.

There may be many reasons to obtain a postnuptial agreement.

Postnuptial agreements only came to be widely accepted in the United States in the latter portion of the twentieth century. But Arizona has permitted them for a long time, as more fully described below. For many years, US jurisprudence followed the notion that contracts, such as a

postnuptial agreement, could not be valid when executed between a husband and wife.

It was only in the 1970s that postnuptial agreements were met with wide acceptance in the United States. The motivating factors considered to be behind this acceptance was the increase in divorce during the 1970s, along with the implementation of "no fault" divorces, granting divorces for any reason. Upon the wave of legislative and statutory changes, postnuptial agreements began to find acceptance in American jurisprudence.

Within the body of law in the US, there are typically three kinds of postnuptial agreements:

1. An agreement that will provide for the assignation of marital property at the time of death of one spouse. These agreements typically have the surviving spouse waiving any rights to property they would have had the right to inherit under a will or statutory scheme.
2. Agreements that are for all purposes separation agreements. In Arizona, we call these “Property Settlement Agreements” These agreements are entered in to avoid the time and cost of divorce proceedings. The disposition of property, other marital assets, custody, alimony and support and the like are agreed to by the marital partners upon separation and the agreement later, usually, incorporated into the final divorce decree.

3. The kind of postnuptial agreement that most people think of when they hear that phrase, are agreements that are an attempt to affect rights in a future divorce, usually limiting or waiving alimony and or support and the division of marital property, which includes property obtained before and after the marriage.

Some states address postnuptial agreements in their statues. Others do not. Arizona has held via a series of court decisions in Roden v. Roden, 29 Ariz. 398, 242 P. 337 (1926), In Re Estate Of Harber, 449 P.2d 7(1969) and Spector v. Spector, 531 P.2d 176 (1975), that postnuptial agreements are valid. Arizona has declined to address postnuptial agreements via statute, but has addressed the issue of prenuptial agreements via statute.

Further below, the Arizona standards will be addressed in greater detail. But for now, it is important to understand some general information about postnuptial agreements. Of course, you should always consult with an Arizona postnuptial agreement attorney before you attempt to negotiate with your spouse regarding the outcome of a potential divorce. There are lots of traps for the unwary, so sound advice from a good Arizona postnuptial agreement attorney will be invaluable. Postnuptial Agreements are written agreements by spouses made after a marriage. So in a way, they are like prenuptial agreements, but they are

entered into after the marriage takes place. Their intent is to try to "fix" something that is going wrong in the marriage, so that the marriage can go forward.

This is a relatively new area of law in many states, but not in Arizona. The development of the law relating to these agreements is now starting to develop and is reminiscent of how the law of Prenuptial Agreements (those made before a marriage) developed twenty-five years ago. Postnuptial Agreements are also referred to as Post marital Agreements or Post-nuptials. It is likely that Arizona will enact statutes that address postnuptial agreements, but as of yet, the state has declined to set for specific statutory standards, instead relying on our case law from long ago.

As recently as twenty years ago in many states, Prenuptial Agreements were not enforceable. They were considered to be against the public policy of encouraging marriage and the full union (including economic) of two people entering into marriage. In addition, Courts and legislatures were concerned with the possibility of coerciveness and unequal bargaining since in Prenuptial Agreements there is generally a large inequality in financial assets of the parties, or their parents.

Since that time, most states have accepted the legality of Prenuptial Agreements, but require certain safeguards for the contracting parties. The rules vary from state to state, but generally, the parties to a Premarital Agreement must make a knowing waiver of the marital rights they are waiving in the Prenuptial Agreement. In addition, the agreement must be fair and reasonable at the time it was entered into and at the time it comes into play (at divorce or death). It must not have been entered into through coercion or force. There must be complete financial disclosure in order for a Prenuptial Agreement to be valid. These are general standards. Arizona has specific standards that will be addressed below.

There is generally more latitude in making restrictive previsions in a prenuptial agreement than in a postnuptial agreement. The theory is that a couple can decide not to marry if they do not like the terms of a pre-nup; a couple is already married when they are developing a post-nup, so the law believes there is more at stake, and the couple is not bargaining at “arm’s length”.

Case law and statutory law is now in the process of being developed regarding the validity and enforceability of Postnuptial Agreements. There are some variations from state to state, so that it is very important for couples to

review the laws of their state before they enter into one. Factors indicating enforceability would be that the negotiation process is not coercive, there has been full financial disclosure, and that the parties each have a separate reviewing attorney. In addition, a very important factor in maintaining the validity of a Postnuptial Agreement is that a contracting party is not secretly motivated to better the terms of an (imminent) divorce.

In Arizona, the standards applied to postnuptial agreements are the same as those applied to contracts in general. The court in the Harber case cited above made clear that Arizona adopts the proposition that marital partners may in Arizona validly divide their property presently and prospectively by a post-nuptial agreement, even without its being incident to a contemplated separation or divorce. There are built in safeguards that the agreement must be free from any taint of fraud, coercion or undue influence. That the parties acted with full knowledge of the property involved and their rights therein, and that the settlement was fair and equitable.

But contracts are not easy things to draft. You should not attempt to draft any contract, let alone such a significant one as a postnuptial agreement, without the assistance of an experienced family law attorney in Arizona.

Can I Get Divorced In Arizona If I Got Married Elsewhere In The U.S.?

Even if you did not get married in Arizona, you can get divorce in Arizona if you are a resident of Arizona. However, the divorce judge may not have jurisdiction over all the issues in your case. For example, if your spouse resides in a different state with the children, and that spouse has resided with the children in that state for at least six consecutive months, the other state is the state that has jurisdiction over the child related matters. Even if your spouse does not reside in the other state with the children; i.e. if the children reside here in Arizona with you, but the other spouse resides elsewhere and if that spouse has never resided in Arizona, the Arizona court may not have jurisdiction over the other spouse with regard to child support.

These situations need to be analyzed carefully because there are exceptions, and exceptions to exceptions, but if you, your spouse and your children all reside here and you have all resided here for the past six months, then Arizona can be the location of your divorce case even if you got

married elsewhere. If there are no children in common between the spouses, the filing spouse must have resided in Arizona for ninety-one consecutive days before filing for divorce in an Arizona court.

If the parties have no children in common, but one spouse is an Arizona resident and the other spouse is a resident of another state, Arizona may not have personal jurisdiction over the nonresident spouse except the Arizona court always has the jurisdiction to sever the marriage on behalf of the spouse who is an Arizona resident, even if the Arizona court does not have jurisdiction to decide property and spousal maintenance issues.

Again, these are complicated scenarios so these general rules should not be relied upon in the absence of a consultation with an experienced Arizona divorce attorney. But as a general rule, if you and your spouse are residents of Arizona, and your spouse then leaves the state with the children, you must act quickly in order to increase the odds that your case will be under the jurisdiction of the Arizona courts, unless the state to which your spouse moves is much more favorable to you on issues that are in your best interest. That is why it is often a good idea to consult with an Arizona attorney and

an attorney in the other state, so that you can analyze the pros and cons of each jurisdiction.

Regardless, if you have children and you do not want to move to the other state, and if you want lots of parenting time with your children, you should move swiftly to file a case in Arizona so that you will increase the chance that the judge will order your spouse to return the children to Arizona. The longer you wait, the more established your spouse and children will become in the new state, and the less likely the judge will be willing disturb their routine.

Can I Get Divorced In Arizona If I Got Married Outside Of The United States?

Even if you did not get married in the United States, you can still get divorced in Arizona if you are an Arizona resident. However, the court may only have jurisdiction to sever the marital ties. The court may not have jurisdiction over the other spouse and the court definitely will not have jurisdiction over property that is located in the other country. International divorce cases are complicated. Figuring out the best way to proceed turns on a variety of factors and it is highly advisable to obtain a consultation with an experienced international divorce attorney in order to determine which jurisdiction would be the correct one in which to file your case.

But if you and your spouse both reside in Arizona, the fact that you got married in the other country makes no difference. You are still entitled to a divorce in Arizona. Whether the other country will recognize the divorce is a different question, and one that must be analyzed carefully with an international divorce attorney if you have plans to move back to that country in the future. Also, if you have children in the other country, you may or may not be able to have custody issues decided in an Arizona court.

Usually the Arizona court will defer to the other country's court, but there are exceptions that are beyond the scope of this general informational material. If your spouse leaves Arizona and moves to another country with your children, you must immediately obtain a consultation with an experienced international child custody attorney. Time is of the essence in such cases. If too much time passes, you will be forced to litigate in the other country, which could be far more costly, time consuming, biased, and frustrating that anything you would experience in an Arizona court, depending on which country your spouse has moved to.

Does Infidelity Matter In An Arizona Divorce Proceeding?

In Arizona, if the marriage is not a covenant marriage (see below for information about covenant marriages), it does not matter whether a spouse has cheated, even though technically adultery is still a crime in Arizona, at least as of 2016. The adultery laws are rarely enforced. With the exception of those few covenant marriages that exist in Arizona, divorce is a "no fault" process, meaning that the judge will not be concerned with things like adultery, abandonment, abuse, etc., at least with regard to whether a divorce can be granted and how the assets and debts will be divided.

The judge cannot give you or your spouse more of the assets if one of you cheated. The judge cannot order you or your spouse to pay more of the debt if one of you cheated. The law is cold and objectively written: assets and debts must be divided equitably (which usually means equally) without regard to who caused the breakup of the marriage or how badly one's spouse behaved in the marriage. The

primary exception is if the judge finds that one of the following transpired:

Actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim

1. Excessive expenditures
2. Abnormal expenditures
3. Destruction of community or joint property
4. Concealment of community or joint property; or
5. Fraudulent disposition of community or joint property

If any of the above are found, the judge can unequally divide the assets or the debts. But the judge still just may permit the party to be divorced even if he or she cheated and even if you do not want the divorce to proceed. And the fact that adultery took place, as stated above, will not affect the entitlement to a divorce nor how the assets are divided. As also mentioned above, if you have a covenant marriage, the adultery can enable you to obtain a divorce more quickly. Covenant marriages are rare; it is unlikely that you have one.

If you have one, you would know it, because you would have had to opt-in to the covenant marriage status. If you

have a covenant marriage in Arizona, obtaining a divorce is more complicated because your situation must fit within one of the special categories for obtaining a divorce. Notwithstanding any law to the contrary, if a husband and wife have entered into a covenant marriage in Arizona the court cannot not enter a decree of dissolution of marriage unless it finds any of the following:

1. The respondent spouse has committed adultery.
2. The respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, county or municipal correctional facility.
3. The respondent spouse has abandoned the matrimonial domicile for at least one year before the petitioner filed for dissolution of marriage and refuses to return. A party may file a petition based on this ground by alleging that the respondent spouse has left the matrimonial domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the matrimonial domicile for the required period at the time of the filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on abandonment, except that the court may enter and enforce temporary orders pursuant to section 25-315 during the time that the action is pending.

4. The respondent spouse has physically or sexually abused the spouse seeking the dissolution of marriage, a child, a relative of either spouse permanently living in the matrimonial domicile or has committed domestic violence as defined in section 13-3601 or emotional abuse.

5. The spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage. A party may file a petition based on this ground by alleging that it is expected that the parties will be living separate and apart for the required period. If the parties have not been separated for the required period at the time of the filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on separation, except that the court may enter and enforce temporary orders pursuant to section 25-315 during the time that the action is pending.

6. The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation was entered.

7. The respondent spouse has habitually abused drugs or alcohol.

8. The husband and wife both agree to a dissolution of marriage.

As long as you fit within one of those categories, you can obtain a divorce in Arizona even if you have a covenant marriage. If you do not have a covenant marriage, as stated earlier, it is very easy to obtain a divorce. However, the more important and complicated aspect of a standard divorce in Arizona is how the court will divide assets and debts and whether spousal maintenance (alimony) will be ordered. And this aspect is almost never affected by whether a spouse had an affair during the marriage.

DIVISION OF DEBTS IN A DIVORCE PROCEEDING

In Arizona, if a debt was incurred during the marriage of the parties and not before they got married, that debt is most likely going to be divided equally. The general rule of thumb is debts incurred during marriage are presumed to be for community (marital) purposes and therefore will be divided equally. But there are exceptions. If the debt was incurred during the parties' marriage, that debt will be assigned to the spouse who incurred that debt prior to the date of marriage.

Also, any debt that is incurred by a party after the divorce petition is served in a divorce case will be assigned to the spouse who incurred the debt. This is because the date when the divorce petition is served is a very important date; it severs the application of the community property laws in Arizona. However, generally any debt incurred during the marriage will be considered a joint obligation, because under Arizona law, each spouse has the power to bind the community (marriage) to any debt

unless it fits within one of the exceptions above or any of these exceptions:

- Any transaction for the acquisition, disposition, or encumbrance of an interest in real estate other than an unpatented mining claim or a lease of less than one year.
- Any transaction of guaranty, indemnity or suretyship.
- Actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.
- Excessive or abnormal expenditures.
- Destruction of property.
- Concealment or fraudulent disposition of community or joint property.

The first two reasons above are mandatory, meaning that the judge has no discretion about whether to award the debt to one or both parties in the Arizona divorce case. He must order only one of the spouses to pay it. With regard to the rest of the reasons, the judge may order one spouse to pay most or all of it or he could just treat it like any other community debt and assign it equally to both spouses. Examples of debts that probably will be assigned to just one spouse are those that were incurred for a mistress or lover; those that were incurred for things that

unquestionably could not benefit the other spouse; debts that were incurred (without the other spouses consent) primarily for the benefit of third parties (such as relatives, friends, business associates, etc.); and a variety of others, but rare situations.

Even if a debt is clearly a community debt under Arizona law, it does not have to be divided equally. The judge has the discretion to order a 60/40, 70/30, or any other ratio that is not 50/50, but this rarely happens. When it does happen, it happens because there are extenuating circumstances. In one of the more notable cases of this in Arizona, the husband was elderly and married a much younger woman. This husband put his wife's name on the title to his house. Within a very short period of time after they got married, they separated and the wife filed for divorce, seeking half of the (substantial) equity in the house. The court decided that it would be grossly unfair to let this woman get away with this windfall.

Although the example just cited deals with property division rather than debt division, the same principles apply. If a woman marries a man, then runs up a massive amount of debt or incurs a massive loan (to start a business, for example), it is not hard to envision a judge refusing to assign half that debt to the husband if the

wife divorces the husband shortly after incurring all that debt. Another situation where debt is awarded mostly to the party who incurred the debt is with regard to student loans.

If one spouse incurs a large student loan debt and the parties divorce shortly afterward, a judge could find that it is grossly unfair for the massive student loan debt to be divided equally, even though that debt was technically incurred during the marriage and therefore is presumed to be community debt, because probably only one of the spouses is going to benefit from the fruits of that educational debt. Nevertheless, there are also many judges that will take a harsh, technical view of such matters and divide the debt equally.

This is another reason why most people should have a premarital (prenuptial) agreement. In a premarital agreement the parties can specify that each spouse is responsible for all debt in his or her name alone, or they can draft any other disposition that is reasonable and sensible. The bottom line is that although most debts are divided equally, there are increasingly more situations in which a judge will unequally divide the debts in order to avoid a grossly unfair result. Legal advice is critical before agreeing to split the debt equally, as you may have the

ability to get a much better result than that. Finally, how to mechanically divide debt can get tricky because it is rare that half the debt is in the name of one spouse and half the debt is in the name of the other spouse.

What we try to do is to assign responsibility for the debts as equally as possible. If there is a major imbalance in the division of the debt, one spouse may need to have an order in place against the other spouse for reimbursement for the difference. Also remember that creditors are not affected by how the debts are assigned in your divorce decree, even if the divorce decree was the result of a trial in which the judge ordered each spouse to be solely responsible for specific debts. This is because the creditor is not a party to the divorce case and therefore the judge has no rights over the creditor.

For example, if it is a debt that is in both spouses' names, but the judge ordered the wife to pay that debt, if the wife does not pay it the creditor can sue the husband for the debt. The husband's only recourse would then be to pursue the wife in family court for a judgment for what the husband had to pay to the creditor that really was the ex-wife's responsibility.

Can I Protect Myself From Debt Accrued By My Wife In Our Marriage?

There are ways to protect yourself from the debts of your spouse that are accrued during the marriage. The easiest way is to make sure your spouse signs a prenuptial agreement prior to marriage, but you should not try to do this on your own. Prenuptial (premarital) agreements are complex documents. You do not want to foolishly download some form you find on the web. Doing so can result in a defective document being signed, destroying your plan of protecting yourself from debts incurred by a potentially spendthrift spouse. It is shocking to see how many people are penny wise but dollar foolish.

They will spare themselves no expense in making sure they enjoy good vacations, luxury cars, meals at high-end restaurants, etc., but then be cheap when it comes to the security of their financial future because they have been brainwashed by the do it yourself culture into thinking

that they can easily handle the drafting and negotiation of legal documents on their own. If you are already married, you may be able to convince your spouse to sign a postnuptial agreement. Again, you have to proceed wisely and not try to do such a thing on your own.

Do not bargain shop for the cheapest lawyer out there. Be smart. Find an experienced attorney who can help you achieve your goal in the safest way, even if that means paying a bit more than you would like to. Major corporations spend millions of dollars on armies of lawyers to protect their interests. You should treat yourself as well as these soulless entities do when they seek to protect their own interests. But if your wife will not sign a postnuptial agreement, your worst case scenario may be to file for a legal separation or divorce.

When a divorce or legal separation petition filed in Arizona is served on the other spouse, the community (the legal status of being responsible for half your spouse's debts) ends for any assets or debts acquired from that point forward. Keep in mind that if you remain married you should not have a false sense of security in thinking that you are protected because all the debt your spouse is incurring is in her name alone. Under

Arizona law, for virtually all debts incurred during the marriage, both spouses are equally responsible for it regardless of which spouse incurred the debt or in whose name the debt is listed.

A consultation with a good, experienced Arizona divorce attorney can be one of the best decisions you can make to protect yourself from massive financial exposure due to a spouse who cannot control her spending.

Division Of Assets In An Arizona Divorce Proceeding

Assets in Arizona divorce cases are divided equitably (fairly). In practice, this means that in virtually all cases the assets will be divided equally. However, the judge does have the discretion to award an unequal division of assets if to divide the assets equally would produce an unfair result. For example, if a husband and wife get married and a month later the husband receives a substantial commission (for example, $50,000), and the parties file for divorce the very next month, there is a decent chance the judge will find that it would be unfair to give the wife $25,000 of that commission.

Of course, this is an extreme example where the parties had a very short marriage. But there are other rare situations in which a judge could award one party of more assets. It is important to know that the judge can only divide community property assets. Community property assets are those that were acquired during the marriage as a result of the efforts or income of one or both spouses. If the asset existed before marriage, that asset is the sole and

separate property of the spouse who owned it prior to the date the parties got married.

Another asset that will be awarded to only one of the spouses is one that was acquired by gift. If the other spouse or a third party made a gift to one of the spouses, that spouse will be awarded the asset as his or her sole and separate property. This is an area in which spouses will often fight in court over whether it truly was a gift, or if it was a gift, whether the gift was to just one spouse or the spouses together as a couple. In such cases it is helpful to have evidence to substantiate your position. For example, if it was a gift from your parents to you and you alone, your parents may need to testify in court to that effect.

If there is a birthday or holiday card that contains a message to you about the gift being yours that can be very useful in court as well. Even text messages, email messages, recordings, photos, and all sorts of other evidence can be used to substantiate the fact that this was a gift and the gift was to just one of the spouses. Another example of property that the judge will not divide is inheritances. If you obtained money or assets by inheritance, as long as you did not commingle it with community property or put it in the name of both spouses, you probably will be able to be awarded that asset without having to share it with your spouse.

But as for the community assets, they, as stated above, will be divided equally in most cases. Often an equalization payment is needed. For example, suppose that you are awarded the family residence and the residence has equity of $100,000. If your spouse does not receive assets that are equal in value to the asset you received, you will need to pay your spouse her share of the equity. In this example, you would have to find a way to pay her $50,000. You could do that by refinancing the home, selling the home, or reaching an agreement with her to pay her a certain amount of money per month until the $50,000 is paid in full.

Another issue that often arises is community contributions to separate property. An example of this is a husband who has a 401k. To keep it simple, let us suppose that his 401k is worth $100,000 on the date the parties get married. A year later, the get divorced. During the year they were married, he contributed $10,000 to the 401k. At the time of divorce, the husband would owe the wife $5,000, which is half the contributions made during the marriage. She would also be entitled to any increases on that $5,000, but to keep it simple the example does not assume there was any increase in the principal amount contributed to the 401k account.

Are There Legal Ways To Protect Your Assets From A Divorcing Spouse?

The single biggest way in which you can protect your assets from your wife is to make sure that she signs a prenuptial (premarital) agreement before you marry her. A prenuptial agreement provides much flexibility in deciding how assets and debts will be divided during a divorce. Most importantly, you can eliminate or greatly reduce what some call "legal theft" or "financial slavery," otherwise known as alimony or spousal maintenance. But if it is too late for that, you could try to get her to sign a postnuptial agreement. Postnuptial agreements are permitted in Arizona. But you must proceed very carefully because this is a tricky area of the law.

Whether you are planning to have your wife sign a prenuptial agreement or a postnuptial agreement, you will need the guidance and advice of an experienced Arizona prenuptial agreement attorney or Arizona postnuptial

agreement attorney. If neither an Arizona prenuptial agreement nor a postnuptial agreement are viable options in your situation, the only other thing you can try is to delay the divorce itself. If you delay the divorce filing, you may be able to prepare for a divorce by taking certain steps to reduce your exposure in a future divorce.

This is a very complicated and risky area of the law, and you should never take steps unless you meet with an attorney who can help you plan for an eventual divorce. At our office, we offer a divorce planning service. This inexpensive service can save you perhaps tens of thousands or even hundreds of thousands of dollars on asset division, spousal maintenance and child support payments. There are legal ways to protect yourself if you have the time to do it and you know how to do it without running afoul of the law.

Impact Of Marital Infidelity On A Divorce Proceeding

If you cheated on your wife, you will not suffer an adverse consequence in your divorce case unless your children were exposed to the cheating. For example, if you foolishly slept with many women and introduced many of them to your children, a judge could find that behavior to be harmful to the children and give you less parenting time or fewer rights as a result of your carelessness. But if

you were discreet about it, the judge will not care and will not punish you with regard to how assets and debts are divided. However, if you spent much money on your mistress and your wife can prove that you did so, your wife may have a claim to half the funds expended on your mistresses.

Also, it is possible that a judge could feel sympathetic to your spouse and subconsciously rule in her favor in areas where the judge could decide the matters either way. So it is important to have an experienced and effective Arizona divorce attorney on your side in order to anticipate and swiftly deal with your wife or your wife's attorney's attempts to creatively "mention" the affairs in an effort to affect the judge emotionally. Some judges, particularly those that are very religious, may have a hard time keeping their emotions under control. Most judges are very good at being unbiased in such matters but you do not want to take chances. Having an attorney who knows how to proactively shut down sneaky attempts to use the marital affairs as a weapon against you is invaluable.

How Do Arizona Judges Divide Furniture And Other Items In The House?

Arizona judges generally dislike having to make rulings about who gets the pots and pans. In Arizona courts, divorcing parties get very little time to present their cases. Most are allowed only two or three hours for the entire divorce trial. This means only half the time is yours to spend both on direct examination of witnesses and cross examination of witnesses (plus opening and closing statements if so desired). With such little time, you probably will not even be able to address such matters as who gets the big screen TV or who gets the bedroom set.

What most judges in Arizona divorce cases will do is order the parties to divide the household furniture, furnishings, appliances, and other items by one of three methods. The first is the "alternate pick method." Using this method, the parties go through the house together. The first party puts a green (or whatever color) sticker on an item that he wants. The second party then puts a red (or whatever color) sticker on the item that she wants. They continue

alternating in this manner in until all the household contents are divided. The second common method is the "alternate list" method. Using this method, the parties flip a coin to decide which party will make two lists.

The property on each list should be of roughly equal value. The other party then picks one of those two lists. Since the party who is making the list does not know which list the other party is going to pick, he or she has a built-in incentive to make the lists as equal in value as possible. Otherwise, the party who gets to choose which list he or she wants will obviously choose the list that contains property of much higher value. The third method that is commonly seen is the "equalization method." Using this method, one party keeps all the property and pays the other party half the fair market value of the property. This method is rarely used unless a proper, reliable appraisal has been done.

Otherwise, the parties will argue with each other over what the value of the property is. There are other methods of dividing the property as well, but these are the most common ones. But the best way to do this is to do it by agreement, if that is possible. It is much less common now in Arizona divorce cases to see serious fights of the contents of the marital residence, and this is probably a

result of the very short amount of trial time divorcing couples are given. Whereas decades ago most divorce trials in Arizona lasted days or even weeks, they now last only a few hours in most cases.

This is not a good development, because much injustice results from the short amount of time in which to produce evidence and testimony, but until things get better, if they ever do, the fact of the matter is that you will not have much time to fight about personal property division in your Arizona divorce case.

Which Court Will My Divorce Case Be Filed In Arizona?

In an Arizona divorce case where the parties both reside in this state, the divorce case will usually be filed in the county of the filing party's residence. The case could be filed in the other party's residence. But if there are children involved, the proper county is usually the county where the children spend most of their time. If the spouses both reside in Arizona and in the same county, then it usually does not matter which court location the case will be filed in.

For example, in Maricopa County, the case can be filed at any of the court's four main locations: downtown Phoenix, Northeast Phoenix, Mesa, or Surprise. But the case will be assigned to the court where the filing party or the filing party's attorney (if the party is represented) is located. This is an important decision to make. The court bases the courthouse to which it assigns the case on the relevant zip code. For example, if you reside in central Phoenix but your attorney has an office in Mesa, your attorney may prefer that you file your case downtown in your own name

if your attorney believes that in your particular case you would be better off with one of the downtown judges.

The attorney would then enter a notice of appearance in the case after the case has been assigned to the strategically determined courthouse. Regardless of which Arizona County you or the other party resides in, the case must be filed in the Superior Court. Justice Courts do not have the authority to hear family law cases in Arizona. Nor do Municipal Courts have the legal authority to hear family law cases. One notable exception is Orders of Protection. Orders of Protection are known as "restraining orders" in many other cases. These can be filed in virtually any court in Arizona, Superior, Justice, or Municipal. But if you are filing the case to address custody, parenting time, division of assets, debts, or other such issues, you must file in the Superior Court of the proper county in Arizona.

Is A Jury Trial Permitted For A Divorce Case In Arizona?

A jury trial is not permitted in Arizona divorce and custody trials. The judge will alone decide the issues in your Arizona divorce or custody case. There are a minority of jurisdictions that allow jury trials in divorce custody cases, but most states do not permit juries to get involved

in these kinds of decisions. That is unfortunate. Especially in contentious child custody cases, it may be advantageous to one or both parties to have a jury of their peers decide who the better parent is in order to have the majority of the time with the child and the right to make important decisions pertaining to that child.

In Arizona, judges often rotate between the different Superior Court divisions, family, civil, criminal, juvenile, and probate. They do this in part because they can get emotionally drained from presiding over acrimonious custody and child support cases. But by rotating between different divisions, they can become rusty on the laws, rules, and standards that pertain to family law cases. Permitting jury trials would relieve them of much of the burden of making these often difficult decisions, enabling them to remain on the family court bench longer so that their expertise can be used to handle procedural and technical issues that are outside the scope of a jury's authority.

Juries in Arizona usually consist of at least six people. These people are more likely to give your case a fresh look than a judge who is jaded and tired of all the bickering and fighting that goes on in family court. They will go to the

jury room after the trial and debate among themselves what the best solution is. This committee style decision is often a better process than having one single; albeit learned individual, make all the decisions that will affect your life. But do not be alarmed. Most family court judges in Arizona try their best to make the best possible decisions no matter how sick and tired they may be of having to preside over family court cases.

Potential Timeframe For Resolution Of A Divorce Case In Arizona

A divorce case in Arizona cannot take less than sixty days from the date the other party is served with the divorce petition. There is a state statute that requires this relatively brief cooling off period. After that period passes, a judge can legally divorce the couple if they have reached a full agreement on all issues. However, if they require a trial on one or more issues, the case will most likely take at least six months. It can take much longer than that if it is a very contentious case with lots of issues in dispute. An important thing to note is that the "community property" aspect of Arizona law no longer applies the moment the other spouse is served with the divorce petition.

This is important for a variety of reasons, such as protecting yourself from liability to third parties if the other spouse injuries someone; not being responsible for debts incurred by that spouse after she has been served; preventing that spouse from accumulating a half interest in all retirement contributions made after the date the divorce petition was served; enabling you to invest your

post service funds without worrying that your spouse will enjoy any increase in those invested funds; and a variety of other reasons. You should not be overly focused on getting an attorney who charges low fees. There is an old saying that you get what you pay for.

This can be true in family court cases, as well. You also should assume that the most expensive attorney is not always the best attorney. You could be throwing money out the window if you believe that paying more is always going to get you a better result. What matters is the experience and effectiveness of the attorney you would like to hire. Even though it may not be cheap to have an attorney represent you, you should resist the urge that some people have to represent themselves. There is an old saying that a person who represents himself has a fool for a client. That saying more often than not is true.

If you truly cannot afford the attorney's fees, you should consider a relatively new attorney who, although may not be as experienced and effective as his older and wiser peers, possesses far more skills than you do with regard to the law, courtroom procedures and presentations. Another thing to consider, if you truly have no money, is low cost legal services. There are some out there for people who cannot afford private representation. Contact our

office for this information if you are someone who is unable to afford traditional representation.

We will be happy to provide the information to you so that you can find out if you qualify for the free or low-cost services. Again, you will be stuck with whomever they give you, but that person is far better at legal matters than you are. Even attorneys themselves often hire other attorneys for their own legal matters. This is because they know firsthand the importance of having an advocate who is not emotionally wrapped up in the situation.

THE COSTS INVOLVED IN AN ARIZONA DIVORCE PROCEEDING

The cost of a divorce in Arizona varies greatly. This is because cases are vastly different in the kinds of issues they have. Most attorneys charge by the hour. This is the fairest way to charge, because the client is only paying for the services rendered. Flat fees are not a good idea for family court cases. The reason is that things can change dramatically from one moment to the next, turning a simple case into a complicated one or a complicated one into one that can be easily and quickly settled. If you pay a flat fee for your divorce, usually either the client or the attorney will end up getting the raw end of the deal.

If the attorney quotes a fee that is too high in light of the work that was actually done when looking back at things after the case is over, the client will feel taken advantage of and upset at the attorney for "overcharging." On other hand, if the attorney quotes a fee that is too low, that attorney is going to be very unhappy if it turns out that the case is much more involved than it initially appeared to

be. Human nature then kicks in, and the attorney may not feel highly motivated to expend enormous amounts of time and effort beyond what is minimally necessary to do a decent job. Hourly fees are therefore by far the most common way of charging clients for representation. The total cost can vary, of course, based on many factors.

Some of the factors that may affect the cost are, how many witnesses need to be interviewed and prepared for trial, how much evidence exists and whether subpoenas must be issued to obtain the evidence, how many issues the parties are fighting over, whether the opposing party is represented or not, the aggressiveness of the other side's attorney, the judge assigned to the case, whether the parties are fighting over asset or debt division or child custody as well, whether any travel is needed, whether depositions will need to be taken by one or both sides, and if so, how many parties or witnesses need to be deposed. Another thing to consider is spousal maintenance being pursued, whether either party owns a business, whether either party has alleged that the other party is unfit to have custody because of drug abuse, mental illness, etc. and a variety of other reasons.

It is important to note that typically, the attorney will require you to pay an advance fee deposit (known

generally as a retainer), which ranges from $2,500 to $5,000, but can be higher in very complicated cases. The retainer will be used to pay the hourly fees as they are incurred. Statements will be issued on a monthly basis to itemize the charges and show how much of the retainer is available. There are cases were flat fees may be useful. The most common situation is an "uncontested case," which at our office is defined as one in which both parties agree from the outset on all issues and fully cooperate throughout the entire process.

Flat fees can be charged because it will be known in advance exactly how much work must be done to finalize the case and achieve the parties' objectives. Flat fees are typically $1,500 to $2,000 in uncontested divorce and child custody cases.

Do The Rules Of Evidence Apply In Arizona Divorce Cases?

Last decade, Arizona experimented with relaxing the rules of evidence. In Arizona, prior to this change, family law cases, such as divorce and child custody cases, were subject to the formal rules of evidence that apply in civil and criminal court. However, this proved to be a hindrance to the efficient disposition of cases, especially those involving self-represented parties. This is because if a person does not follow the formal rules of evidence exactly as required, important information can be kept out of the trial, conversely, very damaging information could be let in (if the proper steps were not taken to keep it out before it was let in).

When Arizona changed its application of the rules of evidence in family law cases, it started with the default status of a relaxed version of the evidentiary rules. The most obvious and important of the changes is that hearsay evidence is now admissible in family court cases unless it is so extreme that it would be too damaging to allow it to be talked about or used in court. Another important

change is that with regard to proving the authenticity of documents, building an evidentiary foundation, and other matters that used to take up lots of time in court. Family law hearings and trials are much shorter than civil or criminal hearings and trials.

Whereas a civil trial can go on for weeks in some cases, most divorce and child custody trials take only hours. Divorce and custody cases in Arizona should be scheduled for at least a day on average, but unfortunately that rarely happens. Because there is so little time for trial, relaxing the rules of evidence has enabled parties to present far more evidence and testimony than used to be the case before the changes to the rules of evidence were implemented. An important decision an attorney must make is whether to demand that the strict, formal rules of evidence be applied. That is an option in every case. Nobody is forced to present their case under the informal evidentiary rules.

In a good number of cases, depending on what your objective is, it is much better to force the other side to comply with the strict rules of evidence in order to prevent them from loading their case with evidence that is of questionable value or reliability. This is the kind of decision that many people who represent themselves fail

to consider. Even many family law attorneys appear to routinely operate under the informal evidentiary rules without considering the consequences. You want to hire an attorney who is able to make a good judgment about whether your case should be heard under the relaxed rules of evidence or the formal, strict rules of evidence.

Your case could be won or lost with just this one decision that appears to be overlooked by many family law attorneys.

Can Someone Lose Their Pet To Their Spouse In A Divorce Case?

Nearly seventy percent of households in America have a cat or dog or both. What happens to these pets in divorce cases in Arizona? People are very attached to their pets and often consider them to be members of the family. Pets themselves are often very attached to their owners and probably will be emotionally affected if they are separated from the owner they are most closely bonded to. Unfortunately, Arizona law is very harsh toward pet owners. Under Arizona law, pets are considered to be community property if they were acquired during the marriage from community sources (such as the income of either or both spouses during the marriage).

If the pet was owned before marriage, it continues to be the sole property of that spouse. If the pet was a gift from one spouse to the other, it belongs to the spouse who received it as a gift. If the pet was a gift from a third party, it belongs to the spouse who received it as a gift. If the pet was received from a third party as a gift to both spouses, then the pet is treated as community property. When a pet is treated as community property, it is coldly considered to be no different than a chair, bed, or dresser. If the pet has special monetary value (a show dog, for example) the pet's value will need to be determined and offset by other property.

For example, if the pet is worth $1,000 and you receive the pet in the court's division of your property, your spouse will need to receive property of equivalent value. However, the pet's true value is emotional in nature and cannot be monetized. That is a major problem for divorcing couples. If the divorcing couples are cooperative, they can agree to share the pet. A good divorce attorney can help you to draft an enforceable agreement to share your pet with your ex. But if you and your spouse cannot agree to share the pet, the judge is going to award the pet to just one of you.

If you need the pet for a disability, then you are very likely going to be the spouse who is awarded the pet. But even if you by far are the spouse who is most emotionally attached to the pet that does not guarantee that you are the one who is going to be awarded the pet. A vindictive spouse can use the pet against you as leverage in settlement negotiations. It is important to have a good divorce attorney on your side to find other things to use against your spouse in negotiations or at trial in order to increase the likelihood that you will be the spouse who is awarded the pet that brings you so much joy.

THE THINGS THAT ARE LEGALLY PROHIBITED IN A DIVORCE PROCEEDING

Whenever a divorce case is filed in Arizona, the court will issue in every case a preliminary injunction that sets forth certain important orders that pertain to both parties, not just the party being served. A common mistake is the filing spouse thinks the preliminary injunction only applies to the spouse being served. This is a dangerous and incorrect assumption. The preliminary injunction issued in Arizona divorce cases will indicate that your spouse has filed a "Petition for Dissolution" (Divorce) or "Petition for Annulment" or "Petition for Legal Separation" with the court. This order is made at the direction of the Presiding Judge of the Superior Court of Arizona in Maricopa County.

This Order has the same force and effect as any order signed by the judge. You and your spouse must obey this Order. This Order may be enforced by any remedy available under the law, including an "Order of Contempt of Court." To help you understand this Order, the preliminary injunction will contact an explanation. Read

the explanation and then read the statute itself. If you have any questions, you should contact a lawyer for help. The explanation contained in the preliminary injunctions issued by Arizona courts states that certain actions are forbidden in the divorce case.

From the time the "Petition for Dissolution" (Divorce) or "Petition for Annulment" or "Petition for Legal Separation" is filed with the court, until the judge signs the Decree, or until further order of the court, both the Petitioner and the Respondent shall not do any of the following things:

You may not hide earnings or community property from your spouse, AND

You may not take out a loan on the community property, AND

You may not sell the community property or give it away to someone, UNLESS you have the written permission of your spouse or written permission from the court. The law allows for situations in which you may need to transfer joint or community property as part of the everyday running of a business, or if the sale of community property is necessary to meet necessities of life, such as food, shelter, or clothing, or court fees and attorney fees

associated with this action. If this applies to you, you should see a lawyer for help. Also, Do not harass or bother your spouse or the children, AND

Do not physically abuse or threaten your spouse or the children, AND

Do not take the minor children, common to your marriage, out of the State of Arizona for any reasons, without a written agreement between you and your spouse or a Court Order, before you take the minor children out of the State.

Do not remove, or cause to be removed, the other party or the minor children of the parties from any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance.

Both parties shall maintain all insurance coverage in full force and effect. Other restrictions are that both parties are enjoined from transferring, encumbering, concealing, selling, or otherwise disposing of any of the joint, common or community property of the parties, except if related to the usual course of business, the necessities of life, or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court. With regard

to behavioral requirements, both parties are enjoined from molesting, harassing, disturbing the peace, or committing an assault or battery on, the person of the other party or any natural or adopted child of the parties.

With regard to restrictions about your minor children common to the spouses, both parties are enjoined from removing any natural or adopted minor child(ren) of the parties, then residing in Arizona, from the jurisdiction of the court without the prior written consent of the parties or the permission of the court. There are also restrictions with regard to insurance. Both parties are enjoined from removing, or causing to be removed, the other party or the minor children of the parties from any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance. Both parties shall maintain all insurance coverage in full force and effect.

With regard to the effective date of the preliminary injunction (Order), the Order is effective against the person who filed for divorce, annulment, or legal separation (the Petitioner) when the Petition was filed with the court. It is effective against the other party (the Respondent) when it is served on the other party, or on actual notice of the Order, whichever is sooner. The Order remains in effect until further order of the court, or the

entry of a Decree of Dissolution, Annulment, or Legal Separation. The filing party must serve a copy of the Order upon the Respondent, along with a copy of the Petition for Dissolution, Annulment or Legal Separation, the Summons, and other required court papers.

Violating the preliminary injunction in Arizona divorce cases can have serious consequences. It is an official Court Order. If you disobey this Order, the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed by disobeying the Order. Furthermore, you or your spouse may file a certified copy of the Order with your local law enforcement agency. You may obtain a certified copy from the Clerk of the Court that issues the Order.

If any changes are made to the Order and you have filed a certified copy of this Order with your local law enforcement agency, you must notify them of the changes. So please be careful to not violate the Order (preliminary injunction). If your spouse violates it, you need to move swiftly to bring the matter to the court's attention and seek appropriate remedies.

Who Gets To Stay In The House During The Divorce Proceeding?

The party who gets to stay in the house during the divorce case is a complicated issue. There is no clear answer in the statutes and rules governing divorce cases. One of the more common reasons why a spouse is entitled to exclusive use and possession of the marital residence is that an order of protection is in place. An "order of protection" is what is referred to as a "restraining order" in many other parts of the country. That order of protection may grant to one spouse the right to the exclusive occupation of the residence as a result of the other spouse being excluded from the residence after having committed domestic violence.

It is important, if you want to remain in the house, not to give your spouse any reason to claim you have committed domestic violence against her. Domestic violence has been interpreted quite liberally in Arizona. Even mere phone calls, emails, and texts can be considered domestic violence, depending on the frequency and content of those messages. If no order of protection has been issued, but you would still like to obtain the right to exclusively use

and possess the marital residence, then you must file a motion in your divorce case requesting this status. The judge will hold a hearing to determine whether one spouse should be excluded from the residence.

Sometimes judges will refuse such a request and affirm that both parties have the right to reside in the residence. This brings to mind the old movie War of the Roses, in which a couple residing together during a contentious divorce case engaged in all sorts of vindictive behaviors toward each other in the residence. Fortunately, the War of the Roses scenario rarely occurs. However, during the housing market recession of 2007-2012 it was quite common for divorcing couples to share the marital residence together during and even after the divorce, because they could not find a buyer for their house that was severely underwater (because the loan balance exceeded the value of the residence).

A question that sometimes arises is who must pay for the mortgage, utilities, and other expenses related to the house if one of the spouses has the exclusive use of the residence. In that scenario, the spouse who is in possession of the house is the one who typically is ordered to be responsible for the mortgage payment, utilities, and minor expenses related to the residence. The reasoning behind this is that the spouse who resides in the residence is enjoying the full use of the residence,

therefore, that spouse should also be responsible for the monthly costs of residing there.

An exception would be if the rental value of the property greatly exceeds the monthly mortgage payment (or if the mortgage is paid off). In that case, the spouse who has the exclusive use and possession of the residence may have to pay to the other spouse half the difference between the fair monthly rental value and the monthly mortgage payment. For example, if the rental value is $2,000 per month, but the mortgage payment is $1,500 per month, the spouse who has the exclusive use of the residence may have to pay to the other spouse the sum of $250, which represents half the $500 difference between the monthly rental value and the monthly mortgage payment.

On the other hand, if you are residing together with your spouse in the marital residence, you should have a written agreement in place regarding which rooms are the private areas of each spouse, who is responsible for which chores, who is responsible for making the monthly payment to the lender and how the other spouse will take care of his or her share, etc. All sorts of problems can arise, and a good family law attorney can help you to avoid many of them by drafting a quality document that spells out the rights and responsibilities of each spouse while they are residing together during the divorce process.

Common Mistakes During A Divorce Proceeding In Arizona

At the risk of sounding self-serving, the one of the biggest mistakes people make in divorce cases is to try to handle their case alone or with the help of a paralegal or mediator, especially those in which there will be a custody battle, assets of more than nominal value at stake, debts of more than a nominal amount that need to be divided, claims for spousal maintenance (alimony), or other moderately to highly complicated issues that need to be addressed. The reality is you simply do not have the training and experience to know how best to present your case in court or obtain the best settlement, no matter how much research and reading you do, and how many previous divorce cases you have had.

Another major mistake divorcing couples make is to reach an agreement between themselves before each has met with an attorney to find out what his and her rights and obligations are. If you reach an agreement and it is put in writing, you may end up with a binding agreement that cannot be changed without the approval of both parties. It

is important not to agree in writing to anything until you have met with an attorney to get solid legal advice regarding whether the contemplated agreement is in your best interest. There are often unintended consequences when a person reaches an agreement with another person without proper legal advice.

Another mistake people make in divorce cases is reaching agreements that are not in their own best interest simply because they are feeling emotional pain and want to end the case as quickly as possible in order to end that pain. Very often, that person will, after he or she recovers from the divorce, begin to feel bitter about having settled for far less than he or she was entitled to. One particular case comes to mind that involved a husband who felt guilty about having cheated on his wife. He wanted to divorce her and he wanted to give her their house, which had been fully paid off. He was advised to leave the attorney's office to go home and think hard about whether he really wanted to give up half the home's value.

He was advised that he probably would wish he had never agreed to such a lopsided settlement. The client went home and returned a week later saying that he had thought it over but still wanted to give his wife the home outright. He was urged again to consider how he might

regret this later. But he held his ground. The attorney agreed to honor his client's wishes, as he is so obligated under Arizona's professional regulations. But he wisely had the client sign a document that the settlement was being made against his attorney's advice. The divorce was finalized quickly. Sure enough, three or four years later, the client returned to the attorney's office. He was with his new wife.

They both were furious at the attorney for "overlooking" the house issue. The client accused the attorney of not having representing him properly by not pursuing half the home equity in the divorce. The attorney luckily was able to quickly print a scanned copy of the document he had made the client sign. When the client saw the form he had signed, it made him remember that yes indeed the attorney had advised him to not do such a thing. He apologized to the attorney and promptly left the office, with his new wife looking at the former client (her husband) with utter contempt. So be very careful about rushing into a settlement.

Even if you and your spouse are on good terms, you can easily make mistakes that could cost you a fortune.

Is There Any Benefit To Filing For Divorce First In Regard To Assets?

The best way you can protect yourself before filing for divorce from your wife is to pay for a consultation with an experienced and effective attorney. It is also worth considering an attorney who concentrates on representing men. An attorney who concentrates on representing men should have a better ability to present your case in a way that mitigates the bias some judges may have against men. There is still a bias against me. Whether we want to admit it or not, some judges may incorrectly see women as the weaker sex and want to protect them using the power of Arizona's laws against you. Times are changing and there is far less bias against men now than twenty or thirty years ago, but there is still a general bias in family court against men.

This has not been proved, but if you sit and watch a dozen divorce and custody trials, you probably will come to this conclusion on your own. An attorney who primarily represents men should have tools and techniques to offset some of the bias that could be facing you in the courtroom. By getting a consultation with an experienced

family law attorney, you will know what to expect and what to do to protect yourself. There are many traps for the unwary husband. He needs to be educated and instructed on how to communicate with his wife during this critical pre-divorce period. For example, a tactic some women will use on unsuspecting men is to lure them into a heated argument and then falsely claim that they were abused by the husband.

This could result in him being excluded from the family residence and or from seeing his own children until he proves himself innocent. In criminal court, a person is presumed to be innocent until proven guilty. In family court, many men feel that the presumption is reversed, they are presumed guilty until they prove to the judge's satisfaction that they are innocent. So do not take the bait. If she tries to argue with you, bite your tongue and walk away. Otherwise you could find yourself sitting in a police car or locked out of your own house. With regard to who files first, most attorneys prefer to be representing the party who files first. This is because that party can often set the tone and direction of the divorce litigation. But in some cases it is better to not file first.

Even if your wife catches you by surprise and files first, do not be alarmed. In roughly half the cases an experienced

family law attorney is representing the party who did not file first. Any experienced divorce attorney can easily handle representing the non-filing party even though most divorce attorneys would rather be representing the filing party for the reasons stated above. The non-filing party can not only respond to the divorce petition, but that party can also file a cross-petition for affirmative relief that he is seeking from the filing spouse.

IMPORTANCE OF AN EXPERIENCED FAMILY LAW ATTORNEY IN A DIVORCE CASE

The best way an experienced attorney can help you in the early stages of the divorce process is to assess the advantages and disadvantages of your case. Knowing the strengths and weaknesses of your case will enable you to know what you should expect out of your divorce. Having a broad perspective of your case will help you also to know which battles are worth fighting and which ones are not. In the early stages of your divorce, if your divorce is not a contentious one, your attorney may be able to help you to settle your case quickly. Obtaining a favorable settlement early in the case is often the best outcome because it will cost you less in time, money, and emotions.

But quite often a case cannot be settled early on. If so, the attorney will give you a checklist of documents to begin assembling for later use in the case. Things such as pay stubs, tax returns, W-2s, 1099s, lease agreements, employment contracts, titles, deeds, insurance policies, bank statements, etc. As the case progresses, the attorney

will be able to help you obtain records that the other side does not voluntarily provide. For example, subpoenas may be needed to access employment, medical, or criminal records. Your attorney can also take your spouse's deposition. A deposition is a process whereby your attorney will force your spouse to appear at his law office and answer numerous questions (during a four hour period) about all sorts of relevant topics and issues.

A court reporter will be present to transcribe the entire process. Invaluable information can be learned during a deposition. Indeed, people have damaged themselves greatly during deposition testimony. That testimony can later be used against the spouse in a divorce trial or other evidentiary hearing. Your attorney also will help you throughout the divorce process by being available for questions as they arise. You will no doubt have numerous questions spread out over the life of your divorce case. Having a good attorney on your side can put you at ease for many reasons, such as having this ability to pick up the phone and quickly find out the answer to a question that is bugging you.

The divorce attorney also acts as a buffer between you and your spouse, to the extent you want your attorney to perform that function. Instead of getting into arguments

with your spouse, you simply tell the spouse to "have your attorney call my attorney to discuss it." This can prevent lots of emotional distress. Some attorneys will also try to act as a place for you to vent about your spouse. This, if done very infrequently, is not necessarily a bad thing, as it can permit you to let off some steam safely. However, a good divorce attorney will know when what you really need is a good psychologist or counselor, and that attorney should be able to refer you to someone suitable.

An attorney is not trained in matters of mental health, so you should avoid using your attorney as a means of general counseling. Some attorneys will not discourage this, because they get paid for every phone call you make to them. But good divorce attorneys will be candid with you and tell you that you should seek out an appropriate counselor, which is both cheaper and more effective than trying to use your attorney for something that he is not trained to do. The biggest way your attorney can help you is by representing you in court hearings, evidentiary hearings, settlement conferences, and the divorce trial itself.

Your attorney, unless you are a skilled communicator, is going to be better than you at presenting a strong case that makes the judge want to rule in your favor. Talented

attorneys, although can be costly, can save you money in the long run. You should not be penny wise but dollar foolish. Get good representation and you will probably never regret it. But go with the cheap guy and there is a good chance that you will kick yourself later for being overly obsessed with the short-term cost of the divorce rather than the long-term cost of the divorce.

DISCLAIMER

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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