

Expect the
Unexpected:

Navigating Divorce

“To expect the unexpected shows a
thoroughly modern intellect.” —Oscar Wilde

EXPECT THE UNEXPECTED: NAVIGATING DIVORCE

It's one of the most repeated "alternative facts" around: half of all marriages end in divorce. In fact, the divorce rate fell by 18% between 2008 and 2016 according to research from University of Maryland sociologist Philip Cohen. Even so, most of us know of a friend or family member who has gone through a divorce and has seen up close the emotional and financial toll such a separation can take.

Having a better idea of what to expect won't eliminate all of that turmoil, but it can be helpful for individuals considering a divorce to **know some basics**.

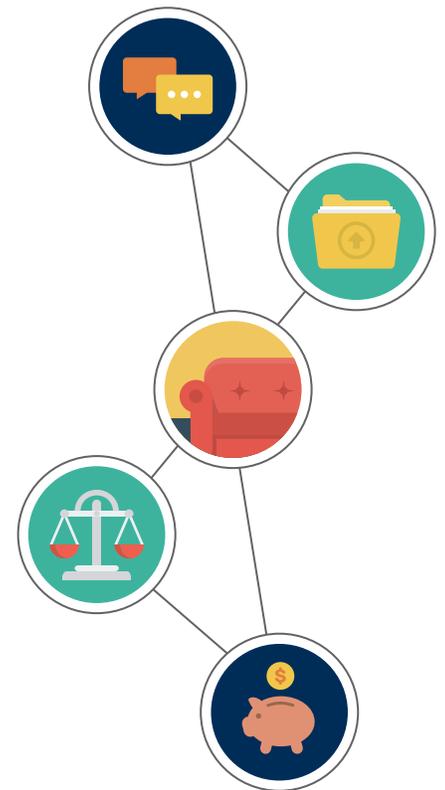
The two primary issues that must be resolved in a divorce include distribution of marital property and, where applicable, child custody and visitation.

In Tennessee, the court seeks to make an equitable division of marital property. What constitutes "equitable"? Tennessee Code 36-4-121 governs distribution of marital property. Accordingly, the court considers, among other things, the length of the marriage, the health, education, and earning capacity of the parties, and the current economic circumstances of each. Interestingly, fault is not a factor. Illiquid assets can be retitled as tenancy in common rather than trying to find a market to divide the asset. Attorneys often advise clients who are considering a divorce to establish a bank account in their own name, collect financial records of all marital property, and document the amount of time each spouse devotes to child care.

Tennessee law recognizes four types of alimony: alimony in solido, which takes the form of a lump sum payment; alimony in futuro which usually continues until the death or remarriage of the receiving spouse; rehabilitative alimony which considers education and training costs for the dependent spouse; and transitional alimony which provides for a transition from marriage to divorce where rehabilitation is not necessary. Many attorneys recommend that divorcing spouses attempt to negotiate alimony rather than leaving it up to the court to decide. Tennessee law has guidelines for establishing child support, but no such framework exists for alimony. As a result, court established alimony can vary widely from one or both spouses' expectations.



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In establishing child custody and visitation, the court seeks to determine what is in the best interest of the child. Tennessee Code 36-6-106 gives the court guidance on what to consider in making this decision. The assessment is based on, among other things, the emotional bond between the parent/caregiver and child, maintaining continuity in the child's life, the stability of the family unit and the mental and physical health of the parents/caregivers. Children age 12 and older can express a preference to the court, but the court is not bound to abide by it.

Child support is designed to cover basics including food, clothing, and shelter. Costs related to extracurricular activities, uninsured medical expenses, and educational expenses are not included in child support calculations. If one parent can show a material change in circumstances, or identifies misuse of support, he or she can appeal the child support amount by filing a motion for contempt.

Upon entry of the final decree, the division of the marital estate cannot be modified. However, alimony, child support, custody and visitation can be modified when one party demonstrates a material change in circumstances. Knowing this on the front end can help divorcing spouses account for, as an example, who will pay for the children's college education in the marital dissolution agreement since child support is not required in most cases after the child reaches the age of 18.

Apart from these basics, what are some general guidelines for best navigating the legal ramifications of a divorce? A local divorce attorney emphasized for me the importance of hiring your own attorney rather than having one attorney negotiate for both spouses. A mediator can give general information but not legal counsel. She cautioned against filing for divorce until you are certain this is the right step for you. In some cases filing might be the catalyst needed to inspire both spouses to work to save the marriage, but in just as many cases it can be seen as a violation of trust from which the marriage cannot recover.

It goes without saying that going through divorce proceedings can feel like navigating an emotional minefield. Perhaps knowing a little more about what to expect and how the court makes decisions helps separating spouses better weather the storm.



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