



# LEGAL AID OF NEBRASKA

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# DIVORCE HANDBOOK

*"Promoting Justice, Hope, Dignity and Self-Sufficiency through quality legal aid for those who have nowhere else to turn."*

Legal Aid of Nebraska

[www.legalaidofnebraska.com](http://www.legalaidofnebraska.com)

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## LEGAL AID OF NEBRASKA

This Divorce Handbook was developed by Legal Aid of Nebraska, a private, non-profit law firm that provides legal services to low-income Nebraskans. If you would like more information about Legal Aid of Nebraska, or if you would like to make a donation, please visit our website at [www.legalaidofnebraska.com](http://www.legalaidofnebraska.com).

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**Please see the “Where To Go For Help If You Cannot Afford A Lawyer” section Part IV at the back of this Handbook for resources if you cannot afford a lawyer.**

## IMPORTANT DISCLAIMER

Use of this informational Divorce Handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska’s attorneys. The information provided to you through this Handbook is intended for educational purposes only. Nothing in this Handbook should be considered legal advice or as a substitute for legal advice.

Please understand that the information contained in this Handbook is based upon generally applicable Nebraska law. Some laws and procedures may vary depending on the county in Nebraska in which you live and the specifics of your case. If you want legal advice about your specific issue you must consult an attorney in your area.

# Divorce Handbook

## **PART I: THE BASICS**

Before you can get a divorce in Nebraska, you must show the Judge two things:

You need to show the Judge that you or your spouse has lived in the state for a full year right before you filed for the divorce. If you lived in Nebraska three years ago and just moved back, you cannot file for a divorce until you have lived here a year. If your spouse continued to live in Nebraska while you were away, you could file for divorce here.

You need to show the Judge that the marriage is over and broken beyond repair, or "irretrievably broken." You have tried, but there is no chance that you can make your marriage work.

Nebraska has a "no-fault" divorce law. The Judge does not decide who was wrong. The Judge determines custody, property, debt division and alimony, not who is at fault.

This handbook outlines the basic steps to get a divorce. A simple divorce can take about six months. But very few are that simple. Each divorce is different.

## **PART II: YOUR DIVORCE--ONE STEP AT A TIME**

### **STEP ONE - CHOOSING A LAWYER**

A lawyer cannot represent both a husband and wife in a divorce case. Even if you and your spouse agree now about everything, problems can come up later on. Some people may tell you that they only used one lawyer for their divorce, but even in those situations the lawyer was actually representing one spouse and the other spouse did not have an attorney. Your spouse may suggest that it would be cheaper to let one lawyer handle the divorce for both of you. If you do choose to use only one lawyer, make sure he or she is representing you. This means that on the papers filed with the court, the lawyer is listed as your lawyer.

The fees you will pay for your divorce include court costs and what your lawyer charges for his or her time. Some lawyers will charge a set fee for a divorce, but most will charge by the hour. Before you hire a lawyer be sure to ask about the lawyer's fee. Some lawyers will meet with a potential client for a free initial consultation (but ask first to be sure!) and that is your chance to get to know the person who may be representing you in this very important matter. You should shop for an attorney just as you shop for anything else—you probably wouldn't buy the first house or car you looked at, and the choice of a lawyer is every bit as important as your choice of a house or car. You should check out several and choose the one with whom you feel most comfortable.

In addition to the lawyer's fee, there will be other expenses associated with the divorce. Those expenses will be discussed later. You can help keep your costs down and help speed up the divorce process by always being ready when you talk with your attorney. When you meet with your attorney, bring a list of your bills, a list of your household goods, the legal description of your real estate, vehicle identification numbers for your cars, income tax statements, credit cards, your spouse's social security number, the social security number for any children of the marriage and a list of who wants what. Also, bring a list of your monthly bills for food, rent, utilities, doctors and medicine, lunch money, bus fare, cleaning expenses, and everything else you must pay for each month. Remember, if you forget something and call your attorney later, that phone call might cost you.

When you get into the legal system, it is easy to become confused. You will hear new words and be put in new situations. People, including your lawyer, will think you know what is going on. Sometimes you won't. It is important that you do know. Ask questions about things you do not understand. Your lawyer should be willing to explain. If your lawyer is not willing to explain things to you, then perhaps you need a different lawyer. Just as you hired him or her, you can fire them. There are many, many lawyers who take divorce cases. You should be able to find the right one for you.

#### IF YOU CANNOT AFFORD A LAWYER

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Please see the "Where To Go For Help If You Cannot Afford A Lawyer" section at Part IV of this handbook for places where you may be able to get help if you cannot afford a lawyer.

#### STEP TWO - FILING YOUR DIVORCE CASE

The next step in your divorce is to file all the proper paperwork with the court. You need to file a "Complaint" with the court to start the divorce process. Your Complaint will tell the Judge:

1. When and where you were married;
2. Where you live now;
3. Where your spouse lives now;
4. That you or your spouse have lived in the state for the last year;
5. The names of your children, the years they were born, and where they have lived the past five years;
6. That you think the marriage is over (irretrievably broken);
7. What you want to happen with the children, your real estate, your furniture, your household goods, and your bills
8. That you want or do not want support (alimony) from your spouse;
9. That you want the judge to end the marriage;
10. How you want the judge to decide custody and visitation/parenting time

11. That you want the judge to decide who pays what child support; and
12. Anything else you want the judge to do. (e.g. wanting your former last name restored).

Usually some time will go by between your first meeting with your lawyer and the time the papers are ready. When they are ready, read them carefully. Make sure all of the things said are correct. Once everything is correct, you will sign the Complaint before a Notary Public. This means that you are swearing that everything said in the Complaint is true. Make sure that it is! After you sign the divorce papers, your lawyer will file them at the courthouse. Upon filing, your case will be given a number. This number will appear on your court file and on all the papers filed from that point forward. The person filing the Complaint is called the "Plaintiff". The other spouse is called the "Defendant".

When you file your divorce, you will need to make sure the filing fee is paid. As of August 2010, the filing fee in a divorce case is \$157.00. This amount can change. You can find out the current filing fees by going to <http://supremecourt.ne.gov/community/fees.shtml>.

If you are unable to afford the filing fee, you can ask the court for an order that you will not have to pay these costs. This is called proceeding "In Forma Pauperis". In these cases the court can order that the county pay the cost of filing the action. In addition to covering the cost of the filing fee, In Forma Pauperis proceedings may also cover the cost of serving your spouse with the divorce case, (providing "Notice" which is further described below) but will not cover the cost of other expenses such as witness fees and deposition costs.

### STEP THREE - "NOTICE"--OR LETTING YOUR SPOUSE KNOW YOU HAVE FILED FOR DIVORCE

It is possible that you and your spouse have been talking about a divorce for some time. However, your spouse still must be given legal notice that you have filed for divorce. There are three main ways you can provide legal notice to your spouse: a voluntary appearance; service by sheriff; or service by publication.

#### A. Voluntary Appearance

The first way to give notice is to have your spouse sign a paper called a "Voluntary Appearance." This is a paper which says that your spouse knows that you have filed for divorce and has received a copy of your divorce complaint. Your spouse should sign this paper before a Notary Public. Your spouse should only sign such a document after he or she has been provided with a copy of the Complaint you filed with the court. Once your spouse signs the Voluntary Appearance, your lawyer will file it with the court. The day your lawyer files the Voluntary Appearance with the court is the official day of notice.

#### B. Service of Process

The second way to give notice is to have the County Sheriff provide "Service of Process". This means the Sheriff will deliver a copy of your Complaint and a Summons to your spouse. A Summons is a paper which tells your spouse that he or she has been sued, and tells them how much time they have to file an "Answer" to your Complaint. The Sheriff must give these papers to your spouse personally. The Sheriff cannot leave them with someone else to give to your spouse. You will need to know where your spouse can be found in order to have the Sheriff give your spouse the papers. Your spouse can be served at home, at work, at his or her favorite hangout, or the place where it is easiest to find him or her. Tell your lawyer the best place and the best times. The Sheriff will charge a fee to serve your spouse. The minimum cost is usually around \$25 but some counties charge much more than that. If the Judge in your case has ordered that you can file your case "In Forma Pauperis" the county should pay this fee. Remember, the more times the Sheriff has to go out to find your spouse, the more it will cost.

Even if your spouse is not living in the same county or is not in Nebraska at all, you still can have a sheriff give your spouse the papers. The Clerk of the District Court in your county gives your lawyer the Summons. Your lawyer can then send the Complaint and Summons to the Sheriff where your spouse lives. This type of service takes a little more time. If your spouse does not live in Nebraska, there also may be a problem with "Jurisdiction." This means that the Judge here may not have the power to make decisions about some of the things you asked for in your Complaint. There is a more complete explanation of Jurisdiction in Part III of this handbook.

The Sheriff must report back to the court whether he was able to find your spouse and give him or her the papers. The Sheriff only has a certain number of days to do this. This is called the "return" date. If the Sheriff cannot find your spouse the first time, your lawyer can ask that he try again. A new Summons has to be issued. You can keep trying to have your spouse served this way if you find new addresses for him or her. However, if the Sheriff is still not able to find your spouse, you will have to serve him or her (give notice) in another way.

If the Sheriff does find and serve your spouse, papers need to be filed with the court showing the judge that you have given your spouse notice. The day that the Sheriff serves the papers on your spouse is the official day of notice.

### C. Notice by Publication

The third main way to give your spouse notice is by newspaper publication. This is used only if you do not know where your spouse is. Your lawyer will prepare a paper called an "Affidavit" for you to sign. By signing it, you are swearing that you do not know where your spouse is. It asks that the judge let you tell your spouse you have filed for divorce by placing a notice (like an ad) in a legal newspaper. Your lawyer can tell you which paper is the legal newspaper in your county. Your notice must run one day a week for three weeks. No one expects your spouse to see the notice and because of this, the judge cannot order your spouse to do certain things such as pay child support or alimony. If you serve your spouse using newspaper publication, the

judge will be able to dissolve your marriage, award you custody of the children, award you property in your possession, but little else. That is why it is better to have your spouse sign a Voluntary Appearance or to serve by sheriff.

Giving your spouse notice means that you must do one of the three things listed above. All take different amounts of time. The costs are different for each. The important thing to remember is that the official date of notice to your spouse is the date used to decide how soon your divorce hearing can be set up. Nebraska has a 60 day waiting period for divorces. The 60 day waiting period begins when your spouse was served with notice of the divorce. That means at least 60 days must go by after your spouse was served before your lawyer can set up your final divorce hearing. The official day of notice to your spouse of the divorce in your case will be:

1. The date your lawyer files your spouse's signed Voluntary Appearance with the Court; or
2. The date the Sheriff hands a copy of your Complaint and a Summons to your spouse; or
3. The date your notice (ad) is in the legal newspaper for the last (3rd) time.

#### STEP FOUR – THE WAITING PERIOD

You must wait at least 60 days from the day your spouse is given notice before you have a final divorce hearing. Very, very few divorces are ready for final hearing after 60 days and many take over a year. During this period of time, several things may happen.

One thing that will happen during the waiting period is that you will find out if your spouse is going to file an “Answer” to your Complaint. In an Answer, your spouse will tell the court if he or she agrees or disagrees with what you said in the Complaint.

If there are any children of the marriage, you and your spouse will need to complete a Parenting Class prior to the final hearing. Different District Courts may have different requirements. You will probably receive a list of court-approved classes from the court or your lawyer. If you do not receive a list, you should ask your lawyer or contact your District Court Clerk’s Office for information. You can find a list of approved parenting education providers by going to this link: <http://www.supremecourt.ne.gov/mediation/parenting-divorce.shtml>. The Judge will not allow you to go forward with your final divorce hearing unless you have filed papers with the court proving you have completed a parenting class, so you should do this as soon as you can.

Another thing that may happen while you are waiting for a final divorce hearing is a temporary hearing. At a temporary hearing, the judge can decide who will have temporary custody of the children while you are waiting for the final hearing. The judge can also order temporary child support, temporary parenting time, temporary alimony, and temporary restraining orders.

If your spouse does not file an Answer they are “in default”. Default divorces are usually simple and easy. Your lawyer can schedule a default hearing. A default hearing may only take 10-15 minutes. You would testify at the default hearing but your spouse would probably not be

present. If what you ask for is fair and reasonable, you will probably get it.

If your spouse does file an Answer, it probably means they have hired a lawyer. During the waiting period the lawyers will try to reach an agreement on the issues involved in the divorce, such as custody, parenting time (also called “visitation”), child support, division of property, division of debts, alimony, etc.

The part of the agreement that involves custody and parenting time is called the “Parenting Plan”. As part of this plan, you and your spouse can agree on the responsibilities for raising your children and how much time you will each spend with the children. Remember, there will need to be give and take on both sides. The Parenting Plan should be what is best for the children—not what is best for the parents. A proposed Parenting Plan is required to be submitted at the final hearing or trial in all divorce cases that involve custody.

If you cannot reach an agreement with your spouse, you may need to go to Mediation. At Mediation, a neutral person will try to work out the differences you have with your spouse regarding custody, parenting time, and other issues. A parenting plan may be mediated. Some lawyers attend mediation with their clients, but others do not. For more information on parenting plans, mediation, and the Parenting Act, visit:

<http://www.supremecourt.ne.gov/mediation/parenting-divorce.shtml>.

If you cannot reach an agreement on all the issues in your divorce, you may need to have a trial. At a trial, the judge will hear testimony and will decide the issues that could not be agreed upon. You and your lawyer may use the waiting period to prepare for the trial. To prepare, your lawyer may need to review documents or talk with people. You can help by getting copies of important documents to your lawyer, and providing contact information for the people you think your lawyer should talk to.

## STEP FIVE-THE FINAL HEARING

The final hearing cannot be set up any sooner than 60 days from the date of notice to your spouse. Usually this means that several months will go by from the time you filed your Complaint before you go to court.

### Uncontested Hearings

If you have worked things out, or if your spouse never filed an Answer, your hearing will be simple. Your spouse does not have to be at the hearing. Only one of you must testify. Your lawyer will ask you to take the stand. You will be sworn in. Your lawyer will ask you a few simple questions, most of which will be about things you asked for in your Complaint and the Decree your lawyer prepared. Your lawyer will give the Decree to the judge. The judge will read it. If the judge agrees that the Decree is fair, he or she will sign it. Your lawyer should give you a signed copy of the Decree that has been filed stamped with the court.

## Trials

If you and your spouse have not been able to work things out, you will have to let the judge decide what is right and fair. This is done by going through a trial. Both you and your spouse may be sworn in and questioned. You and your spouse may bring people to court (witnesses) who can tell the judge things that will help your side.

Your lawyer also should tell you what questions your spouse's lawyer is likely to ask you. Your lawyer should talk with any witnesses you will bring with you so that they know what your lawyer and the other lawyer will ask. Your lawyer will want to know if you know of any problems that may come up. Be honest with your attorney. Your lawyer cannot get ready to deal with problems if he or she doesn't know about them.

At the end of the trial, the judge may decide everything immediately. Or, the judge may say they want time to think about what everyone has said. When the judge makes a decision, your lawyer should tell you. You should be given a copy of your decree that has been signed by the Judge and file-stamped with the court.

## STEP SIX – THE DECREE

Your lawyer should give you a copy of the Decree as soon as it is signed. The Decree contains orders about all issues involved in your divorce. You and your spouse need to follow those orders. Some things may begin on a different date if the Judge said so in the Decree. For example, child support may begin the month after the Decree is signed. Read your Decree carefully so you know which dates apply.

If you do not understand something in the Decree, ask your lawyer to explain it. If you agree with the Judge's decision, you can wait for 30 days to go by, and your divorce will then be final, (except for the purposes of re-marriage, appeal, and the continuation of health insurance). If you do not agree with something in your Decree, speak with your lawyer. There are short time frames if you would like to file a motion for a new trial or an appeal.

You need to wait 6 months from the date your divorce decree was entered before you remarry. Your decree was entered on the date your decree is file-stamped by the district court clerk. You cannot remarry anyone else anywhere in the world for a period of six months.

The decree does not become final for 6 months for the purposes of health insurance coverage. Your decree was entered on the date it was file-stamped by the district court clerk. If you were covered on your spouse's health insurance, or you covered your spouse on your health insurance, that coverage can continue for 6 months after your decree was filed with the court. Also, you can ask the judge to order your spouse to cover you on his/her health insurance, or your spouse can ask the judge to order you to cover him/her on your health insurance, for 6 months after the decree is entered.

## STEP SEVEN - WHAT TO DO IF YOU DON'T GET WHAT YOU WANT

If you do not agree with something the judge has decided, talk to your lawyer right away. Your lawyer can ask the judge to listen to the case a second time by filing a motion for a new trial in hopes that the judge will change his/her mind. If the judge makes the same decision, or if you didn't ask for a new trial, you can ask the Nebraska Court of Appeals or Supreme Court to listen to your case by filing an appeal. These Courts will decide whether the District Court Judge was right and fair.

An appeal to a higher court can cost you a lot of money. It could take quite a while before the appeals court makes a decision. Your lawyer should talk to you about whether or not he or she thinks your appeal will be successful. The appellate judges will not change the District Court Judge's decision unless they feel he/she was clearly unfair or made a serious mistake of some kind. If your lawyer tells you that your chances of winning are not good, you may want to get a second opinion, but do it right away. There are short time limits that must be met.

## PART III- COMMON TERMS THAT ARE USED IN DIVORCE

We have arranged this section in alphabetical order. We have tried to use the most common terms so it will be easy for you to find what you need.

### ALIMONY

Alimony is money one spouse is ordered to pay for the other's support. Before the judge orders alimony, he/she will consider how long you were married, if you are able to support yourself, etc. For example, say you have been married 25 years and have not worked for the last 20. It will be difficult for you to find a job. You may need to go back to school in order to learn skills that allow you to re-enter the job market. In this case, the judge could order that your spouse support you, at least until you are able to support yourself. If you were disabled and could not work at all, the judge could order that support be paid for your lifetime or until you remarry. Alimony almost always stops when you remarry.

You may not want any money from your spouse. However, your lawyer may advise you to ask for a token amount (as little as \$1.00 per year). If alimony is not included in the original Decree, you cannot ask for it later, even if your situation changes and you need it. As long as the \$1.00 is there, you can ask for an increase later on.

Alimony is not just for women. Courts can and do order women to pay alimony to their husbands.

## ANNULMENT

Some people believe that if you were married for only a short time, you can have the marriage annulled rather than go through a divorce. This is not true in Nebraska. The length of the marriage does not matter. There are very specific rules about when a marriage can be annulled, such as situations involving fraud.

The steps you must go through to have your marriage annulled are about the same as those for a divorce. If you think you have cause for an annulment rather than a divorce, ask your lawyer about it. A legal annulment is not a church annulment. If you want a church annulment, you will need to talk to your religious leader.

## CHILD SNATCHING

Problems sometimes occur when one parent takes a child to another state and refuses to return. Many states, including Nebraska, have adopted the Uniform Child Custody Jurisdiction and Enforcement Act. One of the reasons this Act was adopted was to keep a parent from taking a child to another state and then getting a custody order in the new state. The Act sets forth rules about which state has jurisdiction, or power, to decide custody matters. In the majority of cases, the Act keeps jurisdiction in the state where the child has the closest ties. A child usually has the closest ties to the state where he/she has been residing for the last 6 months, and this is called the "home state." If custody has already been decided, that is, if you already have a court order awarding custody to you, and the other parent snatches the child, this may be a crime. If this happens, you should contact law enforcement.

## CHILD SUPPORT

Usually, the parent who does not have custody of the children will be ordered to pay money for their support. The amount the Judge orders is based on the needs of the children and both parents' ability to pay. The Nebraska Supreme Court has set forth [Guidelines](#) that are to be followed when establishing child support. The Guidelines can be found at <http://www.supremecourt.ne.gov/rules/html/Ch4/art2/>. The child support paid through the Nebraska Child Support Payment Center is separate from any "gifts" that the supporting parent may give the child.

Collecting child support can become a problem, especially if your spouse does not live in the state or work on a regular basis. If your spouse is not paying child support as ordered, you can seek free legal assistance from your local County Attorney's office, or the Child Support Enforcement office. You can call the Child Support Enforcement Call Center at 1-877-631-9973 to request an application for enforcement services. You can also download an application or locate your local child support attorney or local Health and Human Services child support enforcement office by going to this website: <http://www.hhs.state.ne.us/cse/appservs.htm>.

## COMMON LAW MARRIAGE

If you live with your boyfriend or girlfriend in Nebraska but do not take out a marriage license or have a wedding, you are not married. Not even if you live together for seven years or more. If, however, you move to a state which does recognize a common law marriage as valid and then move back to Nebraska, you may have a valid marriage in Nebraska. The requirements for common law marriage are different from state to state. If you have a valid common law marriage and then you split up, you need to get a divorce to end the marriage.

## CONTEMPT OF COURT

When a judge says someone is in "contempt of court," the judge means that the person is not doing something he or she was ordered to do even though they are able to do it. The judge can punish them for this. Contempt hearings can be very serious. The judge can put a person in jail for being in contempt of court.

The most common type of contempt hearing is held because the parent who was ordered to pay child support gets behind in their payments. Usually, a judge will start by giving the person a chance to get caught up. If the person still does not make payments, the judge can order several different penalties, including the possibility of jail time.

## CUSTODY OF THE CHILDREN

When a judge has to decide who will have custody of the children, the judge is supposed to make that decision based upon what is in the best interests of the children. The judge must decide which parent can, on a day-to-day basis, best provide for the children. Providing means more than a house and food. It also means meeting the child's emotional needs and ensuring that the child grows up happy and healthy.

A judge cannot give the mother custody just because the judge thinks children belong with their mother. He cannot give the father custody just because the father makes a lot more money than the mother. The judge listens to all that is said at the hearing. This could include reports from a psychologist. If the children are older (usually at least 12, but the children may be younger), the judge might ask them with whom they wish to live. After listening to everything, the judge must decide what is best for the children. The activities of the parent are not always considered unless they have an effect on the children. So, don't think you'll automatically lose your children if you have had an extramarital affair. Be sure to talk to your lawyer about it, however.

## DIVISION OF PROPERTY

In general, property that you and your spouse bought while you were married, with money that you shared, is considered marital property and belongs to both of you. This includes real estate,

household goods, appliances, furniture, cars, boats, trailers, stocks, bonds, etc. It generally does not matter who bought the property, or in the case of vehicles or real estate, whose name is on the title or deed, as long as the property was purchased during the marriage. When you get your divorce, this property must be divided. If you and your spouse cannot agree on how it should be divided, the Judge will have to decide.

The Judge is supposed to divide the property in a fair way. Some things are not easy to divide; for example, your house or car. If something cannot be divided, the Judge can give something of equal value to the other person. The Judge also can order that property be sold and the profit divided.

If you and your spouse have been separated for awhile, you probably have already divided most of the property. The Judge usually will not change this division unless one of you complains and the Judge agrees that the division was not fair.

#### DIVISION OF DEBTS (BILLS)

While you and your spouse were married, you probably had joint credit cards, loans, etc. Someone has to continue to pay for these bills. Again, if you and your spouse cannot agree on who should pay what, the Judge will have to decide.

One important thing to remember is that your Divorce Decree only affects your relationship with your spouse, not with your creditors. As far as the creditors are concerned, you and your spouse both owe them. Your Divorce Decree does not take your name off the bill. If the Decree says your spouse should pay a bill, and your spouse does not pay, the creditors will want you to pay. If you do not, they may try to repossess whatever you named as security (collateral) on the loan. They also can sue you for the balance due on the loan.

If your spouse does not pay, you can ask your lawyer about a contempt of court hearing. The judge can punish your spouse for not paying the bills he or she was ordered to pay. If you ever find out that your ex-spouse is filing for bankruptcy, talk to your lawyer. Your spouse cannot include alimony or child support in a bankruptcy.

If you have a lot of marital debt you should talk to your attorney about bankruptcy. If you want to file bankruptcy, it may be better for you to file it before your final divorce hearing. You need to talk to your attorney about this.

#### GUARDIAN AD LITEM

A Guardian Ad Litem, or GAL, is a person appointed by the court to represent what is best for the children in a custody dispute. The GAL is generally an attorney who is supposed to look out for the "best interests" of the child/children. This may or may not mean doing what the child wants. While a GAL can be helpful, they can also be expensive. The GAL is usually an attorney,

so that means another lawyer's fee needs to be paid by someone. Sometimes a judge will not appoint a GAL until one of the parties deposits enough money with the court to assure that the GAL will be paid. If neither parent has money to pay for a GAL, and the judge feels a GAL is necessary, the judge can order that the GAL fees should be paid by the county.

## GETTING YOUR PRIOR NAME BACK

After your divorce, you may want to go back to using your former last name. If this is not your first marriage, you may want to go back to your former married name, especially if you have children with that name. Be sure to tell your lawyer you want this at your first interview. Your request should be in your Complaint for divorce, but if it is not, you are sometimes allowed to add the request at a later date. If you do get your former name back, you will need to have a certified copy of your decree to change your name on your driver's license, social security card, and other important things. For a small fee you can get a certified copy of your decree from the clerk of the district court.

## HOME STATE

Nebraska has adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA). The UCCJEA says that in order for custody to be decided in either a divorce or legal separation, Nebraska should be the "home state" of your children. To be the "home state", your children need to have lived in Nebraska for at least six months before you file the case. There are a few exceptions to this requirement. Speak to your lawyer about this.

## IN FORMA PAUPERIS

It is possible for a person to file a Complaint with the Court even if they cannot pay the filing fee. A judge can order that the person be allowed to file without paying if they can show they can't afford the court costs. The person must sign an Affidavit which shows income, assets and expenses. If the Judge agrees that you cannot afford to pay for the fees, the judge signs an Order which says that you can file without pre-paying. The county may then be ordered to pay the fees (filing, Sheriff, publication). This does not include lawyer's fees, deposition fees, witness fees, and other things.

## INSURANCE

Life Insurance. If your spouse has a life insurance policy at the time of the divorce, you can ask the Judge to order your spouse to make the children the beneficiaries. This would protect the children in case something happens to your spouse and your spouse is not able to help support the children in the future. If you have a life insurance policy, talk to your lawyer about this and whether or not you should change the beneficiary.

Health Insurance for children. Nebraska law requires parents to obtain health insurance for the benefit of any children as long as it is available through an employer or other organization at a reasonable cost. Any expenses not covered by health insurance are usually paid by having the custodial parent pay the first \$480 per year per child, and expenses above and beyond that are shared by the parents—either on a 50/50 basis, or a percentage based on their incomes. In certain cases if no parent has insurance available at a reasonable cost, a non-custodial parent may be ordered to pay a cash medical assistance payment.

Health Insurance for Spouses. Your divorce decree does not become final for 6 months for the purposes of health insurance coverage. Your decree was entered on the date it was file-stamped by the district court clerk. If you were covered on your spouse's health insurance, or you covered your spouse on your health insurance, that coverage can continue for 6 months after your decree was filed with the court. Also, you can ask the judge to order your spouse to cover you on his/her health insurance, or your spouse can ask the judge to order you to cover him/her on your health insurance, for 6 months after the decree is entered.

## JOINT CUSTODY

Custody of children can be divided into two issues: Legal Custody and Physical Custody. Legal Custody means the legal authority to make decisions and have control over a child. Physical Custody means having physical possession of a child. If parents share Joint Legal Custody then they are to jointly share in making decisions about their children. If parents share Joint Physical Custody, then they are to joint share the physical possession of their children, usually on a 50/50 basis.

Joint Physical Custody can be ordered only if a judge decides it is in the best interests of the children. Usually parents must be able to get along with each other in order for joint physical custody to be successful. More importantly, the children must feel comfortable going back and forth between two different homes on a frequent basis. If you and your spouse fought about how to raise the children when you were together, you may have difficulty making joint physical custody work. Child support could still be ordered if you and your spouse share joint physical custody, as support is determined based upon each parent's income and the amount of time each parent spends with the children.

Joint Legal Custody can be ordered only if the judge decides it is in the best interests of the children. Joint Legal Custody means the parents should mutually share in the important decisions regarding their children, and many parents do that anyway.

Sometimes parents will share Joint Legal Custody, but one parent will have sole or primary Physical Custody. In these situations, the children live with the custodial parent, have visitation (or Parenting Time) with the non-custodial parent, and the non-custodial parent pays child support. These situations are not much different than cases where the parents do not have any type of Joint Custody. The only difference is that the parents are subject to a court order that

requires them to jointly share in decisions affecting their children. Both parents are required to consult with each other, but in the event of a disagreement the parent who provides the primary residence gets to make the decision.

## JURISDICTION

Jurisdiction is the authority of the court to hear and decide a case. For example, you or your spouse must reside in Nebraska for twelve months in a row before filing for divorce. If neither you nor your spouse were residents of Nebraska for twelve months before filing for divorce, a court in Nebraska cannot hear your divorce case as it has no jurisdiction to do so.

## LEGAL SEPARATION

If you or your spouse did not live in the state long enough to file for a divorce, you can file for a legal separation. However, Nebraska still needs jurisdiction to decide custody. See the “HOME STATE” section above. The things you and your lawyer must do are just about the same as when you file for a divorce. The costs are the same. The Judge can make decisions about the children, support, division of property and debts, restraining orders, etc. Some people confuse “Legal Separation” with a trial separation. A Legal Separation is not a temporary thing that gives you and your spouse time to work things out. A Legal Separation is a final court order for people who do not meet the residency requirements for a divorce, or for people who do not wish to be divorced because of their religious beliefs or other reasons. The only difference between a divorce and a Legal Separation is that a Legal Separation does not legally end the marriage.

## MEDIATION

Nebraska law now provides that judges can order parents to attend Mediation in an effort to attempt to come to an agreement on some or all of the issues in the divorce. Mediation is not ordered for the purposes of trying to make your marriage work. For example, if you and your spouse cannot agree on who should have custody of your children, or what the parenting time schedule should be, the judge might say you need to see a Mediator. A mediator is a neutral party and most Mediators are specially trained to help people resolve their disputes. There is usually a cost for mediation, but Nebraska does have several Mediation Centers that offer services on a sliding fee scale. You can go to this link to find mediation center locations: <http://www.supremecourt.ne.gov/mediation/center-locations.shtml?sub7>.

## MODIFICATION OF A DECREE

Modification simply means change. You can ask the Judge to change things that were ordered in your first divorce Decree. However, before the Judge will do this, you must prove that something has changed. You cannot ask the Judge to change the Decree just because you did not like what was ordered the first time.

Nebraska law says that before a Decree is modified, one parent must show that there has been a "material change in circumstances" since the Decree was entered. For example, say you want more child support. Inflation has made it more costly for you to take care of your children. This is one fact you can show to the Judge. But you probably will need more. You could show that your spouse is making more money now than he or she was at the time of the divorce, or perhaps, you are making less.

Whenever you feel that something in your Decree should be changed, think about how you can show the Judge that things have changed. Then talk with your lawyer.

## PARENTING CLASS

After you file for a divorce, the court will require you to attend a Court Approved Parenting Class if you have children. These classes are often only one session, lasting approximately 3-4 hours. After you file for divorce, the district court clerk should mail you a list of approved parenting classes. If you do not get this list, tell your attorney and he/she should provide you with a list of approved parenting classes. You can find a list of approved parenting education providers by going to this link: <http://www.supremecourt.ne.gov/mediation/parenting-divorce.shtml>. You will need to pay the cost of the parenting class. Once you complete the class, you will get a Certificate of Completion. Your lawyer needs to file that certificate with the court to prove that you successfully completed the class. Remember that you need to attend one of the classes that have been approved by the court where your divorce is filed. There are many types of parenting classes available, but only a handful have been approved for divorce cases.

## PARENTING PLAN

If you have children, you will need to submit a proposed Parenting Plan at your final divorce hearing. You and your spouse need to attempt to agree on a Parenting Plan for raising your children. The Judge will want to review this plan at your divorce hearing. The plan will need to say where the children will live, which parent is responsible for getting them to school, etc. If you and your spouse cannot agree upon a Parenting Plan, you may need to go to Mediation to see if a mediator can help you come up with a plan. If you still cannot reach an agreement, you may have to ask the Judge to order a plan—if that happens, each parent may submit a plan to the Judge and the Judge can pick one, or come up with a different plan. For more information on parenting plans, mediation, and the Parenting Act, visit: <http://www.supremecourt.ne.gov/mediation/parenting-divorce.shtml>.

## PROTECTION ORDERS

Protection orders are separate from divorce cases. If a person is a victim of domestic violence, or a victim of repeated harassment, they can request that an order be entered directing the abusive or harassing person to stop having contact with the victim. A judge may deny or grant the request, and a hearing may be held in court. If the judge leaves a protection order in place

after a hearing, the order can remain in effect for one year. If a person violates a Protection Order, it is a crime and they can be arrested. The law also allows judges to enter a temporary custody order in Protection Order cases. The temporary custody order can last no more than 90 days. Sometimes a judge may not want to address temporary custody in a protection order case because they feel custody is best handled in a divorce or paternity case. If you have concerns about your personal safety, your children's safety or have experienced domestic abuse, you can find contact information for services across the state by going to the following link <http://ndvsac.org>. The National Domestic Violence Hotline number is 1-800-799-7233. The Nebraska Spanish Helpline is 1-877-215-0167.

## RESTRAINING ORDERS

There are several types of restraining orders that can be issued within a divorce case. One type of restraining order is similar to a protection order and simply tells your spouse to leave you alone and stay away. In the past, violations of these types of restraining orders were not considered crimes. Violations of restraining orders entered by the divorce court were enforceable only by contempt of court proceedings. So, victims of domestic violence often preferred to have a separate Protection Order because they wanted the abuser to go to jail if he violated the order. However, the law has now been changed to provide that violation of a divorce restraining order is a Class II Misdemeanor.

Another type of restraining order that can be entered in a divorce case involves property, called non-hypothecation orders. The Judge can enter an order restraining one or both parties from selling, giving away, or disposing of marital assets. If you are worried that your spouse is going to spend or give away much of your marital property before a judge can divide it, you should consider asking for this type of restraining order. Likewise, you cannot dispose of joint assets. If you and your spouse bought a car while you were married, you cannot sell the car without permission from the court or your spouse's agreement.

Other types of restraining orders can exclude the other spouse from the home, or prevent them from having contact with the children. There are many rules that have to be followed in requesting these types of orders so you should discuss those procedures with your lawyer.

## SPOUSAL SUPPORT

See the "ALIMONY" section above.

## VISITATION OR "PARENTING TIME"

The parent who does not have custody of the children still has the right to see and spend time with their children. This is usually called Visitation or Parenting Time. In all cases involving custody of children, you need to give the Judge a proposed Parenting Plan. The Parenting Plan sets forth custody, visitation/parenting time, exchanges of visitation, and other important things

about how you and your spouse will address issues involving your children. Please see the “PARENTING PLAN” section above for more information.

Child Support and Visitation are separate things. Just because your spouse does not pay support, does not mean you can keep him or her from seeing the children.

Studies show that children whose parents are going through a divorce have fewer problems when both of their parents stay involved in their life. Children often feel that the divorce is their fault. If one parent seems to drop out of the child's life, it can increase the child's feelings of guilt and loneliness.

Try to keep your spouse involved in your child's life. Talk with him or her about decisions which need to be made. Encourage your spouse to keep their relationship with your child as unchanged as possible. This may not be easy. You may have very bad feelings about your spouse and the divorce. Get outside help if you cannot put aside those bad feelings. Remember, you divorced your spouse, but your children did not.

If you or your children were abused by your spouse, talking to your abusive spouse about divorce, custody, and visitation issues may put you at risk for harm. If your spouse was abusive to you or your children, be sure to tell your attorney. You and your children's safety should be addressed when determining custody and parenting time.

#### **IV. WHERE TO GO FOR HELP IF YOU CANNOT AFFORD A LAWYER**

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Some resources are:

#### **LOW-INCOME LEGAL SERVICES**

##### **LEGAL AID OF NEBRASKA**

[www.legalaidofnebraska.com](http://www.legalaidofnebraska.com)

If you cannot afford an attorney you can call Legal Aid of Nebraska's AccessLine® to see if you qualify for assistance. You cannot apply online. To complete an application, call:

- 402-348-1060 AccessLine® if you live in the Douglas Co. area
- 1-877-250-2016 AccessLine® if you live outside the Douglas Co. area
- 1-800-527-7249 Elder AccessLine® if you are 60 and over
- 1-800-729-9908 Native American AccessLine® if you are Native American

##### **NEBRASKA STATE BAR ASSOCIATION VOLUNTEER LAWYER PROJECT**

<http://www.nebar.com/displaycommon.cfm?an=1&subarticlenbr=84>

You can call the Nebraska State Bar Association Volunteer Lawyer's Project toll-free at 1-800-742-3005 to see if you qualify for assistance. If you live in Lincoln, call 402-475-7091.

## **LAW SCHOOL LEGAL CLINICS**

### **UNIVERSITY OF NEBRASKA COLLEGE OF LAW CIVIL CLINICAL LAW PROGRAM**

<http://liferaiddemo.unl.edu/web/law/academics/curriculum/clinics>

A limited number of cases are accepted by the UNL Civil Clinical Law Program. Clients are represented by students under the supervision of College of Law faculty. The telephone number is 402-472-3271.

### **CREIGHTON UNIVERSITY SCHOOL OF LAW LEGAL CLINIC**

<http://www.creighton.edu/law/clinics/civillawclinic/index.php>

For Douglas County residents only. A limited number of cases are accepted by the Creighton Legal Clinic. Clients are represented by lawyers assisted by third year law students. To complete an application for assistance call the Clinic at 402-280-3068 between 9:00 a.m. and 4:00 p.m. Monday through Friday.

## **SELF-HELP RESOURCES**

### **NEBRASKA SUPREME COURT SELF-HELP FORMS**

<http://www.supremecourt.ne.gov/self-help/>

The Nebraska Pro Se (Self Help) Committee has developed some self-help divorce forms. These forms are to be used in cases where you and your spouse are not disputing anything and there will be no “fight” over custody, child support, property division, and debt division.

### **SELF-HELP CENTERS**

There are Self-Help Centers in Lincoln, Omaha, and the Grand Island area operated by volunteer lawyers which may be able to be of assistance to you. The centers do not offer assistance with criminal cases and questions are not taken by phone. Centers are coordinated by the Nebraska State Bar Association Director of Legal Services. Legal information, assistance with forms, and brief legal advice is provided through the centers which are open limited hours (see below).

•**Lincoln (Lancaster County)** Open Mondays 10:00 a.m. – 2:00 p.m., Thursday 9:00 a.m. - 1:00 p.m., Friday 9:00 a.m. – noon. The Self-Help Desk is located off the Jury Lounge on the third floor at the Lancaster County Courthouse at 575 South 10th Street in Lincoln. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

•**Omaha (Douglas County)** Open Mondays, Wednesdays and Fridays from 10:00 a.m. - 2:00 p.m. The Self-Help Desk is located in the Douglas County Law Library. Follow the connector-hallway between the Douglas County Courthouse and the 1st Floor Hall of Justice, 17th and Farnam in Omaha. For questions or further information, call the Library at 402-444-7174.

•**Tri City Center (Hastings, Grand Island, Kearney)** Open Fridays from 10:00 a.m. - 2:00 p.m. The Self-Help Desk is located on the lower level of the Hall County Courthouse (across from Courtroom #3) at 111 West First Street in Grand Island. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

## LEGAL AID OF NEBRASKA'S ACCESS TO JUSTICE (A2J) CENTER

Legal Aid of Nebraska's A2J Center is a self-help center in Douglas County where low-income people can access legal resources including computers, forms, and self-help clinics. It is located in Omaha at 1904 Farnam Street on the first floor. Call 402-348-1069, or toll-free at 1-888-991-9921, or, visit our website at [www.legalaidofnebraska.com](http://www.legalaidofnebraska.com) to find out more information.

## **LIBRARIES**

### STATE LIBRARY

<http://www.supremecourt.ne.gov/state-library/index.shtml>

You can go to the State Library if you need access to legal resources including using the internet to do legal research. The State Library is located in room 325 at the State Capitol Building in Lincoln. The telephone number is 402-471-3189.

### PUBLIC LIBRARIES

Your local public library may have some resources and public access to computers and the internet. To find your local library you can visit <http://www.publiclibraries.com/nebraska.htm>.

### UNIVERSITY OF NEBRASKA COLLEGE OF LAW LIBRARY

<http://law.unl.edu/library/>

The UNL College of Law Library is located on the east campus of UNL. The Law Library has one public access computer for members of the public to conduct legal research. The general telephone number to the law school is 402-472-2161.

### CREIGHTON UNIVERSITY LAW SCHOOL LIBRARY

<http://www.creighton.edu/law/library/>

The Creighton Law School Library has public access computers available for legal research. Reference assistance is also available. The general library telephone number is 402-280-2875. The Law Library is open to the general public with legal research needs from 7:00 a.m. to 7:00 p.m. Monday through Friday while school is in session. Hours may vary during breaks and over the summer. It is located in Omaha on the corner of 21st and Cass Streets on the second floor of the Ahmanson Law Center.

## **REFERRAL SERVICES**

Referrals to private attorneys are available. Private attorneys may charge for their services.

### NEBRASKA STATE BAR ASSOCIATION LAWYER REFERRAL

The Lawyer Referral Service is provided by the NSBA for individuals who need a lawyer licensed to practice in the State of Nebraska and are not familiar with the legal community. If you live in Lincoln call 402-475-7091, or if you live outside Lincoln call toll-free at 1-800-742-3005.

OMAHA BAR ASSOCIATION LAWYER REFERRAL SERVICE

The service refers callers to private practicing attorneys in Douglas and Sarpy counties. For more information call 402-280-3603 or visit their website at:

<http://omahabarassociation.com/lawyerreferral.asp>.



**LEGAL AID OF NEBRASKA**