



CHANGING COURSE: GUIDE TO DIVORCE IN NEW JERSEY

*Covering Assets, Alimony, Child Support,
Domestic Abuse, and Other Aspects of
Family Law in New Jersey*

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GETTING DIVORCED IN NEW JERSEY

When you decide to get a divorce, you're deciding to relieve yourself from a stressful situation. It might be stress caused by entrenched personal differences, or marital infidelity, other acts of dishonesty, or even abuse. Whatever the reason, you know you need the stress to end – you know you need to get yourself out of that situation. It's unfortunate, then, that the choice to end a stressful situation – a failing marriage – means for most people accepting even more stress. You'll face a legal process that could drag on for years. Judges and attorneys will discuss your most personal matters, sometimes even in the harshly formal atmosphere of a courtroom. You'll have to pay significant expenses out of pocket. You may be uprooted from your home, and you'll feel jerked out of your old rhythms like a needle from a record groove. Moreover, you might have children to care for, keeping them safe and stable while you plan for their uncertain future.

A certain amount of stress and anxiety will be, in almost every case, unavoidable, but having an experienced and attentive divorce attorney on your side can help relieve that, and move you quickly toward an equitable resolution. Your attorney will be able to answer many of your questions, and even put some of them to rest, in your first consultation.

Before that, though, you might want to familiarize yourself with the ins and outs of the divorce process, starting with the laws in your state. Different states recognize different kinds of divorce, and have different laws regarding where, when, and how you can file. Even things like alimony can vary greatly state to state. Talk to an experienced attorney about the laws in New Jersey before you move ahead with your divorce.

>> *Are there different types of divorce?*

Each divorce is unique, but in New Jersey, we classify divorces into two broad categories.

- » **Uncontested:** In an uncontested divorce, parties enter the process having already agreed on how to divide assets and care for children, or else there are no assets or children to fight over.
- » **Contested:** In a contested divorce, the parties negotiate or actively fight over assets, child custody, child support, spousal support, and even pets.

Because most attorneys charge by the hour, contested divorces are much more expensive. Uncontested divorces are cheaper, quicker, and also tend to minimize any impact on children.

>> Do I have to wait before filing a divorce?

New Jersey law requires a person to have lived in the state for at least one year before filing for divorce, except in cases of adultery, in which the time restriction is lifted.

>> Where can I file for a divorce?

New Jersey law requires a person to file for divorce in the county where either spouse is living. If you were married in another county or in another state, you still must file in the county where you reside. If spouses live in different counties, either one will do.

>> Can I file for divorce if my spouse lives in another state?

In New Jersey, there is no legal barrier to filing a complaint for divorce even if your spouse lives outside of the state. So long as you've lived in New Jersey for a year or more (except in cases of adultery), if you file for divorce in New Jersey, that county will have jurisdiction and handle the case, no matter where your spouse is living.

>> What if I can't locate my spouse?

If you are unable to locate your spouse, you can rely on your attorney's team to conduct a search. New Jersey law requires you to make a "good faith" search

for your spouse. An attorney can handle this, using a last known postal address as well as DMV information and your spouse's Social Security Number. If this search still fails to locate your spouse, the court allows you to publish the divorce complaint in a local newspaper. After this you will be able to move forward with your divorce.

COMMON QUESTIONS ABOUT DIVORCE

>> *What are grounds for divorce in New Jersey?*

Some of the most common grounds for divorce are:

- » Mental cruelty
- » Physical cruelty
- » Desertion
- » Adultery
- » Irreconcilable differences

Some of these grounds for divorce can be difficult, time consuming, and costly to prove. Because of that, by far the most common grounds for divorces filed in New Jersey is "irreconcilable differences." To prove this, the court only requires you to prove that you and your spouse have been unable to get along for six months.

>> *How long will it take to get divorced?*

Time frames for divorce proceedings vary, and any cookie cutter estimates will be unreliable. A divorce could be finalized in under a month, or it could drag on well past a year. The amount of time a divorce takes will depend upon the facts of the case and the willingness of both parties to communicate and to compromise. An experienced divorce attorney will be able to give you a more

precise and reasonable estimate after examining your circumstances at an initial consultation.

>> *What will my divorce cost me?*

Time and cost are usually the first questions on anybody's mind. In most divorce cases the two are related in direct proportion. It surprises some to know that the cost of a divorce isn't necessarily tied to the value of the assets involved. A potentially complicated divorce involving many valuable assets, property, and children could be resolved inexpensively if the parties come to an agreement before filing, or early in the process. Because most attorneys bill by the hour, the longer two spouses drag on negotiations, the more expensive the divorce becomes for both parties.

The cost of an uncontested divorce in New Jersey will typically start around **\$1,500.00**, plus the filing fee. If the divorce is contested and there are assets and issues such as custody and child support, the initial retainer could range from **\$3,500.00 to \$5,000.00**, or more depending on the circumstances. A long and fiercely contested divorce could cost as much as **\$15-20,000**.



>> *How do I respond to divorce papers?*

In New Jersey, if you've been served with a summons of complaint for divorce, you should consult a family law attorney immediately. You only have 35 days to respond to the complaint – that means filing an answer and a counter claim. You cannot delay to protect your rights, including control over your assets and custody of your children. If your spouse has filed a complaint, that means he or she has already consulted with an attorney about the particulars of your shared lifestyle and finances, considered strategy and drafted a set of demands. You shouldn't wait to get an experienced attorney on your side, too. Seek that counsel, and let your attorney handle the official response.

>> *Will I need to take my case to a trial?*

Most divorce cases in New Jersey never make it to a trial. If the parties come to an agreement, one party can waive his or her right to an appearance, avoiding the need to go to court. Some New Jersey counties allow settlement without either party appearing in court. If there is a “default” case, when one party doesn’t answer the other party’s complaint, the filing party would have to make a very brief appearance in court to enter facts into the record before the judge comes to a decision.

>> *I’m unhappy with the result of my trial. Can I appeal?*

In New Jersey, you have **45 days to appeal** the verdict of a case. If you appeal, the Appellate Court will take on your case. The Appellate Court may “vacate,” or make legally void, the judge’s decision in your case. If you do not file an appeal within the 45 day window, the Marital Separation Agreement (MSA) spelling out the terms of your divorce will be final and cannot be overturned. You can revise an MSA and negotiate new terms, but that requires the cooperation of your former spouse.

DIVIDING ASSETS

The first issue most spouses tackle is the division of assets. Whether it was many years ago or relatively recently, you and your spouse made a vow to share your lives – and that means sharing *things*, too. Lives are never joined at one clean seam, but entangled – and so too objects and other assets become entangled with an individual’s identity. While you might want a “clean break” from your marriage, it’s rarely that simple when it comes to the division of possessions and assets.

The division of assets starts with a **discovery process**, in which both parties exchange financial information. That doesn’t mean you stop at bank statements: potentially anything could be “discovered,” or requested, including property holdings, cars and boats, gambling winnings, retirement accounts, bonus packages, stocks, and even frequent flier miles. This might involve getting

depositions from employers or other parties with relevant information, or subpoenaing information from investment houses and insurance providers. After the discovery process, both sides come to the table with an offer, and negotiation begins. If the parties can't come to an agreement, the case may proceed to a trial.

>> *What assets are subject to distribution?*

New Jersey is an “equitable distribution” state. That means that any assets acquired between the date of the marriage and the date one party filed a complaint for divorce are subject to be distributed “equitably” – which can often mean 50/50, though that isn't necessarily the case.

Income, bonuses, retirement accounts, and property can be distributed. The list runs much longer – you'd be surprised by things that the court considers part of the marriage “pot.” An experienced attorney can help you figure out what assets in your case might be subject to distribution.

Some property will not be subject to distribution. Inheritance will stay with the inheritor. That includes money and stocks as well as things like furniture and other heirlooms. Items clearly associated with one spouse's hobby will go to that spouse – for example, golf clubs, easels and paints, hunting trophies, etc. Collections that appreciate, however – like antique cars, coins, or artwork – count as investments, and will be subject to equitable distribution even if they are the exclusive passion of only one spouse. Everyday cars will also be split. If one spouse drives a BMW 7 Series and other drives a Gremlin, the court will add the value of both cars and divide that sum by two. It doesn't matter who keeps which car, then: both are entitled to half the value of both combined.

It's important to keep in mind that debts are subject to equitable distribution as well as assets: that could include mortgages, loans, and credit card debt.

>> *I think my spouse is hiding assets. How do I find out the truth?*

In any high-asset divorce case, both parties will undergo a full and thorough asset search, including assets held out of state or overseas. You may end up

hiring a CPA or forensic accountant to study your spouse's bank statements and tax filings to look for discrepancies and red flags. (It's unwise to hide assets – if found out, you've weakened your position in the eyes of the court, making yourself appear untrustworthy.) Most other countries will accept the jurisdiction of a divorce proceeding in New Jersey, but some don't.

SPOUSAL SUPPORT

Alimony isn't involved in all New Jersey divorce cases, but it is an important element in many. The three biggest factors determining alimony are the length of the marriage, the lifestyle a couple shared during their marriage, either party's legitimate financial need, and the other party's ability to pay. If both parties are earning close to the same income, there will not generally be any alimony. There are other factors commonly considered, too – for example if one spouse is raising young children, or if one spouse is elderly. Following recent legislation, New Jersey recognizes two types of alimony.

- » **Limited duration alimony:** One spouse will continue payments for a finite, prearranged period.
- » **Open duration alimony:** Various triggers and conditions will determine the length of time one **on** **one. intended. Although attorneys, mediators, and in som** spouse makes payments to the other.

>> *How much will alimony payments be, and how long will they last?*

- » Alimony payments rarely exceed the length of the marriage. There is no established formula for deciding the amount and duration of alimony payments, but in most cases, New Jersey judges will order alimony payments for about half the length of the marriage, and take 1/4-1/3 of the difference between the two parties' incomes as a starting point – but this comes from custom, not an official statute.

>> *What happens if someone stops making alimony payments?*

In New Jersey, if one party fails to abide by an alimony order, the other party can file a motion with the court to seek the enforcement of that order. This can result in the incarceration of the negligent parent, the suspension of that parent's driver's license or other professional licenses, and an order of contempt.

CHILD CUSTODY

The State of New Jersey recognizes two types of child custody:

- » **Legal Custody:** This pertains to a parent's access to school and medical records. New Jersey precedent prefers joint legal custody in all but extreme cases – for example, when there has been a history of child abuse.
- » **Physical Custody:** This pertains to where the children will live. While it's possible to have a 50/50 physical custody arrangement, you have to think hard about the feasibility of this option: complicating factors include the proximity of both parents' residences, career obligations, etc. Generally in New Jersey there will be one "parent of primary residence" – the "custodial parent" – and one "parent of alternate residence," allotted a certain amount of time with the children. If one parent gets the children for at least two nights a week this is considered joint custody. There are countless ways to split this time up, accounting for holidays, summers, weekends, weekday dinners, and travel. While you have legitimate desires to be acknowledged in these decisions, it's important here, as with all other decisions directly pertaining to the children, to put their interests first.

>> *My spouse and I can't agree on a child custody arrangement. What happens now?*

If you and your spouse can't agree on a child custody arrangement, the court will require you to attend mediation. You shouldn't see this as an imposition, but as an opportunity to sit down with an experienced, impartial mediator and try to work creatively to put your children's interests first.

If you can't work out an arrangement in mediation, a judge will decide for you. The judge, too, will prioritize the interests of your children – but keep in mind that no one knows your children better than you and your spouse, despite any disagreements, ill-will, pain, or resentment you might harbor. It's usually best to come to a decision together, rather than leaving it up to a judge.

>> *Can I move my child to another state before the divorce?*

Once you or your spouse has initiated divorce proceedings, the law prohibits you from moving a child out of state without the other parent's agreement, unless you've obtained a court order lifting this restriction. Be careful: you could face kidnapping charges if you fail to observe the proper guidelines – and of course you'd lose custody of the child. Consult an experienced family law attorney if you have any questions.



>> *My former spouse is always late for visitation. What can I do?*

If the non-custodial parent is late picking up or dropping off your child, you can take your former spouse to court to file a motion to reduce the amount of visitation time he or she has.

>> *My former spouse isn't allowing our child to travel. What can I do?*

As the custodial parent, you have the right to take your children on trips, even outside of the country. If the non-custodial parent is refusing to allow this travel, refusing to allow your child to obtain a passport, or otherwise attempting to prevent you from traveling with your child, you can go to court and file a motion against the non-custodial parent. If you can demonstrate good reason why the child ought to be allowed to travel outside of the country, the judge will generally grant your motion.

>> *I suspect my former spouse is drinking or using drugs while overseeing my child. What can I do?*

If you suspect your children are in danger because your former spouse is drinking, using drugs, or exhibiting uncontrolled anger, you need to correct this as quickly as possible, enlisting a skilled and experienced attorney to take your concerns to court. You must file a motion in court, and provide evidence substantiating your claims. The court will consider your motion and could either change the parenting time arrangement, or take steps to correct the offending behavior.

CHILD SUPPORT

Child support is one of the more difficult areas of family law, and disagreements over child support can turn contentious and bitter, in some cases lasting long after former spouses have finalized their divorce. The question of what's financially fair and equitable is complicated when the interests of a third party – the child or children – come into play. An experienced family law attorney can help answer some of your questions about child support, and anticipate some of the common concerns that arise.

>> *How do we calculate child support?*

Different states have different rules and guidelines governing child support. New Jersey courts use two sets of guidelines, or “worksheets,” one for “sole

parenting” and one for “shared parenting.” If one party’s gross weekly income exceeds \$3,500, the guidelines may serve as a starting point, but the judge will have greater discretion to mandate additional child support on a case-by-case basis.

>> *How do we plan for our child’s college education?*

If your children are very young, you might not have put much thought toward your child’s college education before you began divorce proceedings. Your first step should be to talk these issues out with your spouse and respective attorneys in mediation. New Jersey law requires that a child exhaust opportunities for scholarships, grants, and student loans available prior to parents being obligated to contribute toward college costs. If the court mandates a contribution, it would be calculated in proportion to their respective incomes, based on the ability to pay.

>> *Can I waive child support?*

In New Jersey, child support is the right of the child, not the right of the parent. In theory, then, child support is not waivable. However, if you do not seek to enforce the child’s right to court-ordered support, that would have the same effect as “waiving” the support.

>> *How long do child support payments typically last?*

Child support payments in New Jersey will continue until a child is legally “emancipated,” which usually occurs at the age of 18. In most cases if a child is enrolled in a two or four-year college, he or she will not be emancipated until graduation. However, the parents have significant say here: some factors could allow for emancipation while a student is still enrolled in college; and in some cases, parents will agree to allow a child five years to finish college.

>> *What if my spouse stops paying child support?*

If your former spouse has stopped paying child support, you can notify the family court; the judge will sign a warrant for his or her arrest, and jail your former spouse until he or she has paid the full balance of missed child support. The court also can seize the negligent party's passport and suspend driver's or other professional licenses.

DOMESTIC VIOLENCE

Any instance of domestic violence rearranges the priorities of a divorce case: if you've suffered or have reason to fear physical abuse, psychological and emotional abuse, or threats and harassment, you need to get yourself and your children to safety. An experienced family law attorney can advise you about the steps you can take to ensure your safety before moving forward with the divorce process.

>> *I've experienced domestic violence. What's the first thing I should do?*

If you've experienced domestic violence, your first call should be to the police, the New Jersey Domestic Violence Hotline, or your local court's domestic violence unit. Once the authorities have removed the violent party, you can speak to a family law attorney about the next steps you should take. If you intend to seek a divorce, you can start this process after taking steps to ensure that you and any children remain safe.

>> *How do I place a restraining order on someone in my household?*

You don't need an attorney to obtain a temporary restraining order. If you've experienced domestic violence – including harassment or terroristic threats and other kinds of emotional abuse – you should notify the police, and then contact an experienced family law attorney. The court will be able to issue a restraining order. If the violent party violates the restraining order, he or she will face jail time and other serious penalties.

>> *I've been issued a temporary restraining order. What should I do?*

A restraining order is a serious matter. A temporary restraining order “freezes” your parenting time. You would have to ask a judge to reinstate any parenting time. If a court has issued you a temporary restraining order, it will set a date for a final restraining order hearing **within ten days**. You can waste no time, then, in contacting an experienced family law attorney to accompany you to the hearing. If the judge decides to issue a final restraining order, the court will enter your name into a statewide database of domestic violence offenders. Unlike in most states, final restraining orders in New Jersey are permanent, and very difficult to have removed or vacated. These orders can negatively affect your family life and employment prospects moving forward. Violation of a temporary or final restraining order could affect future child visitation rights, and in many cases can result in jail time. If the court has served you a temporary restraining order, you need the help of an experienced family law attorney to ensure the best possible outcome.

LIFE AFTER DIVORCE

>> *How do I resume my maiden name after my divorce?*

If you'd like to resume your married name after a divorce, you can write this into the divorce order without difficulty – you only have to prove that you aren't changing your name to avoid creditors, bankruptcy, or criminal charges. If you or your child would like a name change for any other reason, that has to go through a separate proceeding. You would file a complaint, publish the order, go back for a final hearing, and again publish the resulting order. After you send a letter to the treasury, your name will be legally changed.

>> *I'm unhappy with my parenting time arrangement. Is there anything I can do?*

Circumstances do change. If you're dissatisfied with your parenting time order, you can go to court and file a motion seeking additional parenting time.

Sometimes parents experience significant career changes that disrupt their schedules. Parents move, making it harder to keep up with an original parenting time arrangement. In any case, you do have legal recourse to adjust your arrangement: your outcome depends upon your circumstances, the age of the children involved, and your former spouse.

PRENUPTIAL AGREEMENTS

Prenuptial agreements have grown in popularity in New Jersey. Basically, a prenuptial agreement is a forecast of what will happen should a marriage break down. Prenuptial agreements are particularly beneficial if there is a disparity in financial assets, income, or earning potential.

>> *What will a prenuptial agreement do for me?*

You should consider a prenuptial agreement if your income or earning potential is significantly higher than your prospective spouse's, or if you have other assets that you want to protect. No one wants to go into a marriage thinking about its possible demise, but it's a commonsense arrangement worth considering. A prenuptial agreement doesn't lessen any love two people share – it's a way of preparing for a future that's unpredictable.