



# 2022 Guide to Divorce

Family Law & Child Custody  
What to Expect



**O'FLAHERTY LAW**

Your Community Law Firm

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**O'FLAHERTY LAW**

Comprehensive. Client-focused. Quality.

At O'Flaherty Law, our mission and standard is to exceed expectations in every aspect of our practice through education and providing quality personalized legal services. By operating according to our mission, we hope to achieve the vision of enriching and elevating the lives of our clients through excellent problem-solving and exceptional, comprehensive service.

I am personally committed to ensuring that each one of our clients receives the highest level of service from our team. Our mission is to provide excellent legal work in a cost-effective manner while maintaining open lines of communication between our clients and their attorneys. Should have have any questions on the material in this guide, please don't hesitate to reach out; we hope you find it useful!



*Many of our clients are going through difficult times in their lives when they reach out to us. They should feel comfortable leaning on the experience and knowledge of our attorneys as their counselors and advocates. We are here to help!*

*Kevin P. O'Flaherty*



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# FILING FOR DIVORCE IN ILLINOIS

Divorce is a difficult time for many people. Emotions are all over the place, finances are stretched, and stress levels are at an all-time high. We understand that a divorce is one of life's most challenging experiences, and we want to make the process easier to understand by simplifying it for you.

To file for divorce in Illinois, either spouse must have lived or resided in the state for at least 90 days. To begin the process of divorce, the first thing you have to do is file the Petition for Dissolution of Marriage. The person who files for the Petition is called the Petitioner, and their spouse is called the Respondent.

In 2016, Illinois became a no-fault divorce state, meaning irreconcilable differences are the only grounds for divorce. If both parties agree that irreconcilable differences exist, then the parties need not live separately and apart before commencing the divorce. If one party does not agree, the parties must live separately and apart for six months before the divorce.

The Petition for Dissolution of Marriage declares the grounds upon which the dissolution of marriage is being requested, along with basic information about current living arrangements and any children of the marriage. The Petition may be filed in the Circuit Court where either spouse lives.

Once the Petition is filed, the other spouse must be notified that the Petition has been filed. This is accomplished by serving the other party with a file-stamped copy of the petition and a summons specifying the time and location of the first court date by a sheriff or special process server.





## NOT ALL DIVORCE LAWYERS ARE THE SAME

Seeking a divorce attorney is often the first step in divorce and a sign that you're ready to make a change. However, the daunting task of filling out legal forms, negotiating an agreement with their spouse, and making arrangements for child custody keeps many from getting back the happiness their troubled marriage took away. With the appropriate divorce path and an experienced family law attorney, those burdens of the divorce process can be reduced.

The right divorce lawyer can help you end your unhappy marriage, secure what's yours, and put you in the best position to build your post-divorce life. Each divorce is unique and requires a tailored plan that answers the questions:

- "How long will my divorce take?"
- "How much will my divorce cost?"
- "Can you fix my legal problems?"
- "What will happen to my children in my divorce?"
- "What will my life look like after divorce?"

Our divorce attorneys will answer these questions and more as they help you through each step of your divorce, ensuring they are dialed into your needs as a client.

# WHAT TO EXPECT FROM YOUR FAMILY LAW ATTORNEY

O'Flaherty Law is renowned for its seasoned divorce lawyers and commitment to customer service. Awarded Avvo's Clients' Choice Award for Divorce and received 10 Best Law Firms for Client Satisfaction (writers, don't worry about looking this up, we'll add it later) by the American Institute of Legal Counsel, the firm finds tailored solutions to meet client needs. Your first meeting with your O'Flaherty Law divorce lawyer serves to map out the specific challenges associated with your divorce.

While each divorce is unique, nearly all share a common process beginning with finding the right divorce lawyer, completing and filing the divorce paperwork, serving the

divorce summons, seeking temporary orders for child support, child custody, and alimony (spousal support/maintenance), attending mediation, negotiating the divorce settlement, and if the married couple cannot come to terms on specific aspects of the divorce, gathering evidence for the trial.

Our divorce lawyers work **efficiently** and **cost-effectively** to make your legal matter as affordable as possible. We are proud of the rates and value we bring to our clients.

We encourage our clients to ask as many questions during the divorce process. Once the judge hands down the divorce decree, finalizing the divorce, we want our clients to feel excited about the next phase in their life, not lamenting some aspect of the divorce process or wondering if they should have asked more questions.



**Delaney M.**

Naperville, IL

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★★★★★ 10/11/2019

My lawyer, Sean, and his associate Marilu have been beyond helpful with my current divorce case. My hectic schedule as a medical professional does not allow for much free time to handle things on my own, and my knowledge of legal jargon is very limited...but Sean and Marilu have made this process incredibly easy for me. They are patient with my questions and schedule, as well as available in a timely fashion when I have questions. They have erased my stress and I am confident that they have represented me to the best of their ability. The staff is friendly, compassionate, and very professional. I recommend them without hesitation for any legal need you have. And please believe me, I am not one to give Yelp reviews freely unless I truly support a business.



## SPOUSAL SUPPORT OR ALIMONY

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Most commonly referred to as alimony, spousal support (also called spousal maintenance) describes support payments owed by the higher-earning spouse to maintain the lifestyle enjoyed by the lower-earning spouse during the marriage. However, does this definition answer the question “What is alimony?” or “How is alimony determined?” Part of an alimony attorney’s job in a divorce case is to help their client understand why they should be receiving the alimony payments to which they are entitled.

Not every divorce results in spousal support. Instead, spousal maintenance is “needs based,” and much like child support, the court will review several factors associated with the marriage and the evidence presented by both sides in the divorce to determine an appropriate alimony payment, if any. Whether you feel you deserve more in alimony or that your spouse is overreaching in their request, you have the right to explore your options, and our divorce attorneys will make every effort to execute your desires.

# PROPERTY DIVISION IN DIVORCE

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Property division in divorce often requires the court to first distinguish between “marital” property (also known as community property) acquired during the marriage and “non-marital” property (also known as separate property) acquired before marriage. Part of the property division lawyer’s job in your divorce case is to help you determine what property is yours exclusively and what is marital property. Property division doesn’t end with the home. Everything from the car to your great aunt’s vase is included in the divorce as property. In deciding how to divide property, judges may consider factors such as:

- Length of marriage;
- Assigned property values;
- Child custody agreements;
- Requests for spousal maintenance;
- Waste of marital or separate property;
- Each spouse’s skills and employability

It’s in the couple’s best interest to divide the property independently. Still, your divorce lawyer can help you get the property you feel you deserve and guide you through mediation to arrive at a settlement, if necessary.



*Our family law and divorce teams are happy to assist you with any family law issues you may be experiencing, including divorce, child custody, child support, visitation rights, maintenance awards, and adoption.*

# FAQs in a Divorce Case

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We encourage our clients to ask us as many questions during the divorce process. Once the judge hands down the divorce decree finalizing the divorce, we want our clients to feel excited about the next phase in their life, not lamenting some aspect of the divorce process or wondering if they should have asked more questions.

## 1. What do I need to start the divorce process?

Before starting the divorce process, you will need to gather your financial records to have an accurate picture of where you and your spouse are financially. Get bank account information, tax records, deeds, retirement account information, and any documents related to investments or trusts that the spouses have together. Then you will need to gather any records you have regarding marital debts. Get copies of loan paperwork, mortgages, student loans borrowed during the marriage, and statements for jointly held credit cards.

Once you have everything you need for your attorney to assess what is and is not marital property accurately, you can move forward with the summons and petition for divorce. If there are minor children from the marriage, you may need to complete a confidential vital statistics document identifying them. This document is sealed by the court to protect the privacy of the minors.

Suppose you request temporary spousal support, child support, or an order allowing you to reside in the marital home during the divorce. In that case, you will want to make that request immediately to ensure as little disruption as possible in your life.

## 2. Are divorce records public?

Generally speaking, yes, divorce records are a matter of public record in the majority of states. Some states will automatically seal parts of the record, for example, any information identifying the marriage's minor children, cases dealing with a child or spousal abuse, or documents containing vital information like social security numbers or financial information.

## 3. What is an uncontested divorce?

An uncontested divorce is when the spouses agree that the marriage is no longer working and amicably agree to divorce. Another example of an uncontested divorce would be if the other spouse simply chose not to fight the divorce. The spouses then work together to divide assets and debts from the marriage and the custody and visitation for any minor children of the marriage. Sometimes, the spouses file a joint petition for divorce, depending on what their state of residence requires. The divorce remains uncontested as long as things remain amicable between the parties.

# FAQs in a Divorce Case

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## 4. What is a legal separation?

A legal separation is where the spouses ask the court to declare them separated and sometimes make orders regarding support and child custody. A legal separation is not a divorce. You are still legally married, and any assets or debts acquired during the separation could be considered a community.

Sometimes people who want a divorce but cannot or will not divorce for financial or religious reasons choose this avenue to lead separate lives but again, you are still legally married.

## 5. What is a cooperative divorce vs. a collaborative divorce?

It might seem that these are the same thing, but there are some significant differences, hence the different names.

In a cooperative divorce, the parties work together to try and come to an amicable agreement with the assistance of their attorneys. If the parties cannot reach an agreement, they proceed to litigation, where it goes before a judge, and respective sides are argued. Some people like this approach because they can at least try to resolve things amicably, but they have recourse if that cannot be accomplished.

In a collaborative divorce, the parties sign an agreement stating that they agree not to litigate. Additionally, the attorneys representing the parties in the collaborative divorce agree to no litigation. If things do not work out, you must get a new attorney to represent you and start the process. Some people find that this approach helps provide an incentive to negotiate a divorce peacefully.

## 6. How do you serve divorce papers?

Depending on what your state law requires, you can use personal service to deliver the summons and complaint or the summons and petition. It would be best to utilize a disinterested third party in personal service to minimize the possibility of an uncomfortable confrontation and to have them complete an affidavit of service once they have delivered the papers. Some states do allow service by mail.

## 7. When is the divorce final?

The divorce is final once the judge signs the decree of divorce. The clerk of court will enter the decree onto the record. Once the decree is entered onto the record, the clerk will send a copy to your attorney, who should give you a copy for your records.

# FAQs in a Divorce Case

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## 8. What should I disclose in a child custody mediation?

The mediation session is about ensuring your child's needs are met. The mediation session is not the place for you to discuss any issues between yourself and the other parent that led to the divorce filing. Although divorce is very stressful and many resentments are bubbling under the surface, it is essential to understand that any negative comments towards or about your spouse are not productive and a waste of your time. Stay focused, polite, and open to cooperating with your spouse about your children's needs.

## 9. What child support forms do I need?

It will vary depending on what your state of residence requires. Typically, the court will require proof of vital statistics for the child or children. Suppose the child has a social security number. In that case, a birth certificate and their social security information should be enough to give your attorney the information they need to include on the petition or complaint for divorce. Additionally, any documentation that shows why your child might have needs that require a higher amount of support than is usually awarded should be included. Any proof of special needs or medical conditions that would require care needs to be taken into account when requesting child support. Finally, preparing a monthly expense report that breaks down the cost of child maintenance would be helpful.

## 10. Can I ask for more child support?

Generally speaking, child support is calculated based on the income of the parent ordered to pay the child support. To successfully request more child support, you need to ask the court to modify child support. For the court to grant a child support modification, you will need to show that the party paying the child support has experienced an increase in their income, warranting an increase in the child support they can pay. That can mean that the person paying child support got a raise, a new job with higher pay, or even an inheritance.

## 11. Is alimony tax deductible?

Alimony used to be tax deductible. Any party ordered to pay alimony with their divorce finalized before December 31, 2018, would have qualified to claim a deduction on their taxes for alimony. In any divorce finalized as of January 1, 2019, and onward, the alimony payments are not eligible to be deducted from your taxes. The IRS no longer requires alimony recipients to declare alimony payments as income, so it is not taxed.





## CHILD SUPPORT SHOULD BE FAIR

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The right child support attorney can make a substantial difference in the quality of life of your child. If you are not receiving child support that is owed, if you have been summoned into court for a child support issue, if you need to apply for child support, or if there has been a change in circumstances and a modification is necessary, you need an experienced and reliable child support lawyer to make sure your rights, and the rights of your child, are aggressively represented.

O'Flaherty Law has the experience and tenacity to get you the best possible result if child support is owed or to get a necessary modification to child support. What makes O'Flaherty Law different from other law firms is our knowledgeable child support attorneys, our outstanding client support, and the ability to take swift action to get child support issues resolved. When you need to know how child support works, the child support process, and your rights, the O'Flaherty law team can help you at any point in the process. We look forward to working with you and being your child support lawyers.

# SECURING CHILD SUPPORT

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In determining child support, the court considers the child's best interests, which requires weighing the financial needs of both children and parents, the child's standard of living if the couple stayed together, and the child's physical, emotional, and educational needs. Examples of expenses the court reviews when calculating child support payments include household expenses, mortgage or rent, groceries, transportation costs, and utilities.

Our group of child support lawyers gather and complete the necessary child support forms and review the most up-to-date child support laws when handling your case. Generally, paying parties (obligors) pay child support to other parents (recipients)

that is presumed to be spent directly on the child. But the more recipients make compared to obligors, the less they are likely to receive in child support payments.

Child support is distributed in different ways, depending on your state. Some states chose to use an automated system through their Department of Family and/or Human Services to ensure there is an independent record that payments are made on time and in the correct amount.

Some parents will agree to send a monthly check, while others prefer the automated system their state offers. One thing you can count on is that the court will set an amount and what day of the month the child support money is expected to arrive. If the other parent does not send the court-ordered child support, they will be in arrears.



*"I contacted O'Flaherty Law to assist me with some private matters. My attorney was one of the most thoughtful and courteous professionals I have ever done business with. The prompt responses I received put my mind at ease that I was in good hands. Such a great experience."*

- Client Google Review



## CALCULATING CHILD SUPPORT AMOUNT

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When the court determines what child support should be, it relies on a mathematical formula defined by statute, otherwise known as state law. The calculation varies from state to state, with some being simple and others being more involved. There is an automatic presumption that the formula defined by state law will produce the correct amount of child support. It would be challenging to get child support that is not the result of the court applying the formula.

Generally, the court will first look at each parent's net income. Then the court will analyze how many dependents each parent has, for example, if you have children from a previous marriage or relationship that need financial support. Usually, the court will look at how much time the child spends with each parent, although joint physical and legal custody does not exempt you from paying child support. The court will also consider the cost of child care, medical care for the child (insurance), and if a parent may be deliberately unemployed or underemployed to avoid paying child support. If there is more than one child from the relationship, the court will adjust the formula accordingly to reflect all children born in the relationship.

# RECEIVING CHILD SUPPORT PAYMENTS

Child support is distributed in different ways, depending on what state you live in. Some states chose to use an automated system through their Department of Family and/or Human Services to ensure there is an independent record that payments are made on time and in the correct amount.

Some parents will agree to simply send a check every month while others prefer the automated system their state offers. One thing you can count on is that the court will set an amount and what day of the month the child support money is expected to arrive. If the other parent does not send the court-ordered child support, they will be in arrears.

# MODIFYING CHILD SUPPORT NEEDS

When the party who pays child support experiences a change in circumstances child support will need to be recalculated and a modification ordered. The reasons for modification are typically that the party paying the support has received an increase in income either from their employment or sometimes after receiving an inheritance. On the other side of the coin, if the party paying child support is fired or experiences a decrease in income, they will also need to request a child support modification from the court or be in danger of accumulating child support arrears, which can be very difficult to recover from financially, and comes with many potential penalties. Child support payments must be made in the same amount until the modification order is entered.



*"My friend recommend this firm based on a good experience with their staff. Alyssa was extremely kind, she listened to everything I had to say and then helped to guide me to someone tailored toward my needs. I am so grateful for this firm and their amazing staff."*

- Client Google Review



## COURT PROCEDURES & PROCESS

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Your child support lawyer will have an initial meeting with you where they gather information about your situation and let you know how O'Flaherty Law can help you. Once hired, your child support lawyer will develop a strategy to get you the best possible result for your circumstances.

It is important that you gather all of the documentation that your child support lawyer will need to properly

evaluate your case and develop a strategy. You should have your W2s, paycheck or payroll stubs, tax returns, proof of dependents, any preexisting orders or written agreements. If you are dealing with the issue of child support arrears, you should have a list of what has not been paid.

Your child support lawyer will then take the appropriate action to make sure your child support case is moving in the right direction. If that means a letter to the other parent, participating in mediation with the other parent, or filing in the appropriate court, you can rest assured that that we will work hard to ensure that your concerns are addressed, and your needs are met.

# FILING TEMPORARY ORDERS OF CHILD CUSTODY

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Determining child custody and parenting time agreements in divorce cases are often the most significant source of stress during the divorce process. Ideally, both parents want what is best for their child, but emotions sometimes cause them to lash out at the other parent by fighting over custody. A good child custody lawyer will be an in your local child custody laws and can act as a mediator between you and the other parent. Ultimately, the court will award parenting time based on the best interests of the child, which is determined by weighing a variety of factors, including the following:

- Parents' wishes and the child's preference;
- Time each party spent caring for the child in the appropriate time period preceding the divorce;
- Child's adjustment to home, school, and surroundings;
- Whether any restriction on parenting time should apply;
- The parent's past behavior;
- Willingness to place the child's needs above those of the parent;
- Distance between the parents' residences and the inherent difficulties of travel



*"Kevin and his team have always treated me professionally and have provided timely and cost-effective service. Would definitely recommend if you are looking for an attorney who communicates well."*

*- Client Testimonial*

# FAQs in a Child Support Case

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## 1. What happens when the other party refuses to pay child support?

When you have a child support order in place and a certain number of months have passed without receiving child support (depending on the law in your state), your attorney can go to court and ask for an enforcement order. Once an enforcement order is entered, the parent who has not been paying child support could have their paycheck garnished, their state and federal tax returns intercepted, their driver's license revoked (also some professional licenses), any request for passport renewal refused, and eventually be found in contempt of a court order, which could mean jail time in an extreme situation. You will need to ask the court for an order of contempt. It is not typically an automatic process.

## 2. How do I enforce child support orders?

You have options when it comes to enforcing a child support order. Note that there must be an order for child support before asking for enforcement. If the court has ordered that one party pay child support to another, some steps can be taken if the order is not obeyed. Your attorney can petition the court for a child support enforcement order, and the penalties for non-payment of child support can be considerable, including garnishment, revocation of various licenses (including driver's license), tax return interception, and even jail time.

Some people choose to go through a state agency for enforcement. The state agency will act to enforce the support order on the child's behalf, so they do not work for you like an attorney, but they are there to help if they can.

## 3. Can I go to jail if I don't pay child support?

Yes, you can go to jail for not paying child support. When you do not pay your court-ordered child support, the court can find you in contempt of court. A child support order is enforceable, just like any court order. If you do not follow the order, you can be fined or even sent to jail, but generally, you will be given many opportunities to fix the situation before that happens. Jail is considered the last resort for not paying child support because the party ordered to pay will not earn any income during their time in jail, but it does happen.

## 4. How often is child support paid?

Most jurisdictions order that child support be paid monthly on a specific day. You can either arrange to pay the other parent directly or go through a state agency to pay the child support. Many people prefer using the state agency because it cuts down on interaction with the other parent and creates an independent record of payment history.

# FAQs in a Child Support Case

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## 5. Do you have to pay child support for a child you cannot or do not see?

Yes. Legally speaking, paying child support and child visitation are two separate matters. When you pay child support, it is not as though you are paying for your child's time; you are contributing to their care and well-being. While time spent with the child is generally factored into most child support calculations, not seeing your child does not mean you do not have to pay child support. If you are not being allowed to see your child, you should contact us, and we can guide you through the process of getting a child custody or visitation order enforced. Choosing not to spend time with your child does not release you from your obligation to pay child support.

## 6. Does child support end?

Yes, child support ends when the child turns 18, becomes emancipated, gets married, or goes off to college. You might have an arrangement with the other parent regarding support during the college years, or your state may have a law that requires some support to be paid to help with college expenses.

The important thing to remember is that child support does not end automatically. The court needs to know if the child support no longer needs to be paid; you cannot just stop making payments of your own accord.

## 7. Can you cap child support payments?

The calculation to determine child support is typically based on monthly net income after certain deductions. You cannot request that you only pay a certain amount of child support or that you never pay more than a certain amount of child support. The calculation used by the court to determine the child support amount is automatically presumed to be correct. Some states cap child support (like Texas) but do not expect child support to be capped or capped at a low number. Other states will cap the net combined income of both parents before inputting it into the calculation. Your child support attorney will be able to go through the specific requirements of your state and let you know what to expect.

## 8. Is child support tax deductible?

No. You cannot claim child support as a tax deduction. The IRS considers child support a personal expense if you are paying it and does not consider it income if you are receiving child support payments. If you have additional questions about tax and child support payment, consult with your tax preparer or a tax attorney, O'Flaherty Law does not offer tax advice.

# FAQs in a Child Support Case

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## 9. Is failure to pay child support a felony?

Yes. Under federal law, if you have willfully failed to pay child support for your child who lives in another state, you have willfully failed to pay for two years, or the unpaid amount is \$10,000 or more, it is a felony that could undoubtedly mean jail time.

Child support matters must be handled at the state level before the federal courts intervene. Ask your child support attorney what penalties your state could impose. Depending on your state law, it could be a misdemeanor or a felony.

## 10. What are child support arrears?

When a party is ordered to pay child support and does not pay, “arrears” accrue, and you are in arrearage. You are also in violation of a court order. Any portion of court-ordered child support you do not pay is considered arrears or “back” child support. Most states typically charge interest on this back child support.

## 11. Can I request more child support payments?

You can ask for more child support if the circumstances allow it. You can ask for a child support modification if the parent paying child support experiences an increase in income. If you are the parent paying child support and have a decrease in income, you will need to ask for permission from the court to lower your monthly child support payment. If you request a decrease in child support because you have lost your job or taken a pay cut, you will need to continue making your court-ordered child support payments until the court determines the modification.

## 12. How long does child support last?

Child support typically ends when the child is no longer legally considered a minor. Other possible ways that child support could end is if the child went off to college, got married, or became emancipated (becomes an adult through a court process). Sometimes there is a child support agreement between parents explaining when the child support payments are expected to end. If the child has special needs or particular medical needs that require extra care, the child support may last longer, depending on the situation.



At O'Flaherty Law Group, our divorce & child custody attorneys are standing by, ready to answer any further questions you may have. We have offices throughout the Midwest, including Illinois, Iowa, Wisconsin & Indiana.

We hope you found this guide helpful and that we answered your questions regarding divorce and child custody.\*

We encourage you to sign up for our monthly Learn About Law newsletter. Please visit our website at [www.oflaherty-law.com](http://www.oflaherty-law.com), and follow us on our social media channels.



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