



Smart Money Moves Financial Institute
—MASTERING MONEY—



SURVIVING DIVORCE
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Surviving Divorce

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Disclaimer:

This course is designed to give you a general understanding of the laws relevant to divorce in Colorado.

This course is not intended to cover the entire subject of divorce. Divorce is a complex area of law requiring complete analysis of your particular situation.

This course will give you a brief overview of the questions and topics that Catherine Roberts encounters most often in her law practice.

This is an **Educational** presentation; **not a How to Manual**.

As an educational presentation, no Attorney-Client relationship is intended by me to be created. I will be happy to schedule an appointment with you in order to speak to you about your specific situation if you like.

One of the hallmarks of an Attorney-Client relationship is that your information remains confidential and I would keep your information confidential unless you told me you were planning to commit a crime.

An attorney can only provide you with competent legal advice if you provide him or her with accurate, complete, and truthful information and/or facts relevant to your case.

Divorce Basics

Restraining Orders (Entered at the initiation of a divorce)

Prohibits either party from modifying, terminating, allowing to lapse, canceling, or dropping insurance of any kind without notice and consent or a court order.

2. Prohibits either party from encumbering, concealing, or in any way disposing of marital property without the consent of the other party.

3. Prohibits either party from molesting or disturbing the peace of the other party or the children.

4. Prohibits either party from traveling out of state with the children without the consent of the other party or an Order of Court.

5. Requires either party to notify the other party of any proposed extraordinary expenses and account for them.

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Tax Considerations in Divorce

Income tax returns

Joint/joint filing separately (Pending and Post)

Head of Household

Liability for joint returns

Sale/transfer of Real Property (Generally transfers “incident to divorce” have no tax gain or loss.)

3. Time limitations (generally one year from date of divorce)

Minor Children Considerations Specific to Divorce

1. Do not have arguments in front of the kids.
2. Do not discuss issues in front of the kids.
3. Do not permit other family members to discuss issues regarding the divorce in front of the kids.
4. Do not permit any family members to badmouth the other parent. If grandma is providing daycare but continually badmouths one of the parents, you need to remove the child from grandma and find alternative daycare.
5. If there is domestic violence, seek a restraining order in addition to the restraining order issued in the divorce.

Domestic Violence is defined in the statute as:

§ 18-6-800.3. Definitions

As used in this part 8, unless the context otherwise requires:

(1) "Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(2) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

Cite as C.R.S § 18-6-800.3

History. L. 89: Entire section added, p. 909, § 1, effective April 4. L. 94: (1) amended, p. 2020, § 1, effective June 3; entire section amended, p. 2025, § 1, effective July 1. L. 95: IP and (1) amended, p. 566, § 1, effective July 1. L. 2007: (1) amended, p. 726, § 7, effective July 1.

6. If you have a significant other already, do not introduce that person into the kids' lives until the divorce is final **and** you have had the relationship for a substantial period of time (six months to one year).

Do not **move** a "new" person (significant other) into the home with the children while the divorce is ongoing.

Do not instruct your young children to start calling the significant other "Mommy" or "Daddy".

Generally children need both parents, try to work out
parenting time schedules and how decisions will be made
concerning the child as soon as possible. Put the agreement
in writing!!!!!! Forms available re parenting time/decision
making.

Debts

Not mentioned specifically in statute but by case law is part of the divorce. Applies to real and personal property division.

Marital Misconduct

Generally not relevant.

Cooling Off Period

Can't be divorced until 91 days after petition is filed and service on the other party.

Reconciliation after Filing for Divorce

Changes everything. Please sit down with an attorney to discuss the consequences of reconciliation.

Premarital Agreements

- Usually represent an attempt to protect property.
- Statutory Requirements: Must be signed by both parties;

i.e., in writing.

- Cannot contract away maintenance or child support.
- Question of whether you can contract away the right to claim attorney fees.
- Cannot contract regarding parenting time and parental responsibilities for minor children.
- Can contract upon death of the other spouse to waive all rights upon death (like the spouses elective to share of the decedent's estate).

Rules to Achieve a Satisfactory Cost Effective Divorce.

- Act as an adult. Remember, you are modeling to your children how to handle life's stressful events.
- Do not ask your children to take sides.
- Please understand that your child or your children still love the other parent.
- Do not discuss with children the specific issues regarding infidelity or financial issues.
- Do not bad mouth your ex-spouse in front of the children.
- Seek counseling. Neither the attorney and/or the staff are mental health providers. If you are crying all the time then you need professional help or medication.
- Seek counseling for your children. Please give them a neutral place to discuss their grief, anxiety, and anger at both parents.
- Do not use your children as messengers to the other spouse.
- Be honest and cooperative with your attorney.
- Be honest in your financial disclosures and get them back to your attorney promptly.

- If you have questions about your financial disclosures, call your attorney.
- Understand that an attorney is not a guarantor of the outcome of your case, particularly if mediation has failed and the case must be tried.
- When parents are suddenly faced with supporting two homes, finances become very tight. Remember as a parent you have an obligation to support your children and it really doesn't matter if a court has ordered you to pay child support or not.

Child Support

- Not deductible; not includable in income of spouse who receives child support.
- Child support must be paid on time.
- Consequences of non- payment include:
 - Suspension of driver's license
 - Seizure of passport
 - Contempt—jail, fines, court costs

- Child Tax Exemption (In case of 50-50 custody—where does child reside most of the year?)

Spousal Maintenance

- Tax deductible for payer
- Formula that advises an amount with recommendation as to the length of maintenance.
- Avoid if possible despite the tax benefit of paying.

Obligation of Financial Disclosure:

C.R.C.P. 16.2(e) provides:

Parties to domestic relations cases owe each other and the court a duty of full and honest disclosure of all facts that materially affect their rights and interest and those of the children involved in the case. The court requires that, in the discharge of this duty, a party must affirmatively disclose all information that is material to the resolution of the case without awaiting inquiry from the other part. This disclosure shall be conducted in accord with the duty of candor owing among those whose domestic issues are to be resolved under this Rule 16.2.

A party shall, without a formal discovery, request, provide the Mandatory Disclosures,...and shall provide a completed Sworn Financial Statement and (if applicable) Supporting Schedules to the other party within 42 days after service of a petition or a post decree motion involving financial issues. The parties shall exchange the required Mandatory Disclosures, the Sworn Financial Statement and (if applicable) Supporting Schedules by the time of the initial status conference to the extent reasonably possible...

A party is under a continuing duty to supplement or amend any disclosure in a timely

manner.

*Rule 16.2. Court facilitated Management of Domestic Relations Cases and General Provisions Governing Duty of Disclosure and General Provisions Governing Duty of Disclosure.
Effective January 2015.*

C.R.C.P. 16.2(e)(10) grant a five-year look-back to allocate “material assets or liabilities, the omission or nondisclosure of which materially affects the division of assets and liabilities.”

Equitable Division of Real or Personal Property

“The Court...shall set apart to each spouse his or her property and shall divide the marital property, without regard to marital misconduct, in such proportions as the court deems just after considering the relevant factors...”

CR.S. 14.10.114

Process Used in Property Division

1. Property is classified as separate or marital.

All property acquired during the marriage is considered marital **unless**:

- (a) Acquired by gift, bequest, devise, or descent;
- (b) Acquired in exchange for property acquired prior to the marriage or in exchange for property acquired

by gift, bequest, devise, or descent;

(c) Acquired by a spouse after a decree of the parties;

(d) Excluded by a valid agreement of the parties.

2. Value of the property established by appraisal/agreement.

3. Equitable distribution (i.e., equitable does not mean equal, but a division that the court regards as just after considering all factors).

4. The contribution of each spouse.

5. The value set aside to each spouse.

6. Economic circumstances of each spouse at the time of the division,

“including home or the right to live therein for reasonable periods to the spouse with whom any children reside the majority of the time”.

7. Court considers any increases or decreases in the value of separate property of the spouse during the marriage.

8. Other Factors:

- Parties may raise or argue as relevant other factors such as:

- (1) Depletion of separate property for marital purposes.

- (2) Tracing may be necessary to show that property acquired during the marriage was separate property. This can be an expensive and complex process that is often ignored by the court.

- (3) The listed factors are not exclusive.

- (4) One factor is not more important than the others.

- (5) Remember that title is not proof of whether property is marital or separate.

§ 14-10-119. Attorney's fees

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceedings under this article and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Notes: _____

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