A GUIDE TO FAMILY LAW IN MO

Family Law is the area of law involving family relationships including divorce, child-custody disputes, adoption and more. No case is the same, so the practice area can seem broad. The following guide has broken down the many areas of family law and is here to assist you in understanding key questions and terms involved in family law in Missouri. However, we do not recommend you take any legal action on your own. Contacting a professional is in your best interest because they are experienced in how to handle complex cases.

Disclaimer: The content given is to be used for informational purposes only. This content is created for your benefit and does not signify an agreement Carson & Coil will be able to represent you in the future.
Often family law involves sensitive information that can put a strain on you. At Carson & Coil, we understand the difficulty associated with family disputes and work to provide you with the best outcome. If you are looking to solve a dispute out of court, our attorneys licensed in family law mediation are here to assist. Whether you are looking to file for divorce or settle a paternity dispute, the expert attorneys at Carson & Coil can lend a hand. Contact us at (573) 636-2177 for more information!
FILING FOR DIVORCE

Filing for divorce can be a confusing and difficult time. Whether you are filing for divorce, legally separating from your spouse or annulling a marriage, the process can be tedious. To help you gather the information you need, we have put together a guide detailing some common questions about divorce in Missouri. Please note, downloading this document does not initiate a client-attorney relationship. Instead this document is to help you get a better understanding of what you are looking for.

The terms divorce, separation and annulment are thrown around often in court and can be confusing if not defined properly. In the following section, we examine the differences between the three options and how each option may affect you.

Annulment

When annulling a marriage, the court makes it look like the marriage never occurred. Although Missouri does not use the term annulment, a “declaration of invalidity of marriage” refers to the same manner of ending a marriage. There are plenty of cases in which seeking a declaration of invalidity of marriage is the best option.

In Missouri common cases include:
• Being too closely related
• One member of the marriage not having the ability to physically consent at the time of the marriage
• Not properly ending a previous marriage before legally marrying a second time.
FILING FOR DIVORCE, CONTINUED

Divorce

Different from a legal separation, divorce states the marriage is legally ended.

In Missouri law, one of five factors must be met to determine the marriage is broken.

1. Participant finds it intolerable to live with other participant
2. Participant cannot reasonably be asked to live with other participant
3. Participant has abandoned petitioner for over six months prior to filing
4. Parties have agreed to live separately for a continuous 12 months
5. Parties have not agreed, but lived separately for a continuous 24 months

Although one of the above five factors must be met to determine a marriage is broken, divorce can occur in Missouri even if no single party is at fault for breaking the marriage. When participants have irreconcilable differences, the divorce is considered a no-fault divorce.

Separation

Separation does not dissolve a marriage, but legally states the couple is living separately and division of the property will occur. This may occur if the court feels the marriage is not completely broken. It gives a couple time to determine whether or not divorce is the right option for them. Each situation is unique, so Missouri law is not guaranteed to grant separation. It is important to discuss your case in detail with your attorney to gain a comprehensive understanding of the potential outcomes.
Child custody is the legal term used to describe the relationship between a child and their guardian. Ultimately, the hardest part for many couples seeking divorce is determining child custody and how to divide time between each parent or guardian. The following section explains legal terms that are often discussed in child custody cases and how a judge may determine custody. It is important to note the following information is for educational purposes only and does not represent a client-attorney relationship.

Types of Child Custody in Missouri

When going through a divorce or separation, determining who has custody of children can be complicated and hard for a family. In Missouri, four types of custody are recognized: physical, legal, sole and joint. However, custody arrangements are not set in stone. Although the state may make guidelines, the arrangement can be customized to fit the needs of your family. Ultimately, the judge is looking for what will be in the best interest of the child.

Legal Terms & What They Mean

Physical custody refers to which guardian the child will be placed with. However, legal custody represents the decision making powers each parent has. For example, a parent can have legal custody, but not physical custody. When only one...
Legal Terms & What They Mean (Continued)

When determining the terms of custody, judges keep the interest of the child in mind. Although the child's preference is not guaranteed, a judge will ensure the final agreement is in the best interest of the child. When determining custody agreements many considerations are taken into account, including:

- The parenting plan
- Child's emotional capability to be without each parent for extended period of time
- Child's preference
- Potential relocation plans
- Encouragement of healthy relationship with other parent
- Mental and physical health of each individual
- History of abuse, neglect or other harmful activities

The list is not inclusive and every case is unique. If you are concerned about determining custody rights in your divorce case, contact an attorney today.
ADOPTION

Adoption is an exciting process at every stage. Don’t let the legal terms and steps detour you from this exciting time in your life! The following section has been created to assist you in understanding Missouri’s adoption laws and regulations. Please note every situation is unique and the following information is to be used for educational purposes only.

In the state of Missouri, adoption is eligible after the court has terminated the legal rights of the birth parents. The process can be different for every couple or individual looking to adopt, so contact an attorney for more information.

Steps of Adoption

Missouri Law states parental rights must be terminated in order for a child to be adopted. This can occur through a parent signing a waiver resigning their rights or the judge determining the parent is unfit to parent. During this time, a social worker will determine whether the future home is fit for the child. Once the home has been approved, the parents wait for full custody approval from a judge. There is no set timeline on this part of adoption, so patience is important. For more details contact a family law attorney today!

Stepparent Adoption

Adoption, in theory, may seem easy, especially if you have been in the child’s life for multiple years. In Missouri, a judge will consider the intent of the stepparent and the child’s desire to be adopted. One of the most important steps in Missouri when wishing to adopt is to respect the parental rights of the child’s non-custodial parent. Due to Missouri law’s code of honoring parental rights, it is important for a stepparent to ensure noncustodial parents approve. The process ends with a judge approving that the adoption is in the best interest of the child.
In this section, we have broken down how child support is calculated in Missouri and how it can be modified depending on your situation. Child Support can be used for education, living expenses or other necessary items the custodial parent may endure. Please note, the following sections are to be used for informational purposes only and do not signify a client-attorney relationship.

How is Child Support Calculated in Missouri?

Although every situation is different, it is customary in Missouri for a non-custodial parent to pay a minimum of $50 a month for child support. As the parents’ adjusted gross income increases, the payment is also expected to increase. Outside variables such as general assistance benefits and Medicaid are not included in the gross income, so the amount varies across situations. In order to calculate an accurate amount pay stubs and tax records are taken into account. For more information about calculating child support in Missouri, explore Missouri Supreme Court Rule 88.01.

Modifying Child Support

When circumstances arise, child support can be altered and revised. In Missouri, visitation credit is awarded to the noncustodial parent when determining child support. If visitation plans are changed and the child spends multiple nights with the non-custodial parent, the child support plan may be modified to accurately depict how much time your child is spending with each parent. It’s important to regularly update your attorney on new additions to your case to ensure you and your child are getting the support they deserve.

In addition to child support laws, paternity in Missouri involves legally establishing a relationship between the father and his child. The following section addresses the importance of paternity and what it can provide for your child.

Paternity

In Missouri, when a child is born to unmarried parents, they legally have no father unless the parents establish paternity. Many benefits come from establishing paternity, such as health and life insurance, financial support, and determining medical history. When establishing paternity, both parents can sign an affidavit stating they are the parents. When paternity is not confirmed, genetic tests can help to determine the father. However, if you find either mother or father are not willing to agree to a paternity test, contact an attorney to find the best course of action for your scenario.
DOMESTIC VIOLENCE

The following section explores domestic violence and how Missouri laws convict and address the different forms of abuse. The following content can be sensitive and should be used for informational purposes only. It does not signify a client-attorney relationship. However, if you are concerned about you or a loved one's relationship, please contact an attorney today.

Domestic violence, one of the top concerns in the country, can take multiple forms. Whether it be physical, sexual, emotional, economic or physiological abuse, domestic violence is a serious offense that can affect anyone. It extends beyond just spousal relationships, but includes sexual, dating and intimate partners, family members, children and cohabitants.

Missouri Domestic Assault Laws

To knowingly cause or attempt to cause physical injury to a member of your family or household is considered domestic assault. In Missouri, it is divided into three levels of degree. The first degree, the most extreme, involves murder or causing serious injury. The second level involves using a deadly weapon to cause serious injury. The third level of domestic assault encompasses a variety of illegal acts, including:

- Reckless attempts to physically injure a family member
- Family member being injured with a deadly weapon
- Intimidates family member, so they are afraid of immediate physical injury
- Putting a family member into a situation where there is high risk of death or serious injury
- Offensively touching a family member
- Knowingly isolating family member from others

Contact an attorney immediately if you are concerned about domestic assault in your relationship. Whether it falls under one of the three levels or not, abusers can be found guilty of other crimes such as rape, stalking, false imprisonment, sexual abuse, etc.

Do abusers show potential warning signs?

Not all abusers show the same warning signs, however abuse ultimately derives from the desire to control and hold power in a relationship. The following characteristics can be considered warning signs of abusive behaviors.

- Demanding you to stop participating in leisure activities
- Isolating you from family and friends
- Controlling or extremely jealous behavior
- Refusing to take responsibility for their actions
- Criticizing a partner's appearance

It is not an inclusive list and if your partner shows one of these characteristics it does not mean you are in an abusive relationship. Domestic violence revolves around the pattern of power and control. However, if you are concerned about your relationship, reach out for help as soon as possible.

Is it possible for abusers to change?

Although it is possible, it is very difficult. First, they must commit to stopping the behavior. This can be difficult because once a person holds the power in the relationship transitioning to an equal partnership seems unfavorable. Many times an abuser may stop physical abuse, but continue to emotionally, sexually or financially abuse their partner. If you are concerned about your relationship, contact an attorney immediately.
FREQUENTLY ASKED QUESTIONS

How should I prepare for a consultation?
Meeting with an attorney for the first time can be intimidating. To ensure you get the most out of your consultation, it is important to prepare a list of questions you would like answered. In addition, you should write important facts about your situation down so as not to forget them. Finally, you will want to make copies of important documents to leave with your attorney. Making additional copies for your records and your attorneys will assist in preventing delays.

Documents can include:
• Pay stubs/pay records, copies of tax returns, bank statements, real estate owned, motor vehicle Titles, statements for credit cards/loans, health insurance documents, life insurance policy, documents reflecting the cost of child care, etc.

Should I settle my case out of court?
Depending on the details of your case, it may be best to settle out of court. When making the decision to settle or go to trial, consider costs, time away from work and the certainty of the outcome. Every case is different, so talk with an attorney to determine the best option for you.

What is the difference between legal separation and divorce?
When legally separated, you and your partner are still legally married, but living apart. To officially terminate the marriage and become divorced, legal steps are required. There are many reasons why couples may choose one over the other. Be sure to discuss the financial ramifications that come with a divorce or legal separation with your lawyer and a financial planner.

Legal Steps for Divorce:
• Filing Divorce Petition, Asking for Temporary Orders, Serve your Spouse, Wait for Response, Negotiate a Settlement, If Negotiations Fail, then Divorce Trial, Finalize Judgement

Does the child get to decide which parent to live with during a custody case?
Based on the child's age, the judge may take into consideration the child's preference. However, when parents can not agree on custody of a child, a judge will determine what is in the best interest of the child based on a trial. During the trial, parents will be asked to provide evidence, witnesses and other statements that support their custody arrangement.

What are the steps to changing visitation or custody?
Situations can change, meaning visitation times and custody agreements may need to be reevaluated. Depending on the situation, there are multiple options to choose from.

Stipulation and Order: Parents come to an agreement and then file the changes with the court.

Mediation: Judges often request parents to meet with a mediator before taking the case to trial. Mediators are able to assist in modifying the plan and can encourage parents to come to an agreement outside of a trial.

Motion to Modify Custody: When filing a motion to modify custody, both parents will have to go back to trial and submit changes to the judge. The judge will then determine whether to change custody agreements or not.
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Carla Holste

Serving Jefferson City since 1987, Carla Holste excels in family law and mediation practices. Serving on multiple boards, receiving numerous awards and winning notable cases in mid-Missouri, Ms. Holste supports and serves her clients in Jefferson City and the surrounding areas. Throughout her career, Ms. Holste has spoken at various seminars addressing family law and written articles for Missouri Bar’s Continuing Legal Education series on child support and maintenance. She currently serves as the chair of the legislative subcommittee for the Family Law Section of the Missouri Bar.

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Gretchen Yancey

Gretchen Yancey has been an attorney for over 15 years and excels in advocating for husbands, wives, mothers, fathers, grandparents and more. Focusing on family law, Ms. Yancey is trained as a Guardian ad Litem and certified as a family court and MARCH mediator. Currently serving as the Chair of the Boone County Bar Association Family Law Committee, Ms. Yancey is involved in a number of community and legal organizations. Ms. Yancey is a part of several local organizations. She volunteers with Central Missouri Humane Society, serves on Columbia Development Committee for Planned Parenthood Great Plains and is a board member of Healthy Bottoms Diaper Bank.

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Anne Kern

Anne Kern excels in divorce, adoption, paternity, child custody and juvenile cases. Practicing family law, juvenile law and adoptions, Ms. Kern is an experienced lawyer in mid-Missouri. Residing in Columbia, Ms. Kern specializes in high asset divorce cases and custody cases. She believes it is her job as an attorney to ensure her client’s voice is heard by the judge. Ms. Kern decided to practice law because she enjoys helping people and doing what is in the best interest of her client.

Honors & Awards: Thomas E. Deacy Jr. Trial Advocacy Award, CALI Excellence for the Future Award for the study of Child Protection and the Law, National Association of Women Lawyers Award, Moot Court Top Ten Oralist
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