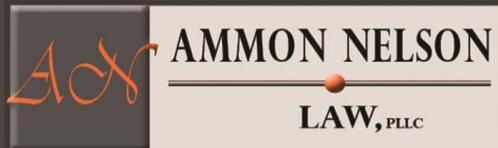


UTAH GUIDE TO DIVORCE



© 2013 Ammon G. Nelson

INTRODUCTION

Welcome to the Ammon Nelson Law Guide to Utah Divorce. You are probably reading this guide because you have questions about divorce. This guide will give you general information about topics such as how to prepare for divorce, how divorce procedure works, what issues are involved in a divorce, how to protect your children from the negative effects of divorce, financial issues, how to choose a lawyer, and how to maintain healthy emotional, psychological, and physical wellness even though you are in the middle of a divorce. Of course, I cannot provide answers to every single specific divorce question in this guide. Divorce law is the product of dozens of state statutes, thousands of cases, and the unique circumstances of every client. Access to state statutes and case law is available at your local law library. In Ogden, the law library is on the second floor of the Weber County Library at 2464 Jefferson Ave.Ogden, Utah 84401. This guide is meant to provide general answers to many of the questions I hear every day from clients who are considering divorce as the next step in their life.

Many view a divorce as the last ugly step of a failed marriage. I have found that in many cases where families have reached the point where divorce is inevitable, a divorce can be the first step toward a healthy, happy, and productive future. Hopefully, after reading this guide, you will feel more comfortable about how to proceed with your potential divorce case.

DISCLOSURE/WARNING

This guide is not meant to provide legal advice. I am not your lawyer (unless you have signed an attorney-client contract with me), and we do not have an attorney-client relationship. You should always consult an attorney in order to receive advice regarding your specific and unique legal situation. I provide free consultations to people who are considering divorce, and the last section of this Guide provides tips for choosing a divorce attorney.

CONSIDERING A DIVORCE

Divorce can be a very difficult step to consider. You are likely reading this Guide because you have reached a point where you can see no other way to continue in your marriage. I have no doubt that at some point during your marriage you valued your relationship with your spouse. Some of you reading this Guide have tried everything to save your marriage, others of you are reading this Guide because you are unsure whether divorce is the proper next step for you. I value marriage, and I believe it is an important union that should be saved if possible. At the same time, I am a divorce attorney, and I meet with people all the time who need to end their marriage and move forward with their lives. As someone who values family and marriage, and as an attorney who recognizes the necessity of divorce in many situations, I have a few suggestions for you to consider before filing for divorce. Some of you have likely tried these things, but I have listed them below in case you have not.

- Meet with a marriage counselor
- Have a weekly date with your spouse
- Speak with ecclesiastical leaders
- Discuss your marriage concerns with your spouse

I understand that these suggestions require both parties in the marriage to participate. If your spouse is unwilling to fully engage in efforts to repair your marriage, it is probably a good sign your spouse does not value your marriage the same as you. However, if you are both willing to make an effort to save your marriage, and that is what you really want, then your marriage probably deserves your best efforts in doing so. If you are in an abusive relationship, where you are being abused either physically or emotionally, you must make sure you and your children are safe and engaging in efforts to save your marriage will not be effective or safe for your family. If you have decided that your marriage is beyond saving, a divorce can be the first step toward a healthy, balanced, and new beginning for you and your family.

PREPARING FOR DIVORCE

If you are considering a divorce from your spouse, you need to take a few steps to prepare for the actual process of getting a divorce. You will need several things. First, you will need a place to live if you are planning on leaving the marital home, you will need money to live on and pay for your attorney, you will need transportation, and you will need support from either friends, family, and/or professional counselors.

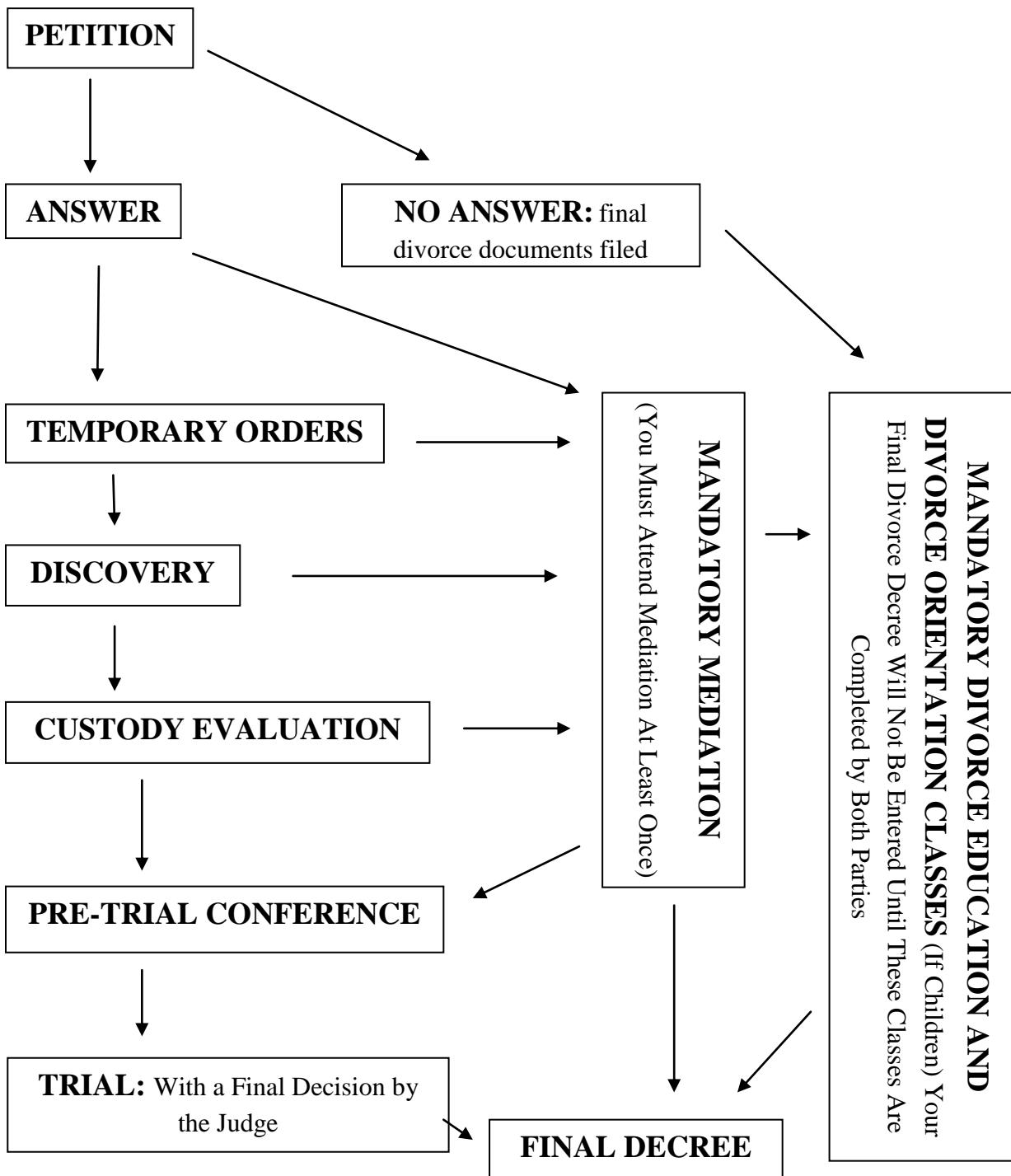
- **A Place to Live:** If you will be staying in the marital home with your children, then you will need to figure out a way to keep paying on your mortgage at least for a few months. Most spouses will not continue to pay for a house they are no longer living in without a court order, and it generally takes a few months to get a court order.
- **Reasonable Accommodations:** If you leave the marital home, you will need to find a place to live that has suitable accommodations for your children. The Court does not like to have children sharing rooms with parents, and if the children are older, it does not like children of the opposite sex sharing a room. The Court also does not like children going to apartments or houses where there are a bunch of roommates, because it is too difficult to gage whether those roommates are appropriate to have around the children. If you do have roommates, make sure your children have their own rooms with a private bathroom and living area. Your best course of action is to get your own place.
- **Money:** Divorce is a very emotional separation. I recognize that in some situations, you just need to get out to protect your physical or emotional health, and there is no time to plan. It's ok, we can figure that out later. But, if you are considering divorce, and you are still living with your spouse, you need to plan for how you will live. Open a separate bank account at a new bank where neither one of you has an account. Take some of the funds you and your spouse have earned during the marriage, and put it in that new bank account. In order to know how much you will need, consider that you will need to pay for housing, food, gas, utilities, car payment, an attorney, credit cards, other monthly bills, and any other regular expenses. If you are in a position where a court will award you alimony, you still need to have some money set aside because the court can take several months to hear your case for alimony, and even then, may not award you what you need, especially if you and your spouse are currently suffering financial hardships. Deciding how much money to set aside is a difficult decision. I cannot tell you how much to set aside. I can suggest you consider two factors: Number one, if you do not set aside money for your divorce, when you file for divorce your spouse will likely take you off of all the joint accounts and cancel your joint credit cards. Number two, if you take all of the marital money, the court will likely be unhappy with you at some point. You should consider speaking with an attorney to get an idea of how much money you can take without hurting your divorce case. Finally, make sure you only spend money on essential items and services to avoid being accused of squandering marital funds.

- **Transportation:** If you plan on keeping custody of your children while you are in the process of getting a divorce, make sure you keep the car that can transport all the children. The court will ultimately divide all of your assets between you and your spouse, but you want to make sure you have reliable transportation sufficient to transport your children if necessary while the Court figures out who should have what property.
- **Support:** Most people who file for divorce do not consider the emotional strain it can have on them. If they do think about the emotional strain, they do not consider how those emotions can negatively affect their divorce. Most attorneys do not provide resources to their clients to help them cope with the emotional aspect of a divorce. Many people end up paying their attorney way more than they should because they use their attorney as a psychologist. Unfortunately, their money is wasted because attorneys are not psychologists. If you are already seeing a counselor or therapist, keep seeing them. You can combat the emotional strain of a divorce without negatively affecting the outcome. I suggest exercise, psychologists, ecclesiastical leaders, spas, family, fun activities with your children, and other support that will help you cope with the emotional aspect of a divorce. Let your divorce be the first step toward a brighter future, not the last step of an unsuccessful relationship.

STARTING A DIVORCE

When you are ready, it will be time to start your divorce. Every time I provide a consultation to a client, inevitably, the client asks "How does a divorce start?" That is an excellent question. I created a general chart that I share with clients to show them an overview of how a divorce starts, its progress through the courts, and ultimately how a divorce concludes. You can find that chart on the next page of this Guide. But, to answer the question, a divorce starts with a Petition. A Petition is like a Complaint in any other kind of civil law suit. Once a Petition is filed, a divorce can take several paths procedurally. Those are outlined in the chart. In most cases, the parties are able to reach a final agreement, called a Stipulation, resolving their divorce in mediation. When the parties simply cannot agree on a particular issue or issues, a judge will ultimately decide the final terms of the divorce. As you can see from the chart, there are many paths for a divorce, and hundreds of ways to ultimately resolve the conflict. A case can also move forward and backward in its journey toward resolution. You are free to attempt to navigate your divorce on your own, or you can consult an attorney to discuss the best path for resolution in your particular case. The last section of this Guide will give you a few tips on how to pick an attorney.

Utah Guide to Divorce Procedure Chart



CHILDREN

One of the most important and emotionally charged issues of a divorce is who will have custody of the children. If you do not have children, your divorce will probably be more straight forward. If you have children, there are some things you need to know as you start down the path of divorce. You need to know how courts think about children, how child support works, and how a parent's behavior can hurt their chances of being awarded time with their children.

Custody: Courts look at the best interest of the children when determining custody. Two types of custody exists: Physical and Legal. Physical custody is who the child lives with most of the time. When considering physical custody, the Court wants to make sure the children are placed in a home where they are safe and able to thrive emotionally, intellectually, and physically. The court considers a long list of factors when determining which parent should have physical custody of the children, how much time each parent should have with the children, and whether both parents should have a say in decisions regarding the children. Legal custody is who gets to make decisions regarding the children. The State of Utah pretty much assumes both parents are capable of working together to make decisions regarding their children. That presumption can be rebutted if you have a good reason.

Child Support: Child support is a calculation based on Utah state statute. There is a calculator provided by the Department of Health at <https://orscsc.dhs.utah.gov/orscscapp-hs/orscscweb/action/public/custodyWorksheet/show>. While the amount can be adjusted slightly if negotiated correctly, in general, the amount of child support a person will pay is pretty fixed by the statute. The basic calculation takes into account your gross monthly income, your spouse's gross monthly income, the number of children from the marriage, how many overnights each party has with the children, and whether either party pays support to other children. Usually, the parent who has the children the least amount of time is the parent ordered to pay child support. I wish I were able to outline all of the ways child support can be manipulated, but this Guide would become more of a text book than a guide if I were to do so.

Your Behavior: Your behavior during the marriage, immediately prior to your divorce, and during your divorce can affect your case for custody of your children. The Court generally does not like it when parents are addicted to drugs or alcohol, abuse their spouse or children, have recent criminal histories, leave their young children home unsupervised, do not have proper living arrangements for children, do not support their children, abuse their spouse in front of the children, leave the children with a mistress or girlfriend/boyfriend, move in with a significant other with a criminal record or addiction, or do anything else with the children that is not age appropriate or which brings into question your ability to keep the children safe and healthy. As with all things in a divorce, your exact circumstances are unique and how a court will deal with your situation depends on state law, case law, and what the Court feels is equitable. As mentioned above, you can access cases at the local law library, or you can discuss your case with an attorney.

Effects on Children: Divorce effects all children differently. I am not a psychologist, but there are several things you can do to minimize the negative effects of your divorce on your children and help your legal case. If you and your spouse have been fighting in front of the children, then the possible

negative effects of the divorce have already started. There are ways to minimize the damage a divorce can have on children. Here are a few guidelines to follow:

- Never talk negatively about your spouse to your children or in front of your children (besides being detrimental to your child's psychological well-being, the courts do not like it).
- Respect the fact that your child loves your spouse, even though you may not.
- Consider making a psychologist available to your child so that the child has someone to talk to who is not involved in your divorce.
- Consider reading the *Co-Parenting Survival Guide* by Elizabeth Thayer Ph.D and Jeffrey Zimmerman Ph.D (This book is often recommended by one of the Utah Second District Court Judges from the Ogden Department).
- Maintain your own psychological and physical health. It is really hard on children when their parent is stressed out, depressed, or unable to be there for them.

WHAT HAPPENS TO YOUR STUFF

You probably agree that if you have children they are the most important asset discussed in a divorce. However, the court will also want to divide your personal property, real property, and debts. The general rule is, if it was acquired during the marriage it will be divided equally between the parties. This includes retirement accounts, cars, homes, debts, bank accounts, businesses, tax returns, etc.

Like all legal rules there are lots of exceptions. For example, whether the property was inherited or earned during the marriage, whether one party has been secretly racking up debt, whether one party is spending marital assets on a paramour, etc. The list is endless. However, even with all of the many exceptions property acquired during the marriage with your spouse in the divorce no matter whose name is on it. As with most things in divorce, your situation is unique and you are free to agree to any division of assets. The best way to know if you are agreeing to a fair deal is to speak with an experienced attorney.

ALIMONY

Alimony is a frequent topic in initial consultations. You likely have questions about whether you are entitled to alimony from your spouse, or whether you will be required to pay alimony. Alimony is a law based on equity which means a judge looks at a series of factors to determine whether alimony should be awarded and how much that alimony should be. Alimony is not awarded in many cases. The factors the Court will consider are found in Utah Code Ann. §30-3-5. In addition to the Utah Code, Utah courts have added further analysis and factors which the Court will consider when determining alimony. You can review the statutes and cases to determine if your situation merits alimony. Attorneys who deal with divorce matters regularly can also determine the likelihood alimony will be awarded in your case.

HIRING AN ATTORNEY

Having an attorney can be a valuable resource as you pursue your divorce. Besides knowing the law, being familiar with the courts, and having experience, attorneys are also trained to negotiate, argue, and write persuasively. All of these skills will increase your chances of reaching your goals in your divorce. At the same time, hiring the wrong attorney can hurt your case by causing delays, increased expense, and frustration. Here are several tips to consider when deciding which attorney to hire:

- **Experienced in Divorce:** This tip seems obvious, but you want to make sure your attorney has experience with divorce cases. Whether an attorney has experience handling divorce cases does not always depend on how long they have been practicing law. An attorney that has been practicing civil litigation or bankruptcy for ten years will be less experienced in divorce law than an attorney who has been practicing divorce law for two years. Also, you need to look at what percentage of the firm or attorney's cases are domestic cases (divorce, custody, etc.). Compared to an attorney who handles predominately divorce cases, an attorney who handles a divorce case once per year will not have up-to-date knowledge to serve your legal goals.
- **Review The Attorney's Free Pamphlet:** A great way to determine if an attorney knows what he is doing is by asking to review his free pamphlet on divorce. The pamphlet should outline the general topics common in a divorce and give you suggestions on how to cope with the non-legal aspects of divorce.
- **Personality:** Make sure when you are interviewing attorneys to pay attention to whether you can get along with the attorney. Handling any legal case requires a team approach between you and your attorney. I often hear that people are looking for a "bulldog" attorney who will strike fear into the heart of the opposing attorney. I have found that attorneys are not afraid of other attorneys, and a "bulldog" approach often makes your case cost more because not only does the opposing counsel not want to deal with your obnoxious attorney, but the judges are usually tired of that attorney's "bulldog" tactics as well. It is better to get along with your attorney, and to make sure your attorney has a good relationship with other attorneys to ensure your case can be resolved quickly and efficiently.
- **Price:** Most attorneys bill for their services by the hour and will require a retainer up front. The current trend is for attorneys to request a lower retainer up front from clients because it gives the illusion that they are somehow cheaper than other attorneys. While some attorneys might be slightly more quick at producing legal documents, you should know that overall you will likely spend much more than your retainer on your divorce. The price you should look at is the hourly fee because that is the amount you will pay for each hour your attorney performs work. For example, it is better to pay a \$3,000.00 retainer to an attorney that bills \$225.00 per hour than to pay a \$1,000.00 retainer to an attorney who bills at \$250.00 per hour. If both attorneys spend

thirty hours on your case, you will pay \$6,750.00 to the first attorney, but \$7,500.00 to the second, even though the second attorney only asked for a \$1,000.00 retainer. A few attorneys are using flat rates for certain services. For example (and I am making up amounts for illustrative purposes), they will do your petition for divorce for \$500.00. They will file for temporary orders for \$3,000.00. The positive side of this type of billing is that you know exactly what you will have to pay. The negative side is that your attorney might not spend very much time on your case because the less time he spends, the more money he makes. He may even give the work to his paralegal to do.

- **Who is Doing Your Legal Work?:** That leads me to the final tip. Make sure you are hiring the attorney, not his paralegal. In order to cut costs, and handle more cases, some attorneys employ a paralegal who performs much of the legal work and drafting of your legal documents. The attorney just signs the documents. Paralegals are trained to do basic legal work, like setting up files, coordinating cases with the court, writing letters, or helping clients on the phone. Most paralegals have not attended law school, and most have not read or studied divorce law. While it might be cheaper for you to have a paralegal doing your legal work, it could hurt your legal case. Is saving a few bucks really worth the risk? Make sure you find out from each attorney you talk to whether the attorney will be performing your legal work or whether he will pass it off to his paralegal.

CONCLUSION

The divorce process is unique because every case has different factors and circumstances. If you have decided to file for divorce, you can choose to make that divorce the first step toward a healthy, balanced, and productive future. Whether you decide to navigate the divorce process without an attorney, or whether you choose to hire an attorney, the information in this guide has outlined how to prepare for divorce, the basic divorce process, how custody of your children will be determined, how to protect your children from the negative effects of divorce, how your property will be divided, and how to choose an attorney.

ABOUT THE AUTHOR



Ammon Nelson is the sole member manager of Ammon Nelson Law, PLLC. Ammon's office is located at 2650 Washington Blvd., Suite 202, Ogden, Utah 84401. Ammon has been providing legal services since 2009. After finishing law school, he focused his practice on family legal services. Ammon practices divorce and custody law, estate planning, family business planning, and personal injury services, although 80% of his practice since graduating law school have been focused on divorce and custody cases. Ammon helps his clients navigate their divorce, reach their legal needs, and encourages them to maintain their overall physical and psychological wellness. Ammon has experience arguing in court, negotiating with other attorneys, and ultimately taking cases to trial if necessary. Ammon provides other educational materials on family law issues on his website: www.Ammonnelsonlaw.com.