

# Guide to Nevada Divorce

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## We understand.

Going through a Nevada divorce and/or custody battle may be one of the toughest challenges you will ever face. We know you likely spent years and perhaps even decades trying to make your marriage work and you didn't come to the decision to divorce lightly. Seeking out a qualified Nevada divorce attorney can be extremely helpful. We created this eBook for educational purposes only.

It should not be construed as legal advice or a legal opinion as to any specific facts or circumstances. This information is based on general principles of Nevada law at the time it was created and you should be aware laws frequently change. Moreover, the laws affecting you may differ depending on the circumstances. You should consult with a qualified attorney in your own state or jurisdiction concerning your particular situation. This eBook does not create a client-attorney relationship with Drizin Law.



# The Divorce Process

Five important considerations.

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## 1. Child Custody

The primary focus in custody determination is to advocate for the best interest of the child/children. Several factors are considered and will be discussed in more detail on page 11.

## 2. Child Support

The Court is required to order child support payments in all cases where children are involved. The amount of child support is based upon a Nevada formula which will be discussed on page 10. However, you should be aware there are always exceptions to the formula!

## 3. Spousal Support

Spousal support (if any) will need to be determined. The amount of spousal support depends upon many factors such as the length of your marriage, each spouse's earning capability, and their respective financial ability and need.

## 4. Asset Division

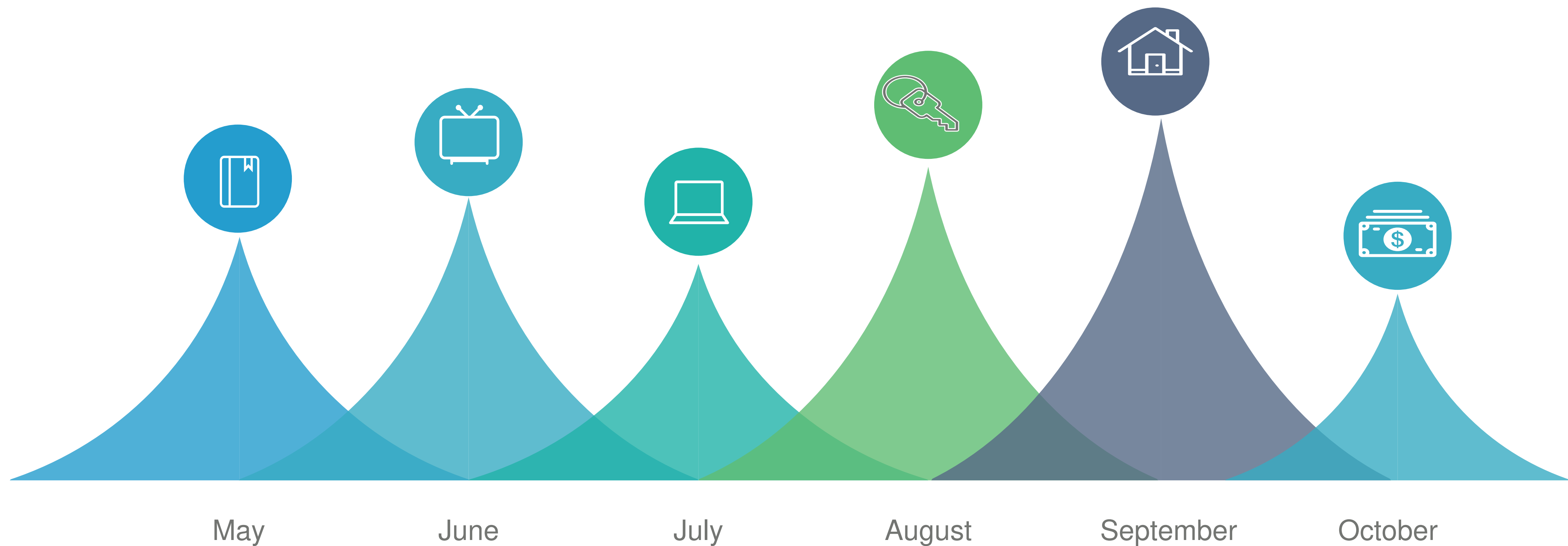
The court will decide which assets will be allocated to each spouse. This process involves which assets are community as opposed to separate assets.

## 5. Debt Division

You and your spouse will also need to have your debts divided. This becomes complicated as your creditors don't care about your divorce and who the Court orders to pay the bills. They just want their money.

# How long does a divorce take?

It depends on how quickly you and your spouse can agree on the issues. It can take as little as a few months to over a year for contested cases involving custody or asset allocation issues. A competent attorney can ensure the process keeps moving forward.\*



Keep in mind, that a divorce can finalize significant issues that have a lasting impact on how you live. Moving as fast as possible is not the goal, you will want to retain experienced counsel who can help guide you to carefully consider all the issues and decide the best options for you and your family.

# How the Nevada Divorce Process Starts

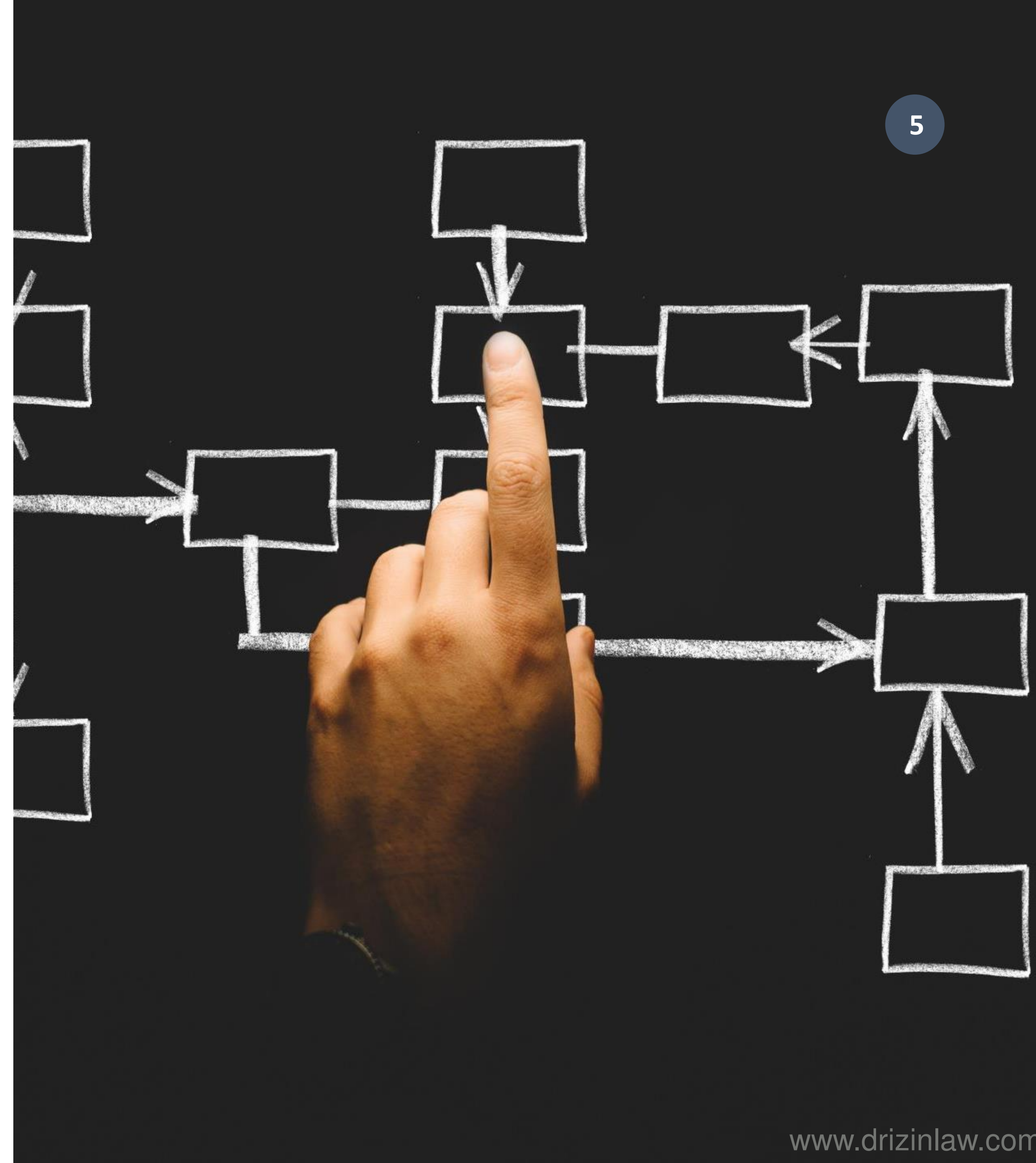
To begin the divorce, a legal document called a complaint is filed. The plaintiff is the person who files the complaint, and the defendant is the other party named in the complaint. Generally there is no advantage to filing the complaint. However, if you need some legal relief and you do not petition the Court, it will be held against you later. Accordingly there are some tactical decisions which should be made regarding particular types of filings.

After receiving the complaint, the defendant has 20 days to respond.

If children are involved, you participate in mediation. Although you are not required to come to a resolution, your participation is mandatory. If you cannot reach an agreement, the Court will hold a trial and issue a decision.

If the parties are unable to reach a mutually accepted agreement, the case will be scheduled for trial. Before you go to trial, the parties will participate in discovery. Discovery may include:

- Requests for documents, such as bank statements
- Written questions and answers under oath
- Subpoenas





# The Court must do its best to equally divide the marital assets

The court is directed to make an equal division of the community assets and debts (also known as community property) at the time of divorce. However, there are times the court may award certain property to one party over the other. An experienced attorney will ensure that you receive all that you are entitled to by law.

If either party **inherits** an asset during marriage, it is generally awarded to them as their separate property. Similarly, assets acquired prior to marriage are considered separate property. Things get complicated when one spouse inherits money but then commingles this money by depositing it in a marital bank account where paychecks and other community property is deposited. This can pose a problem down the road if a divorce petition requests to award the inheritance to only one of the parties.

It then becomes necessary to trace the inherited money to its original source. This can be problematic if too much time has passed or significant activity has occurred in the account so that the inheritance has lost its separated nature.





# What's Considered Community Property?

Nevada is a community property state. Community property is everything a married couple acquires together, including money earned, debts incurred, and property acquired during the marriage. The courts generally divide community property equally at the time of divorce.



## Real Estate

Any real property that was purchased while you were married.\*



## Your Vehicles

Any vehicles purchased when you were married.



## Checking/Savings/401K/Retirement

The total of all cash and investments that were accumulated while married.



## Debt

Any debt incurred during the marriage: Mortgages, Autos, Credit Cards



## Personal Property

Any personal property purchased during the marriage.



## Businesses

Any businesses that were created or expanded during the marriage.

\* If you owned property prior to your marriage, a portion of that asset may be considered community property if the community funds helped pay the mortgage even if it's only in your name.





# Understanding Separate Property

While the courts generally divide community property equally at the time of divorce, separate property is not considered to part of the community assets. Below are just a few examples of separate property.



## Pre-Marital Real Estate

Any real property that was purchased by one person prior to marriage.\*



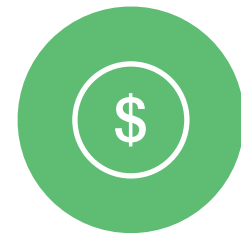
## Pre-Marital Autos

Any autos owned outright prior to your marriage.



## Checking/Savings/401K/Retirement

The total of all cash and investments that were accumulated before your marriage.



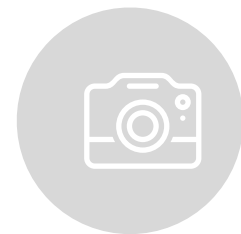
## Inheritance

Any inheritance received before or after marriage by one party that is not co-mingled with marital assets.



## Pre-nups

Certain assets already assigned in prenuptial agreements.



## Personal Property

Personal property acquired prior to the marriage.

\* If you owned property prior to your marriage and then your spouse moved in, a portion of that asset will likely be considered as community property since the community funds helped pay the mortgage.







# Overview of Spousal Support

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Alimony also known as “Spousal Support” is discretionary and depends upon many factors including the length of your marriage, each spouse’s earning capability, and their respective financial ability and needs. Nevada statutes set forth numerous factors for the Court to consider in making an award of alimony. In addition, there are several different types of alimony that can be awarded and depending on the circumstances, alimony may be awarded to either party.

**Rehabilitative Alimony:** Rehabilitative Alimony is fixed spousal support paid for a specific period of time and is intended to help the recipient become self-supporting.

**Temporary Alimony:** Temporary spousal support/alimony is given when the parties are separated and the divorce is not yet final. Spousal Support is given so that the spouse may maintain his/her lifestyle between the time the couple separates and divorces.

**Permanent Alimony:** Permanent Alimony is spousal support paid for an indefinite period of time. The amount of money is ordered by the court to be paid by one spouse to the other at standard intervals, which generally continues until modification of the judgment takes place, one spouse passes away, or the receiving spouse remarries. The amount of permanent alimony paid can be reduced by the courts.

**Lump Sum Support:** Nevada allows a spouse to pay the total agreed upon alimony at the time of divorce.





## Determining Child Support.

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Nevada Child support is set by a formula. The supporting parent pays a percentage of their gross monthly income as follows:

- (1) For one child, 18 percent;
- (2) For two children, 25 percent;
- (3) For three children, 29 percent;
- (4) For four children, 31 percent; and
- (5) For each additional child, an additional 2 percent.

This formula is easy to apply if one parent has primary physical custody. The supporting parent pays the corresponding amount. However, most parents share joint physical custody. Therefore, it is necessary to figure out both parent's incomes and offset the difference between the two. As always, there are exceptions and deviations from the formula. A parent who also pays for health insurance, supports other children from another relationship, or incurs child care expenses, will alter the amount of child support a court will order to be paid.



# What you should know about child custody.

The Nevada legislature recently updated the child custody laws to favor joint custody between separating parents. However, there may be reasons to award one parent more custodial time over the other. The primary focus in custody determination is the best interest of the child. Some of the factors the courts may consider include:

- The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference. This usually means at least age twelve. However, some judges will not allow older teenagers to make decisions regarding their living arrangements.
- Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- The level of conflict between the parents.
- The ability of the parents to cooperate to meet the needs of the child. Some parents just have too much conflict to work together to raise their child. This means the Court may give custody to one parent over the other if they simply cannot co-parent.
- A child may have special needs that cannot be adequately met by one of the parents versus the other.
- Relationship of the child to other siblings.
- The existence of domestic violence. If one of the parents has committed domestic violence, then there is a presumption that the offending parent may not be suitable for joint custody.







# Domestic Violence .

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If domestic violence is involved in your divorce or custody case, it's very important you retain legal counsel who is familiar with the legal issues surrounding your situation. A competent domestic violence lawyer will have both prosecuted and defended the allegations of domestic violence so that they understand both sides of the equation.

Domestic Violence carries special penalties in addition to a general battery conviction. In addition, the domestic violence statutes of Nevada define injury to an ex-partner's pet as domestic violence.

With respect to child custody determinations, domestic violence raises a presumption that the perpetrator is not fit to have primary or joint custody of their child ([NRS 125.480](#)).

Whether you are the person who has been the victim of abuse and is requesting a protection order, or the person who the protection order is against, make sure you ask your attorney about their experience in handling such cases as this can have a significant impact on your divorce.





## Remembering what's important.

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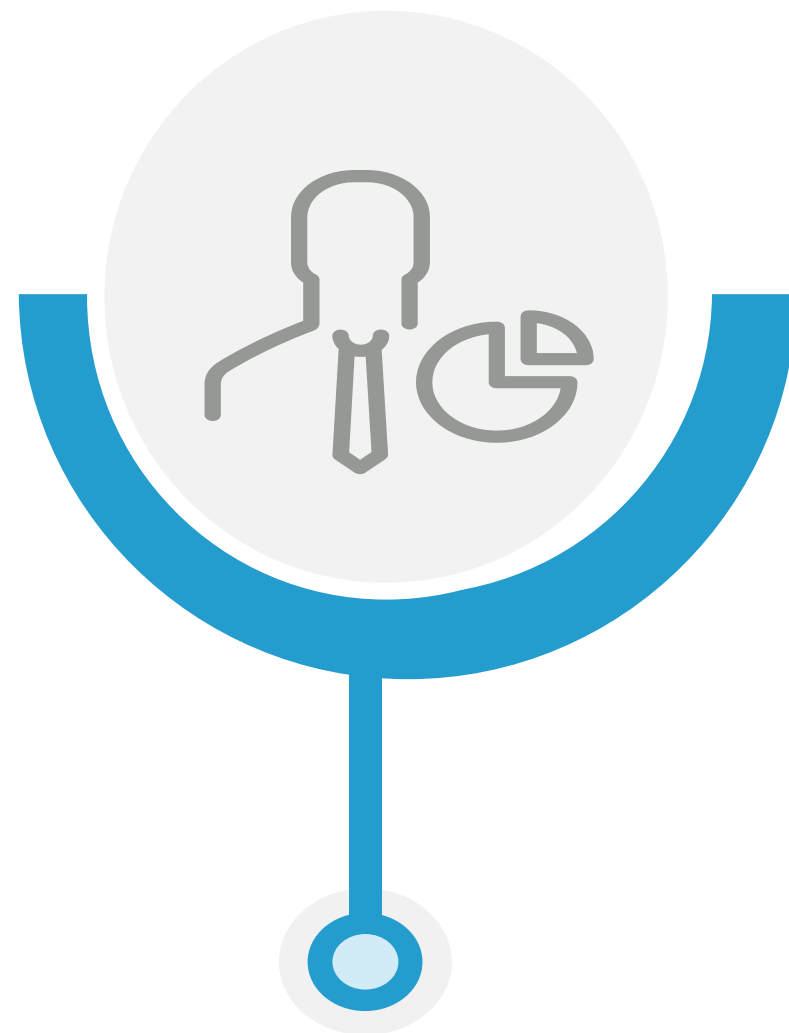
Every divorce is unique and if you have children, the decision to divorce is going to impact not just you and your spouse. The experts generally recommend that at least one parent tell the children that a divorce is happening. You may wish to do this at the start of a weekend to give them a few days to process the information before returning to school. Every child will react differently. A teenager will have a greater understanding of the situation and will have different questions and concerns than a younger child. Regardless, avoid too many personal details. The Court forbids a parent from directly involving a child in the litigation. For younger children, it may be as direct as saying, mommy and daddy are not going to live together anymore but each of us love you very much and always will. Reassure the child that this is not their fault. It will be an emotional time for everyone and while it is the end of your marriage, it is not the end of your family.

You may notice your child cries more, has mood swings, anger out bursts or is withdrawn. Allow them some freedom to express their emotions and their feelings. Although this is difficult to witness, many experts believe it is not the divorce itself that can negatively impact the child but rather how parent's handle the divorce. Children are very observant and watch their parents for cues of how to react. You can serve as role model, stay calm, take care of yourself and don't vent about your spouse or the divorce process when your children are present.



# Tips on Hiring an Attorney

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Meet face to face.

This is the best way to get a gut feeling. You will likely have to share personal information and discuss outstanding problems.



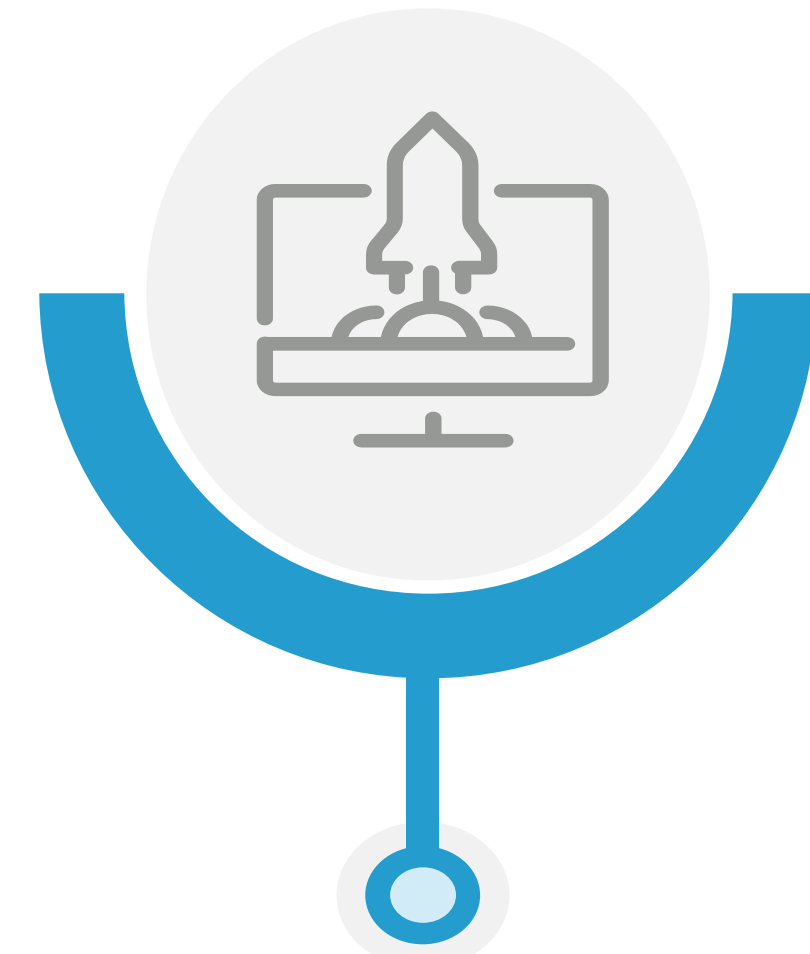
Prepare for the meeting.

Don't waste your time or that of the attorney. Make a list of questions ahead of time.



How well do you work together?

Consider how the attorney addresses your questions. Do you feel rushed? Are answers easy to understand?



Evaluate the initial experience.

Is the attorney and his assistant accessible? Were you able to talk to them at your initial phone call? If you left a message, did they call back?





# What not to do.

There are a few things you should avoid doing that will undermine your efforts to successfully navigate the divorce and custody process.

- Don't send angry or emotional texts or voicemails to your spouse. Avoid making financial or custody threats. Remember, a judge might read the angry texts you send.
- Don't threaten to withhold financial support in retaliation to something your spouse has done or said.

- Don't spend frivolously on vacations, expensive gifts or pricey dinners, gambling or shopping sprees. As long as you are still married, you're spending community assets.
- Avoid disagreements and blow-ups in front of your children. They may already be in grief, fear or anger and witnessing their parents fighting or angry will not help them heal.
- Don't cancel or stop your spouse's car or medical insurance. Until you are divorced you are still responsible for your spouse's medical and other bills.
- Don't sell or hide assets. Speak with your divorce attorney for more best practices or if you have questions.





# The problem with flat fee divorces.

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There are many options for people seeking a divorce, everything from going to the forms store and filling out the paperwork yourself to hiring an attorney at their hourly rate or a flat fee. There can be several issues with flat fee divorces and while they may work for some people, we want to point out at least a few of the pitfalls we have observed.

1. Not every attorney, especially those that have significant experience and are highly skilled, offer a flat fee divorce option. If you limit your search to only attorneys that offer a flat fee, you may have fewer options in retaining experienced counsel.
2. When you sign a flat fee agreement, you must be very careful about the language used in the contract. Many flat fee agreements state they do not cover custody issues or highly contested matters.
3. If you do sign a flat fee agreement and run into contested matters regarding custody of your children or your case goes to trial, you will likely have to sign an additional fee agreement and pay additional money. Most flat fee agreements only cover the divorce process up to a certain point.

Generally it's best to hire an experienced attorney who will only charge you what is necessary to finalize your divorce. For more ideas on how to save money on your divorce, refer to page 20.



# Common Questions and Answers

## Can't I just fill out the paperwork myself?

It's generally not a good idea to try to handle your divorce paperwork on your own. Most spouses rarely agree on everything and hiring an experienced attorney can assist you in advocating for you and your children's best interest.

## How much does a divorce cost?

The price can vary depending on what needs to be divided and finalized. As a general guideline, most divorces are finalized in the range of \$2,500 to \$10,000. However, for highly contested matters, the legal fees can increase substantially.

## Do we have to sell our house?

It depends. Typically, any assets that are joint assets need to be divided equally. If you have other assets that can offset your equity in the house, you may not need to sell your home. You and your spouse may decide on a workable solution where one party stays in the home with your children and other assets are allocated to the spouse who moves out.

## What do we do with the debts?

If the debts were acquired during the marriage, the debts will need to be divided according to Nevada law.





## Common Questions and Answers

### **Do I have to split my 401K?**

The money deposited into your 401K during the course of your marriage is considered community property and will need to be divided. There is a way to do this without any tax consequences upon divorce.

### **My spouse is saying they won't sign. Now what?**

According to Nevada law, a judge can sign your final divorce decree. It is not necessary that both parties sign the document for your divorce to be finalized.

### **I never handled the finances, can you help me?**

We know the divorce process can be overwhelming. Your legal counsel will assist you and oversee the division of assets. Do your best to gather as much account information as possible.





# How can I save money on my divorce?

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This is an excellent question and we have several suggestions. First, don't just hire the first divorce firm you speak with. Many times people are in a fog and are unsure how to proceed. They hastily hire a divorce attorney without looking at reviews or asking any details. Consult google reviews or ask a friend if they know a qualified divorce attorney.\*

Second, don't get hung up on the initial retainer. Consider the firm's hourly rate and as well as how they bill. Some firms bill every item in either 30 minute or 15 minute increments. Drizin law bills in tenth of an hour increments i.e. every six minutes. How does this affect you? Let's say the hourly rate is \$350 per hour and your attorney makes a six minute phone call to the opposing counsel:

This would be billed as follows:

|                                 |         |
|---------------------------------|---------|
| The half hour minimum firm =    | \$175   |
| The quarter hour minimum firm = | \$87.50 |
| Tenth of an hour firm =         | \$35.00 |

This can surely add up over the course of litigation. People tend to focus exclusively on the initial retainer amount when the hourly rate and billable increment time is what is more important.

Third, don't think you will definitely save money by hiring a newly admitted, less expensive attorney over a more experienced attorney who has a higher hourly rate. The experienced attorney will likely save you time and money.

Fourth, make sure you follow up on everything your attorney asks you to do. When your attorney or their staff has to contact you to follow up on missing documentation, you are billed for this time.

Fifth, check your revenge at the door. It's OK to be emotional but retaliation against your spouse for what you perceive to be his or her wrongful acts against you only make the case more expensive. (Even if they may deserve it!) Not complying with Court orders for payment or withholding children from visitation may feel good temporarily, but it only adds to the time spent on your case, and also the bill.







## **What if I already have a divorce attorney and my case is not progressing forward?**

It's true that not all divorce attorney's possess the same skill set. While it's generally best to continue with the attorney you started your divorce case with, it's your right to hire a new attorney.

Generally, what you'd want to do is seek out new counsel and explain your situation. You will have to come up with a new retainer. The good news is, you'll have a fresh set of legal eyes looking at your case. Once the new attorney is hired, they will file a Substitution of Attorney form on your behalf, letting the court know you have new counsel.

Your prior attorney will then be obligated to transfer your case over to your new attorney. Only you know if it's time to make a switch. At the end of the day, you are the client, and you deserve to have the best representation. So if your divorce case is proceeding at a snail's pace, consider seeking a second opinion. It could end up saving you a lot of time and money when you have competent legal counsel who are actively working your case and proceeding quickly toward closure.





## How a divorce impacts your estate plan

By the time your divorce is finalized, you may be tired from the whole process. But you are not done. You must revisit your estate plan. Your will or trust most likely still names your spouse as your primary beneficiary. Any insurance policies you have also probably still list your spouse as the one person to receive all your money when you die. If you have children, now is a good time to make them the beneficiary of your estate instead of your former spouse.

If they are still minors, perhaps putting someone you trust in charge of the money would be beneficial as it is assumed your former spouse is now not the proper choice. If you never had a will or trust in the first place, now is the time to do what you have put off. At some point, it will be too late to make sure your estate passes the way you intended.



# Things to Bring to Your Consultation

You'll want to make the most of your initial consultation with your attorney.

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## 1. Personal Info

Personal information for you, your spouse and children. Name, date of birth and social security number



## 2. List of Assets

- A. Bank accounts
- B. Brokerages account
- C. House
- D. Cars (year, make model, and debt)
- E. Business holding, including investments in corporations and limited liability companies.
- F. Other real estate
- G. Jewelry
- H. Safe deposit boxes



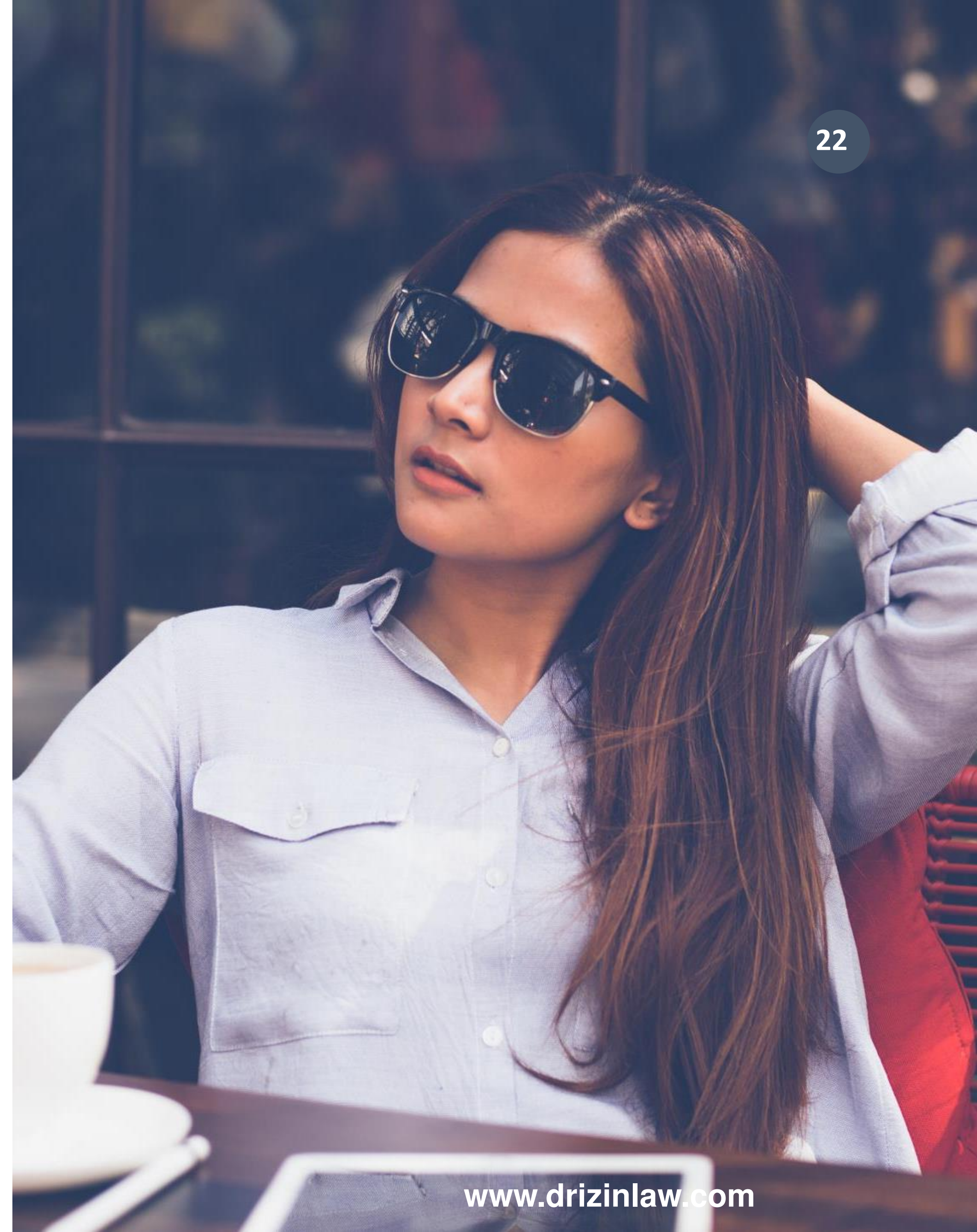
## 3. Retirement Accounts

Retirement accounts, and pensions, 401Ks, and IRA's, including beneficiary assignments.



## 4. List of Debts

List of all debts, including mortgages, student loans and credit cards including current balances and minimum payments.





For the division of assets, the following two pages are helpful in determining a starting value of your current assets, liabilities, income and expenses.

| Asset              | Value | Mortgage or debt associated with asset |
|--------------------|-------|--|
| Home               |       |  |
| Rental Property    |       |  |
| Cash/Savings       |       |  |
| Autos              |       |  |
| Stocks/Investments |       |  |
| 401 K/Retirement   |       |  |
| Personal Property  |       |  |
| Other (Specify)    |       |  |
| Total              |       |  |

| Income          | Your Monthly | Spouse's Monthly |
|-----------------|--------------|------------------|
| Wages           |              |                  |
| Wages           |              |                  |
| Other (Specify) |              |                  |
| Other (Specify) |              |                  |
| Total           |              |                  |



| Expenses                               | Your Monthly | Spouse's Monthly  |
|--|--------------|-------------------|
| Rent/Mortgage                          |              |                   |
| Association Fees                       |              |                   |
| Water/Electric/Gas                     |              |                   |
| Cell/Cable/Internet                    |              |                   |
| Groceries/Dining Out                   |              |                   |
| Health care/Prescriptions/Therapy      |              |                   |
| Clothing/Personal Care/Pet Care        |              |                   |
| Entertainment/Vacations/Gifts          |              |                   |
| Child Care                             |              |                   |
| Credit Card Payments                   |              |                   |
| Loan/Lease Payments                    |              |                   |
| Other Loan Payments                    |              |                   |
| Spousal Support/Child Support          |              |                   |
| Car repairs and fuel                   |              |                   |
| Insurance, car, house, life, misc      |              |                   |
| Furniture/Equipment/Household supplies |              |                   |
| Other (specify)                        |              |                   |
| Other (specify)                        |              |                   |
| Total                                  |              | www.drizinlaw.com |



# Drizin Law

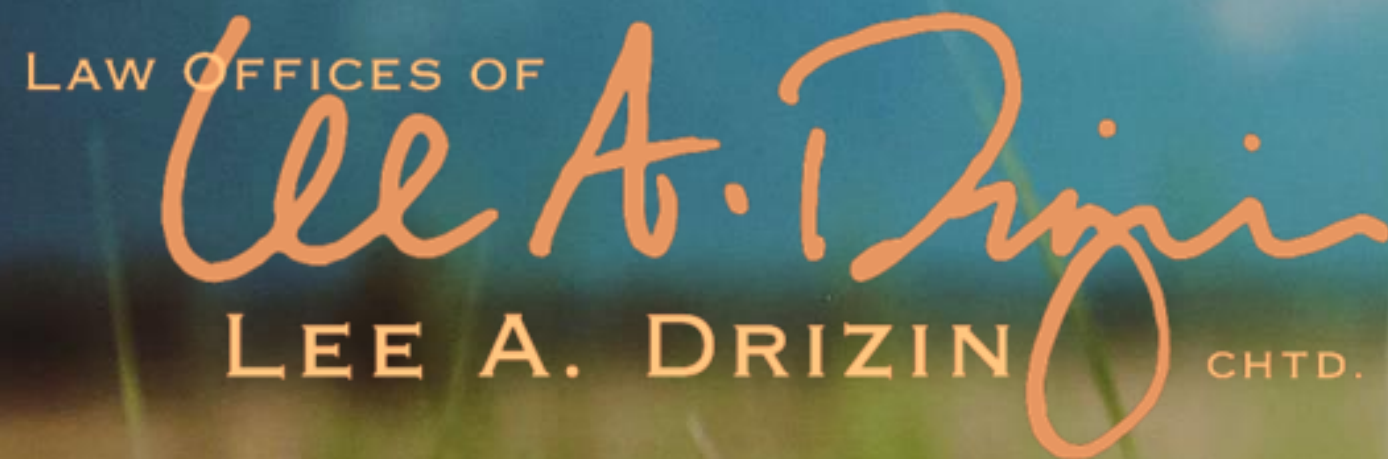
Drizin Law offers its clients over 45 years of experience in Probate, Real Estate, Estate Planning, Divorce, Custody, Business Law, Guardianship and Litigation. We are committed to providing our clients compassionate and quality attention to all matters. We place a high value on responsiveness, both in its timely help to clients and how well it meets their needs and objectives.

For over two decades, Family Law Attorney Ethan Kottler has been committed to helping people with their family law matters. He has devoted his legal career to the demanding and constantly changing area of family law; from reaching agreement on child custody, divorce, child support, prenuptial, and alimony to division of complex, high-value property such as business interests and investments.



Ethan Kottler, ESQ





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## Moving On

Going through a divorce is not an enjoyable process for anyone involved, but staying inside a marriage that is broken can be far worse. We hope you've found this guide to Nevada Divorce helpful. Every legal situation is different, so we would encourage you to contact our office, or another seasoned Nevada divorce attorney, to assist you. It's generally not a good idea to go it alone, especially if your spouse has retained legal counsel.

We wish you much success on your journey, this is definitely a bump in the road, but sometimes the detour can take your life in an exciting new direction. We've helped many individuals navigate their divorce and years later they return to our office in a much happier place to set up a trust, purchase real estate or create an estate plan and will. If we can be of service, please don't hesitate to reach out. We're just a phone call, text or email away!

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