

What You Need to Know About

# ARIZONA Family Law



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# INTRODUCTION



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Welcome to JacksonWhite Attorneys at Law and our guide, What You Need to Know About Arizona Family Law. This booklet presents some of the key issues that arise in family law and outlines many of the legal complexities families encounter from time to time.

Families are our most important asset, which is why it is so important to protect your family and yourself by knowing your rights as a parent, grandparent, child, or other family member. Some of the issues covered in this guide include marriage, divorce, child support and custody, domestic violence, and adoption. While family law matters can involve a great deal of stress, understanding your legal rights and obligations can alleviate much of this burden. At JacksonWhite, we understand that each situation within family law is uniquely personal and sensitive. Our family law team is dedicated to your family's specific needs, keeping you up-to-date on the law, making you aware of our expectations, and maintaining frequent contact with you about the status of your case.

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# MARRIAGE

## Arizona Recognizes Legal and Valid Statutory Marriages

In Arizona, a marriage is legal and valid if it meets statutory requirements. First, a couple must obtain a valid marriage license. Second, somebody with legal authority to perform the ceremony must marry the couple before the marriage license expires. In addition, the couple must have the capacity to get married, which in Arizona means they cannot be blood related, and they must be at least 18 years old unless they have consent from a parent or guardian.

Couples who do not meet these requirements cannot get married in Arizona. Other states, however, recognize common law marriage as well as statutory marriage. Common law marriage is a marital relationship that arises from cohabitation or agreement between the couple. If a person has a common law marriage in another state, Arizona may recognize it for purposes of enforcement.

## Same-Sex Marriage

As of June 25, 2015, the United States Supreme Court concluded that same-sex couples in every state have a fundamental right to marry. This update to the law allows for the recognition and validity of same-sex marriages. States are required to issue marriage licenses to couples regardless of sexual orientation. These changes allow more rights to same-sex couples in Arizona that were previously only available to heterosexual couples. Marriage equality also allows the possibility for divorce, custody issues, parental rights, prenuptial agreements, etc., for same-sex couples.

Same-sex marriages are legal and thus are governed and protected by the same laws that apply to heterosexual marriages. And, therefore, same-sex divorces and any related legal issues.

However, due to the novelty of these rights, there is room for confusion and uncertainty in some cases. As more cases arise, the legal system will evolve with the changes and establish precedents in the new areas that will help govern same-sex family law issues.

## Obtaining A Standard or Covenant Marriage License

To obtain a marriage license in the state of Arizona, couples must present a government issued photo I.D., and pay a modest fee to the Clerk of the Court's Office. Marriage licenses are issued on the day of application, and couples may marry that same day. When applying for a marriage license, couples must indicate whether they want a standard or covenant marriage. The key difference between the two lies in what the spouses must do to legally dissolve the marriage. In the dissolution of a standard marriage, the sole question courts ask is whether the marriage is irretrievably broken. With covenant marriages,

on the other hand, courts are more limited in their ability to dissolve the marriage. Unless both spouses in a covenant marriage agree to the divorce, the court can only grant dissolution for one of the following reasons:

- One spouse commits adultery.
- One spouse is convicted of a felony that carries imprisonment or the death penalty.
- One spouse abandons the other for a year or longer.
- The spouses have been living separately, and without reconciliation, for more than two years.
- One spouse commits domestic violence.
- One spouse abuses drugs or alcohol.

*Certificate of*

*This Certificate*

*were united in marriage*

*This ceremony was*

Because covenant marriages are more difficult to dissolve than standard marriages, couples must undergo premarital counseling before entering into one. When applying for their Covenant Marriage License, couples must sign an affidavit attesting that they meet the statutory requirements, and provide a notarized statement from the counselor or clergy member who performed their counseling, confirming that:

- They were advised about the nature and purpose of a covenant marriage.
- They were advised about the limits on dissolving a covenant marriage.
- They were given a copy of Covenant Marriages in Arizona, published by the Arizona Supreme Court Administrative Office of the Courts.

## Marital Property Becomes Community Property

Arizona is a community property state, which means spouses share joint ownership in most property acquired during the marriage, regardless of which spouse earned or acquired it. There are exceptions to this rule, such as property acquired through gift or inheritance, which is treated as separate property. The community property designation really becomes important in a divorce, when it comes time to divide the marital property. The principle underlying community property is that regardless of whose name is on the title or who earns the majority of the income, both spouses contribute to the family unit. Upon property division, each spouse is deemed to own an equal share in all community property.

## Creating a Prenuptial Agreement

Couples can enter into a spousal agreement before marriage, known as a pre-





nuptial, or premarital agreement to control certain aspects of the marital property. Statistics show that more than half of marriages end in divorce. While prenuptial agreements don't increase this likelihood for a couple, they do simplify things if the marriage doesn't go as planned. Prenuptial agreements can include any term that is not unconscionable, criminal, or in violation of public policy. Also, spouses cannot use prenuptial agreements to control child custody or child support issues. On the other hand, couples commonly use prenuptial agreements to define property interests, expenses, division of property and spousal maintenance. While these agreements certainly aren't for everybody, they can provide couples with protection beyond that which is offered by existing laws. An attorney can help couples determine whether a prenuptial agreement is appropriate, and then draft an agreement that will be valid and enforceable in court.

## Creating a Postnuptial Agreement

Prenuptial agreements may be the most common type of spousal agreement, but spouses can create marital agreements after marriage as well. These are known as postnuptial agreements. Spouses sometimes use postnuptial agreements to resolve financial disputes during the marriage, and these agreements sometimes help spouses prevent divorce or separation. A properly drafted postnuptial agreement can separate spouses' income and create clear financial boundaries by designating certain assets as separate property.

As with prenuptial agreements, however, courts can refuse to enforce postnuptial agreements for a number of reasons. Spouses should always consult with an experienced attorney when considering such an agreement to ensure it will be valid and enforceable.

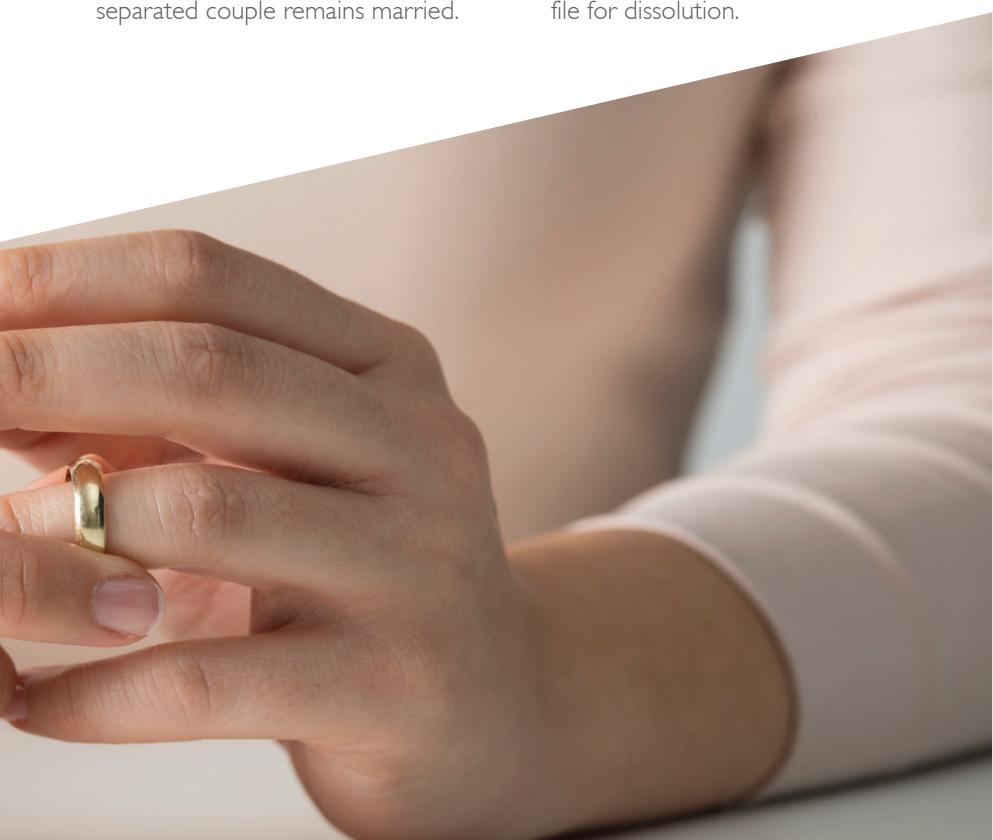




# LEGAL SEPARATION

Physical separation or moving apart from your spouse does not cause a couple to become legally separated. In fact, legal separation involves many of the same issues as divorce, including child custody, visitation, child support, spousal maintenance, and division of property and debts. To obtain a legal separation in Arizona, at least one of the spouses must be a resident of the state and both spouses must agree to the legal separation. If either of the spouses oppose the separation, the court will not enter a legal separation decree; instead, the court will instruct the couple to consider filing a petition for dissolution. Importantly, a legally separated couple remains married.

This means the legal rights and relationships stemming from the marriage do not cease to exist. For instance, a separated couple's life and health insurance policies remain in effect throughout the legal separation, which may give some couples a reason legally separated couple remains married. This means the legal rights and relationships stemming from the marriage do not cease to exist. There may be other advantages to legal separation, such as overcoming moral or religious prohibitions against divorce. On the other hand, couples who are certain their marriage will eventually end may want to avoid going through a legal separation and instead file for dissolution.



# DIVORCE: THE DISSOLUTION OF MARRIAGE

## Uncontested Divorce

An uncontested divorce is generally the least costly type of dissolution proceeding. It is only possible if both spouses agree on most of the key terms of the dissolution. However, spouses going through a divorce oftentimes have difficulty reaching mutual agreements, even if doing so would be in their best interests and save them both time and money. In an uncontested divorce spouses create the terms of the dissolution without the court's involvement. Either by themselves or with legal counsel, the spouses agree on terms such as child custody and division of property and debt. If spouses fail to agree on one or more terms of the dissolution, they can involve the court, at which point the divorce is no longer uncontested. While spouses are not required to hire an attorney, it may be in their interest to do so. Whether the divorce is uncontested or not, a family law attorney can help facilitate a fair and just proceeding. Contrary to stereotype, most good divorce attorneys are not simply trying to increase conflict and litigation. In fact, more often than not a good family law attorney will actually steer the parties toward settlement and an uncontested divorce.

## Contested Divorce

Contested dissolutions can become complicated. Courts will not issue a decree of dissolution until the key terms are in place. In other words, courts will not approve a divorce until the parties have clear direction on issues such as property division, allocation of debts, spousal maintenance, child support, and child custody. In many contested divorces, courts have to resolve child support issues for the spouses. Courts also step in to establish child custody and visitation rights, which are many times the most highly contested issues in dissolution proceedings. It is also common for courts to order spousal maintenance upon dissolution. These issues are rarely easy to resolve and a family law attorney can be extremely helpful in ensuring fairness throughout the proceeding.

## Mediation or Litigation?

A contested divorce does not have to turn into a vicious court battle, as many couples find a good alternative to litigation in the mediation process. Mediation can take a variety of forms, and it is almost always less adversarial than traditional dissolution proceedings. Throughout the mediation process, spouses meet together with a mediator

to work through the pending dissolution. The mediator remains in a position of neutrality and provides each spouse with the information necessary for them to reach their stated goals. A good mediator will never take sides with either party or offer advice that gives one spouse an advantage. Those who want specific legal counsel during the mediation process can retain an attorney to represent their interests throughout the mediation process, but they are not required to do so.

Ultimately, mediation removes many of the barriers common to traditional litigation. Spouses have an opportunity in mediation to work together with a neutral party to come up with a mutually acceptable dissolution agreement. As a viable alternative to litigation in a contested divorce, couples should consider mediation services. A good family law attorney can assist in the identification and selection of an appropriate mediator.

## Dividing Marital Property Upon Divorce

Arizona is a community property state, which means that spouses share ownership in marital property. Marital, or community property, is earned or acquired during the marriage. While this seems pretty straightforward, the application of this rule is not always simple. For instance, even in a community property state, certain property acquired during the marriage, such as

gifts or inheritances, is considered separate property, and thus belongs solely to one spouse. In addition, one spouse's sole and separate property can become "comingled" with the community property, which transforms that property into community property. Further, it is not uncommon for married spouses to use community income to pay off or improve one spouse's sole and separate property. This situation creates a community interest, known as an equitable lien, in the sole and separate property of the other spouse. These complexities to the relatively straightforward community property rule can give rise to disagreement, and even litigation. More often than not, courts divide community property equally between spouses, regardless of who earned the income or who purchased the property, so long as the income or property was acquired during the marriage. For instance, if one spouse contributed \$45,000 to a \$50,000 savings account, the court is likely to split the account so each spouse takes \$25,000. Other assets, such as the family home, however, are more difficult to split than cash. Couples may sell the home and split the proceeds, or one spouse may keep the home and take less of other assets. Family law attorneys can help couples sort these issues out.

## Retirement Accounts

Retirement accounts are often an issue in a dissolution proceeding. There are special rules the court must follow when dividing pensions, 401(k)s, IRAs or other retirement benefits. When a

retirement benefit is an issue in a dissolution proceeding, it is always advisable to seek the counsel of a good family law attorney.

## Dividing Marital Debt Upon Divorce

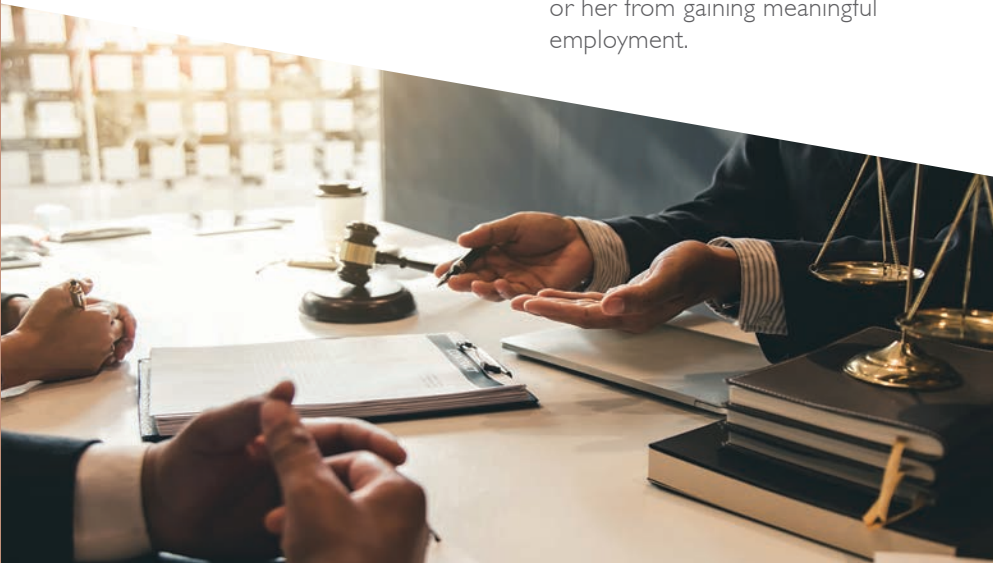
Just as community property is owned equally between spouses, so too is marital debt. Upon the dissolution of a marriage, the marital debt is divided equitably between the spouses, meaning that each spouse takes a fair amount of the couple's debt accumulated during the marriage. This is true regardless of which spouse incurred the debt, so long as the debt was incurred during the marriage. Where spouses cannot agree upon terms as to how to divide the marital debt, the court makes the decision for them.

## Spousal Maintenance

Spousal maintenance is commonly referred to as alimony. A spousal maintenance obligation is a court order requiring one spouse to make maintenance payments to the other for a period of time. Arizona statute provides four factors for courts to consider when deciding whether to order spousal maintenance.

Courts may order spousal maintenance for either spouse if he or she:

- Does not have enough property to meet his or her needs.
- Contributed to the educational opportunities of the other spouse.
- Lacks self-sufficiency or earning capacity, or must remain at home to care for a child.
- Had a long marriage, and is of an age that may preclude him or her from gaining meaningful employment.



Courts consider a variety of factors when determining the amount of spousal maintenance, and the period of time for which to order such maintenance. One thing that courts do not consider when making this decision, however, is marital misconduct. Arizona statutes list the following factors as relevant to determining the amount and duration of spousal maintenance:

- The standard of living that the spouse seeking maintenance has grown accustomed to.
- The duration of the marriage.
- The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance.
- The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.
- The comparative financial resources of the spouses, including their comparative earning power in the labor market.
- The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
- The extent to which the spouse seeking maintenance has reduced his or her income or career opportunities for the benefit of the other spouse.
- The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
- The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet his or her own needs independently.
- The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
- Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
- The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.
- All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

Spousal maintenance issues are often hotly contested. This is because there is no set formula for determining amount and duration, as there is for child support. For this reason, parties to a divorce may find they need an experienced attorney to help them apply the spousal maintenance statute to their specific situation to assist the court in arriving at a fair alimony amount.

## After the Divorce: Modifying & Enforcing the Decree of Dissolution

Ex-spouses are bound by the terms of their divorce decree. Courts are willing, however, to modify decrees if one of the parties experiences a significant change in life circumstances. Ex-spouses commonly petition the court to modify child custody and support orders, but courts modify other types of orders as well. Unless the court modifies a decree, ex-spouses are legally required to follow the terms of the original decree. When one party disregards the court's orders without seeking a modification, the other party may petition the court to enforce the decree.

Many times, it takes the court's involvement before a spouse will honor the terms of the decree. The court may be asked to step in when an ex-spouse interferes with parental rights or fails to timely pay child support. In addition to custody and support orders, ex-spouses can also call upon the court to enforce a divorce decree's property terms. Many divorce decrees include property orders requiring one of the parties to deliver property to the other or to make timely payments on loans incurred in both spouse's names. Where an ex-spouse fails to obey these orders, it could damage the innocent spouse's credit. Seeking enforcement from the court with the assistance of a family law attorney may be the best protection for people in these types of situations.



# WHEN CHILDREN ARE INVOLVED IN A DIVORCE OR SEPARATION

## TYPES OF LEGAL CUSTODY

### Joint Custody vs. Sole Custody

The court will make a custody determination when parties to a divorce have children together. Because legal custody involves decision-making authority, a parent with legal custody is entitled to make important decisions relating to his or her children. These decisions may involve education, religion, and non-emergency medical care. The most common type of custody arrangement in Arizona is joint legal custody, which authorizes both parents to share in the decision-making for their children. However, joint legal custody does not necessarily provide parents with equal parenting time. While in most cases joint legal custody proves to be in the children's best interest, this does not always hold true. If one parent is unfit to parent, for instance, or simply refuses to co-parent, courts may award the other parent with sole legal custody. Further, cases that involve acts of significant domestic violence may warrant an award of sole legal custody to the non-abusive parent. A parent with sole legal custody has absolute authority to make important decisions for the child. Where one parent is seeking sole legal custody, it is particularly important to involve a family law attorney who can protect the children's interests.

### Physical Custody or Visitation Rights

As with legal custody determinations, courts will enter physical custody orders when children are involved. Physical custody is generally referred to as parenting time, and it is almost always in the best interest of the children that parents share parenting time rights, in some fashion. Sometimes an equal physical custody arrangement is preferable, meaning that parents share 50/50 parenting time. Other times, however, courts make one parent the primary residential parent, and award the oth-

er parent reasonable visitation rights. What is "reasonable," however may mean something entirely different to each parent, resulting in disagreements and conflict. Parents who cannot agree on reasonable visitation many times turn to the court for resolution. Where a parent has a history of abusive or unstable behavior, courts may require that parent's visitation to be supervised. Sometimes parents and the court decide together who will supervise the visits, while other times the court appoints a person whom the parents do not know.

If supervised parenting time is ordered by the court, the supervised parent



may petition the court for unsupervised visits after establishing through a period of good behavior; that he or she is not a danger to either him/herself or the child.

## Reaching a Custody and Parenting Time Agreement

Generally speaking, parents and children alike are best served when the parents come to a custody and parenting time agreement without battling the issue out in court. Parents know their children and their needs much better than a judge who has never met, and likely will never meet them. The problem here, of course, is that by the time parents decide to dissolve their marriage, many couples have a difficult time working things out on their own. Parents who are unable to reach custody and parenting time agreements will need to involve the court. In arriving at a custody and parenting time determination, Arizona courts will consider a host of statutory factors, including:

- The preferences of the children and parents.
- The relationship between the child and each of the parents.
- The environment at each parent's home.
- The health and wellbeing of each parent.

- How well the parents get along with one another.
- Each parent's history of providing and caring for child.
- Any misconduct of either parent.
- Courts can also order an independent custody evaluation to aid in their decision.

Obviously, there is much at stake when courts become involved in child custody cases, and a family law attorney can be invaluable in helping parents receive the proper allocation of parental rights.

## Child Support: How Much?

Calculating a proper child support amount can be a difficult process. At a minimum, courts look at the number of children involved, the incomes of both parents, which parent will provide medical insurance for the children, the amount of any medical insurance premiums, whether there are any extra child care or educational costs, and the number of annual parenting days each parent has.

The process of determining a parent's income can become very complicated when one or both parents are self-employed, or own their own business. Arizona takes child support very seriously, and can impose serious consequences on those who fail to make timely payments. Parents who fall behind in their child support payments may be found

in contempt of court, and may even have a warrant issued for their arrest. To avoid these problems, parents with difficulty paying their child support should never simply ignore the issue. Rather, they should petition the court to modify their obligation.

Likewise, a parent who relies upon a valid child support order should not ignore the fact that the other parent has stopped paying. In either case, an experienced family law attorney can assist parents when a delinquent child support obligation is an issue.

## Child Support: How Long?

Generally speaking, parents are obligated to pay child support for each child until that child turns 18 years old. If, however, the child will not graduate

high school by the time he or she turns 18, the child support obligation will be extended until the child graduates, or turns 19, whichever occurs first. In some instances, child support orders can be extended beyond this period, if special circumstances exist. Parents who stop making child support payments before the order terminates can face serious legal consequences. Further, a parent's child support obligation will not automatically terminate when the child turns 18 or graduates. This is especially important in cases where child support is automatically withdrawn from a parents pay check by automatic wage assignment. Therefore it is very important that the obligated parent know the law and take the necessary steps to stop his or her child support obligation when authorized to do so.



## Modifying Custody and Child Support Orders

Because a divorce decree remains in effect as written unless it is modified by a subsequent court order, parents often feel overwhelmed when their orders do not reflect actual changes in their life circumstances. Former spouses who experience changes in their personal lives have a responsibility to make sure the court is aware of their current

income or life situation. Parents are bound by custody arrangements and parenting plans even if they came up with the arrangement themselves.

Parents who interfere with their ex-spouse's custody and parenting time can be sanctioned with fines and possibly even jail time. Furthermore, custody is separate from child support, and one can never be conditioned upon the other, so parents must honor custody and visitation arrangements regardless of whether the other parent makes timely child support payments.

Losing a job, taking a pay-cut, or encountering unforeseen medical ex-



penses are all appropriate reasons for parents to petition the court to modify a support order; if the modification will result in a 15% change to the existing support order. Courts may modify custody and parenting time orders upon a showing of a substantial and continuing change of circumstances. Courts are ordinarily reluctant, however, to modify custody orders unless there are serious and significant reasons to do so. Parenting time orders are easier to modify when both parents agree to the changes. Under any circumstances, modifying a court order is best facilitated under the advisement of a family law attorney.

## An Arizona Court Must Have Jurisdiction to Determine Child Custody Issues

An Arizona Court only has authority to determine child custody issues if it has jurisdiction over the matter. Because different states may have different custody laws, the outcome of a custody proceeding may hinge on which state has jurisdiction. For this reason, jurisdiction issues can become contested in and of themselves.

For Arizona to have child custody jurisdiction, any of the following must be true:

- Arizona was the child's home state when the proceeding

began. Home state status is defined by statute, and is generally satisfied if the child has lived in Arizona for the preceding six months prior to the filing of the custody petition.

- If the child no longer lives in the state, Arizona must have been the child's home state within six months prior to the filing of the custody petition, and at least one parent still lives in Arizona.
- The child's home state decides that Arizona is a more suitable forum; and
- The child and at least one parent have a significant connection with Arizona.
- Evidence pertinent to the proceeding is available in Arizona.
- Every other court that has jurisdiction declines to exercise jurisdiction on the ground that an Arizona court is a more appropriate forum.
- No other state court would have jurisdiction based on these criteria.

It should also be noted that even if Arizona is not the home state as defined by statute, if the child is present within the state, Arizona may exercise what is known as temporary emergency jurisdiction if such is necessary to protect the child in an emergency.

## ESTABLISHING PATERNITY

### The Biological Father's Rights and Responsibilities

Establishing paternity is the process by which a man is declared a child's legal and biological father. Paternity actions arise when a child is born to parents that are not married and either parent files a paternity action. Importantly, the alleged father's name on the birth certificate is insufficient to establish legal paternity.

Mothers typically file paternity actions to make the father assume parental responsibilities, such as paying child support.

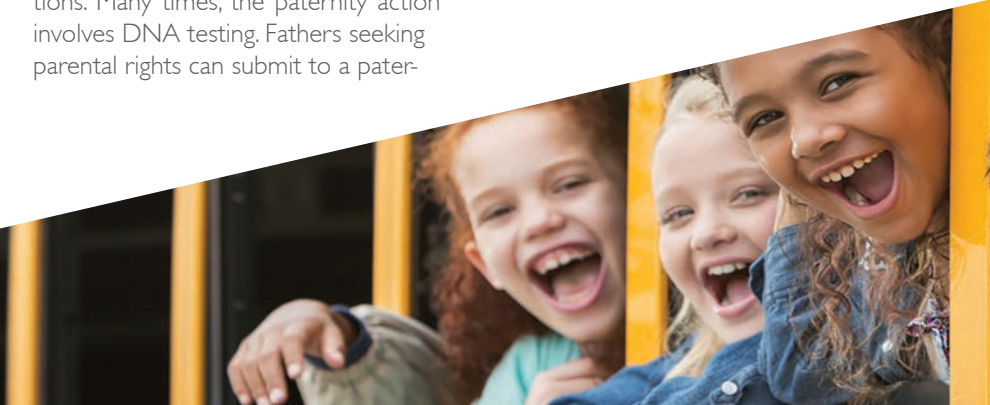
Fathers, on the other hand, typically file paternity actions to secure parental rights, such as custodial and visitation rights. Until paternity is established, mothers cannot enforce child support, and fathers do not have an enforceable right to custody or visitation.

Mothers, fathers, a guardian, public agency or the state can file paternity actions. Many times, the paternity action involves DNA testing. Fathers seeking parental rights can submit to a pater-

nity test on their own volition. In child support disputes, on the other hand, fathers are sometimes more reluctant to take such a test. If the parties disagree as to who the father is, the court may order a paternity test, which the alleged father must take. The court presumes the man to be the father only if the testing indicates a likelihood of paternity of 95 percent or greater.

## Grounds for Terminating Parental Rights

Sadly, children sometimes have abusive or unstable parents, or have been abandoned by their parents. In such cases, it is sometimes appropriate for somebody close to such a child to petition the court for a termination of parental rights. Anyone with a legitimate interest in a child's welfare may petition the court for termination of parental rights, be it a relative, a physician, or a private agency. Sadly, taking this serious step is often necessary to protect the child's safety and wellbeing. Arizona courts have authority to terminate parental rights only upon showing that:



- The parent abandoned the child.  
The parent neglected or willfully abused the child.
- The parent is unable to discharge his/her parental responsibilities because of mental illness or a history of substance abuse that is likely to continue for an indeterminate period of time.
- The parent was convicted of a felony of such a nature that would prove the unfitness of that parent, or the sentence will deprive the child from a normal home for a period of years.
- The presumed (called "putative") father failed to file a timely claim of paternity.
- The parents relinquished their rights to another individual or an adoption agency.
- The child is being cared for in an out-of-home placement for a period of time, and the parents have not remedied the situation that caused such placement.
- The identity of the parent is unknown, and remains unknown after three months of diligent searching.
- The parent had parental rights to another child terminated within the preceding two years, and is presently unable to discharge parental responsibilities for the same cause.
- The child is repeatedly removed from the home to out-of-home placement.

A termination proceeding is a very serious matter, and any parent or person involved in the matter should seek the assistance of competent legal counsel.





## Grandparent's Rights

Grandparents play an important role in the lives of their grandchildren, and when the bond between them is broken, it is harmful to grandparent and grandchild alike. What some grandparents do not realize is that they may obtain a legally enforceable right to visit their grandchildren. Where a parent is unable to exercise visitation time, a grandparent may even claim the parent's time as their own.

The Arizona Superior Court has discretion to grant grandparents visitation rights under any of the following circumstances:

- The child's parents have been divorced for three months or longer.
- The child's parent has been deceased or missing for three months or longer.
- The child's parents were never married.

In addition to meeting one of the above requirements, the court must also agree that granting grandparents visitation rights is in the child's best interest. The court considers the following factors when weighing a child's best interest:

- The existing relationship between the grandparent and the child.

- The grandparent's motives.
- The parent's motives for preventing visitation.
- The amount of visitation time requested.
- The benefits to the child of maintaining a relationship with the grandparents.

Our appellate courts have also informed our understanding of grandparents' rights. In 2000, the U.S. Supreme Court held that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to direct the custody and control of their children. This broad decision is viewed as empowering parents (as opposed to third parties) to make the decisions regarding the upbringing of their children. In 2013, the Arizona Court of Appeals stated that our third-party rights statute (A.R.S. § 25-409), requires that a court give "special weight" to a parent's decision to oppose visitation between a child and a nonparent. In 2016, the Arizona Court of Appeals further held that "a parent opposing visitation does not bear the burden of proof under [the] statute, and that 'special weight' means the party seeking visitation must prove that a fit parent's decision to deny visitation would substantially impair the child's best interest." The Court also held that when determining whether to interfere with existing parental rights, courts must give "robust deference" to the fit parent's opinions on their child's best interest. These cases



are generally viewed as imposing restrictions on grandparents' rights. In actual practice however, it is still possible for grandparents to be awarded custody and/or visitation rights, but generally there must be some fitness issues with respect to one or both of the parents, and the grandparent must meet his or her burden of proof. Each grandparent rights case is determined on the unique facts of their specific case.

## In Loco Parentis: Custody by a Non-Parent

Arizona law provides a mechanism for a step-parent or other person who acted as a parent to a child to gain a legal right to custody and parenting time. Grandparents seeking more than visitation rights sometimes pursue this route,

as do stepparents and others who have developed a close relationship with a child. Regardless of who is seeking this right, per Arizona law, they must stand "in loco parentis" to the child, meaning that they have been "treated as a parent by the child," and have "formed a meaningful parental relationship with the child for a substantial period of time."

Gaining in loco parentis rights can be an uphill battle, as the court presumes that it is in children's best interest to remain in the custody of a legal parent.

Those seeking in loco parentis rights, however, may overcome this presumption under the right circumstances and upon a showing that it would be significantly detrimental to the child to remain in the custody of the child's legal parents.



# DOMESTIC VIOLENCE

Domestic violence is more pervasive than most people care to believe. All too often, victims of domestic violence fail to seek legal remedies and, instead, live in fear and oppression. The first step to seeking redress is gaining an understanding of what domestic violence really is.

Domestic violence is broadly defined by Arizona statute. Some forms of domestic violence are obvious, such as hitting another person, while other forms of domestic violence include verbal threats, harassment and stalking. Importantly, courts offer protection even when physical violence is not present.

Because domestic violence most frequently occurs within families, an Arizona family law attorney can protect victims of domestic violence, and also defend against allegations of domestic violence, within the context of the family court.

Arizona statutes specifically define the following as acts of domestic violence:

- Dangerous crimes against children.
- Reckless endangerment.
- Threatening or intimidating a person.
- Threatening to cause injury to a person or serious damage to property.
- Assault (intentional or reckless).
- Intentionally placing another person in reasonable apprehension of injury.
- Knowingly touching another person with intent to injure, insult, or to provoke.
- Custodial interference without lawful right to keep a child from the other party (exceptions may apply).
- Unlawful imprisonment (knowingly restraining a person from leaving).
- Criminal trespass (breaking in or refusing to leave another's property).
- Intentionally damaging someone else's property.
- Disorderly conduct.
- Recklessly displaying a weapon.
- Use of a telephone or other communication to terrify, intimidate, threaten, harass, annoy or offend (may include obscene language).
- Anonymous telephone calls.
- Stalking or following a person with no legitimate purpose.
- Surveillance of another person for no legitimate purpose.
- Making false reports to a law enforcement or social service agency.

## SEEKING THE COURT'S PROTECTION

### Orders of Protection

Orders of protection, or restraining orders as they are sometimes called, can protect people from being harmed by a family member or somebody else close to them.

Courts only issue orders of protection where there has been domestic violence, and the person seeking the order has a relationship with the person committing the violence.

More specifically, courts only issue orders of protection if the person requesting the order is related to the abuser in one of the following ways:

- Blood relation.
- Living in the same household.
- Being married to that person, even if presently divorced.
- Having a child together.
- Marriage.
- Certain other relationships.

Protective orders last for one year; but before a court will issue one, the person seeking the order must file a petition setting forth the specific acts of domestic violence and the dates on which those acts were committed. If the court finds that the person seeking the order has a relationship with the alleged abuser; and that the violence in fact occurred, it will issue a protective order that will make it illegal for the abuser to contact the victim. The court can also provide a person with exclusive use of the home that he or she shares with the abuser.

### Injunctions Against Harassment

Injunctions against harassment can protect people from those who do not meet the relationship test required to obtain an order of protection. This means that injunctions against harassment offer protection from virtually anybody, be it a neighbor, boyfriend, co-worker, friend or stranger. The first step to obtaining an injunction against harassment is demonstrating that the accuser is actually being harassed.

Arizona statutes define harassment as a series of acts over any period of time that is directed at a specific person, such that it would cause a reasonable person to be seriously alarmed, annoyed, or harassed. Next, the accuser must show the conduct actually alarmed, annoyed, or harassed her or him, and served no other legitimate purpose. The court can issue an injunction against harassment that will last for one year if it finds that the statutory elements of harassment are met.

# ADOPTIONS

Adoption allows people to bring a new member into their family. The adoption process can be quite complicated, but once it is complete an adoptive parent is indistinguishable from a birth parent under the law. Prospective adoptive parents are carefully evaluated by the court. At the very least, prospective adoptive parents must be able to financially support a new family member.

Agencies and birth parents may impose additional requirements that adoptive parents must meet before adopting a child.

Because the adoption process is fraught with potential complications, it is always advisable to consult with an attorney who specializes in adoptions.

## International vs. Domestic Adoption

Adoptive parents have several types of adoption to choose from. To begin with, adoptions can be either domestic or international. International adoptions provide a greater availability of children for adoption, but they also carry a unique set of issues. Most importantly, adoptive parents must follow U.S. laws, as well as those of the child's home country. Domestic adoptions are available through agencies or directly from birth parents.

Both of these methods require adoptive parents to meet strict requirements, such as terminating the birth parent's parental rights and meeting other formalities. Working with a family law attorney can help adoptive parents follow protocol and keep the adoption on track.

## Open vs. Closed Adoption

Adoptive parents also choose between an open and closed adoption. Closed adoptions are more common, and they keep the birth parents from developing a relationship with the adoptive family. Once the adoptive family takes a child in a closed adoption, the birth parents relinquish their rights and have no further communication with the child or adoptive family. With open adoptions, on the other hand, birth parents have an opportunity to maintain contact with the child and adoptive parents after their parental rights are terminated. The terms to the open adoption generally arise out of contract law, so legal counsel is essential in arranging such an adoption.

## Adopting Stepchildren

Stepparents may be able to adopt a stepchild in order to obtain enforceable parental rights. Before proceeding with one of these adoptions, however, the biological parent must relinquish his or her parental rights. Biological parents can consent to the adoption, and voluntarily terminate their parental rights.

On the other hand, parental rights can be involuntarily terminated as well, but only under certain circumstances.

Stepparents hoping to adopt a stepchild should seek the assistance of legal counsel to help facilitate the process.

# HIRING A FAMILY LAW ATTORNEY

Choosing the right family law attorney to represent you is an important decision and should be approached with careful consideration. First, individuals should schedule a consultation with their potential family law attorney.

During this consultation, ask specific questions relating to the attorney's experience in the area of family law. Your potential attorney should be able to explain and answer your questions about all aspects of your family law matter from beginning to end.

You should clearly discuss the attorney's fees, hourly rate, and obtain an estimate of the costs you are likely to incur.

You should feel comfortable with your attorney and get a sense of his or her commitment to you and your case. You

should not feel rushed, hurried, or pressured into making a decision to hire the attorney at the time of the consultation. Keep in mind that the attorney-client relationship is in fact a "relationship".

What you disclose to the attorney during the consultation is protected by law and will not be shared with anyone even if you choose to not retain the attorney you are meeting with.

Good family law attorneys should not only know the law, have significant courtroom experience and a history of producing favorable outcomes for his or her clients, but he or she should value the client and respect him or her as a person and recognize that the client is going through one of the most difficult experiences in his or her life.

## Our priority is **you** – not just your case.

Choosing the right family law attorney is an important decision - one that shouldn't be taken lightly. Contact **JacksonWhite** to schedule your initial consultation and learn how we can help you. We look forward to the opportunity to help you get through this challenging time and move forward to the next chapter of your life.

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