



# LEGAL BRIEF

## NEVADA DIVORCE LAW

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*This guide provides general information about obtaining a divorce in Nevada, with specific considerations for the military community. It is for informational purposes only and is not a substitute for legal advice from a qualified attorney. Divorce procedures and requirements vary by state. If you do not reside in Nevada, please consult the laws of your state of residence.*

### **I. Starting the Divorce Process**

#### **A. Residency Requirement**

To file for divorce in Nevada, at least one spouse must have resided in the state for a minimum of six (6) weeks before the divorce action is filed.

- Service Members Stationed in Nevada: Being physically present in Nevada due to military orders satisfies this requirement, even if you maintain legal domicile in another state. For example, you meet the requirement if you are stationed at Creech for the six-week period before filing, even if you were temporarily deployed during that time.

#### **B. Reason for Divorce**

Nevada is a “no-fault” divorce state. This means you are not required to prove that your spouse did anything wrong. You only need to state that the parties are “incompatible” and there is no chance of reconciliation. While other grounds for divorce exist, they are rarely used.

### **II. Where and How to File for Divorce**

#### **A. Choosing Where to File (Jurisdiction)**

For military families, you can file for divorce in three potential jurisdictions: t

1. The state where the service member is currently stationed.
2. The state where the service member claims legal domicile.
3. The state where the non-military spouse resides.

Each state has different laws on property division, alimony, and custody. The choice of jurisdiction can significantly affect the financial outcome of divorce.

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If filing in Clark County, you may do so online, in person, or by mail.

1. **Online:** File through the court's e-filing system (<https://nevada.tylertech.cloud/OfsWeb/Home>). A small fee is charged per upload in addition to the standard court filing fee. You will need to register for an account and be able to scan your documents into separate PDF files. Use the E-Filing Guide to avoid mistakes (<https://www.familylawselfhelpcenter.org/images/forms/FLSH/eFiling-Guide-English.pdf>)
2. **In person:** File at the Family Courthouse. Check their website for current hours and location: <https://www.familylawselfhelpcenter.org/self-help/getting-started/court-basics/basics-of-court-forms-and-filings#filing>
3. **By Mail:** (*mail takes about 6-8 weeks to process*): Mail your completed forms and filing fee (check or money order payable to "Clerk of Court") to:

Family Courts and Services Center  
Attn: Clerk of Court  
601 North Pecos Road  
Las Vegas, NV 89101

## B. Types of Divorce: Uncontested vs. Contested

There are two ways to file for a divorce in Nevada. If both spouses agree on everything in their case, they can file a Joint Petition for Divorce. If both spouses cannot agree on all the terms of the divorce, one spouse generally files a Complaint for Divorce with the Court.

- **Uncontested Divorce (Joint Petition):** This is the fastest and most straightforward method, used when both spouses agree on *all* issues, including property and debt division, child custody and support, and spousal support. A judge can typically approve of the divorce without any court hearing.
- **Contested Divorce (Complaint):** If spouses cannot agree, one spouse (the "Plaintiff") files a Complaint for Divorce. This document is then formally "served" on the other spouse (the "Defendant"). A contested divorce often involves court hearings and mediation to resolve disputes.
- **Considerations for Military Members:** Military members have protections under the Servicemembers Civil Relief Act (SCRA). If a divorce complaint is filed against an active-duty service member who cannot respond due to their military duties (such as deployment), the SCRA allows them to request a temporary "stay" (postponement) of the case. This prevents a default judgment from being entered against them and can delay the divorce timeline.

## III. Separation vs Divorce

A legal separation in Nevada is called "Separate Maintenance." Like a divorce, this court process addresses child custody, support, and property division. However, at the end of the process, the parties are still legally married. Either spouse can still file for divorce in the future.

**Important:** If one spouse files for Separate Maintenance and the other files a Counterclaim for Divorce, the court will grant the divorce.

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#### IV. Key Issues to Consider/Resolve

Whether contested or uncontested, every divorce must resolve the following issues.

##### A. Spousal Support (Alimony)

A court may order one spouse to provide financial support to the other. There is no set formula for alimony; it is decided case-by-case based on factors like the length of the marriage, each spouse's earning ability, age, and health. A judge may also order temporary "rehabilitative alimony" to help a lower-earning spouse gain education or training to become self-sufficient.

##### B. Division of Property/Debts

Nevada is a "community property" state. All assets and debts acquired during the marriage are presumed to belong equally to both spouses and are divided equally upon divorce. This includes bank accounts, real estate, vehicles, credit card debt, mortgage, and retirement accounts.

Spouses may be ordered to transfer titles or refinance property so that it is listed solely under that person's name after the divorce.

- Uniformed Services Former Spouses' Protection Act (USFSPA): This federal law allows Nevada courts to treat a service member's "disposable retired pay" as community property to be divided.
- The 10/10 Rule: This rule (10+ years of marriage overlapping 10+ years of service) determines *how* a former spouse is paid their share of military retirement, not *if* they are entitled to it. If the rule is met, the Defense Finance and Accounting Service (DFAS) can pay the former spouse directly. If not, the service members are responsible for making the payments themselves.
- Thrift Savings Plan (TSP): The portion of a TSP accumulated during the marriage is community property and is subject to division.

##### C. Child Custody

For a Nevada court to rule on custody, it must be the child's "home state" (where the child has lived for at least 6 months or since birth if the child is younger than 6-months old) before the case is filed. If the child left Nevada less than 6 months ago and a parent still lives in Nevada, Nevada may still be the "home state." All decisions are based on the "best interests of the child."

Nevada law requires minor child custody and visitation for the parent that does not have physical custody of the children. The visitation schedule must be provided in detail in the Complaint or the Counterclaim (if any) and the Decree of Divorce. Simply stating "reasonable visitation" is not sufficient. The parents may agree upon custody and visitation, or each parent may create opposing plans and let the court decide.

- Legal Custody vs Physical Custody:
  - Legal Custody: Refers to the responsibility for making major decisions about the child's upbringing (e.g., healthcare, education, religion). Nevada courts prefer to award joint legal custody.
  - Physical Custody: Refers to which parent the child lives with. A court can award joint legal custody while giving one parent primary physical custody.

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- Considerations for Military Members. A parent’s military service or potential deployment cannot be the *sole reason* for a custody decision. However, military families should have a detailed parenting plan addressing custody during deployments. If you receive PCS orders, you must get your ex-spouse's consent or a court order to relocate with your child.

#### D. Child Support

Both parents have a legal duty to support their children, generally until the child turns 18 (or 19 if still in high school). Support is calculated based on each parent’s “gross monthly income.” which includes pre-tax income from all sources, including employment, tips, overtime, unemployment, and retirement. Each parent must submit financial statements and proof of income.

- Consideration for Military Personnel: For a service member, “gross monthly income” typically includes base pay, Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), special pay (hazard duty, flight pay, etc.), and any bonuses or re-enlistment incentives. Combat pay is usually excluded.
- Child Support Estimator: To get an estimated amount you can use the online calculator (<https://nvchildsupportguidelinescalculator.azurewebsites.net/getobligation.aspx>). Note that this is only an estimate and the court may adjust any estimated obligation and will take into consideration a number of circumstances/factors in the case.

#### V. Contested Divorce Process (Complaint): Step-by-Step

1. Filing and Service: The Plaintiff files a Summons and Complaint. These documents must then be legally “served” on the Defendant by a neutral third party.
  - Summons: Summons is to advise the defendant that he or she is being sued and to command the defendant to reply to the Complaint. Basic facts about the marriage are contained in the Complaint, which also specifies what the plaintiff wants in the way of a parenting agreement (custody, support and visitation), division of property and debt and spousal support.
  - Service: Service is a legal concept; a Summons and Complaint are usually served by having copies personally delivered to the defendant **by a “disinterested person.” This means someone who is not a party in the case, not interested in the outcome of the case, and who is at least 18 years old. Family members and significant others cannot serve the documents.** You can ask a neutral person to serve the documents, or you can hire the sheriff, constable, or a private process service for a fee. The person who serves must complete an Affidavit of Service which must be filed with the court.
2. Response: The Defendant has 21 days to file an Answer and Counterclaim with the court.
  - Answer and Counterclaim: The Defendant’s reply is called an “Answer.” It may include a “Counterclaim.” The Counterclaim sets out the defendant’s position on the parenting agreement (custody, support and visitation), division of property and debt and spousal support. Once the Plaintiff has been served with a Counterclaim, he/she has 20 days to file and serve a Reply to the Counterclaim.
3. Temporary Orders: Either spouse can ask a judge to issue temporary orders for child custody, visitation, child support, occupancy of the family home, bill payments, and use of the family home while the divorce is pending.

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4. **Joint Preliminary Injunction:** To prevent any immediate problems in/during a divorce, a Joint Preliminary Injunction may be requested by either spouse. This injunction restrains both parties from harassing one another, taking the children out of state, disposing of property, or incurring any unusual debts.
5. **Seminar for Separating Parents Class (COPE):** If children under 18 are involved, both parents are required to attend a 3 ½ hour parenting class within 45 of the defendant receiving the complaint or petition called “Seminar for Separating Parents” (COPE) class. **(This is only required in Clark County.)** This class informs parents about the effects of divorce on children and encourages them to come to a mutually acceptable agreement on a parenting plan. If the parents cannot agree on a parenting plan after attending the class, the court usually will order a mediation.
6. **Mediation:** If parents cannot agree on a custody plan, the court will usually order them to mediate with a neutral third party. The parties can choose between mediation using the Family Mediation Center or a private mediator (paid by the party requesting a private mediator). The mediator will try to negotiate a parenting plan that is acceptable to both parties. If mediation is not successful, the parties will generally then have a court hearing to resolve any outstanding custody, visitation or child support issues.
  - o If you are a victim of domestic violence, you should ask the judge to order the mediator to use the Domestic Violence protocol. Family Mediation Center also does its own screening for domestic violence, so that the mediator can be alert to these issues.
7. **Settling All Issues:** All issues must be settled to finalize the divorce. If the parties cannot agree on a permanent plan for custody, support, visitation, or property division, a court hearing (“evidentiary hearing”) will be held to decide any disputes. If parties agree on a settlement and no part of the divorce is contested, the case does not have to go to an evidentiary hearing. Settlements negotiated between spouses are presented in writing for approval by the court and signed by the judge. If the case requires an evidentiary hearing, the judge’s decision is recorded in writing and signed by the judge who conducts the trial.
8. **Decree of Divorce:** A marriage is not dissolved until the judge signs the Decree of Divorce, you file the Decree with the Clerk of the Court and you file and serve a Notice of Entry of Decree of Divorce. Once the Decree of Divorce is signed by the judge and filed with the Clerk of the Court, the parties are legally divorced and free to re-marry. Nevada does not have a waiting period for a Divorce to become final.

## VI. Frequently Asked Questions

- **When is the divorce final?** Your divorce is final once the Judge signs the Decree of Divorce and it is filed with the Clerk of Court. Nevada does not have a waiting period.
- **Can I Get Back My Maiden Name In the Divorce?** Yes. You can request the court restore your former name in the Complaint or Counterclaim, and it can be restored in the Divorce Decree.
- **How Does the Court Decide Child Custody and Visitation Issues?** The court will decide on custody and visitation, based on the best interests of the child, which factors in your family’s situation.

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- **Child Support Is Too Low (I Know My Ex Is Making More Money Now Than When We Divorced). What Can I Do?** In Nevada, child support can be reviewed every three years or if a parent's income changes by 20% or more. To modify the child support order, you must file a motion with the court (the Self-Help Center at Family Court has a form packets or you may download the forms (<https://www.familylawselfhelpcenter.org>). You can also ask the Clark County District Attorney to help you.
  
- **Debts Were Divided in the Divorce Decree. What Should I Do?** Notify creditors in writing to remove your name from or close joint accounts. Even if the decree assigns a debt to your ex-spouse, a creditor may still hold you liable for debts incurred jointly during the marriage. You may have to pay the creditor and then seek reimbursement from your ex-spouse.
  
- **What Can I Do If My Ex is Refusing to Pay Child Support/Spousal?** There are two different ways you can get a parent to follow a child support order.
  - Contact the District Attorney Family Support Division ("DAFS") for assistance. DAFS can garnish the ex-spouse 's wages, intercept tax refunds, etc., to secure payment. Please visit District Attorney Family Support for more information. Clark County's DAFS contact information:
    - Phone: (702) 671-9200
    - Fax: (702) 366-2410
    - Address: 1900 E Flamingo Road, Suite 100, Las Vegas, NV 89119 Website: [https://www.clarkcountynv.gov/government/departments/district\\_attorney/divisions/family\\_support\\_division/](https://www.clarkcountynv.gov/government/departments/district_attorney/divisions/family_support_division/)
  - File a Motion to Enforce and/or for an Order to Show Cause. This kind of motion asks the judge to declare the ex-spouse in contempt (violating court order) for not following the court order. The judge can punish the ex-spouse with sanctions, fines, and/or jail. You can also ask the judge to award you any child support arrears that are owed to you.
  
- **What Can I Do If My Ex is Refusing to Obey Custody and Visitation Orders?**
  - Enforce Custody and Visitation: You can file a Motion to Enforce Custody and Visitation with the court. The judge will have you both appear in court to find out why the visitation schedule is not being followed, and may award make-up time.
  - Hold The Ex-Spouse in Contempt: You can file a Motion to Enforce and/or for an Order to Show Cause with the court. This kind of motion asks the judge to hold the ex-spouse in contempt for not following the order. The judge can punish the violating parent with sanctions, fines, and/or jail.
  - Have the Child Immediately Returned to You: When there is an emergency and you want the child returned to you immediately, you can ask the court to give you a "Pickup Order" that awards you temporary sole custody. This is usually the kind of order law enforcement requires before they get involved in enforcing visitation orders. You can also contact the Nevada State Advocate for Missing and Exploited Children for possible assistance in having the child returned to you.
  
- **What Can I Do If My Ex is Refusing to Follow the Terms of Decree of Divorce?** If there are other parts of the decree that the other party is not following, you can file a Motion to Enforce and/or for an Order to Show Cause asking the judge to hold the other party in contempt. The judge can punish the other person with sanctions, fines, and/or jail.

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- **Can Child Custody and Visitation Schedule be Changed?** Either parent can ask the judge to change the custody and/or visitation schedule. The legal standards to change custody are:
  - If the Current Order Gives One Parent Primary Physical Custody: You must prove that changing custody is in the best interest of the child AND that there has been a substantial change in circumstances affecting the welfare of the child since the last custody order was entered.
  - If the Current Order Gives Both Parents Joint Physical Custody: You must prove that changing custody is in the best interest of the children
  
- **Can I relocate with my Child? Can my Ex-Spouse Relocate with our Child?** A parent must have permission from the ex-spouse to move with a child to a faraway place (moving outside of Nevada or anywhere inside Nevada that is so far that it would seriously harm the ex-spouse's relationship with the child). If the ex-spouse does not agree, a judge may allow the move.
  - The moving parent must show that there is a sensible, good faith reason for the move, and that the move would be in the best interest of the child. The parent must also show that the parent and child will benefit from an actual advantage if allowed to move.
  - If the moving parent does not already have primary physical custody, the parent must also prove that it would be in the child's best interest for that parent to have primary physical custody.
  
- **What about taxes?** Spousal support is treated as income for the receiving spouse and as a deduction for the paying spouse. Property settlements and child support are not treated as income or deductions for either spouse. The IRS will not allow anyone to disguise child support or property settlements as spousal support to shift the tax burden.
  - The federal tax exemption for a child is presumed to go to the primary custodian, regardless of how much support the secondary custodian pays. Exemption can be taken by the secondary custodian if primary custodian parent signs an IRS Form 8332 or a similar statement releasing the exemption

## VII. Resources

- Family Law Self-Help Center: Download divorce forms that are free of charge, visit the
  - <http://www.familylawselfhelpcenter.org/forms/divorce-forms>.
- Family Law Self-Help Center: Provides free divorce forms and information:
  - [www.familylawselfhelpcenter.org](http://www.familylawselfhelpcenter.org)
- Legal Aid Center of Southern Nevada: Offers free legal classes on divorce and other family law topics.
  - [www.lacsn.org](http://www.lacsn.org)
  - Free Divorce classes: <https://www.lacsn.org/what-we-do/free-classes>
  - Phone: 702-386-1070
- Clark County District Attorney, Family Support Division
  - Website: [www.clarkcountynv.gov/government/departments/district\\_attorney](http://www.clarkcountynv.gov/government/departments/district_attorney)
  - Phone: 702-671-9200

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