The Complete Utah Divorce Guide

Jill L. Coil, esq.
CoilLaw.com

Disclaimer: I am an attorney, but I am not your attorney. Any advice given is general and shall not be be construed as legal advice.

Find out more about CoilLaw, LLC., domestic litigation professionals, by visiting coillaw.com, or emailing community@coillaw.com.

CoilLaw, LLC
10815 S 700 E
Sandy, Utah, 84070

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INTRODUCTION

THE PURPOSE OF this divorce guide is to give you information and a legal road map to better help you understand the divorce litigation process and our process at CoilLaw, LLC.

Choosing an Attorney

A divorce can be a very emotionally draining experience that can take a significant amount of time to be finalized. While the process may be straightforward for a couple that has few or no assets and no children, it can get complicated depending on what other issues need to be ironed out. Negotiations on issues like alimony and the division of marital assets can become emotionally charged, and having an experienced family law lawyer to handle these negotiations can result in a better outcome.

Building a relationship with your lawyer based on mutual trust is extremely important. You need a lawyer that not only handles your case with your best interests in mind, but one that listens to your concerns and addresses your needs in the case. During a divorce or custody dispute, you may need to tell your lawyer a lot of personal details about your life and your marriage. It is important to consider the relationship you have to develop with your lawyer and feel comfortable enough to share this information.

Choosing the right family law firm that can handle your

case is also important. For example, if a couple has multiple assets and unresolved issues relating to alimony, it is important to consider how many attorneys and other resources a firm has to dedicate to your case to ensure a successful outcome. You should choose a firm that specializes in family law. A construction attorney that does (some) divorce is not a person who specializes in divorce. You would not have a pediatrician perform surgery on your brain. Having a professional that understands the problems and issues that can arise and how to resolve them will result in the most beneficial outcome. Choosing an attorney who actually likes practicing family law and does it primarily as their practice is key.

Reading a law firm's reviews can provide you with more information about their practice and client interaction. Though negative reviews are not always indicative of an attorney's work, several negative reviews, or consistent complaints regarding something, will give you insight into the attorney. Don't be afraid to meet with several attorneys to ensure that you pick the one you feel is the best for you.

Be wary of "free consultations." The saying, "you get what you pay for," rings true when meeting with attorneys. If the firm is willing to do a free consultation, the chances are that they need your work and that they are going to spend a majority of the consultation time convincing you to hire their firm. Paid consultations are going to give you actual value because you are paying for the time of the attorney. This initial investment signals to the attorney that you value their time and counsel and encourages you to make the most of the consultation. Make sure when you go to the consultation you have your list of questions ready to go so that you don't miss the chance to get your questions answered.

To find more tips on the best practice to hire an attorney, please check out my book, *No One Dies from Divorce*.

What You Can Expect with CoilLaw

At CoilLaw, LLC, our mission is to help you through what is most likely one of the hardest experiences of your life—your divorce. At CoilLaw, LLC, we see you, we hear you, and we advocate for you.

See You

At CoilLaw, LLC, we empathize with your situation. We know you are going through a hard and difficult time. In order to be more astute at meeting our clients emotional needs, the CoilLaw team is trained in empathy, vulnerability, and high-conflict situations. We understand that your case is very important to you, and we attempt to ensure your case is treated with the utmost care and diligence.

Hear You

Communication is one of the most important elements in the attorney-client relationship. The failure of either the attorney or the client communicating with the other can lead to misunderstandings and frustration. The CoilLaw team is committed to communicating with you on a regular basis to ensure you understand what is going on in your case and what you can expect. In order to advocate you you, it's first important that we understand the situation and facts in your case by listening to you and asking the right questions. Once the CoilLaw team understands the problems, they work together to create strategies or advice to help resolve issues or concerns you may have.

Advocate for You

At CoilLaw, LLC, aggressive litigation leads to quick and fair settlements. We understand the law and facts of each of our cases to ensure we advocate aggressively for our clients. We are trained litigators that are skilled in the courtroom and in settlement negotiations. Because of this, more than 90% of our cases

settle out of court. However, if court and/or trial is necessary, you can rest assured that you have some of the finest litigators in the state representing you.

LEGAL ROAD MAP

ONCE YOU HAVE retained an attorney, you'll go through the following steps to get a divorce in Utah. Each step will be explained in greater detail following this outline.

Stage 1 – Initial Procedures

- Petition is filed by Petitioner
- Answer to Petition and Counter-petition filed by Respondent
- Petitioner provides Initial and Financial Disclosures
- Respondent provides Initial and Financial Disclosures
- If children, both parties take Divorce Education and Divorce Orientation classes.

Stage 2 – Discovery (Fact and Expert)

- Discovery Requests
  - Interrogatories
  - Requests for Production of Documents
  - Requests for Admission
- Subpoenas
- Depositions
- Mediation
- Motion for Temporary Orders
- Requests for Compliance with Expert Evaluations (e.g.: Custody, Vocational, Appraisals, etc.)

State 3 – Moving to Trial

- Certification for Trial with Commissioner (if assigned) or Judge
- Pretrial Conference with Judge to set trial dates and deadlines
- Judicial Settlement Conference (possibly)
- Final Pretrial Conference
- Trial
- Final Order

Petition for Divorce

First, the Complaint, or Petition, is filed. The petition is a document designed to request that the court grant you a divorce, and it outlines what you would like the court to do in resolving the divorce. This document can be general or very specific. Your attorney will discuss what approach is better for your case. Once your divorce petition has been filed, you must properly serve the other party with the petition and other documents, such as a Summons. In Utah, there are specific rules to have effective and proper service. You handing the documents to your spouse is not sufficient. The best way is often to have it served by a process server or a constable.

It can be intimidating and scary to be served with legal documents, particularly in a divorce. Attempting to avoid being served is not going to stop the inevitable. It may delay it, but in the meantime, lots of unfavorable things can happen. Therefore, speak to an attorney immediately after being served so you know your rights and the best way to proceed.

To File or Not to File?

Clients often ask whether it matters who files first. In Utah, if you are the one to file first, you are called the Petitioner. As

the petitioner you will be responsible for paying the initial filing fee of $325. Once designated as the petitioner, you will remain the petitioner forever. Thus, if a modification is filed by the other party in your case a year later, you will remain the petitioner. There is no compelling evidence indicating that being the petitioner helps your case. The only situation where it may be important to file first is if you are going to allege fault on grounds sufficient to have the court consider that fault in awarding alimony. You should discuss this with your attorney to see if this may apply to your case. Filing first does allow you to control the beginning of the case. You can file a petition and wait up to 120 days to serve the other party. This can be a legal strategy to protect yourself while you are trying to decide when to actually move forward with a divorce.

Answer to Divorce Petition and Counter Complaint

Once the initial petition has been served, the person served with it is designated as the Respondent. That person will have to file a response, known as the Answer. This means that the respondent goes through the petition and either admits or denies the allegations made in the petition. It's at this point that the respondent can present a counter-petition for divorce asking the court for what that person wants.

Our firm will ensure that we draft a petition that protects all issues that may be pertinent to your case. Don't get frustrated if your spouse's petition asks for things that you think are unfair and/or are not indicative of what you have been discussing together. Parties commonly ask for even more than the law would allow the court to give them. No one ever gets everything they want in court. This is something that you should not get worked up over.

Divorce Education Class

Everyone who has at least one child must complete the Divorce Education course and the Divorce Orientation course. These two courses should be completed within thirty days of the initial petition being served. These courses can be completed online. The class must be taken prior to the court making temporary orders. We suggest all clients with children take the class immediately so that we do not unnecessarily delay court hearings.

Initial Disclosures

Once the respondent's answer is filed, both parties will exchange documents called Financial Disclosures, including the Financial Declaration. The initial disclosures include an initial list of people you believe may have information pertinent to your case or may testify on your behalf. Any documents or other evidence you are aware of should also be sent to the other party as part of the initial disclosures. The CoilLaw team will send a letter with a blank financial declaration to fill out, explaining exactly what financial documents and information are needed to complete the financial disclosures. It is very important to ensure that you disclose everything that the financial disclosures and initial disclosures requires of you. If you do not, and an undisclosed asset is discovered later, it could be solely awarded to your spouse.

Discovery

During this time, either party can request Fact Discovery and/or Expert Discovery. Fact Discovery is a period of time and consists of seeking out information from other sources,

including your spouse. You can ask them to answer written questions, produce documents, or admit that certain statements are true. You can also depose (interview) your spouse to obtain information. This interview occurs under oath as if you are in court. You may also be able to obtain documents and/or information from other people or businesses via subpoena. It's important you and your attorney discuss what information is necessary to support the allegations made in your petition and support what you are wanting in the divorce.

Experts can also be obtained to establish opinions as to unknown facts. For example, if there is a dispute as to the value of a house that one party wants to keep, the parties can seek appraisals of the property to provide an expert opinion of what the value should be. Another common expert used is a vocational expert that can form an opinion about how much one party may be able to earn with their education, experience, and skills. Custody evaluators are also commonly sought out to give an expert opinion as to what kind of parent-time and custody arrangements should be implemented in the best interests of the children. These experts are generally identified during fact discovery, but must be disclosed shortly after the deadline to complete fact discovery.

Mediation

Mediation is a meeting that includes both you and your spouse, each person's attorney, and an agreed-upon Mediator. The mediator is a person specifically trained to help parties come to an agreement to resolve disputes in divorce. The mediator is neutral and not there to advocate for either person, but simply to try to resolve as many of the issues and disputes as possible, if not all of them. The general goal is to create a "global resolution," which resolves all of the issues in the divorce. Mediation

can occur at any point of the process, although it's better not to go into mediation before each party issues their initial and financial disclosures. This allows you and your attorney to be fully informed. That way your attorney can advise you with more confidence, and you can make better decisions in negotiating a settlement. Our firm will set a meeting 2–3 days prior to the mediation itself to discuss more specifically what you will and will not be willing to agree upon. We will usually ask you to tell us in detailed terms not only what you want in an ideal world, but also what you are willing to accept as a compromise. Mediation is more successful if you have all the information needed to settle a case and if you are emotionally prepared to settle a case. At CoilLaw, LLC, we discuss this and determine if scheduling mediation at this time would be beneficial.

Prior to mediation, you should be able to answer three questions:

1. What is most important to me?
2. What will I settle for?
3. What is my bottom line and my non-negotiables?

By being able to answer these three questions, you are able to fight for what is really important, and all the other things become minor issues that are able to be used as negotiations to get you what is most important to you.

The mediator will place your ex-spouse and their respective attorney and/or us in different rooms to minimize potential conflict. You should not see your spouse unless you have agreed to do so and believe it would help resolve any issues. It is not common for the parties to participate in the same room. The mediator will typically begin by obtaining a proposal from the party filing the petition. The mediator will then confer with the opposing party, present any proposal(s) to them, and discuss whether they are willing to agree to the proposal(s)' terms.

During mediation, you are not required to agree to anything, and the mediator has no authority to force you to reach an agreement. Their role is simply to be a neutral facilitator or go-between. The communication and negotiations made in mediation are confidential and cannot be used in court—with certain, very specific, exceptions. For example, they have a duty to report any crimes or any new allegations of abuse of children or elderly persons. The mediator is not permitted to be called by either party as a witness in the case, and cannot be forced to disclose the negotiations during mediation to the court. The mediator will encourage you to settle outside of court, even if you have to make concessions, rather than putting it all in the judge's hands with no control over the outcome.

Clients sometimes feel as though the mediator is "ganging up" on them or supporting the other person. But, rest assured, they are having the same conversation with the other person in their room. If the parties can reach an agreement on any or all issues, an agreement (called a "stipulation") will be written then and there for everyone to sign so as to avoid someone backing out of the agreement. If a stipulation is signed in mediation, these terms of the stipulation will be included in the final orders. If there is a global resolution, the divorce is effectively completed, only needing to prepare final orders and submitting them for the court to sign.

Remember, a divorce can settle at any time in the proceedings. In some cases, it takes two or three sessions of mediation before we finalize and settle the entirety of the case. If the case is unable to be resolved completely in or out of mediation, any unresolved issues will continue to trial to allow the Judge to resolve the dispute.

During the case, we will want to discuss the discovery process, as mentioned above. During this process we can send Interrogatories and Request for Production to your ex-spouse

(collectively called "written discovery"), and we can take their deposition. Further, we can ask the court to appoint expert witnesses, such as custody evaluators (to make recommendations regarding custody and best interest of children) and/or vocational assessors (to determine the employ-ability of someone who does not work), etc. Sometimes we need to do this discovery prior to mediation, and sometimes we strategically wait to see if mediation fails.

If we go through all attempts of mediation and attempt to settle, and it fails, the parties may proceed to trial. The court would prefer for you and your spouse to resolve any disputes. If your case is ready to go to trial, the judge may refer your case to a judicial settlement conference. This is similar to mediation, except a judge works with the parties to help resolve the outstanding disputes. Only about 2% of all cases in Utah go to trial. However, if either party is unwilling to cooperate, trial is necessary. It is imperative that you hire an attorney that is comfortable in the courtroom to best represent your interests and to advocate for what is fair and reasonable.

Motion for Temporary Orders

Throughout the course of litigation, there are motions on various issues that require hearings in front of the Commissioners, such as motions to compel discovery, temporary support hearings, and temporary custody and parenting hearings. These happen within the road-map above.

At any time during your case after the petition for divorce has been filed and after you have taken the divorce education class and completed the initial disclosures, a Motion for Temporary Orders can be filed. The motion for temporary orders is a request for the court to set ground rules for you and the other party to follow while the case is unresolved. The court can

make temporary orders regarding parent-time, custody, allocation of expenses, insurance, child support, spousal support, who will have possession of property, and who will be responsible for paying any marital debts. It is common for these motions to request that the other party participate in or cooperate with an expert in obtaining information to form their expert opinion. Whether you need to do this is based on your circumstances and the facts surrounding your case. At CoilLaw, LLC, we would work with you to help decide what is best for your circumstances.

Once the motion is filed, it can often take two months to have a hearing on the motion. So it's important to talk to your attorney to determine whether a motion for temporary orders or other motion will be needed as soon as possible. Our firm will discuss if temporary orders need to be filed immediately. Sometimes there are issues that need to be urgently addressed and cannot wait for an agreement by parties.

Trial

Certifying for Trial

Once the time for fact discovery has concluded, and any experts have been identified and any reports or depositions taken, the court will certify the case for trial. This means both parties have had the opportunity to obtain all of the information necessary to present to the court to help it make decisions to resolve any outstanding issues. This is completed with the commissioner.

Once it has been certified for trial, a pretrial conference is scheduled with the judge. The judge will set deadlines for certain motions and disclosures as well as trial date(s) and potentially require the parties to participate in a judicial settlement conference. Either party may request that the court order a judicial settlement conference as well.

Pretrial Disclosures

In preparing for trial, you and your attorney will identify all of the witnesses and other evidence necessary to support your position on any of the unresolved issues. A list of witnesses and exhibits (evidence) will be prepared, and all of the exhibits will be gathered. The list along with any exhibits must be prepared and sent to the other party twenty-eight days prior to trial, or another date that the judge sets.

Trial

At trial both parties will have the opportunity to present their evidence and establish facts that support their desired outcome. Both you and the other party will testify. Your attorney will help understand the process and how to best prepare, not only for the questions they will answer, but also the questions the other person's attorney will ask. Both parties can present their witnesses and exhibits to help the court obtain the information necessary to make a decision. It's relatively common for the parties to work on resolution immediately before or even after trial starts.

Once the trial is concluded, the judge may make some orders immediately. Most often the judge will take the evidence and issues "under advisement". This means that they take some time to review the information and render a decision. This can take up to sixty days. The judge may set a time to call and give an oral ruling or file their findings of facts, conclusions of law, and orders. Some judges request that the parties' attorneys prepare proposed written findings of facts and conclusions of law. Then the judge uses those to prepare their written order.

Finalization of the Case

Your case will resolve either through agreement in a stipulation, through trial, or both. No matter how a final resolution

occurs, that is generally not the conclusion of the case. Either way a Decree of Divorce will have to be prepared and submitted to the court for signature. There are other documents that are also required to be filed with the court along with the decree of divorce. Once those documents have been prepared and the proposed decree of divorce has been reviewed by the parties' attorneys to ensure it complies and is in-line with a stipulation or order of the court, then the documents and proposed decree of divorce are submitted to the court for signature. Once the judge signs the final decree of divorce your case has been finalized.

Many cases have post-divorce tasks that need to be completed, such as property division, sale of real property, or division of financial and retirement accounts. Our office is happy to remain on the case until these issues have been completely resolved to assist in making sure these tasks are completed as smoothly as possible.

LEGAL ISSUES

IN ADDITION TO the roadmap above, I'd like to convey some general legal concepts that could apply to your case. Every case has different issues that they are facing. However, below are the most commonly addressed issues usually faced in divorce.

Child-Related Issues

When it comes to your children, there are two different types of custody: physical and legal custody.

Physical Custody

Physical Custody in Utah is determined by how many nights each parent has with the children per year. Clients often express a desire to have sole-physical custody of their children. In order to have sole-physical custody, the other parent cannot have more than 110 overnights with the children each year. If both parents have at least 111 overnights each year, the parents share joint-physical custody. Even when there is joint-physical custody, one parent is generally designated as the custodial parent. This is the parent with more overnights.

The Utah Code does not establish a presumption of either sole-physical or joint-physical custody. Rather, the law assumes that the parents know what is in their children's best interest. If the parents cannot agree on physical custody, the judge will make that determination. The judge will look at custody factors

in determining what parent-time schedule is in the children's best interest.

The Utah Code has several schedules for parent-time. The first is a set of parent-time schedules for children from birth to five years old. There are three other identified parent-time schedules for children from five to eighteen years old. The first is a minimum parent-time schedule, which would fall into the sole-physical custody schedule. This is the one that is well known. It's every other Friday night to Sunday night with a mid-week visit with the non-custodial parent.

The next is an expanded parent-time schedule designed to give the non-custodial parent 145 overnights per year. This gives the non-custodial parent time with the children every other Friday night until Monday morning with a midweek overnight.

The last parent-time schedule is a 50/50 parent-time schedule where one parent has the children every Monday and Tuesday nights, the other parent has Wednesday and Thursday nights, then the parents switch every other weekend who has Friday through Sunday night.

While there is no presumption, the courts are moving more to joint-physical custody arrangements where both parents have been actively engaged in caring for the children. There is not a presumption of physical custody in Utah and therefore, the court does an analysis of best interest factors to determine physical custody. Though it is becoming less and less likely that one will be given sole physcial custody, there are definitely circustances in which this is still granted (i.e. relocation, physcial/sexual abuse, abandonment, neglect, etc.).

Legal Custody

Legal Custody is the ability to make legal decisions regarding the children. In Utah, the presumption is that the parties will share Joint Legal Custody. This means that the parties will have

to create a parenting plan (basically a set of rules and expectations for how the parties are going to co-parent and make decisions regarding their children after the divorce). Parenting plans also have dispute resolution that helps the parties resolve disputes regarding major decisions about your children. The court only defines the following as major decisions regarding the children: religion, medical, education and sometimes extracurricular activities. Most other decisions for the children would fall into day-to-day care, which the parent exercising parent-time can determine. However, if there is a dispute on one of those major issues, you will then have a dispute resolution plan laid out in your parenting plan. Generally, one parent will have the final say. Parents can elect for neither parent to have final say and to allow the court to be the tie-breaker. If there is no final say allocated or statement that there isn't a final say, the parent that has more parent-time will be given the final say.

Best-Interest Factors

For best-interest factors, below are some of the things the court looks at when determining physical and legal custody, though this is not an exhaustive list:

- Past patterns of interaction between parents and children
- Current circumstances
- The ability of the parents to put the children ahead of themselves and their own interests
- Level of conflict between the parties
- Each parent's ability to encourage the relationship between the children and the other parent
- What the child needs from both parents
- How close your former spouse and yourself live from one another
- Each parent's ability to safely parent the children

Begin thinking about this so you can consider what you would like in custody rights in the event that your case does not settle and we must proceed to court. If you want to be an equal parent (for physical and legal custody), make sure you can prove that you have been actively engaged in caring for the children and participating in their lives prior to the divorce.

Our firm will discuss with you what you envision your parent time looking like with your children, and what you believe the other party should have. We will discuss issues that you may have with the other party exercising parent time and what can be done to alleviate some of the issues you may have.

Financial Issues

There are many financial issues that need to be resolved during a divorce. The two that are most commonly focused on are child support and alimony.

Child Support

Child support is a shifting of income between households so that the children do not see a decline in financial circumstances after the divorce. Many view child support as a payment to the other parent to support the parent's lifestyle. But the child support belongs to the children. It's intended to benefit the children. For that reason, the courts generally will not waive child support based upon the parents' agreement without some good reason for doing so.

Child support is income-driven and based on a calculation that incorporates you and your former spouse's income or potential income and the number of overnights you have with the children. Child support is based on a legislated algorithm. You can find the calculator at https://orscsc.dhs.utah.gov/orscscapp-hs/orscscweb/actions/Csc0002. Child support is based on your gross income as defined by Utah law. With some

exceptions, parents who have traditionally not worked will be imputed to minimum wage ($1,259 per month) by the court for purposes of calculating child support.

If the parent who is obligated to pay child support is not paying it the receiving parent can seek State assistance in collecting it. The Utah Office of Recovery Services ("ORS") helps parents collect child support. There is a small monthly fee for their assistance, but they are able to garnish the parent's work income to collect child support and pay it directly to the receiving parent.

Alimony

Alimony is a shift of income from the higher earning spouse to the lower earning spouse, if the lower earning spouse is unable to meet their financial needs, to maintain the same standard of living enjoyed during the marriage, after the divorce. In most cases, there is not sufficient income between both parties to allow both parties to maintain the same standard of living after the divorce. This makes sense as most households use the majority of their earnings on the monthly financial obligations during their marriage. Supporting two households at the same standard after the fact is not feasible. In these situations the court will seek to divide the monthly income in an equitable manner.

As mentioned, income plays a part in both child support and alimony, and Utah allows us to argue that the court should "impute" a higher income to a spouse when that spouse is not working at their capacity. We will continue to discuss these topics as we move forward.

In Utah, there is not a calculator to determine alimony, therefore, making it very subjective in the court's eyes. Alimony can vary greatly depending on each case. Therefore, it will be necessary to hire a knowledgeable attorney that can go through each element to ensure that child support and alimony are determined fairly.

When considering and calculating alimony, the court will go through the following analysis:

They look at the lower earning spouse's ability to earn income. The court will expect the lower earning spouse to work. Even if the spouse has not worked during the marriage. If you do not have a recent work history, the court will at least impute you to minimum wage. However, this can be an argument made in work that someone is voluntarily underemployed and should be expected (imputed) to work more.

The court will then look at the lower earning spouses' monthly expenses necessary to maintain the standard of living enjoyed during the marriage. If there isn't enough money to meet both spouses' monthly expenses the court may scrutinize and modify each party's need. Once the court has established the lower earning party's need, they look at all of their income to see if their earnings and other income (e.g., child support) are sufficient to meet their monthly financial need. If there is a shortfall, the court will determine there is a need in the amount of the shortfall. It will then turn to the other party's ability to pay. Once the court takes the lower-earning spouse's net income, plus child support, if there is an additional need left over they will then assign alimony. The court may scrutinize their reasonable and necessary need as well to ensure that the party is not inflating the need to try to get more alimony.

Once a need for alimony is determined, the court will look to higher earning spouse's ability to pay. Meaning they take their net income, minus child support, and subtract out their monthly expenses to maintain the standard of living enjoyed during the marriage. The court may again scrutinize their expenses to adjust for inflated numbers or to bring the total amount needed by the parties to be consistent with the actual funds available. If there is money left over, then they have an ability to pay. The court will award the spouse needing alimony

an amount of the higher-earning spouse's surplus up to the amount needed. If there isn't enough surplus to meet the need, the court may equalize the monthly loss for each party.

After custody, child support and alimony are the most commonly litigated issues in divorce, and one will want to ensure that their attorney has all the facts and information necessary to argue for the best result possible.

Property Issues

When dividing the property in the marital estate, the court will endeavor to allocate it "equitably." Equitable distribution is presumably equal, but does not have to be equal. There may be other considerations the court looks at to determine whether an equitable division should be something other than equal. The court must determine what is marital property and what is separate property. The marital estate consists of only the marital property. Generally marital property is anything accumulated during the marriage, regardless of how it was acquired, or in whose name it was acquired or maintained, with only a few exceptions.

Separate property is not included in the marital estate and is not subject to equitable division. Separate property is anything that you came into the marriage with, as well as any inheritance or gift you received during the marriage. You should be thinking about what you might claim as separate property when you are working on your financial declaration. Keep in mind that even if separate property was kept separate, the increase in value of that property may also be marital under some conditions. Sometimes, people take separate property and "gift" it or commingle it with the marital estate. Money that was separate prior to the marriage can become marital property if it is commingled with marital property. For example, if

you receive a gift from your parent in the form of money, and you deposit that money into an account that you deposit your earned income, it may become impossible to determine what funds in that account are those from your parent and the funds that were earned.

When separate property is gifted to the marriage it loses the protection of being yours alone and becomes "marital" and, therefore, subject to equitable division. The most common way of gifting separate property to the marriage is by placing it in joint title. We will work on distinguishing between separate properties and marital when we are formulating goals and strategies.

The marital estate also includes debts incurred during the marriage. These debts are also equitably divided between you and your spouse. Generally, secured debt (e.g., mortgage on your home or loan on a vehicle) will go with the asset it is attached to, and, therefore, is often paid by the person who is awarded the asset. Unsecured debt (e.g., credit card debt and medical debt) is allocated, also equitably, taking into account what the final financial circumstances are of each party.

Student Loans

A big concern is student loans. Usually student loans will be awarded to the person who incurred them. However, if any of the money was used to live on and support the family during school the court could equitably divide those monies.

Attorney Fees

The court may also address how attorney fees and costs should be allocated. The law allows an allocation of attorney fees based on disparity in incomes and overall financial circumstances. The point being that a financially advantaged spouse may have to share in the financially disadvantaged spouse's attorney fees or costs. These costs can be allocated while the

divorce is pending or at its conclusion. Before and during the divorce proceedings, everything that comes into the home is marital, including incomes. Sometimes this perspective can help when it comes to cost and attorney fees. The other avenue where attorney fees come into play is at any hearing. If one party wins the issues requested, they can request that the losing party pay the attorney fees for that hearing. The purpose of this is to encourage parties to settle claims and not take unreasonable positions. It is not common for attorney's fees to be paid when there is an agreement or stipulation to settle the divorce. In most cases the parties will bear their own attorney fees associated with the divorce.

SOCIAL ETIQUETTE AND COMMUNICATING WITH YOUR SPOUSE

Domestic Relations Injunctions

WHEN A PETITION for divorce is filed the court will automatically issue a domestic relations injunction order. This order sets out specific expectations for you and your spouse at the outset of the case. This order addresses restrictions on behavior of the parties, the minor children, and property.

The order prohibits the following behavior between you and your spouse: (1) harassing or intimidating the other person; (2) committing domestic violence against your spouse or your children; (3) using your spouse's information or likeness to obtain credit, open an account, or obtain a service; (4) cancel or interfere with any established services (such as phone) or utilities; or (5) cancel, modify, terminate, change the beneficiary, or allow to lapse for voluntary nonpayment of premiums on any insurance policies without the consent of the other spouse.

The order places restrictions on either you or your spouse travelling with the children during the pendency of the divorce proceedings. It prohibits both parents from (1) demeaning or disparaging the other parent in front of the children, (2) attempting to influence the children's preference regarding custody or parent-time, (3) doing or saying anything that would negatively affect the love and affection of the children for the other person, or (4)

making parent-time arrangements through the children. You and the other parent will also be expected to remove your children from any situation in which any of those situations are occurring.

The order places restrictions on personal property. Neither you or your spouse will be able to transfer, encumber, conceal, or dispose of your property or your spouse's property without consent of the other or court order. There may be some exception if business operations need to run or it's required to provide the necessities of life.

Mutual Restraining Orders

In every case there will be a request for mutual restraining orders. There are primarily four mutual restraining orders that are entered. The first three are those found in the domestic relations injunction. The mutual restraining order not included there that we would suggest in every case is one in relation to social media. This mutual restraining order prohibits both parties from making comments or posts about or sharing photos of the other party or the divorce case on social media platforms including, but not limited to, Facebook, Instagram, Snap Chat, Tik Tok, etc.

Protective Orders

If there are issues regarding domestic violence in your case it may be necessary to seek a protective order. This is a completely different proceeding from the divorce case. If there has been or there is a threat of domestic violence and there is a need for an immediate order to seek protection from that threat, a protective order may be filed. If you choose to request a protective order from the court, it can make temporary orders regarding possession of the marital residence, possession of vehicles, stay away orders, and custody and parent-time. If the court issues a temporary protective

order the orders will be valid until a hearing which is generally set within two weeks of the temporary protective order being signed.

At the hearing both parties will be able to present evidence to the judge or commissioner that is conducting the hearing. Neither party will be expected to testify, but the information will be presented by the parties or their attorneys if they have one. It is the party requesting the protective order that bears the burden of showing that domestic violence has occurred or there is a threat of domestic violence. If the court finds that burden has been met it will enter the protective order. Often times these proceedings are resolved in entering temporary orders and temporary restraining orders in the divorce case. It's important to speak with your attorney about the best way to move forward if there are issues with domestic violence.

Communicating with Your Spouse During Divorce

You may expect that parties are on their best behavior during divorce proceedings to put their best foot forward for the court. This can be difficult where there is pain and resentment for the other person. It's important to try and be objective as possible in communicating with the opposing party. The relationship between you and your spouse transitions from an intimate partnership into more of a business relationship. The best course of action is to try and communicate as objectively as possible and not allow emotion to control responses. Your spouse may attempt to trigger emotional responses from you or bully you. If that's the case, do not respond immediately. If you need help crafting a response or the communication becomes too difficult, consult with your attorney. It may be appropriate for communication to go through your attorney for a period of time until both parties can reach a point where they can communication in a cordial and effective manner.

OUR PROMISE TO YOU

IN UTAH, WE deal with a wide body of case law and statutes that helps inform our goals and strategies generally and broadly. The CoilLaw team relies on the language of the statute, case law, and our own understanding gained through experience litigating to work with you in developing a tailored strategy that works for you and your case.

Utah law is constantly changing. You want a law firm that is on top of the changing laws to advise you as best as possible.

CoilLaw will continue to work toward reaching all reasonable agreements we can to avoid as much time and expense as possible; however, we also need to prepare fully. Therefore, remember to communicate with your attorney so that they are aware of all facts and information necessary to provide the best care possible.

"Hire Us Before Your Spouse Does"

CoilLaw advocates for our clients with the diligence and the strength each one individually needs. CoilLaw works hard to protect what is so precious to their client and to ensure that each person feels heard, validated, and valued! CoilLaw works as a team so that you never feel alone: you get a team of experts that are working hard for you and your case. CoilLaw is dedicated to showing you that you're not just hiring a lawyer, but a trusted friend who is going to protect you in this trying time in your life. This is the CoilLaw way.

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ABOUT THE AUTHOR

JILL L. COIL, Esq., is a divorce attorney licensed in both Texas and Utah. She has created and grown one of the largest family law firms in the state of Utah. She has spent the last decade recognizing the support needed for people going through divorce and studying best ways to do that.

Jill takes pride in giving back and donates her time through the State Bar and takes on Guardian Ad Litem cases, pro bono. She also has a college scholarship and mentorship programs through her nonprofit, the Coil Foundation. She is a motivational speaker and is on a mission to ensure that people feel empowered in their own lives to understand their self-worth and then be able to empower others.

Jill lives in Salt Lake City, Utah, with her husband, Ryan, and their four children, Lexi, Max, Paxton, and Moxie.

Find out more at jillcoil.com and coillaw.com, or follow her on Twitter, Instagram, YouTube, TikTok, and Facebook @jillcoil.