

A Manual for Parents

Family *Change* Separation & Divorce

Kansas State University
Agricultural Experiment Station
and
Cooperative Extension Service



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Introduction

When parents decide to divorce, they create a new and different world for their children and themselves. Divorce is one of the most stressful life events a person can experience and each person in the family will be affected in some way.

This manual offers information for parents who are going through the separation and divorce process to help them to understand personal and family adjustments, legal issues, and financial matters. It is written in a question and answer format. The information in this publication is not intended to be a substitute for legal advice or counseling. Nor is it intended to serve as a complete and exhaustive text on adjustment, legal, and financial issues surrounding separation and divorce. Rather, it is designed to provide basic, general information. Please note that the information in this publication is based on Kansas and federal laws in force on the date of publication.

Personal and Family Adjustments

As you probably already know, divorce is hard on everyone involved, and no two divorces are the same. It is an ongoing process rather than an event that ends with a court decree. Just as each divorce is different, every parent and child will not have the same emotions and difficulties. Some divorce situations are more difficult than others. As a parent, you have to cope with your own losses as well as be concerned about your children's adjustments. These guidelines to commonly asked questions might be helpful to you during this time. Remember that every family and situation is different, and that these are only guidelines. You will have to adjust them to your own family situation.

Emotional Issues

Q: How can I manage my emotions while going through the divorce?

A: An important thing to remember during this difficult time is to take care of yourself. To say it is all right to take care of yourself does not mean it is okay to neglect or ignore your children. It does mean it is all right to find ways to have your own needs met so that you can take care of your children. The better you are functioning, the better parent you will be to your children. This is definitely a time when your support is crucial to your child's adjustment.

Understand that you are going through a loss – even if you initiated the divorce. Give yourself time and permission to grieve and to feel sad. Perhaps you have to deal with the loss of a dream – a dream of having a significant relationship with someone who provides security and love. You also may have a vast array of other

emotions from day to day such as anger, guilt, loneliness, and not feeling lovable or sexually attractive. These are some predictable emotions of adjustment.

Make an attempt to find some way to take care of yourself and deal with this emotional roller coaster. Otherwise, you may have little or no emotional energy to give to your children. Worse yet, frustrations may end up being taken out on the children during a time when they need their parents the most. You might try things as simple as getting up a half-hour earlier each day and giving yourself permission to leisurely do whatever you want. Schedule recreation by playing your favorite sport or working on an enjoyable hobby. You may even consciously have to slow down in such simple things as eating, walking, talking, and listening to others.

The next task in adjusting to your new family structure is to learn how to be a single person and a single parent, and find sources of support for each of these roles. Dealing with the divorce involves self-examination that may require professional help. A person who is adjusting well is ready to move on and establish future-oriented instead of past-oriented goals.

Q: Should I talk to other adults during this time?

A: One of the ways you can take care of yourself is by talking to other adults. Children have enough to deal with on their own. They should not be asked to contend with the stress of adult problems or to make adult decisions. Although it might make you feel better at the time to vent your feelings to your children, remember that it is likely to make your children feel worse. Choose another adult to talk to rather than confiding in your children. Adults are better able to understand





what goes on in a divorce; however, carefully weigh informal advice given to you by friends and family. Decide if this advice is in the best interest of you and your children.

Call on relatives and friends for help, or join a support group of other parents who are divorcing. Do not be afraid to ask for help with day-to-day tasks, because your job as a parent is even more difficult now that you are on your own. If you begin to realize that you are having thoughts, feelings, and behaviors that signal uncontrollable stress, see a counselor or family therapist.

Q: What books or Web sites might help me through this difficult time?

A: Rebuilding When Your Relationship Ends. 3rd Edition. Bruce Fisher and Robert E. Alberti (2000). Publisher: Impact Publishers.

<http://outreach.missouri.edu/cooper/fo/fo/web.htm>

This Web site lists numerous resources related to divorcing parents. The Web site is provided as a service from the University of Missouri Extension Service, but does not constitute endorsement. It is periodically reviewed and updated.

http://twosocks.ces.ncsu.edu/cyfdb/browse_2.php?search=Parent/Family
To find resources on this Web site, click on the links to *Divorce*, *Separation* under the following headings: *Parenting*, *Partners*.

Parenting Concerns

Q: How can I explain the divorce to my children?

A: Tell the children about the divorce as soon as possible. Have both parents explain the decision if the two of you are likely to not get emotional in front of the children. If that is not pos-

sible, each parent needs to talk to the children in the absence of the other parent, but not in a way that blames and accuses the other parent.

Explain what will happen in an age appropriate way. It is important for the children to know how the divorce will affect their daily lives. Children should know when they will spend time with each of their parents. They also need to know that their parents still love them, even though the parents will not be living together any longer.

If children are not given an explanation for the divorce, they come up with their own conclusions. Unfortunately, their own conclusions may be based on bits of what they have seen and overheard. They fill in the gaps with their own fears and fantasies.

There are two points that have to be made clear to help children come to terms with the divorce. Tell them their parents will not be getting back together. Also, tell the children they are not to blame for the divorce. Repeat these statements over and over in as many ways as possible – just saying them once is not enough.

Q: How do children of different ages react to divorce?

A: Children of different ages will react to divorce in different ways. The following chart is a list of age-specific characteristics that are common among children experiencing their parents' divorce and guidelines on how to help children adjust. Of course, there will be individual differences in reacting to divorce, including the time it takes to adjust.



<p>Infants:</p>	<p>Although infants cannot understand divorce, they will respond to a change in their environment. They may show stress through excessive crying, eating problems, or bowel disturbances. They may also have problems sleeping. It is important that their normal routines be kept as consistent as possible. Even the youngest children will feel more secure in a stable environment. Pay careful attention to their needs, and give them a lot of love and hugs.</p>
<p>Toddlers:</p>	<p>What toddlers will understand about a divorce is the change in their routine, and that one parent is no longer living in the home. Toddlers will show their stress in ways that you can see. They may be more clingy and anxious, cry more, or have problems sleeping. Show them plenty of affection, and reassure them of your continued love. They need to feel secure. Clear limits for acceptable behavior should be set and reinforced. Their lives should remain as consistent as possible. Stress should be kept to a minimum.</p>
<p>Preschoolers:</p>	<p>Preschoolers, like toddlers, do not understand what a divorce is. They do know that it separates their parents. Preschoolers may engage in magical thinking. They often believe that their behavior can control what other people do. They may blame their own actions or behaviors for the divorce. Children of this age fear being separated and abandoned by their other parent. They may become anxious, irritable, clingy, or act younger than their age. It will help to reassure them verbally and physically (holding, cuddling), showing that you love them. Keep promises you make with your children - if you say you will be with them for the weekend, make sure that happens. Encourage your preschooler to share questions and concerns, and to express feelings, including anger. It is very important for you to tell them over and over that they are NOT responsible for the divorce.</p>
<p>Elementary School Age:</p>	<p>Children of this age are beginning to understand what divorce means. They may react strongly to the pain of their parents. Young children wish for their parents to get back together. When this does not occur, they may feel deceived and rejected by the parent who left. Elementary school-age children may exhibit signs of depression, or they may fear abandonment. They are extremely sensitive to the promises you make with them - be sure to honor these commitments. Even though they may not let you see it, they often feel a lot of anger. Be sensitive to what they may be feeling. You can encourage your children to discuss their feelings, but respect their decision if they choose not to. Again, consistency is an important rule to follow. These children need to feel that life will be okay and that their world is secure.</p>
<p>Preteens/ Adolescents:</p>	<p>Adolescents are more likely to understand divorce, but they often do not want to accept it. They may feel torn by loyalty to both parents and have difficulty separating from one or the other. Their self-esteem may be threatened and they worry about being loved. They may experience shame, embarrassment, denial, withdrawal, or depression. Explain to them in clear and definite terms what is happening and how they will be affected. Be willing to listen when your children want to talk and let them share their feelings even though it may be hard for you. Refrain from getting defensive and denying their feelings.</p>





Q: Regardless of a child's age, what is the key points to parenting in a divorce process?

A: Keep your promises. For example, if you are to spend a weekend with your child, try your best to keep that commitment. A child can easily feel rejected when a parent fails to honor a promise. Even though your child may not show appreciation for the things you do, do not give up. They are going through many emotions related to growing up in addition to the divorce.

Keep rules and routines consistent, but not too restrictive for adolescents, as this is a normal stage for wanting more independence from the family. Be careful not to discuss your problems with children and especially not to bad-mouth the other parent. Your children should not, in any way, be used as a replacement for your missing partner.

You can also help your children by understanding the many losses they have experienced in the divorce. These losses may include not having one of their parents around on a daily basis, leaving the house they grew up in, losing old friends and having to make new ones, having less money to spend, and moving to a new city. In order to help children grieve for what they have lost, it is important for parents to grieve as well. If you cannot acknowledge your own pain, it will be difficult to acknowledge your children's pain.

Show affection to your children. Even though it is not logical, many children feel as though they are the ones being divorced and their parents are divorcing them. Many children whose parents are divorcing also end up feeling unloved. Reassure your children that you love them and will continue to love them. For example, if you have school-age children, take an

interest in their school activities, homework, and friends. Children benefit from a parent who is able to support them through the process of divorce, even though the parent also is hurting.

Although divorce may be a very stressful process for you, take time to listen to your children. Find a way to let them know you are listening. Some people do this by making eye contact. Watch for "cues" such as tone of voice or body language that may show/indicate what your child is feeling. When you are listening, do not correct, judge, or minimize their feelings. Doing so may give children the idea that they are not being heard, or that their feelings are not important. Listen and convey that you have heard them. This kind of listening takes a lot of energy and patience, which is why it is so necessary for you to take care of yourself.

Help your children identify and understand their feelings. A statement like, "You are feeling angry, aren't you?" may help a child understand what he or she is feeling. When your children get angry with you, they may try to bring the other parent into the conflict. It may take restraint on your part to not become angry and to remain calm when this happens. Try to bring the conversation back to the issue that caused your child to become angry. Suggest a time-out for both of you. Come back at a later time to continue your discussion when you are both calm.

Children often act out their anger on the parent with whom they are living. This can be very painful for the residential parent. This parent needs to understand that because he or she is providing security, and is readily available, they can become a safe target for the children to act out their anger.

If children do not want to talk, do not assume they are unconcerned. It may be necessary to bring the subject up yourself. For younger children, you might read a book about divorce and ask them to share their feelings. For older children, you could ask for a reaction to a television show or a movie that you have both seen. Even if children do not wish to talk, make sure they know that you will be available when they are ready. Encourage them to speak to a friend or counselor.

Q: What are some children's books about divorce that parents and children can read together?

Vicky Lansky, *It's Not your Fault, KoKo Bear*. (1998). Publisher: Book Peddlers. For children ages 3 to 5 years.

Laurene Krasney Brown and Marc Brown, *Dinosaurs Divorce: A Guide for Changing Families*. (1986), Little Brown and Company. For young school-aged children.

Julia Cole, *How Do I Feel About My Parents' Divorce?* (1997), Copper Beach Books. For older school-aged children.

Debra Goldentyer, *Pre-Teen Pressures: Divorce*. (1998), Steck-Vaughn Company. For older youth.

Q: How do I keep the children's lives as consistent as possible?

A: Divorce is a time full of change. At the same time, children require consistency. It will benefit everyone involved – especially your children – to maintain a routine as much as possible – even if the divorce requires a move. Children should be kept to a regular daily schedule. Set regular mealtimes and bedtimes. Older children should know each day what they will be doing after school. Children of any age should know when they are

spending time with their other parent. They feel reassured with a routine and structure they can count on.

Keeping children's lives consistent also means maintaining consistent discipline. Set the consequences for breaking the rules. Make the rules clear, and if your children break them, follow through on the consequences. It is confusing to children to punish them one day for doing something wrong, and not discipline them the next day when they do the same thing. They may learn not to count on what you tell them.

Sometimes trying to be consistent can be frustrating when the other parent does not have the same rules. You can still provide some consistency by explaining to your children that there is one set of rules when they are with you, and another set of rules when they are with the other parent.

Relationship with the Other Parent

Q: How do I work with the children's other parent to take care of our children's needs when we cannot talk without arguing and fighting?

A: It is understandable that there is a great deal of hurt and anger after a divorce. Marriage is a huge emotional investment. When a marriage ends, it is painful, even for the spouse who wanted the divorce. In some divorces there has been so much hurt and anger, that it seems impossible to think about cooperating with a former spouse in child rearing. Yet, cooperation is in the best interest of the children. Even though the spousal relationship between two adults is over, the parental relationship is not. You have to learn new ways to coparent without being married. This is extremely important for your children.





Be businesslike when it is necessary to communicate with the other parent. Try to think of each other as business partners, not as former spouses. If you are meeting face-to-face, choose a neutral location and a safe place if abuse is a possibility. Be clear on the topic of discussion. Sort out what points might be negotiable on the issue. When phoning each other, find a mutually convenient time when the children will not hear your conversation. If your emotions begin to get out of control, indicate to the other parent that the conversation is becoming difficult for you, and ask to reschedule a time when you can continue the discussion. Remember that you cannot control what the other parent will say and do, but you can control yourself.

Q: Why is it important to keep children out of the middle?

A: Not involving your children in your fights is one of the best ways to make sure they will adjust to divorce. Being caught in the middle forces a child to think about loyalty issues. The harmful effects of using children to carry on fights between parents during and after a divorce have been well documented.

Six ways to keep your children out of the middle are:

- (1) Do not argue in front of them.
- (2) Do not send messages through them.
- (3) Do not pump them for information about your former spouse.
- (4) Do not ask them to keep a secret from the other parent.
- (5) Don't criticize the other parent in front of the children.
- (6) Don't use custody, visitation, and money issues to harm the child's relationship with the other parent.

Q: Why is it important to encourage the children's relationship with their other parent?

A: Encouraging the relationship between children and their other parent can be difficult. This may seem like an impossible task, but continuing the relationship is important for the adjustment of your children. A child is more at risk for future problems when both parents are not involved in a child's life. The only exception would be if contact with the other parent puts the child in danger.

Every child has the right to maintain a relationship with both parents without feeling guilt, pressure, or rejection. Listening to one parent criticize the other can make children uncomfortable. Remember that a child is a combination of both parents, and for one parent to insult the other parent is indirectly insulting the child. Many children will believe that if something about their parent is not "okay," then something about them is not "okay" as well.

Asking children to take sides puts a lot of pressure on them. It is normal for children to have positive and negative feelings toward both parents. Sometimes all they express are their negative feelings. However, it is usually in the child's best interest to maintain a relationship with both parents. In the long run, your children will respect you for not trying to turn them against the other parent.

Share information as needed with your parent partner, including changes in addresses or phone numbers at home and work or the children's medical situations. Keep him or her informed about the children's events and activities, and work at accommodating the other parent's presence at these events. Each parent

should arrange to have school information sent to him or her.

Q: Why is it important to encourage your children's relationships with the extended family?

A: Divorce should not end the child's relationship with their parent or their relationship with other relatives, such as grandparents, aunts, uncles, and cousins. Children will benefit when they are permitted to maintain the family relationships that held meaning for them before the divorce. The extended family may serve as a strong source of support for your children as well as yourself.

Household Management Issues

Q: How can I manage all of the household tasks by myself, including those things that I did not do when I was married?

A: You may feel overwhelmed by the many tasks that need to be done. For example, you may not have paid the bills and balanced the checkbook, or you may not have been responsible for buying groceries and planning the meals when you were married. It takes time to deal with these changes.

Steps to help you in this transition are:

- Prioritize what absolutely needs to be done and what can wait.
- Decide if someone else can help you with some of the tasks. For example, an older child may be able to take over mowing the lawn or take the car to the service station to have the oil changed. If your children are younger, are there ways that you can exchange doing things with other adults? For example, exchange childcare with family, friends, or neighbors on

Saturday mornings or evenings so adults in both families are able to take turns in running errands.

- Think about different ways to do things. Perhaps you decide that your house does not need vacuumed as often as in the past.
- Break tasks down into smaller steps and tackle one at a time. This may be easier said than done. If you can take one evening to pay the bills, and the next evening to do the laundry, you may begin to feel less overwhelmed.
- Look for ways to take short cuts. For example, as you go through the mail, stand near a wastebasket and throw away junk mail rather than putting it on the table and having to sort it later.





Legal Issues

The legal process continues after divorce if there are orders for child support, custody, or maintenance. The following are some questions and answers you may find helpful regarding legal issues after divorce or after child support orders are filed in a paternity action.

Legal Process

Q: What are the most common grounds for divorce?

A: Incompatibility is the most common grounds used. There is no defense to getting a divorce if one spouse wants to divorce.

Q: What is the difference between maintenance or alimony and child support?

A: Maintenance is the same as alimony and is support for a former spouse. Child support is money ordered for the support of the child(ren).

Q: After the divorce is final, or after paternity action is final, how does a person collect child support or maintenance that has been ordered?

A: The State of Kansas has enforcement agencies and private contractors authorized by law to collect support or maintenance as well as your private attorney. They are the following:

1. District court trustee's office,
2. Staff attorneys with Social and Rehabilitation Services (SRS),
3. Assistant county attorneys who specifically collect child support, and
4. Private contractors for support enforcement.

Q: How do I determine which of the government agencies is authorized to enforce a support order?

A: You can call the local clerk of the district court to determine who is authorized to enforce support orders in that district. Some districts have choices or options. For example, many districts provide clients with the choice of either a trustee's office or an SRS attorney, in addition to an individual's private attorney.

Q: What are the functions of a district court trustee?

A: The District Court Trustee is an attorney appointed by the Administrative District Judge to collect support. Some Trustee offices also modify support orders. In Kansas, most Trustees' offices cannot become involved in issues concerning custody or parenting time.

Q: What advantages are there to having a trustee's office enforce support orders versus a private attorney?

A: If your child is almost emancipated, and there are no problems in collecting child support from a paying parent, the individual may not need to seek the services of a trustee's office or an SRS staff attorney. However, there can be substantial savings for the custodial parent if that parent chooses to retain the court trustee's services for support enforcement or modification. Retaining a private attorney is typically more expensive than the court trustee's services.

Q: Are child support orders resulting from paternity cases different from child support orders that occur after a divorce?

A: No. Children not born of a marriage have the same right to child support as children of divorce.

Q: Are all Kansas judicial districts' programs regarding child support enforcement identical?

A: No. The State of Kansas has districts and each district implements its own court rules regarding the fee charged for enforcement of support orders. Kansas law limits trustee's fees taken out of the payee's support payments to a maximum of 5 percent.

Child Support

Q: How does the judge determine the amount of monthly child support that will be ordered?

A: The Kansas Supreme Court has adopted guidelines for use in establishing child support orders. The guidelines are based on the premise that both parents have a shared duty to support their children, based on each parent's proportion of the combined family income.

Kansas child support guidelines require the court to consider relevant factors such as: 1) gross income of both parents; 2) health insurance; 3) whether the parents annually alternate taking income tax exemptions for the child(ren); 4) day care expenses; and 5) parenting time costs for the parents.

Regardless of the type of custodial arrangement, the court may order child support and educational expenses be paid by one or both parents until June 1 of the school year, and until the child becomes 18 years of age (19 years old in some cases if the child is still attending high school). Child support and educational expenses may also be extended beyond 18 years of age if the parents sign a written agreement approved by the court, or if language to extend child support beyond 18 is in the divorce decree.

Q: Where is child support paid?

A: The parent ordered to pay child support is required to pay through the Kansas Payment Center in Topeka. Unless a judge orders otherwise, a parent will receive credit only for payments made through the Kansas Payment Center.

Q: Under what conditions can child support be modified?

A: Three circumstances under which child support orders can be modified are: 1) If there would be a 10 percent change in support from the current order; 2) If there has been a three-year lapse since child support has been modified; and 3) If the child enters a new age bracket. The age brackets in Kansas are 0 to 6, 7 to 15, and 16 to 18 years of age. The older the child, the higher the child support order is per Kansas child support guidelines.

Q: How can a parent get child support modified?

A: If any of the criteria is met for a possible change in child support, the parent who receives support can seek a modification through a private attorney or through some district court trustee's offices.

Q: What if the paying parent changes jobs?

A: The paying parent is required by court order to report any change of name, address, or employment to the clerk of the court or the trustee's office within seven working days.

Q: If a parent is unemployed, will his or her child support order be terminated or reduced automatically?

A: No. In order for a child support order to be reduced, the paying parent must file a motion to modify downward and have a judge rule on the motion.





Q: What happens if the paying parent does not pay all of the court-ordered child support?

A: After July 1, 1993, child support is automatically withheld from most paying parents' wages per Kansas law. If income is not being withheld, it can be ordered withheld when a parent defaults or does not pay. Child support orders, as well as maintenance orders, are frequently enforced by Income Withholding Orders. In addition to income withholding, the law authorizes garnishment of bank accounts, imposition of liens on personal property, interception of tax refunds, revocation of professional licenses, and other remedies including contempt and incarceration.

Q: Why must there be an Income Withholding Order issued if the paying parent is not keeping up with child support payments?

A: Federal and state laws require that an Income Withholding Order be issued in all cases, unless the judge grants a waiver. The Income Withholding Order is not a reflection of the paying parent's integrity or past pay history, but is merely a law in all states. Income Withholding Orders mandate that payments come directly from the paying parent's wages into the Kansas Payment Center, enabling the paying parent and the court to keep a record of what child support has been paid to the custodial parent.

Q: How is child support routed with an Income Withholding Order?

A: The Income Withholding Order is sent from the employer to the Kansas Payment Center and the Kansas Payment Center sends the check to the payee.

Q: When can a custodial parent expect to receive the money paid through the Income Withholding Order?

A: Child support orders may state that child support is due at the first of each month, but employers are not legally mandated to send child support into the Kansas Payment Center until the end of the month. When a trustee's Office files an Income Withholding Order, the employer should withhold income within 14 days after the employer's next pay period. Further, if the paying parent is in the military, it frequently takes a few months before an Income Withholding Order will commence.

Q: Can a paying parent be sent to jail if he or she does not pay child support?

A: Yes. In addition to enforcement procedures, there are possible criminal penalties. If a parent's failure, neglect, or refusal to pay support of a child without lawful excuse occurs, it is a felony. If convicted, a parent could be imprisoned. Failure to obey a court order to pay support may result in a civil punishment, such as a fine or imprisonment for contempt until the offender demonstrates to the court that the order will be paid.

Q: Does the parent receiving child support have to spend the money on the child?

A: Child support does not have to be spent on items that go only to the child, such as clothes or toys. Part of the money is intended to help pay for rent or house payments, utilities, school fees, food, and transportation. No accounting is required.

Q: If parents have concerns regarding custody, parenting time, or visitation, what can they do?

A: Parents have the option of retaining a private attorney or hiring a mediator, (neutral third party), in order to aid parents in determining issues of custody or parenting time.

Q: How do I find a court-certified mediator?

A: You can call the clerk of the district court in order to determine who is on the court certified mediator list.

Q: If I need to find an attorney, how can I find one?

A: You can contact the Kansas Bar Association Lawyer Referral Service. Call 1-800-928-3111, and ask for the name of an attorney who handles domestic relation cases. For those who cannot afford a private attorney, free legal assistance to low-income people is available in all counties. Contact Kansas Legal Services, Inc. (KLS) at 712 S. Kansas Ave., Topeka, KS, 66603, or by phone at 785-233-2068 to learn of the nearest KLS serving your county.

Parenting Time

Q: If the non-custodial parent is denied parenting time, can he or she refuse to pay child support?

A: No. Child support and parenting time are considered two entirely separate matters by Kansas law. The parent cannot withhold child support to enforce parenting time, nor can the parent deny parenting time to enforce child support rights. If a parent is being denied parenting time, the parent can file a motion with the court, even without an attorney, to enforce parenting time. If parenting time is being wrongfully denied, the judge can correct the situation. Parents also have the legal option of resolving issues of parenting time in mediation.

Q: What happens if the parties cannot work out an agreeable parenting schedule, or do not follow the schedule that has already been ordered by the court regarding parenting time?

A: If a divorce or paternity case is still pending, the parent can ask for a temporary order or modification of an existing temporary order. If the order is final, the party must file a motion for specific parenting time to enforce the existing order. The court may find a party in contempt of court for refusing to comply, or could modify the existing order.

Q: Does a father in a paternity action have rights of parenting time/custody to his child?

A: Yes. After paternity is established, voluntarily or through a court order in Kansas, the father has right of custody and parenting time.

Q: Can a judge ever prohibit access by a parent?

A: Yes. A judge may restrict or even prohibit access if there is evidence that parenting time would be extremely harmful to the child, as in instances of abuse. Sometimes a court will order parenting time to be supervised by a third party, such as a social worker, relative, or court officer. A parent prohibited from seeing a child may, at a later time, petition the court for parenting time if conditions improve.

Q: Are there any guidelines for parenting time?

A: Parental responsibilities continue to exist whether the parents live together or not. For children to grow up emotionally healthy – love, understanding, and sound guidance is required from both parents. Children need the opportunity to love and respect both parents. Courts often give parents the following guidelines:

- The residential parent should have the child ready at the mutually agreed time.





- The residential parent should encourage and make the child feel good about going to the other parent.
- The nonresidential parent should pick up and return the child on time unless there is an emergency or the parent has called ahead.
- The nonresidential parent should notify the other parent as soon as possible if unable to keep parenting time.
- The nonresidential parent should make the time spent with the child as pleasant as possible by not questioning the child regarding the other parent's activities, making promises that cannot be kept, discussing faults of the other parent, or by giving extravagant gifts.
- Parents should not argue with each other in front of the children.
- nonresidential parents should not visit the child after drinking or taking illegal drugs.
- nonresidential parents should not visit the child without making prior arrangements with the custodial parent, nor should they take the child to unsafe places.

Q: Can a judge order visitation rights for anyone other than the parent?

A: Kansas statutes provide that, following a divorce, grandparents and stepparents may be granted visitation rights if it is in the best interest of the child. In addition, Kansas law allows grandparents to petition for parenting time if they have established a substantial relationship with the child, or if their child has died and their grandchild has been adopted by a stepparent. The judge has discretion to make a parenting time order.

Parenting Plan

Q: What is a court-ordered parenting plan?

A: Legislation enacted in 2000 addressed matters in court-ordered parenting plans for minor children. A parenting plan is to accomplish the following:

- Establish parental rights and responsibilities.
- Establish an appropriate working relationship between the parents so that matters regarding the health, education, and welfare of their child are best determined.
- Provide for the child's physical care.
- Develop a written schedule of parenting time.
- Maintain the child's emotional stability.
- Minimize the child's exposure to harmful parental conflict.
- Protect the best interests of the child.
- Encourage the parents to meet their responsibilities to their minor children through agreements in the permanent parent plan, rather than by relying on judicial intervention.

Q: What additional steps are required in a parenting plan?

A: A parenting plan must include: 1) designation of legal custody of the child; 2) a schedule for parenting time with each parent, when appropriate; and 3) a provision for a procedure for resolving disputes between the parents so there is no need for court intervention.

Q: What other details may be included, but are not required, in the parenting plan?

A: The plan may include details such as:

- 1) Assignment of parenting duties –
 - a. Decision making related to: education of child; medical, dental, health care; selection of health-care providers; handling of health-care emergencies; extracurricular activities; and selection of childcare providers.
 - b. Duties of each parent in routine care giving.
 - c. Communication related to: communication procedures between parents; school information; medical conditions of child; and access to telephone numbers.
- 2) Residential Schedule –
 - a. Residential time with each parent, including weekdays/weekends; major holidays; school holidays/breaks; vacations from school; child's birthday; and Mother's Day and Father's Day.
 - b. Times for phone or other contact with child.
 - c. Procedure for handling requests that varies from the planned schedule.
- 3) Exchange of Child –
 - a. Procedure for exchanging child between parents.
 - b. Parent responsibilities for exchange.
 - c. Transportation arrangements.

The plan may also indicate how these details may change as the child grows older.

Child Custody

Q: What types of custody orders can a judge make?

A: **Joint custody** is preferred in Kansas and implies both parents will share in making the major decisions concerning the child's upbringing. The usual arrangement is for the child to reside primarily with one parent (residential custody) and to spend time with the other parent (noncustodial parent) on weekends, overnights, and extended summer parenting time. Shared residential custody creates a 50/50-time share by parents that requires them to be extremely cooperative.

Sole custody means that one parent makes the entire major decisions regarding the child's upbringing and the child lives with that parent. The other parent (noncustodial parent) may have specified parenting time. Sole custody is not the preferred order in the majority of custody arrangements in Kansas, but may be appropriate in certain circumstances.

Divided custody means that the judge will place one child with one parent and another child with the other parent. This occurs in exceptional cases.

Non-parental custody can be granted, especially temporarily, if the court believes the parents to be unfit or that the child is in need of care. An action would be filed pursuant to the Kansas code for the care of children.

Q: What factors does a judge consider when awarding custody?

A: The judge has broad discretion in awarding custody according to the child's best interest. Kansas statutes include the following factors: the child's adjustment to home, community and school; the wishes of the parents and the child; which parent will be most cooperative in helping the





child maintain a relationship with the other parent; and evidence of spousal abuse. Neither the mother nor the father is preferred because of sex. Each case is reviewed based on its own facts and according to the child's best interest. If the child is a teenager, the judge may be willing to consider the child's wishes and reasons regarding his or her residence. Parents have much more say or control in working out custody or parenting time with a neutral third-party mediator. In mediation, the parents determine the outcome of an issue, rather than the judge.

Q: Can parties agree to the custody arrangement for their children?

A: Yes. Parties can agree on the type of custody that best fits their circumstances then present their agreement to the judge for approval. Kansas' law provides a presumption that a parenting plan between the parties concerning the child's custody and residence is in the child's best interest.

Q: After a court determines which parent should have the primary residence of a child, can the court ever change the order?

A: Yes. The court retains jurisdiction, or keeps power to change the primary residential custody of the child until that child obtains the age of majority. Generally, a motion to change primary custody must be filed in the same court where custody or paternity was determined as jurisdiction continues in that court.

Q: What reasons would a court need to change a child's primary residence?

A: The law usually requires a "material change in circumstance" before a judge will modify the custody order. Usually, the change of circumstance will be something in the residential parent's home that has an adverse

impact on the child, such as an abusive stepparent, excessive use of drugs and/or alcohol, or neglect. Seldom will the mere improvement in conditions of the nonresidential parent be sufficient for a court to remove a child from a stable situation.

Q: Do Kansas laws designate a particular age that a child has the right to testify in court regarding custody?

A: No. The court does not set a particular age at which the child is considered sufficiently mature to testify in court. A judge would have to rule on whether or not he or she would allow a child to testify in open court or the judge's chambers. However, in mediation, the parents have control over whether or not the child would participate in mediation concerning custody and/or parenting time.

Mediation

Q: What is mediation?

A: Mediation is a process that enables parents who disagree on issues such as parenting time or custody, to come together in a peaceful, confidential setting and create an agreeable solution for both sides. The mediator helps the parties with clarifying communication in a respectful manner. However, the mediator is a neutral third party and has no decision-making power.

Q: Why would parties want to use a mediator after divorce?

A: Parents can use a mediator to aid in coparenting issues after divorce, rather than experience the adversarial process of going back to court.

Q: What are the benefits of mediation?

A: Mediation can be more effective because it eliminates everyone in the decision-making process, except the

parents who are responsible for the care, love, and well-being of their child(ren). When parents develop a decision together, they are more likely to abide by the decision they made. The focus of mediation is finding a way to coparent in the most effective, peaceful, and positive manner possible. Emphasis is on the child and the future, rather than blame and the negative issues the parents may have between themselves.

Q: How is mediation different from counseling?

A: Counseling looks more at understanding one's past emotions. A goal of mediation is to develop a written plan devised by the parents regarding coparenting. Counseling can involve the counselor and one client, whereas mediation involves the mediator, the two parents, and (if the parents agree) the child(ren).

Q: Who decides the outcome of questions or issues in mediation?

A: The parents determine the outcome, not the mediator. In court, the judge decides who is right and wrong, or who gets the custody, or how parenting time issues are ordered. The mediator, unlike the judge, has absolutely no decision-making power. It is the parents and their children who determine decisions regarding the parenting plan.

Q: Is mediation as expensive as litigation or going to court?

A: In many cases, it is not as expensive. Typically, the parents, rather than each parent paying an attorney, will split the cost of a mediator. Furthermore, the parties find mediation can be more efficient in resolving conflicts, rather than waiting to get into court.

Q: Can mediation be short and long term?

A: Yes. Parents can actually mediate their entire divorce if they prefer this process, or they can mediate issues concerning custody or parenting time. There is no particular length of time to use mediation.

Q: How does a mediated agreement become part of the court order?

A: A court-certified mediator writes down the agreement of the parties, and these individuals submit the agreement to the judge for the judge's approval. Also, the parties can take their agreement, written by the mediator, to an attorney and have the attorney incorporate their wishes into an order for the court to approve.

Q: Once a mediated agreement is concluded, can parents change this agreement?

A: The parties can modify a mediated agreement. This is another difference between mediation and court. Once a judge renders a decision on parenting time or custody, it may be difficult for the parents to reverse that decision or get back into court. However, with a mediated agreement, parents can agree to go back into mediation if an agreement does not work. Any mediated changes would have to be approved by the court for enforcement purposes.





Financial Matters

There are many complicated financial issues associated with divorce. The decisions that are made can have long-term consequences. Some of these issues have been mentioned previously.

Property

Property division can be one major source of conflict and stress during a divorce. While family assets may be relatively easy to divide into two "equal" parts, the question of what is "equitable" and "fair" is often more difficult.

Q: How are assets and debts divided in a divorce agreement?

A: Kansas law calls for an "equitable distribution" of property when a couple divorces, including real property and personal property. Real property includes land, attached structures, and mineral rights. Personal property includes both tangible and intangible property. Tangible personal property encompasses such things as household goods, automobiles, and business or farm equipment. Intangible personal property includes bank deposits, life insurance policies, retirement and pension plans, stocks, and bonds.

Property can be distributed in several ways, including dividing the actual property, awarding all or part of the property to one spouse with a corresponding payment to the other; or by selling the property and dividing the proceeds. Debts are also allocated during this process.

The couple can agree on how they will divide the property and debts, with or without attorney assistance. Or they can develop an agreement through mediation, although it is advisable to consult an attorney

before mediation. If the parties had a valid premarital agreement, it will control the property division.

In addition to issues of "equity" and "fairness," each spouse needs to consider the costs and benefits of one property versus another. Some questions to consider include:

- How easily and at what cost can the property be converted to cash? What is the likelihood that cash will be needed quickly?
- Will the property be likely to depreciate or appreciate in value?
- How will inflation and taxes impact the value of the property?
- Which property will be more valuable over time?
- If a promissory note is involved, how reliable are the payments and what is the likelihood that the payer will default on the payments?
- What other expenses, responsibilities, and obligations go along with the property? (mortgage or loan repayments; real estate taxes and insurance on a home; investment decisions and portfolio management on stock, bonds, and other securities; or maintenance and repair on homes and vehicles)

If the couple agrees on a property settlement and the court approves it, the agreement will take effect when the divorce becomes final. Unlike child support and custody issues – which the court can revisit in the future if deemed necessary – property settlements generally are final and binding. This is why it is extremely important that each spouse think carefully and rationally about property division issues before agreeing to a settlement.

The court has the authority to decide how property and debts will be divided between a divorcing couple if the couple has not done so by agreement. Property normally considered “separate” during the marriage (such as that owned prior to marriage or received by only one spouse by gift or inheritance and kept separate during the marriage), as well as property acquired by both spouses during the marriage, is subject to division by the courts.

When considering how property should be split between spouses, the courts will consider such things as:

- Length of the marriage.
- Age and health of the spouses.
- How, when, and by whom the property was acquired and titled.
- Whether assets were “dissipated” because of conduct by the spouses.
- Present and future earning capacity of the spouses.
- Family obligations and expenses.
- Tax consequences of the property division.
- Whether or not maintenance was awarded.
- Other factors the court considers necessary for a “just and reasonable” division.

Q: Can the divorce decree allocate pension benefits from an employed spouse to the other spouse as part of a property division?

A: Generally, the court can authorize a spouse to receive a portion (or all) of the pension or other retirement benefits the other spouse has available through his or her employer. This is usually done through a Qualified

Domestic Relations Order (QDRO) or other valid Domestic Relations Order (DRO) that meets the requirements established for that type of pension or retirement plan. These benefits can take many forms. For example, the former spouse might receive an annuity, a lump sum, or a rollover into an Individual Retirement Account (IRA). The tax consequences differ under each alternative, so they should be examined carefully.

Social Security benefits cannot be divided at divorce, although the courts can take into account the value of these benefits when dividing property among spouses. In the event the marriage lasted for at least 10 years, former spouses of covered social security employees may be eligible for certain benefits. There are several other ways that retirement assets can be divided during a divorce, so advice from an attorney may be helpful.

Q: After the divorce, what other things need to be done to safeguard property?

A: In the process of going through a divorce, many of the following items may have already been completed. If not, it is a good idea to do so after the divorce is final.

- Be sure that you have all of the original deeds, notes, titles, and documents that should be in your possession as a result of the property division and transfers – as well as documents relating to the divorce, such as the divorce decree and support order. You also need documentation of the tax basis of the property (cost when acquired, cost of improvements made, depreciation taken, and related information), in order to figure capital gains or losses when the property is sold or disposed of. These documents need to be kept





in a safe location (such as a safe deposit box or burglarproof, fire-proof home safe).

- Deeds and titles transferred as a result of a property division need to be officially recorded.
- A will or trust may need to be drafted or updated. Property ownership will probably have changed significantly as a result of the property division. In addition, if something happens to you, and you have not updated your will or trust, property that goes to the minor children will probably be controlled by your former spouse.
- Check beneficiary designations on insurance policies, Individual Retirement Accounts (IRAs), property with payable on death or transfer on death designations, savings bonds, and other property. Change the named beneficiaries where needed.

Taxes

Tax problems can occur during and following a divorce. Tax laws are very complicated, with exceptions for most general rules. However, knowing something about tax laws (and doing a little planning), may help to avoid some of these problems. Internal Revenue Service (IRS) Publication 504 (Divorced or Separated Individuals) may be of some assistance. You can access this and other relevant publications at most public libraries, via the World Wide Web (www.irs.gov), or by calling 1-800-829-3676. You also may need to seek the advice of a tax professional.

Q: Are child support and alimony payments tax deductible?

A: When certain rules are met, the former spouse who pays alimony (also called maintenance), can deduct it

from gross income (as an adjustment to income), while the recipient must report it as taxable income.

Child support is not tax deductible. The former spouse who pays child support cannot deduct it from gross income, and the former spouse who receives child support does not report it as taxable income.

Because of the tax-deductible nature of alimony, former spouses sometimes try to disguise child support (or property transfers) as alimony. The IRS has addressed this issue by establishing a complex set of rules that must be followed when determining whether certain payments "qualify" as alimony for tax purposes.

Q: My former spouse and I filed a joint return before we divorced. If we are audited at some point in the future and owe additional taxes, who is responsible for the taxes?

A: In general, you are both responsible for the taxes, interest, and any penalties due on that return, even if your divorce decree states that your former spouse is responsible for paying the taxes. If your former spouse does not pay (or if the former spouse's liability is discharged through bankruptcy or an accepted compromise offer), you are still liable for any unpaid taxes. Through the courts, you may be able to recover from your former spouse some or all of what you end up paying.

In some cases, a spouse may be relieved of responsibility for the tax, interest, and penalties on a joint tax return by filing for relief on Form 8857. The three types of relief available are:

- Separation of liability (for joint filers who are no longer married to, legally separated from, or have

been living apart from a spouse for at least 12 months)

- Innocent spouse relief
- Equitable relief

The first two types of relief listed apply only to items incorrectly reported on the tax return, while equitable relief can apply in other situations. All three types of relief are generally for tax obligations since July 22, 1998 (or earlier obligations if they were not paid by that date). For information about other requirements that must be met to qualify for relief, IRS Publication 971 or your tax professional can assist you.

Q: If my former spouse and I filed a joint return before we divorced and there is a tax refund from that return, who gets the refund?

A: While both spouses on a joint return are entitled to his or her share of the refund, the Internal Revenue Service generally will send the tax refund check to the address on the tax return, or deposit it electronically in the financial account specified. If an income tax refund is expected, how funds from the refund will be split should be included in the divorce decree or in the property settlement.

The IRS has the authority to use tax refunds to pay for past-due taxes, debts to other Federal agencies (such as student loans), and past due child support or alimony. You can file Form 8379 (Injured Spouse Claim and Allocation) to receive your portion of the refund if you filed a joint return with your former spouse, all (or part) of your share of the refund was (or is expected to be) applied against your former spouse's past-due obligations (those mentioned above), and you meet certain other requirements.

Q: Who receives the dependent tax exemption for the children?

A: Children can only be claimed as a dependent on one tax return – either the child's tax return (if there is one) or one of the former spouse's tax returns (if they meet certain dependency requirements). Generally, the parent who has custody for more than half of the year (the residential custodian) claims the exemption. However, the noncustodial parent may be able to claim the exemption if it is designated in the divorce decree, or if the residential custodian completes IRS Form 8332 (which the noncustodial parent attaches to his or her tax return each year the dependency exemption is claimed).

Parents also may "share" the exemption over time (each parent claiming the exemption in alternate years), by designating this on Form 8332. In Kansas, if the parents do not share the exemption, the child support order will take that into account and compensate the parent not claiming the exemption.

Q: Are legal and related fees associated with getting a divorce tax deductible?

A: Generally, the only fees paid in connection with a divorce that may be tax deductible are those for tax advice and to obtain alimony. Other court costs and fees paid to an attorney, accountant, or other professional cannot be deducted. It is important to have professionals who are advising couples going through a divorce to provide a breakdown of their fees by the type of service performed.





Q: When property transfers are made between divorcing spouses, are they subject to income taxes?

A: Although there are some exceptions, property transfers “incident to a divorce” generally are considered a nontaxable event at the time of the divorce. In other words, nothing is deducted from, and nothing is included in the income of either party for income tax purposes.

For example, transferred property that has appreciated (or depreciated) in value generally is not subject to capital gain or loss provisions of the income tax code when transferred at the time of the divorce. However, the former spouse receiving the property could have a capital gain or loss when the property is eventually sold or disposed of. This is because the tax basis of the transferred property generally is tied to the value of the property when the couple acquired it, (taking into account purchase price, improvements, depreciation, etc.), not on the value of the property at the time of the divorce.

To be “incident to a divorce,” the transfer generally has to be:

- within one year after the date on which the marriage ends, or
- within six years after the date the marriage ends and made under a divorce or separation agreement.

However, if the property is not “transferred,” but is sold and the proceeds split between the former spouses, the transaction would be subject to capital gain or loss provisions at the time of sale.

Q: What filing status should we use during the divorce?

A: Your filing status depends partly on your marital status as of the last day of the tax year (usually December 31).

Generally, couples still married as of that date can file as married filing jointly or married filing separately. If you file jointly, you are responsible for the entire tax liability for that return (including any interest or penalty due), unless you are eligible for “relief” as described earlier. Be aware that certain tax benefits may only be available if a couple files as married filing jointly.

Couples who are still married generally cannot file as unmarried. An exception exists where there is a legal separation and the couple lived apart during the last six months of the tax year. Several other criteria also must be met.

If former spouses are unmarried at the end of the tax year, they may file as head of household (if they qualify) or single.

Credit

The use (and overuse) of credit can create conflict and financial strain during a marriage. It also can create conflict and financial strain during a divorce. It is important to remember that credit contracts entered into jointly during a marriage are not negated by a divorce decree; you both are still liable. Further, changing how property is titled does not change who is responsible for a joint debt on that property. How debt payments are handled before, during, and after a divorce can impact both spouses’ ability to get credit in the future.

Q: Even though my former spouse agreed to pay off the outstanding balance on our joint credit cards, can the creditor make me pay if my former spouse does not?

A: Yes. If both spouses applied for the credit together (that is, they are joint accounts), each is responsible for the debt. This is true even if a divorce

decree assigns separate debt obligations to each former spouse. A divorce decree does not change the contracts entered into jointly during a marriage. Joint accounts mean joint liability.

However, if your spouse does agree to pay off a joint debt, make sure this is included in the written divorce decree. If your former spouse is ordered by the court to pay a debt (and does not), and the creditor forces you to pay it, you can ask the court to order your former spouse to pay you back. The court can find your former spouse in contempt for violating the court's order.

Q: Is there anything I can do to help prevent credit problems from happening during the divorce?

A: There are some things you can do to help prevent credit obligations from making the divorce even more difficult. Consider the following:

- Keep joint bills current during the divorce, even if it means paying for bills you ultimately will not be responsible for. Pay at least the minimum amount on joint debt obligations. Late or missed payments generally will show up on both of your credit histories for up to seven years. This may make it difficult to obtain new credit in your own name, or make your creditors more reluctant to release you or your former spouse from liability on joint accounts.
- You may want to write to creditors and ask them how to transfer your joint debt to the name of the person who will be responsible for repayment. If the creditor agrees, both you and your spouse will probably have to sign an agreement to release one of you from liability. In the case of a mortgage or home equity loan, a lender may require refinancing to remove a

spouse from the obligation. An alternative would be to sell the home and divide the proceeds.

- If you are concerned that your spouse may incur a lot of debt during the divorce, you may want to cancel as many joint accounts as possible. Inform creditors in writing that you are not responsible for these debts after a specific date. Keep a copy of the letter for your records. This may not keep creditors from trying to collect from you, however, especially for "family necessities" (which the court generally considers as a joint responsibility).
- Be sure there is a detailed accounting in the divorce decree of all credit accounts, amounts, and the person who will be responsible for repayment. Do not forget to include home equity loans, margin accounts, and other lines of credit.
- Do not leave the marriage with open credit accounts. If you applied jointly for that credit, each of you remains liable for repayment (even for debts incurred after the divorce). To stop any liability for future debts, contact creditors and ask them to close joint accounts. Creditors cannot close a joint account simply because of a change in marital status, but they can do so at the request of either spouse.

You may want to request that joint accounts be converted to individual accounts. A creditor does not have to agree to do this, however, they can require you to reapply for credit on an individual basis. Based on your new application (and your creditworthiness), the creditor can extend or deny you credit.





- If you have an individual account where you named your spouse as an authorized user of that account, be sure to contact the creditor and have this changed or close the account. Remember that this is an instance where you have authorized your spouse to use the account, but you alone are contractually liable for paying the debt.

Q: Is there anything I can do to help prevent this from happening after the divorce?

A: If funds are not available to pay off debts when the divorce becomes final, you and your former spouse might consider obtaining individual consolidation loans to pay off your share of the debts. This helps ensure that each former spouse is responsible only for those bills he or she agreed to pay. It also will help establish or reestablish credit in each former spouse's own name.

After the divorce, get a copy of your credit report and examine it closely. Make sure all information is correct for both previous and current credit accounts.

Remember, information about joint accounts (and individual accounts where you named your spouse as an authorized user), is reported to credit bureaus in both spouse's names (if the account was opened after June 1, 1977).

Q: How can I get a copy of my credit report?

A: One place to start is your local credit bureau. Check the yellow pages under Credit Reporting Agencies. Expect a small fee.

You also may want to check one or more of the national credit reporting agencies listed below, especially if you or your former spouse used major credit cards. Your former spouse will need to request a separate report.

- Experian (formerly TRW) – You may call 1-888-397-3742 or access the following Web site: <http://www.experian.com/consumer>. Send a check or money order for the fee requested to: Experian, P.O. Box 2104, Allen, Texas, 75013-2104. You also can order a copy of your credit report and charge the cost to your credit card.
- Equifax – You can receive a copy of your credit report by calling 1-800-685-1111 using your credit card to pay the fee; or writing Equifax at P.O. Box 105873, Atlanta, Georgia 30348 and sending a check; or ordering online via the following Web site: <http://www.econsumer.equifax.com/>
- Trans Union – You can receive a copy of your credit report by calling 1-800-916-8800, and sending a check or money order to: Chester, Pennsylvania, 19022; Trans Union, P.O. Box 1000; or access the following Web site: www.transunion.com/creditreport/

If you are requesting a report through the mail from any of these credit reporting agencies, call the toll-free number to find out what the fee is, and what information you must send to verify your identity. If you are ordering a credit report via the telephone or a Web site, you will be asked to provide some of the same type of information.

Conclusion

Your job as a parent is an important, yet difficult one. Emotional, legal, and financial issues that arise during the divorce process create additional stresses on your role as a parent. You do not have control over everything that happens to you or your children. However, this information is intended to be a resource to help you and your former spouse compromise and make decisions – keeping the well being of your child(ren) as a primary concern. Remember that these guidelines are not a substitute for legal advice or therapeutic counseling.

Your lives are changing. Learning to adjust may take a long time. Even though your family is taking a different form, families still need to do what they always have done – raise and care for children and create satisfying lives for everyone.



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