

FACING A DIVORCE NOW WHAT?

*10
things you
need to know*

1. Get help from an experienced attorney

Make sure your interests are protected and that you are informed regarding your rights.

Divorce does not have to be messy or nasty, but there does need to be a fair dissolution. If you are clear that you are getting divorced, one of the first steps is to start looking for representation.

There is no set formula to get the ball rolling. Meeting with an attorney may not be your first step, but it is definitely your biggest initial step forward.

Many clients don't know what to do. It can be a confusing time where most feel lost. But you want to start making fairly swift steps towards finding out what it is all going to look like. That means meeting with someone who knows the law.

There are so many pieces to the divorce process that it is impossible to know everything at the outset. Moving towards a divorce should always involve talking it over with an attorney.

You don't have to do it alone.

2. Consider the cost of not getting help

What will it cost you to not to hire an attorney? Divorce is an event that will impact you for years.

Even if you do not foresee a high conflict resolution, a lot is coming at you at once. You need a personal advocate who can navigate through this process, fully focused on your needs and concerns.

A mediator's incentive is to get a settlement. They will take advantage of the weakest link in order to get a quick resolution. They represent neither side. And when there are kids and money, you need to have help.

You need to have your own advocate in your own corner. Otherwise, you risk being governed by a law that dictates the rest of your life without it even being a fair order for you to have to comply with.

Quick story: a friend of ours was tied to a level of child support that was not realistic, and he ended up facing contempt of the court based on unestablished income that actually never materialized.

When custody of your children and your financial stability are involved, you need representation.

Meet with an attorney. Did they make you feel heard? Did they return your calls?

Lawyers don't have to be stoic and inaccessible. Find an attorney who will protect your interests and who also will be the right fit.

3. No one size fits all

What is the formula for how you tell your family? What about the kids, what kind of schedule are you going to have? How are you going to continue to support your children together?

As you might imagine, the answers to these questions are slightly different for every situation. The way you break it to your family will depend on a number of factors, such as:

- The age of your children. The way you tell your college-aged kids will obviously be different to how you tell your five-year-old. Keep it age appropriate and let them know it wasn't at all their fault.
- Whether the split is amical or not. Your children might have seen you and your spouse argue. You can acknowledge this and explain why this decision is best for the family. Avoid placing blame upon anyone.

It is best if you and your spouse are there to break the news together. This avoids your family hearing just one side of the story which can add to their confusion.

The State of Utah requires divorcing parents to take a mandatory parenting course designed to educate them their children's needs during and after a divorce.

You should get legal advice so you are fully informed about these issues.

4. Utah is a no-fault state

*Have you had an affair or have you been cheated on?
What if your spouse does not want the divorce?*

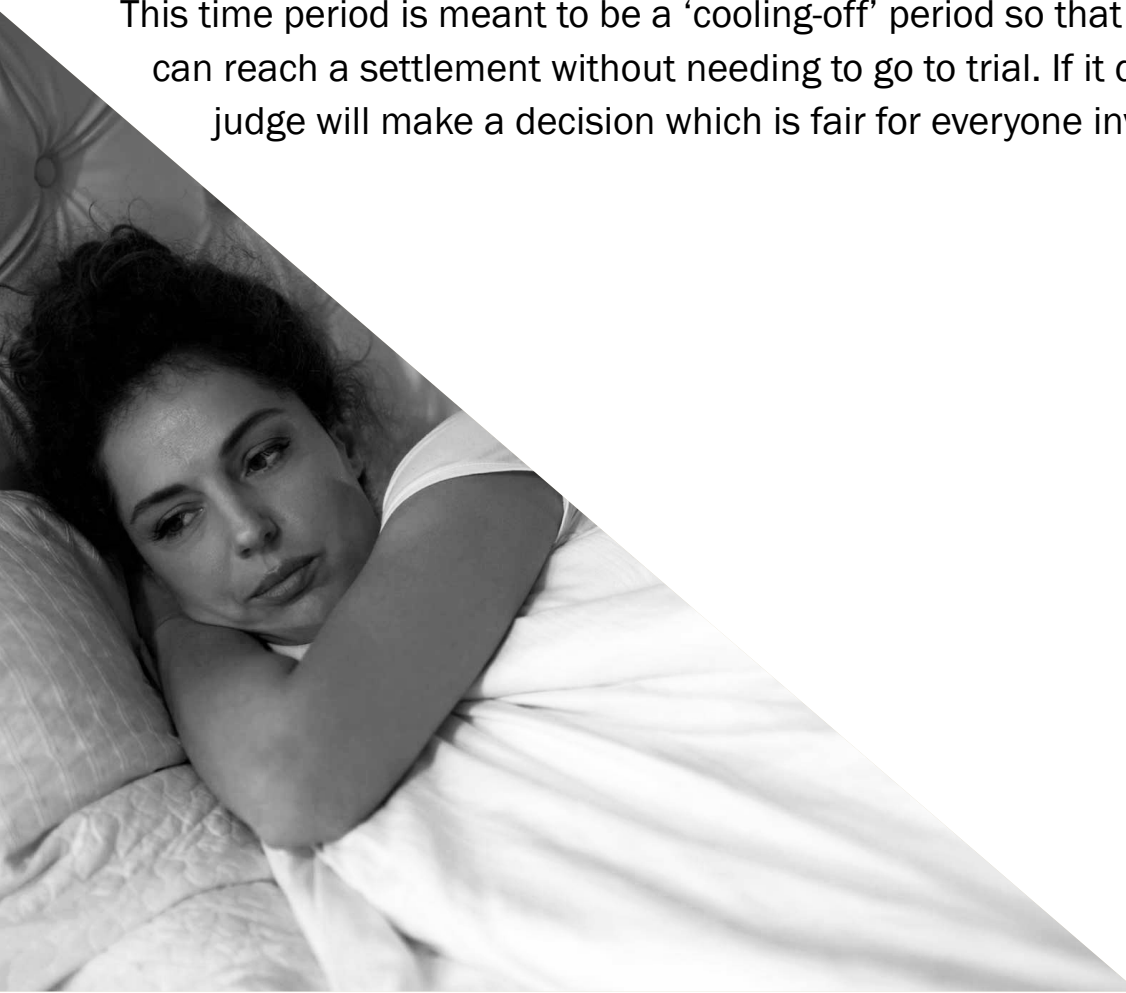
In Utah, it doesn't matter. Utah is a no-fault state meaning only one of you needs to file for divorce – and it does not matter who files first.

There is no need to prove who is 'to blame'. However, if there is serious transgression by one spouse, this can affect court decisions around alimony and property division.

To file for a no-fault divorce, at least one of you must have been resident in Utah for a minimum of three months.

You will be subject to Utah's 90-day waiting period between your initial filing and the granting of the final divorce decree.

This time period is meant to be a 'cooling-off' period so that you and your spouse can reach a settlement without needing to go to trial. If it does go to trial, the judge will make a decision which is fair for everyone involved.



5. Child custody

You should try to resolve child custody arrangements yourselves before going to court.

There are two elements of custody to consider:

- Do you want sole **legal** custody or joint-legal custody?
- Do you want sole **physical** custody or joint-physical custody?

In Utah, there is a presumption of both parties being awarded legal custody so joint-legal custody is common. Joint-legal custody means that both parties have the right to make decisions on the bigger issues that will have to be made on behalf of the child (healthcare, religion, schools, etc.).

That is why you file a parenting plan in the divorce petition because it outlines all the parameters for these different issues (and is a foundation for co-parenting.)

With physical custody, the issue is where the child lives. This element of custody tends to be contentious.

Sole custody here is when you have the child the majority of the time and your place is child's primary residence. The non-custodial parent will still be involved in the child's life.

The non-custodial parent is presumptively given 111 overnights. This schedule is often defined by that parent having the child every other weekend.

The guiding principle is what is in the best interest of the child or children.

6. Alimony

How is alimony decided?

Under Utah law, alimony may be awarded to either spouse. It can be granted on a temporary or a long-term basis. The longer the marriage, the more likely it is that alimony will be awarded.

During the discovery phase, each party will provide the other party with all financial information (the personal property, debts, assets).

Alimony is determined by taking into account the requesting spouse's financial needs, balanced against the alimony payer's ability to pay. This is based on the lifestyle the requesting spouse enjoyed during the marriage.

Lay everything on the table to determine a fair division of assets and liabilities.

Mediation is a required component once the divorce has been filed and the other party has answered.

7. Child support

How is child support awarded?

Your divorce decree will set out rules that you and your ex-spouse will need to abide in years to come. It is going to govern how you look after your children and your finances.

In Utah, child support is calculated based on the number of overnight stays the child has with each parent and each parent's gross monthly income.

Within the first three years, if there is a significant and unforeseeable change in circumstances (such as losing a job), either party can **petition** to verify the other's income. Then every three years, income can be verified simply by a **motion**.

There are no higher stakes than your kids and your finances. Get professional legal advice to ensure you are protected.



8. Asset division – what's yours?

How is property divided?

Half of anything acquired by either party during the marriage is yours.

Is it a clear 50/50 split of everything? No, but it does need to be a 50 percent split of total value. The guiding presumption is that 50% is yours. Keep in mind that this includes debts as well as assets.

You can offset assets that are important to you by compensating the other party in other ways.

If you clearly kept assets separate and did not merge these into the marital estate, then these are considered 'separate property' and will remain yours.

It's a good idea to consult with an experienced Utah legal professional to discuss your rights and options.

9. Don't do anything that you don't want to become precedent

How you've lived during the course of the marriage sets a precedent.

For example, if the father and mother have been equally involved with the children, there is going to be a presumption of joint custody.

Temporary orders

If there is conflict after filing a divorce petition, your attorney will file a motion for temporary orders on your behalf, and a hearing will decide the temporary living situation.

If the order places the children on a schedule where they are primarily under your care, a judge making the final decision will turn to that precedent.

The longer the order is in effect and the better the kids are doing, the stronger the precedent.

Establish a precedent that will help you later. If you want joint-custody of your kids, then show up. Be involved.

10. Don't let the turmoil distract you from what is important

Think of the future.

Divorce is an emotionally and financially stressful time.

Don't get swept away by the here and now – think of the future.

Avoid spending your energy on winning little arguments. Focus on making the best decisions for your finances and your kids.

Remember that in most cases you will still see the mother or father of your children frequently after the divorce, so keep it civil. If you struggle to keep things cool when speaking to your ex-spouse, channel your communication through a neutral third-party.

If you find yourself getting overwhelmed, try writing down your feelings or speaking to a trusted friend or counselor. It will get better soon.



BONUS – free consultation

We can help you know where to start and guide you through every step of the process. With over 35 years' combined experience, we have seen it all. Your first step is to call us to set up an appointment.

During the initial consultation, we will get a feel for the situation:

Do you have children? Do you want custody? What do you want that custodial arrangement to look like?

Do you own a home? Do you want to stay in your house? What is the next step after the divorce is filed?

First step: call Schmidt Law Firm.

During your free initial consultation, you will have the opportunity to discuss:

- Grounds for divorce - Utah is a no fault?
- Distribution of marital assets (home, cars, financial and retirement accounts)
- Child custody and visitation Child support and alimony Relocation after divorce
- The general divorce process and timeline The cost of hiring our firm to represent you

What documents should you bring?

A list of items you would like to discuss during your divorce consultation.

Should we both decide working together is a good fit, there will be other documentation requested (any documents you have been served with, your marriage certificate, a copy of your prenuptial or postnuptial agreement).

HIRE THE SCHMIDT LAW FIRM

We'll guide you through the right process for you

BOOK YOUR FREE CONSULTATION NOW



Schmidt Law Firm, PLLC