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Relocating with kids after divorce

How hard would it be for you, as a divorced parent, to relocate with your children?

In some states, a parent with custody must give the other parent (whether that parent has shared custody or not) written notice of his or her plans. If the other parent objects, a family court will decide the issue. Elsewhere, the parent seeking to relocate has to petition the court directly for its blessing.

In most states, a court looks at the specific facts of each case and makes a decision based on what it views as being in the best interest of the child. In certain states, however, the court works under a presumption that a move is not in the child's best interest, in which case the parent seeking to relocate has to convince the court that the move will significantly improve the quality of life for the child. And some states use a two-step approach, in which the parent first has to show they are moving for good reason, then the other parent (assuming they object to the move) has to show that the move would cause the child harm.

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In determining whether a move is the right thing for the child, a court can look at a variety of things, including the nature of the child's relationship with each parent, the location of other important people in the child's life, whether the move appears to be an attempt to alienate the child from the other parent, how old the child is and his/her individual needs, comparative resources and opportunities in each location, and the child's preference, depending on his or her age or maturity. You may even see a court appoint a "guardian ad litem," a psychologist, attorney or other professional specially equipped to investigate the situation and, acting on the child's behalf, make a recommendation the court.

These situations can be complicated, as a couple of recent cases show. For example, a divorced mother in Rhode Island recently sought to move with her children, who were five and seven at the time, to Ohio, where her own family lived. During the marriage, the father, a doctor, was the sole breadwinner while the mother was the primary caregiver. When they divorced, they were given joint legal custody, though the mother had primary physical

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Temporarily delegating your parental authority

Imagine you're headed off with your spouse for a weeklong vacation in Europe or the Caribbean. You can't even remember the last time you and your spouse had some adult time away from the kids, and you've never left them for this long before. You know they're in good hands with your friends, but even when you leave your kids with people you trust, things can come up that only a parent is permitted to handle.

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For example, your daughter has a doctor or dentist appointment and it turns out a minor medical decision needs to be made, but you're out of reach and your friend doesn't have the legal authority to make the decision for you. Or your kid ends up in the emergency room, but they won't let your friend in the room because she's not the child's parent or guardian. What then?

Most states will allow you to "temporarily delegate parental authority" if you go on vacation, if you leave town for work or if you're deployed by the military. You create a document, usually a form available on your state or county's website, where you designate a particular person as a "temporary agent" to step into your shoes for a certain period of time.

Typically you can give that person general authority to make decisions on your child's behalf, including medical, educational or financial decisions (though a lot of states won't allow a temporary agent to agree to let your child marry or be adopted) or you can limit it to specific powers.

In most states, the form for temporarily delegating parental powers looks fairly straightforward, but there could be hidden traps for the unwary. If you're thinking of appointing a temporary agent, it would be a good idea to have a family attorney assist you.

Relocating with kids after divorce? Issues to consider

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custody. A family court judge denied the mother's request, focusing heavily on the kids' relationship with their father and his own parents, who lived nearby.

On appeal, the mother argued that the family court wrongly disregarded the better housing and employment opportunities available for her in Ohio, the short time the children actually lived in Rhode Island before their parents divorced, how much more she had been involved in the children's upbringing than her ex-husband had and the support network she had available in Ohio.

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But the Rhode Island Supreme Court disagreed, finding that the mother had not proven that her employment opportunities and the kids' emotional well-being would be significantly better in Ohio. The court also pointed out that the father's family, which lived nearby, provided the kids a strong support network, too.

On the other hand, Massachusetts' highest court recently ruled that a divorcing mother could take her daughter to her native Germany. The couple had met and married overseas and the mother had only briefly lived in the U.S. at the time of the divorce. Meanwhile, the child had already spent significant time in Germany, while the father, who was American, wasn't making enough money from his job with a nonprofit to meet his child support obligations, and there was no extended support system for the child in Massachusetts. Additionally, though the child had a loving relationship with her father, he was frequently away for work and missed visitations that he did not attempt to make up. Accordingly, the court upheld a trial judge's ruling that it was in the child's best interest to relocate with her mother.

If you are thinking of relocating, talk to a family lawyer where you live.

These cases can be very fact-dependent. If you are thinking of relocating (or your ex wants to move away with your child), talk to a family lawyer where you live.

When should I modify my custody order?

Custody agreements consider factors such as vacation schedules, holidays, monthly or weekly visitation schedules, as well as details related to children's education, religious activities, extracurricular activities and even sports, based on everybody's needs at the time of the divorce.

However, needs can change, so you might consider modifying your custody order. In most states, custody orders can be modified if there's been a significant "change in circumstances" and if the current arrangement is no longer in the children's best interests.

If a parent gets a new job that requires relocating, or if a parent has a new work schedule that makes the current arrangement very difficult, that might justify a modification. A significant change in a child's schedule, whether for school, important after-school activities, religious school or any number of things that are critical to the child's development could necessitate a modification.

A modification might also be in order for other reasons, such as the other parent's home being unstable or unsafe due to drugs, alcohol or violence, or a because of a parent's incarceration.

If you plan to seek a modification, it's generally up to you to prove a change in circumstances and to explain why a modification is in the child's best interests. You will be expected to document all of this. If you think a modification may be in your child's best interests (and not just in your own best interests), you should contact a family law attorney who is legally-versed in custody issues right away.

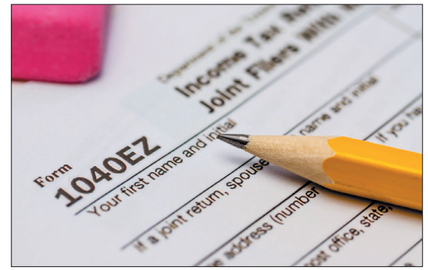
Should you file your taxes jointly or separately during a divorce?

One of the benefits of marriage is being able to file your taxes jointly. That's because you get the benefit of certain tax breaks, such as the child and dependent care tax credit, deductions for college tuition expenses and student loan interest, the deduction of net capital losses and various IRA deductions.

But what if you're in the process of getting divorced? In that case, you need to determine first whether you're actually eligible to file jointly. Then you need to decide if you should.

When filing taxes for a certain year, you can file jointly as long as the court hasn't issued the final divorce decree by the end of that year. If you're eligible on those grounds, you still can't file jointly unless both spouses agree to do so. If the court issues your decree after the end of the year, but before you file taxes for that year, you can still file jointly for that year, but after that you will need to file separately.

Of course you and your spouse may have different interests at stake. For example, if you are the breadwinner and you make a nice income, you would probably want to file jointly to get any tax deductions for being head of a household, for dependents and for any mortgage interest.



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On the other hand, if your spouse makes less money and you file jointly, that might lower his or her tax refund. In a situation like that, you should expect to negotiate whether to file jointly or separately.

If you do decide to file jointly, it's important that your divorce agreement be specific on how you will be dividing any taxes due or refunds to be received.

What about filing separately? This may be an option if you and your soon-to-be-ex are on such bad terms that you cannot cooperate even for the purposes of filing a tax return. Also, if your spouse has a big tax liability and is unable to cover it, and you file jointly, you may end up being responsible for the tax debt. In that case, separate returns may be better for you.

If you're getting divorced and trying to figure out how to file, make sure you're represented by a good family law attorney who is looking out for your best interests and can help you figure out the best way to go.

Protecting an inheritance in the event of a divorce

If you receive an inheritance during marriage and later get divorced, does your spouse get to share in it? The answer varies depending on the circumstances. As a recent New Jersey case tells us, a key factor is how you treated the inheritance when you received it.

In that case, a married woman received an inheritance when her daughter from a prior marriage passed away. The inheritance consisted of $162,000 in life insurance proceeds and assorted other assets. The woman initially parked the money in a joint checking account but later put it in a CD that was in her name only.

When she and her husband got divorced, her husband wanted the money included in the marital estate so he could take his share. But the family court judge rejected his demand and a New Jersey appellate court upheld the ruling. Specifically, the court said that based on how the woman handled the proceeds, she showed no "donative intent." In plain English, that means there was no evidence that she meant for the money to be shared at any point at all.

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Had the wife commingled the money with marital assets, the case may have turned out differently. For example, had the CD been in both spouses' names, or had the wife kept the money in the joint account, the court might have ruled that the husband had a right to at least some of it. Either way, if you've received an inheritance that you hope to protect in the event of a divorce, talk to a family law attorney to find out what options you might have.

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