

# **THINKING ABOUT DIVORCE BUT HAVE CONCERNS ABOUT IMMIGRATION?**



**CVLAP** | CRIME VICTIMS  
LEGAL ASSISTANCE  
PROJECT  
DOMESTIC VIOLENCE AND ELDER JUSTICE



# INTRODUCTION



The Crime Victims Legal Assistance Project provides free civil legal assistance to clients who have experienced domestic violence or elder abuse. Our attorneys are located throughout the State of Michigan and can be reached by contacting your local legal aid program or doing an intake with CALL @ 1-888-783-8190



The Michigan Immigrant Rights Center (MIRC) is a resource center for Michigan's immigrants and immigration advocates. For immigration related assistance (not divorce or custody assistance), please call our intake at (734) 239-6863.

# AGENDA

What can a divorce get me?

What do I need to know *before* I file the divorce?

What do I need to know about *filing* a divorce?

What do I need to know *during* the divorce?

What do I need to know *after* the divorce?

How can I apply for help with my divorce?



**WHAT CAN A  
DIVORCE GET ME?**

# DIVORCE +



**DIVISION OF  
PROPERTY**



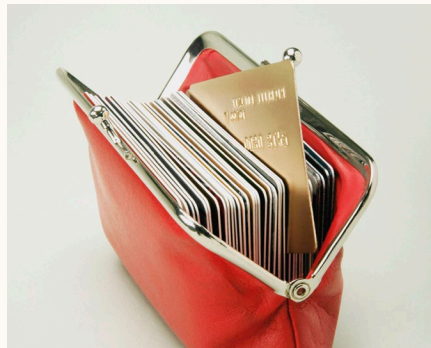
**DIVISION OF DEBT**



**CUSTODY**



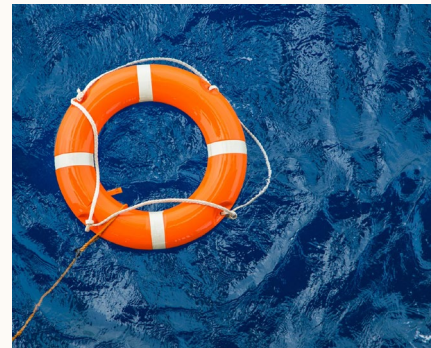
**VISITATION**



**CHILD SUPPORT**



**SPOUSAL SUPPORT**



**SAFETY**



**NAME CHANGE**



**WHAT DO I NEED  
TO KNOW *BEFORE* I  
FILE FOR DIVORCE?**

# BASICS

- Michigan is a “no fault” divorce state, meaning you do not have to prove that your spouse has done something wrong to get divorced. The only reason for divorce in Michigan is that one person feels that the marriage is broken and there is no possibility of reconciliation.
- Your spouse cannot stop you from getting a legal divorce, even if they disagree. If you tell the Judge that your marriage cannot be repaired, then you will be able to divorce your spouse (even over their objections).
- You and your spouse do not need to be separated or living apart to get a divorce.
- You can file for legal separation (it is called “separate maintenance” in Michigan) if you do not want a divorce but you still want to separate your life from your spouse. Going through the process of a legal separation is exactly the same as going through the process of a divorce.
- You can only get an annulment if you can prove to the Judge that at least 1 of 5 things happened when you married: 1) that your spouse was married to someone else, 2) that you or your spouse did not have mental capacity, 3) that you or your spouse were too young, 4) that you or your spouse are close relatives, or 5) that your spouse used force or fraud to get you to marry.

# WHAT IF I AM NOT A US CITIZEN?

- You do not need to be a citizen of the United States (or even have legal status in the U.S.) to get a divorce in Michigan.
- If your right to live in the United States depends on your marriage, a divorce may affect that right and you should seek advice from an immigration attorney.
- It also does not matter where you got married (even if it was outside the United States) as long as your marriage was considered valid in the place where you were married.
- You do not need a copy of your marriage certificate, immigration paperwork, or your children's birth certificates to get a divorce although knowing the information on these documents can be helpful.
- You do not need to speak English to file for divorce. The Court is supposed to assist you with getting an interpreter for all Court hearings so that you can understand what is happening and the Court can understand what you are saying. Although there are some Court forms that are also in other language, most forms you use and receive will be in English so it is important to reach out for assistance from someone trusted to help you translate the documents.



# IMMIGRATION RELIEF FOR VICTIMS

If you are an undocumented immigrant married to an abusive U.S. citizen or Legal Permanent Resident, you may be eligible to apply for a “VAWA Self-Petition.”

If you have been the victim of a crime who has made a police report, you may be eligible to apply for a “U-Visa”

If either of these situations applies to you, you should speak with an immigration lawyer to learn more information.

# SAFETY TIPS

- If your spouse has threatened to do something bad to you if you file for divorce (like hurt you, deport you or take the children from you), you can request a Personal Protection Order to keep you and your children safe. You should also seek the assistance of a domestic violence shelter and a lawyer if this applies to you.
- In addition to a Personal Protection Order, you can also ask that the Court limit the other parent's access to the children if that parent is a danger to the children (ex: that parent has hit a child or driven drunk with a child).
- If you do not want your spouse to know your address, then you can ask the Court to grant you an order for “confidential address” in your divorce so it is kept a secret. Alternatively, you can use another address (like a P.O. Box or a friend's house) where you are able to receive mail regularly.
- If you still live with your spouse and you are worried that your spouse may do something bad to you if you file for divorce, you can contact a domestic violence shelter in your area and ask for assistance with temporary housing, food, childcare or other basic necessities.



**WHAT DO I NEED  
TO KNOW ABOUT  
*FILING* A DIVORCE?**

# WHERE AND WHEN DO I FILE?

- You (or your spouse) must have lived in Michigan for at least 6 months before you can file for divorce in the State of Michigan
- If your spouse does not live in Michigan (even if your spouse does not live in the United States), you can still get divorced in Michigan if you have lived her for 6 months.
- Even if you have no idea where your spouse is located you can still get divorced, but it will be more complicated. You should seek the assistance of a lawyer if this applies to you.
- You will need to file your divorce in the Michigan County where you or your spouse has lived the past 10 days. Most people file where they live but you do not have to – you can file in the County where your spouse lives.
- If you already filed for divorce in another State or County, then that case must be dismissed before you can file a new case for divorce.

# PAPERWORK AND FEES

- If you are going to represent yourself, you can (and should) get all the paperwork you need for filing a divorce from *Michigan Legal Help*.
- The basic paperwork for filing a divorce is called a **Summons and Complaint**.
- There is a cost (called a filing fee) that you must pay when you file your divorce. The filing fee for a divorce without children is about \$175. The filing fee for a divorce with minor children is about \$225.
- If you are unable to pay the filing fee because you have limited income (particularly if you receive some type of public assistance) then you can request that those fees be waived (meaning you do not have to pay them).



# HOW DO I SERVE MY SPOUSE?

- “Serving” your spouse is a fancy way of saying that you have given your spouse the divorce paperwork in the proper way. If you do not properly serve your spouse, then your divorce cannot move forward.
- In Michigan there are 3 proper ways to serve your spouse:
  1. Your spouse can voluntarily accept the paperwork and sign a statement (called a Proof of Service) saying that they have accepted the papers.
  2. Someone (other than you) who is over 18 can hand the paperwork to your spouse. That person must sign a statement (also called a Proof of Service) swearing that they gave the paperwork to your spouse and have that statement notarized. This will work regardless of whether your spouse accepts the paperwork or not.
  3. You can mail the paperwork to your spouse using CERTIFIED MAIL, RESTRICTED DELIVERY. This only works if your spouse will accept the mail and sign for it.
- **Warning:** You only have 90 days to get your spouse served after you have filed your divorce paperwork otherwise your case will be dismissed, and you will have to start all over again.

# HOW LONG WILL IT TAKE?

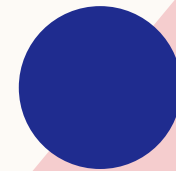
At a minimum, a very simple divorce *without children* is required to take at least 60 days before it is over.

Similarly, a very simple divorce *with children* is required to take at least 6 months before it is over. This may be waived by the Court but you still have to wait 60 days.

Most divorces, however, take anywhere from 6 to 12 months - so do not be surprised if you have to wait a year before you are divorced.

# WHAT IF A DIVORCE IS *FILED AGAINST ME?*

As long as you want a divorce, it does not matter who files. There is usually no advantage to being the spouse who files first – also known as the “Plaintiff.” If the divorce is filed against you, which would make you the “Defendant,” you just need to make sure you file an **Answer** and a **Counter-Complaint** within 21 days of being given the paperwork.





# DO I NEED A LAWYER?

- You do not need to have a lawyer if you want to get a divorce. You can represent yourself.
- The more complicated your divorce is, however, the more you should consider talking to a lawyer. A divorce can be complicated if you:
  - own real estate
  - have a retirement account
  - need spousal support
  - your spouse is abusive
  - you have no idea where your spouse is
  - you have children but one of them is not your spouse's child





**WHAT DO I NEED  
TO KNOW *DURING*  
THE DIVORCE?**

# DIVORCE +



**DIVISION OF PROPERTY**



**DIVISION OF DEBT**



**CUSTODY**



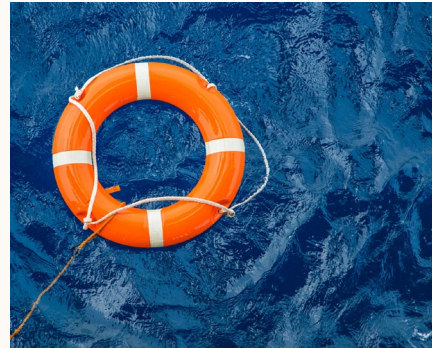
**VISITATION**



**CHILD SUPPORT**



**SPOUSAL SUPPORT**



**SAFETY**



**NAME CHANGE**

# WHAT HAPPENS TO OUR PROPERTY AND DEBT?

- One of the primary goals of a divorce is to fairly divide all the property and debt that developed during the marriage.
- Property & debt may include:
  - Vehicles (and loans to purchase them)
  - Houses or Land (and mortgages or lines of credit)
  - Furniture and Appliances
  - Tools or Equipment
  - Bank Accounts, Cash, Safe Deposit Boxes
  - Retirement Accounts, Stocks or Bonds
  - Businesses
  - Credit Cards and Student Loans
  - Etc.



# MY NAME IS NOT ON THE HOUSE

- In a marriage, it is common for the marital home (or other property - like a car) to only be listed in one spouse's name. This does not mean that only that spouse owns the property. Regardless of whose name is on the property, both spouses have an ownership interest in it and a right to fair division of the value of the property.
- It is also common in a marriage for one spouse to make more money than the other. This is particularly true in marriages where there are still minor children. Just because one spouse is the breadwinner of the family does not mean that all the money they have earned and saved belongs to them. Just like property, money earned and saved must also be fairly divided.
- Just like property and savings, debt that was taken on during the marriage must be shared as well. This is true even if it is listed only in one spouse's name.



# HOW WILL OUR PROPERTY AND DEBT BE DIVIDED?

- If you and your spouse cannot agree on how to divide your property and debt, the Judge will decide. Michigan law requires Judge's to divide property and debt fairly.
- Fair usually means that each person gets about half of everything. Your spouse cannot prevent you from getting a fair division of property just because of your immigration status or because you were a stay-at-home parent.
- In some cases, a Judge could decide it is fair to divide things in a different way. Your property may be divided unequally if one person is more at fault for the marriage ending (ex: due to adultery, violence, drug or alcohol abuse, etc) or if one person needs more property to make things fair.



# DIVORCE +



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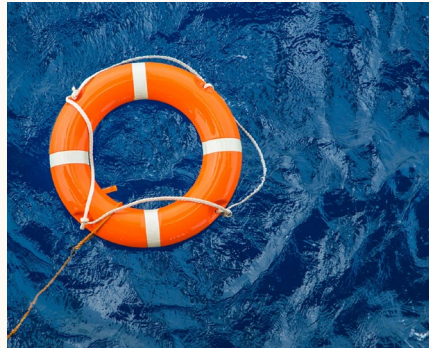
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# CAN I GET SPOUSAL SUPPORT?

- The terms “spousal support” and “alimony” mean the same thing.
- There is no formula to tell you whether or not you will get spousal support or how much you will get. Spousal support is decided on a case-by-case basis.
- Whether spousal support is appropriate in your case depends on various factors, including:
  - The length of the marriage and how each person behaved during that marriage
  - How much each person earns (or does not earn) and whether either party is able to pay
  - The age, health, needs and living situation of each person
  - Whether either party has other people to support or if they are living with someone else who helps support them
  - The standard of living the parties had during the marriage
  - How much property or debt each person is going to get after the divorce





# TYPES OF SPOUSAL SUPPORT

## PERIODIC

- Periodic spousal support means that it is paid over time, usually each month.
- Periodic spousal support can either be temporary or permanent. If it is temporary, then it will eventually end.
- If it is permanent, then it will continue for a long time. This is most common after long term marriages.

## LUMP SUM

- Lum sum spousal support means that it is paid all at once, usually one your divorce is finalized, and then never paid again. This is less common.

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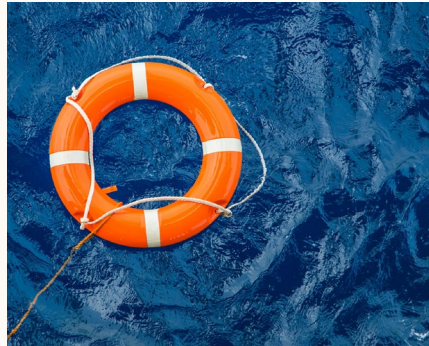
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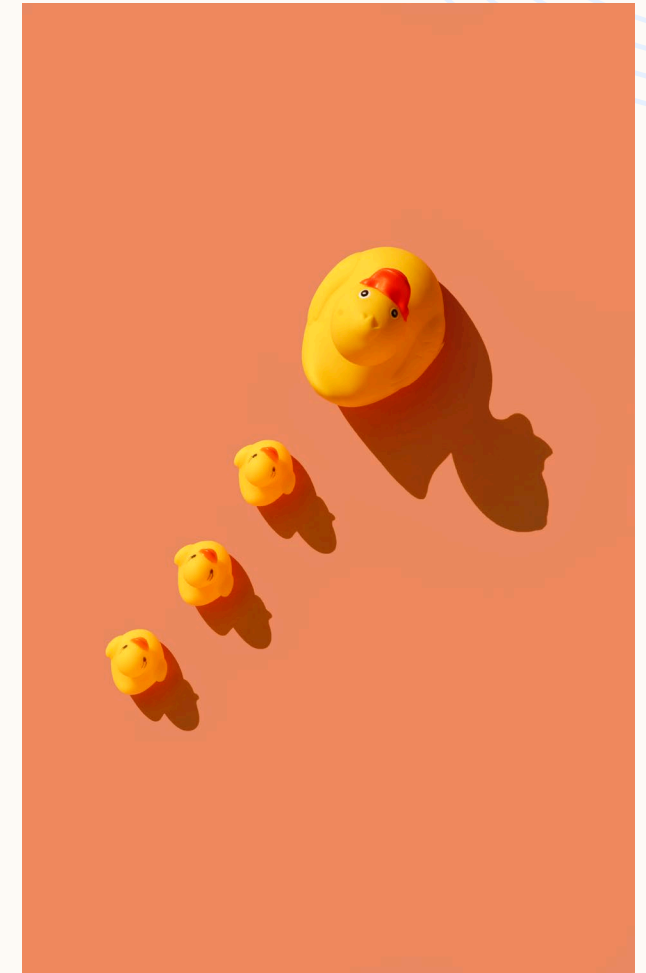
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**NAME CHANGE**

# WHO GETS THE KIDS?

- Children have a right to a relationship with *both* parents regardless of their parents' immigration status and regardless of who primarily took care of them during the marriage.
- In Michigan there are 2 types of custody:
  - “**Legal Custody**,” which means having the right to make important decisions about your children, such as where they go to school, what religion they practice, and what medical treatment they receive
  - “**Physical Custody**,” which refers to the children’s living arrangements and the schedule for visitation or parenting time.
- Custody can be “sole” or “joint”. Joint means that decisions and time with the children are shared by both parents. Sole means that only one parent makes decisions or that one parent’s time with the children is limited in some way.



# WHAT WILL THE SCHEDULE BE?

- Visitation is often referred to as “parenting time” in Michigan. Parenting time can be “specific,” meaning there is a schedule with dates and times when the children are to be exchanged, or it can be “reasonable,” meaning you and the other parent will work it out as you go.
- The schedule that your children will have depends on what is in the children’s best interest. Sometimes visitation is equally shared, sometimes one parent has a little more visitation, sometimes one parent has a lot more visitation. It all depends on the circumstances.
- You cannot restrict the other parent from having regular visitation with the children unless there are serious concerns about their safety when with the other parent.



# WHAT ARE THE “BEST INTEREST FACTORS”?

**Factor A:** The emotional ties between each parent and the child(ren).

**Factor B:** Each parent’s capacity and disposition to give the child(ren) love, affection and guidance.

**Factor C:** Each parent’s capacity and disposition to provide the child(ren) with food, clothing, medical or other care

**Factor D:** The length of time the child has lived in a stable, satisfactory environment and importance of maintaining continuity.

**Factor E:** The permanency of each parent’s home.

**Factor F:** Each parent’s moral fitness.

**Factor G:** The mental and physical health of each parent.

**Factor H:** The home, school, and community record of the child.

**Factor I:** The child’s reasonable preferences.

**Factor J:** Each parent’s willingness to facilitate and encourage the child’s relationship between the child and the other parent.

**Factor K:** Whether either parent has engaged in domestic violence.

**Factor L:** Anything else that is relevant.

# SAFETY CONCERNS

- Domestic Violence is 1 of the 12 factors the Judge must consider when making custody and parenting time decisions in your divorce. The Judge must consider domestic violence even if your spouse was not violent towards the children, and even if the children did not see the violence. It is important to let the Judge know about the violence and why you are afraid.
- An abusive spouse may still get parenting time or some form of custody. The Judge must consider joint custody if either parent asks for it. The Judge will have to decide whether you and the other parent can make parenting decisions together. If your spouse has been abusive, it may be hard to communicate and make decisions together. This may be one reason to ask for sole custody.
- If the Judge is concerned about the children's safety, they can put protections into place designed to protect the kids, such as supervised visitation, limited visitation (ex: only daytime visits) or no visitation. The more serious the danger, the more serious the protections the Court will consider.

# DIVORCE +



**DIVISION OF PROPERTY**



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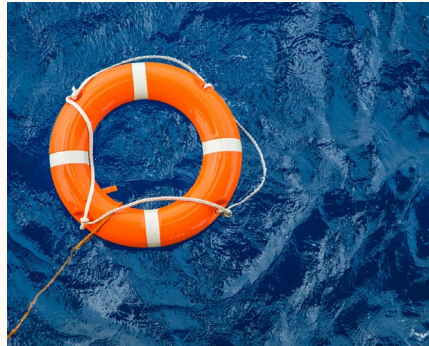
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**NAME CHANGE**


# WHAT IF MY SPOUSE IS ABUSIVE?

- Domestic violence is serious and can impact the issues in your divorce. If your spouse has been verbally, emotionally, or physically abusive, consider talking to a lawyer. If you are low income, you may qualify for a free attorney with legal services.
- As described previously, if one parent is abusive, either to you or to the children, the Court can require that safeguards be put into place to protect the children when they visit with that parent.
- A parent without legal status in the U.S. cannot be deported simply for fleeing with the child(ren) from an abusive spouse. Seeking safety to avoid further violence and abuse of children is allowed regardless of a parent's immigration status.






# SAFETY OPTIONS




**LIMIT OR STOP  
COMMUNICATION**



**CONFIDENTIAL  
CONTACT INFO**



**PARENTING &  
BATTERER CLASSES**




**MOVE AWAY**



**COURT HOLDS  
PASSPORTS**



**RESTRICTED  
VISITATION**



**REQUIRED MENTAL  
HEALTH TREATMENT**



**REQUIRED SOBRIETY  
OR TESTING**

# CAN I RETURN TO MY HOME COUNTRY WITH THE KIDS?

If you have not already filed for divorce and there is no existing custody order, then maybe you can return to your home country with the children. You should consult with a lawyer before you do this.

If you have already filed for a divorce or if there is an existing custody order then no, unless you have permission from the Judge or you and your spouse have a written agreement allowing you and your children to return to your home country.

Your best bet for returning to your home country with the children have a written agreement with your spouse allowing you to go. If your spouse disagrees, however, the Judge must decide.

# PERSONAL PROTECTION ORDER

In addition to safety provisions the Court can grant you in the divorce, you can also request a PPO. This is not a criminal action – so your spouse will not be charged with a crime – but it is an effective way to stop abusive, threatening, stalking or harassing behavior.

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# WILL I PAY/GET CHILD SUPPORT?

- Children have the legal right to receive financial support from both parents. Typically, one parent will end up paying child support (called a “payor”) and the other will end up receiving it (called a “payee”).
- A parent cannot avoid paying child support by simply agreeing not to have visitation with the children. The Court will not approve this type of agreement.
- The amount of child support is calculated using the Michigan Child Support Formula. This formula considers the following factors:
  - Each parent’s incomes
  - The number of overnights the children spend each year with each parent
  - The number of children to support
  - Healthcare expenses for the children
  - Childcare expenses for the children
  - Whether either parent has additional children they pay child support for

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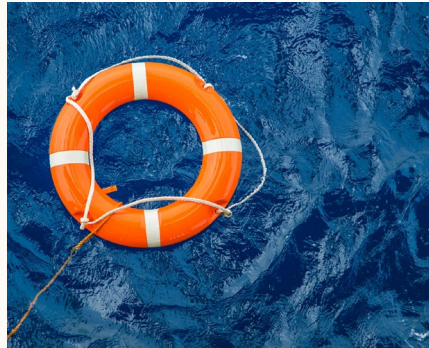
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**NAME CHANGE**

# CAN I CHANGE MY NAME?

Yes, you can change your name (but you do not have to). Also, your spouse cannot force you to change or keep your name after the divorce.

That is your choice.



**WHAT DO I NEED  
TO KNOW *AFTER*  
THE DIVORCE?**



# READ YOUR PAPERWORK

After you get divorced there may be things you are required to do. This may include paying child or spousal support, exchanging children, selling the house, signing over title to a car, etc.

Read your “Judgment of Divorce” very carefully to make sure you know what you are required to do. You cannot change your mind after the divorce and decide not to do what is required of you.

If you do not follow the rules in the Judgment of Divorce, you could be punished (or “held in contempt”) by the Court and lose some of your rights or even go to jail.

If getting your divorce paperwork translated will help you comply with your requirements, then seek help in getting your Judgment of Divorce translated into your primary language.

## **WHAT IF MY SPOUSE DOES NOT FOLLOW THE RULES?**

Your spouse can also get punished if they do not follow the requirements in the Judgment of Divorce paperwork. It is important to keep a record of what your spouse is doing (or not doing) so you can easily explain it to the Judge. If your spouse is refusing to comply, then you can file a “Show Cause” motion against them and ask that the Judge force them to follow the rules. This could result in your spouse losing certain rights or even going to jail.



**HOW CAN I APPLY  
FOR HELP WITH MY  
DIVORCE?**

# TO APPLY FOR HELP GO TO:

*For assistance with a divorce:*

Crime Victims Legal Assistance Project

[www.cvlap.org](http://www.cvlap.org)

*For assistance with immigration:*

Michigan Immigrant Rights Center

[www.mirc.org](http://www.mirc.org)