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Modifying your support agreement during a pandemic

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The coronavirus pandemic has wreaked havoc on millions of Americans' financial situations. Layoffs, reduced hours, furloughs and business closings have changed people's economic outlook. It's also made it hard for people paying child support to meet their obligations and equally hard for child support recipients to cover their expenses. If this sounds like your situation, you should talk to a family law attorney because you may have options.

Your first option is to talk openly and honestly with the other parent and try and negotiate an arrangement while the pandemic is going on. Be reasonable — it's likely that the other parent has experienced changed circumstances that impact their needs as well. If you can agree ahead of time, you may be able to submit the agreement for the court's approval.

If you can't work something out with the other parent, you may have to go to court to seek a modification. In that case, you generally will need to show that you lack the ability and opportunity to earn. When you're facing this situation, it's important that you're actively trying to find another job, regardless of how challenging that might be at this point. This is because a judge will want to see that you're making a good faith effort to find employment. Be sure to document your efforts so you can demonstrate this to the court.

Finally, if you think you need to file for a modification, it's important that you do so quickly. Courts around the country have been reopening at different rates and it's likely they'll be jammed with business that's been backed up for months. In many states, it may be a while before your case is resolved, but by filing for the modification you may be able to get it to apply retroactively.

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Family Law
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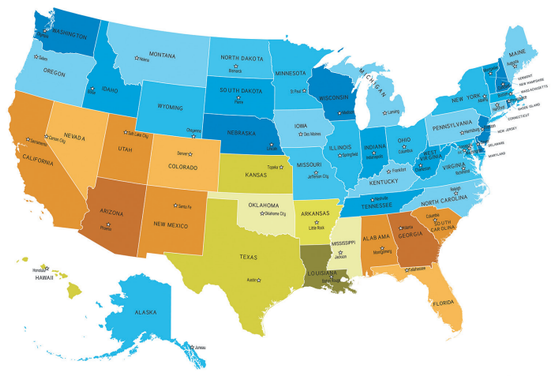
How relocating can impact your divorce

It's very common for someone who's getting divorced to think about moving to a different state. Maybe they live far away from their parents, childhood friends and extended family and want to go somewhere with a support system. Or maybe they've gone "home" for a while during a separation and decided to stay, or finally feel free to pursue their dream job and their best opportunities lie elsewhere.

Whatever the reason, you should realize that different states have very different laws. This means that depending on which state has jurisdiction over your divorce you could see very different outcomes in terms of how your marital property is split up. In addition, the state with jurisdiction typically has the power to decide related issues like custody and visitation, child support and alimony and, potentially, future disputes if you or your ex seek to modify arrangements. That's why if you're contemplating a move in conjunction with a divorce you should discuss all relevant considerations with a family law attorney.

> If you do plan to file for divorce or avail yourself of the courts in a new state, be aware that you will need to prove your residency.

One consideration is where you should file. If you plan on seeking alimony, you may find that the state where you live may not provide for it at all or may have very strict requirements, while the state you want to move to has more generous support laws. You may be able to



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file there instead, depending on your new state's residency requirements. Two states — Alaska and Washington — have no residency requirements at all, while some require that you reside there for as little as 60 days. Others require a full year of residency.

If you do plan to file for divorce or avail yourself of the courts in a new state, be aware that you will need to prove your residency by showing a driver's license, a voter registration card or a residential lease. And remember that if your spouse files for divorce first, the state where he/she lives will get jurisdiction over the proceedings.

If you plan to relocate and you have children, keep in mind that

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Different laws in different states can impact your divorce

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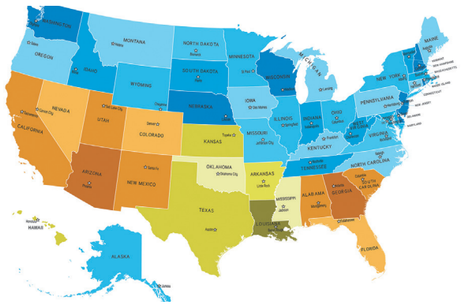
custody jurisdiction can be complicated. Typically the child's "home state" (the state where the child has been living for at least six months) has jurisdiction over custody matters. But if a different state issued an original custody order, that state could retain the power to decide any modifications if one of the parents still lives there.



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Parties can enter agreements as to which state will be considered the "home state" for the purpose of deciding custody issues, but a recent New Jersey case shows us that these agreements have limitations, particularly if real-life facts don't match what's on the paper.

In that case, an unmarried woman who lived in Virginia gave birth to "Jimmy." When Jimmy was almost a year old, his parents entered a "custody and parenting time" agreement that designated the father, who lived in New Jersey, as the parent of primary residence and gave both parents joint legal custody. The agreement also stated that it was governed by New Jersey law and any related disputes would be decided by New Jersey courts.

Several months later, the mother did not bring Jimmy back to New Jersey after her designated parenting time ended. The father went to a New Jersey court seeking an order that the child be returned. The mother argued in response that Jimmy was born in Virginia, enrolled in day care there and resided there, making Virginia his home state for custody purposes. She also claimed the father's legal paternity was never established. The court still found that New Jersey had jurisdiction over the agreement and ordered Jimmy's return.

The New Jersey Appellate Division reversed. The appeals court found that the lower court wrongly relied on the agreement between the parents as a basis for jurisdiction. Instead, the court should have determined which state Jimmy was most personally connected with. The trial court will now have to decide what state is Jimmy's "home state."

An inheritance is coming. Should you get a prenup?

When many people hear the term "prenuptial agreement," they think of celebrities and tycoons like Beyonce and Jay Z, Kim Kardashian and Kanye West and Mark Zuckerberg. After all, high-wealth individuals have more to lose if they get divorced. Still, there are plenty of reasons for "normal" people to consider entering into a prenuptial agreement (a contract you enter into with your spouse that details exactly what will happen in the event of a divorce) when they get married.

One reason might be an expected inheritance that you want to make sure remains in your family.

As a general principle, an inheritance that one spouse receives during a marriage should be safe. That is because in most states property that you bring into the marriage remains your "separate property" and can't be divided during a divorce, as opposed to most other types of income and assets acquired during marriage, which would be considered "marital property."

However, the devil is in the details. For example, if you put an inheritance into a joint bank account and use it for marital expenses, it may lose its protection as separate property. If you use it to improve your house, it could lose that protection as well. Even if you keep your inheritance completely separate from joint property, in some states it still may be applied toward child support, alimony and even your ex's attorney fees.

However, a well-crafted prenuptial agreement can include language ensuring that a future inheritance cannot be divided or used toward legal fees or support in any circumstance, as long as your state's laws permit this.

Admittedly, bringing up the idea of a prenuptial agreement can feel awkward to many people. Nobody headed to the altar wants to be thinking of divorce. But nothing in life is certain, and a little bit of foresight today can save you a lot of stress later on. Talk to a family attorney where you live to learn more.

Wife's stake in business subject to 'marketability discount'

One of the most contentious issues that can arise in a divorce is the status of a family business, particularly where a husband and wife hold unequal stakes. A recent South Carolina case shows that having a minority stake can be a disadvantage both in making business decisions and in a divorce.

In that case, the husband owned 75 percent of the business and the wife owned the other 25 percent. During their divorce, a dispute broke out in the context of property division over the value of their respective stakes.

A family court judge ended up devaluing the wife's stake in the business, pointing out the lack of any evidence that the husband, who controlled the business, planned to sell.

The wife challenged this "marketability discount" and a midlevel appeals court judge reversed the decision.

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But the South Carolina Supreme Court disagreed and put the trial judge's order back in place. The court reasoned that the proper way to value the wife's interest was based on fair market value, meaning how much she could realistically sell her interest for, rather than "fair value," meaning 25 percent of the whole company's value. This, the court said, should result in both a marketability discount and a "control discount." The court concluded that a 30-percent reduction should apply.

The law, of course, may vary from state to state. An attorney can tell you more.

Remember to update your beneficiaries when you divorce

A recent Massachusetts case serves as yet another reminder that when you divorce, it's important to review all your insurance policies, bank accounts, retirement funds and investment portfolios. It's also important that you and your soon-to-be ex-spouse are each represented by separate counsel.

In this case a man took out a life insurance policy when he was still married to his ex-wife. He named his wife as its beneficiary. The couple got divorced after having two kids and handled their divorce pro se (without lawyers).

The husband died without ever replacing his ex-wife as the policy beneficiary. She sought to collect the benefits, contending that she and her ex-husband had made an oral agreement under which she would continue making premium payments in exchange for his promise not to cancel the policy and cash it out. She claimed they did this for the benefit of their children.

But the husband's mother intervened, pointing out that Massachusetts has a "revocation upon divorce" law that cancels any "disposition or appointment of property" to a former spouse. The mother argued that this terminated the ex-wife's beneficiary status, leaving her as the rightful recipient of the death benefit.

The ex-wife argued in court that because the Massachusetts law did not specifically state that it applies to "beneficiary designations" (unlike other states that adopted a similar law), the divorce did not strip her of her interest in the policy.

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But a judge disagreed, pointing out that other parts of the law made it clear that beneficiary designations were meant to be revoked upon divorce, unless the owner of the policy stated otherwise in writing.

We will never know what the husband's true wishes were. So if you want to make sure your assets go where you want them to in the event of your death, be sure to work with an attorney to identify any relevant documents, go through all beneficiary designations and make clear in writing what your intentions are.

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