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The Legal Rights of Women in Vermont
Domestic Relations
Chapter 3

This chapter includes information about:

"Domestic relations" refers to the complex legal rights of women involving marriage, civil unions, separation, divorce, child support enforcement, establishing parentage, and the rights of couples who have not married or joined in civil unions.

Marriage

Marriage in Vermont is defined as "the legally recognized union of two people." This means that same-sex couples may legally marry in Vermont.

A person between the ages of 16 and 18 can be married with the consent of a parent or guardian. No person under the age of 16 may legally marry. You cannot marry your parent, grandparent, child, grandchild, sibling, niece or nephew, aunt or uncle. You do not need to have a blood test before getting married.

Vermont does not recognize "common law" marriages. The fact that you consider yourself married, or the fact that you have lived together for a certain number of years, does not mean that you will be considered "married" under the law.

In order to become legally married in Vermont, you need to:

- get a marriage license from the town clerk where either you or your partner resides (the application allows for the choice between bride, groom, or spouse);
- get married within sixty days of the date the license is issued;
- have the marriage "solemnized" (performed or just signed) by a Vermont clergy

person, judge, justice of the peace, a clergy person from outside Vermont, if that person gets appropriate approval before the marriage from the Probate Division of the Superior Court of the county in which the marriage is to occur, or a **temporary officiate.** A "temporary officiate" may solemnize a marriage if authorized by the Secretary of State. The individual must be at least 18 years old and complete an application within 10 days prior to the ceremony;

- you do not need to have anyone other than the person performing the marriage sign or "witness" the marriage license.
- have the marriage license filed with the town clerk within ten days after the marriage (usually by the person who performs the marriage). If you miss the filing deadline for your marriage license, you can file a "delayed certificate of marriage" with the Probate Division that covers the town where the license was issued.

If you are participating in the confidential address program and applying for a marriage license, you can notify the town to keep your address confidential. This means the town clerk will not disclose your address on any public records.

In 2015, the Supreme Court of the United States decided that marriage was a fundamental right protected under Constitution. Furthermore, the Court decided that same-sex couples have the same right as opposite-sex couples to marriage. Because of the decision, no state can deny legal marriage to same-sex couples. However, religious organizations are not required to provide services related to marriage ceremonies. A church or clergy member may legally decline to perform a marriage ceremony or to provide accommodations for the marriage ceremony for any reason.

Civil Unions

A civil union means two eligible people have established a relationship under Vermont law and may receive provided benefits and protections. In 2000, Vermont became the first state that allowed for same-sex couples to be joined in a civil union. **In 2009 Vermont allowed same-sex couples to legally marry and couples may no longer establish civil unions.**

A couple already joined in a civil union that was established before September 1st, 2009 will continue to have the same legal benefits, protections, and responsibilities provided under Vermont law to married couples. A couple in a civil union may marry one another without terminating the civil union. The civil union will continue to exist.

Since you have the same rights under Vermont law as spouses in a marriage, all of the places in Vermont law which refer to "spouse," "family," "immediate family," "dependent," "next of kin," etc., also apply to you as a spouse in a civil union. This includes a large number of laws, for example: property ownership; probate; adoption; abuse protection; discrimination on the basis of marital status; compensation to spouses under victims' compensation and workers' compensation; notification, medical treatment and decisions; family leave benefits; public assistance benefits; and state income taxes.

Under domestic relations law in Vermont, **if you want to dissolve a civil union, you have to go through Vermont family court in the same way you would terminate a marriage.** In other words, all of the following sections regarding legal separation, divorce and child support also apply to people who are going through the process to dissolve their civil union. If you have a civil union and a marriage and wish to terminate the partnership, they can be terminated in one court order at the same time.

Legal Separation

Under Vermont law, a "legal separation" can be granted for the same grounds as in a divorce. It can be entered into by written agreement or by court order and uses the same process as a divorce. It can stay in effect for a limited or an unlimited time.

Since it is not a divorce, you cannot remarry. In almost every other respect, however, a legal separation is the same as a divorce, providing division of property and arrangements for how you will care for and provide for your children.

Divorce

The term "divorce" refers to the dissolution of a marriage or civil union. Divorce can be one of the most difficult legal problems that people face. Getting a divorce may be either complicated and costly, or straightforward and relatively inexpensive, depending on the circumstances in each case. **The complexity of a divorce or legal separation depends on how well the parties relate to each other and how many issues are contested.**

The terms of most divorces in Vermont are the result of negotiated agreements between the parties, which are then formally approved by a Superior Court judge. A much smaller percentage (about 7%) are cases where the parties cannot reach an agreement and where the terms of the divorce are decided by a judge after a hearing in court.

The major issues to be decided in a divorce usually include:

- who the children will live with and when the children will see each parent;
- how the parents will make decisions for the children and how they will be supported;
- how the marital property will be divided;
- who will be responsible for paying outstanding bills;
- whether there will be any spousal maintenance (alimony).

Vermont is a no-fault divorce state. The most common ground for divorce in Vermont is a showing that you have lived apart for at least six months and that there is no reasonable chance of reconciliation (i.e. you and your spouse will not get back together). It is also possible to claim that you have lived apart for six months, even though you are living under the same roof if you have stopped having marital relations. You do not have to have lived apart for six months before filing for divorce**,** but you have to have lived apart for six months by the time your divorce is granted (the final hearing).

When filing using this ground for divorce, you do not need to demonstrate any showing of fault by either party. **You can file for and get divorced even if your spouse does not want to.** Your spouse *cannot* prevent your divorce action from moving forward because they do not want a divorce. If one party denies under oath living apart for six months, the court will consider factors such as the circumstances for filing for divorce and the possibility of reconciliation. After considering the factors, the court may schedule a hearing for a later date or make a decision based on the factors.

Although used infrequently, the **other grounds for divorce** in Vermont are: intolerable severity; nonsupport; imprisonment for three or more years; adultery; permanent mental incapacity; willful desertion or absence for seven years while not being heard of during that time.

You have to have lived in Vermont for at least six months before you can start a divorce and a year for a divorce to be granted. The divorce process is handled in Vermont through the Family Division of the Superior Court in each county. (See VCW's Resource Directory – Family Division and Office of Child Support section.) The Family Division can decide cases involving divorce, separation, child support, parental rights and responsibilities (custody), parent-child contact (visitation), grandparent visitation, paternity, abuse prevention, juvenile delinquency, abuse and neglect, and certain mental health proceedings.

Each county has its own Superior Court and the process in each may be somewhat different. Depending on the county, various stages of your divorce may be in front of a **Family Division Magistrate** (especially if you and your spouse have children), a **Superior Court Judge**, or, in rarer cases, an **Assistant ("Side") Judge**. It is common at an evidentiary hearing for a **Superior Court Judge** and two **Assistant Judges** to be present. The role of the Assistant Judges is fact-finding.

Hiring a Lawyer, Representing Yourself or Going to a Mediator

Whether you are thinking of divorcing your spouse, or if your spouse has started a divorce against you, one of the first questions you will have to decide is whether to hire a lawyer or to represent yourself.

It may be advisable to **hire a lawyer** to help you through the process if:

- you and your spouse have too many disagreements about the terms of the divorce, such as custody of the children, distribution of property, responsibility for debts; etc.;
- your spouse has a lawyer or is a lawyer;
- there are substantial assets or debts to be divided or you believe your spouse may be hiding assets;
- there has been physical or emotional abuse in the marriage.

If your spouse has hired a lawyer, it is advisable for you to consider hiring your own lawyer to represent your interests. You should not take advice from your spouse's lawyer since

that person is not allowed to represent both of you and is representing your spouse's interests. If you find your spouse's lawyer intimidating, you may request that communication occurs in writing to give yourself time to consider and thoughtfully respond.

You might consider representing yourself **("pro se")** if the decision to get a divorce is mutual and you and your spouse are able to communicate well, and can work out such things as the division of property, including items such as furniture, vehicles, financial and retirement accounts, who will pay the outstanding bills, whether any spousal maintenance (alimony) will be paid, and, if you have children, the parental rights of each parent.

Except for relief from abuse petitions and child support hearings, the court will order all parties representing themselves to attend a **Pro Se Litigant Education Program** before they appear in court. These classes are one-hour long and designed to inform you and your spouse about your rights and responsibilities while representing yourself, courtroom procedures, and support that may be available to your family to deal with problems that may arise during the divorce process.

There are also some informative pamphlets provided by the Family Division of the Superior Court, also available on the Vermont Judiciary website, which explain the divorce process and how to fill out the appropriate forms. (See VCW's Resource Directory – Legal section.)

You can decide to hire an attorney at any stage in the process, and you have the right to fire your attorney at any time as well.

Before deciding whether you and your spouse need to hire separate lawyers, you might want to hire a mediator together to help you resolve any disputes or conflicts regarding the difficult issues in your divorce**.** A mediator is a trained, neutral third person who might be able to help you and your spouse create a mutually acceptable divorce agreement. Mediators help parties communicate in an informal and confidential setting.

When choosing a mediator, make sure they do the following:

- inform you of their mediation training and experience;
- explain the mediation process; and
- give you an estimate of the time and fees involved.

If mediation is successful, it is recommended that you have the written agreement reviewed by a lawyer before sending it to the court. A lawyer can review your agreement to ensure it covers all of the necessary topics, protects your rights, that the language reflects your intentions, and can help spot any red flags or potential areas of concern or contention. The Vermont Superior Court, Family Division offers a list of mediators in each county that participate in an income-based sliding fee scale program.

If you **decide to hire an attorney**, you should talk to several until you find one you like and trust. You may consider researching lawyers online. Choosing a lawyer is highly personal. (See VCW's Resource Directory – Legal section.) If there are serious disputes in the divorce, you should make sure that you are hiring an attorney who understands you and your needs. You should discuss how much the lawyer will charge you ("fees") and how you will be billed. Most lawyers charge an hourly rate, require a down payment ("a retainer") and are not able to give you an estimate of how much the whole divorce process will cost. This is because of all the variables involved in the process. However, it is important to learn what the charge will be based on, to put the agreement in writing and to work out a payment schedule, if necessary.

When Abuse Is Involved

Going through the Relief from Abuse (RFA) process does not result in a divorce. A divorce must be filed to terminate the marriage. See the Violence Against Women and Children chapter of *The Legal Rights of Women in Vermont* for information about how to obtain a Relief From Abuse Order.) The court may combine your abuse case with your divorce case.

If you have already received a **Relief from Abuse Order** you should inform the court of that at the time you, or your spouse, begin the divorce process. Your Relief from Abuse Order will stay in effect even after you begin your divorce. The order can be extended beyond the date the order was originally supposed to expire. This can be done by **filing a motion to extend before the current order expires** (typically one to two months before) and showing that it is necessary to protect you or your children. **There is no need to show that any new abuse has occurred or that there has been any change in circumstances when asking for the order to be extended.**

If you have already started your divorce case and need to be protected from abuse, you can either go to court for a Relief From Abuse Order or make a motion to the court asking for relief from abuse as part of your divorce case. Make sure you deliver any new or amended court order to the police (i.e. a changed Relief From Abuse Order or Temporary Order) so they know which order is the most current and which should be enforced.

Divorce and Active Military Service

The law protects a spouse on active duty in the military. The purpose of the law is to enable service members to devote full attention to their military duties.

If the ability of the service member to either defend or pursue a court matter is affected by his or her military service, the court is required to wait. Sometimes hearings are postponed or suspended until the service member can participate. So, if a spouse cannot attend a hearing due to military service, and the outcome will depend on his participation, the hearing may be postponed. **Under normal circumstances, temporary decisions regarding parental rights and responsibilities and child support will be decided** in the absence of the service

member spouse in order to protect the best interest of the children involved.

A law called the **Military Parents Rights Act** addresses parental rights and responsibilities and parent-child contact when a military parent is deployed and has active or pending court orders related to custody or visitation. Reservists and members of the National Guard are also protected by this law while on active duty. The law directs the court, upon motion of one of the parents, to enter a **temporary order modifying parental rights and responsibility or parent-child contact for the duration of the deployment and for a pre-established transition period after the deployment ends.** The law also prevents the court from entering any final order until 90 days after deployment has ended. However, deployment, in and of itself does not constitute the "real, substantial, and unanticipated change in circumstances" necessary to modify parental rights and responsibilities or contact. **The deploying parent may also delegate parent-child contact rights to another person for the duration of the deployment if the court finds that it's in the child's best interest.**

Divorce Filings and the Divorce Process

In order to get divorced in Vermont, there are a number of forms that must be filed and issues that must be decided. You and your spouse can submit written agreements about any or all of the issues in your divorce at any time. If you reach a written agreement about any terms in your divorce, you should submit the agreement signed by both you and your spouse to the Court promptly, as it may eliminate the need to conduct scheduled hearings. You should think carefully about the short and long term impacts of any agreement you make with your spouse; it can be difficult to undo a written agreement. You may want to consult with a lawyer before you sign an agreement.

If you and your spouse reach written agreement (stipulation) on all terms in your divorce and file it *at the time of filing your initial complaint for divorce*, you are eligible to file at a significantly reduced cost. You can go through this stipulated divorce process whether or not you are represented by a lawyer and as long as you do not need the court to decide any contested issues. Most of the documents/forms referred to below can be obtained from your local Superior Court or online. (See VCW's Resource Directory – Family Division and Office of Child Support section.)

The following will give you a general idea of the process for a divorce. Every step listed below may not happen in every case. If you and your spouse file a written stipulation or agreement on one or more of the outstanding issues, steps may be eliminated.

1) **File a Summons, Complaint, and Notice of Appearance for divorce** (along with an Information Sheet, Health Department Record of Divorce, in the Family Division of the Superior Court of the county in which you or your spouse resides. **In order to start a divorce, you have to have lived in Vermont for at least 6 months.** If you have difficulty paying the filing fee, you can complete and file an application to waive filing fees and service costs.

If you and your spouse have minor children together, you will also need to file an Affidavit of Income and Assets and the first page of a Child Support Order

2) **"Serve" (deliver) the initial divorce filings** (and some additional documents) **on your spouse.** In some divorces, this is done by having the person who receives the documents sign a form agreeing to "accept service" of them, either in person or by mail. Otherwise, the papers need to be served by a sheriff. File proof that your spouse has been served with the Court, such as the signed Acceptance of Service form, or confirmation from the post office like a signed, certified, return receipt requested slip. If a sheriff cannot serve process on your spouse, you may need to petition the Court to allow you to meet this requirement by some other approved method.

If you and your spouse have minor children together, the Court will serve your spouse by mail.

3) **The Court will usually issue an Interim Domestic Order** which prohibits selling marital property; spending marital funds on items other than routine living expenses; canceling insurance policies or removing coverage; andinterfering with access to bank accounts or credit cards a spouse would normally use to pay household bills.

If you and your spouse have minor children together, this order will also prohibit either parent from removing the children from the state for extended periods. This order remains in effect until modified by the court. If your spouse does not follow this order, you can file a motion to enforce.

4) **Your spouse files their answer to your complaint with the Court. This may include a counterclaim for divorce, parental rights and responsibilities, child support, and/or spousal maintenance.** You should receive a copy from your spouse, or, if you have minor children together, from the Court.

5) **Attend the initial Case Manager Conference (CMC)** with your spouse. The Court will give both you and your spouse a "Notice of Hearing" for each scheduled court hearing and conference in your divorce case. It is not necessary for you to bring evidence or witnesses about your case to a Case Manager Conference, except for specific financial documents listed at the bottom of your Notice of Hearing.

The Case Manager is not a judge but is employed by the court to work with families that are dissolving at the initial stages of their case. Their primary role is to see if you and your spouse are in agreement about any issues in your divorce and to help write and file an agreement. The Case Manager will also assess what issues may need to be resolved by a Court on a temporary basis and can ask the Clerk to schedule necessary hearings. The Case Manager may also explain relevant parts of the law and the divorce process to you and your spouse during the meeting. The Case Manager cannot issue or approve Court orders. If you and your spouse do reach an agreement but you would like to think about it for a few days, you have a right to do so. **If you and your spouse do not agree on any issues in your case, no order will be issued at the Case Manager Conference.**

If you do not feel it is safe to be in the same room with your spouse for the case manager's conference, you can call and speak to the case manager about your concerns and ask for alternative arrangements in advance.

6) **Attend the Pro Se Education Class**, a free one-hour class offered by the court. The classes are conducted by an attorney who regularly practices in the Family Court. The purpose is to educate litigants about the following: your rights and responsibilities while representing yourself, courtroom etiquette and procedures, and services available through outside agencies to help with problems affecting families.

7) *If you and your spouse have minor children together*, you will also need to **attend the Coping with Separation and Divorce Seminar** offered through the UVM Extension. This is a four-hour parenting seminar required by the Court for parents of minor children going through divorce or parentage proceedings. There is an application for a reduced fee available on the court website if you have trouble paying the registration fee.

8) **Attend any scheduled temporary hearings.** If you and your spouse cannot agree on how to arrange your lives while the divorce is pending, you may need to have a Temporary Hearing in the Family Division of the Superior Court to decide these issues. You may need to file a written motion with the Court to ask that a hearing is scheduled. A temporary hearing is an evidentiary hearing before a judge. You will be expected to provide testimony and other evidence such as documents, printed photographs, or witnesses to support your position.

Some of the issues that might need to be decided at a Temporary Hearing include:

- who has the right to temporarily live in the **marital home** while the divorce is pending;
- whether either spouse is entitled to spousal maintenance **("alimony"**);
- who will have temporary possession of **personal property** (such as cars, tools, clothing, furniture, etc.);
- who will have temporary responsibility **for paying debts** such as the mortgage, taxes, and insurance on the home, credit card bills, and other bills

and if you and your spouse have minor children together:

- how and when they will have contact with the other parent **("visitation"**);
- how much will be paid in **child support;**
- how decisions affecting the children will be made.

After hearing from both sides, the court will issue a Temporary Order that will be in effect until it is changed at or before the Final Divorce Hearing.

9) **Attend one or more Status Conferences.** A Status Conference is a short

hearing, typically 15 or 30 minutes before the Judge. The purpose of a Status Conference is for the Court to understand how things are going for you, your spouse, and your children, whether you think you may be able to reach an agreement in your divorce, and how much time a final hearing is likely to take. The Judge may ask what issues you believe you will need the Court to decide, how many witnesses you will present, and when you will be prepared for a final hearing.

10) **Attend one or more Final Hearings.** If you cannot reach a final agreement with your spouse, the Court will schedule one or more "contested final hearings" before the Judge to resolve any outstanding issues in your divorce.

These may include the division of property and debts, spousal maintenance (alimony), *and if you and your spouse have minor children together,* parental rights and responsibilities (custody), parent child contact (visitation), child support, and (rarely), grandparents' visitation. **See below for a more detailed explanation of each of these matters and the factors the Court considers in making decisions.** At a contested hearing, you will be expected to give your own testimony, to present other evidence such as witnesses and documents supporting your position, and you will have the opportunity to ask your spouse questions. The Court may issue an order from the bench on the date of the hearing or may take the matter under advisement for weeks.

If you and your spouse have reached a final agreement, attend the "uncontested final hearing". **In order to be granted a divorce, you or your spouse will have to have lived in Vermont for at least a year.** At the final hearing, you will give certain information to the Judge, such as:

- you or your spouse has lived in Vermont for one year;
- one of you has lived in this county when you filed your divorce;
- you and your spouse have lived separate and apart for at least six months; and,
- there is no reasonable possibility that you will get back together again.

If neither you or your spouse is the subject of a relief from abuse order, and if you and your spouse both agree, you can file a stipulation and motion to waive the final hearing.

11) The Judge will then sign a **Final Divorce Order. At an uncontested final hearing, this usually happens** at the end of the hearing. In most cases, this will be the same as the final agreement you filed with the court. **If you had a contested final hearing**, the court will serve you and your spouse with the final divorce order. In some cases, this could happen the day of your hearing, but more commonly the order will arrive in the mail weeks after your last final hearing. **You are both required to follow the terms of this final order.**

12) **You and your spouse sign an "Acceptance of Service" form**, **acknowledging that you received the Final Divorce Order.** If your spouse is not present at the final hearing, the Order will need to be served on that person. **If your final hearing is waived**, the divorce order will need to be served on both parties.

13) **If you receive an unfavorable ruling after a contested hearing, the deadline for filing an appeal is 30 days after the clerk enters the order on the docket.** If you decide to file an appeal, you would file with the Family Court clerk. You should consider hiring a lawyer to help you go forward with an appeal. Although the filing fee for an appeal can be waived, other costs cannot. Be aware that appeals are usually costly and time-consuming.

14) **The divorce becomes final at the completion of a waiting period (called a "nisi period").** This is usually three months after the final divorce order is signed by the judge unless you ask, and the court agrees, to make it shorter. Some reasons for shortening or waiving the time are that you intend to remarry or you want to file taxes as a single person at the end of the year.

Factors the Court Considers in Divorce Cases

During the course of your divorce, the following matters may need to be resolved. There are statutes that tell judges what factors they may consider and are prohibited from considering when making these decisions. The factors the Court considers are the same for temporary and final orders, although the Court is likely to spend more time hearing evidence before issuing a final order than a temporary one.

Division of Property

If you and your spouse cannot decide how to divide your **"marital property"** the court will make this decision for you. The "marital property" includes everything you and your spouse own, either by yourself or together, at the time of your divorce. This can include anything you or your spouse has inherited, property given to either of you, property either of you owned before the marriage and anything you and/or your spouse acquired during the marriage, including certain job-related benefits. **The biggest issue usually involves valuing your marital home and any other major assets, including businesses and pension plans.**

The court, by law, has to look at several factors to determine how the property should be divided fairly. The judge will decide how much weight to give each factor based on the individual case.

These include:

- the length of the marriage;
- the age and health of the parties;
- the job, source, and amount of income of each spouse;
- vocational skills and employability of each spouse;
- the contribution by one spouse to the education, training or increased earning power of the other;
- the value of all property interests, liabilities, and needs of each spouse;
- whether the property settlement is instead of, or in addition to, spousal maintenance

(alimony);

- the opportunity of each spouse for acquiring property and income in the future;
- the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;
- the party through whom the property was acquired;
- the contribution of each spouse in obtaining and maintaining the property including the non-monetary contribution of a homemaker spouse; and
- the respective merits of the parties (e.g. what the behavior of each spouse was during and after their separation, whether either party was abusive or abused alcohol.)

It does not matter who has title to the property or who paid for it. Once the court has issued a final divorce order, the property division cannot be changed.

Debts

The division of debts is part of the total property settlement. Such debts can include bank and personal loans, credit cards, medical bills, utility bills, etc. The court will divide them fairly, taking into consideration who incurred the debt and for what purpose. This can happen either as part of a Temporary Order (while you are separated and the divorce is pending) and/or as part of the court's Final Order (when you get your divorce).

Be aware that if your spouse has been ordered by the court to pay for a **jointly incurred loan** (a loan which both of you originally signed for) but does not do so, it is possible for you to be sued for that debt by the creditor. If this happens, you can ask the court to force the non-paying spouse to pay, but this still does not relieve you of your liability for the debt.

On the other hand, **a spouse is generally not liable for the debts of her/his spouse**. Thus, a creditor cannot come after you for a debt that is solely your spouse's. Although the court can order you to pay such a debt, the creditor cannot legally hold you responsible for it.

Spousal Maintenance ("Alimony")

Spousal maintenance is more familiarly referred to as "alimony." This is the payment of support by one spouse to the other spouse**. The purpose of spousal maintenance is to prevent financial and social hardship and disruption that the divorce may cause when a spouse has been dependent on the other spouse for financial support.** The court may order or approve the payment of spousal maintenance when one spouse lacks sufficient resources (income and/or property) to provide for her/his own reasonable needs or is unable to support herself/himself through employment at the standard of living established during the marriage. **Either spouse is eligible to receive such maintenance if it is appropriate.**

The court considers the following when making a decision about spousal maintenance:

- the money and property available to the spouse who is asking for maintenance, the property awarded in the divorce, the spouse's ability to meet her/his needs independently and whether the amount of child support includes any money for the spouse (such as a housing allowance);
- the time it will take and the cost to get sufficient education or training to enable the spouse seeking maintenance to find appropriate employment;
- the standard of living during the marriage;
- the length of the marriage;
- the age and physical and emotional condition of each spouse;
- the ability of the other spouse to meet her/his reasonable needs while also meeting the needs of the spouse seeking maintenance;
- an adjustment for inflation;
- financial guidelines set forth in statute.

If you want to seek spousal maintenance, you must ask for it during the divorce process because you cannot ask for it after the divorce is final. While maintenance often ends when you remarry, it sometimes continues past remarriage. For example, if it is ordered in part as repayment for the contributions you made to the marriage partnership (such as helping a spouse through school), or if the remarriage does not improve your financial security. Once spousal maintenance is ordered by the court, the amount and length of time it is ordered may be changed later if there is a substantial, unanticipated change of circumstances.

Parental Rights and Responsibilities ("Custody")

Often, the most significant issue in contested divorces is who will have custody of the children. This is referred to as **parental rights and responsibilities.**

There are two major parts to parental rights and responsibilities ("custody"). One is called **legal rights and responsibilities** --the right to make major life decisions for the child, such as education, medical and dental care, religious affiliation and activities, and travel arrangements. The other is called **physical rights and responsibilities** -- the right to provide routine daily care and control of the child - this is usually the parent with whom the child will primarily live. If you and your spouse agree, you can share parental rights and responsibilities for your children.

It is possible for parents to share legal rights and responsibilities and have one parent have sole physical rights and responsibilities or vice-a-versa.

Any voluntary agreement between the two parents regarding the care of the child will be considered in the best interests of the child by the court. The court discourages parents from having the judge make parenting decisions for them. It is common for parents to agree to share parental rights and responsibilities, particularly when parents are able to

discuss and make decisions jointly regarding their children.

However, when parents are in dispute over the custody of their children the court will decide how to assign these parental rights and responsibilities - in other words, who will be the primary parent. **If you and your spouse do not agree to, the Court cannot order you to share parental rights and responsibilities.**

Vermont law requires that the court takes the following factors into consideration when deciding which parent should be awarded legal and/or physical rights and responsibilities of the child:

- the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance;
- the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs and a safe environment;
- the ability and disposition of each parent to meet the child's present and future developmental needs;
- the quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change;
- the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;
- the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;
- the relationship of the child with any other person who may significantly affect the child;
- the ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and
- evidence of abuse and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

The court may NOT consider the sex of the child, the sex of the parent, or the financial resources of a parent in reaching a decision.

If you or your ex-spouse is in the military and are about to be deployed, custodial and/or visitation rights may need to be changed or modified. (See section above on Divorce and Active Military Service.)

For information about changing a court's decision on parental rights and responsibilities see section below on Changing Court Orders.

Child Custody When One Parent is in Another State or When the Children Have Moved from One State to Another

Vermont has adopted the Uniform Child Custody jurisdiction and Enforcement Act

(UCCJEA). At the time of this writing, only Massachusetts and Puerto Rico have not adopted this act. When both parents do not live in the same state at the time of the first determination of child custody or when either parent goes back to court to seek to modify child custody and one parent is in another state, this law is used to determine which state court will be considered the child's home state where the case will be heard. **In general, the child's home state is defined as the state where the child has most recently lived with a parent for six consecutive months prior to the start of the initial custody proceeding, (or since birth for a child under six months of age.)** If the child has not lived in any state for at least six months, establishing a "home state" is more complex.

Once a state court has made a custody determination, that state keeps jurisdiction over all matters concerning the child, unless:

- A court of the state with jurisdiction determines that the child or the child and a parent do not have a significant connection with the state, and evidence concerning the child's custody determination is not available in the state;
- A court of the state with jurisdiction, or any other state, determines that the child and both parents or acting parents do not reside in the state any longer.

Multi-state custodial issues can be difficult and complex. It is advisable to consult a lawyer to help you.

Children's Rights in Contested Custody Cases

A child cannot choose which parent to live with just because the child has reached a particular age.

Because decisions regarding children can be very difficult to make, the courts sometimes seek the advice of other professionals, such as psychiatrists and social workers, when parental rights are contested. **The court may appoint a guardian ad litem to represent the best interests of the child.** A guardian ad litem is a person who looks out for the child's interests in court. The guardian ad litem will communicate with the child, the parents, parent's lawyers, judges, social workers, and other parties involved. Some states use public defenders, but in Vermont all guardian ad litems are volunteers.

Before a child may testify, a guardian ad litem must be appointed for the child and a hearing must be held to determine whether the testimony of the child is needed, whether the importance of the testimony outweighs the potential harm to the child and whether the evidence cannot be obtained from another source. **If the testimony of the child is found to be necessary, a lawyer must be appointed by the court to represent that child.**

Parent/Child Contact ("Visitation")

Visitation is a term used to describe parent and child contact. Even if one parent is given the sole parental rights and responsibilities for the children, the other parent will be

given the right to have parent-child contact. In contested cases, the court will also decide the extent and frequency of contact that a child will have with each parent.

In Vermont, the Court presumes that after parents have separated, it is in the best interests of minor children to have maximum physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact.

If there is a risk to the child, limitations may be placed on the parent such as restricting where the parent may visit the child or prohibiting alcohol and drug use during visitation. The contact may be ordered to occur only under the supervision of an appropriate person or structured to protect the child and give the parent the opportunity to change and to be more responsible as a parent. Some counties have **supervised visitation centers** which can be used when a child is at risk. The court may order that exchange of the child occurs in a safe and neutral setting to protect an abused parent. The court may prohibit overnight visits. Where abuse has been present, the court can order the address of the parent and child to be kept confidential, so the abusive parent does not know where they live. Denying a parent contact with the child is extremely rare and usually only ordered by a court when all other options have failed.

Refusal to comply or interference with court ordered visitation may be grounds to modify the custody order and can be a factor in determining what custody arrangement is in the best interests of the children in the future. If you have a reason to believe that an upcoming court ordered visit may be dangerous for your child, you have a right to file a motion with the court asking them to suspend visitation until a hearing can be held about your concerns.

How much time a spouse can spend with the child does not depend on how much child support is being paid, or even if it is being paid. **If a spouse does not pay child support, the custodial spouse cannot prevent that spouse from spending time with the children.** Although you are entitled to enforce payment of child support through the courts, you may not do so by limiting visitation rights. In fact, a parent can file a motion asking the court to enforce visitation rights, if they have been denied by the custodial parent. Similarly, if one parent refuses the other parent contact with the children, this does not permit or excuse non-payment of child support.

Courts cannot force a parent to spend time with their children.

One parent cannot prevent the other parent from moving out of state. If one parent decides to relocate, the parenting arrangements, including parental rights and responsibilities, may have to be renegotiated to ensure the new arrangement is in the best interests of the children and the children still have the opportunity to spend time with both parents

If you take the children out of state in violation of the custody order, you can be charged with custodial interference or contempt of court.

Grandparents' Visitation

Grandparents cannot become a party to the divorce proceedings or a custody case. However, **a court can award grandparents the right to visit their grandchildren if the grandparents have made a written request to the court as early as possible during an ongoing custody case**. The court will determine if this formal order for visitation is in the best interest of the grandchildren. Grandparents also have the right to seek formal visitation if the parent of the child has died, is physically or mentally incapable of making a decision, or has abandoned the child.

Establishing Parentage

If the parents of a child are not married or in a civil union, the State of Vermont only recognizes the parental rights of the mother, and does not recognize the parentage of the father until it is legally established by a parentage action**.** This can be done by filing an action in the Family Division of the Superior Court.

A parent seeking to establish that a person is the child's other biological or legal parent, or a parent seeking to establish that he or she is the child's biological or legal parent, may file a parentage action in the Family Division of the Superior Court.

Where a child has been born or adopted by parents who subsequently marry, establishing parentage can also be made part of a case for divorce, annulment or separate maintenance.

The Office of Child Support (OCS) may also file a case to establish parentage in the Family Division of the Superior Court if a parent has applied for OCS services. The OCS can also arrange and pay for any necessary genetic testing.

The person who is seeking to have parentage established can ask the court to require the child, the person alleged to be the parent and any acknowledged parent to submit to appropriate genetic testing to determine parentage. The only way to avoid such testing is if the court finds that there is "good cause" to exempt the person from testing. The court may do so if the alleged parent has a history of abuse, violence, or criminal behavior and it would not be in the best interest of the child to establish this person as the parent. The OCS may also require all parties to appear for genetic testing at the time of filing.

Once the results of the tests are obtained by either party, they must be made available to the other party. If the test results are going to be used at the hearing, this fact must be given to the other side and the test results must be made available at least 15 days before the hearing. **If the alleged parent refuses to comply with an order to submit to genetic testing, he or she will be presumed to be the parent.** If the probability that the alleged parent is the biological parent is greater than 98 percent, as established by a scientifically reliable genetic test, that person will be presumed to be the parent.

Once parentage is established the court will then seek to establish parental rights and responsibilities, parent/child contact and child support in the same manner as in a divorce proceeding. See above section on Divorce and following section on Child Support.

Child Support

The impact of the dissolution of a family can be severe, both emotionally and economically. Even when parents have a steady income, it is more expensive to maintain two separate households than it is to maintain one. Children who grow up in single parent families have a much greater risk of living in poverty than children who live with both parents. The purpose of child support is to help ensure that the children will be supported in the same manner as they would have had the parents continued to live in the same household. Both parents have a legal obligation to support their children.

The parent receiving child support can spend child support income on any living expenses, including rent, food, clothing, utility bills, or transportation expenses. There is no requirement that child support income is spent directly on items for the children or school or activity expenses.

Initial Child Support Order

Child support is typically determined during the separation or divorce process, or as part of a parentage action. A parental rights and responsibilities and parent child contact order is required before you can obtain a support order.

Once an order regarding parental rights and responsibilities and parent child contact is issued, a child support hearing is scheduled. This is either a hearing with a Magistrate Judge for the Family Division or a conference with a Case Manager for the Family Division. You will have to exchange information about each of your income and assets in order to determine who is to pay child support and in what amount, according to the **child support guidelines** that have been established in Vermont.

It is possible for you to work out an agreement about child support in advance of this hearing.

Depending on the rules of your Family Division, you may not need to attend the child support hearing if you have already worked out an appropriate agreement. You can do this by filing required paperwork including **a separate Affidavit of Income and Assets** from each parent, a completed **Child Support Order** signed by both parents, and accompanied by the **child support guideline results** for your family. The Office of Child Support can help you with the guideline calculations, or you can download the Child Support Calculator from the Vermont Office of Child Support website which utilizes the child support guidelines, enter the indicated information, and print the results. The printed calculation should be included with your child support agreement to

help demonstrate to the Court that the agreement you reached is fair to your children.

If you and the other parent agree upon child support payments, you should decide whether it is to be paid until the child reaches adulthood or for a longer period of time. In Vermont, adulthood is achieved when the child is 18 years of age or when they finish high school, whichever event occurs later**.** The court may extend child support up to the age of 22 if a child has significant physical, mental, or developmental disabilities. You must show documentation of the disability.

It is up to you and your spouse whether to include a provision about how your child's college education will be paid for, since the court cannot, on its own, order either party to pay for college. Which parent is responsible for the medical and health support of the children will also be included in the order.

Parents can also agree to change the support to be paid if they believe that the guidelines would be unfair. If parents agree to **change the support from the guidelines,** they have to write down why the change is appropriate, taking into account many specific factors. The Magistrate's role is to protect the children. If an agreement changes the amount of support under the guidelines, and the reasons for the change do not make sense to the Magistrate, the parents' agreement may not be approved.

If you cannot reach an agreement regarding child support, the amount owed will be decided by the Magistrate Judge. The following steps must be taken to determine support obligations:

1. Both parents must complete a form called **Affidavit of Income and Assets.** An affidavit is a statement witnessed by a notary or an officer of the court who can administer oaths. These forms must be exchanged between the spouses and also filed with the court.

2. Each parent should file their four most recent pay stubs, or if the parent is self-employed, the business records of income and expenses.

3. Each parent should file their income tax returns for the past two years.

4. Once the gross incomes of both parents have been determined, the child support guideline tables are used to find the "after tax income" for each parent. Deductions may be given to parents who:

- pay for the health insurance of the children (the court will require that parents pay);
- have other minor children living in his or her household;
- pay other child support obligations;
- are self-employed;
- pay spousal support;
- have a child in DCF custody and pay additional housing and out of pocket expenses.

Child Support Guidelines

Vermont law has established **child support guidelines** to calculate the amount of child support to be paid by the noncustodial parent. The guidelines are based on the principle that children should have the same share of their family's economic resources as they would have if the family had remained together. The guidelines take into account both parents' entire financial situation, including the expenses of the noncustodial parent for other child support or a second family. (See VCW's Resource Directory – Family Division and Office of Child Support section.)

The guidelines include a **self-support reserve**. This is an amount that the paying parent is allowed for his or her own expenses.

Child support orders may not take into account any unemployment that is voluntary. For example, a parent cannot get out of making child support payments simply by quitting their job.

The calculations may also take into account the cost of any childcare that is required for a parent to work or go to school, and the cost of extraordinary educational and medical expenses for the children.

The guidelines also take into consideration how much time the children will spend with each parent. This is done by calculating the percentage of overnights the children spend with each parent per year, based on the existing court order.

In addition to establishing the child support amount, the Magistrate will also make orders for the **children's medical and health support, if that has not already been agreed to by the parents**. Either parent may be ordered to include and pay for health insurance for the children if either has a reasonable policy through their employment. Any health expenses of the children that are not covered by insurance (medical, dental, orthodontic, optical, prescription, etc.) may be part of the shared obligation of the parents.

The court may order that support payments have to be made until each child reaches adulthood. In Vermont, adulthood is achieved when the child is 18 years of age or finishes high school, whichever event occurs later. Again, the court may determine many variations of the obligation termination depending on the specific circumstances of each family. If your child has significant physical, mental or developmental disabilities, you may petition the court to extend child support up to the age of 22. You must provide documentation of your child's disability.

If there are special circumstances not addressed by the Vermont guidelines (circumstances that you feel entitle you to pay less or receive more child support than otherwise required) you can ask Family Division of Superior Court to grant a deviation from the guidelines anytime child support is being determined.

There must be a specific **reason for a deviation**, such as:

- the financial resources of the children or either parent; sometimes including the resources of a new spouse;
- any special physical or emotional needs of the children;
- the educational needs of the children;
- the educational needs of either parent if the education is pursued for the purpose of improving the parent's earning potential; or
- extraordinary travel expenses incurred by a non-custodial parent in order to exercise his or her parent-children visitation rights.

Child Support Wage Withholding

Under Vermont law, **child support orders must require an employer to withhold the child support payment from the paying parent's wages** or another source of regular income, even if the parent is not behind in making payments**.** Under the Vermont withholding law, child support - just like taxes - is deducted automatically from person's paycheck. The purpose of withholding is not to punish the parent making the payment but to protect the child and to set up a simple system to help payments be more regular. Withholding also makes life easier for the paying parent since it saves time and protects that parent from deciding not to pay if money is tight.

The employer is instructed to withhold the support from each paycheck and forward it to the Office of Child Support (OCS) Registry that keeps a record of the payment and then forwards it to the receiving parent.

OCS will provide enforcement, payment tracking, and the like, only after a parent applies for services by filling out an application or is receiving Reach Up benefits**.** If services are limited to recording and distributing support payments through the OCS Registry, the case is a Registry-Only Case and there is a $5 monthly fee. Otherwise, all OCS services are free at this time.

Wage withholding cannot be ordered when the parent is self-employed, although other methods for ensuring collection may be used.

In some cases, where both parents agree in writing that they do not want withholding, the Magistrate may approve what is called a direct payment order. Under direct payment, the paying parent has sole responsibility to ensure that the child support is paid in full and on time according to the terms of the court order. Under such arrangement, there is no third party (i.e. the Office of Child Support Registry) to keep track of each payment. Parents must keep their own written records of the payments.

If you have a direct payment order, however, payments must always be made on time. **If a parent with a direct payment order is ever late by 7 days or more with a single payment, the court, upon request by the other parent, will revoke the right to make direct payment and order that all future payments be withheld from the paying parent's paycheck.** Also, if a parent has applied to the

Office of Child Support for services, OCS may issue an administrative wage withholding order without going back to court.

If parents cannot agree on direct payment, but one parent feels strongly that withholding shouldn't occur, the Magistrate will consider whether there is a history of financial responsibility by that parent towards the family. If the Magistrate finds support has been paid regularly by the paying parent in the past, the court may approve a direct payment order.

Child Support Maintenance Supplement

If the lifestyle of the children would be significantly better if the custodial parent received more help from the non-custodial parent, the court can order that **parent to pay an additional amount of child support, a child support maintenance supplement. You cannot receive a maintenance supplement unless it is ordered in the first child support order between the parties, and you have your children with you more than 50% of the time**. This can occur only if the primary custodial parent requests such a supplement. The court will take into account the financial circumstances of both parents, including their gross income, assets, debts and the amount of child support being paid.

Bankruptcy

If the spouse who is required to pay child support files for bankruptcy, he or she will still be responsible for paying child support and any back child support (arrears) that has not been paid. This is considered a nondischargeable debt.

However, depending on the type of bankruptcy filed, a "stay" might be placed on payments during the bankruptcy proceedings. This means that the person who owes support may not have to pay until the bankruptcy is settled. If this happens, you can ask the court to lift the stay, but they are not required to do so. **When the bankruptcy is settled, "domestic support obligations" take top priority in any distributions made to creditors.**

It is also unlikely that the bankruptcy will interfere with a spouse's obligation to pay any alimony or maintenance. If the person filing for bankruptcy owes property as part of the divorce order to an ex-spouse, this property award cannot be canceled (discharged) by the Bankruptcy Court. If your spouse has been ordered to make payments on a loan original signed by both of you, including such things as credit card payments and mortgages, and this obligation is discharged (canceled) by the Bankruptcy Court, **the creditor can try to collect it from you despite the final divorce order from the court.**

Child Support Enforcement

If one parent stops making child support payments which have been ordered by the court or begins paying less than what the court ordered, the following options exist for enforcement:

1. The Office of Child Support (a Vermont state agency) provides free assistance for anyone in Vermont, regardless of income, in enforcing child support orders and collecting unpaid child support. (See VCW's Resource Directory – Family Division and Office of Child Support for a link to the OCS office nearest you.)

2. You can go back to court on your own (or with a lawyer) and file a written **Motion to Enforce.**

As was noted in a previous section, if a non-custodial parent fails to pay court ordered child support, that is **not** a basis to refuse the parent-child contact. Conversely, if a custodial parent refuses to honor the noncustodial parent's visitation rights, that is also **not** a basis for the non-custodial parent to stop paying child support. To do either of these things will place you in danger of being found in contempt by the court.

Office of Child Support Option

In order to get assistance from the **Office of Child Support (OCS)**, you need to apply for their services by filling out a written application. In most cases, parents who have custody and who are getting public assistance or Medicaid are automatically referred to OCS for services. They do not have to apply. Everyone else must apply before OCS can provide services.

OCS has the authority to take the following collection actions through an administrative process rather than by going back to court:

- When payments are one month overdue, OCS can order wage withholding (if it was not included in the original court order) or increase the amount of wage withholding to pay owed child support.
- When payments are 3 months overdue, OCS can intercept property such as bank accounts, by issuing a lien or trustee process in order to collect the child support owed.
- If the amount owed is more than 3 months of support, OCS can report the debt to credit bureaus so that the delinquent parent will have difficulty getting loans unless the support is paid.
- If the delinquent parent has won the lottery in Vermont, OCS can withhold and use those lottery winnings to pay for any owed child support.
- Depending on the circumstances, OCS may be able to intercept the delinquent parent's federal and state tax refunds and use that to pay for any owed child support.

While OCS may take these actions to help you obtain child support, **OCS cannot directly represent you.** In addition, it is important to understand that OCS staffing is limited and caseloads are high.

Court Option--Motion to Enforce

If you choose to go to court to enforce a child support order, you will need to file a written **Motion to Enforce**. In this motion, you should state how much support is owed and ask the court to order it to be repaid. You must also attach an **Affidavit** (a statement witnessed by a notary or an officer of the court who can administer oaths) that describes how the other parent has violated the order. It is also possible for the Office of Child Support (if you are receiving services from OCS) to file a Motion to Enforce in court so that it can seek remedies that are beyond its administrative abilities to order.

After the other parent has been served with all the paperwork filed with the court, an **enforcement hearing** will be held.

The court might order any of the following, depending on what is determined at the enforcement hearing:

- Payment of the back child support in a **lump sum**, if the delinquent parent is able to do so.
- A **repayment plan** to pay all the back child support over time.
- A **child support surcharge** can be imposed on the past due child support. The surcharge is computed and assessed monthly. A court may cancel all or part of the accumulated surcharge if it finds that the obligated parent has become unable to comply with the underlying child support order.
- In some cases, the court may require that property owned by the delinquent parent be held **"in escrow"** (by a neutral third person called an escrow agent) to guarantee he or she will pay the support due. The property held can't be worth more than four months of support payments.
- An order **to participate in employment, educational or training related activities** if the court finds that they would help address the reasons why the parent has not paid or has fallen behind in paying child support.
- An order to participate **in substance abuse or other counseling** if the court believes it will help the parent keep stable employment.
- If the delinquent parent is unemployed, the court can order that person to **seek work or community service immediately**. The court will also order that person to report to the court, the other parent or the Office of Child Support on a weekly basis regarding the efforts to find work. If the parent fails to look for work, the court can find the parent in contempt of court.
- If the court finds that the delinquent parent owes child support under a previous order of the court and that there is a delinquency of at least two-twelfths of the annual child support obligation, the court can order the **suspension of the delinquent parent's motor vehicle license (driver's license).** The license will be reinstated after notification from the court or the Office of Child Support that the child support has been paid.
- The court can order the delinquent parent to pay the enforcing parent's attorney fees and costs that they had to pay for having to come to court to enforce the child support order.
- If the delinquent parent has a **professional license** (ex. medical professions, accountants,

cosmetologists, tattoo artists, etc.)**, or a hunting or fishing license issued within Vermont,** you or OCS can also ask that the court **suspend such a license.** The parent's license may not be renewed (unless the parent can show they are up to date in child support payments or has made a plan to become current).

The court may not order a delinquent parent to pay back payments of child support if the parent needs to use his or her self-support reserve to make the payments, as defined in the child support guidelines. It is still the delinquent parent's responsibility to repay the support when his or her income is above the self-support reserve. The court may make an exception to this rule if the parent filing the petition presents a good reason why payment should be ordered.

Contempt

If the court determines that a parent willfully disobeyed a court order to pay child support, and had the ability or capacity to pay, the court can find that person in **contempt of court**. Contempt is the last resort to make a parent comply with an order. The penalty for contempt of court in such a situation could include the payment of a fine or putting the person in jail until the support that is owed is fully or partially paid.

Interstate Child Support Orders

Every U.S. state, including Vermont, has adopted the federal Uniform Interstate Family Support Act (UIFSA). The UIFSA provides guidance regarding which state has jurisdiction to issue initial child support orders, and says that state will retain exclusive jurisdiction to modify that child support order for the remainder of the obligation unless both parties have moved out of the state that issued the original order.

UIFSA provides for interstate wage withholding by allowing enforcement a support order in another jurisdiction if the noncustodial parent's employer is known. Wage withholding can be initiated in one state and sent directly to an employer in another without involving the child support agency in that state.

Enforcement of a Court Order

If the other party is not following a court order you can file a Petition or Motion to Enforce to ask the court to enforce the order, accompanied by an affidavit. Your spouse must be served with your petition before an Enforcement Hearing is held. At the hearing, you will need to explain what part of the order has not been followed and why, and provide any available evidence supporting your position. If the issue cannot be resolved, the judge will order enforcement. One form of enforcement is contempt. Contempt is willful disobedience of a court order. If the judge determines you or your spouse has willfully disobeyed the divorce order and has the capacity to comply, the judge may order jail until compliance.

Changing or Modifying Court Orders

If you want to change the terms of your final divorce order regarding parental rights and

responsibilities (custody), parent-child contact (visitation), or child support you must go back to court. If you and your former spouse agree about the changes, you can write, sign, and file a new agreement for approval by the judge. If you do not agree about the changes, you must file a motion to modify the prior court order.

Modification of Parental Rights and Responsibilities and Parent-Child Contact

The court will only grant a change if you can show that there has been a **real, substantial and unanticipated change of circumstances and that granting the modification would be in the best interests of the child.** You would do this by filing **a Motion to Modify** and an accompanying **Affidavit**. The court may hold a hearing on your motion, but it can also deny it without a hearing if the court believes insufficient facts have been stated to support granting the requested changes.

Reasons for seeking a modification of parental rights and responsibilities or parent child contact may include:

- the relocation of either party;
- reports made to the Department of Children and Families;
- child abuse, endangerment, or neglect;
- conviction of a crime of one party;
- a pattern of missing scheduled parent child contact;
- a pattern of one party denying court ordered parent child contact to the other party;

Your written motion should explain what real, substantial, and unanticipated change of circumstances has occurred since the last court order was issued, what change you are asking for, and why that is best for your children. The court will expect you to be able to provide evidence such as testimony, photographs, and documents to support the claims you make in your motion.

Modification of Child Support

If you are seeking a change in the child support portion of the final divorce order, you have the right to have the order reviewed at least once every three years**,** even without a preliminary showing that there has been a real, substantial and unanticipated change of circumstances. If it has been less than three years since your last modification, you will need to show that there has been a real, substantial and unanticipated change of circumstances.

Reasons for seeking a modification of a child support order may include:

- substantial changes in one parent's income (at least 10% up or down);
- involuntary loss of employment;
- replacement of wages by unemployment compensation, worker's compensation or disability benefits;
- a promotion, a higher paying job or a substantial inheritance;
- changes in the parenting plan, such as when the children live with the non-primary parent for longer periods of time.

A noncustodial parent cannot ask the court to change (lower) an existing child support order simply because a new dependent resides in his or her household. If the parent to whom child support is being paid petitions the court for an increase in child support, however, the court can take into account any new dependents that are in the noncustodial parent's household.

Note that motions to modify must be done in the state in which the original orders were made unless neither parents or the child still reside there. (Please see the Child Custody When One Parent is in Another State or When the Children Have Moved from One State to Another section or the earlier in this chapter.)

Sometimes parents agree to make informal changes to a child support or other divorce related order. This can be done, but **such informal changes cannot be enforced by the court.** If you receive services from OCS, they cannot be responsible for informal agreements either. Therefore, if you want any such modifications to be enforceable, you should present them to the court for its approval. If approved by the court, it becomes a new order and can then be enforced.

Separation of Unmarried Couples and Couples Not Joined by Civil Union

The laws of divorce in Vermont do not apply to a couple who is neither married nor in a civil union. If such a couple separates and is unable to reach an agreement as to how to divide their joint property, either or both parties can bring a case in the Civil Division of Superior Court to decide this question. The court will usually treat it as though you had been in a business partnership together, instead of following divorce law. The judge may also simply try to divide the property in the manner that seems most fair to both parties. **Because the laws are not well suited to resolving disputes that arise when unmarried couples separate, you may want to seriously consider alternative dispute resolution processes such as mediation or arbitration.**

When a couple who is neither married nor in a civil union separate, and they are both legal parents (due to adoption, parentage proceedings or voluntary acknowledgment), the **Family Division of the Superior Court, in a parentage action, can decide cases regarding parental rights and responsibilities, parent-child contact, and child support with respect to the children.**

Child Snatching

If you have custody of the children and your spouse, former spouse, or relative with visitation rights "snatches" them or refuses to return them from visitation, **you may contact the police and the state's attorney in the county in which you live**. Under Vermont law, it is a crime for a relative to take or keep a minor child from the lawful custodian if they do not have the legal right to do so. This is called **custodial interference** and can be punishable by up to 5 years in prison and/or a fine up to $5,000. If anyone snatches your child, immediately contact the police.

The Vermont Office of Child Support (OCS) has parent locator services, which may be of help to you if you do not know where your children are. The police typically will not issue an Amber alert for a child involved in a custody dispute.

Find the most local and most appropriate agency/organization to help you—go to Vermont Commission on Women's Resource Directory:
Legal section
Family Division and Office of Child Support section

Relevant Laws

Vermont:

Child Support Enforcement, 15 V.S.A. §§ 606, 780, et seq.
Civil Unions, 15 V.S.A. Chapter 23; 18 V.S.A. §5160 - 5165 (repealed, 2009)
Custodial Interference, 13 V.S.A. §2451
Divorce, 15 V.S.A. Chapter 11
Family Court, 4 V.S.A. Chapter 10
Grandparents Visitation, 15 V.S.A. Chapter 18
Legal Separation, 15 V.S.A. §§555, 753
Marriage, 15 V.S.A. Chapter 1
Marriage Records and Licenses, 18 V.S.A. Chapter 105
Military Parents' Rights, 15 V.S.A. § 681, et seq.
Office of Child Support, 33 V.S.A. § Chapter 41
Parentage Proceedings, 15 V.S.A. § 301, et seq.
Public Accommodations, 9 V.S.A §4502
Uniform Child Custody Jurisdiction and Enforcement Act, 15 V.S.A. Chapter 20
Uniform Interstate Family Support Act (UIFSA), 15B V.S.A. Chapters 1 - 9 Vermont Rules for Family Proceedings
Baker v. Vermont, 1999 (that same-sex couples are entitled the same benefits as opposite-sex couples)

Federal:

Bankruptcy Code, 11 U.S.C. §§523 (a)(5) and (15)
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L.109-8
Child Support Recovery Act of 1992, Pub.L.102-521- amended by Deadbeat Parents Punishment Act of 1998, 18 U.S.C. § 228
Defense of Marriage Act of 1996, Pub.L.104-199
Family Support Act of 1988, Pub.L.100-485
Personal Responsibility & Work Opportunity Act of 1996, Pub. L. 104-193
Obergefell v. Hodges, 2015 (that the right to marry is a fundamental and inherent right and the states must recognize lawful same-sex marriages performed in other states)

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