

The Arizona Divorce Handbook
The Comprehensive Guide To Getting Divorced In Arizona
By Attorney DeeAn Gillespie-Strub
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Divorce and Family Law Attorneys

My name is DeeAn Gillespie-Strub. I am a divorce & family law attorney. Gillespie, Shields, & Associates has offices conveniently located in Phoenix and Mesa. This Arizona Divorce Handbook been prepared with you in mind. As you research for a divorce/child custody attorney, it's critical that you are able to separate the truth from the rumors and urban legends surrounding Arizona divorces. These include issues such as, who keeps the children, how both spouses will support them, and whether one spouse will pay spousal support to another. Knowledge is power, and therefore you need to learn about your rights, responsibilities, and options so you can protect yourself and those you love.

As a founder of Gillespie, Shields & Associates, I am an experienced and zealous yet compassionate advocate, as are all our attorneys and paralegals. We know how to be aggressive and assertive when needed. I am determined to reach an agreed-upon resolution for my clients. Since any litigation is inherently stressful, we always seek to reduce stress, defuse difficulties, and minimize conflict. Unnecessary belligerence is seldom of any value other than to simply aggravate the opposition and drive the parties further away from an amicable, reasonable settlement. All of our professionals seek to minimize conflict, but not at expense of causing any unfair effect or treatment on/of our client. We will always first counsel you the client so that we may set forth goals of our case, set out realistic goals & objectives, and finally work within the law and present facts to reach those goals. We are ready and willing to litigate, but we always seek to avoid adding additional stressors to an already strained situation.

Our greatest asset here at Gillespie, Shields, & Associates is our people, both our attorneys and our paralegals. Every one of our clients is assigned one of each of these professionals. While the attorney is the subject matter expert and your most visible team member, your paralegal is an important team member in seeking to advance your case. Our

paralegals add great value to your case through their experienced, knowledgeable efforts. They are not mere functionaries or administrative workers. They are skilled in the day-to-day transactional issues that comprise a great percentage of the legal workload. With the guidance of the attorneys, the paralegals ensure that all deadlines and issues are attended to. You get these two people on your case at all times, ensuring all your phone calls and other inquiries are promptly returned, and all your questions are answered. While we will always welcome and will promptly return your phone calls, once we are on board with you, we welcome and encourage you to e-mail us so we can offer a thoughtful written reply as soon as possible. Responding by e-mail allows us to compose our thoughts and give clients a considered and well-researched response.

My partner attorneys, associate attorneys, paralegals, and I represent clients in family law matters of both contested and uncontested divorce, custody and parenting plans, child support and alimony issues, and many others. In addition, we offer representation in criminal defense, trusts & estates / probate law, civil litigation, as well as business / corporate law.

We guarantee that we will listen very closely and make every effort to ensure you understand the entire process from start to finish. The one thing we won't do is guarantee a particular result if you decide to retain us. No attorney can or should do that, and if you find an attorney who offers guaranteed results, it's usually not a good sign.

Our offices are conveniently in Phoenix and Mesa. Call us at our Phoenix office at (602) 870-9700, or at our Mesa office at (480) 985-4000. Let us help you get the best possible outcome on your case. Read on for a sample of the most commonly asked for information. We're here to help you when you most need it.

Very Sincerely,

DeeAn Gillespie Strub

Attorney At Law

Founder/Partner

Gillespie, Shields, & Associates

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Residency Requirements/Where to File

Residency: In Arizona, one needs only to be immediately present to file for a legal separation. However, to file for dissolution (divorce), one needs to have residency for a minimum of 90 days. Residency is generally defined as physical presence (i.e. a home) with the intent to remain indefinitely (a much more fluid qualification).

Where to file: One should file the divorce action in a county court where one of the parties resides. Technically any state court will receive the petition, but in the interests of judicial efficiency, an action filed in a county with no connection to the litigants will likely transfer it to a local court for hearing.

Legal Grounds for Divorce

For a standard marriage in Arizona, the only legal ground required to obtain a divorce is a statement that the marriage is irretrievably broken, and there is no reasonable hope for reconciliation. In reality, if one party believes that the marriage is irretrievably broken, then a judge will ultimately make that finding.

For a *covenant* marriage, the court can only grant a divorce or a legal separation for certain, limited reasons. Covenant marriages are relatively rare and have only existed in Arizona for about the last decade.

What Makes a Good Divorce Attorney?

There is nothing more important than the well being of your family. It is therefore absolutely necessary that you hire the best lawyer you can and the lawyer who is most compatible with your goals. Your attorney for your divorce or any family law matter should be a competent, hard-working professional who performs diligent and competent work so you are prepared for either settlement or trial.

A very famous lawyer from Illinois once said: "A lawyer's time and advice are his stock in trade." You might have heard of this man-his name was Abraham Lincoln. When you hire legal counsel, you're paying for his or her skill and experience. This can be a rather confusing concept. If your case is one with no children and very few assets, you might get by on an attorney barely out of law school, but how do you really know if your attorney is worth his or her salt?

Once you have trusted your attorney with your case, you want someone with the experience in divorce or family law to help you accomplish your goal. You want a specialist; a subject matter expert when your children and your livelihood are at stake, it's always better to err on the side of experienced rather than inexperienced. To put it this way: While a dermatologist is technically possessed of the licensure required to perform open-heart surgery, do you really want him to perform your triple bypass surgery? No, obviously. You want the specialist—the individual with the training, experience in the one area you need him or her to assist you.

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Your attorney must also have the correct personality, a compatible disposition, and the appropriate personal philosophy to effectively conduct your case. This is as much a matter of art as science.

In order to effectively present your side of the case, an attorney with a strong and assertive personality is necessary. However unharnessed assertiveness comes off like Shakespeare's poor player: "full of sound and fury, signifying nothing." A calm, methodical, well-planned tactical approach accomplishes more than a lot of meaningless noise.

A good attorney will also be responsive, which includes timely responses to your questions and / or concerns. It is unrealistic to expect your attorney to be at your beck and call. Quite the opposite-if your attorney is always available whenever you call because he has no other clients or court dates, this lack of a workload should cause you concern as to their level of competence, especially in family law. That being said, your calls and emails should be returned within 24 hours.

You want an attorney with whom you can have a harmonious attorney-client relationship. At the same time, your attorney is not your best friend, particularly at these hourly rates. You will likely have occasional disagreements when your attorney advises you of the alternatives available and then makes a recommendation for you to evaluate. However, your attorney does have your best interests in mind. He is however bound by the facts, the law, and legal precedent to make the best of the situation both of you find yourselves in. Generally speaking, you are paying good money for the advice of your lawyer, so it only makes sense to follow that advice. In the end, you might decide to disregard your attorney's advice, in spite of the known consequences, in order to do things the way you are the most comfortable. However, if you have a good relationship with your attorney, these difficult decisions will be much easier to make.

An attorney who is empathetic to you is preferable to one who sticks to a cookie-cutter/road map approach to his clientele. If you find empathy, your divorce process will be positive and growth oriented. It can accelerate the pace at which you retake personal responsibility and clarify the issues in your life. Ask yourself:

- Does this attorney listen attentively to what I say?
- Is this attorney able to identify and respond to the emotion in my statements?

You must have confidence in your attorney. He or she should be well organized and in full control of the situation. Your attorney should be sympathetic to your concerns, responsive to your needs and interested in your well-being.

Gender and Personality--Do you want an attorney of the same gender as you? You may feel more comfortable with your attorney, or more like you are a part of a team, if you are of the same gender.

On the other hand, the gender of your attorney can also hinge on the temperament of the litigants in your case. Depending on your spouse's disposition, an attorney of either gender may be able to deal with your spouse or vice versa. At times a female client will opt for a male attorney with strong personality to deal with a domineering spouse, and a male client might prefer a female attorney to deal with a manipulative or enigmatic spouse.

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Which personality traits are best suited for your case? Do you want a sly fox to outwit your spouse & their counsel? Or a Rottweiler to deal with your out-of-control spouse? Review your own situation and consult with us to determine what sort of approach is appropriate.

It's your case, you are the customer as much as you are the client. As they say in retail, "The customer is always right." List any other factors that improve your comfort level. Perhaps you would prefer an attorney of a certain age, an attorney who has experienced divorce themselves, or an attorney who concentrates in child custody disputes. Once you have decided that you want a divorce, the earlier you retain an attorney, the better prepared you will be.

Filing Your Petition for Divorce

To start an action for divorce, as in any case, you file a complaint or, as it's called in Arizona, a petition. A petition is a document your attorney creates, based on your input, that identifies who the parties are, what your reasons are for bringing the case, what the facts are in your case and what you want the court to do.

While the client always states the desired end state, quite often it is best to leave the tactics and methods used to arrive at that goal to the best judgment of the attorney. Your attorney has seen many cases before yours and has the experience to get to your desired goal in the most effective way, even if it seems to not be so.

Once the complaint is filed, the other party will be served summons papers, either by a County Sheriff's Deputy or by a private process service. These papers formally give notice to the other party of the case filed against them, and state when and how they must respond to avoid a default judgment.

There are many intricate Rules of Family Law Procedure in Arizona that must be followed for there to be effective service of process. This is but one of several technical reasons (not leaving out the myriad of legal reasons) you should engage competent legal professionals instead of attempting to file your own divorce.

Preliminary Injunctions

Immediately upon filing the Petition for Dissolution of Marriage, a "Preliminary Injunction" is issued by the Court. It is very important and applies to both parties. Generally, it prohibits the parties from disposing of any of the joint, common or community property, with a few narrow exceptions.

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Additionally, both of the parties are also prohibited from:

- Harassing other party or any child of the parties.
- Removing any child residing in Arizona at the time of the initial filing from the state without the prior consent of the parties or the court.
- Removing or reducing any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance from either the other party or any child.¹

Temporary Orders

Once the initial divorce pleading is filed, either spouse may for a temporary custody, support or asset and debt division order. If your scheduled hearing date is a long way off and you need a court order sooner than that, you can always file a motion for temporary orders if you cannot reach agreement between you and your spouse. Once you retain a divorce lawyer or family law attorney, take the opportunity to identify everything that worries you. List and then discuss your concerns with your attorney. Together you'll identify specific issues and attempt to discuss these concerns with opposing counsel to seek some level of an agreement without having to go to court.

If your spouse is not willing to work with you on temporary orders, it may be necessary for you to move quickly to get a court order on your own.

It's not realistic to expect to get everything you want, at least in legal negotiations. Be ready to give on some issues and to trade on others. Hearings for temporary orders are costly and emotional. If you find that you can get most of what you want by agreement, let a few minor points slide. One or two of your temporary orders for the next few months are usually not worth the considerable expense of a court hearing.

Child-Related Issues

If there are children involved in the divorce, the court must deal with all child issues at the same time.

Parent Education Class

The State of Arizona established a law in 1996 requiring that parents involved in a divorce action attend a Parent Education class (called the Parent Information Program in some counties). The focus of this class will be on how children and adults react to separation, divorce, and changes in the family. The course has been designed for the purpose of sharing information with parents about the impact that divorce, the restructuring of families and the court's involvement in your case can. It will also help you understand what you can do to make those changes easier for your children through co-parenting and communicating effectively.²

¹ ARS 25-315.

² <http://www.supreme.state.az.us/dr/Text/ParentEd.htm>

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Your attorney will provide you with list of class locations, as well as the days and times the classes are offered. The instructor of the course will provide you with proof of attendance, which you can return to your attorney or directly to the Clerk of the Court.

Custody

When the parents cannot stipulate to (agree on) custody or parenting plan arrangements, the court will make the decision for them after considering the circumstances, with the central concern being **the best interests of the child**. Factors included in that decision making process include:

- The wishes of the child's parent or parents as to custody.
- The wishes of the child as to the custodian (depending on the child's age and maturity.)
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
- The child's adjustment to home, school and community.
- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.
- Whether one parent, both parents, or neither parent has provided primary care of the child.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
- Whether a parent has completed the required parent information program.
- Whether either parent was convicted of an act of false reporting of child abuse or neglect.³

Clearly each parent will have strong feelings as to his or her own parental fitness and the fitness of the other party, but the court is charged with sorting through the emotions for discernable facts to determine what arrangement will be in the child's best interests, not the parents'.

³ ARS 25-403.

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Child Support

Often a point of great controversy is the amount of child support to be paid by the non-custodial parent to the other. In Arizona, the courts have set forth several criteria to compute the appropriate amount. These criteria go into a formula that yields a final support number. This is a fairly exact science in Arizona law, as the formula is set by the Arizona Supreme Court, and the resulting number is presumed to be the final child support order. Exceptions or deviations from this amount are rare. The criteria that comprise the formula include:

- The parents' respective incomes;
- The medical and dental insurance costs for the child;
- The cost of daycare expenses for the child;
- Any spousal maintenance paid or received by the parents;
- The amount of time the child spends with each parent; and
- Any other children who may be supported by the parents. This does not include step-children.⁴

In some circumstances, other criteria may also apply. These include:

- Extra educational or extracurricular expenses;
- Extraordinary child needs.⁵

By now the reasoning behind complete disclosure of all financial assets should be rather clear. In order to ensure that the divorce does not harm the children materially, complete financial transparency by all parties is a necessity.

⁴ ARS 25-320.

⁵ ARS 25-320.

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Affidavit of Financial Information (AZ Rules of Family Law Procedure Rule 49/ AZ Supreme Court Form 2)

Where child support is an issue, each party will be required to disclose all income sources and child support related expenses via the filing of an Affidavit of Financial Information, listing:

- Income of the party from all sources for the past two (2) completed calendar years, and year-to-date income for the current calendar year;
- Proof of court-ordered child support and spousal maintenance actually paid by the party in any case other than the one in which disclosure is being provided;
- ALL medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;
- Any child care expenses paid by the party for any child listed or referenced in the petition;
- Expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and
- Any expenses paid by the party for the special needs of a gifted or handicapped child listed or referenced in the petition.

Relocation: People move on and remarry after their divorce. Sometimes they wish to move to other cities within Arizona, and sometimes they want to move out of state. But moving with children and a divorce is not as simple as simply packing up and going. Relocation cases are difficult and mostly depend on the facts of the individual case. In parental relocation cases, the court considers many factors in deciding whether the child will move or not, including the motives behind the proposed move, the distance, the quality of the child's relationship with the stay-behind parent, how the move will affect the child, and ways to keep up the relationship with the left-behind parent after the move.

In long-distance move cases, a parenting plan should address telephone contact, virtual contact and travel arrangements among other considerations.

One of the keynote relocation cases in Arizona was recently decided. It was a case in which Gillespie Shields & Associates worked and prevailed.

Property Issues

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Property Division

Arizona adheres to the concept of equitable distribution of marital assets. Equitable distribution doesn't necessarily mean equal; it means fair. However, the exceptions to a 50/50 distribution of assets accumulated during marriage are extremely rare under Arizona's community property law. This law provides that all property accumulated during marriage is presumed to belong equally to the husband and the wife, regardless of who actually earned or whose name it's titled in. Exceptions to this presumption include gifts and inheritance. There are a number of factors that the judge uses to determine what distribution of this marital property is equitable. Marital property includes pensions, bank accounts, stocks, bonds, real estate, personal property, antiques, collections, automobiles, cash value of life insurance, and all other assets.

Spousal Maintenance

Per Arizona Revised Statute 25-319, when determining the necessity of spousal maintenance (aka "alimony") The court will consider the following factors regarding the spouse requesting maintenance:

- Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
- Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
- Contributed to the educational opportunities of the other spouse.
- Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

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If support is ordered, the amount will be determined by considering all relevant factors, including:

- The standard of living established during the marriage.
- The duration of the marriage.
- The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.
- The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
- The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
- The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
- The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.
- The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
- The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.
- The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
- Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
- The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.
- All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.⁶

⁶ ARS 25-319.

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Litigation Tools

Discovery

If the court is to make an informed ruling, both parties need to be able to provide evidence in support of their claims. Discovery is the instrument with which critical facts and issues come to light. Each party is obligated to respond to discovery truthfully and, in some cases, certify their answers under the pains and penalties of perjury.

Interrogatories: Interrogatories are a list of questions that may inquire about specific legal or factual contentions as well as asking your spouse to state the legal theories and to describe in general the factual bases for the party's claims or defenses.

Requests for Production of Documents: In a divorce you are entitled to inspect, sample, test, photograph and copy documents or tangible things that are within the scope of discovery and within the party's possession, custody, or control.

Depositions: In an oral deposition, questions are usually asked by opposing counsel (with the opposing attorney present) directly to the person being deposed. This person's answers are recorded by a stenographer or court reporter, or may be recorded by other means, including audiotape or videotape, and may be even be conducted over the phone.

“When Will This Be OVER??”

The final phase of the case involves resolution of the case, either through settlement or trial. The vast majority of cases settle. A settlement depends more on the parties and their attorneys' willingness to settle, as than the actual issues involved. While some issues need to go to trial, such as significant issues involving custody, most issues can be resolved through compromise and common sense. The judges encourage settlement whenever possible. Oftentimes four-way settlement conferences where the parties and lawyers meet to explore settlement options are required by the court. Sometimes, depending on the judge's preference, the judge will meet with the lawyers in chambers to discuss the issues and to make settlement recommendations.

As a rule of thumb, a good settlement is equal to or better than what the Judge will order at trial, factoring in the cost of attorneys' fees incurred in trying the case. But any lawyer who pretends to know exactly what a judge will order is fooling himself or herself most of the time. If the case does not settle, it goes to trial. As a matter of philosophy, most family law cases really should settle. More so than any other area of law, settlement allows the parties to be flexible and address their strongest concerns to their own unique circumstances. Too often, when a case proceeds to trial in front of a judge, the judge is simply not in as good a position as the parties to address their individual needs and concerns. Parties always have the ability to settle their case, and many times the best thing a lawyer can do is help the client in this process.

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The average divorce case lasts approximately nine months, but many can go longer or shorter than that depending on the parties' willingness to settle, and the availability of the lawyers and judge. If a divorce case settles, the case is typically over within a few weeks after agreeing on the terms of settlement.

Life Goes On

Divorce is not the end of your family. It is clearly a large change, but it is often the most worthwhile, albeit difficult decision you must make. That being said, you must ensure that you take care to preserve your mental and emotional well-being and that of your children.

Remember to always:

- **Stay Healthy.** Take steps to maintain your physical, mental, emotional, and spiritual health. This can take the form of relying on your existing support network, seeking support groups, and/or assistance from community and ecclesiastical resources. Do not fall into self-destructive escapes such as alcohol or drugs. These temporary fixes will not help you, your case, or your children.
- **Listen To Your Child.** Children's feelings of fear, confusion and anger during a separation or divorce are often reflected in their statements. Be sure to listen when your child talks to you. Let your child know they can share their happy, sad, or angry feelings with you. Children won't share their feelings if they are afraid of hurting one of their parents.
- **Talk To Your Child.** Your child may not understand that a separation or divorce was not his or her fault. In fact, some children blame themselves for the problems that parents experience with each other. Help your child understand that the divorce or separation is not their fault, and that your child is not being "divorced" by the parents. In doing this, it is extremely important not to put the child in the middle of the divorce. As a general rule, adult issues such as the specifics of a divorce case should not be addressed with the child.
- **Be There To Comfort.** There will be times when your child will display behavior that may appear disruptive. Remember that your children will need to know they are loved, they will be cared for, and that both parents will still be their mom and dad.
- **Protect Your Child From Disagreements.** If you include your child in conversations or disagreements about the other parent, your child will become insecure and uncomfortable around you. Your Children should never:
 - Be placed in the middle of a disagreement between parents,
 - Made into messengers,
 - Or overhear you making derogatory remarks about the other parent.

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- **Praise Your Child.** Praising your child will help them grow up feeling very good about themselves. When children feel good about themselves, it is easier to understand that although their parents are no longer together, both parents still love them.
- **Have Fun With Your Child.** Your child needs to spend quality time with you regardless of how difficult your divorce or separation may be. Having fun allows parents and children to feel good about their relationship.⁷

Conclusion

Divorce is never an easy decision to arrive at. The skilled attorneys and paralegals at Gillespie, Shields, & Associates are ready and able to handle your case in a sensitive and professional manner so that you can rest assured that two of the most important things in your life—your children and your possessions—are protected. Please call us at 602-870-9700 to schedule your initial consultation.

⁷ <http://www.supreme.state.az.us/dr/Text/ParentEd.htm>