

DISSOLUTION OF MARRIAGE OR DOMESTIC PARTNERSHIP

Jurisdiction:

The Courts of the State of Nevada have **subject matter jurisdiction** over a cause of action for divorce for any of three causes pursuant to NRS 125.010:

1. Insanity existing for 2 years prior to the commencement of the action.
2. Separation for one year or longer without cohabitation.
3. Incompatibility.

Additionally, in order for a Court of the State of Nevada to have subject matter jurisdiction to grant a divorce, either the Plaintiff or the Defendant must have been a resident of the State of Nevada for a period of not less than 6 weeks preceding commencement of the action. The durational residency requirement is mandatory - a Nevada Court cannot grant a divorce unless the Plaintiff or Defendant resided in Nevada for not less than 6 weeks before the divorce action is commenced.

The Nevada Courts have **personal jurisdiction** over the person of any party (Plaintiff or Defendant) who subjects himself or herself to the jurisdiction of the Court by seeking relief from the Court. Proof of residency is a “question of fact,” which must be supported by corroborating evidence. Hence, the need for a “residency witness” who is willing to execute the Affidavit/Declaration of Resident Witness. If residency may be challenged, a prospective divorce Plaintiff should do those things that tend to objectively demonstrate the legitimacy of residence in Nevada, such as obtaining housing, having mail forwarded to the Nevada address, registering to vote, obtaining a Nevada driver’s license, and registering vehicles in Nevada. Obtaining employment is also evidence of a good faith intent to make Nevada one’s legal residence.

A Nevada Court with personal jurisdiction over both parties acquires jurisdiction to determine the custodial arrangement for their children, whether or not the children are within the physical boundaries of the state.

In order for a Nevada Court to grant a divorce, the Nevada Court **must** have subject matter jurisdiction **and** personal jurisdiction over at least one of the parties. However, where division of property, alimony or other monetary issues are present, there needs to be a basis for exercise of the Nevada Court’s jurisdiction over the Defendant, as well.

Property Rights and Division:

In Nevada, married couples own property either separately or as a community. **Community property** is defined as “all property, other than that stated in NRS 123.130, acquired after marriage by either husband or wife, or both, is community property unless otherwise provided by:

1. An agreement in writing between the spouses (i.e., prenuptial agreement).
2. A decree of separate maintenance issued by a court of competent jurisdiction.
3. NRS 123.190 (Earnings of either spouse appropriated to own use pursuant to written authorization of other spouse deemed gift).
4. A decree issued or agreement in writing entered pursuant to NRS 123.259 (one spouse is institutionalized).

Separate property is defined as “all property of a spouse owned by him/her before marriage, and that acquired by him/her afterwards by gift, bequest, devise, descent or by an award for personal injury damages, with the rents, issues and profits thereof.”

There are **restrictions** with what a spouse may do with community property. Pursuant to NRS 123.230, neither spouse may:

1. Devise or bequeath more than one-half of the community property.
2. Make a gift of community property without the express or implied consent of the other.
3. Sell, convey or encumber the community real property unless both join in the execution of the deed or other instrument.
4. Purchase or contract to purchase community real property unless both join in the transaction.
5. Create a security interest, other than a purchase-money security interest, in, or sell, community household goods, furnishings or appliances unless both join in executing the security agreement or contract of sale, if any.
6. Neither spouse may acquire, purchase, sell, convey or encumber the assets, including real property and goodwill, of a business where both spouses participate in its management without the consent of the other.
7. If only one spouse participates in management of a business, he or she may, in the ordinary course of business, acquire, purchase, sell, convey or encumber the assets, including real property and goodwill, of the business without the consent of the nonparticipating spouse.

Pursuant to NRS 125.150, in **granting a divorce**, the Court :

(a) May award such alimony to the wife or to the husband, in a specified principal sum or as specified periodic payments, as appears just and equitable; *and*

(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, except that the court may make an unequal disposition of the community property (marital waste) in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.

Compelling reasons which might justify an unequal division of community property, called **Marital waste**, would be financial misconduct of one of the parties, such as waste or secretion of community assets in violation of court order, charging thousands of dollars in credit card debt after separation, negligent loss or destruction of community property, unauthorized gifts of community property, and compensation for losses occasioned by marriage and its breakup.

Nevada law does not have an explicit definition of “**separate debt**” or “**community debt.**” However, neither the separate property of a spouse nor his/her share of the community property is liable for the debts of the other spouse contracted *before* the marriage. Thus, NRS 123.050 appears to create the categories of “separate debt” and “community debt.” Payment of “necessaries” by either spouse after separation will likely be deemed “community debt” and are subject to division upon divorce.

Pursuant to NRS 125.150(2), **property held in joint tenancy** is equally divided unless a party has made a contribution of separate property to the acquisition or improvement of property.

Pursuant to NRS 125.155, **pension and/or retirement benefits** acquired during marriage are community assets subject to division. In determining the value of an interest in or entitlement to a pension or retirement benefit, the Court **shall** base its determination upon the number of years or portion thereof that the contributing party was employed and received the interest or entitlement, beginning on the date of the marriage and ending on the date on which a decree of legal separation or divorce is entered (the “time rule”). The Court **may** order that the benefit not be paid before the date on which the participating party retires. To ensure that the party who is not a participant will receive payment for the benefits, the court **may** require the participating party to purchase a policy of life insurance naming the nonparticipating party as the beneficiary until the participating party retires. Court Orders dividing pension and/or retirement benefits may be called Qualified Domestic Relations Orders (QDRO), Court Order Acceptable for Processing (COAP).

There is a presumption that property acquired during marriage is community property and that property owned prior to marriage is separate property. When a spouse uses separate funds or separate credit to purchase property during the marriage, that property generally remains his or her separate property. However, where no attempt is made by a spouse to keep separate property and community property segregated, so that the properties have become so mixed and intermingled that it is no longer possible to determine their source, such intermingled properties are considered community property. The community property presumption is rebuttable by clear and convincing evidence.

It is important to remember that community property accrues until parties are divorced – property rights do not terminate upon separation.

Termination of Domestic Partnerships:

Chapter 122A of Nevada Revised Statutes governs Domestic Partnerships. Domestic partnerships may be terminated by a “simplified” termination proceeding. For a domestic partnership to qualify for the simplified termination proceedings, all of the following conditions must exist at the time of the filing pursuant to that subsection:

- (a) The domestic partnership has been registered for 5 years or less.
- (b) There are no minor children of the relationship of the parties born before or during the domestic partnership or adopted by the parties during the domestic partnership and no female member of the domestic partnership, to her knowledge, is pregnant, **or** the parties have executed an agreement as to the custody of any children and setting forth the amount and manner of their support.
- (c) There is no community or joint property **or** the parties have executed an agreement setting forth the division of community property and the assumption of liabilities of the community, if any, and have executed any deeds, certificates of title, bills of sale or other evidence of transfer necessary to effectuate the agreement.

(d) The parties waive any rights to support **or** the parties have executed an agreement setting forth the amount and manner of support.

(e) The parties waive any right to the conduct of more comprehensive proceedings pursuant to chapter 125 of NRS.

If the domestic partnership qualifies for “simplified” termination proceedings, domestic partners may terminate their domestic partnership by filing the prescribed form with the Office of the Secretary of State and paying the required fee.

If the domestic partnership does not qualify for “simplified” termination proceedings, the domestic partners must following the “dissolution of marriage” procedures provided for in NRS Chapter 125, as explained above.