

John Robinson Hill  
*Practice Group Leader*  
Joani C. Moberg  
Amy L. Helsene  
Julia Melk

## Divorce and Related Services

Whether your situation is complicated or straightforward, we're here to help you understand the process and make good decisions. Our attorneys are highly experienced in helping clients through all aspects of a divorce – from child custody to division of property to spousal maintenance.

For your convenience, we've outlined the Minnesota divorce process below. This information is not comprehensive, but may answer some basic questions before we meet.

### **Residency requirement**

To get a divorce in Minnesota, one of the parties must have resided in Minnesota, have been a member of the armed services stationed in Minnesota for not less than 180 days immediately prior to filing for divorce, or have been a domiciliary of Minnesota for not less than 180 days immediately prior to filing for divorce.

### **Where to file**

The petitioner spouse must file for divorce in the Minnesota District Court within the county where either spouse resides.

### **Grounds for filing**

Minnesota is a "No Fault" state, meaning that neither party must prove fault to be granted a divorce. A divorce is granted when the court finds that there has been an irretrievable breakdown of the marriage. This must be shown by living separate and apart for 180 days, or serious marital discord adversely affecting the attitude of one or both of the spouses toward marriage.

### **Alternative Dispute Resolution**

All family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes, such as mediation or arbitration. Many parties choose to utilize alternative dispute resolution methods to assist them in settling their case outside of court.

A mediator – an impartial third party – helps resolve conflicts by guiding both parties through problem-solving steps towards a mutually agreeable solution. Larkin Hoffman family law attorneys are experienced in family solutions mediation and ADR services, have completed specialized training, and are state-certified for inclusion in the Minnesota ADR Statewide Neutrals Roster in all three categories of Family Neutrals.

---

John Robinson Hill  
*Practice Group Leader*  
Joani C. Moberg  
Amy L. Helsene  
Julia Melk

## Divorce and Related Services

### Primary documents

Petition for Dissolution of Marriage and Decree of Dissolution of Marriage are the essential documents needed to start and finalize the divorce. Anywhere from 10 to 20 other documents may be required.

### Property distribution

Minnesota is an “equitable distribution” state, so marital property shall be divided in an equitable fashion. Equitable doesn’t mean equal, but rather what is fair. As an “equitable distribution” state, each spouse retains his or her non-marital (separate) property, consisting of property acquired prior to the marriage; any gifts or inheritances; or property exchanged for or an increase in value of such non-marital property.

All other marital property, including any pension and retirement plans, is divided, without regard to fault, after a consideration of a number of statutory factors. If the parties cannot come to an agreement on how their marital property is to be divided, the court shall base its findings on all relevant factors, including the length of the marriage, any prior marriage; age and health; amount and sources of income; vocational skills and employability; estate; liabilities; and opportunity for future acquisition of capital assets.

The court will also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It is presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to allow for an equitable distribution.

### Spousal support

Not all cases involve support from one spouse to the other; it’s decided on a case-by-case basis. Spousal maintenance – formerly called alimony – is payment of money on a regular basis from one spouse to the other during or following a divorce. It is based upon one party’s need for financial assistance in order to maintain the standard of living the parties had during the marriage.

John Robinson Hill  
*Practice Group Leader*  
Joani C. Moberg  
Amy L. Helsene  
Julia Melk

## Divorce and Related Services

The rationale behind spousal maintenance is based on the notion that the marital relationship involves an economic partnership in which the spouses equally share the burdens and responsibilities of both marriage and dissolution.

Although there are factors that help the court in determining whether to award spousal maintenance and its amount and duration, there is no set formula. Spousal maintenance can be temporary or permanent – and is without regard to marital misconduct. The court and considers all relevant factors, including the financial resources of the person seeking maintenance, training to enable the person seeking maintenance to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the loss of earnings; the age and the physical and emotional condition of the spouse seeking maintenance; the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.

### **Child custody**

When minor children are involved in divorce, Minnesota courts will do everything possible to help lessen the emotional trauma they may be experiencing. You and your spouse can decide who will take care of your children. You can arrange for sole custody, joint legal, joint physical, or both. If the parents cannot come to an agreement, the court will establish the custody order at its discretion.

When minor children are involved in a dissolution of marriage, the Minnesota courts will do everything possible to help lessen the emotional trauma the children may be experiencing. If the parents cannot agree on an appropriate custody arrangement, the court will examine what is in “the best interests of the child” by evaluating: the wishes of the child’s parents; the reasonable preference of the child; the child’s primary caretaker; the intimacy of the relationship between each parent and the child; the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child’s best interest; the child’s adjustment to home, school, and community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed custodial home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love; the child’s cultural background.

*Except in cases of domestic abuse, each parent is encouraged to permit frequent and continuing contact by the other parent with the child.*

---

John Robinson Hill  
*Practice Group Leader*  
Joani C. Moberg  
Amy L. Helsene  
Julia Melk

## Divorce and Related Services

### **Child support**

Minnesota child support guidelines use the Percentage of Income formula, which calculates the support obligation as a percentage of the income of the non-custodial parent. The court may order either or both parents to pay an amount reasonable for the child's support, without regard to marital conduct.

Both parents have a legal duty to support their child according to their ability to do so. Most jurisdictions have guidelines in effect, which provide a formula for calculating child support based on a proportion of each parent's gross income. These guidelines are applied unless a party can show that this would be unjust and inappropriate.

You can avoid making child support a contested issue, and the legal expense of litigating this issue before the courts, by both parents agreeing to the appropriate amount of child support and making this agreement part of a marital separation agreement.

If the parents cannot agree to a support amount, the court shall set child support according to the child support guidelines and worksheet, found at [www.childsupport.dhs.state.mn.us](http://www.childsupport.dhs.state.mn.us).