

I. TENNESSEE DIVORCE LAW

A. T.C.A. 36-4-104 - Residence Requirements

1. Party filing for divorce must be a resident of the State at the time the grounds for divorce took place.
2. If the grounds took place outside of the State of Tennessee, one of the spouses must be a resident for six months prior to filing.

B. T.C.A. 36-4-101 - Grounds for divorce. There are fifteen statutory grounds for divorce in Tennessee. They are:

1. Irreconcilable differences between the parties
2. Impotence
3. Adultery
4. Conviction of a felony and imprisonment
5. Alcoholism and/or drug addiction
6. Wife is pregnant by another at the time of marriage without husband's knowledge
7. Willful desertion for one year
8. Bigamy
9. Endangering the life of the spouse
10. Conviction of an infamous crime
11. Refusing to move to Tennessee with a spouse and willfully absenting one's self from a new residence for two (2) years
12. Cruel and inhuman treatment or unsafe and improper marital conduct
13. Indignities that make the spouse's life intolerable
14. Abandonment, neglect, or banning the spouse from home
15. Both parties have lived separate and apart for two (2) or more years and have not cohabited as man and wife

C. Irreconcilable differences:

1. "Irreconcilable differences" is the ground most often used.
 2. T.C.A. 36-4-103 provides Irreconcilable differences procedure
 3. If marital dissolution agreement properly entered into, service of process is waived for 180 days.
- D. T.C.A. 36-4-101(b) – Waiting Period
1. There is a 60 day waiting period if there is no child under the age 18.
 2. There is a 90 day waiting period if there are children under the age 18.
- E. If a marital dissolution agreement is properly entered in, mediation is not required.
- F. T.C.A. 36-4-106 – Mutual temporary injunctions
1. Upon the filing of the petition for divorce, temporary injunctions shall be in effect against both parties until the final decree of divorce or order of legal separation is entered, the petition is dismissed, the parties reach an agreement, or until the Court modifies or dissolves the injunction.
 2. The temporary injunctions will enjoin both parties from transferring, assigning, borrowing against, concealing, or in any way dissipating or disposing without the consent of the other party or the order of the Court any marital property.
 3. Each party is restrained from harassing, threatening, assaulting or abusing the other and for making disparaging remarks about the other or in the presence of any children of the parties or to either party's employer.
 4. Both parties are enjoined from relocating any children of the parties outside the state or within 50 miles from the marital home without permission of the other party or an order of the Court, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child.
- G. T.C.A. 36-4-131 – Mediation requirements and exceptions.
1. With limited exceptions, the Court will order the parties to participate in mediation.
 2. Exceptions to the mediation requirement include such factors as the parties' inability to afford the cost of mediation, the parties have entered into a written marital dissolution agreement or an agreed order resolving all the pending issues in the divorce, parties have participated in a settlement conference presided over by a Court or special master, or the Court finds that there is a substantial likelihood that mediation will result in an impasse, or for any other cause found sufficient by the Court.

3. T.C.A. 36-4-130 – Mediation is required but in some instances, it can be waived.

II. **PROPERTY DIVISION AND ALIMONY IN TN DIVORCE DISTINCT FROM OTHER STATES**

A. Property Division. TN law classifies property as either Marital Property or Separate Property, in the event of divorce and distributing assets and debts between the parties. The first step the judge undertakes in property division is classifying assets and debts as either Marital or Separate.

B. Marital Property is:

1. All real and personal property, both tangible and intangible, acquired by either or both spouses during the marriage, and including any property to which a right was acquired up to the date of the final divorce hearing. (T.C.A. § 36-4-121(b)(1)(A)).
 - a) Includes income from and increase in value during the marriage of Separate Property IF each party “substantially contributed” to preservation and appreciation of asset. (T.C.A. § 36-4-121(b)(1)(B)(i));
 - b) “Substantial contribution” means the direct or indirect contribution of a spouse as homemaker or parent. (T.C.A. § 36-4-121(b)(1)(D)).
2. Includes recovery in personal injury, workers’ compensation, social security disability actions, and other similar actions. (T.C.A. § 36-4-121(b)(1)(C)).
3. “Assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division.” (T.C.A. § 36-4-121(b)(1)(E)).

C. Separate Property:

1. Includes real and personal property owned by a spouse before marriage, and income from and appreciation of that property. (T.C.A. § 36-4-121(b)(2)(A) and (C)).
2. Includes gifts to or inheritance of a party.
3. Includes pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages.
4. Includes employment-related retirement and stock option assets accrued as a result of employment prior to the marriage, together with the appreciation of the asset. (T.C.A. § 36-4-121(b)(1)(B)(iii)).

- a) If contributions have been made to the asset during the marriage (and said contributions appreciated during the marriage), the court will use a reasonable method of accounting to determine pre- and post-marital appreciation. *Id.*
- b) If contributions to pre-marital employment related retirement and stock option assets are from a party's marital employment, then said contributions are Marital Property.
- c) Note: "[T]he concepts of commingling and transmutation shall not apply" when determining appreciation pursuant to this subsection. (T.C.A. § 36-4-121(b)(1)(B)(iii)).

D. Once the property is classified, the court awards each party his or her Separate Property and decides an equitable division of Marital Property.

1. Not necessarily equal
2. List of factors to consider (T.C.A. § 36-4-121(c)) including duration of the marriage, the contribution of each party to the acquisition and appreciation of property, and the tax consequences, among others.
3. In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;
4. Fault is not a factor. ("without regard to marital fault" T.C.A. § 36-4-121(a)(1))
5. Distribute marital property before determining alimony. (T.C.A. § 36-4-121(a)(1)).

D. Separate Property can transform into Marital Property by either Transmutation or Commingling.

1. The Tennessee Supreme Court explains commingling and transmutation as follows: "[S]eparate property becomes marital property [by commingling] if inextricably mingled with marital property or with the separate property of the other spouse. If the separate property continues to be segregated or can be traced into its product, commingling does not occur.... [Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it became marital property.... The rationale underlying these doctrines is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed to be marital. The presumption can be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remain separate."

Snodgrass, 295 S.W.3d 240, 256 (Tenn. 2009) (quoting *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002)).

1. Transmutation is the intent to treat the property as marital, treatment of the property as marital property (e.g. the other party's substantial contribution to the asset), or joint ownership.

E. No such thing as community property. (And note: no such thing as common-law marriage in TN)

III. ALIMONY

A. T.C.A. § 36-5-121(c)(1) and (2): Purpose

1. There may be “economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

2. [T]he contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage, the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.”

B. Features

1. Unlike property division, fault is a factor to consider.

2. No black and white formula.

C. List of factors the court weighs to determine alimony (T.C.A. § 36-5-121(i)) including the relative earning capacity of the parties, education of the parties, duration of the marriage, and age, among others.

D. There are four kinds of alimony:

1. Lump sum (also known as alimony in solido): Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees, where appropriate.
2. Periodic alimony (also known as alimony in futuro): An award of alimony in futuro may be made, either in addition to an award of rehabilitative alimony, where a spouse may be only partially rehabilitated, or instead an award of rehabilitative alimony, where rehabilitation is not feasible.
3. Transitional alimony: Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation, or other proceeding where spousal support may be awarded, such as a petition for an order of protection.
4. Rehabilitative alimony: To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties. There is a statutory preference for rehabilitative alimony. T.C.A. § 36-5-121(d)(2).

E. Modifying Alimony:

1. “[T]he court may award an increase or decrease or other modification of the award based upon a showing of a substantial and material change of circumstances; provided, that the award is subject to modification by the court based on the type of alimony awarded, the terms of the court's decree or the terms of the parties' agreement.” T.C.A. § 36-5-121(a).
2. Cohabitation allows for suspension of alimony, not necessarily termination. *Gregory v. Gregory*, 2016 Tenn. App. LEXIS 464 (Tenn. Ct. App. 2016). And cohabitation does not have to be romantic interest. *Naylor v. Naylor*, 2016 Tenn. App. LEXIS 494 (Tenn. Ct. App. 2016).

IV. CHILD CUSTODY JURISDICTION

A. *Original Jurisdiction of Intrastate Custody*

1. Circuit and chancery courts, and in some circumstances probate and juvenile courts, have concurrent jurisdiction to make child custody determinations in

conjunction with a divorce, annulment or support hearing. (Tenn. Code Ann. §§ 36-4-105; 16-10-108)

2. The jurisdiction of the divorce court to determine custody may be lost if a petition is filed in juvenile court to declare a child dependent and neglected, in which case juvenile court would have exclusive jurisdiction to determine custody. The juvenile court, however, has discretion to transfer jurisdiction back to a court with domestic relations jurisdiction. (Tenn. Code Ann. § 37-1-103)

B. Jurisdiction to Modify Intrastate Custody Decisions

1. Jurisdiction to modify a child custody order lies with the court that made the original determination. (Tenn. Code Ann. § 36-6-101)

2. Exclusive continuing jurisdiction may be lost if all of the parties move out of that county. A case involving custody or child support must be transferred if none of the parties resides in the original county and if the custodial parent and child have resided in another county for at least six months at the time of filing the petition to transfer. (Tenn. Code Ann. § 36-5-3003)

C. Jurisdiction to Determine Interstate Custody

1. The Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) was adopted by the Tennessee legislature in 1999, and is the sole vehicle for resolving jurisdictional disputes between states. (Tenn. Code Ann. § 36-6-201, et. seq.)

2. Regarding international jurisdictional disputes, the UCCJEA provides that Tennessee courts should treat a foreign country as if it were a state of the United States for purposes of applying the UCCJEA. (Tenn. Code Ann. § 36-6-208)

V. CHILD CUSTODY DETERMINATIONS

A. Custody Decisions

1. In custody disputes between natural parents, the court will apply the doctrine of comparative fitness.

2. Taking into account the child’s best interests, the trial court shall adopt a schedule that permits each parent to enjoy the maximum participation possible in the children’s lives that is consistent with the factors set forth in the statute. (Tenn. Code Ann. § 36-6-106(a))

3. In making the custody determination, the court is to consider all relevant factors to the child’s best interest including:

a) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

b) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-

child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

c) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

d) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

e) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

f) The love, affection, and emotional ties existing between each parent and the child;

g) The emotional needs and developmental level of the child;

h) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

i) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

j) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

k) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

l) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

m) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

- n) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and
- o) Any other factors deemed relevant by the court.

(Tenn. Code Ann. § 36-6-106)

A. Parenting Plans

1. Any final decree of divorce involving a minor child must incorporate a permanent parenting plan. (Tenn. Code Ann. § 36-6-404)

2. Specifically, a permanent parenting plan shall:

- a) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;
- b) Establish the authority and responsibilities of each parent with respect to the child;
- c) Minimize the child's exposure to harmful parental conflict;
- d) Provide for a process for dispute resolution, before court action, unless precluded elsewhere by statute;
- e) Allocate decision-making authority to one (1) or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child;
- f) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent;
- g) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process;
- h) Require the obligor to report annually on a date certain to the obligee, and the department of human services or its contractor in Title IV-D cases, on a form provided by the court, the obligor's income as defined by the child support guidelines and related provisions; and
- i) Specify that if the driver license of a parent is currently expired, canceled, suspended or revoked or if the parent does not possess a valid driver license for any other reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety and welfare of the child when such child is in the custody of such parent.

(Tenn. Code Ann. § 36-6-404)

3. Additionally, any permanent parenting plan shall include a residential schedule.

(Tenn. Code Ann. § 36-6-404)

- a) The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which

encourage each parent to maintain a loving, stable, and nurturing relationship with the child.

b) If the limitations of § 36-6-406 (evidence of abuse) are not dispositive of the child's residential schedule, the court shall consider the factors contained in § 36-6-106, listed above, in determining the residential schedule:

4. The administrative office of the courts has developed a parenting plan form that is used consistently by each court within Tennessee that approves parenting plans. (Tenn. Code Ann. § 36-6-404)

C. Parent Education Seminar

1. In an action where a permanent parenting plan is or will be entered, each parent shall attend a parent educational seminar as soon as possible after the filing of the complaint for divorce. (Tenn. Code Ann. § 36-6-408)

2. The seminar shall educate parents concerning how to protect and enhance the child's emotional development and informing the parents regarding the legal process. The seminar shall also include a discussion of alternative dispute resolution, marriage counseling, the judicial process, and common perpetrator attitudes and conduct involving domestic violence. (Tenn. Code Ann. § 36-6-408)

3. For good cause, the court may waive attendance at the parent education seminar. Further, no court shall deny the granting of a divorce for failure of a party to attend the educational session. (Tenn. Code Ann. § 36-6-408)

4. In addition, the fees or costs of this seminar may be waived for indigent persons. Tennessee Supreme Court Rule 38 provides for funding to reimburse both parenting education and alternative dispute resolution services where those services have been provided to indigent litigants. (Tenn. Code Ann. §36-6-408; Tenn. Sup. Ct. R. 8).

D. Modification of Custody

1. Before the court will consider whether the modification is in the best interest of the child, the petitioner has to demonstrate that a "material change in circumstances" occurred after the entry of the child custody order sought to be modified. (Tenn. Code Ann. § 36-6-101(a)(2))

2. If the court finds that a material change in circumstances has occurred, the trial court must then determine whether a modification of custody is in the child's best interest using the factors for the comparative fitness analysis enumerated above. *Cranston v. Combs*, 106 S.W.3d 641 (Tenn. 2003)

3. If a change to the residential schedule is sought, a material change in circumstances may include, but is not limited to the following: significant changes in the needs of the child over time, which may include changes relating to age; significant changes in the parent's living or working condition that significantly affect parenting; failure to adhere to the parenting plan; or other circumstances making a change in the residential parenting time in the best interest of the child. (Tenn. Code Ann. § 36-6-101(a)(2))

4. Notably, if a parent is attempting to modify the parenting schedule but not modify the custodial parent determination, a parent does not have to prove that the change in

circumstances was not anticipated at the time of the initial parenting agreement. *Armbrister v. Armbrister*, 414 S.W.3d 685 (Tenn. 2013)

5. If a change in custody is sought, a material change of circumstances may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child. The change must not have been reasonably anticipated with the order was entered. (Tenn. Code Ann. § 36-6-101(a)(2))

E. Parental Relocation

1. After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move.

a) Absent agreement by the parents on a new visitation schedule within thirty (30) days of the notice or upon a timely objection in response to the notice, the relocating parent shall file a petition seeking approval of the relocation. The non-relocating parent has thirty (30) days to file a response in opposition to the petition. In the event no response in opposition is filed within thirty (30) days, the parent proposing to relocate with the child shall be permitted to do so.

b) If a petition in opposition to relocation is filed, the court shall determine whether relocation is in the best interest of the minor child.

c) If, the court finds that relocation is in the best interest of the minor child, the court shall modify the permanent parenting plan as needed to account for the distance between the non-relocating parent and the relocating parent.

d) If the court finds that relocation is not in the best interest of the minor child, the court shall deny the petition for approval and, utilizing the factors described above for the comparative fitness analysis, enter a modified permanent parenting plan that shall become effective only if the parent proposing to relocate elects to do so despite the court's decision denying the parent's petition for approval.

(Tenn. Code Ann. § 36-6-108)

VI. CHILD SUPPORT

A. Generally

1. Parents have a joint duty to support their minor children, according to their means and ability. (Tenn. Code Ann. § 34-1-102(a))

2. Generally, this duty of support extends until the child reaches age eighteen; however, if the child is still in high school upon turning eighteen, the duty of support continues until the child graduates high school or the class in which the child was enrolled upon

attaining the age of eighteen graduates, whichever occurs first. (Tenn. Code Ann. § 34-1-102(b))

B. Jurisdiction

1. Tennessee Code § 36-5-101(a) states that, whether a marriage is dissolved or a separation is decreed, the court may order support of the children by either spouse.
2. In interstate cases, jurisdiction to modify, alter or enforce child support orders is controlled by the Uniform Interstate Family Support Act.

C. Child Support Guidelines

1. Pursuant to Tennessee Code, the Tennessee Department of Human Services promulgates Tennessee Child Support Guidelines, which are a set of administrative rules used to determine child support. (Tenn. Code Ann. § 36-5-101(e)(2))
2. The Tennessee Child Support Guidelines adopt the income shares model for child support determination, meaning both parents' earnings and income from all sources are included when calculating child support. (Tenn. Comp. R. & Regs. Ch 1240-2-4-.03)
3. Among the considerations for child support pursuant to the Guidelines are the number of parenting days each parent has with the child per year, the adjusted gross income of each parent, and key expenses such as childcare and healthcare expenses for the child. (Tenn. Comp. R. & Regs. Ch 1240-2-4-.03)

D. Modification of Child Support

1. A child support order may be modified if the court finds a significant variance between the guidelines and the current support order, unless the variance is the result of a previously ordered deviation from the guidelines based on circumstances that have not changed. (Tenn. Comp. R. & Regs. Ch 1240-2-4-.05)
2. A significant variance is generally defined as at least a 15% change between the current order and the proponent's proposed order for more or less support and at least a 7.5% change for low income parents. (Tenn. Comp. R. & Regs. Ch 1240-2-4-.05)