

# THE KENTUCKY DIVORCE GUIDE

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*This guide does not contain legal advice. This guide is designed to help you understand more about Kentucky divorce law and assist you and your spouse to discuss divorce. Some divorces will be contested, and we do not guarantee that your divorce will be uncontested.*

The general information contained in this Guide is not related to your specific situation and there are likely facts and circumstances related to your case that could give you additional claims or defenses. To obtain legal advice, you must retain an attorney. This guide is intended to provide you information about divorce in Kentucky that you may share with your spouse, which we hope will lead you and your spouse to pursue an uncontested divorce. If you pursue an uncontested divorce, we offer limited scope representation and mediation services, like Lets Divorce, to assist you before, during, and after your divorce.

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# THE KENTUCKY DIVORCE GUIDE

## OUR DEBT OF GRATITUDE

We sincerely appreciate the judges, attorneys, clerks, staff, Cabinet workers, and others that work tirelessly for children and families across the Commonwealth. We hope that this Guide helps ease the burden on the courts and family court system. Our appreciation also goes out to the editors, ethics committee members, and others who took time out to help us produce this Guide.

## IS THIS GUIDE FOR YOU?

This Guide assists you to understand the divorce process in Kentucky. If you are considering or engaging in divorce, this Guide should help you understand all the necessary elements to obtain a divorce. By providing this information, we hope to eliminate some of the uncertainty that accompanies the extraordinary uncertainty that surrounds divorce. We hope, pray, and bank on the ability to help you all work together to achieve an amicable and fair resolution instead of an expensive and more painful contested divorce. If you want to know more about Kentucky divorce, this Guide is for you.

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## INTRODUCTION TO DIVORCE

Divorce is hard. Even uncontested divorces are painful. We attempt to ease some of the pain caused by the uncertainty of the divorce process, legal system, and common legal issues. We also offer an alternative to divorce litigation by helping you reach an agreement with your spouse without the expense and hardship of nasty divorce litigation. This section discusses the differences in contested and uncontested divorces.

### WHAT IS AN UNCONTESTED DIVORCE?

***Uncontested divorce means agreed divorce.*** Divorce is uncontested if you and your spouse agree on *everything*. Many people agree to an uncontested divorce because it is cheaper, faster, and better than the adversarial legal system. This Guide educates you to help you and your spouse reach an agreement instead of going through the nightmare that can be family law litigation.

Even if you do not believe that you can reach an agreement, reading this Guide will give you information to better understand your unique situation. Fear and uncertainty drive animosity in a divorce, and we hope that sharing this Guide with your spouse might create the space to trust a process other than “lawyering up.” Even if you cannot reach a complete agreement, agreeing to what you can will limit the involvement of courts and attorneys, which saves you time, money, and heartache. Further, limiting issues allows you to focus on the remaining issues. We have excellent mediators to assist you obtain an agreed divorce.

### BENEFITS OF AN UNCONTESTED DIVORCE

1. **Cleaner.** If the parties work together to divorce, divorce is usually cheaper, faster, and usually leaves a clean division. With uncontested divorces, the parties decide the issues, not a judge that balances you and hundreds of other cases. With children, things usually work better after an uncontested divorce. If you give full disclosure, you should have a good opportunity to attempt a fair and equitable divorce yourself, or with limited professional assistance. Courts usually accept agreed divorces.
2. **Faster.** Divorce papers can be completed and filed the same day. This does not mean that you will be divorced immediately, but we enable you to promptly complete the divorce process if your spouse agrees. Once filed, you wait until the Court signs off. If there are any issues, we will help you resolve them. Most individuals do not properly file divorce documents and attorney can be slow, causing delay. We save you time.
3. **Flat Rate.** You can save thousands of dollars by working together. The average contested divorce costs about \$21,000. We offer a flat rate solution to assisting you with your divorce. Everything remains confidential and the process is cleaner, faster, and more convenient than the typical divorce process.

## WHAT IS A CONTESTED DIVORCE?

If you cannot agree on all the things that must be decided by the Court, then you have a contested divorce. The emotions of the parties, the attorneys selected, and the underlying facts are all important factors to determine how messy your divorce will be. The process of going before the court, whether in writing or speaking, is litigation. You can represent yourself, which attorneys generally frown upon, or you can hire an attorney. If you choose to represent yourself, the Court will hold you to the standards of an attorney.

Some contested divorces are necessary, particularly where there are issues with domestic violence, custody of children, or complicated finances; however, a surprising number of contested divorces are argued over nonsense between attorneys. If you believe you might have contested issues, you may consider hiring a mediator to assist you with these issues. Most courts require mediation before allowing attorneys to submit evidence at a hearing to the Judge. We attempt to help you short circuit the process by knowing the law yourself and then obtaining your own agreement with your spouse or using a mediator to assist you.

The basic requirements for a divorce are the same whether contested or uncontested. The biggest difference is the involvement of the Judge deciding issues instead of you and your spouse.

Disagreements will have to be explained to the judge in great detail. Financial issues will require you to gather credit card statements, bank records, retirement accounts, and potentially far more.

Parenting time disagreements may cause the Judge to order an evaluation to determine parental fitness to help the Judge decide what schedule is in the best interest of the child. The cost is usually \$2,500-\$5,000, plus costs of the attorneys, which are highly recommended for custody disputes. The Judge may even appoint an attorney for your child (*guardian ad litem*) so that the child's interests are independently represented during the trial. You and your spouse will have to pay for the evaluation and the *guardian ad litem* whether you agree with the judge's decision or not, in addition to also paying for your own lawyers.

Contested divorces that are not solved in mediation take four- to six-months and attorney fees can be tens of thousands of dollars. While some issues—or some couples—simply cannot be settled without the intervention of a judge, we are committed to the idea that most divorces can be completed without the headache and expense of going to court. If you and your spouse can agree or believe that perhaps a neutral third party could assist you in finding a fair solution, then please consider our alternative.

***We believe there is a better way.***

# THE DIVORCE PROCESS AND LEGAL SYSTEM

## COURTS

Many Kentucky counties have a designated Family Court under the concept of “one family, one judge.” Some counties have courts that handle family law matters and other criminal and civil cases. No matter, one Kentucky court will have control over your divorce. The idea is to have one judge hear all of the issues so that judge can be knowledgeable about the entire case. This Guide often interchanges the words Judge and Court, because in family law the Judge is the Court.

## ATTORNEYS

Attorneys can be a useful source of information and assist you to obtain a divorce. You are not required to hire an attorney to represent you, but if you represent yourself **you are bound by the same rules as an attorney**. Paperwork errors occur frequently and can affect your legal rights. Our Mediation Platform is designed to help you avoid making mistakes.

Here are things to know about attorneys:

1. **Pros.** Certain cases beg for an attorney’s involvement as an advocate, particularly in cases where one spouse wants sole custody and decision making of the children or to restrict or require supervised parenting time. If one spouse will not agree to this, then the Judge will require a Trial. An attorney will know how to best use the facts of your situation to convince a Judge to give you custody or defend your rights. Attorneys are helpful and can help you along the way. Many charge reasonable flat fees and do an excellent job of communicating.
2. **Cons.** Some attorneys are aggressive, some unethical, some lazy, some cause delays, and others will charge you \$10,000 in fees to litigate a \$500 mattress and bedframe. THAT IS NOT WHAT WE DO. Psychiatrists and psychologists agree that divorce litigation can be REALLY bad for children.<sup>1</sup> We know that divorce is hard on spouses and children, but we try to eliminate the uncertainty that arises and help you reach a fair, prompt, and reasonable resolution, like adults.
3. **Delay.** Attorney delay is common. Even if you hire a great attorney, they may still delay the process because of large caseloads and archaic processes. Something as simple as filing your paperwork may be pushed off for weeks, resulting in your “quick” divorce taking much longer. If you must have a hearing before a judge, that hearing cannot happen until there is a time when the judge and your busy attorney are both available, which is usually months away. Completing a divorce yourself ensures a prompt resolution and we provide a streamlined online Platform.

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<sup>1</sup> <https://www.psychologytoday.com/us/blog/surviving-your-childs-adolescence/201112/the-impact-divorce-young-children-and-adolescents>

4. **Billable Hours.** If you hire a divorce attorney, you will likely pay a retainer. A retainer is the amount of money you pay to your attorney upfront to secure services. This amount is typically nonrefundable and allows the attorney to begin working on your case. Attorneys will bill against the retainer using their hourly rate, which in Kentucky is usually between \$150-\$350. If the retainer is exhausted before your case is finalized, you will begin having to make payments each month depending on how much time the attorney spent on your case. You will be billed for every minute of her time. If you pay your attorney a \$2,000 retainer and she charges \$250.00 per hour (a common rate), it does not take long for your significant retainer to be drained. Attorneys have an incentive to rush through your case to keep the retainer or make money by billing time. While there are certainly many excellent attorneys faithfully serving clients and the community, our perspective is why risk it in the first place? Why not try to resolve your divorce together?
5. **Choosing an Attorney.** If you desire to have an attorney assist you with your case, you may ask yourself some of the following questions when you interview a potential attorney:
  - a. Is the attorney empathetic?
  - b. Does the attorney listen to you?
  - c. Does the attorney ask good questions?
  - d. Does the attorney make quick or thoughtful decisions about your case?
  - e. Do you feel comfortable speaking about the intimate details of your relationship?

Most individuals with good attorney experiences indicate that the attorney cared about their situation, listened carefully, and delivered a reasonable outcome and resolution without over-litigating or overcharging the matter.

In our opinion, if you do not have children—or you agree what to do about them—then the rest of the divorce is relatively simple math. There is little need for an attorney unless you do not want to adhere to the law. Even if you speak to your spouse and you are not in complete agreement or do not fully understand the law, we have representatives that would be happy to answer certain questions and mediators that love to assist families and spouses in the divorce process.

## NEGOTIATION

Negotiation is the process of discussing your case with your spouse, or using attorneys to discuss the case, with the goal of reaching a resolution. Settlement negotiations provide an opportunity to efficiently resolve a dispute without involving the court or a third-party mediator. Negotiations can be done many different ways, such as in person, over the phone, or via email. **Settlement negotiations cannot be discussed in front of the judge.** This rule allows all sides to explore their options without fear that their words will later be used against them in court.

## MEDIATION

If you cannot negotiate an agreement, then you will likely go to mediation. Mediation is the process of having a neutral third-party help you reach an agreement with your spouse. Most courts require mediation before they will allow a hearing in front of the judge. Most family law mediators are local attorneys or former judges with extensive divorce experience and specialized mediation training. Mediators do not represent either of the parties and do not advocate for one party over the other; they are not allowed to give legal advice directly to either party. However, Mediators are typically well-versed in family law and can explain how your facts may be ruled upon by a judge. The saying amongst attorneys and judges is that a bad agreement is better than a good court order. We think we can improve on that - our Platform and mediation process are designed to help you divorce better.

## LITIGATION

If you and your spouse cannot agree on everything, then a judge will decide for you. This is called a contested divorce, and contested divorces require litigation. Litigation is the formal process of the court deciding your divorce. Litigation is expensive and difficult and usually only attorneys win. Litigation may be necessary for domestic violence, child abuse, or questions about the fitness of one or both of the parents to have custody. Litigation may also be necessary for complex financial issues, which include business interests, certain maintenance (alimony) calculations, high net worth business owners, and prenuptial agreements. The laws do not change, but the stakes do. More is discussed below about these issues.

## COMMON DIVORCE ISSUES: CHILDREN AND MONEY

### CHILDREN

1. **Custody.** Custody determines who makes medical, educational, and religious decisions for the children. It is best thought of as “legal custody.” *Custody is different than parenting time.* It does not determine how much parenting time a party will receive. There are two types of legal custody: joint and sole.
  - A. **Joint Custody.** Joint custody is when both parents share decision making. Joint custody gives each parent a right to be involved in major decisions affecting the child. By law, Kentucky courts default to joint custody unless there are specific and verifiable reasons why that would not be in the best interest of the children. The Judge has discretion to determine what issues are serious enough to justify awarding sole custody to one parent.
  - B. **Sole Custody.** Sole custody is when one parent has the right to make major life decisions for the child. Sole custody orders are rare and most likely to be issued if a parent has a history of child abuse or neglect, domestic violence, or drug or alcohol problems. Even if you have sole custody, your spouse will have parenting time unless a Court finds that spouse seriously endangers the physical, mental, moral, or emotional

health of the child. If you have legitimate issues of spousal or child abuse, we suggest you seek out a divorce attorney or ask the Kentucky Bar Association for a referral list for family law practitioners with experience in the area. If you think sole custody, either temporary or permanent, may be appropriate in your situation, our Platform may not be right for you. For additional information, please see our blog. You can also review [KRS 403.270](#) to see the factors a court may use to determine custody.

- C. **Child's Best Interests.** The polestar for courts in family law cases is the best interest of the children. There are multiple specific factors contained in [KRS 403.270](#). The court will use evidence from the parties, experts, and others to understand the best interests of the children. Most information about your life, particularly the bad, and your child's life will be important to a Judge.
2. **Parenting Time and Schedule.** Parenting time is the time that each parent spends with the children. It is also sometimes called visitation or time-sharing. We believe that usually parents are in the best situation to determine the best interests of the children; however, this is not always the case. If you and your spouse cannot determine the parenting time and schedule, a judge will do so for you. Just as the law defaults to joint custody, there is a presumption that equal parenting time with each parent is in the best interest of the children. There are many different issues to consider, particularly work schedules. Ideally, you will work together to truly share parenting. You and your spouse can choose a schedule that works the best for both of you. You can also choose to vary the schedule during the summer months when the child is not in school.
    - A. **Schedule.** You know your lives and children better than the court and if you can agree, that's usually best. It is almost always best for the parties to decide than a judge.
    - B. **Summertime.** Often times one parties "makes up" parenting time in the summer. This is completely up to the parties to agree, or a judge will determine how you and your spouse will share the summer.
    - C. **Vacation Time.** Generally, both parties will have two weeks per year of vacation time.
    - D. **Holiday Time.** You can agree to a default holiday schedule or create a holiday schedule that controls over the regular parenting schedule. If you and your spouse cannot agree, then the Model Time-Sharing/Visitation Guidelines can be used. The guidelines can be found at this [link](#).
  3. **Child Support and Medical Expenses.** The amount of child support is set by law and calculated by the number of children, the combined income of you and your spouse, and certain child-related expenses, including the cost of health insurance for the children, and of any work-related childcare. The amount of child support owed by own party to the other could be reduced if the parents have similarly equal incomes and parenting time. You can calculate a child support estimation at this [link](#). We can also provide you child support estimates based upon paystubs

provided by you and your spouse. If your child receives government benefits such as a medical card or food stamps, the Commonwealth of Kentucky can file for child support against you, even if you and your spouse agree that no child support should be paid. There is additional information contained below for complex issues, but generally Courts will do the following to determine child support:

- A. **Determine Monthly Income.** The first task is to determine the monthly gross income of the parents. Gross income is a person's income before taxes and deductions like insurance or retirement contributions. Net income is a person's income after those deductions. Net Income is not used in calculating child support. Determining income is simple with a traditional W-2 employee or if the parties agree on certain income levels. Courts require each parent to supply three most recent paystubs and a copy of their most recent tax return to make its income determination.
- B. **Bonuses and Overtime.** If a parent earns bonuses, the court will average the expected yearly bonus income over twelve months. If a parent is paid hourly and often works overtime, the court will determine how much overtime that parent typically works over the course of a year. This can be tricky, especially when parents work cyclical businesses, like construction, where they may work sixty-hour weeks during the summer and twenty-hour weeks during the winter. If you are in a line of work where the hours can vary you will need extensive documentation—paystubs would be preferred—to prove it to the Court. Ideally, you will reach an agreement based upon historic average earnings.
- C. **Determining Health Insurance.** Parents are required to maintain health insurance for children. If one parent pays for that insurance the other parent is required to contribute to the cost. Typically, insurance plans offer three types of plans: 1) employee; 2) employee + children; and 3) family. Costs are typically broken down by your company HR department into monthly or bi-weekly amounts. To determine the cost for each child, subtract the cost of the employee-only plan from the employee + children plan. If each child covered by the plan is the child of your current spouse, the resulting number is the cost of insurance for the children. If some children covered are not with your current spouse—e.g. children of yours from a previous relationship—then the Court will often split the cost between all the children and add up the cost of the children in common with your current spouse.
- D. **Determining Child Care Cost.** Child care costs are typically straightforward. For most, it is a simple calculation of daycare costs. Some people have unusual childcare needs, but the simple solution is to add up the reoccurring costs and document with receipts. This is difficult proof to argue against. Your spouse is only required to share the cost of work-related childcare—in other words child care you have to have in order to go to work—not the cost of a babysitter so you can go run errands or see a movie.

- E. **Extraordinary Medical Expenses.** Parents are required to share the cost of any child’s medical bills not covered by insurance. Typically, this is just a matter of dividing up copays, but it also applies to bigger expenses such as braces or expensive medications.

Keep in mind that if you and your spouse agree to an amount that is different from the guidelines, a judge can always change it. Deviating from guidelines is always a reason for scrutiny, and judges do not have to accept agreements. If you and your spouse can agree on a gross monthly income, then the rest of the process is a simple calculation.

## MONEY

1. **Marital Versus Nonmarital Property.** Property means just about anything of value, including houses, cars, bank accounts, and retirement accounts. Most property acquired during marriage is marital property. Generally, property acquired before the marriage is nonmarital property. If you get something as a **gift or inheritance**, that will likely also be your nonmarital property. All property that is “marital” must be divided—assigned to one party or the other—at the end of a marriage. If you cannot agree on that division, you will have a hearing so that the judge can decide how to divide the property. The first thing the Judge will do is return nonmarital property to the proper party, then the Judge will equitably divide the marital property.

## 2. **Division of Marital Property and Debt.**

- A. **Real Property.** Real property includes land, houses, and anything growing or built on that land. If you bought a house or a condo during the marriage, it is likely marital property, and the Judge is responsible to divide its value between the parties equitably. There are a number of rules and factors that judges are required to consider when deciding what is fair.

- a. **New Normal.** For many couples, a house which they could afford to pay for together is too expensive to afford alone. In that case, the judge will likely order that you sell the house and will divide any equity that remains after the sale. If the equity in the home is entirely marital—acquired during the marriage using marital money—the court will typically issue an order that divides the equity by percentage. Because equity in a marital residence is often the largest asset a couple has, courts frequently offset other divisions of property against a spouse’s share of the equity in the home.
- b. **Remaining in the Home.** In some cases, one spouse wishes to retain the marital residence after the divorce is finalized. In that case, the court will typically require the parties to either agree on a value for the house or have it professionally valued. Once a value is determined, the court can calculate how much marital equity is in the home and decide a fair division of that equity between the parties. The judge will then require the spouse who wishes to keep the house to buy out the other spouse.

- B. **Personal Property.** Any property that is not attached to land is considered personal property. This broad category includes everything from socks to cars and includes all marital checking and savings accounts. Courts typically expect the parties to divide most smaller items—clothes, dishes, lamps, etc.—themselves, but may get involved with the division of more expensive items like televisions, computers, or furniture sets. ***This rarely makes sense economically.*** Technically, if the parties are absolutely unable to agree on how to divide ***anything***, the court is required to make reasoned, individual determinations about the division of personal property. This is an expensive road to go down because the Judge may require you and your spouse to inventory everything you own and have it all professionally valued.
- C. **Assets and Debts.** Most anything you earn or buy during the marriage is considered marital property and must be legally divided by the court. Debts work the same way. This is true even if only one spouse’s name is on the property or debt. Once the nonmarital property is returned—legally assigned—to the parties, any assets and debts must then be divided between them. Courts are required to equitably divide the assets and debts; however, equitable does not always mean equal. If one party incurred debts that did not benefit the marriage (e.g. if one spouse had a secret gambling problem), a court may require that party to be solely responsible for their own debt. Depending on the allocation of assets involved, it is also common for courts to assign a greater share of the debt to the party who earns more money. Each court is different, and they all take a complicated array of factors into account when making their decision.
- D. **Pensions and Retirement Accounts.** If either party has a retirement account, 401K, or pension plan, each party is entitled a portion of the value that was added to the account during the marriage. Under federal law, the company managing your retirement account cannot divide that account without a Qualified Domestic Relations Order (“QDRO”). A QDRO is a court order that tells the manager of a pension plan, 401k, or retirement account how to divide that money between divorcing spouses. If you have to divide a retirement account, pension plan, or 401k, you will likely need the help of an attorney to prepare the QDRO.
3. **Spousal Maintenance.** Spousal maintenance, or alimony, is money paid by one spouse to the other. Not every spouse is entitled to maintenance. To award maintenance, a court must find that one party lacks sufficient property to provide for their reasonable needs and cannot support themselves through employment. A party may be excused from the work requirement if they are the custodian of a child whose need for care makes it inappropriate for that party to work outside the home. Maintenance may begin during the divorce process or once the divorce is finalized. Typically, it is a monthly payment, but it can be a lump sum payment. Depending on the financial circumstances of each spouse, maintenance can be awarded either on a

permanent or temporary basis. Factors that help determine the length and amount of maintenance are the length of the marriage, age and health of each spouse, education of each spouse, the ability for the receiving spouse to maintain employment, and the receiving spouse's financial need. You might consider speaking to an attorney if you believe you might be entitled to spousal maintenance.

## **COMPLEX DIVORCE ISSUES**

### **CHILD CUSTODY**

1. **Picking a School.** A parent with sole legal custody of the children has the authority to make determinations about the children's schooling, medical treatment, and religious instruction without the input of the other parent. Joint legal custody requires parents to share information and decision-making authority about schools, doctors, and religious matters. The most common sticking point between divorced parents is choosing a school for their child. If you and your spouse share joint custody and cannot agree, then a Court will make the decision.
  - A. **Public School Location.** When parents move to separate school districts, someone must determine where the child attends school, and there may be a substantial burden placed on the parent living outside the school district, and even the children. If your former spouse has overnight parenting time with the kids during the week, he or she may need to drive the children to school rather than send them on the bus. It also means more travel time to get to extracurricular activities and parent-teacher conferences.
  - B. **Private School.** Some parents choose to send their children to private school. If this is an option for you, be aware that courts in Kentucky cannot order a parent to pay for private school or tutoring unless that parent agreed to do so by contract (i.e. in a Marital Settlement Agreement) or the child in question has special needs that require the expense. Unless you have the agreement of your spouse—or you can afford the costs on your own—private school may no longer be in reach post-divorce. If you do want to make an agreement with your spouse, our Platform allows you to do so or you can seek the assistance of an attorney to prepare the contract or Marital Settlement Agreement. Think carefully before you do this commitment because private school is expensive and so is going back to Court once the cost hits home.
  - C. **You or the Court Decide Your Child's Best Interest.** If you have joint custody and cannot agree on which school is best for your children, a judge will try to determine what is in the best interest of the kids. The judge will do that by considering a number of factors including: 1) quality of the schools; 2) whether the children have adjusted to a particular school; 3) whether the school is inconvenient for the children or the parents; and 4) what the children prefer. If the parents are particularly set on getting their way, a

judge may order an Issue Focused Assessment<sup>2</sup> or appoint a Friend of the Court (FOC).<sup>3</sup> Either prospect will likely cost more than \$1,000, and likely \$2,500. We recommend you try to resolve differences with one of our mediators instead.

2. **Moving after the Divorce.** Divorce results in you, your spouse, or both having to move. For couples with no children, this is simple. If children are involved, it can get complicated. Raising children is hard enough with two adults in a household available to provide care. Following a divorce, many people want to move closer to family members to have help with the kids. Even if you only want to move a few minutes away, if you are the primary residential custodian of the children (i.e. have the majority of the parenting time) your move could change their school district. It may no longer be convenient to take them to their old pediatrician, or their former place of worship. If you share joint custody with your former spouse, the two of you will have to make decisions about each of those things.
3. **Relocation.** Even if you have sole custody of the children, you need to agree with your spouse or you **must** ask the court for permission to move more than a short distance. If you want to move far enough away that it will interfere with your former spouse's ability to have parenting time, you are essentially restricting their visitation. To get permission, the judge will require a hearing to determine whether moving is in the best interest of the children. If you cannot agree, we strongly recommend you have an attorney to represent you because relocation, especially away from a family structure, is a difficult argument.

### COMPLEX CHILD SUPPORT

1. **Generally.** In Kentucky, courts are required to follow the Kentucky Child Support Guidelines (the "Guidelines"). The Guidelines provide a chart to determine the child support obligation of the parent without primary residential custody. In other words, it is the amount that the parent who has the children less often must pay to the parent who has them more often. The Guidelines apply where one parent has the majority of the parenting time with the children. If one parent has 80% of the time with the children, it follows that they incur 80% of the everyday expenses of feeding, clothing, and raising them. Therefore, it is fair that the parent with 20% of the parenting time be required to contribute their share to those expenses. The Guidelines are a rough substitute for a laborious accounting of the day-to-day expenses of the children. The more balanced the parenting time between the parents, however, the less fair the Guidelines become.
2. **Equal Parenting Time.** All other things being equal, it is clearly unfair to ask a parent with 45% of the parenting time to pay the same child support as a parent with 20% of the parenting time. Because of this, Kentucky courts have the power to deviate from the Guidelines if the

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<sup>2</sup> An Issue Focused Assessment is a professional evaluation of a specific issue by a psychologist, in this case to recommend which school is in the children's best interest.

<sup>3</sup> A Friend of the Court is a court-appointed expert whose job is to gather information and testify about it to the court.

Court finds the Guidelines would be unfair, particularly when parenting time and income is approximately equal between the parents. It may also permit a deviation where the parties have agreed to do so, or where one of the parents or children have extraordinary needs.

3. **Determining Income for Child Support.** If you cannot agree on each party's income, you may consider hiring an attorney because they will know how to quickly, clearly, and credibly present the information to your judge. Documentation and credibility are important when trying to prove your income to the court because the judge is trained to watch for parents trying to hide their income and lower their child support obligation.
4. **Significant Incomes.** Typically, the deviation is a reduction in the support obligation of a parent, although there are cases where the parents' combined gross monthly income is higher than what the Guidelines were designed to accommodate. Under those circumstances, the court is permitted to deviate a child support obligation upwards to ensure that the parent earning less money is able to provide a lifestyle for the children that is comparable to the parent earning more money.
5. **Business Owners.** Documentation and credibility are crucial for self-employed parents. Under Kentucky law, the court is required to carefully review the business finances of self-employed parents to determine gross monthly income. Judges are directed *not* to simply accept the profit/loss numbers on a tax return, and instead to forensically examine business income and expenses. Deductions and credits which may be accepted by the IRS may not be acceptable to your judge. The reason for the heightened scrutiny is simple: people who are self-employed are far more able to hide income than a regular W-2 employee. Further, certain benefits provided to business owners count as "gross income" under Kentucky law. If you are self-employed or own a business, you *will* need to hire an attorney unless you and your spouse can agree about your income. In addition, your spouse may have a marital interest in your business. These types of cases are ripe for litigation unless the parties can fairly agree after full disclosure.
6. **Underemployment and Unemployment.** A court may impute income to a parent. Imputing income means the court will treat a parent as though they earn a certain monthly gross income even if that person does not. In Kentucky, a parent has an on-going duty to support their children to the best of their ability. If a parent is not disabled and otherwise capable of gainful employment, the law imposes upon them an obligation to work full-time. Generally, though not always, they are required to work in the highest-earning job they are able to find. This determination is based on education, employment history, and current job market conditions. If a court determines that a parent is *voluntarily* unemployed or underemployed, it may calculate that parent's child support obligation using imputed income. The only exception—aside from incapacity or involuntary unemployment—is that the court may not impute income to a parent caring for a child age three or younger for whom the parents have legal responsibility. In other words, a child-in-common age three or younger.

7. **Children with Special Needs.** Under Kentucky law, a parent may generally make a motion to the court to terminate his or her child support obligation once the child graduates high school and reaches the age of eighteen. This is because an eighteen-year-old who has graduated high school is considered emancipated (legally an adult). In the case of a child with special needs, if the court determines that their physical or mental disability is so severe as to make them wholly dependent—unable to live on his or her own without nearly full-time care or assistance—then the child is never considered emancipated and the duty of the parents to care for the child continues. Under those circumstances, a parent may be obligated to pay child support for his or her child, in theory, for that child’s entire lifetime.

### COMPLEX SPOUSAL MAINTENANCE

If spousal maintenance is an issue in your divorce, we recommend hiring an attorney. The biggest reason for this is that there are no hard rules for the judge to follow in deciding whether to award maintenance and, if so, how much to award for how long. Instead, Kentucky law directs a judge to consider a number of extremely subjective factors like the standard of living established during the marriage and how long it would take the spouse seeking maintenance to get a job that would allow them to sustain that standard of living.

## DIVORCE DOCUMENTS

### PETITION FOR DISSOLUTION

Filing for divorce starts with filing a “Petition for Dissolution of Marriage.” Courts requires certain information about each spouse be in the Petition. Either spouse may file the Petition. The spouse who files becomes the “Petitioner” and the non-filing spouse becomes the “Respondent.”

### SERVICE OF PROCESS

Service of Process is the legal notice to someone that they have been named in a lawsuit. Courts require that you serve, or at least make a good faith effort to serve, your spouse the Petition and other divorce documents. If you agree to the divorce, then your spouse can sign an “Entry of Appearance,” which is available on all Platforms.

### VERIFIED DISCLOSURE STATEMENT

You and your spouse will need to complete a Verified Disclosure Statement. This statement lists all your assets and debts. You both must agree that the statement is factually accurate. Once you have compiled a list of your assets and debts, you must agree on everything. In an uncontested divorce, the Statement may be completed by only one spouse.

The “Simplified Case Disclosure” is for parties that make a combined income of less than \$100,000. and have assets of less than \$100,000. This document is five pages. The standard version is for

parties who earn over \$100,000 per year or have assets of over \$100,000. Both statements try to capture the complete financial situation of the parties.

If there are minor children involved, you must supply child care expenses and insurance costs. In addition, if a maintenance claim is being made, you must list an approximate cost for monthly expenses. The Disclosure Statement also gives you the opportunity to stake a claim to any non-marital property. **The case disclosure is an important legal document.**

### VERIFIED DISCLOSURE ACKNOWLEDGEMENT

In an uncontested divorce, one spouse will send a Case Disclosure to the other and that spouse will sign a legal document acknowledging that the Case Disclosure is accurate. In a contested divorce, these documents become the basis for legal arguments about what party should obtain what property in the divorce and how much money that party should get.

### ENTRY OF APPEARANCE AND WAIVER

On uncontested divorces, the non-filing spouse signs an Entry of Appearance and Waiver. The Entry of Appearance and Waiver tells the court that the Respondent has received and read the Petition, that they choose not to hire an attorney to represent them, and that they agree to the divorce.

### MARITAL SETTLEMENT AGREEMENT

A Marital Settlement Agreement is the contract that lays out the terms of your divorce and should cover all applicable areas described in this Guide. Once the Marital Settlement Agreement is complete, the Court will not usually modify financial issues unless special circumstances exist. The court may modify child custody, parenting time, and child support until the child is emancipated.

### COURT ORDERS

If you cannot agree, then you will ask the Court to rule and enter an Order after hearing both sides present arguments and witnesses. Litigation, especially in family law, is difficult. We suggest researching litigation to understand the process better. Most courts agree that agreements are better than litigation. There are times that do require litigation, and our Platform is not for everyone.

### DECREE OF DISSOLUTION

If the court approves the Marital Settlement Agreement, the judge will sign the Decree of Dissolution. In an uncontested divorce, the parties give the court a Decree to sign. If you or your spouse prefer to return to your maiden name, the Decree can do this. Once signed, your divorce is final, and the Decree will be mailed to you. **This document finalizes your divorce, and you must keep it.**

## WHAT WE DO

We support spouses trying to obtain uncontested divorces by writing and maintaining this Guide and building a Platform that supports you before, during, and after divorce. Our Platform helps you and your spouse create your own divorce documents and prepare those for filing with the Court. If you do not want to file the documents yourself, we also offer an attorney review and filing for a flat fee. We offer the following services:

1. Access to our Platform for a flat rate of \$500. The Platform allows you and your spouse to work together to create your own Marital Settlement Agreement and divorce documents;
2. For \$250 plus the Court filing fee of \$200 (\$450 total), we will review the documents and file those electronically for you after our review and consult; and,
3. If you and your spouse cannot agree entirely, we offer flat rate mediation services.

## BOTTOM LINE

We want you to divorce better. The Platform allows you to generate comprehensive and complete divorce documents catered to your specific circumstances and jurisdiction. We earn our money by helping you save yours. Because our Platform is based on a flat rate fee, you can rest easy knowing that your price is capped. We have every reason to efficiently help you efficiently complete your divorce. If you and your spouse need help resolving issues, we also provide options to facilitate settlement. We can refer you to talented mediators and therapists, set up videoconferences with paralegals and attorneys, or even have a retired family law judge review your case and make recommendations. The divorce process is hard. Let us help you make it better.

## ABOUT THE AUTHORS

*Sydney A. Lane* is a full-time law school student at the University of Louisville Brandeis School of Law. Before law school, Sydney attended Bellarmine University. She started with TJLG in 2017 and works diligently to improve technology and administrative efficiencies for our clients.

*Spencer J. Brooks* is a full-time staff attorney in Jefferson County Family Court. Spencer has devoted his time to this public service since he graduated law school in 2013. Spencer has experienced an ample amount of family law and is dedicated to serving the community through his legal work.

*J. Brandon Johnson* is the founder of The Johnson Law Group, PLLC. Brandon started TJLG in 2014 with the foundational tenants of technology, legal expertise, and adding massive value to our clients.

*Ashlea Shepherd Porter* is a family law attorney located in Bowling Green, KY. Ashlea is an extraordinarily caring and fierce advocates for her clients and children in the Commonwealth.