

Summary of Illinois Law in Relation to Ending Marriages

(provided by [Gary L. Schlesinger](#))

I. Annulment -- Declaration of Invalidity -- Legal reasons for:

A. Lacked capacity to consent to the marriage because:

- 1 . Mental incapacity;
2. Influence of alcohol or drugs;
3. Must be filed within 90 days after the person suing knew of the condition.

B. Induced to marry by force or duress; (Suit must be filed within one year after the person suing obtains knowledge of the condition).

C. Fraud involving the essentials of marriage; (Suit must be filed within one year after the person suing obtains knowledge of the condition).

D. Lacked physical capacity for intercourse and other party did not know; (Suit must be filed within one year after the person suing obtains knowledge of the condition).

E. Age 16 or 17 and no parental or judicial consent; (Suit must be filed before the person suing reaches the age of 18).

F. Marriage prohibited.

II. Legal Separation -- Any person living separate and apart from his or her spouse without fault may have a remedy for reasonable support and maintenance while they so live apart. At the conclusion of this lawsuit, the parties are still married. The court does not have the power to divide up property, but can consider custody and support.

III. Dissolution of Marriage -- Divorce

A. Temporary Relief

1 . Temporary relief consists of court orders dealing with custody, support, payment of bills, payment of attorney's fees while the lawsuit is pending. Either party can go to court and ask the judge for support, custody, or attorney's fees temporarily.

2. Upon the filing of a lawsuit and the serving of a summons upon the other party, both parties are restrained from physically abusing, harassing, intimidating, striking, or interfering with the liberty of the other party, or of any minor children. Both are restrained from removing any minor children from the State of Illinois or concealing the children within the State. 750 ILCS 51501.1

B. Grounds

1 . Illinois is not a no-fault divorce state.

2. The legal reasons for ending a marriage are:

Without cause or provocation by the person filing the lawsuit, the other person was at the time of the marriage and continues to be naturally impotent; or the person being sued had a wife or husband living at the time of the marriage; or the person being sued had committed adultery after the marriage; or has willfully deserted himself or herself from the person suing for one year, or has been guilty of habitual drunkenness for two years or has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for two years or has attempted the life of the person suing by poison or other means showing malice; or has been guilty of extreme and repeated physical or mental cruelty; or has been convicted of a felony or other infamous crime; or has infected the person suing with a communicable venereal disease.

3. Mental cruelty is the most commonly used.

4. Irreconcilable differences is the ground that most people can no-fault. It requires:

- a. Spouses live separate and apart for more than two years (can be in same residence); (This can be shortened to six months by agreement).
- b. Irreconcilable differences have caused the irretrievable breakdown of the marriage and that
- c. Efforts at reconciliation have failed or future attempts at reconciliation would be impracticable and not in the best interests of the family.

C. Custody

1. The custodian may determine the child's upbringing, including but not limited to, his education, health care and religious training. 750 ILCS 5/608(a) This technically has nothing to do with where the child lives.

2. Custody is decided based on the best interests of the children including eight factors. 750 ILCS 5/602(a) lists the factors:

- a. The wishes of the child's parent or parents as to custody.
- b. The wishes of the child as to custody.
- c. The interaction and relationship of the child with his parent, parents, siblings, or other person who may significantly affect the child.
- d. The child's adjustment to home, school and community.
- e. The mental and physical health of all individuals involved.
- f. Physical violence or the threat of physical violence by the potential custodian, whether directed against the child or another person.
- g. The willingness and ability of each parent to facilitate a close relationship between the parent and the other child.
- h. The occurrence of any ongoing abuse.

3. The courts usually send people in custody contests to a psychologist or social worker to make an investigation and report to the court on what custody and visitation arrangements are in the child's best interests. 750 ILCS 5/604 and 605

4.The judge has the power to interview the child to learn the child's opinion as to the proposed custodian and the child's preference. 750 ILCS 5/604

5.The Lake County court system requires both parents to attend a two-hour parent education program.

D. Joint Custody 750 ILCS 5/602.1

1 . Does not mean equal time with each parent.

2.Means that the parties share decisions.

E. Visitation

1 . Restricted only if it endangers seriously the child. 750 ILCS 5/607(a)

2.Available to grandparents. 750 ILCS 5/607(b)

3.Available to siblings. 750 ILCS 5/607(b)

F.Before either parent can permanently remove the child from the State of Illinois, that parent needs the permission of the other parent or a judge. Notice must be given to the other parent if either parent removes a child from Illinois temporarily. 750 ILCS 5/609

G. Changing custody750 ILCS 5/610

1.Prefer stability and the continuation of the present relationship.

2.More difficult in the first two years after a custody decision.

H. Support

1.Child support

a. Set as a percentage of the income of the support parent:

Number of Children	Percent
1	20%
2	25%
3	32%
4	40%
5	45%
6 or more	50%

b.Paid by means of a Notice for Withholding which means the support is removed from

the pay of the person paying, sent to the State Disbursement Unit in the office of the DuPage County Court Clerk and then sent to the recipient.

C.If the payor is presently unemployed, the court can order that person to seek employment and report employment efforts to the court regularly. 750 ILCS 51505.1d.Child support is always subject to change if there is a substantial change of circumstances.

2.Maintenance, also known as Alimony. 750 ILCS 5/504

a.Up until January 1, 1993, this was a negative concept in Illinois. As of that date, the law was changed to make it easier to obtain maintenance.

b.There are 12 factors for the court to consider. They are:

1 . The income and property of each party.

2.The needs of each party.

3.The present and future earning capacity of each party.

4.Any impairment of earning capacity as a result of devoting time to domestic duties or giving up or delaying education training and employment because of the marriage.

5.The time necessary to enable a person to acquire appropriate education training and employment, whether that party is able to support himself through appropriate employment or is the custodian of a child making it not appropriate to be employed.

6.The standard of living established during the marriage.

7.The duration of the marriage.

8.The age and physical and emotional condition of the parties.

9.The tax consequences of the property division.

10.The contribution of a party seeking maintenance to the education, training, career or license of the other spouse.

11.Any valid agreement of the parties.

12.Any other factor that the court finds to be just or equitable.

c. The court can award permanent maintenance.

d.The typical arrangement in Lake County, Illinois is three to five years of maintenance with a review to determine whether it should continue and, if so, in what amount.

I. Property 750 ILCS 5/503

1 . Non-marital property:

- a. Property acquired by gift of inheritance during the marriage.
- b. Property acquired before the marriage.
- c. Property acquired after a judgment of legal separation.

2. Marital property:

All property acquired by either spouse after the marriage other than non-marital property.

3. Non-marital property is identified, valued, and given to the person to whom it belongs.

4. Marital property is divided "without regard to marital misconduct in just proportions" between the parties considering 12 factors. 750 ILCS 5/503(d)

5. A problem is when marital and non-marital property are mixed together. Mixing marital and non-marital property creates a legal and accounting problem.

J. Attorney's Fees

1 . Court has power to order either party to pay the attorney's fees for the other party or for his own attorney. 750 ILCS 5/501(c-1) and 750 ILCS 5/508

2. Fee agreement with client must be in writing.

3. Legislature requires that a statement of client's rights and responsibilities are to be attached to the fee agreement.

Information provided by:

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<http://www.divorcesource.com/IL/DS/schlesinger.html>