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FREQUENTLY ASKED QUESTIONS
CHILD SUPPORT

1) WHAT IS CHILD SUPPORT AND WHO IS REQUIRED TO PAY?

Child support is a court ordered, on-going, periodic payment made by one parent to the other to support the couple's minor child or children when the parties are not "parenting" together. After a divorce or an annulment, the non-custodial parent is made to pay child support. If the parents were never married, the non-custodial parent is required to pay. However, where the parents were never married, paternity must be established before or in conjunction with filing for child support.

2) ARE MEDICAL EXPENSES AND/OR DAYCARE COSTS CONTEMPLATED IN THE CHILD SUPPORT CALCULATION?

Yes. The costs of childcare, such as daycare or a babysitter, are generally factored into the child support equation when courts make a determination of who has to pay what. Child support is intended to cover a broad range of expenses, and although daycare expenses are often split 50/50 under most state laws, it is nevertheless one of the many things contemplated when ordering support. Child support also covers expenses like school tuition/fees, extracurricular activities, clothing, entertainment, and medical expenses. Although each state is different and has enacted its own guidelines for determining support, payment of medical expenses and/or a requirement by the parents to carry some form of health insurance for the child is standard among all the states.

3) WHAT IS A CUSTODIAL PARENT?

A custodial parent is the parent who was awarded actual physical custody of the child through a court order. When discussing the issue of custody, parents must keep in mind that custody contemplates both physical custody of the child (where the child is going to actually live a majority of the time) and legal custody of the child (who is going to be responsible for making decisions regarding the child's health, welfare, and safety). While parents may share legal (or decision-making) custody, typically a court will order that one parent has residential custody (the child lives with them) while the other parent may exercise visitation on a regular basis. In most of these situations, the parent with physical custody (or the custodial parent) is presumed to provide more than half of the child's daily care, so the non-custodial parent is usually ordered to pay child support to the other parent for the child's benefit. For purposes of child support, a non-custodial parent is typically the parent who has to "pay".

4) DO I NEED TO ESTABLISH PATERNITY BEFORE REQUESTING CHILD SUPPORT?

Where the parents are not or have not ever been married, and one of the parents is seeking an order of child support, paternity *does need* to be established before petitioning a court for support. In most jurisdictions, paternity is established by the father acknowledging paternity or by one of the parents (or sometimes an interested party or the state through welfare officials) initiating a paternity action. When a biological father "acknowledges" paternity, this means that he has either admitted to being the father, or the parties have "agreed" that he is the father, and, as a result, he is required to pay child support.

Where the parents are not or have not ever been married, and one of the parents is seeking an order of child support, paternity does need to be established before petitioning a court for support.

In a paternity action (also referred to as filiation hearing) a petition can be filed requesting that the court order a DNA test that will affirmatively determine (or likewise, rule out) paternity.

Either way it is accomplished, if paternity has not been established where the parties are not married, any request for child support will likely be denied.

5) WHEN SHOULD A CUSTODIAL PARENT APPLY FOR CHILD SUPPORT?

When to apply for child support really depends on the non-custodial parent's need and circumstances. Where parents have their children or child residing with them immediately after separating, child support can be sought at any time, and custody and child support are usually requested at the same time.

In some cases, the custodial parent does not want or need support initially, but later their situation changes and they need financial assistance from the other parent. In these situations, custodial parents can apply for child support when the need arises, even when the divorce is final and all other matters stemming from the parties' separation have been settled.

When the parties have not been married, child support can be sought by the custodial parent once paternity has been established (*See Question 3*).

6) HOW IS CHILD SUPPORT CALCULATED?

All states have adopted some form of Child Support Guidelines, which take into account the needs of the child or children and the ability of each parent to meet those needs.

In states like California, Michigan, and Ohio, child support is calculated based on the Income Share Model. In these states a court will base child support payments on the income of both parents and the number of children they have. Both parents are expected to contribute to the needs of the child in proportion to each parent's respective income.

In Percentage of Income states like Texas and Alaska, the court will base the child support payment on a specific percentage of the noncustodial parent's gross or net income and the number of children the noncustodial parent supports. The percentages under this model can either by flat or varying, and in "varying" states, when the parents' income fluctuates, so does the child support calculation (and, therefore, child support amount). In "flat" states, even if the noncustodial parent's income changes, the calculation and child support amount remain the same.

Other states employ the Nelson Formula in calculating child support. In these jurisdictions, child support is based on a defined set of factors which include the needs of the child as well as the Standard of Living Adjustment (SOLA). This method for determining support has been referred to as a "hybrid" of the Income Share model, but allows for more money as one or both parents increase their income. Child support calculations in these Nelson Formula states are typically more complex than those based on the Income Share or Percentage models.

7) IS IT POSSIBLE FOR A JUDGE OR MAGISTRATE TO DEVIATE FROM THE CHILD SUPPORT GUIDELINES?

Yes. Generally, a court has the power to deviate from the state's standard child support model and base payments on different factors, like the child's needs, the child's standard of living before the parents' separation, the amount of parenting time the non-custodial parent exercises, whether the noncustodial parent has other children to support, separation agreement or divorce terms, and, lastly, the child's own contribution or resources (i.e. Does the child have an inheritance? Or Trust fund? Or some other source of income?)

8) IS CHILD SUPPORT TAX DEDUCTIBLE?

No. Child support payments are not deductible by the payor, and are not taxable income to the payee (custodial parent). While the parties may be able to claim the child as a dependent, the custodial parent (or the parent with whom the child resides predominantly) claims the child as he/she is typically treated as the parent who provided more than half of the support.

9) CAN AN ORDER OF CHILD SUPPORT BE DISCHARGED IN BANKRUPTCY?

No. Child support debt cannot be discharged in Chapter 7 bankruptcy proceedings. Under Chapter 7 (*the most common form of bankruptcy for individuals) child support payments are deemed a "priority" debt, which means that any child support payments owed will not be wiped out even with a bankruptcy discharge. Likewise, Chapter 7 does NOT suspend or "stay" actions to collect child support. When debtors file for bankruptcy under Chapter 7, all collection efforts against the debtor and/or his property are "stayed" or suspended pending the court's decision. Creditors are temporarily barred from going after the debtor for money owed to them. However, child support is one of several exceptions to the "automatic stay" rule, and any lawsuit initiated to establish or enforce a child a support order can

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proceed. So how is the non-custodial parent expected to pay child support if his or her assets are "frozen" during the bankruptcy? Any assets or income earned or acquired after filing for bankruptcy are not considered property of the bankruptcy estate, and, therefore, child support creditors are free to pursue those earnings to satisfy child support obligations, even when a bankruptcy proceeding is fully underway.

10) IF THE NONCUSTODIAL PARENT IS UNEMPLOYED OR HAS A REDUCTION IN HIS OR HER INCOME IS HE OR SHE STILL REQUIRED TO PAY?

Yes. Unemployment in most jurisdictions is only considered a temporary change, and the noncustodial parent is still required to meet his or her child support obligation. Moreover, unemployment insurance or unemployment benefits that a noncustodial parent receives are still considered "income" and, therefore, available as a means of supporting children.

11) CAN A CHILD SUPPORT ORDER BE MODIFIED?

Yes. A party can request to have a child support order modified if there comes a time when a change to the amount is necessary and/or appropriate. A hearing is not always necessary for establishing child support or modifying it. If the parties can stipulate or agree to a modification of support, courts usually approve the change so long as the new agreed upon amount does not deviate from or fall too far below whatever the child support guidelines are for that jurisdiction.

Where the parties are not able to agree on a modification amount, the party seeking modification will need to request a hearing wherein a judge will determine if a modification is warranted. Any party seeking to modify an order of child support must allege a change in circumstances. In other words, the party seeking to change the order must show that something new or unforeseeable occurred since entry of the original order and now a change is necessary to help

the parent meet their support obligation. Depending on the type of "changed circumstances" alleged, the court can modify the order temporarily or permanently.

Change of circumstances alleged for a temporary modification typically include:

- The noncustodial parent's inability to pay as a result of illness, temporary unemployment, or disability
- A child's medical emergency and costs associated with it
- Temporary financial or medical emergencies of the custodial parent

For a permanent modification, changed circumstances can equate to:

- One parent remarrying
- Permanent disability of one parent
- Job or career change of one parent
- The needs of the child (age, illness, education, etc.)
- Changes in the law regarding child support standards

At any rate, whether seeking a permanent or temporary modification, the party requesting the modification must petition the court and be prepared to prove that circumstances have changed and that a modification is warranted.

12) ARE STOCK OPTIONS OR IRAS CONSIDERED INCOME WHEN CALCULATING A CHILD SUPPORT AMOUNT?

Yes. Stock options and Individualized Retirement Accounts (IRAs) can be considered when determining the appropriate child support award. The calculation of child support, no matter the jurisdiction, is always "income-driven", and, because of this, it is extremely important for parents to know and understand how their state's child support guidelines define "income". Most states will define exactly what income is and what it is not, but any definition of income will include any and all earnings from the noncustodial parent. Earnings typically include monies received from salaries, wages, alimony received from a person other than the other spouse in the present case, income from self-employment, rent, royalties, etc.

Because child support guidelines inevitably seek to define "income" as expansively as possible, even unrealized income like interest from an IRA or unrealized gains from unexercised stock options fall under the broad category of "income". It does not matter that this type of income is "unrealized", or rather only exists on paper. For purposes of calculating child support, these types of unliquidated, unrealized assets are still deemed a source of income.

Other sources of income for child support may include, but are not limited to:

- Trust/ estate income
- Income from drawing a pension
- Annuities
- Veterans benefits
- Military fringe benefits
- Workers compensation and/or unemployment benefits

Stock options and Individualized Retirement Accounts (IRAs) can be considered when determining the appropriate child support award.

- Disability insurance benefits
- In some circumstances, income from a new spouse (if it in fact assists/enables the other parent in providing care for the subject child/children)*
- Financial aid subsidies, educational grants, etc.
- Gifts and prizes (e.g. lottery winnings)

13) WHO NEEDS TO FILE A FINANCIAL AFFIDAVIT WHEN MAKING A CLAIM FOR CHILD SUPPORT, AND WHAT INFORMATION IS TYPICALLY REQUIRED?

Because of the courts need to understand the total financial picture in terms of the family unit – and in awarding an appropriate amount of child support to the custodial parent – it is required that the parties to a child support proceeding complete and file a financial disclosure affidavit. Each state has its own form, and typically both parties must complete the same form. Most affidavits require the parents to provide detailed personal information such as the names and ages of the children in their care, information about current (and sometimes former) employers, educational background, skills, and a detailed accounting of all other sources of income. Although preparing a financial disclosure affidavit can be cumbersome and time consuming, it is a necessary (and relatively simple) step in the child support process.

14) CAN I DENY VISITATION IF THE CHILD SUPPORT IS NOT BEING PAID?

No. Child support, and child custody and visitation are two very separate issues. Although courts will consider what is in the best of the interests of the child when determining both these things, the parent-child relationship is thought to be paramount; for that reason, nonpayment of child support is rarely a barrier to exercising a court ordered visitation.

15) HOW LONG DO I HAVE TO PAY CHILD SUPPORT?

In most jurisdictions, a noncustodial parent has to pay child support until the child reaches the age of "majority". Most states define the age of majority as 18 years old, however, there are a few states that define it as 21 years of age. Regardless of how the age of majority is defined, non-custodial parents should also be aware that there are times when child support can continue beyond majority (be it 18 or 21). This happens in instances where the child has a disability or an illness, or is attending school or college full-time, for example.

By the same token, there are a few circumstances when a noncustodial parent's obligation to pay support will end before the child reaches majority. For example, when a child has married, is emancipated, joins the military, or leaves home and becomes otherwise economically independent, a parent no longer has to provide support. Noncustodial parents charged with paying support should familiarize themselves with their state's law to see which age applies, what circumstances if any would extend child support beyond majority, and/or what qualifying events allow for termination of child support prior to majority.

At any rate, it is very important for parents paying child support to know that child support payments DO NOT end automatically, even where the child has "aged" out, or otherwise reached the age of majority. In most states, the non-custodial parent subject to a child support order must petition the court and request an order terminating their child support obligation once the child reaches majority OR the minor child becomes otherwise economically independent through some qualifying event (emancipation, joining the military, getting married, etc.). For information on when a child support obligation ends and/or how to terminate child support, non-custodial parents should familiarize themselves with state law and/or speak with the local child support agency in their state or an attorney.

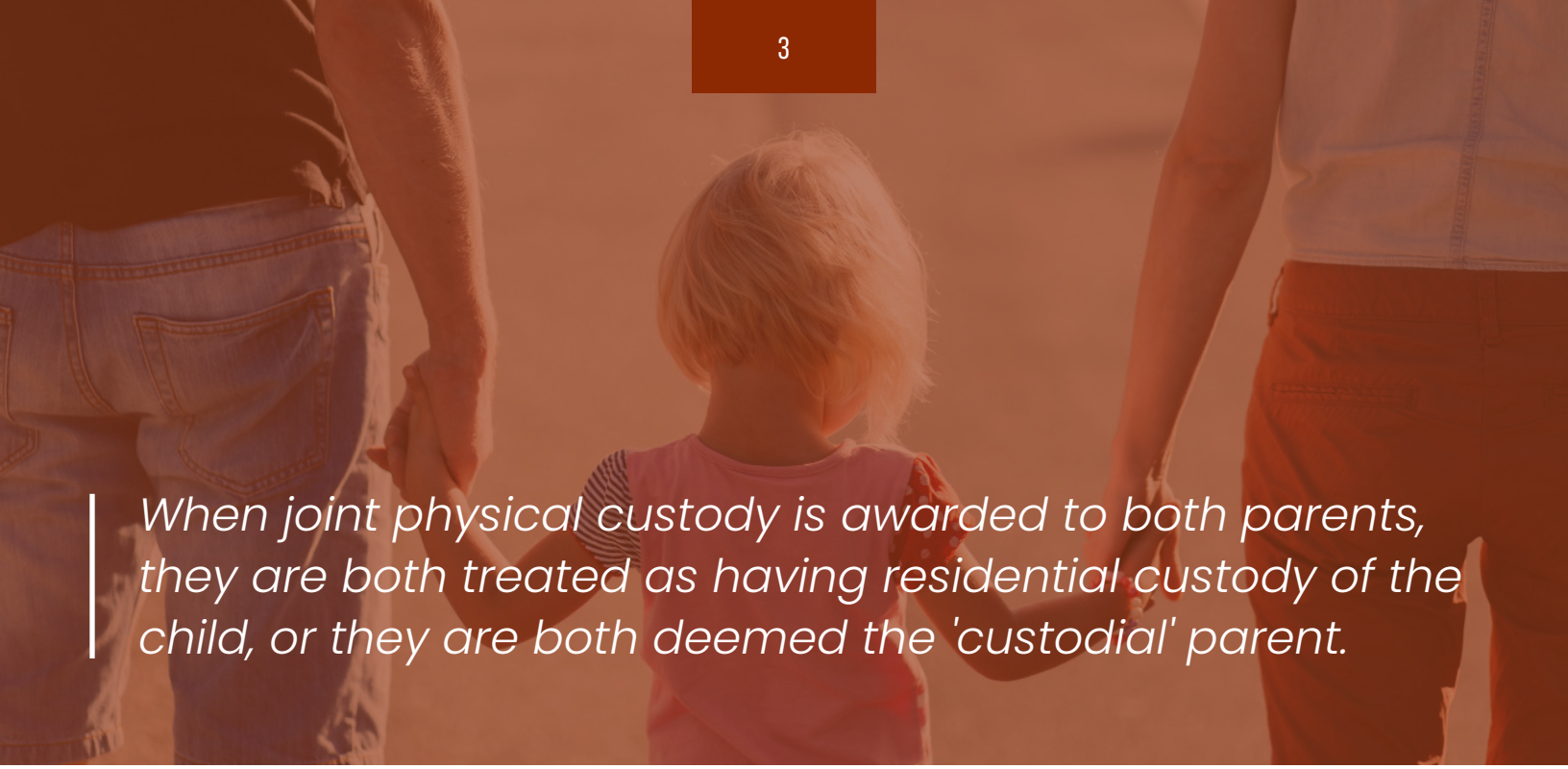
16) DO I HAVE TO PAY SUPPORT IF I HAVE JOINT PHYSICAL CUSTODY?

When joint physical custody is awarded to both parents, they are both treated as having residential custody of the child, or they are both deemed the "custodial" parent. In these situations a court will look at the gross annual income of both parents and make a determination based primarily on which parent makes the most money. Other factors may be taken into consideration like basic living expenses, education expenses, whether the child has special needs, and the age and number of other children residing in either home.

The bottom line is that even when the parents share joint physical and legal custody of a child, child support can still be ordered.

17) WHAT IF THE NONCUSTODIAL PARENT IS INCARCERATED? ARE THEY STILL EXPECTED TO MEET THEIR CHILD SUPPORT OBLIGATION?

Yes. Simply being incarcerated does not automatically suspend or terminate an existing child support order. If the noncustodial (paying) parent is incarcerated, but still has assets and/or some source of income, then they are expected to use those resources to meet their child support obligation. For those noncustodial (paying) parents who are incarcerated, but do not have a viable source of income while they are in jail, efforts should be made, where possible, to



When joint physical custody is awarded to both parents, they are both treated as having residential custody of the child, or they are both deemed the 'custodial' parent.

modify the order to reflect their actual income and reduce the accumulation of child support arrears (past due amount owed on child support).

18) WHAT IF THE NONCUSTODIAL PARENT IS DISABLED? IS HE OR SHE STILL REQUIRED TO PAY CHILD SUPPORT?

Yes. Disability insurance or disability benefits received by the non-custodial parent is/are still considered "income" under most child support guidelines, and, therefore, disabled parents who are receiving disability insurance are still obligated to pay their child support orders (*See Question 12*).

19) IS IT ALWAYS NECESSARY TO HAVE A HEARING TO DECIDE CHILD SUPPORT? AND WHAT IS INVOLVED IN A CHILD SUPPORT HEARING?

No. If the parties are able to stipulate or agree to an amount, then a hearing is not necessary. The party seeking to establish child support must file a petition in family court requesting that an order be made for the benefit of the child. If after that however, the parties are able to agree upon an amount, and that amount is in keeping with that jurisdiction's child support guidelines, then typically a court will approve the parent's agreement.

20) DO I NEED AN ATTORNEY TO MAKE A CLAIM FOR CHILD SUPPORT?

No. The law does not require that an attorney present or commence an action for child support. Many people decide to go forward without an attorney and most jurisdictions have self- explanatory forms that parties can easily complete

and file on their own. However, because of the different—and sometimes complex—issues that can come into play during a support proceeding, it is always advised that parents seeking to establish or modify child support consult an attorney.

21) WHO CAN RECOUP ATTORNEY'S FEES IN A CHILD SUPPORT MATTER?

Yes. Generally parties are able to recoup attorney's fees in a child support action. When considering the award of legal fees, judges typically look at the financial resources of the parties, the information that was presented during the case, and, most importantly, the behavior of the parties during proceeding. The laws vary from state to state, but in most cases the law allows for interested parties who are acting in good faith and who are unable to defray the costs of litigation to request to have their attorney's fees paid by the other party.

In some jurisdictions, when parties are seeking to recover attorney's fees in a child support case, they are required to prove additional elements beyond just "good faith" and "the inability to defray the cost of litigation" in order to succeed in a claim for attorney's fees. In North Carolina, for example, the parent seeking to have his or her attorney's fees paid by the other party must also prove that the party ordered to pay child support has refused to pay adequate support under the circumstances.

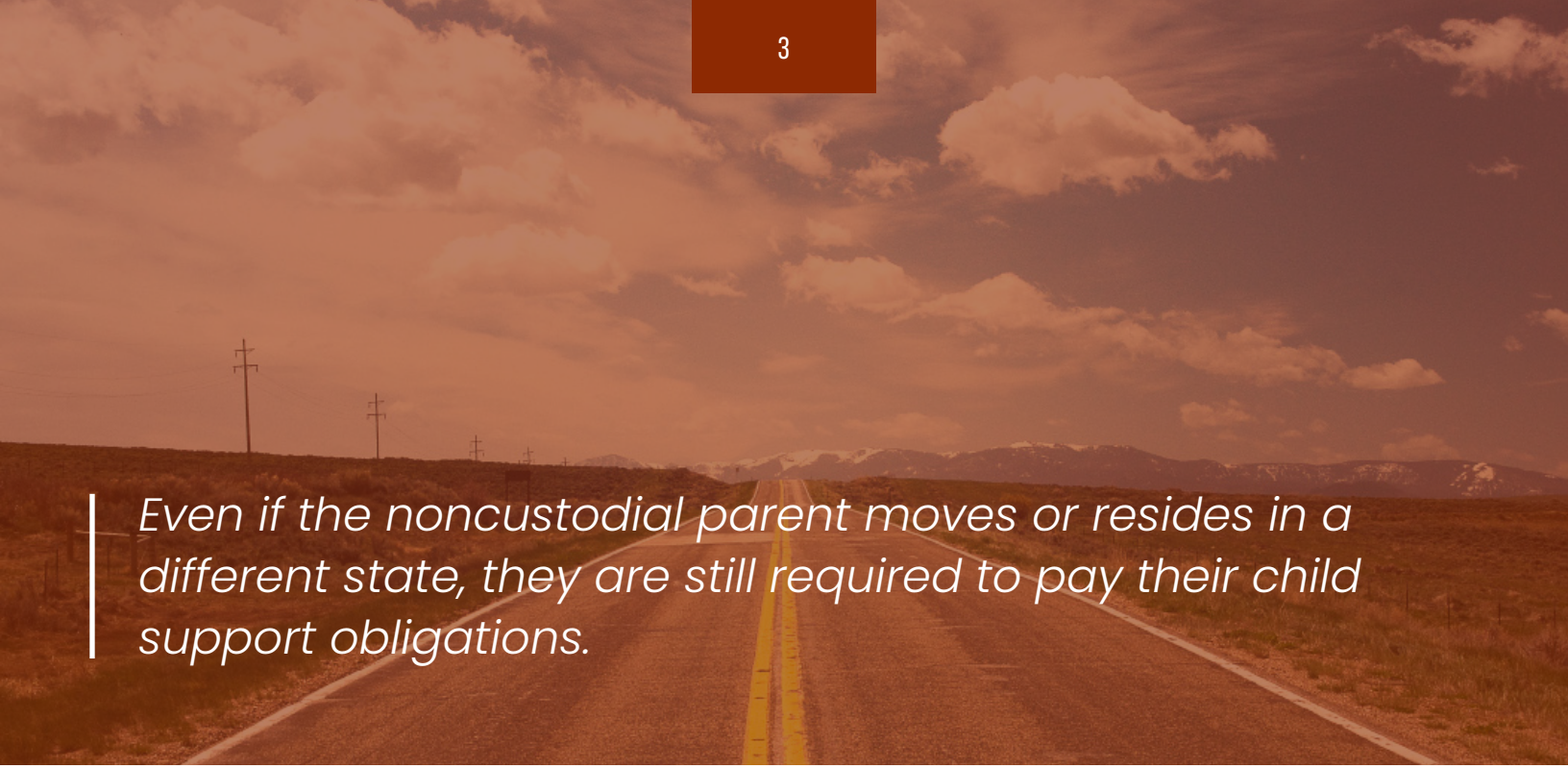
In most cases, a request for attorney's fees can be made in the initial pleadings, or by filing a motion once a determination of child support has been made.

22) CAN A COURT OVERRULE A CHILD SUPPORT AWARD IN A SEPARATION AGREEMENT?

Yes. Just because there are child support provisions in a separation agreement or divorce decree, it does not prohibit a court from modifying that order if and when they deem it appropriate to do so. The court is charged with the responsibility and authority to protect a minor child and determine what is in his or her best interests; no contract or agreement can deprive the court of that authority. Although child support provisions in a separation agreement cannot be modified without the parties' consent, a court having proper jurisdiction will always have the power to modify an existing order of support based on a proper showing of changed circumstances.

23) SO WHAT THEN ARE THE ADVANTAGES TO AGREEING ON A CHILD SUPPORT AMOUNT IN A SEPARATION AGREEMENT?

Although a court may modify a previously agreed upon child support award, it is still sometimes advantageous to the parties to agree upon things like child custody or a child support amount in a separation agreement. This is because a separation agreement is a type of contract: the parties are free to include and agree upon contract terms and contract provisions that the court itself cannot under the law mandate. For example, under a separation agreement or "contract" one parent may agree to pay more child support than the law actually provides for, or one of the parents may agree to pay for private schooling or summer camp, items that—under some state laws—a court cannot order as part of a child support award. Additionally, if the separation agreement containing these "extra" provisions is eventually



Even if the noncustodial parent moves or resides in a different state, they are still required to pay their child support obligations.

incorporated into a final decree of divorce, the court now has the power to enforce terms and provisions that it normally could not order on its own.

24) WHAT IF THE EX REMARRIES AND HAS A CHILD WITH HIS NEW SPOUSE? WILL THAT AFFECT THE AMOUNT OF CHILD SUPPORT MY CHILD RECEIVES?

It might. In most cases, simply remarrying does not have an impact on a parent's obligation to pay child support. If a child support order was already in place before the parent got remarried, the new spouse's income was not counted when determining support, only the income of the parents. While a parent may argue that remarriage is a type of permanent changed circumstance that would allow a court to modify the current order, courts are typically reluctant to modify an order based on this fact alone.

The only way child support might be impacted in the new spouse scenario is if one of the parents (usually the noncustodial parent) has a child with his or her new spouse. In this instance, a court will consider the new child when reviewing the parent's support obligation, but even then, if a reduction of support is appropriate, it will likely not be proportionate to the increase in family size. For example, if a noncustodial parent remarries and has another child with her new spouse and she seeks a reduction in her child support because she now has two children, her obligation would not be cut in half, but rather only reduced *slightly*.

25) WHAT IF THE NONCUSTODIAL PARENT RESIDES IN ANOTHER STATE?

Even if the noncustodial parent moves or resides in a different state, they are still required to pay their child support obligations. The Uniform Interstate Family Support Act sets forth the procedure for enforcing child support orders when the noncustodial (nonpaying) parent resides in another state.

Additionally, the Child Support Recovery Act of 1992 makes it a federal crime for a parent to refuse to pay child support to a parent living in another state and the Deadbeat Parents Punishment Act of 1998 make it felony for a parent living in another state to refuse to pay support.

26) WHAT HAPPENS IF THE NONCUSTODIAL PARENT FALLS BEHIND OR FAILS TO PAY CHILD SUPPORT?

When a noncustodial parent fails to make timely payments of child support, the parent is in "arrears" on his payments and that amount can be added to the monthly child support order until it is eventually "caught up". In some cases, the noncustodial parent can request a reduction of future payments in an effort to "catch up", but most judges are reluctant to reduce a child support order for this reason and insist that the arrears are paid in full or as part of the on-going monthly order.

If the noncustodial parent stops paying altogether there are many ways a custodial parent can "enforce" their support order. Most states have Child Support Enforcement services that can help with enforcing the order. The National Child Support Enforcement Association publishes a list of state agencies on their website—http://ncsea.rog.

Federal legislation can also be a resource in enforcing child support obligations. The Child Support Enforcement Act of 1984 provides that district attorneys or state's attorneys are now required to assist with collection of child support from an ex-spouse or parent who refuses to pay. Under this legislation, the district attorney or state attorney will send the noncustodial (non-paying) party papers advising them to meet with the attorney in order to discuss and set-up payment arrangements. If the noncustodial parent fails to appear or otherwise respond to the DA, the noncustodial parent is faced with a number of consequences that can be imposed for failure to pay support. Withholding federal taxes, suspension of an occupational, business, or driver's license, seizure of property, wage garnishment, and—in some egregious cases of nonpayment—denial of the issuance of a US passport by the US Department of State are some of the sanctions that can be imposed on nonpaying parents. Thereafter, if the noncustodial parent still refuses to pay, the court can hold him or her in contempt and impose jail as a sanction for noncompliance.