a guide to
Nevada Divorce

The Law Offices of Karen A. Connolly, Ltd.
This book provides only basic information about divorce in Nevada. It is not a substitute for consulting with a divorce lawyer. Only an experienced Nevada divorce attorney can give you legal advice about your situation.
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An Overview of Nevada Divorce

Divorce in Nevada

Nevada is a “no-fault” divorce state, which means that you cannot allege that wrongdoing by your spouse is the cause of the divorce. Instead, most divorces in Nevada are based on the grounds that the parties to a marriage have irreconcilable differences that have led to the breakdown of the marriage. You may also base your divorce on the grounds that you have been separated from your spouse for at least 12 months.

There is no waiting period for a divorce in Nevada. Although a spouse cannot contest the actual dissolution of a marriage, he or she can contest the terms of the divorce settlement such as child custody and support, the division of marital assets and debts, and alimony. These issues are discussed more fully below.

Grounds for Divorce in Nevada

Pursuant to Nevada Revised Statutes § 125.010, grounds for divorce in Nevada exist if:

- The spouses are incompatible (sometimes referred to as having “irreconcilable differences”); or
- The spouses have lived separate and apart for 12 months (one year) without cohabiting; or
- One of the spouses suffers from insanity for a period of 24 months (two years) prior to the filing of the divorce.

It is important to understand that while Nevada is a no-fault divorce state and fault will not impact whether you may get a divorce, courts may consider fault when dividing property or awarding alimony. How courts in Nevada use fault as a determining factor in allocating property and alimony will be discussed more fully below.
Annulment in Nevada

Nevada Revised Statutes § 125.290 and the following sections provide that an annulment may be granted if:

- A parent or guardian did not consent to the marriage if consent was required at the time of the marriage; or
- There was a lack of understanding or insanity at the time of the marriage by you or your spouse; or
- You or your spouse induced the other to marry by fraud (or lies); or
- The marriage was illegal because you and your spouse are too closely related; or
- You or your spouse was married to someone else at the time of your marriage.

Residency Requirements for Divorce in Nevada

In order to petition a Nevada court for a divorce or an annulment, one or both spouses must be a resident of Nevada for at least six weeks prior to the date of filing for divorce. A person is a “resident” of Nevada for purposes of filing a divorce if he or she is permanently present within the borders of the state for a period of six weeks before filing a complaint for divorce.

How Property is Divided upon Divorce in Nevada

Nevada is a community property state. This means that any income earned or debt accumulated by either spouse during the marriage is generally considered to be marital property that is owned equally by each spouse. The same is true for property bought with those
earnings. At divorce, any community assets, debt, and/or property is typically divided equally between the spouses.

It is important to understand that there are many exceptions to these general rules, and that not all property (particularly real property like your family home) can be divided into two equal halves. Nevada courts have discretion to order an unequal distribution of community property if an equal division would not be fair and equitable under the circumstances. Nevada courts may consider “fault” or wrongdoing by a spouse when dividing property upon divorce.

If a valid prenuptial agreement was signed prior to the marriage, this will likely impact how property is divided upon divorce. It may stipulate that certain property that would ordinarily be considered community property remains the separate property of one spouse in the event of a divorce. An experienced divorce lawyer can carefully analyze a prenuptial agreement and advise you as to how it will impact your rights and responsibilities upon divorce.

How Child Custody and Child Support is Determined upon Divorce in Nevada

In making a child custody determination, the sole consideration of courts in Nevada is the best interest of the child or children. If a court believes that joint custody would be in the best interest of the child or children, the court may grant custody to the parties jointly. Nevada law specifies that in making a custody determination, preference will not be given to either parent for the sole reason that the parent is the mother or father of the child. See Nevada Revised Statutes § 125.480.

NRS 125.480 provides that a court must award custody in the following order of preference unless the best interest of the child or children requires otherwise:
• To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent’s application.

• To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

• To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

• To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

In determining the best interest of the child or children, Nevada courts will consider the following factors. In some cases, they may consider additional factors.

• The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.

• Any nomination by a parent or a guardian for the child.

• Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

• The level of conflict between the parents.

• The ability of the parents to cooperate to meet the needs of the child.

• The mental and physical health of the parents.

• The physical, developmental and emotional needs of the child.

• The nature of the relationship of the child with each parent.

• The ability of the child to maintain a relationship with any sibling.
- Any history of parental abuse or neglect of the child or a sibling of the child.
- Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

After a divorce, Nevada requires both parents to financially support their child or children. In determining the amount of child support owed, Nevada courts look primarily to each parent’s income and other resources, as well as how much time each parent will spend with the child or children based on the child custody arrangement.

Issues pertaining to child custody and child support can be highly contentious. This is one of the many reasons why it is important to hire a divorce lawyer who will fight what is in the best interest of you and your child or children.
Understanding the Nevada Divorce Timeline

The divorce process in Nevada is relatively straightforward. Below are important steps that everyone who is getting (or considering getting) a divorce in Nevada should know. The below-referenced information is intended to serve as a general overview, not an all-encompassing timeline; therefore, it is advisable to consult with an attorney accustomed to the comprehensive set of Nevada Divorce Laws.

The Timeline

1. Establish Residency

Nevada does not have a strict residency requirement. Nevada law requires that either you or your spouse live in the state for at least (6) weeks immediately prior to the divorce.

2. Complaint and Grounds for Divorce

If you or your spouse satisfies the residency requirement, you may file a “Complaint for Divorce” in your home county, your spouse’s home county, the cause of divorce county, or the county where you last resided as a couple. The person who files is the “plaintiff” and the non-filing spouse is the “defendant.” Nevada is a “no-fault” state, meaning that the plaintiff need not prove that either spouse did anything wrong to cause the divorce; instead, the plaintiff may file for divorce based on incompatibility and a statement that the parties do not believe they will reconcile.

3. Service of Process
Under Nevada law, the plaintiff must perform “service of process” to notify the defendant of the filing. To perform “service of process,” the plaintiff must have a third party over eighteen (18) years of age personally deliver to the defendant copies of the Complaint, Summons and Financial Disclosure form within one-hundred and twenty (120) days of filing for divorce or otherwise cause the pleadings to be served.

4. Answer Complaint or Default

Under Nevada Law, a defendant has twenty (20) days to file a response (also called an “answer”). The court will then set a case management conference within ninety (90) days at which both parties must be present. At the hearing, the judge will inquire about the status of the case and contested/resolved issues. If the defendant spouse does not respond, the filing spouse may ask the court to enter a “default” against the non-filing spouse. If the court issues a “default,” the plaintiff may submit a final divorce decree to the judge without the defendant’s signature.

5. Discovery

“Discovery” is a legal mechanism designed for gathering detailed information about both parties to the divorce concerning marital assets, child custody, and other issues pertinent to the matter. Methods of discovery include written interrogatories, document requests, and depositions.

6. Temporary Orders

Pending the final divorce, both parties may file motions for temporary orders for child support or alimony from the court.

7. Settlement Conference
Settlement conferences offer both parties, along with respective counsel, to settle the divorce without going to trial. If you can reach a settlement, you may submit a Divorce Decree to the judge for approval. If and when the judge signs the Divorce Decree and it is filed with the court, the parties are divorced.

8. If No Settlement, then Trial

If you cannot reach a settlement, the judge will set a trial date. At trial, both you and your spouse will have the opportunity to present your case through testimony, witnesses, and evidence. After trial, the judge will render a decision. Once a final decree of divorce is filed or entered, the divorce is final.

Filing for divorce can be daunting. Common questions among people who are considering filing for divorce are, “how long will it take?” and “how much will it cost?” Unfortunately, there are no easy answers; no two (2) divorces are the same. The more issues that are resolved, the quicker and less costly the divorce will be. If you are considering filing for divorce, it is imperative that you closely monitor your behavior to avoid making decisions that could work against your position during trial and that you learn about your legal right and options.
Nevada Divorce Frequently Asked Questions

If you’re considering divorce, you likely have a lot of questions. Below, we’ve done our best to address the most common questions that we hear from people who are considering divorce. If your question is not answered here, please feel free to contact us about scheduling a consultation with Ms. Connolly.

Nevada Divorce FAQs

Q: Must I hire an attorney?

Answer:

There is no Nevada statute that requires a litigant to hire an attorney before filing for divorce; however, a court will hold a litigant not represented by an attorney (a “Proper Person Litigant”) to the same standard as a licensed attorney with respect to knowledge of the applicable rules of law. For this reason, it is recommended that a litigant hire an attorney to represent them during the divorce process so as to ensure that spouses does not run afoul of the law and severely harm their case.

Q: What are the valid reasons (i.e. grounds) for a Nevada divorce?

Answer:

The valid grounds for divorce include:

- Insanity existing for 2 years prior to filing for divorce;
- Spouses live separately and apart for 1 year without cohabitating; and
Q: What are the residency requirements to file for a Nevada divorce?

Answer:

Nevada requires a person be permanently present within the borders of the state for a period of six (6) weeks before filing for divorce.

Q: What if I cannot locate my spouse?

Answer:

A default divorce can occur after you have attempted service by a process server at the last-known address of your spouse, or you have served your spouse via publication of the Summons, Joint Preliminary Injunction, and Complaint in a newspaper. Once your spouse has been properly served either in person or by publication, a default may be entered on day 22 after the date of service or last date of publication. Once the default is granted, your divorce decree may be submitted for your judge's signature. Once the court clerk files the decree, your Nevada divorce is final.

Q: Will Nevada divorce courts consider the "fault" of my spouse?

Answer:

No. Nevada is a purely "no-fault" jurisdiction; therefore, you may not allege that your spouse's wrongdoing was the cause of the divorce. A judge may not consider the conduct of the parties when making a determination.
Q: Must I appear in court?

Answer:

It depends. If a case is uncontested or resolved, an appearance in court may not be required; however, when the parties are unable to come to an agreement to the terms of the divorce, the court must intervene and require the parties to appear before the court.

Q: How will a court divide the property?

Answer:

Nevada is a community property state. This means that any income earned or debt accumulated by either spouse during the marriage is generally considered to be marital property that is owned equally by each spouse. The same is true for property bought with those earnings. At divorce, any community assets, debt, and/or property is typically divided equally between the spouses.

It is important to understand that there are many exceptions to these general rules, and that not all property (particularly real property like your family home) can be divided into two equal halves. Nevada courts have discretion to order an unequal distribution of community property if an equal division would not be fair and equitable under the circumstances. Nevada courts may consider “fault” or wrongdoing by a spouse when dividing property upon divorce.

If a valid prenuptial agreement was signed prior to the marriage, this will likely impact how property is divided upon divorce. It may stipulate that certain property that would ordinarily be considered community property remains the separate property of one spouse in the event of a divorce. An experienced divorce lawyer can carefully analyze a prenuptial agreement and advise you as to how it will impact your rights and responsibilities upon divorce.
Q: How will a court calculate alimony?

Answer:

In Nevada, alimony is not mandatory and there is no formula for setting alimony; either the amount or duration. Whether a spouse is obligated to financially support the other, and to what extent, depends on factors, including:

- Ages and health of the spouses;
- Relative earning capacities of each spouse;
- Length of marriage;
- Whether one spouse has worked for a significant period of time while the other did not;
- Education of the parties;
- Assets and debts of the parties; and
- Needs of each party

Q: How will a court determine custody of my child(ren)?

Answer:

Nevada courts will determine custody using the “best interest of the child” standard. In determining the best interest of the child, the court shall consider, among other things:

- The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.
- Any nomination by a parent or a guardian for the child.
- Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- The level of conflict between the parents.
- The ability of the parents to cooperate to meet the needs of the child.
- The mental and physical health of the parents.
- The physical, developmental and emotional needs of the child.
- The nature of the relationship of the child with each parent.
- The ability of the child to maintain a relationship with any sibling.
- Any history of parental abuse or neglect of the child or a sibling of the child.
- Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

**Q: How will a court calculate child support?**

**Answer:**

Nevada requires spouses to pay a set percentage of individual gross monthly income, up to a certain point, to child support. Gross monthly income includes all income received each month, which typically includes: salary, wages, bonuses and commissions from job, and pensions or severance pay. The amount of child support depends on the number of children as follows:

- one (1) child is eighteen percent (18%);
- two (2) children are twenty-five percent (25%);
- three (3) children are twenty-nine percent (29%);
- four (4) children are thirty-three percent (33%); and
- each additional child is two percent (2%).
Each year, the court issues new guidelines to cap child support, effective each year from July 1st until June 30th.
5 Things You Should do Before Filing for Divorce

Divorce is an emotionally trying, life-changing experience. Many people let their emotions get in the way of rational thinking in the midst of a divorce, and this can lead to negative legal and financial consequences that are difficult to reverse. Before you file for divorce in Nevada, there are a few steps you can take to protect your legal rights and secure a favorable divorce settlement.

1. Hire an Experienced, Reputable Divorce Attorney

Your divorce lawyer is someone with whom you will work very closely throughout the divorce process. It is important to feel comfortable with this person, so make sure to interview potential divorce attorneys about their background and approach to family law. At the outset of the attorney-client relationship, clearly express your needs and what you hope to secure in your divorce settlement. This will empower your attorney to fight for your best interests.

2. Take a Detailed Financial Inventory

Before you file for divorce, you need to understand where you and your spouse stand financially. Nevada is a community property state. In general, this means that all earnings and property acquired during your marriage are owned in common between you and your spouse, and all debts incurred during your marriage are the shared responsibility of you and your spouse. Upon divorce, Nevada courts will try to make a fair and equitable distribution of marital assets and debts.
In order to secure a favorable divorce settlement, you must know what you and your spouse own and owe. Take an inventory of any property acquired during your marriage. This includes your marital home, any financial accounts, and assets such as vehicles, artwork, pension plans, inheritances, and valuable belongings. You should also account for all of your debts. Get an up-to-date copy of your credit report. Any debt you have will be listed on your credit report.

Gather records pertaining to your assets and debts. Your divorce attorney will request these documents from you, and having them readily available will save you both time and money.

3. Gather Proof of Income

Proof of income is critical in the Nevada divorce process. If you and your spouse have children, your respective incomes will be evaluated by the court in making a child support determination. Also, you may be entitled to receive alimony (also called “spousal support” payments) based on the disparity between your income and that of your spouse. On the other hand, you may be required to pay alimony. Having proof of your income will help ensure that any child support or alimony orders accurately reflect your financial situation.

If you and your spouse are salaried employees, make a copy of your most recent pay stub as well as your most recent income tax return. Determining income can be more difficult if you or your spouse is self-employed. You may need to make copies of your bank account statements or business invoices. If you are having trouble determining how much income you or your spouse earned, a divorce attorney can conduct discovery.

4. Prepare for Life After Divorce
Before initiating divorce proceedings, you should do your best to prepare for life after divorce. Think about where you will live and work after the divorce. Make a post-divorce budget that reflects your cost of living and anticipated earnings, including estimated alimony and child support payments (your divorce attorney can help you with this). Your financial resources may drop considerably after a divorce. Building a realistic budget helps you adjust your lifestyle now instead of being surprised later by bills you can’t afford to pay. Having a budget prepared will also help you and your attorney secure a favorable divorce settlement that accounts for your financial needs.

In addition to getting your finances in order, now might be a good time to work with a therapist or counselor. Divorce is a major life transition, and having a trusted professional to talk with about how you are feeling can help you deal with the emotional weight of ending a marriage. If you have children, they also may need the services of a therapist or counselor during this difficult time.

5. Be Above Reproach

If you and your spouse have children, child custody will be an issue in your divorce. This means that you should be on your very best behavior until the divorce is finalized. Do not date or go out partying until all hours of the morning. Reports of your bad behavior – or even social media posts about your lifestyle – can play a significant role in the judge’s custody determination. Be a good mother or father. Spend time with your children, and take care of yourself physically and emotionally.
The Basics of Alimony or “Spousal Support”

In Nevada, alimony—otherwise known as spousal support—can be awarded during an uncontested and contested divorce. There is no formula for calculating spousal support one spouse will pay to the other post divorce. This makes alimony awards very unpredictable.

If the parties cannot agree upon alimony, either its amount or duration, the court will ultimately decide the amount of alimony to be awarded as well as its duration. The absence of any kind of formula makes the issue of alimony a difficult one to settle but also a risky one to take to trial.

There are three (3) different kinds of alimony in Nevada.

**Temporary Alimony:** As a divorce proceeds, the spouse with the lower income may be entitled to temporary alimony, maintenance or financial assistance during the divorce process.

Post divorce, “rehabilitative alimony” may be awarded. This is for the support and maintenance of a spouse to enable that spouse to obtain training, education related to work or a profession. The court will consider if the payor spouse obtained enhanced job skills, or education during the marriage and whether the recipient spouse, assisted while those avenues were pursued. An award or rehabilitative alimony is not permanent.

Post divorce alimony may be for a period of time, or, **permanent.** The court must take a number of factors into consideration when determining an appropriate award of alimony. Those factors include but are not limited to: length of marriage; financial condition of the parties; value of their respective properties; health of both parties; earning ability; and education.
Lump sum alimony is also a viable alternative to making monthly payments over a period of time. An advantage of lump sum alimony that it is non modifiable. All other alimony awards remain modifiable or adjustable, if there is a change in circumstance during the duration of the alimony award. Generally a change in circumstances is considered to be a twenty percent a 20% change in the payor or recipient’s income. In Las Vegas, alimony cannot be modified following the end of the ordered term. Alimony terminates upon remarriage of a recipient spouse.
How Property Division is Handled in a Nevada Divorce

Spouses must answer many questions during a divorce, but one of the biggest questions is, “Who gets what?” Nevada law governs property division in a divorce under statute NRS 125.150. Nevada is one of only nine states where it is presumed by law that property should be equally divided. That being said, the court must divide property in a manner that is fair and equitable.

It is always best for divorcing parties to try to negotiate the division of property between themselves, with or without the assistance of their respective attorneys and/or a mediator or settlement judge. Then a marital settlement agreement or divorce decree can be drafted. However, if a couple cannot reach a decision on the division of property upon divorce, the court will be left to make that determination.

Before the court can determine what is a fair and equitable division of community property, it must first determine the nature of the property of the parties: Community property or separate property. There are steps that can be taken to ensure that property is not improperly disposed of by either party while the divorce is pending.

Community Property

Absent a prenuptual agreement, generally, community property is property acquired during the marriage by either or both spouses. In Nevada, the law presumes that community property will be distributed equally between the parties upon divorce. It is the net value of the community property that will be divided equally and not necessarily the actual division of each individual piece of property.
Marital property begins to accumulate at the start of the marriage and continues until the divorce. This is true even if the couple is separated, unless there is a separation agreement. A judge may only make an unequal distribution of community property when the judge determines that an equal distribution is not just or fair and equitable and the court has a compelling reason to distribute the property by other means.

Property purchased with separate property funds (not earnings) can maintain its separate character even if purchased during the marriage.

Retirement, pensions, 401(k)s, and IRAs are considered community property to the extent accumulated during the marriage. Each spouse will receive half of the other spouse’s retirement benefits that accrued during the marriage. In some cases, a qualified domestic relations order is required to divide those assets.

**Joint Property**

The court will divide property held jointly by the parties in the same manner as community property. The court may reimburse a party for any separate property contribution the party made to the acquisition or improvement of the property held in joint tenancy or as community property. A contribution to joint property includes:

- A down payment for the property;
- A payment for the purchases or improvement of the property; and
- Payment made towards the principle of the loan used to finance the purchase or improvement of the jointly held property.

A contribution to joint property does not include:
● A payment towards the interest of the loan used to finance the purchase or improvement;
● A payment for maintenance;
● A payment for insurance; or
● Payments towards the taxes of the property.

A court determining whether a party will receive reimbursement for a contribution in whole or in part will consider:

● The intentions of the parties when placing the property in joint tenancy;
● The length of the marriage; and
● Any other factors the court deems to be relevant in making a just and equitable division of the property.

Separate Property

Separate property is the property of each spouse that was acquired before or after the marriage. Separate property is also designated as property acquired during the marriage by gift, inheritance, or the profit or rent gained from any such separate property. Personal injury awards can also be separate property.

A personal injury award for pain and suffering is considered separate property, however, a personal injury award to cover property damage or loss of wages will be considered community property.

Separate property can become community property if the separate property is commingled with the community property. For example, if one spouse inherits money and deposits the inheritance into the couple’s joint bank account, which is used by both parties to pay household expenses and for day-to-day expenses then the court may determine that the inheritance is indistinguishable from the community property.
Once separate property has been determined to be commingled then the property becomes community property through a process known as transmutation. The party claiming an asset as separate has the burden of proving that the asset is separate property.

Debts and Liabilities

The court must also divide among the parties the debts and liabilities accumulated during the marriage. Debts and liabilities, as with property, will first be divided into community debt, separate debt, and joint debt. The court will decide this by determining:

- When it was acquired;
- Who acquired it; and
- How it was used.

Property Value Assessment

Once the property is divided into community property and separate property then each piece of property must have a value placed on it before distribution can take place. Monetary assets such as cash can be easily divided, however, the family home, cars, and the parties’ tangible personal property cannot be simply cut in half and distributed.

If the parties cannot agree on the value of each piece of property then the property will be appraised to determine the fair market value of the property. The fair market value of the home, vehicle, or personal item will be used when the court makes the distribution.

After the property is divided into community and separate property and the value of the property has been determined the court will distribute the property among the parties. The court may also take
alimony and child support into consideration when making property determinations.

The Finish Line

Once a settlement agreement is reached or the court has determined the “Who gets what?” question it is important to take the necessary steps to properly transfer all the property. Finally, each party must get the other party to sign any deeds, stock transfers, or other forms to transfer the property into the appropriate parties’ name. Also, each party must make any necessary payments to the other party and refinance any property if necessary.

Dividing property during a divorce can be a daunting task, but a necessary one. Getting through this step means moving one step closer to a new chapter.
How a Nevada Divorce will Affect your Retirement Plans

Money saved for retirement secures your future, but what happens to those future funds during a divorce? What happens if a stay at home spouse is relying on the retirement savings of the working spouse, but the marriage does not last and the couple decides to divorce?

Retirement benefits, such as, pensions, 401(k)s, IRAs, and others are all subject to division as other property is during a divorce. Retirement accounts can be a large source of the overall property of the divorcing couple and can be used as a leverage point in negotiating the property division.

Retirement Plans

There are generally two types of retirement plans.

The first are defined benefit plans, which provide monthly income benefits upon retirement using a formula that factors in age, years of service, and salary. These are generally government, union, or company pensions. For divorce purposes a defined benefit plan is harder to value and may need to be appraised.

The second are defined contribution plans, which are based off the funds in the individual retirement account. Members make contributions to the retirement account and the return on their investment determines the amount of their retirement. Defined contribution plans include 401(k)s, 403(b)s, 457s, IRAs, Keoghs, simplified employee pension plans, deferred compensation plans, profit sharing plans, and stock saving plans.
In Nevada, retirement benefits are considered community property to be divided during a divorce. Community property is all the property acquired during a marriage by either or both spouses. Under NRS 125.150, it is presumed that community property should be divided equally among the parties and since retirement benefits are considered community property and therefore marital property each spouse should receive half of the other spouse’s retirement benefits that accrued during the marriage.

Some retirement plans, such as an IRA, are subject to a 10% tax if funds are withdrawn early. The IRS, however, may not tax the funds that are subject to a divorce order. Some retirement benefits are not marital property and are governed by federal law.

A Qualified Domestic Relations Order may be needed to split retirement benefits.

**Qualified Domestic Relations Order**

A Qualified Domestic Relations Order (QDRO) is an order from the court that orders payment of retirement benefits to be paid to someone other than the person contributing to the retirement plan.

The other person is called the alternate payee. After a court orders a QDRO the original QDRO or a certified copy of the QDRO must be submitted to the retirement plan’s administrator for approval. For a QDRO to be valid it must contain:

- The member’s name;
- The member’s mailing address;
- The alternate payee’s name;
- The alternate payee’s address;
- The amount or percentage of the funds to be distributed to the alternate payee;
- The manner the amount or percentage is to be determined;
The number of payments or period of time the order applies to; and
The name of the plan that the order applies to.

In Nevada, an alternate payee has a right to a portion of their ex-spouse’s retirement benefits once the retiree is first eligible for retirement, despite whether or not the employee retirees. Nevada has ruled that even if the employee ex-spouse does not retire he or she must pay the amount that would be due to the alternate payee if the employee had retired. Also in Nevada, if the alternate payee dies the benefits due to them under the ex-spouses retirement plan will carry over to the alternate payee’s estate.

Public Employees’ Retirement System

Nevada has its own retirement system for State employees known as the Public Employees’ Retirement System (PERS). During a divorce PERS is governed under Nevada statute NRS 125.155. PERS is a defined benefits pension program. If an ex-spouse has a public employee pension then the parties must have an order from the court entered under PERS.

Under PERS, unlike other retirement plans, the alternate payee will only receive payment once the employee spouse actually retires. The court, however, may order a bond or life insurance policy in order to protect the alternate payee’s interest in the pension.

Also, unlike other retirement plans, PERS payments will cease upon the death of either party. The order, however, may be drafted to include a survivorship clause in order to allow the payments due to the alternate payee to pass to the alternate payee’s estate.

Normally the value of a pension is not computed at the time of the divorce because the value may change, however, Nevada has ruled that this is not the case if the employee spouse has used extraordinary efforts to increase the value of the retirement account.
The employee spouse holds the burden to prove that his or her extraordinary efforts led to the increase in value of the retirement account.

**Federal Employee Retirement System**

Federal employees that began a federal job before 1994 are members of the Civil Service Retirement System (CSRS). Federal employees that began working a federal job after 1984 have a Federal Employee Retirement System (FERS). Members of the FERS contribute to the Thrift Saving Plan, which is a defined contribution plan that can be easily calculated and distributed during a divorce.

Divorce leaves couples with many things to consider and what will happen to the retirement plans of the spouses is one of those considerations. It can be a scary thought that the funds a person has retained by working their entire adult life may be decreased because of a divorce.

It is also a scary situation when one spouse has relied, for one reason or another, on the retirement savings of the other spouse for when neither can or chooses to no longer work. Division of retirement benefits is just one necessary step that must be taken in order for each spouse to move on to the next chapter of their lives.
What Entrepreneurs in Nevada Need to Know About Divorce

Most entrepreneurs choose to start their own companies because they want to launch an exciting business or product, or have greater control over their work schedule. Perhaps they want to shape their own careers and reap more of the financial benefits of their hard work. But launching a business often requires investing everything you have – and this can cause a great deal of strain on a marriage.

If you are an entrepreneur in Nevada, you should know that divorce can be much more complicated for entrepreneurs and business owners than for people with traditional, salaried jobs. Your exact income may be difficult to determine. As a result, reaching a fair resolution with respect to financial matters upon divorce may be challenging. Moreover, Nevada is a community property state. This means that your business, or certain aspects of it, may be the joint property of you and your spouse and it will be divided equally upon divorce.

This section discusses some of the key things that Nevada entrepreneurs must keep in mind when considering a divorce. It is not a substitute for consulting with a family law attorney. Only an aggressive Las Vegas divorce lawyer can give you legal advice about your rights with respect to your business, assets, and rights.

1. Nevada is a community property state.

In community property states, almost all income and property acquired during a marriage is owned equally by both spouses. Upon divorce, Nevada courts generally divide all community property equally between each spouse. The law does not require an “in kind” division of community property, which would mean that you would have to divide each asset. Instead, the law requires that each
spouse must receive an equal division of the net value of the community property assets.

What does this mean for your business? If you started a business during your marriage, it is generally considered to be the community property of you and your spouse unless you signed a valid agreement to the contrary. When a business is operated by one spouse and that spouse has invested skill, labor, and expertise into developing the business, Nevada courts will typically award the business to that spouse and order him or her to “buy out” the other spouse. This means that you may have to give your spouse other assets or cash that is equivalent to half of the value of your business.

Even if you started a business prior to your marriage, your spouse may be entitled to half of the overall increase in the company’s value during the period you were married. This is one of the many reasons why hiring a Las Vegas divorce lawyer with experience representing business owners and entrepreneurs is crucial.

2. You may have to open up your company’s books.

In order to divide community property equally upon divorce, Nevada courts must assess the actual value of any community property assets, which may include your business. This typically requires the services of a forensic accountant, who will ask you to open up your company’s books and provide truthful information about its revenue and debts. Business owners who try to keep information from the court may be held in civil contempt. If you are an entrepreneur who is facing a divorce, now is a good time to organize your company’s financial statements.

3. You may be ordered to pay alimony.
Many people mistakenly believe that alimony (or “spousal support”) is an antiquated legal notion. The fact is that alimony is alive and well in Nevada. If there is a disparity between your income and that of your spouse, you may be ordered to make a lump-sum alimony payment or monthly alimony payments to your spouse. If your income increases by more than 20 percent after the divorce, your spouse can request that the court increase his or her alimony award accordingly.

As most entrepreneurs know, income for business owners is not always steady. Because your income as a business owner may fluctuate (or you may not be taking a salary from your business), it may be very challenging to negotiate an equitable alimony award. This is another reason why working with an aggressive divorce lawyer who has experience representing business owners is so important.

4. Alimony and child support payments may be difficult to calculate.

Both alimony and child support payments may be difficult to calculate. For entrepreneurs and business owners, income can fluctuate greatly from month to month (or worse, hover around zero). If your child support payments are set too high, you may fall behind – and this can result in serious legal consequences. You should be totally honest about your current and projected income with your divorce lawyer. That way, your attorney can fight for your best interests throughout the divorce process.

5. Hiring an aggressive divorce lawyer is critical.

Entrepreneurs have a unique set of needs and concerns when it comes to divorce in Nevada. If you are a business owner, do not
leave your future to chance. Hire an aggressive divorce lawyer who can protect your legal rights and negotiate the most favorable divorce settlement possible.
Spousal Spying in Nevada Divorce Cases

Are you spying on your spouse or do you expect your spouse of spying on you? Spousal spying occurs for numerous reasons. Maybe one spouse has cheated on the other spouse in the past. Maybe the spouse is simply insecure or has a need for control.

Spouses also spy to gain leverage in a divorce or child custody battle. Whatever the reason spousal spying is an unhealthy activity for the person spying and also a sign of an unhealthy relationship. Some forms of spying can also be illegal as a federal crime or a state crime. Spousal spying can include reading emails, social media monitoring, phone tapping, following, and video surveillance. These forms of spying may be illegal and hold federal and state criminal and/or civil penalties.

Federal Law

Spousal spying can be illegal under federal law. The Electronic Communications Privacy Act (ECPA) of 1986 prohibits many forms of spousal spying. The ECPA of 1986 expanded on the federal law on wiretapping to the intentional interception of unauthorized electronic communication. The ECPA applies to, but is not limited to:

- The interception of phone calls or the wiretapping of phones;
- Voicemail;
- Pagers;
- Electronic messages, including email or social media messages;
- Online chat communication;
- Web-streaming video;
- Voice-over IP; and
- The recording or videotaping of private face-to-face conversations.

Reading the emails, private social media messages, or chat communication of another spouse can be a violation of ECPA. If the spouse accessing the email does not have authorization to do so then this will be in violation of the ECPA. If one spouse has given their email password to the other spouse then that spouse has been authorized to use the account.

Although, if a password was given for a specific reason and the spouse searches and reads emails other than for that specific reason this could be in violation of ECPA. If a spouse receives information unintentionally, such as an email being sent by mistake, then this is not in violation of the ECPA because it only governs intentional interception.

The ECPA prohibits a person from intentionally intercepting or attempting to intercept a phone conversation or other electronic communication by use of electronic, mechanical, or other devices. If a spouse installs spyware software on their spouse's cell phone without the spouse's consent this is illegal.

Violating the ECPA can bring civil and criminal penalties. A spying spouse may be ordered to pay damages, which increase the longer the violation occurred. The spouse may also be sentenced up to five years in prison for violating the ECPA.

When spouses are separated it is not uncommon for one spouse to obsess over the other spouse’s whereabouts and activities. A spouse that begins following their partner can quickly escalate into stalking territory. The federal Interstate Stalking Act makes it illegal to cross-state lines with the intent to injure or harass another person and in do so placed that person or a member of the person’s family in a reasonable fear of death or serious bodily injury.
State Law

Many states have enacted their own versions of the federal ECPA. Nevada statute NRS 200.610-200.690 makes some spousal spying techniques illegal. For example, Nevada law requires the consent of both parties to a conversation for a phone call to be legally recorded.

In Nevada it is legal to record the in-person conversation of a spouse so long as one party consents.

A spouse found to violate one of these laws can be charged with a class D felony. In Nevada, a class D felony is punishable from one to four years in prison and the offender may be fined up to $5,000. The spouse is also liable to the victim spouse for actual or liquidated damages, punitive damages, and reasonable cost and attorney fees of the other party. Actual damages are $100 per day of violation, but not less than $1,000.

Nevada also has a law making it illegal to use spyware. Under NRS 205.4737, it is illegal to use spyware. If one spouse downloads spyware on another spouse’s computer or phone this may be in violation of Nevada law unless the other spouse consents. A spouse found violating this statute might be held criminally and/or civilly liable.

By state law a spouse does not have to cross state lines in order to be guilty of stalking. Under NRS 200.575, a person is guilty of stalking if the person willfully and maliciously engages in conduct that would make a reasonable person to feel terrorized, threatened, harassed, or fears for their immediate safety and/or a family member or household member’s safety and the person and/or family or household member actually does feel terrorized, threatened, harassed, or fears for their immediate safety.

For a first offense of stalking it is a misdemeanor and for any offenses after the offender is guilty of a gross misdemeanor. A
person commits aggravated stalking if the person stalks and threatens the person with the intent to place the person in fear of death or substantial bodily harm and is guilty of a category B felony. Aggravated stalking is punishable by two to 15 years in prison and a fine up to $5,000.

If a person stalks by the internet, email, text messages and publishes or distributes the information in a way that substantially increases the victim’s risk of harm or violence then the offender is guilty of a class C felony punishable by one to five years in prison and up to a $10,000 fine.

Spousal Spying Should be Avoided

Spousal spying is not healthy for the spying spouse, the spouse being spied on, and certainly not the marriage. Spying on your spouse is not only unhealthy, but may lead to criminal or civil repercussions on a federal and state level and should be avoided. Also, if a spouse’s spying activities are found to be illegal any information the spouse may have uncovered cannot be used at a divorce or custody proceeding.
About Karen A. Connolly, Esq.

Karen A. Connolly obtained a bachelors degree in economics from the University of Arizona in 1988 and her juris doctorate in law in 1991. Ms Connolly’s primary areas of practice are family law and criminal defense. She has proven her exceptional trial skills by winning felony jury trials in both federal and state court.

Her acquittals have included Murder, Kidnapping, Sexual Assault and Drug cases. She recently obtained the reversal of an improper murder conviction and secured the freedom of a man wrongly convicted of murder. Through her perseverance and legal skills, Ms. Connolly saved a man’s life by convincing the District Attorney to remove him from death row. She has argued before the Ninth Circuit Court of Appeals and before the Nevada Supreme Court where she convinced the court to reverse another murder conviction.

Additionally, Ms. Connolly has vigorously represented many, many people in family court where her proven trial skills and legal acumen place her a cut above the rest.

If you’re in need an experienced, aggressive attorney to represent your interests, please contact the Law Offices of Karen A. Connolly. Ltd:

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