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# Legal Matters®

## Divorce can be even harder when children have special needs

**D**ivorce is emotionally difficult for everyone, and this is especially true when children are involved. But when a couple has a child with special needs, it can become even more complicated.

For instance, many parents argue over child-rearing decisions, such as where the children attend school, the activities in which they participate, and their religious upbringing. But when a child has special needs, it's even more important for the parents to find a way to make decisions together, because there are simply more decisions to make – including special school programs, medical treatments, and many other concerns.

Custody can be difficult. A "typical" custody arrangement might find a child shuttling back and forth between parents on a regular basis, in order to keep both parents in the child's life and maximize each parent's time with the child. But this arrangement doesn't



always work well for special-needs children.

Many children on the autism spectrum, for example, benefit greatly from a stable,

predictable environment, and can have tremendous difficulty with abrupt or frequent change. Moving from home to home each week could have a very detrimental effect on such a child.

A teenager with cerebral palsy might require special lifting and transfer equipment. If this equipment is available at only one parent's home, then extended visits to the other parent's home could result in the child's having very limited mobility.

In such cases, it's often necessary to create a unique custody arrangement that responds to the child's needs while also respecting each parent's interest in spending time with the child.

Financial issues can also be a challenge. In addition to standard child-rearing costs such as food, clothing, and activities, parents of special-needs children may have to plan for the cost of doctors, medication, special

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Arnold & Smith  
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204  
(704) 370-2828 • [www.CharlotteDivorceLawyerBlog.com](http://www.CharlotteDivorceLawyerBlog.com)

## Cohabitation agreements can be useful for unmarried couples

If you're living with a romantic partner and you don't have any immediate plans to get married, you might want to consider signing a "cohabitation agreement," also known as a "domestic partner agreement."



Cohabiting couples often enjoy many of the trappings of marriage, such as combined finances and property. But it's important to realize that you have none of the legal protections of marriage, such as equitable distribution of property or support payments if you ever break up.

A cohabitation agreement is a legally binding contract designed to protect both you and your partner in the event that you don't stay together, and enforce the promises you've made to each other in the relationship.

For instance, an agreement can define your financial obligations after a breakup, such as the payment of debts that you may have taken on together as a couple.

An agreement can also determine how property will be divided should the relationship end, including who

keeps the house or apartment, who gets a car you own together, and who will have custody of a beloved pet.

Additionally, you can appoint each other as your health care proxies. A health care proxy is someone who has the power to make medical decisions for another person if that person no longer has the capacity to make them on his or her own. For married couples, the law generally assumes that spouses can make medical decisions for each other in such circumstances. But this is generally not the case for unmarried couples, even if they live together. If you want to serve as each other's health care proxies, you need to make this clear in writing.

Cohabitation agreements can be particularly useful for gay couples in states that don't recognize gay marriage.

Some couples have tried to write these agreements on their own, but this is not a good idea because you need a lawyer to make sure the contract is legally binding. Ideally, just as with a prenuptial agreement, each member of the couple should have their own lawyer in order to ensure a fair agreement that protects you both.

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## Can injury and disability payments be split at divorce?

Payments that relate to one spouse's injury or disability can be very difficult to divide at divorce, because it's not clear if they should "belong" solely to the injured spouse or to the couple.

Two recent cases from Pennsylvania show the kinds of questions that can come up.

The first case involved a man who was injured while he was married, but didn't settle his personal-injury lawsuit until after he and his wife had separated. The man argued that since he didn't get any money until after the split, the settlement should belong to him alone.

But the Pennsylvania Supreme Court ruled that his *right* to receive compensation for his injury arose at the time he was hurt. Because he was still married at the time of the injury, his ex-wife could share in the lump-sum settlement payout, the court said.

The second case involved a heart surgeon who underwent surgery himself for carpal tunnel syndrome. The surgery left him unable to operate. He and his wife later divorced.

Years earlier, the husband had taken out a disability insurance policy. When he became disabled, he applied

for benefits, and started receiving monthly disability checks. He had to renew his right to receive these checks each year by proving that he was still disabled.

The wife argued that she was entitled to share in the monthly checks because the husband's disability – and thus his right to collect the disability payments – occurred during the marriage.

She argued that her situation was exactly like that of the wife in the first case, whose husband was injured during the marriage but didn't receive compensation until after they had split up.

But not so fast, the Pennsylvania Superior Court said. This case was different, the court ruled, because the surgeon's right to future disability payments depended on his proving *each year* that he was still disabled. Therefore, the surgeon's right to future checks after the first year didn't arise when he first became disabled during the marriage, but when he later proved that he was *still* disabled after the marriage.

The law varies from state to state and from case to case, but these two cases illustrate that these kinds of payments often create thorny issues in a divorce.

# Divorce can be harder when children have special needs

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equipment, handicap accessibility in their homes and vehicles, and private-school tuition in some cases.

Some children require special diets that are more costly than standard diets. Others have to frequently replace expensive orthopedic devices as they keep growing.

While standard child-support formulas often assume that both parents will be working, parents who are looking after a special-needs child simply might not be able to work full-time, or might incur larger-than-usual child-care costs if they do so.

And while child support typically ends when children reach adulthood, that's not necessarily the case for special-needs children. Such children might require a great deal of time, support and expense into adulthood, and it's important for divorcing parents to make plans as to how the children's needs will be met beyond the age when child support usually ends.

**It's even more important for parents to find ways to make decisions together.**

Life insurance is an additional issue. Many divorce agreements require parents to maintain life insurance for the benefit of their children, but this can be even more important with a special-needs child.

Finally, if a child is eligible for SSI or Medicaid as a result of a disability, it's very important to be careful in drawing up a divorce agreement, because it's possible for certain divorce payments to disqualify a child for government benefits. There are a number of techniques (such as trusts) that can avoid or at least limit this problem.

In short, divorces involving children with special needs are highly complicated, and having an experienced attorney to help you is essential.



## Income other than salary can affect alimony payments

A wife's alimony payments could be increased when her ex-husband started receiving significant income in addition to his regular salary, says the Ohio Court of Appeals.

The husband was a highly paid executive with JP Morgan Chase who was transferred to Singapore. As a result of the transfer, in addition to his regular salary, he received a \$149,500 bonus, a \$104,300 housing allowance, a \$25,300 "foreign assignment pay differential," a \$7,200 long-term incentive bonus paid out as dividends, and a \$12,300 travel allowance.

The wife went to court and argued that the husband's alimony obligation should be increased as a result of this windfall.

A judge initially sided with the husband, saying that alimony couldn't be adjusted based on anything other than the husband's base salary.

But the appeals court agreed with the wife, and said the important thing was that the husband had a big increase in his income, regardless of whether the income was labeled as "salary" or something else.

## Wife liable for husband's 'last-minute' credit card charges

A Florida woman told her husband that she was planning to leave him after 27 years of marriage. Just days before she officially filed for divorce, however, the husband charged more than \$13,000 to the couple's Discover credit card to cover costs their daughter was incurring as she started college.

During the divorce proceeding, the wife argued that she had never intended to pay for the daughter's college expenses, and that the husband had engaged in a sneaky maneuver to try to force her to share these costs. A judge agreed with her and ordered the husband to pay the entire \$13,000.

However, an appeals court sided with the husband. According to the appeals court, unless the couple had a valid separation agreement in place at the time, any financial obligation incurred while the couple were still married should be considered a shared marital debt.

As always, the law varies, but this case is a good demonstration of how credit card debt can be a major issue in a divorce.





The Historic John Price Carr House  
200 North McDowell Street  
Charlotte, North Carolina 28204  
(704) 370-2828  
[www.CharlotteDivorceLawyerBlog.com](http://www.CharlotteDivorceLawyerBlog.com)

## Sperm donor might be required to pay child support

Anyone who is thinking of having artificial insemination using a sperm donor – or of acting as a sperm donor himself – should talk with a family law attorney to fully understand the possible legal ramifications of the decision.

That message is underlined by a recent ruling from a court in Kansas.

The case involved a couple who found a sperm donor through an ad they placed on Craigslist. The donor – who never intended to play the role of father – signed a contract with the couple stating that he would assume no financial or any other parental responsibility for the child.

The couple performed the insemination procedure at home without the involvement of a doctor. Several years after the child was born, the couple separated. The mother later became sick and couldn't work, and ended up

receiving financial assistance from the state.

The state – seeking to recoup the assistance – went after the sperm donor for child support.

Of course, the donor argued in court that under the contract he and the couple had signed, he had no financial obligations to the child.

But the court pointed to a state law that requires all artificial insemination procedures to be performed by a physician. Because the couple had violated the law when they performed the procedure by themselves, the contract they signed with the donor was invalid, the court said. (The state argued that unless a physician were involved, there was no way to prove whether a man was really just a sperm donor as opposed to the mother's lover.)

Not every state has a law like this. But there are a number of other legal traps for people who participate in artificial insemination, and it's important to get legal advice if this is something you're considering.

