

# Family law in the United States: Illinois: Overview

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A Q&A guide to family law in Illinois.

The Q&A gives a high level overview of key issues including jurisdiction and conflict of law; pre- and post-nuptial agreements; divorce, nullity, and judicial separation; children; surrogacy and adoption; cohabitation; family dispute resolution; civil partnership/same-sex marriage; and controversial areas and reform.

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## Jurisdiction and Conflict of Law

### Regulatory Framework

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

### Sources of Law

In Illinois, family law matters are civil matters governed by the:

- Illinois Code of Civil Procedure (735 ILCS 5/).
- Illinois Supreme Court Rules.

- Local circuit court rules.
- Administrative orders of each circuit.

State-wide statutory sources that govern family law matters include the:

- Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 Illinois Compiled Statutes (ILCS) 5/).
- Illinois Uniform Premarital Agreement Act (Premarital Agreement Act) (750 ILCS 10/).
- Uniform Interstate Family Support Act (750 ILCS 22/).
- Uniform Child-Custody Jurisdiction and Enforcement Act (Child Custody Act) (750 ILCS 36/).
- Illinois Parentage Act of 2015 (Parentage Act) (750 ILCS 46/).
- Adoption Act (750 ILCS 50/).
- Gestational Surrogacy Act (Surrogacy Act) (750 ILCS 47/).
- Illinois Religious Freedom Protection and Civil Union Act (750 ILCS 75/5).
- Religious Freedom and Marriage Fairness Act (750 ILCS 80/5).

Common-law case precedents are also an important source of law.

**Federal law.** Federal law on family law issues also binds the Illinois courts, including, but not limited to the:

- International Child Abduction Remedies Act (ICARA) (22 U.S.C. 9001).
- Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. 1738A 1980).
- Decisions of the:
  - Supreme Court of the United States of America;
  - United States District Courts for the Northern, Central and Southern Districts of Illinois (on family law matters);  
and
  - United States Court of Appeals for the Seventh Circuit (on family law matters).

## Court System

The Illinois courts consist of:

- County circuit courts.
- Courts of appeals.
- The Illinois Supreme Court.

Most circuit courts dedicate separate courtrooms to civil family law matters. Some dedicate separate courtrooms to domestic and family violence, which can later be consolidated with another family law action such a dissolution of marriage or a parentage matter.

See also [Question 2](#).

## Jurisdiction

2. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

## Divorce

Illinois courts define subject matter jurisdiction as the power of a particular court to hear the type of case before it (*Faris v. Faris*, 35 Ill. 2d 305, 309 (1966)).

A court has subject matter jurisdiction in a divorce, and can enter a decree even without personal jurisdiction over the opposing party, as long as the petitioner resided in Illinois (or was stationed in Illinois while a member of the armed services) for 90 days before initiating the action or for 90 days before the court makes findings (*In re Marriage of Hoover*, 314 Ill. App. 3d 707, 709-10 (4th Dist. 2000)); 750 ILCS 5/401(a) (Marriage Act); *In re Marriage of Mates*, 156 Ill. App. 3d 26, 29 (2d Dist. 1987); *Hermann v. Hermann*, 219 Ill. App. 3d 195, 197 (3d Dist. 1991)).

Personal jurisdiction is required to impose certain remedies against an individual in relation to child custody or to property. Proper service on an Illinois resident vests in the court with personal jurisdiction over that individual (735 ILCS 5/2-201 (Marriage Act)).

An Illinois court has personal jurisdiction over an out-of-state resident if the petitioning party satisfies the criteria of the Illinois long-arm statute (735 ILCS 5/2-209). For actions for dissolution of marriage, declarations of invalidity of marriage and legal separation, the state has long-arm jurisdiction over a non-resident where:

- Their matrimonial domicile was in Illinois when the cause of action arose.
- They committed any act giving rise to the cause of action in Illinois.

Personal service must be made on the non-resident.

For actions brought under the Illinois Parentage Act, the state courts have personal jurisdiction over a non-resident that:

- Performs an act of sexual intercourse within Illinois during the possible period of conception. (Personal service of proceedings must be effected).
- Performs an act of sexual intercourse within Illinois claimed to result in the conception of a child who lives in Illinois.

- Fails to support a child, spouse or former spouse who continues to reside in Illinois where the responding party either formerly resided with them in Illinois or directed them to reside in Illinois.
- Takes ownership, possession or control of any asset or thing of value present in Illinois when ownership, possession or control was acquired.

## Same-Sex Spouses and Civil Partners

The Religious Freedom and Marriage Fairness Act ensures that same-sex and different-sex couples and their children receive equal treatment on civil marriage or on dissolution of marriage.

Under the Religious Freedom and Protection in Civil Union Act, persons entering into civil unions have the same protections as those available to married persons. This means that an Illinois court will enter a judgment of dissolution of a civil union if the individuals meet the grounds for dissolution of marriage under the Marriage Act.

## Property

The aspects of an Illinois divorce action disposing of property of any type require personal jurisdiction (*In re Marriage of Passiales*, 144 Ill. App. 3d 629, 637 (1st Dist. 1986)).

## Children

The aspects of an Illinois divorce action adjudicating child custody matters (now known as "parenting allocation") require personal jurisdiction (*In re Marriage of Passiales*, 144 Ill. App. 3d 629, 637 (1st Dist. 1986)).

The Child Custody Act governs jurisdiction over parenting allocation in Illinois and requires the Illinois courts to treat a foreign country as it would treat another US state of the for purposes of applying its jurisdiction provisions.

Illinois courts can exercise jurisdiction for initial child custody determinations if the case meets the following criteria:

- Illinois is the child's home state on the date the action commences, or was the child's home state at least six months before the action commenced, where the child is absent from Illinois but a parent or person acting as parent continues to live in Illinois.
- A court of another state lacks jurisdiction as the home state, or a court of the home state declines to exercise jurisdiction on the ground that Illinois constitutes a more appropriate forum.
- The child and the child's parents, or the child and at least one parent or person acting as a parent, has a significant connection with Illinois other than presence.
- Substantial evidence is available in Illinois about the child's care, protection, education and personal relationships.
- All courts that would otherwise have jurisdiction decline to exercise it on the ground that Illinois constitutes the more appropriate forum to determine custody.
- No court of any other state would have jurisdiction under the criteria above.

Except in cases where an Illinois court exercises emergency jurisdiction under the Parentage Act (750 ILCS 33/204), an Illinois court that makes a child custody determination retains continuing exclusive jurisdiction over the determination until:

- A court of Illinois determines that:
  - neither the child, the child's parents nor any person acting as a parent have a significant connection with Illinois; and
  - the substantial evidence concerning the child's care, protection, education and personal relationships no longer remains in Illinois.
- A court of Illinois, or a court of another state, determines that neither the child, the child's parents nor any person acting as a parent presently resides in Illinois.

An Illinois court that makes a child custody determination but that does not have continuing exclusive jurisdiction can only modify that determination if Illinois has jurisdiction to make an initial determination.

An Illinois court will continue to exercise exclusive jurisdiction and be considered the home state of a child who moves out of Illinois within a radius specified in the Marriage Act (750 ILCS 5/609.2(h)).

An Illinois court can only modify a child custody determination made by a court of another state if an Illinois court has jurisdiction to make an initial determination (Child Custody Act (750 ILCS 36/203)).

Illinois will exercise temporary emergency jurisdiction over a child present in Illinois where the child has been abandoned or emergency circumstances make it necessary to protect the child because the child, a sibling or a parent of the child is subjected to or threatened with mistreatment or abuse (Child Custody Act (750 ILCS 36/204)).

## Domicile, Nationality and Habitual Residence

3. How do the concepts of domicile, nationality and habitual residence apply in relation to divorce, financial arrangements, and children?

An Illinois court has subject matter jurisdiction in a divorce, and can enter a decree regardless of whether it has personal jurisdiction over the opposing party, as long as the petitioner resided in Illinois (or was stationed in Illinois while a member of the armed services) for 90 days before initiating the action or for 90 days before the court makes findings (see [Question 2](#)).

The term "residence" as used in the statute is not synonymous with "domicile" but denotes a permanent abode or place the individual considers home. The person's intent to make a place their permanent home is of greatest significance in determining residence (*In re Marriage of McCaskey*, 167 Ill. App. 3d 860, 863 (5th Dist. 1988), (citing *Rosenshine v. Rosenshine*, 60 Ill. App. 3d 514, 517 (1st Dist. 1978))).

## Conflict of Law

4. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

## Procedure

A matrimonial action must be brought in the Domestic Relations Division of the circuit court that both:

- Is the court of the Illinois county in which either party to the action resides (the proper venue).
- Has the power to determine property distribution, spousal support, child support and child custody within the action.

(Marriage Act (750 ILCS 5/104).)

See [Question 2](#).

A respondent can file a motion to dismiss an Illinois action on the basis that there exists another action between the same parties for the same cause pending elsewhere between the same parties and for the same cause as the Illinois action (Code of Civil Procedure (735 ILCS 5/2-619(a)(3)).

## Factors

The party opposing the motion to dismiss can present affidavits or other proof denying the alleged facts, or establishing facts that eliminate the grounds for the defect. If the filings give rise to a material and genuine disputed question of fact, the court can either:

- Decide the motion.
- Deny the motion without prejudice to the right to raise the subject matter of the motion in response.

Raising these matters by motion under the above provision of the Code of Civil Procedure does not preclude a party from raising them in an answer unless the court disposes of the motion on its merits.

## Anti-Suit Injunctions

A party who establishes the court's jurisdiction over the opposing party can seek an injunction under the Code of Civil Procedure to order the opposing party not to take any action in the foreign proceedings until after Illinois determines the question of jurisdiction. The Code of Civil Procedure (735 ILCS 5/) governs the issuance of temporary restraining orders and preliminary injunctions.

## Applicable Law

5. Are foreign nationals treated differently on divorce?

Illinois courts apply Illinois law to actions for dissolution of marriage where there is no valid and enforceable agreement to use the law of a different jurisdiction. See [Question 9](#).

No provision of Illinois law specifies disparate treatment for foreign nationals. Some specific statutory provisions provide for forms of notice to foreign nationals (see [Question 6](#)).

## Service of Proceedings

6. What are the requirements for service of divorce, financial and children proceedings in your jurisdiction?

Except as otherwise expressly provided, service on an individual defendant must be effected by either:

- Leaving a copy of the summons with the defendant personally.
- Leaving a copy at the defendant's usual place of abode with a member of the family or a person residing there over the age of 13 years, and informing that person of the contents of the summons, provided the officer or other person making service also sends a copy of the summons to the defendant at their usual place of abode in a prepaid sealed envelope.

Service can be by either the county sheriff or by private/special process servers appointed by the court.

(Code of Civil Procedure (735 ILCS 5/2-202, 735 ILCS 5/203).)

The Code of Civil Procedure also makes other provisions for the service of individuals by special order (and by other means) where customary methods of service have not been effective. Alternate methods of service have included service on other related third parties and/or employees (*In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 370 (2d Dist. 2001)).

Service can also be accomplished outside of Illinois on any party that has submitted to the jurisdiction of the state (Code of Civil Procedure (735 ILCS 5/2-203 to 5/2-208)). Service outside of the state on any party that has not been determined to have submitted to the jurisdiction of the state limits the scope of the court's power to enter orders with service by publication only (Code of Civil Procedure (735 ILCS 5/2-208, ILCS 5/2-206)).

## Pre- and Post-Nuptial Agreements and Matrimonial Property Regimes



## Validity of Pre- and Post-Nuptial Agreements

7. To what extent are pre-nuptial and post-nuptial agreements binding?

### Pre-Marital Agreements

The Premarital Agreement Act applies to any pre-marital agreement executed on or after 1 January 1990. Illinois pre-marital agreements must be written and signed by both parties and are enforceable without consideration. The parties to a pre-marital agreement can contract with respect to the following:

- The rights and obligations of each party in any property belonging to either or both of them whenever and wherever required or located, including the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property.
- The disposal of property on separation, marital dissolution, death, or the occurrence or non-occurrence of any other event.
- Modifying or eliminating spousal support.
- Making a will, trust or other arrangement to carry out the provisions of their agreement.
- Ownership rights and disposition of the death benefit from a life insurance policy.
- The choice of law governing the construction of the agreement.
- Any other matter including personal rights and obligations that does not violate public policy or a statute imposing a criminal penalty.

The rights of children to support cannot be adversely affected by a pre-marital agreement.

Pre-marital agreements become effective on marriage. Following a marriage, the parties to a pre-marital agreement can only amend or revoke the agreement by a written agreement signed by both parties. Such amendments are enforceable without consideration (Premarital Agreement Act (750 ILCS 10/6)).

An Illinois court will enforce a pre-marital agreement as long as the other party cannot prove either:

- The party did not execute the agreement voluntarily.
- The agreement was unconscionable at the time the parties executed the agreement in circumstances where a party did not receive a fair and reasonable disclosure of the property or financial obligations of the other party before the agreement was concluded and:
  - did not voluntarily and expressly waive the right to disclosure of the property or the financial obligations of the other party;

- did not have or could not reasonably have had adequate knowledge of the property **or** financial obligations of the other party.

An Illinois court will not enforce a provision of a pre-marital agreement that modifies or eliminates spousal support to the extent it will cause undue hardship in light of circumstances not reasonably foreseeable when the parties signed the agreement.

### Agreements Signed After Marriage

The Marriage Act allows courts to enforce agreements between spouses to:

- Designate property as non-marital (750 ILCS 5/503(a)(4)).
- Resolve disputes relating to the dissolution of the parties' marriage in relation to property, maintenance, support, parental responsibility allocation for children and support of children, as well as agreements regarding pets (750 ILCS 5/502).

A post-nuptial marital settlement agreement must be a valid common law agreement, and must therefore have adequate consideration for the promises made and received.

Such marital agreements cannot:

- Be unconscionable (750 ILCS 5/502). Illinois courts decide issues of unconscionability of marital agreements as a matter of law. In a decided case, the court:
  - found that duress could be sufficient to render an agreement unconscionable when proven by clear and convincing evidence;
  - took into consideration the wife's claims of fraudulent representation in determining unconscionability in relation to the economic circumstances resulting from the agreement.

*(In re Marriage of Richardson 237 Ill. App. 3d 1067, 1080 (1st Dist. 1992)).*

- Preclude or limit parental responsibility or the support of children (750 ILCS 5/502(f)).

Such agreements can be enforced as contract terms, or incorporated into a judgment for dissolution of marriage to be enforceable by all the remedies available for the enforcement of a judgment, including contempt.

8. Do matrimonial regimes exist in your jurisdiction and is there a default matrimonial property regime?

### Default Regime

Illinois uses an equitable distribution regime for property, which can be altered by a valid and enforceable pre-marital agreement or agreement to create non-marital property signed after marriage (Marriage Act) (750 ILCS 5/503(a)(4)). See [Question 7](#).

Marital property includes all property including debts and other obligations acquired by either spouse after the date of marriage.

The courts presume all property acquired by either spouse during marriage to be marital property, including non-marital property transferred into a form of co-ownership between the spouses.

A party can overcome the presumption of marital property by showing clear and convincing evidence that the property is non-marital property.

Non-marital property includes:

- Property acquired before the marriage, other than retirement plans that may have both marital and non-marital characteristics.
- Property acquired by gift or inheritance, or acquired in exchange for such property.
- Property acquired in exchange for property acquired before the marriage.
- Property acquired by a spouse after a judgment for legal separation.
- Property excluded by valid agreement of the parties.
- Property obtained awarded to a spouse from the other spouse by a judgment (except where a spouse must sue the other spouse to secure insurance coverage or recover from a third party and the recovery directly relates to amounts advanced by the marital estate).
- Property acquired by a spouse by the sole use of non-marital property as collateral for a loan where the party then uses the loan to acquire property during the marriage. To the extent the marital estate repays any portion of the loan, that repayment is considered to be a contribution from the marital estate to the non-marital estate that is subject to reimbursement.
- The increase in value of non-marital property, whether it results from a contribution of marital property, non-marital property, a spouse's personal efforts or is otherwise subject to rights of reimbursement.
- Income from property acquired by one of the above methods, as long as the income is not attributable to a spouse's personal effort.

When one estate makes a contribution to another estate, the estate receiving the contribution must reimburse the contributing estate. The court will not allow reimbursement for a contribution that is not traceable by clear and convincing evidence, or that was a gift. A court may provide for reimbursement out of marital property or impose a lien against the non-marital property that received a contribution.

Where marital and non-marital property is co-mingled so that the contributed property loses its identity, it becomes part of the estate that receives the property, and is subject to reimbursement. If the contributed property retains its identity, it remains property of the contributing estate. If marital and non-marital property co-mingle into newly acquired property that results in the loss of identity of the contributing estates, the co-mingled property is deemed to have become marital property, and is subject to reimbursement.

If a spouse contributes personal effort to non-marital property, an Illinois court will treat the personal effort as a contribution from the marital estate. The court will award the marital estate reimbursement for significant efforts resulting in a substantial appreciation to the non-marital property unless the marital estate has received reasonable compensation for the personal efforts.

The current property regime specifically states that property will not be deemed marital property solely because a party acquired the property in contemplation of marriage. This specifically overrides prior provisions that allowed a court to treat a home acquired in contemplation of marriage as marital property.

The marital property regime includes specific provisions discussing retirement benefits, stock options, restricted stock or similar forms of benefits, as well as life insurance.

## Procedure

Illinois courts assign each spouse's non-marital property to that spouse (Marriage Act) (750 ILCS 5/503(d)) and divide marital property without regard to marital misconduct in just proportions considering all relevant factors. See [Question 15](#).

Once a party files an action for dissolution of marriage, each spouse's common ownership in the marital property vests, and that interest does not encumber property so as to restrict its transfer, assignment or conveyance by the title holder unless the title holder is specifically enjoined from doing so. This allows the parties to a dissolution to continue to transact in property after the divorce filing (750 ILCS 5/503(e)).

When determining the value of marital and non-marital property for the purposes of dividing property, the court has discretion to use the trial date or such other date as agreed on by the parties or ordered by the court at its discretion (750 ILCS 5/503(f)).

As a part of apportioning property, an Illinois court can order one party to contribute to the other party's legal fees. Illinois courts base such awards on the criteria for the division of marital property and for awards of maintenance.

Illinois courts employ a fair market value standard in determining the value of assets or property (750 ILCS 5/503(k)). The courts can seek the advice of financial experts or other professionals and Counsel have the right to examine these experts as they would any other witness (750 ILCS 5/503(l)).

See [Question 15](#).

9. How are foreign separation of property agreements and pre-nuptial and post-nuptial agreements treated by the courts in your jurisdiction?

The courts will apply a valid contract's choice-of-law clause to disputes arising from the contract (see, for example, *Kohler v. Leslie Hindman, Inc*, 80 F.3d 1181, 1185 (7th Cir. 1996)).

The Premarital Agreement Act allows for an agreement on choice of law.

The question of choice of laws is governed by Illinois contact law. Under the Restatement (Second) of Conflict of Laws, §187(2) (1971), the law of the state chosen by the parties will govern a contract unless either:

- The chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice.
- Application of the law of the chosen state would be contrary to a fundamental policy of the law of the state that:
  - would govern in the absence of an effective choice of law by the parties; and
  - has a materially greater interest in the determination of the particular issue than the chosen state.

If the choice of law question is not at issue, courts must consider whether the agreement meets the requirements of contract law generally.

In Illinois, a contract is "an agreement between competent parties, upon a consideration sufficient in law, to do or not to do a particular thing." *Steinberg v. Chicago Medical School*, 169 Ill.2d 320, 329 (1977) (citing *People v. Dummer*, 274 Ill. 637, 640 (1916)). An enforceable contract requires an offer, acceptance and consideration. (*In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 770 (2d Dist. 2007)).

See [Question 7](#) for requirements of valid pre- and post-marital agreements.

## Divorce, Nullity and Judicial Separation

### Recognition of Foreign Marriages/Divorces

10. Are foreign marriages/divorces/civil partnerships recognised in your jurisdiction?

### Marriages

Generally, if a marriage is valid where it was solemnised (either in another US state or in another country), it will be valid in Illinois. A marriage in any other state of country can be proved by the acknowledgement of the parties, cohabitation or other evidence. Foreign records of marriage can be accepted as evidence as an exception to the hearsay rule (Marriage Act (750 ILCS 5/409)).

### Divorces/Annulment

Illinois has adopted the Uniform Enforcement of Foreign Judgments Act (735 ICLS 5/12-650 to 5/12-657). and generally recognises a foreign divorce judgment under principles of comity. Foreign judgments can be enrolled in Illinois and then enforced (and in some cases modified in certain regards) subject to the Uniform Interstate Family Support Act (UIFSA) (750 ILCS 22/101) and the Child Custody Act (UCCJEA) (750 ILCS 36/101 to 36/112), both of which have been adopted by Illinois (735 ILCS 5/12-652).

### Civil Partnerships

A civil union, or a substantially similar legal relationship (other than common law marriage) legally entered into in another jurisdiction will be recognised in Illinois as a civil union. Similarly, a marriage, whether of same sex or different sexes, and providing that it is not a common law marriage, legally entered into in another jurisdiction will be recognised as a marriage in Illinois (750 ILCS 75/60).

## Divorce

11. What are the grounds for divorce?

## Divorce

Since 2016, Illinois has followed the "no fault" approach to divorce where all that is needed for the court to enter a judgment of dissolution is a finding that the relationship between the spouses has broken down irretrievably and there are irreconcilable differences between the parties. If the parties have lived separately and apart for six months or more, the irretrievable breakdown is assumed (Marriage Act (750 ILCS 5/401)).

## Nullity

A marriage can be declared invalid under Illinois law (formerly known as "annulment"), in the following circumstances:

- A party lacked capacity to consent to the marriage at the time of the marriage due to mental impairment.
- A party was induced into the marriage by:
  - force or duress; or
  - fraud as to the "essentials of the marriage". This does not include misrepresentation of fortune or failure to disclose a prior marriage (*In re Marriage of Igene*, 2015 Il. App. (1st) 140344, paragraphs 17, 19) but would include concealing a lack of capacity for sexual intercourse (*In re Marriage of Naguit*, 104 Ill. App. 32 709, 720 (5th Dist. 1982)).
- A party lacked the physical capacity to consummate the marriage and the other party did not know of the incapacity at the time of the marriage.
- A party was underage at the time of the marriage and did not have the consent of their parent or guardian.
- The marriage is otherwise prohibited.

(750 ILCS 5/301.)

## Judicial Separation

Legal separation is available under Illinois Law but is rarely used, and the relief available is generally limited to reasonable support and maintenance (both temporary and longer term) for married people living apart. Property can only be valued or allocated by the agreement of the parties. The procedure for filing for legal separation is similar to that of filing for a dissolution of a marriage (750 ILCS 5/402).

12. What is the procedure and timeline for divorce?

## **Divorce**

The procedure is as follows:

- A divorce action is commenced by the filing of a petition and summons.
- The summons must be served within 30 days after filing, which can be extended for good cause.
- A respondent has 30 days from the date of service to file their response.
- The respondent's post appearance deadlines, pleadings (complaint and answer, which may include counterclaims and replies to counterclaims), the timing of discovery and case management and motions are governed by the Code of Civil Procedure, Illinois Supreme Court Rules and certain local rules that vary from county to county.

The speed with which the action proceeds to final judgment depends on the particular circumstances, including whether the matter has been referred to mediation.

In more financially complex cases, it is not unusual for the process to last two years or more, not counting appeals.

However, the Illinois Supreme Court Rules require the expeditious resolution of parenting disputes (Il. Sup. Ct. R. 900 Child Custody and Allocation of Parental Responsibility Proceedings).

## **Nullity**

The procedural stages in an action for nullity are essentially the same as in an action for divorce.

## **Judicial Separation**

The procedural stages in an action for legal separation are essentially the same as in an action for divorce.

## **Religious Marriage and Divorce**

13. Are customary and religious marriages and divorces recognised in your jurisdiction?

A legal Illinois marriage must be:

- Licensed.
- Solemnised.
- Registered.

A marriage can be solemnised in accordance with the practices of any religious denomination, Indian nation or tribe or native group. If those practices require an "officiant," the officiant must be in good standing with the religion or tribe.

Both religious and civil marriages are recognised in Illinois as long as the marriage is also licensed and registered (Marriage Act (750 ILCS 5/209)).

A religious divorce granted in Illinois is not sufficient to dissolve a marriage, and a civil divorce must be obtained. A religious divorce granted outside the US may be recognised in Illinois under principles of comity if it is valid in the jurisdiction where it was obtained.

### **Finances/Division of Assets**

14. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

The Illinois property regime generally only directs courts to consider property owned by one or both parties. The courts will consider awards of property transferred to other individuals or entities if a party can prove a transaction that removed property from the marital estate was illusory, for example, due to fraud (*Johnson v. LaGrange State Bank*, 73 Ill. 2d 342 (1978)), or due to the use of a revocable trust (*In re Marriage of Frederick*, 218 Ill. App. 3d 533 (2d Dist. 1991)).

See [Question 8](#) and [Question 15](#).

15. What factors are relevant to the exercise of the court's powers?



Illinois courts assign each spouse's non-marital property (see [Question 8](#)) to that spouse (Marriage Act) (750 ILCS 5/503(d)) and divide marital property without regard to marital misconduct in just proportions considering all relevant factors, as well as the following specific factors:

- Each party's contribution to acquiring, preserving, increasing or decreasing the value of the marital property.
- The dissipation of marital property by either party, subject to a requirement that a party give notice of the intent to claim dissipation no later than 60 days before trial, or 30 days after discovery closes, whichever comes later.

The notice must state when the marriage started to irretrievably break down and identify the dissipated property and when the dissipation occurred. No dissipation will be deemed to have occurred earlier than three years after the party making the claim knew or should have known of the dissipation and not earlier than five years before the filing of a petition for dissolution of marriage.

- The value of property assigned to each spouse.
- The duration of the marriage.
- The relevant economic circumstances of each spouse when a division of property will become effective, including the award of the family home, or right to live in the family home for reasonable periods, to a spouse where it is also the primary residence of children.
- Any obligations and rights arising from a prior marriage of either party.
- Any pre- or post-nuptial agreement of the parties.
- The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- Custodial provisions for children ("parenting allocation").
- Whether the allocation of property is in lieu of or in addition to spousal maintenance.
- The reasonable opportunity of each spouse to acquire capital assets and income in the future.
- The tax consequences of the property division on the economic circumstances of each party.

An Illinois court can set aside a portion of jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, physical and mental health and general welfare of any minor dependent or incompetent child of the parties where necessary to protect and promote the best interests of children (750 ILCS 5/503(g)).

The marital home is divided in the same way any other property, whether by sale and division of proceeds or by award to either party. The need for children to remain in a home can impact the treatment of a home. The courts can order a sale of marital property with the proceeds to be applied as determined by the court (750 ILCS 5/503(i)).

See [Question 16](#).



16. What is the court's current position on the division of assets?

In apportioning marital property, courts must make the division equitable, and each case rests on its own facts. An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if this is warranted by the relevant factors (*In re Marriage of Romano*, 2012 IL App (2d) 091339, paragraph 121).

Under the Marriage Act, the court must consider "the contribution of a spouse as a homemaker or to the family unit" (750 ILCS 5/503(d)(1)). The intent of this provision is to allow the court to consider the nature and extent of homemaking contributions by women who have little, if any, experience working outside the home.

Disproportionate awards of marital property have been upheld where one party made substantial contributions and the other party made few contributions during the marriage (*In re Marriage of Guntren*, 141 Ill. App. 3d 1, 5 (4th Dist. 1986)).

Some case law provides more credit to the spouse who accumulated the financial aspects of the marital estate, and is therefore awarded a greater share of the marital estate (see, for example, *In re Marriage of McMahon*, 82 Ill. App. 3d 1126 (4th Dist. 1980) and *In re Marriage of Harding*, 189 Ill. App. 3d 663 (1st Dist. 1989)).

In contrast, in another case, the Appellate Court reversed a trial court's disproportionate property allocation where one party's financial contribution to the civil union's estate significantly exceeded the other's but the other party had created a "safe environment" for the business owner's entrepreneurial activities and risk-taking (*In re Civil Union of Hamlin and Vasconcellos*, 2015 IL App (2d) 140231).

The non-economic contribution to the marriage gains more importance as the duration of the marriage increases (*In re Marriage of Cecil*, 202 Ill. App. 3d 783, 791 (3rd Dist. 1990)). In a lengthy marriage, where one spouse was solely responsible for the accumulation of marital property but the other spouse raised the parties' children and contributed to the marriage as a homemaker, the court may apportion the marital property on a nearly equal basis (see for example, *In re Marriage of Polsky*, 387 Ill. App. 3d 126 (1st Dist. 2008)) and *In re Marriage of Heroy*, 385 Ill. App. 3d 640 (1st Dist. 2008)).

Further, in *In re Marriage of Romano*, 2012 IL App (2d) 091339, the trial court awarded the husband about 23% of the marital estate and 77% to the wife. While the husband was "to a great extent" responsible for creating the parties' lavish lifestyle, which could not continue, the court found the wife and the minor child should not experience a "drastic and immediate change" in circumstances where the husband had significant non-marital assets. In the circumstances, and in light of the factors set out in section 503(d) of the Act, the Appellate Court found no abuse of discretion in disproportionately distributing the marital assets.

### **Finances/Spousal Maintenance (Alimony)**

17. How does ongoing spousal maintenance operate following marital breakdown? Is maintenance awarded for a fixed term or on an open-ended basis? Is there a set formula or do judges have discretion over quantum and term?

### **Spousal Maintenance**

Spousal maintenance is determined by the court with direction and guidance from detailed statutory guidelines with regard to the amount and duration of the payments (Marriage Act (750 ILCS 5/504)).

The move to a more formulaic and guideline approach to maintenance (with the goal of achieving more predictability and consistency of outcomes) started in 2016 and has since been further refined. As the statute is relatively new (as well as due to the global pandemic), there is a lack of appellate case law interpreting the new statute.

Maintenance is common in Illinois in marriages of any duration, particularly where there are children born during the marriage.

A court can enter orders for temporary spousal support during the pendency of a case and before final judgment (750 ILCS 5/501).

## **Basis for Award**

Illinois courts consider several factors to first determine whether maintenance is appropriate. If maintenance is appropriate, a guideline formula set out in the Marriage Act (750 ILCS 5/504) is typically used to determine both the amount and the duration of the award. However, the courts have discretion to deviate from the guidelines, in which case the divorce court will use the statutory factors to determine the amount and duration of the maintenance award (see below).

A court must make a finding indicating their reasons for deviating from the guidelines.

In determining whether spousal maintenance is to be awarded, the court considers the following factors.

- The income and property of each party.
- The needs of each party.
- The present and future earning capacity of each party.
- The contribution of a spouse as a homemaker.
- Any impairment of the present or future earning capacity of the party against whom maintenance is sought.
- The time necessary for the party seeking maintenance to obtain education, training, and employment.
- The standard of living during the marriage.
- The duration of the marriage.
- The age and physical and emotional condition of both spouses.
- All sources of public and private income, including disability and retirement income.
- The tax consequences of the property division.
- Any contributions of one spouse to the other's education or career.
- Any valid agreements between the parties.
- Any other factor that the court finds to be just and equitable.

## Fixed Formula or Court Discretion

Once a court finds that maintenance is appropriate, the next determination is whether the statutory formulas will be applied to determine the amount and duration of the maintenance award.

**Amount.** The courts are directed to apply the statutory formula where the couple's combined gross yearly income is less than USD500,000. The statutory formula for the amount of spousal maintenance to be paid each year is one-third of the net income of the paying spouse, less 25% of the net income of the receiving spouse. Maintenance is capped at 40% of the couple's combined net income.

Where the combined gross yearly income exceeds USD500,000, courts have discretion to determine the amount and duration of the maintenance award by weighing the factors listed above under *Basis for Award*.

Even where courts decline to calculate maintenance using the same formula for income ranges beyond USD500,000 per year, they often still use the guidelines for determining the duration of the maintenance.

**Duration.** The duration of spousal maintenance is calculated as a percentage of the duration of the marriage, ranging from 20% of the duration of the marriage (for a marriage of less than five years) to 100% of the duration of the marriage or for an indefinite term (for a marriage of 20 years or more).

Despite the above percentages, courts typically determine maintenance as follows:

- For marriages under ten years, maintenance will continue for a fixed term then automatically terminate (known as "fixed term maintenance").
- For marriages of between ten and 20 years, maintenance will continue for a fixed term, at which point the court will review the situation and determine whether to extend the payments or terminate them (known as "reviewable maintenance").
- For marriages of over 20 years, maintenance will typically continue indefinitely until modified or terminated (known as "indefinite maintenance").
- Maintenance also terminates on the recipient remarrying or the death of the payer or of the recipient.

The standards for the termination or modification of maintenance (on a substantial change of circumstances of either the recipient or payer) are set out in 750 ILCS 5/510.

18. Is it common for maintenance to be awarded on marital breakdown?

Maintenance is common in Illinois in marriages of any duration, particularly where there are children born during the marriage. See [Question 17](#).

19. What is the court's current position on maintenance on marital breakdown?

See [Question 17](#).

## Finances/Child Support

20. What financial claims are available to parents on behalf of children within or outside of the marriage?

The Marriage Act allows for financial claims on behalf of any minor dependent or incompetent child of the parties, including for child support and for the establishment of a separate fund or trust for the child's support, maintenance, education, physical and mental health and general welfare (750 ILCS 5/503(g); 750 ILCS 46/802(d)).

Courts have the discretion to protect children's interests when the non-custodial parent is either unwilling or unable to make child support payments (*In re Marriage of Petersen*, 319 Ill. App. 3d 325, 343 (1st Dist. 2001)).

A parent seeking the imposition of a trust need not prove that the non-custodial parent has wilfully violated any order of court (750 ILCS 5/505; *In re Marriage of Gocal*, 216 Ill. App. 3d 221, 224-25, (1st Dist.1991); *In re Marriage of Hobson*, 220 Ill. App. 3d 1006, 1014 (4th Dist. 1991)).

21. On what basis is child maintenance calculated?

Child support is calculated according to guidelines using an "income shares" model. There is a rebuttable presumption that the amount resulting from the child support guidelines represents correct support (Marriage Act) (750 ILCS 5/505(3.3)).

The legislature intended basic child support obligations to reflect what parents who live together ordinarily spend on a child based on both parents' combined net incomes. The courts then allocate that cost proportionately to each parent based on the parent's net income.

Illinois computes the basic child support obligation by:

- Determining each parent's monthly net income.
- Totalling the parents' monthly net incomes to determine monthly combined net incomes.
- Selecting the corresponding appropriate amount from the Schedule of Basic Child Support Obligations based on the parents' combined monthly net incomes and number of children.
- Calculating each parent's percentage share of the basic child support obligation.

Both parents then have a monetary obligation, but the parent receiving the child support does not pay child support back to the other parent, as the courts presume they spend that money directly on the child.

The courts must apply the guidelines unless the court finds that doing so would be inappropriate after considering the child's best interests and evidence showing relevant factors that include:

- The financial resources and needs of the child.
- The financial resources and needs of the parents.
- The standard of living the child would have enjoyed had the marriage or civil union not been dissolved.
- The physical and emotional condition of the child and their educational needs.

The statute defines "income" and includes calculations for multiple families.

Illinois courts deduct spousal maintenance when calculating the child support obligation.

If an Illinois court finds a parent to be voluntarily unemployed or underemployed, the court will calculate child support based on a determination of the individual's potential income considering:

- Employment potential.
- Probable earnings level based on work history.
- Occupational qualifications.
- Prevailing job opportunities.
- Ownership of any substantial non-income producing asset.
- Earnings levels in the community.

In the absence of data, the courts apply a rebuttable presumption that the parent's potential income is 75% of the most recent US Department of Health and Human Services' Federal Poverty Guidelines for a family of one person.

A court can deviate from the child support guidelines if the application would be inequitable, unjust or inappropriate, accompanied by written findings giving reasons for the deviation.

Reasons for deviation can include:

- Extraordinary medical expenditures necessary to preserve the life or health of a party or a child of either or both of the parties.
- Additional expenses incurred for a child with special medical, physical or developmental needs.
- Any other factor the court determines should be applied after considering the child's best interests (750 ILCS 505(a)(3.4)).
- Healthcare needs not covered by insurance, such as unreimbursed medical, dental, orthodontic or vision expenses and prescription medications (750 ILCS 5/505(a)(4)).

Courts have discretion to determine child support in cases where the combined adjusted net income exceeds the highest level on the schedule (750 ILCS 5/505(a)(3.5)).

In addition to basic child support, a court can order the parents to:

- Contribute to the reasonable school and extracurricular activity expenses to enhance the educational, athletic, social or cultural development of the child, as well as childcare expenses (750 ILCS 5/505(a)(3.6) to 5/505(a)(3.7)).
- Provide healthcare insurance, including dental or vision insurance (750 ILCS 5/505(a)(4)).
- Maintain reasonably affordable life insurance for themselves to secure the child support obligations (750 ILCS 5/505(a-3)).

Unpaid child support accrues interest at the judgment rate established in 735 ILCS 12-109. Child support orders constitute a series of judgments vesting on the dates when due, meaning that vested instalments cannot be subsequently modified (750 ILCS 5/505(b)).

22. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

Illinois child support orders must include a date when the obligation terminates, which must be no earlier than the date of the child's 18th birthday (unless the child will not graduate from high school until after age 18, in which case the termination date must be no earlier than the earlier of either graduation from high school or reaching age 19) (735 ILCS 5/505(d), 5/505(g)).

Courts can impose obligations on either or both parents, or the estate of a deceased parent, to support higher education expenses for children over the age of 18 until the age of 23 (or the age of 25 where a good cause is shown) (750 ILCS 5/513). Such expenses can include the:

- Actual cost of the post-secondary expenses, including tuition and fees that do not exceed the amount of in-state tuition and fees paid by a student at the University of Illinois for the same academic year.
- Actual costs of child's housing, whether on or off campus that do not exceed the costs for the same academic year of a double occupancy student room with a standard meal plan in a residence hall operated by the University of Illinois.
- Actual costs of the child's medical expenses including medical insurance and dental expenses.

- Reasonable living expenses of the child during the academic year and periods of recess.
- The cost of books and other necessary supplies.

The obligation terminates if the child either:

- Fails to maintain a cumulative "C" grade point average, except in the event of illness or other good cause,
- Attains the age of 23 (or 25 where a good cause is shown).
- Receives their degree.
- Marries.

Courts awarding such expenses must consider the:

- Present and future financial resources of both parties, including savings for retirement.
- Standard of living the child would have enjoyed had the marriage not been dissolved.
- Financial resources of the child.
- Child's academic performance.

23. Can a child (whether of legal maturity or otherwise) make a claim directly against their parents?

Children do not have third-party beneficiary rights to a settlement agreement or judgment between the parties after trial, and are not entitled to file contribution petitions. However, the child can file a petition for contribution in the event of the death or legal disability of the party who would have the right to file a petition for contribution (750 ILCS 5/513(i)).

### **Enforcement of Financial Orders**

24. What are the main methods of enforcement to ensure compliance with financial orders following divorce/dissolution in your jurisdiction?

The methods of enforcement of financial orders include the following:



- Income withholding orders for both spousal support and child support (750 ICLS 28/5-60). The Income Withholding for Support Act allows for the direct withholding of support payments from employment income, and creates several penalties against the employer for failure to comply.
- The court has powers of contempt to enforce support orders and property awards (which includes the ability to incarcerate until the payment of a bond) (750 ILCS 5/511).
- Money judgments can be enforced through wage and non-wage garnishments, and securing liens on property (735 ILCS 5/12-801 to 5/12-819, 735 ILCS 5/2-1402).

25. What is the legal position on the reciprocal enforcement of financial orders?

Illinois generally recognises foreign divorce judgments and has adopted the Uniform Enforcement of Foreign Judgments Act.

### Financial Relief after Foreign Divorce Proceedings

26. What powers are available to the court to make orders following a foreign divorce? If such a power exists, what is the legal basis for making such an application?

The Marriage Act provides for the enforcement of foreign judgments for the dissolution, legal separation or invalidity of marriage (750 ILCS 5/511). Based on the principles of comity, a party can enforce a qualifying foreign judgment that is properly enrolled in Illinois, in the same manner as an Illinois judgment.

Illinois courts have no obligation to acknowledge or enforce a foreign divorce but generally do so under the concept of comity. The laws of the country afforded comity must be substantially similar and have substantially the same effect as Illinois law (compare *Hager v. Hager*, 1 Ill. App. 3d 1047, 1050 (4th Dist. 1971) with *In re Marriage of Muruges and Kasilingam*, 2013 IL App. (3d) 110228, paragraph 23)).

The courts treat foreign divorce decrees in the same manner as those under Illinois law, provided they meet the criteria for enforcement.

Marital settlement agreements bind the parties and the courts (*Blum v. Koster*, 235 Ill. 2d 21, 32 (2009)). As contracts, the rules governing the interpretation of contracts apply to marital settlement agreements (*In re Marriage of Murphy*, 359 Ill. App. 3d 289, 300 (3d Dist. 2005)).

A foreign order of protection issued by the court of another state, tribe or US territory is entitled to full faith and credit in Illinois and is enforceable in the same manner as any order of protection issued in Illinois.

## Children

### Custody/Parental Responsibility

27. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage? Do local courts in your jurisdiction recognise parenthood that has been established in another jurisdiction for the purposes of custody/parental responsibility, maintenance and so on?

### General Position for Custody/Parental Responsibility

Custody or "parenting allocation" is governed by section 600 of the Marriage Act (750 ILCS 5/600 to 5/610.5).

A person over the age of 18 cannot be subject to a parental allocation order.

Allocation of parental responsibility for decision-making is determined by the best interests of the child (750 ILCS 5/602.5). The determination turns on each case's facts and circumstances.

Relevant factors include:

- The wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making.
- The child's adjustment to their home, school and community.
- The mental and physical health of all individuals involved.
- The ability of the parents to co-operate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making.
- The level of each parent's participation in past significant decision-making with respect to the child.
- Any prior agreement or course of conduct between the parents relating to decision-making with respect to the child.
- The wishes of the parents.
- The child's needs.
- The distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to co-operate in the arrangement.
- Whether a restriction on decision-making is appropriate under section 603.10.

- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
- Any physical violence or threat of physical violence by a parent directed against the child.
- The occurrence of abuse against the child or other member of the child's household.
- Whether one of the parents is a sex offender, and if so, the exact nature of the offence and what, if any, treatment the parent has successfully participated in.
- Any other factor that the court expressly finds relevant.

See [Question 28](#).

The court can:

- Appoint a forensic expert in connection with custody and visitation issues.
- Interview the child *in camera* (750 ILCS 5/604.10).
- Appoint a guardian *ad litem*, child's representative or attorney for the child, who all serve in different capacities as advocates for the best interests of the child (750 ICLS 5/506).

## Parenthood Established in Another Jurisdiction

Illinois courts recognise parenthood that has been established in another jurisdiction. Federal law requires all states to give full faith and credit to paternity determined by any other state.

28. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

The court is required to consider the following factors when allocating parenting time:

- The wishes of each parent.
- The wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time.
- The amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under two years of age, since the child's birth.
- Any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child.

- The interaction and inter-relationship of the child with their parents and siblings and with any other person who may significantly affect the child's best interests.
- The child's adjustment to their home, school and community.
- The mental and physical health of all individuals involved.
- The child's needs.
- The distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to co-operate in the arrangement.
- Whether a restriction on parenting time is appropriate.
- Any physical violence or threat of physical violence by a parent directed against the child or other member of the child's household.
- The willingness and ability of each parent to place the needs of the child ahead of their own needs.
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
- The occurrence of abuse against the child or other member of the child's household.
- Whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offence and what, if any, treatment the offender has participated in.
- The terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the US armed forces who is being deployed.
- Any other factor that the court expressly finds to be relevant.

Grandparent visitation, as well as parenting time for siblings and step parents is expressly authorised in appropriate circumstances (such as where a biological parent has died, is incompetent or incarcerated) (750 ILCS 602.9).

## International Abduction

29. What is the legal position on international abduction?

Illinois applies US federal law on international abduction, as stated in the HCCH Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention) and implemented by the International Child Abduction Remedies Act (ICARA). (42 U.C.S. 11601). Illinois courts also apply the:

- International Child Abduction Remedies Act (22 U.S.C. 97).
- Federal Parental Kidnapping Prevention Act (PKPA) (28 U.C.S. 1738A).

A parent can file an action either in the United States District Court of proper venue or in the Domestic Relations Division of a circuit court of proper venue. The Department of State, Office of Children's Issues acts as the central authority on these matters.

## Leave to Remove/Applications to Take a Child Out of the Jurisdiction

30. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

Illinois law prohibits the relocation of minor children where there is no agreement between the parents or a court order (750 ILCS 5/609.2). The predominant emphasis in deciding relocation cases in Illinois is "the best interests of the child" based on relevant factors. These factors include:

- The reasons for seeking or opposing the move.
- The history and quality of the relationship between the child and the custodial and non-custodial parents.
- The educational opportunities for the child in each location.
- The presence or absence of extended family in each location.
- The wishes of the child.
- The impact of the move on the quantity and quality of future contact with the non-custodial parent.
- The degree to which the custodial parents' and the child's lives may be enhanced economically, emotionally and educationally by the move.
- The feasibility of preserving the relationship between the non-custodial parent and the child through suitable visitation arrangements.

(*In re Marriage of Eckert*, 119 Il. 2d 316 (1988); 750 ILCS 5/609.2.)

## Surrogacy and Adoption

### Surrogacy Agreements

31. What is the legal position on surrogacy agreements in your jurisdiction? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

Illinois law sets out requirements under 750 ILCS 47/ for the use of surrogacy and reproductive contracts, as follows:

- A surrogate must be at least 21 years old, have given birth to at least one child, complete medical and mental health evaluations, undergo legal counselling and obtain health insurance.
- The intended parents must contribute at least one of the gametes, present a physician's affidavit as to their medical need, complete a mental evaluation and undergo legal counselling.
- The parties to the surrogacy must sign a contract witnessed by competent adults before any medical procedures begin, with both being by advised separate counsel.

The rights of the intended parents vest on birth.

The statute imposes a duty of support on the intended parents. No action invalidating an otherwise compliant surrogacy can be made after 12 months from the child's birth.

There are no restrictions on who can be an intended parent other than the statutory criteria. Surrogacy is available to individuals and cohabiting couples, and to both heterosexual and same-sex couples.

## Adoption

32. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

The Illinois Adoption Act (750 ILCS 50/) governs adoption proceedings. The statute distinguishes between related-party adoptions and those where the adoptive parent does not have a prior relationship with the child. The statute governs:

- All aspects of adoption, including petition requirements, notice, definitions, procedures and investigations.
- Intrastate, interstate and international adoptions.

There are no restrictions on who can be an adoptive parent other than the statutory criteria. Adoption is available to individuals and cohabiting couples, and to both heterosexual and same-sex couples.

## Cohabitation

33. What legislation (if any) governs division of property and financial claims for unmarried couples on the breakdown of the relationship?

No legislation governs the division of property for unmarried couples on the breakdown of the relationship. Illinois expressly rejects any concept of common law marriage.

## Family Dispute Resolution

### Mediation, Collaborative Law and Arbitration

34. What non-court-based processes exist to resolve disputes? Is alternative dispute resolution mandatory? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Illinois allows the use of a variety of out-of-court alternative dispute resolution (ADR) methods. While local court rules may make ADR mandatory in parenting matters, it is not mandatory in property division and support matters. The courts will enforce agreements reached through such methods, provided they comply with the statutory requirements.

35. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

Illinois statutes governing alternative dispute resolution methods include:

- The Uniform Arbitration Act (710 ILCS 5/1).
- The Uniform Mediation Act (710 ILCS 35/1).
- The Collaborative Process Act (750 ILCS 90/). Collaborative processes can be used in all types of disputes that arise in family law matters other than actions under the Juvenile Court Act or open matters with the Illinois Department of Children and Family Service.

- The Marriage Act (750 ILCS 5/508), which requires an attorney and client to participate in ADR in relation to fee disputes unless one of them opts out of the process.
- Rules of the circuit courts that require parties to mediate parenting matters or financial matters before litigation.

Whether formally or informally, most Illinois courts do not allow parties to engage in mediation on parenting matters.

## Civil Partnership/Same-Sex Marriage

36. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

Illinois law allows for both marriage and civil unions (750 ICLS 75/1 to 75/90). The process for the dissolution of a civil union and substantially similar to that of a dissolution of a marriage (750 ILCS 75/45). See [Question 12](#).

## Media Access and Transparency

37. What is the position regarding media access to and press reporting of family law cases?

There is a constitutional presumption of public access to court proceedings in Illinois. Until recently, Illinois had no statute, rule or other authority to counter this presumption other than in adoption proceedings and sexual abuse trials involving minors.

The public can attend all proceedings other than adoption proceedings and proceedings subject to protective orders that exclude the public from the proceedings.

A party opposing public access must establish that there is a compelling interest favouring a closed file and that any protective order is drafted in the least restrictive manner possible to overcome the common law presumption of access (*Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 231 (2000)).

In proceedings to allocate parental responsibilities, a parent can apply for an order to exclude the public from the hearing on the basis that a public hearing could be detrimental to the child's best interests.

Even if an exclusion order is granted, the court can admit any person having a direct and legitimate interest in the case or a legitimate educational or research interest in the court's work, but only with both parties' permission and subject to court approval.



The court can also make an appropriate order sealing the records of any interview, report, investigation or testimony (750 ILCS 606.5).

## Succession Rights on Divorce/Dissolution

38. How does divorce impact succession and estate planning in your jurisdiction?

Under the law of Illinois, a spouse is entitled to inherit the deceased's estate on intestacy. This right is extinguished by divorce. On divorce, any prior will is automatically interpreted so that the former spouse will inherit nothing under it.

If a spouse is intentionally left out of a will when the parties remain married, they have no recourse against the estate.

Spousal maintenance terminates on the death of the payer.

Child support obligations do not automatically cease on the death of a parent. Illinois courts can order sums out of the estate of a deceased parent to support a child.

## Controversial Areas and Reform

39. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

There are currently no areas of the law undergoing major change given recent efforts to update the Marriage Act and related statutes.

Controversy surrounds whether to implement a presumption of 50/50 parenting time in child custody cases.

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- *Profiled as an "Elite Esquire" by Sheridan Road Magazine.*
- *Chicago Lawyer, "Finding Success in Succession Planning".*

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