



PROTECTION ORDER HANDBOOK

This Protection Order Handbook was developed by Legal Aid of Nebraska, a private, non-profit law firm that provides legal services to low-income Nebraskans. If you would like more information about Legal Aid of Nebraska, or if you would like to make a donation, please visit our website at www.legalaidofnebraska.com.

If you would like to apply for services please call:

- **AccessLine® at 1-877-250-2016**
For Spanish - Press #2
Monday & Wednesday 9 a.m. – 11 a.m. CST
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Friday 9 a.m. – 12 p.m. CST

Important Disclaimer

Use of this informational Divorce Handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska's attorneys. The information provided to you through this Handbook is intended for educational purposes only. Nothing in this Handbook should be considered legal advice or as a substitute for legal advice.

Please understand that the information contained in this Handbook is based upon generally applicable Nebraska law. Some laws and procedures may vary depending on which county in Nebraska you live and the specifics of your case. If you want legal advice about your specific issue you must consult an attorney in your area.

PROTECTION ORDERS

The definition of “domestic violence” can be very broad. The legal definition of domestic violence is very specific.

Nebraska law defines domestic violence as violence between:

- People who live in the same household;
- People who used to live in the same household;
- People who are dating;
- People who used to date each other; and
- People who have a child together.

Violence is defined as “intentionally:”

- Trying to cause bodily harm;
- Causing bodily harm;
- Putting another person in fear of bodily harm; or
- Sexual assault.

People who live or used to live in the “same household” are:

- Spouses;
- ex-spouses;
- Children;
- People who do live together;
- People who used to live together;
- People who have a child together, even if they never married or lived together;
- People who are dating; and
- People who used to date.¹

A “protection order” is a special kind of court order. The order is issued by a judge. The order is directed to someone who hurt or threatened to hurt a member of the same household.

A person who asks for a protection order is the “petitioner.” The person who has to respond to the protection order petition is the “respondent.”

A protection order tells the respondent to stop hurting or threatening to hurt a member of the same household. A protection order also can tell a respondent to:

- Not contact the other party in any way;
- Leave a home where the other party lives;
- Stay away from where the other party works;
- Stay away from other places where the other party might be; and

¹*Neb.Rev.Stat.* §42-903(3)

- Give the petitioner custody of children for a short period of time. ²

A judge can make any order needed to keep the petitioner safe.³ Sometimes that depends on the facts of the case.

When Should I get a Protection Order?

That question cannot be answered in a legal handbook. There are places you can call or go to that **can** help you answer the question.

Please go to the Nebraska Domestic Violence Sexual Assault Coalition’s website to find help from an agency in your area. The website is: <http://ndvsac.org/get-help/>.

If you are in Douglas County, you can call the Women’s Center for Advancement (WCA) or Catholic Charities.

- The WCA has a 24/7 Crisis Hotline. The telephone number is 402-345-7273
- Catholic Charities can be reached at 402-558-5700.

If you are in Sarpy County, you can call Heartland Family Services (HFS).

- HFS has a 24/7 Crisis Hotline. The number is 800-523-3666.

If you are in Pottawattamie County, you can call the Phoenix House.

- The number is 712-328-0266.

What Can a Local Domestic Violence/Sexual Assault Program Do for Me?

Your local program can help you:

- Figure out whether a protection order is right for your situation;
- Provide confidential support and information 24 hours per day;
- Arrange for a safe place for you to stay;
- Provide emergency transportation to shelters, court hearings or medical appointments;
- Go with you to court;
- Go with you to a hospital emergency room to get treatment for physical or sexual assault; and
- Make referrals for your other immediate needs.

Please see Appendix A to this handbook for a list of social service agencies in Nebraska that provide services to victims of domestic violence.

² *Neb.Rev.Stat.* § 42-924(1).

³ *Id.*

Where do I go to Fill-out a Protection Order?

You go to your local Clerk of the District Court's Office. Every Clerk of the District Court has protection order forms. The Clerk of Court can give you the forms. The Clerk of Court cannot help you fill out the forms.

There are many agencies that work with victims of domestic abuse. Check the list of programs in Nebraska at the back of this booklet. You can get help to fill out the forms at a local domestic violence program.

When you apply for a protection order you fill out 2 forms:

- A petition; and
- An affidavit.

An affidavit is a statement you make under oath. The oath is a promise to tell the truth. A copy of the Petition and affidavit can be found at the back of this handbook. *See Appendix B.*

What Information do I need when I go to fill-out the Protection Order?

You need the following information:

- Photo identification;
- The other party's home or work address;
- The other party's age;
- A physical description of the other party;
- Whether you have been a party in any other court cases;
- Your address;
- Your date of birth;
- The names of your children; and
- Specific information about the threat or harm that happened.
 - When did the threat happen?
 - On what day were you hurt?
 - What happened that led up to the threat?
 - What led up to the other party hurting you?
 - Are you afraid of the other party; and
 - Information about other threats or times the other party has hurt you.

There is no cost to file a protection order. You can get help to fill out the forms at a local domestic violence program. Check the list of programs in Nebraska for a program near you, at the back of this booklet.

What Happens after I fill-out the form?

The Clerk of the District Court will watch you sign the petition and affidavit. The Clerk will notarize your signature. The Clerk of Court will file the petition and affidavit.

A judge must review your petition. After the judge reads your petition, the judge will decide whether to issue a protection order, issue an order to show cause or deny your request.⁴

There are 2 kinds of protection orders:

- Orders issued before a hearing; and
- Orders issued after a hearing.

Orders issued before a hearing are called “*ex parte*” orders. Judges enter *ex parte* orders when it looks like the petitioner is in immediate danger. *Ex parte* orders are temporary orders.

The judge may issue an order to “show cause.” The order will tell the both parties to show up at a particular time and date to explain “why” the court should or should not enter the protection order.

The sheriff will try to find the other party to serve him/her with the *ex parte* or “show cause” order. The other party can ask for a hearing on the order. The other party must ask for this hearing within 5 days of the date the sheriff served him/her with the *ex parte* or “show cause” order.

If the other party asks for a hearing the judge will schedule a hearing. For an *ex parte* order, the hearing must be scheduled within 30 days of the day the judge got the party’s request for a hearing.⁵ If the other party asks for a hearing, the judge will let you know the date and time of the hearing. If the other party does not ask for a hearing the protection order is granted automatically. The protection order is effective for one year from the date it was filed.

For a “show cause” order the hearing must be held within 14 days of the day the order to show cause is filed with the Clerk of the District Court. **You must go to the hearing. If you do not go to the hearing the judge will dismiss or deny the protection order. At the hearing you must show why the protection order is needed**

The other party must go to the hearing too.

⁴ *Neb.Rev.Stat.* § 42-925.

⁵ *Id.*

Can I Contact the Other Party After I fill out the Petition and Affidavit?

It is not a good idea to contact the other party. The other party will use your contact as proof that you are not afraid of him or her.

What Happens at the Hearing?

It is hard to go to court and face someone who scares you. There are many agencies in Nebraska who have advocates to go to court with you. The advocate is there to keep you company and help you feel safe. The advocate cannot talk with the judge or the other party. Check the list of programs in Nebraska at the back of this booklet to see if there is a domestic violence agency near you. Call the agency and ask for help.

When you get to the courthouse, ask the Clerk of Court where the hearing will be held. Go to the judge's courtroom. Go into the judge's office, if you can, and let the judge's bailiff know you are in the courtroom.

Expect that the other party will be at the hearing. Do not talk to the other party. If the other party has an attorney you do not have to speak with the attorney.

The judge will come into the courtroom. The judge will "introduce" the case. You asked for the protection order. That means you will testify first.

The judge may or may not place you under oath. You testify as to what happened. When you are in court you are talking to the judge. You are not talking to the other party.

Tell the judge what happened. Give the judge as many details as you can remember. It is important to describe how you felt when you were hurt or when the other party threatened you.

At the hearing you must prove that:

- The other party physically hurt you; or
- The other party threatened to hurt you and is capable of carrying out the threat; and
- You are afraid of the other party.

Ask the judge to accept your affidavit into evidence. If you have medical records, ask the judge to admit those records into evidence. If you have text messages, print them out ahead of time. At the hearing, ask the judge to admit those texts into evidence.

The other party might speak under his/her breath while you are testifying. The other party might interrupt when you are testifying. Do not pay attention to the other party. Keep talking to the judge.

The judge might have some questions for you. Answer the judge's questions truthfully. If you do not know the answer to a question, say so.

When you are finished speaking the judge will let the other party talk. Do not speak under your breath when the other party is testifying. Do not interrupt the other party. Do not speak to the other party.

The judge may have questions for you after the other party is finished speaking. You will still be under oath. Answer the questions truthfully.

When everyone is finished talking the judge will make a decision. The judge will either grant the protection order or deny the protection order.

If the judge grants the protection order, the order will spell out what the other party cannot do. For example, the order might tell the other party:

- Not to contact you in person;
- Not to contact you by phone;
- Not to go to your home; and/or
- Not to go to your place of work.

If the judge grants the protection order, do not leave the courtroom. Ask the judge how you can get a copy of the protection order. The Clerk of the District Court should give you 2 certified copies of the protection order.

If you are afraid the other party will still be at the courthouse, ask the Clerk of Court for an escort to your car. A deputy sheriff should be available to walk you to your car.

If the judge grants the protection order, it is valid for one-year. The year begins to run from the date the order was first entered. If an *ex parte* order was entered before a hearing, the year begins to run from the date the *ex parte* order was filed.

Carry a copy of the protection order with you at all times.

What Happens if the Other Party Violates the Protection Order?

If the other party violates the order call the police. Call the police each time the other party violates the protection order. It is a crime to violate a protection order. 6

Can I Dismiss the Protection Order?

Yes. To get a protection order dismissed go to your local Clerk of the District Court. Ask the Clerk for a “Motion to Vacate” the Protection Order.

What is the Difference between a Harassment/Protection Order and a Protection Order?

The big difference is the presence of violence. To get a protection order you must have been:

- Harmed;
- Sexually assaulted; or
- Someone must have threatened you with bodily harm or sexual assault and be capable of carrying out the threat. ⁷

Harassment orders are meant to protect against a different kind of harm, including stalking. Harassment is:

- A pattern of conduct;
- Directed at a specific person;
- That terrifies, threatens or intimidates the person; and
- That does not serve a legitimate purpose. ⁸

⁷ *Linda N. o/b/o Rebecca N. v. William N.*, 289 Neb. 607, 856 N.W.2d 436 (2014)

⁸ *Neb.Rev.Stat.* § 28-311.02(2)(a).

WHERE TO GO FOR HELP IF YOU CANNOT AFFORD AN ATTORNEY

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Some resources are:

LOW-INCOME LEGAL SERVICES

LEGAL AID OF NEBRASKA

legalaidofnebraska.org

If you cannot afford an attorney you can call Legal Aid of Nebraska's AccessLine® to see if you qualify for assistance. You cannot apply online. To complete an application, call:

- 402-348-1060 AccessLine® if you live in the Douglas Co. area
- 1-877-250-2016 AccessLine® if you live outside the Douglas Co. area
- 1-800-527-7249 Elder AccessLine® if you are 60 and over
- 1-800-729-9908 Native American AccessLine® if you are Native American
- 1-855-916-4540 Breast Cancer Legal Hotline if you are breast cancer patient or survivor
- 1-800-464-0258 Farm Ranch Hotline for farmers and ranchers
- 1-855-307-6730 Nebraska Immigration Legal Assistance Hotline (NILAH)
- 1-844-268-5627 Disaster Relief Response Hotline for victims of recent disaster, such as tornado, flood or train derailment

LAW SCHOOL LEGAL CLINICS

UNIVERSITY OF NEBRASKA COLLEGE OF LAW CIVIL CLINICAL LAW PROGRAM

<http://liferaydemo.unl.edu/web/law/academics/curriculum/clinics>

A limited number of cases are accepted by the UNL Civil Clinical Law Program. Clients are represented by students under the supervision of College of Law faculty. The telephone number is 402-472-3271.

CREIGHTON UNIVERSITY SCHOOL OF LAW LEGAL CLINIC

<http://www.creighton.edu/law/clinics/civillawclinic/index.php>

For Douglas County residents only. A limited number of cases are accepted by the Creighton Legal Clinic. Clients are represented by lawyers assisted by third year law students. To complete an application for assistance call the Clinic at 402-280-3068 between 9:00 a.m. and 4:00 p.m. Monday through Friday.

SELF-HELP RESOURCES

NEBRASKA SUPREME COURT SELF-HELP FORMS

<http://court.nol.org/self-help/>

The Nebraska Supreme Court has developed a form to use for terminating a child support order.

Self-Help Centers

- **Lincoln (Lancaster County)**

Open Thursdays 9:00 am – 1:00 pm.

The Self-Help Desk is located off the Jury Lounge on the third floor at the Lancaster County Courthouse at 575 South 10th Street in Lincoln. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

- **Omaha (Douglas County)**

Open Mondays & Wednesdays from 10:00 a.m. to 2:00 p.m.

The Self-Help Desk is located in the Douglas County Law Library. Follow the connector-hallway between the Douglas County Courthouse and the 1st Floor Hall of Justice, 17th and Farnam in Omaha. For questions or further information, call the Library at 402-444-7174. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

- **Norfolk (Madison County)**

Open the third Friday of the month from 10:00 a.m. to 2:00 p.m.

The Self-Help Desk is located on the north side of the Courthouse, 1313 North Main Street in Madison. Individuals needing assistance should check-in with the Clerk of the District Court's Office (first office at the courthouse entrance). No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

- **Hall County Self-Help Desk:** Open Fridays from 10:00 a.m. to 2:00 p.m.

The Self-Help Desk is located on the lower level of the Hall County Courthouse (across from Courtroom #3) at 111 West First Street in Grand Island. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

- **Scotts Bluff County**

Open the first and third Thursdays of the month from 11:00 a.m. – 1:00 p.m.

The Self-Help Desk in Scottsbluff County is located in the Scotts Bluff County Courthouse. No appointments are needed and individuals are offered assistance on a first-come, first-served basis.

LEGAL AID OF NEBRASKA'S ACCESS TO JUSTICE (A2J) CENTERS

Legal Aid of Nebraska's A2J Centers are self-help centers where low-income people can access legal resources including computers, forms, and self-help clinics.

Omaha

Located at 209 S. 19th Street on the second floor. The A2J Center is open:

Monday – Thursday 1:00pm to 4:00pm.

Call 402-348-1069, or toll-free at 1-888-991-9921, or visit our website at legalaidofnebraska.org to find out more information. *The hours the A2J Center is open may vary.*

Lincoln

Located at 941 'O' Street, Suite 800, Lincoln, NE. The A2J Center is open:

Monday and Wednesday 1:00pm to 4:00pm

Friday 9:00am to 12:00pm

Call 402-435-2161, or toll-free at 1-800-742-7555, or visit our website at legalaidofnebraska.org to find out more information. *The hours the A2J Center is open may vary.*

LIBRARIES

STATE LIBRARY

<http://www.supremecourt.ne.gov/state-library/index.shtml>

You can go to the State Library if you need access to legal resources including using the internet to do legal research. The State Library is located in room 325 at the State Capitol Building in Lincoln. The telephone number is 402-471-3189.

PUBLIC LIBRARIES

Your local public library may have some resources and public access to computers and the internet. To find your local library you can visit <http://www.publiclibraries.com/nebraska.htm>.

UNIVERSITY OF NEBRASKA COLLEGE OF LAW LIBRARY

<http://law.unl.edu/library/>

The UNL College of Law Library is located on the east campus of UNL. The Law Library has one public access computer for members of the public to conduct legal research. The general telephone number to the law school is 402-472-2161.

CREIGHTON UNIVERSITY LAW SCHOOL LIBRARY

<http://www.creighton.edu/law/library/>

The Creighton Law School Library has public access computers available for legal research. Reference assistance is also available. The general library telephone number is 402-280-2875. The Law Library is open to the general public with legal research needs from 7:00 a.m. to 7:00 p.m. Monday through Friday while school is in session. Hours may vary during breaks and over the summer. It is located in Omaha on the corner of 21st and Cass Streets on the second floor of the Ahmanson Law Center.

REFERRAL SERVICES

Referrals to private attorneys are available. Private attorneys may charge for their services.

OMAHA BAR ASSOCIATION LAWYER REFERRAL SERVICE

The service refers callers to private practicing attorneys in Douglas and Sarpy counties. For more information call 402-280-3603 or visit their website at:

<http://omahabarassociation.com/lawyerreferral.asp>.

Personal Safety Plan
A Checklist for Living Free of Domestic Violence

If Violence Happens....

If you are home and an argument becomes dangerous:

- Leave your home;
- Take your children with you;
 - Go to a friend or family member's house, or
 - Go to a shelter;
- If you have been hurt:
 - Go to a doctor or hospital;
 - Take pictures of your injuries;
- If you cannot leave;
 - Do what the abuser wants;
 - Allow the abuser to calm down;
 - Stay close to a room with a door to the outside; and
 - Avoid bedrooms, bathrooms or kitchens.

Safety When Preparing to Leave....

- Open a savings account in your own name;
- Get a safe address, such as a P.O. Box;
- Pack a bag with:
 - money,
 - an extra set of car and house keys,
 - important documents, and
 - clothes;
- Leave the bag with someone you trust;
- Have a place to go; and
- Figure out who can loan you money if you need it.

Safety at Home....

- Change your locks or add new locks;
 - If you rent, tell your landlord about this;
- Talk with your children about a safety plan for when you are not with them;
- Tell your neighbors and landlord your partner does not live with you anymore;
- Do not put outgoing mail in your mailbox;

- If you have a locked mailbox, change the lock;
- Keep your protection order with you at all times;
- If the protection order covers the children, leave a copy of the order at their school or day care;
 - Tell the school and day care who can pick the children up;
- Change your phone number;
- Do not call your abuser from your new number;
- Keep a diary of all contact with your abuser; and
- Call the police if the abuser breaks the protection order and contacts you.

Safety While Using Technology....

- Create a new e-mail account;
- Save and print out any messages your abuser sends you;
- Use a public computer;
 - Your home computer has a history of your searches. Public libraries have computers for the public to use.
- Protect or change your e-mail and voice mail passwords;
- Protect or change your PIN numbers;
- Check with your service provider to see if the location service is activated on your phone;
 - Have the location feature turned “off;” and
- Do not give anyone your social security number unless it is necessary.

Safety outside the home....

- Change your travel routes often;
- Shop in different locations;
- Cancel all joint credit cards;
 - Open an account in your name only;
- Close joint bank accounts;
 - Open an account in your name only;
- Keep your protection order with you at all times;
- Tell your co-workers, your boss and security at your place of work about your situation;
- Let your calls at work go to voice mail or get caller ID for your work phone; and
- Walk with a co-worker to your car or the bus stop after work.

Safety for your Pets....

- Keep emergency provisions for your pet;
- Keep a phone number for the nearest emergency veterinary clinic;
- Establish ownership of your pet;
 - Get a pet license;
 - Have a vet put your pet's medical records in your name;
 - Keep a copy of your pet's records;
- Pack a bag for your pet and include;
 - Food;
 - Medicine;
 - Toys; and
 - Bedding;
- Find the name of a shelter for your pet;
- Keep your pet indoors as much as possible;
- Do not leave your pet outdoors alone;
- Pick safe routes and times to walk your pet;
- Do not walk your pet alone; and
- Tell your vet or kennel that you want to keep the location of you and your pet confidential.

