

2016 Changes to the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"): What you need to know.

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The IMDMA Changes became effective on January 1, 2016 and cover:

1. All cases filed after January 1, 2016;
2. All pending cases and proceedings after January 1, 2016, including modifications to a Judgment and/or Order previously entered (pending cases and post-decree)

Appeals not included if underlying issues were addressed prior to January 1, 2016.

1) 'Custody' no longer exists. 'Custody' has evolved into 'Allocation of Parental Responsibility'.

- a) Allocation of parental responsibility requires the allocation of decision making authority on the following:
 - i) Educational Decisions;
 - ii) Medical Decisions;
 - iii) Extra-Curricular Decisions; and
 - iv) Religious Decisions.
- b) Notwithstanding the removal of 'custody', the Parenting Plan (see below) must specify which parent has the majority of the parenting time.

2) The 'Parenting Plan'.

- a) Under 750 ILCS 5/602.10 all dissolutions with unemancipated children are required to have Parenting Plans detailing the allocation of parental responsibilities. (see above)
- b) Within, but not later than, 120 days after the Petition for Dissolution is filed a temporary parenting plan must be submitted by the parties to the Court.
- c) In the event the parties cannot come to an agreement on a Parenting Plan, each party will submit their own proposed Parenting Plan and the Court will be required to choose (How? Who knows?)
- d) For good cause shown, the time for filing of the parenting plan/proposed parenting plan may be extended by the Court.
- e) Caretaking functions such as who does what and when, transportation, notifications, nutritional needs, discipline, social development, moral and ethical guidance, and alternative care of the child(ren) are micromanaged.

3) Visitation? What visitation? I have parenting time!

- a) Parents are allocated parenting time under a Parenting Plan.

4) Right of First Refusal becomes the default law of Illinois.

- a) The Court can and will consider whether the Right of First Refusal is to be awarded to the parent, or presumably another party, if the parent in possession of the child will/needs to/wants to leave the child(ren) with another person for a “significant” period of time.
- b) Problems WILL arise. What is significant? Who are these other people? Babysitters? Au Pair? Grandparent? Aunts? Uncles? How is this enforced?

5) Can I move? Relocation under 750 ILCS 5/600(g).

- a) Relocation within and from Cook, DuPage, Kane, Lake, McHenry, or Will Counties: Relocation is now the “Change of residence from child’s current primary residence located in counties of Cook, DuPage, Kane, Lake, McHenry, or Will to a new residence within Illinois that is more than 25 miles from child’s current residence.” (750 ILCS 5/600(g)(1))
- b) Therefore, relocation is NOT a move in or from Cook, DuPage, Kane, Lake, McHenry, or Will Counties of less than 25 miles regardless of whether or not the move increased the travel time required for parenting time.
 - i) For example: Dad moves children from Evanston to Oak Brook. This may be 25 miles (depending on how the calculation is made), but the travel time could now reach 1.5-2 hours of driving.
 - ii) What if the move is done in a purposeful effort to thwart parenting time?
 - iii) How do you measure 25 miles? As the crow flies? Via main roads? Shortcuts? What about traffic?
- c) Relocation within and from ‘Other’ Counties: “Change of residence from Child’s current primary residence location in any other county to a new residence within Illinois that is more than 50 miles from the child’s current primary residence.” (750 ILCS 5/600(g)(2)).
 - i) Would this mean a move of 49 miles would be OK?
 - ii) See above b.ii and b.iii.
- d) Relocation when moving outside of Illinois with the child: “Change of residence from child’s current primary residence to a residence outside the borders of Illinois that is more than 25 miles from the current primary residence”
 - i) For example: Lake and McHenry Counties border Wisconsin. A parent with physical possession of a child may now move the child out of state without the permission of the other parent so long as they remain within the 25 mile radius of the child’s current primary residence.
- e) But I want to move more than 25/50 Miles!!!
 - i) ***The parenting requesting the relocation must provide written notice of the intent and file the notice of intent with the Court at least 60 days prior to the requested/anticipated relocation date.***
 - ii) ***The non-relocating parent must object in writing to the proposed relocation.***
 - iii) What happens now that there has been notice and a written objection? Who knows? It is likely there would be a Motion to Relocate (or similar) and the relocation would proceed forward through litigation (or collaboration, mediation) means as before this change in law.

6) Truth in Reporting: Those Financial Affidavits better be right, provided properly, and have the correct supporting documentation.

- a) There will be a state wide Financial Affidavit and requirement of certain supporting documentation. (Final version yet to come)
- b) Upon the motion of a party, the Court can hold a hearing on any discrepancies between the Financial Affidavit and the supporting documentation.
- c) If a party intentionally, recklessly, or (I believe) negligently files an inaccurate or misleading Financial Affidavit, the court shall impose significant penalties **and** sanctions, including, but not limited to, attorney's fees and costs.
- d) But, you better not file that Financial Affidavit or supporting documentation or you may trigger sanctions against the filing party. Possibly the attorney?

7) Messing around with maintenance even more.

- a) The Court now must consider the "realistic" present and future earning capacities of the parties.
- b) The Court may now consider all sources of income in the calculation of maintenance. Specifically "all sources of public and private income including, without limitation disability and retirement income". What is private, public income?
- c) Findings on why the maintenance was set at the level it was set will be necessary. Why? How? Where do they go?

8) Property issues.

- a) Valuation dates now need not be the date of trial or the date the Judgment for Dissolution of Marriage is entered. The parties can agree on a different date. Good luck getting on agreement on this....
- b) No more "Acquired in Anticipation of Marriage". The property, usually a home, belongs to the person on title.
- c) Codification of case law in 750 ILCS 5/503(a)(6.5) on non-marital businesses, pre-marital business

9) College is about to get a lot more expensive.

- a) The court can now order the parent(s) to pay for up to five (5!) college applications, the full costs of two standardized college entrance/admission exams, and a college exam preparatory course/class.
- b) The Court can order the parents to complete the FAFSA and any and all other financial aid forms in a timely manner.
- c) The Court can Order college contributions up to age 23 or 25 if good cause is shown.

10) No more 'Heart Balm' remedies. The only grounds available for a dissolution of marriage are now irreconcilable differences. There will no longer be the option to allege alienation of affections, breach of promise to marry or criminal conversation. A small piece of legislative

support to the long held attorney argument that court is not the place to work out your relationship issues making Illinois a pure no fault state.

11) Venue, aka “Where do we file” and “Can I/we file somewhere where no one knows us?”

a) A party used to be able to file a Petition for Dissolution in a county in which they did not reside, and keep the case in that county, unless the other party objected or the Court kicked them out. This is no longer the case and the Petition for Dissolution of Marriage must be filed in the county in which either the Petitioner or Respondent resides unless, upon a proper petition and affirmative waiver of the court, a Court of inappropriate jurisdiction accepts the case.

12) Six (6) Months is the magic number. Illinois no longer has the two (2) year mandatory separation period or six month waiver. There is an irrefutable presumption the requirement of irreconcilable differences has been met after a six month separation.