



12 COMMON MISCONCEPTIONS REGARDING NEW JERSEY DIVORCE LAW



THE MICKLIN LAW GROUP LLC

EMPOWERING MEN IN DIVORCE & FAMILY LAW ISSUES

The internet and social media offer all of us access to a wealth of information. Unfortunately, a lot of the information about divorce that is found online is wrong, inaccurate, or out of date, especially for men and fathers in New Jersey who are thinking about leaving their spouse.

Don't fall prey to divorce misconceptions. Here's the truth behind 12 of the most common myths.



MISCONCEPTION #1:

I NEED TO BE SEPARATED BEFORE A DIVORCE

There are many legal reasons why you can file for divorce in New Jersey: 18-month separation, extreme mental physical cruelty, sexually deviant behavior, substance addiction, irreconcilable differences, adultery, abandonment, desertion, institutionalism, and imprisonment. Each has a waiting period and proof elements. For a long time, 18-month separation has been the closest option to a “no fault” divorce. All other provisions required proof of a “bad act.” So, historically, 18-month separation was the easiest to prove prior to the adoption of irreconcilable differences.

“Irreconcilable differences” requires a six-month waiting period and no physical separation. One must only be able to say, “Irreconcilable differences exist that cause the breakdown of marriage for at least 6 months.” These differences can be almost anything. The courts are generally not interested in the details of the conflict. Clearly, this is a better option for many couples than waiting to divorce for 18 months.

MISCONCEPTION #2: IF I LEAVE MY HOUSE, I WILL “ABANDON” IT

It is true that abandonment can be grounds for a divorce, but this has no effect on any of the assets in which you have a financial interest. You do not abandon an asset simply by moving out. You may have walked away from the marital home, but you have not walked away from your financial interest in the asset. Additionally, leaving the home where your children live because you are getting divorced does not indicate to a judge that you don't want or deserve split custody of the kids.

MISCONCEPTION #3: PRENUPTIAL AGREEMENTS ARE ONLY FOR THE WEALTHY

Certainly these agreements help those that have acquired significant assets before marriage. However, prenuptial agreements help all couples about to marry. Many believe that a prenuptial agreement is a healthy, positive thing for a couple. Exchanging financial information and outlining resolutions early is healthy. Without one, you face these difficult issues when the relationship is strained and finances are difficult. Having a prenup doesn't mean that your marriage is any more likely to end in divorce, and it certainly doesn't “doom” your union.



MISCONCEPTION #4: **PRENUPTIAL AGREEMENTS DON'T HOLD UP IN A DIVORCE**

As long as both people getting married were not under duress when they wrote and signed a prenup, it is legally binding. The only other reason a judge might toss out a prenuptial contract is if it can be proved one of the people is shown to have been deceptive about their assets and debts prior to the wedding. However, it is true that postnuptial agreements may be more heavily scrutinized during divorce. This is why we recommend getting a prenup out of the way and not waiting until you're already married to create this type of document.



MISCONCEPTION #5: **I CANNOT GET ALIMONY BECAUSE I WAS MARRIED FOR LESS THAN 10 YEARS**

There is no hard and fast rule for when alimony can be granted. A judge will award alimony based on many factors. Alimony assists a spouse who lost the opportunity to advance their career during the marriage. It helps that spouse in maintaining a comparable lifestyle to that of the marriage. A court can consider a spouse's respective ability to pay, the duration of the marriage, the age and health of the parties, the marital standard of living, earning capabilities and employability, and equitable distribution of marital property when determining alimony.

As stated above, no set time exists for alimony. However, the longer the marriage, the more likely a person will receive longer-term alimony. A long-term marriage of 20 years or more may warrant permanent alimony. Alimony laws in NJ were updated in 2014 with the passing of the Alimony Reform Act of 2014. Stricter laws for alimony are in place, and "durational" alimony exists. Alimony can only be granted for the number of years a couple was married if the marriage lasted for less than 20 years (unless under exceptional circumstances). However, courts must still consider the

MISCONCEPTION #6: **LEGAL SEPARATION IS A FIRST STEP TO DIVORCE**

People will often ask about legal separation. New Jersey does not recognize legal separation. We have something called a “divorce from bed and board,” also referred to as a “limited divorce.” This divorce resolves financial issues without severing the legal marital contract. In essence, the parties remain technically married and cannot remarry, but resolve their financial aspects. This divorce is commonly utilized by people who cannot seek a full divorce due to their religion or people who need to continue medical insurance and may be unable to obtain it once they are divorced. But since New Jersey divorce law does not recognize a “legal separation,” it’s not a first step toward divorce.



MISCONCEPTION #7: **A CUSTODIAL PARENT CANNOT LEAVE THE STATE OF NEW JERSEY WITH THE CHILDREN WITHOUT THE OTHER PARENT'S PERMISSION**

This is inaccurate for two reasons: first, any parent can leave the state with their child if “custody is not an issue.” Typically, this means if there is not and has not been any litigation involving the children with regard to custody, parenting time, or child support. If neither parent ever brought the other parent to court about the child or children, either is free to come and go. To be otherwise would prevent parents from taking children on vacations or even to New York for the day. When it comes to extended vacations, absent any issues in the past of parental alienation or interference, the custodial parent only needs to show the itinerary for the trip and the return day.



MISCONCEPTION #8:

A SPOUSE CANNOT RECEIVE ALIMONY IF HE/SHE COMMITS ADULTERY DURING THE MARRIAGE

That is generally incorrect. New Jersey's alimony statute, NJSA 2A:34-23(b) sets forth 14 different criteria for a judge to consider when awarding alimony. They include:

- The actual need and ability of the parties to pay;
- The duration of the marriage or civil union;
- The age, physical and emotional health of the parties;
- The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;
- The earning capacities, educational levels, vocational skills, and employability of the parties;
- The length of absence from the job market of the party seeking maintenance;
- The parental responsibilities for the children;
- The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- The history of the financial or non-financial contributions to the marriage or civil union by each party, including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
- The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

- The income available to either party through investment of any assets held by that party;
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;
- The nature, amount, and length of pendente lite support paid, if any; and
- Any other factors which the court may deem relevant.

As a hard and fast rule, the statute does not list adultery in the criteria to consider. Basic statutory construction states that, if the legislature intended it to be a factor, they would have included it. It is possible that alimony could be a factor included within the catch all of factor number 13. However, the family court, being a court of equity or fairness, probably shouldn't ever increase one's alimony award because of that same spouse's adultery.



MISCONCEPTION #9: COMMON LAW MARRIAGES ARE THE SAME AS A REGULAR MARRIAGE

Many people believe that they have a common law marriage if they have been together, living as spouses, for several years. This is incorrect because New Jersey does not recognize common law marriage. In New Jersey, there is no such thing as a common law marriage where a couple live together but never get a license or are married by a judge or religious figure. Regardless of how long or short you've been living with your spouse or partner, in the eyes of the law you were not married. This may be good news for men who hope to walk away after a breakup with all of their own assets, but unfortunately, you may still need to get the law involved if you and your ex are fighting over who owns what.



MISCONCEPTION #10: MY EX CAN'T MOVE OUR KIDS OUT OF STATE WITHOUT MY PERMISSION

Issues relating to a permanent relocation do need the court's approval, but one can seek the court's permission if they cannot acquire the other parent's permission. What needs to be proven depends on the type of shared custody. In a typical 50/50 (or close to it) parenting time schedule, the custodial parent needs to prove that the move is in the child's best interest, there's a good-faith reason for the move, and that it will not harm the child or the child's relationship with the non-custodial parent. In the case of a true shared physical custodial arrangement, the parent that seeks to relocate needs to establish that it is in the child's best interest.

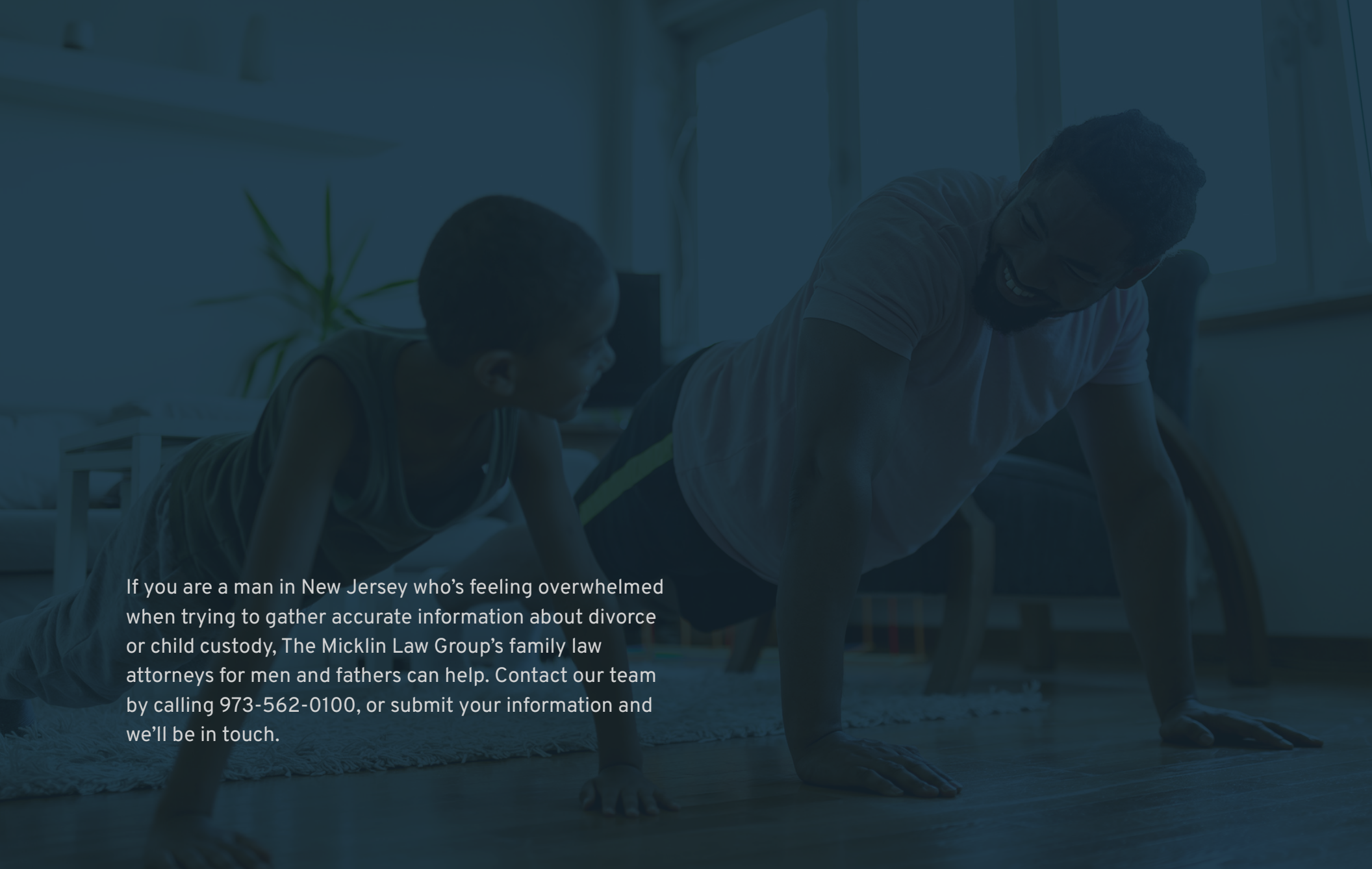
MISCONCEPTION #11: **A FATHER NEVER GETS CUSTODY OF THE CHILDREN**

Traditionally, that has been the case. But there are a growing number of divorce cases in New Jersey where fathers have been awarded full custody. A judge will want to know why a father would be a better custodial parent than the mother, and they will generally only consider it if the child is in danger of being abused or neglected in some way by the other parent. This could be for many reasons: excessive physical punishment, drug and alcohol abuse, and even bringing unsafe people around the children. We have argued successfully on behalf of fathers who wanted to be the custodial parent, but it's important to know that the judge will consider every aspect of the child's life to ensure their ruling is in the child's best interest.



MISCONCEPTION #12: **DIVORCE IS ALWAYS A LENGTHY AND EXPENSIVE PROCESS**

Divorces can drag on sometimes, but this doesn't have to be the case. Assuming you aren't divorcing a narcissist who wants to make things as difficult as possible, your divorce can be settled relatively quickly and without shelling out big bucks. Working with an attorney during your divorce is the best way to settle things quickly. It may sound counterintuitive to pay someone if you want to keep costs down, but it's much quicker to negotiate with your spouse when you have attorneys, and you don't risk doing something incorrectly. There are ways to keep your costs down; the best solution is to have as low-conflict of a divorce as possible. This decreases the number of hours your attorney will work on your case, so it will be more affordable.



If you are a man in New Jersey who's feeling overwhelmed when trying to gather accurate information about divorce or child custody, The Micklin Law Group's family law attorneys for men and fathers can help. Contact our team by calling 973-562-0100, or submit your information and we'll be in touch.