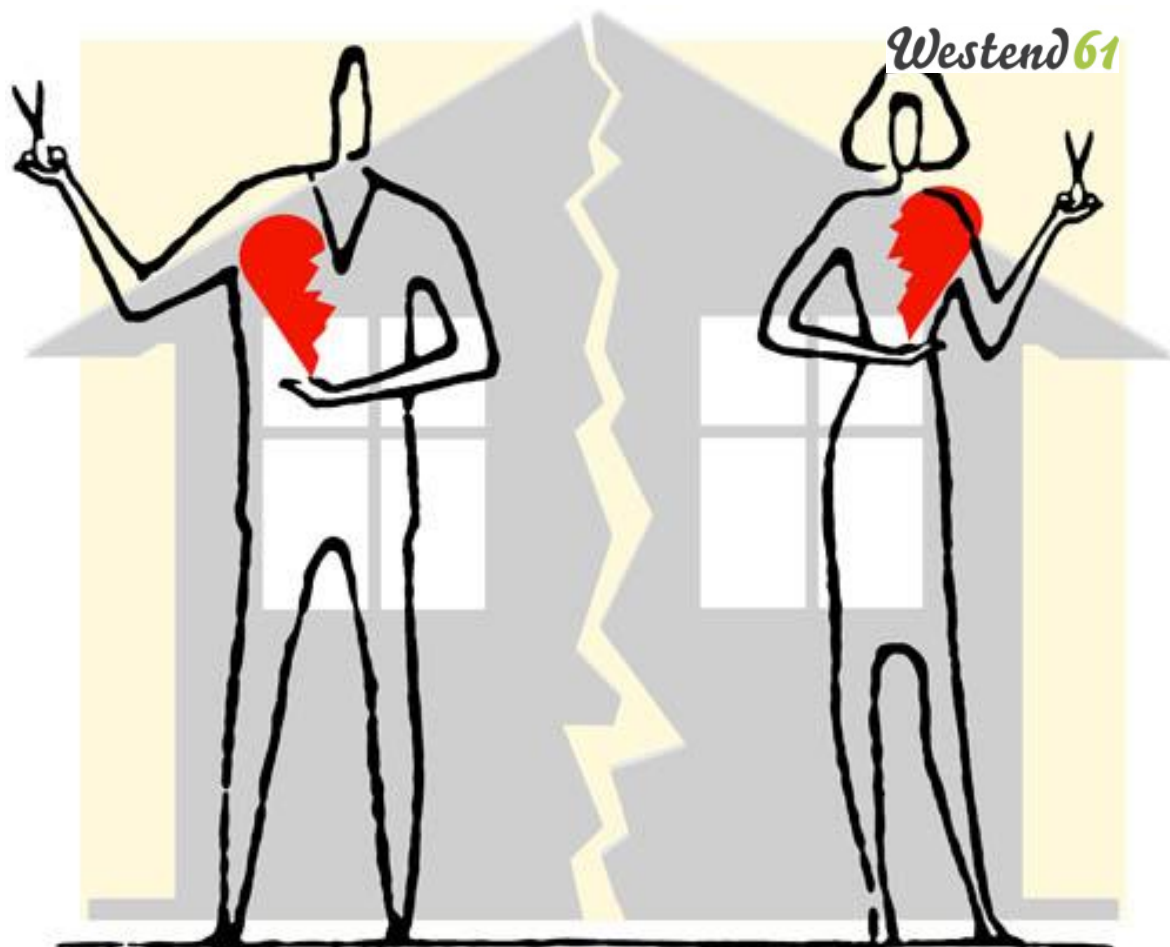


e-advisor

Separation & Divorce



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When parents separate, what remains is a bond: The children!

This statement and attitude is in the focus of our work as well as of the first e-guide "Separation & Divorce". We cover the following topics: crisis & opportunity, marriage & partnership, custody, child support & calculation, assets & pension fund, housing & household goods, debts, divorce & costs, courts, other legal consequences, help & advice, sources, templates & forms.

We wish you a successful and peaceful co-operation / separation.

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Foreword

Apart from the typical emotional (or even financial) burdens, a separation or divorce means a changed legal status with all the related issues. In order to be able to protect one's rights as a husband and father, it is necessary to know them and, if necessary, to enforce them.

This e-guide to separation - divorce, made available here to a broad audience, on the one hand provides an up-to-date overview of legal information in the context of separation and divorce; on the other hand, it also aims to discuss and evaluate different variants of contemporary forms of care in the context of custody.

All e-guides of Männerfragen are updated and supplemented as needed and are always available to download in the most current version at e-ratgeber.li. The date of the respective version can also be found at the bottom of each page.

We are confident that this e-guide on separation and divorce will help and provide orientation. Given the variety of questions that arise in practice, it is not possible to discuss all conceivable difficulties. Therefore, this guidebook cannot and does not replace individual counselling and support by qualified experts at specialised offices, law firms or government agencies, but it complements them in a useful way.

If you see the page number

- in a circle on the right-hand edge of the page, this means that the page was downloaded in full from our homepage as an e-guide;
- in a triangle, this means, that the sheet was downloaded from our homepage as a chapter.

We wish you and your family a good time together!

1 Crisis & Chance

1.1 Practical example: My wife wants a divorce

"I am 45 years old and have been married to my wife for eleven years. I generally thought our marriage was okay, but tonight my wife told me, that she wants a separation because she doesn't love me anymore. She said there was no other man involved. A certain routine had crept into our marriage, but I think that's normal after all this time. Our sex life had pretty much fallen apart lately, to which we are both to blame. I'm falling into a deep hole right now, I never expected anything like this. I feel totally overwhelmed with the situation."

From one second to the next, long-tested life plans can shatter. Even though separation and divorce are unfortunately the norm today, they represent a drastic experience for those affected - for both men and women. Often the entire world view collapses; the abandoned person reacts with grief, pain, anger and self-doubt. Physical and psychological complaints are typical accompanying symptoms. Separations and divorces are rarely uncomplicated. Harmful words and insults experienced by the ex-partner tempt each other to fight and to wash "dirty laundry".

Most affected are the children, who react with fear or guilt to the separation of their parents. This is where a lot of empathy and understanding is needed from both parties. All those who are thinking of separating or who have to deal with a separation should make a serious effort to do justice to the best interests of the children and deal with them fairly. Particularly in matters of custody and especially in contact arrangements, parents should show a willingness to compromise and always cooperate and stand up for the concerns and needs of their children. Those who seek support from the child- and youth-service (Office for Social Services) and counseling centers, demonstrate good will.

1.2 Tips in case of separation

Tip 1: *Set new goals*

When the separation is inevitable, it is time to process the pain, deal with the new situation and accept it as it is. The question of which partner is more or less responsible for the break-up does not help. More importantly, is how you shape the new phase of your life. So get out of the perpetrator-victim way of thinking. Shaping things yourself, setting yourself new goals and coming to terms with yourself should be a priority.

Tip 2: *Negotiate good agreements*

Since a separation or divorce agreement may form the basis for shaping the entire future life of both partners, one should carefully consider what one wants to agree upon and what consequences the agreements will have in the future. The importance of financial issues, often cause people to overlook the fact, that contact rights to the children must also be formulated with greatest care. If communication between the parents is incomprehensible, they are often interpreted unilaterally and the children, for example, have to suffer from arrangements that don't work. The more generous and stable the contact between children and the separated parent is agreed upon, the more likely it is that the threat of alienation will be prevented. A rigorous turning away of a child from one parent, with simultaneous attention to the main caring parent (Parental Alienation Syndrome PAS) can be observed especially when the children are "programmed" or influenced accordingly. This is definitely not in the best interest of the child.

Tip 3: Clarity in communication

Despite clear agreements, it happens that one side does not stick to them. What if the ex-wife is negligent in dealing with the children or tries to use her power against the father of the children? Then it is time to communicate clearly. If the best interests of the child seem to be at risk, action must be taken, if necessary with the involvement of child- and youth-services (youth welfare office) or in court.

Tip 4: Share responsibility for the children's daily tasks

Especially in the classic residential model, where - as a rule - the father can only visit his children about every second weekend, it becomes apparent that he is cut off from the children's normal everyday life. Contact with the children including overnight stays benefits closer ties, than daytime contact. But children should benefit from the parenting influence of both parents, which is more possible in normal everyday life than during weekends. Fathers should therefore also be able to be involved with their children during the week, e.g. by helping with homework, everyday conversations and more. Many studies show that this strengthens their role as fathers.

Tip 5: Use counselling services

Men feel just as overwhelmed in crisis situations as women. In order to be able to tackle all the problems associated with a separation or divorce, Liechtenstein offers a wide range of legal or psychosocial counselling services (see Chapter 12).

2 Marriage & Partnership

2.1 Dissolution of marriage

Marriage may be terminated in Liechtenstein by:

- annulment
- divorce
- separation

2.1.1 Declaration of invalidity

The marriage may be declared invalid by the court, in particular if it was entered into, solely for the purpose of acquiring citizenship, or the purpose of residence. In addition, for other serious reasons, such as bigamy, consanguinity, impotence, deception or the like.

2.1.2 Divorce

2.1.2.1 Divorce by mutual consent

The marriage can be annulled by mutual consent of the spouses if they have been married for at least one year and both parties consider the marriage to be broken. In order to avoid rash divorces, it is necessary for the spouses to have agreed in full, on all the ancillary consequences of the divorce (children, maintenance, property, marital home, household goods). The reasons for divorce do not have to be presented to the court, as the fault for the failed marriage is not relevant.

The spouses can file a joint request for a divorce by mutual consent with the court. At the divorce hearing, the parties are questioned both separately and jointly.

If the court is assured, that the request for divorce and the divorce agreement are based on the free will of both parties, then the agreement can be approved. The divorce is pronounced by way of order.

2.1.2.2 Divorce based on separation

In the event, that the spouses do not agree on the consequences of the separation an action for divorce may be considered, if the marital community has been dissolved for at least three years. Dissolution of the marital community is understood to mean, that the spouses' personal points of contact have largely been eliminated, even if they still live together but no longer share a common household or a common life plan.

2.1.2.3 Divorce on grounds of unreasonableness

A spouse may file for divorce before the expiry of the three-year period if he or she cannot reasonably be expected to continue the marriage for substantial reasons. The decisive factor is always, whether the effects are nevertheless felt in an unreasonable manner despite living apart. Recurrent threats, stalking, severe physical attacks or constant humiliation as an expression of disrespect towards the partner are substantial reasons that can justify unreasonableness.

In all divorce variants, the consequences of separation (maintenance, children, housing, assets, etc.) must be settled. If no divorce agreement is reached within the proceedings, the court decides on the points of dispute or can order judicial mediation.

2.1.3 Marital separation

Marital separation takes place under the same conditions and according to the same procedure as divorce. In contrast to divorce, however, the marriage bond remains in place, i.e. the spouses are still considered to be married. The judicial separation decision loses its effect if the separated spouses resume the marital union and jointly notify the court thereof.

2.2 Dissolution of a cohabitation (partnership)

A man and a woman enter into a concubinate agreement informally. The legislator does not establish rules for justification or cohabitation. This can also be terminated informally. Maintenance obligations for the partner or other secondary consequences of the separation (e.g. property issues) are not triggered unless they have already been regulated in a cohabitation agreement for the case of separation.

2.3 Dissolution of a registered partnership

Regarding the dissolution of a registered partnership, the Partnership Act basically follows the regulations of the Marriage Act. This can take place upon joint request or by legal action (after living apart or due to unreasonableness). As in the case of divorce or separation, the collateral consequences (maintenance, housing, assets, pension fund, etc.) must be settled. If no amicable settlement is reached, the court decides in the dissolution decree.

Unlike the Marriage Act, the lawsuit can already be filed after one year of separation (dissolution of the domestic partnership). The regulations of the divorce proceedings apply to the dissolution proceedings correspondingly.

3 Custody & best interests of the child

3.1 Definitions

3.1.1 Parental custody

This includes care and parenting, property management and legal representation of underage children. If possible, parents should exercise parental custody by mutual agreement. Parents must have the best interest of their underage children at heart, i.e. provide them with care, security and a careful upbringing. Violence towards children is inadmissible.

3.1.2 The best interests of the child under the law is understood to be

- "adequate provision of food, medical and sanitary care and housing";
- "care, security and protection of the child's physical and mental integrity"
- avoidance of violence;
- careful upbringing and support in accordance with the child's "aptitudes, abilities, inclinations and development potential";
- "appreciation and acceptance of the parents";
- consideration of his or her opinion "according to his or her understanding and ability to form opinions";
- ensuring "reliable contact and secure ties with both parents and important attachment figures" and avoiding conflicts of loyalty;
- safeguarding of property and other claims and interests of the child. (§ 137 b ABGB).

Apart from the parents, other persons who have a family relationship with the parent (e.g. adult siblings, new spouses or partners) must do everything reasonable to protect the child's welfare, e.g. to take the child to the doctor or hospital in case of illness. This right and duty to represent the parent with custody "in matters of daily life" is of course also available to the non-custodial parent if the child (lawfully) stays with him or her, e.g. if the child falls ill during a contact weekend.

3.1.1 Who may represent the child?

Even in cases of joint custody, the principle of **individual representation** applies, i.e. each parent alone is entitled and obliged to represent the child vis-à-vis third parties. This act of representation (e.g. conclusion of a mobile phone contract) is legally effective, even if the other parent does not agree to it. This also means that a third party must accept the act of representation of each parent with custody: e.g. the signature of a parent with custody who concludes a mobile phone contract for his or her child, registers the child for kindergarten, a holiday camp or the like, is sufficient.

Only such measures as

- name changes
- changes of nationality
- joining or leaving the church
- transfer to foster parents
- contracts of apprenticeship, training or services
- acknowledgement of paternity
- transfer of residence abroad

require the full consent of the other parent with custody in order to become legally effective.

3.2 Joint or sole custody

3.2.1 Standard case: joint custody

In Liechtenstein, joint custody has been the rule since 1 January 2015. Irrespective of this, it can be stated, that the child's remaining contact with both parents is considered an essential advantage. Good communication and willingness to cooperate on behalf of the parents, is a prerequisite for the success of joint custody. Joint custody has a relieving effect on the parents.

3.2.2 Exceptional case: sole custody

Sole custody is predominantly a practice, if the child's mother is unmarried or is in conflictual relationships and serious experiences of violence between the parents. In the case of sole custody, a rather conflict-exacerbating effect on the post-marital parenting situation can be observed. This is generally the case, if fathers are not sufficiently informed or are given hardly any opportunities to participate in the decision-making process for their children.

3.3 Custody arrangements depending on marital status

3.3.1 Custody of unmarried parents

In the case of unmarried parents, the mother of the child is entrusted by law with sole custody. The parents have the possibility to agree on joint custody together in writing and have to have it confirmed by the court or have to obtain it unilaterally by filing an application with the court.

3.3.2 Custody during marriage

If the parents are married to each other, both are entrusted with custody (legal rule).

3.3.3 Custody after separation

Parents living separately, have to determine, with which parent the child should mainly reside or by whom the child should mainly be cared for. If the parents cannot agree on a custody arrangement, the court decides on the disputed points or orders a court mediation.

3.4 New regulation of guardianship

3.4.1 From sole to joint custody (participation)

By agreement:

If only one parent is entitled to sole custody - either by law (in the case of unmarried couples) or, based on a court decision - the parents can agree on joint custody. The agreement requires a court approval in all cases. In doing so, the court has to examine whether the parents are willing and able to perform the tasks associated with custody by mutual agreement and whether the agreement is in the best interests of the child.

On application:

If the child's mother is the sole custodian under the law, the child's father may apply to the court for joint custody. The court must grant the application, if the best interests of the child do not conflict with joint

custody.

It is more difficult if the parents have previously had sole custody based on an agreement or a court order. In these cases, the court will only grant an application if the changed living conditions bring an added value for the best interests of the child, compared to the previous sole custody.

3.4.2 From joint to sole custody (withdrawal - restriction)

By agreement:

If the parents agree, that in future - for whatever reason - only one parent is to exercise custody, they can make an agreement to this effect with the court. They can also restrict custody to certain matters or agree on the division of care.

On application:

If one parent seeks sole custody, he or she can apply to the court for the termination of joint custody. Custody can be restricted or withdrawn, if parents (or one parent) endanger the best interests of the child, i.e. grossly neglect the child; expose the child to dangerous situations; deprive the child of necessary medical treatment or appropriate education; or if a joint custody arrangements don't work in practice, due to a conflictual relationship between the parents.

3.5 Rights & Duties in Custody

3.5.1 Right to determine the child's place of residence

The parent with custody rights is entitled to determine the child's residence. If it has not (yet) been determined, in whose household a child is to be mainly cared for, the child's residence may only be moved abroad with the consent of both parents or with court approval. This always applies even if both parents are entrusted with joint custody.

3.5.2 Right to information and expression

A parent who does not have custody rights, also has the right to be informed of important matters, but also of all other essential measures affecting the child (such as change of residence in Austria or abroad, choice of education), and to be informed in due time, so that he or she has the opportunity to express his or her opinion within a reasonable time-period. If the parent with custody does not respond to the other parent's statement, the other parent can file an application with the court. For example, if it is a question of whether a certain educational path is in the best interests of the child or whether another proposal, e.g. one suggested by the father, is better suited to the wishes and inclinations of the child.

3.5.3 Right of contact

The relationship with both parents is an essential right of the child.

It is newly regulated, that regular personal contacts corresponding to the needs and age of the child, are both a right and a duty of the parent not entrusted with custody. The contacts are to be arranged in such a way, that a close relationship can be secured or established. The needs and wishes of the child should be considered in accordance with its age. Adolescents from the age of 14 can participate in a consensual contact arrangement themselves or file an application for contact arrangements with the court.

When it comes to contact between the child and the separated parent (usually the father), there are constant points of contact between the parents. Old hurts and grievances or strongly divergent ideas on parenting issues often have a negative effect on the parents' cooperation. If the fronts between the parents

are not too hardened, it is advisable to seek professional help from neutral mediators, especially in regard to contact (see point 12).

In particularly serious cases, contact can be restricted or prohibited altogether, e.g. violence towards the child, the main caring parent is persistently badmouthed or belittled and the like. If one parent pays too little or maintenance too late, this has no influence on the contacts. Contact that has been agreed or ordered in court, can also be enforced, as long as the best interests of the child are not endangered.

As the relationship between the parents is often emotionally charged during separation phases, contact between parents and child can also suffer. If contact does not work out, contact accompaniment can be considered by court order. Accompanied contact is particularly appropriate to protect the child (from violence, abduction, etc.), to re-establish contact after a prolonged separation or to facilitate the handover of the child. Accompanied contact is usually ordered by the court and implemented by the Child and Youth Service (ASD) or on its behalf by the Assisted Living Association (VBW).

For the parents, a good **code of conduct** is required, i.e. both parents must refrain from anything that could hinder or impair the child's relationship with the other parent. If contact with the child is impeded or even prevented, the court can make "appropriate orders", such as orders to enable contact up to the point of withdrawal of custody, as the ultimate measure (ultima ratio).

3.6 Childcare models

In this section, the ideal-typical models of childcare will be discussed and evaluated. It should be noted that sometimes, there is a fluid transition between the classic standard model, the "residence model" and the "double residence or alternating model". The courts must take into account the different forms of care, since child maintenance does not only depend on the ability of the debtor to pay maintenance, but primarily on the care model practiced by the parents.

3.6.1 Residence model - center of life with A, visiting contact with B

The classic/traditional model. The children remain with the parent who has mainly taken care of them in recent years, i.e. mostly with the mother. The father is granted contact rights (formerly: visitation rights). General practice, is a more or less broadly fixed contact on every second weekend (e.g. Friday evening - Sunday evening). It makes sense to split up the holidays, public holidays and bridge days, to arrange contacts during the week, specific school or sporting events, etc. The father has the right of contact with the child. The visitation agreement should also include, when it is possible for young children to stay overnight, during visits.

- + If custody is practiced fairly by both parents together, the residence model is a reliable solution.
- + Fixed routines and stability, with sufficient contact by the other parent, especially in baby and toddlerhood.
- The decreasing relationship to the other parent (usually the father). One of the two parents has far less of the child, he or she does not take part in "normal" everyday life during the week, or only to some extent.

3.6.2 Dual residence or alternating model - children live alternately with F and M

The care times of both parents are approximately the same in the alternating model. A main residence must be determined for the child, the child benefit goes to one parent. Whether the change takes place every

three days, every week or always after two weeks depends on the individual needs and experiences. It is also common for parents to step-in flexibly.

Prerequisites for the model to work:

- 1) a positive, stable relationship between the children and both parents;
 - 2) a good basis for discussion and a willingness to cooperate on behalf of both parents;
 - 3) different educational attitudes of the parents should not be an obstacle;
 - 4) the parents' homes should be close to each other, so that the children can reach kindergarten or school from both locations. We owe this to our children, don't we?
- + It is ultimately the consistent implementation of the children's right to family life with both parents, equal rights for men and women, the compatibility of family and work; and joint parental responsibility at eye level.
 - + The risk of parent-child alienation is minimized, the multiple burden and tendency towards poverty of single parents (usually mothers) is counteracted.
 - A feeling of brokenness, if any, arises in the child.
 - In addition, the child's need for flexibility in individual cases is often subordinated to strict adherence to the care times, that are necessary for the implementation of the alternating model.

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3.6.3 Nest model - children stay in one home, parents take turns caring for them.

This model can be a good transitional solution, especially directly after a separation. At present, it is rarely practiced as a permanent solution. It requires a two- or three-flat solution. The children live in their home as before, in their traditional environment, the parents take turns using this "nest" and look after the children there, and the rest of the time (when the other is responsible for looking after them) they spend in their own separate or shared second home. The additional flat gives each parent their own space and retreat.

- + It is advantageous for the children to keep their familiar environment. They can keep their friends, continue to have the same school route and do not have to commute constantly.
- + The additional flat gives each parent their own space and retreat.
- Additional financial burden, if the parents have to finance two or three flats.

4 Support

4.1 Child support

The parents must contribute to the maintenance of a child proportionately according to their best efforts, considering the child's aptitudes, abilities, inclinations and possibilities for development.

The obligation to support the child exists until the child is able to support itself:

- Own income of any kind (not only earned income) reduces the maintenance claim.
- The parent who runs the household in which the child lives thereby provides maintenance (maintenance in kind).
- The other parent is obliged to pay a maintenance contribution (monetary maintenance) as far as he or she is able to do so.
- Childcare in one's own household is therefore generally considered by the law as a full maintenance contribution by the parent who looks after (or mainly looks after) the child and is treated in the same way as the payment of monetary maintenance.

If the person obliged to pay maintenance is unable to do so, for example due to incapacity to work, the parent providing care must also pay for the lack of financial means. If both parents are unable to pay, the grandparents are to be called upon, as long as they do not jeopardize their own maintenance.

The amount of maintenance depends on the one hand, on the age and needs of the children and, on the other hand, on the income and (other) care obligations of the person liable to pay maintenance. For the calculation of reasonable maintenance, the percentage method is usually used, which takes the net income of the parent working full-time, as the basis for assessment. Although used in practice, the percentage method has no legal basis. In this respect, it is to be understood as an upper limit of the debtor's ability to pay maintenance.

Accordingly, a father of a child has to pay a percentage of his net income for his child aged

- up to 6 years 16%
- 6 - 10 years 18%
- 10 - 15 years 20%
- from 15 years 22%

until the child becomes self-supporting.

If there are several dependent children, 1 % (under 10 years) or 2 % (over 10 years) per child is to be deducted from the percentages above.

In case of further competing duties of care (e.g. for the mother of the children), these percentages are reduced by a further 1 - 3 % per child.

4.1.1 When is a child capable of self-support?

One is capable of self-support, when one has completed vocational training or studies. However, the child must also be given a reasonable amount of time to find a job. A course of study should be completed in the usual average time for the respective field of study; a one-time change of study or training, if the initially chosen course of study does not correspond to the child's inclinations and aptitude, does no harm. However, if a child has already completed vocational training and then wishes to study, the parents are then only liable to pay maintenance in special cases, for example if the child is particularly suitable for the course of study and greatly improved career opportunities are to be expected after a degree.

If the income situation changes significantly, the child maintenance can be adjusted. An increase in maintenance can be considered, if the child's father earns a significantly higher income or if the child has greater needs as it grows older.

A reduction in maintenance can be requested, if the child's father earns a lower income, has additional care obligations or the child entitled to maintenance has a creditable own income. An apprentice's salary, for example, would have to be credited to a child entitled to maintenance or its mother entrusted with custody.

4.1.2 What are considered special needs?

Special needs are expenses that exceed the average need, i.e. such costs that are incurred only exceptionally. These are expenses for health and personal development (training, talent, promotion, education). For example, the following are recognised:

- Boarding school (only if there is no equivalent institution in Liechtenstein).
- Acquisition costs; e.g. for a computer that is necessary for the education.
- Learning therapy
- Speech therapy
- Musical instrument for a particularly gifted child
- Necessary school events that serve school purposes; e.g. language holidays that are necessary for school graduation

In addition, there are special medical expenses, such as

- Dental adjustment and special treatments
- Glasses
- special foods due to illness
- ...

as far as they are not reimbursed by the IV (disability insurance) or health insurance. The special needs are to be carried proportionally by the parents, i.e. the parent who mainly cares for the child can demand 50% of the part of the treatment costs not reimbursed by the health insurance from the other parent in addition to the current child maintenance.

Such expenses, which are not specifically related to the person of the child, but are usual for leisure activities (school trips, bicycle, tennis or skiing equipment, sports shoes, etc.) are already to be considered in the assessment of the normal maintenance and are therefore in principle to be paid from the current maintenance. From this, savings for such larger purchases must be made on an ongoing basis.

When covering special needs, it must always be taken into account that the person obliged to pay maintenance has an income left over, so that he or she can still satisfy his or her own needs. Generally, the more a special need is prevalent, the more likely it is, that the debtor will be burdened with it.

4.2 Spousal maintenance

4.2.1 Assessment criteria

Maintenance must be paid to the other spouse if the latter cannot support himself or herself. The Marriage Act lists several criterias for the duration and assessment of maintenance:

- division of duties in the marriage
- duration of the marriage
- age and health of both spouses

- income and financial circumstances
- occupational potential
- childcare etc.

In the case of a childless short marriage (less than five years), there is generally no claim to maintenance, since as a rule no "marriage-related disadvantages" have occurred. Such marital disadvantages, on the other hand, are always to be assumed if one spouse was responsible for raising the children and therefore did not work full time.

As soon as the joint marital household has ceased to exist, maintenance can be requested from the court (so-called interim or separation maintenance). The final maintenance is determined in the divorce decree, which, in the case of amicable divorces, is based on the agreement submitted to the court.

4.2.2 Duration of maintenance

The maintenance claim is limited in time. If minor children are being cared for, maintenance is usually limited when the youngest child reaches the age of 16. If the person entitled to maintenance enters a new marriage, maintenance ceases altogether. In the case of a new civil partnership, maintenance is suspended for as long as the partnership continues. In both cases, the person previously liable to pay maintenance must assert the termination of maintenance with the court. A civil partnership is to be assumed if the partners maintain an intimate relationship with each other, live together and assist each other, etc., generally; as if they were living together. In principle, they live together as would be expected of spouses under the same conditions.

A maintenance creditor may also forfeit the maintenance rightfully established if he or she is guilty of serious misconduct towards the debtor after the divorce. The misconduct must be particularly serious and violate interests of the debtor worthy of protection, e.g. prostitution or continued influencing of the joint children, to refuse contact with the father.

4.2.3 Adjustment of maintenance

If there is a substantial and lasting change in income and financial circumstances, the court may, on complaint, increase, reduce, cancel or suspend maintenance for a certain period of time. If the income situation of the spouse entitled to maintenance improves, the maintenance cannot be reduced to the full extent of the additional earnings, since - according to case law - the spouse entitled to maintenance would be deprived of the incentive to ensure his or her economic betterment. In such cases, the maintenance creditor only has to accept 50% of the additional earnings.

4.3 The principle of "stretching" in maintenance law

A person who has maintenance obligations (whether child or spousal maintenance) must use his or her powers ("strain") to obtain an income from which he or she can pay maintenance. With the exertion of his or her power (in the case of the debtor), maintenance can be assessed based on a fictitious income that is achievable, although not actually achieved. However, the person entitled to maintenance (whether spouse or child) must also allow himself/herself to be "stretched" to a reasonable (attainable) higher income.

Individuals obligated to provide financial support often attempt to avoid fulfilling their responsibilities towards their children or spouse by either reducing their income or stop working. This approach should be rejected and does not ensure success: in such cases, maintenance is not assessed according to the actual income, but according to a fictitious income that he or she could achieve if he or she pursued reasonable

employment.

However, problems can inevitably arise if the maintenance determined in this way were to be claimed or enforced, since one can only seize an actual income and not a fictitious one. Cases where someone gives up a well-paid job to become self-employed or retrain for a better job are also problematic. Such retraining and further education measures can be in the interest of the family, especially since children and spouses would have to accept certain restrictions even if the marriage remained intact in order to benefit from the career advantages of the other - at least in the long term.

4.4 Interim maintenance

In connection with divorce proceedings or a maintenance claim, so-called provisional maintenance can also be applied for; i.e. subject to another final decision, provisional maintenance is awarded to the person who can certify a breach of the maintenance obligation. This remains intact, until a final decision on the amount and duration of maintenance has been made.

5 Child support calculation

5.1 Child support

5.1.1 Classical residence model

Assumption: Children (5 and 10 years) remain with mother (contact with father every 14 days)

Income M:	6'000.-
Child maintenance for a child 10 years, 17 % (20 % ./ 1 % for 5-year-old child, 2 % for wife)	1'020.-
Child maintenance for a child 5 years, 12 % (16 % ./ 2 % for 10-year-old child, 2 % for wife)	720.-
= Total child maintenance	1'740.-

5.1.2 Extended residence model

The mother mainly cares for the children, the father has contact every fortnight from Friday afternoon to Monday morning (He picks up the children from school and brings them back to school after the weekend). Additional contacts: Every Wednesday from 12pm - 8pm and four weeks of holidays including public holidays and bridging days. Overall, care shares are about 70 % (mother) and 30 % (father). The parents make a maintenance agreement; the father receives a reduction of 25 % (factor of 0.75). This means for the above case example:

$$\text{= Total child maintenance: } 1'740.- \times 0.75 = 1'305.-$$

According to recent case law in Austria, in cases where the parents share care to an extent that clearly exceeds the scope of the usual contacts of the parent liable to pay maintenance (he/she pays maintenance during the extended contacts), the monetary maintenance is to be reduced.

For each week-day of care on which the child spends more than the usual average of (1 day per week) with the paying parent, a deduction of approx. 10% from the monetary maintenance is justified (percentage deduction method). Admittedly, this approach is only an orientation and rather the lower limit for considering the additional burdens of the parent obliged to pay maintenance. It would be desirable and worth considering an orientation towards the percentage of time spent in care, which would then have to be corrected if the income situation of the two parents in care, differs greatly.

5.1.3 Alternating model 60: 40

The mother looks after the children 60% of the time; the father 40%; in their own households. Although the child is still mainly cared for by the mother in pure percentage terms, there is (according to recent Austrian case law already from 1/3 of the time of care) approximately equal care, according to which it is no longer necessary to proceed with percentage deductions, but the maintenance model under care law is to be applied. If the care contributions of the parents are completely equivalent, the child is no longer entitled to monetary maintenance either way. If the parents' incomes differ considerably, a compensation payment to the parent with a significantly lower income is justified.

Total child maintenance: CHF 0.- (possible equalization payment to child's mother)

5.2 Spousal maintenance

The husband (M) works full-time and earns CHF 6'000 net, 13 times. The wife (F) works part-time and earns 923.- net, also 13 times. Calculate 13 net salaries divided by 12.

M: 6'000.- x 13 = 78'000.- : 12 =	6'500.-
F: 923.- x 13 = 12'000.- : 12 =	+ 1'000.-
Family income M + F	7'500.-

5.2.1 Separation maintenance

This applies until the divorce.

<i>Family income (as above)</i>	7'500.-
of which 50 %	3'750.-
./. own income F	- 1'000.-
= Separation maintenance (until divorce)	2'750.-

5.2.2 Post-marital maintenance - without children

This applies from the time of divorce.

<i>Family income (as above)</i>	7'500.-
of which 40 %	3'000.-
./. own income F	- 1'000.-
= Definitive maintenance	2'000.-

5.2.3 Post-marital maintenance - with children

The children (ten and five years old) are entitled to maintenance (competing maintenance obligation)

<i>Family income (see above)</i>	7'500.-
of which 32 % (40 % minus 8 %*)	2'400.-
./. own income F	- 1'000.-
= definitive maintenance	1'400.-

* see 5.1.1

5.3 Conclusion

The examples above are based on the guidelines developed in court practice. In principle, the assessment of maintenance always depends on the circumstances of the individual case. According to settled case law in Liechtenstein, if the parent liable to pay maintenance looks after the child within the scope of the usual right of contact in a household, this has no effect on the amount of maintenance. The more the care goes beyond the usual time, the more deductions from the monetary maintenance are appropriate. However, in regards of the variety of family lifestyles and care models, it is not possible to set rigid percentages for the point at which it can be assumed that the parents provide "equivalent" care.

If the circumstances change significantly ((potential) income, unemployment, new civil partnership, age of the children, changed care times, etc.), corresponding adjustments to the maintenance can be considered for both spousal and child maintenance.

6 Assets & Pension Fund

6.1 Allocation of the increase in assets

Although in Liechtenstein (as in Austria) there is a separation of property (i.e. during the marriage each person owns what they have acquired or received for themselves), in the event of divorce there is a property settlement.

In principle, the assets acquired during the marriage are to be divided. However, the so-called personal property of the spouses, i.e. those assets that were brought into the marriage, inherited or donated, is not to be divided. This goes so far that a property which was bought during the marriage only from the demonstrably, already acquired (inherited or donated) funds before the marriage, of one of the spouses is not divided.

Saved income from such personal property (e.g. rental income from a property of the husband) counts as an increase if it was intended for the family or used for joint purchases.

The assets can only be divided in practice if there is clarity about the assets of both spouses. All components of the assets should be disclosed when the divorce is decided. Both spouses are obliged to provide each other with complete information about their income, assets and debts.

How and to what extent of the division, can cause difficulties in practice. According to the Marriage Act, the division is to be carried out "according to equity". The assets are not to be divided according to the numerical value of the assets to be divided. Compensation payments are to be assessed with a lump sum. If, for example, a house was built during the marriage on a plot of land belonging to one spouse with the cooperation of both spouses, the increase in assets is to be determined by comparing the market value of the house and the mortgage debts existing on it (in the event of dissolution of the marital union).

Contrary to legal norms, spouses can mutually stipulate through a marital agreement that their individual personal properties, along with any generated income or replacement acquisitions, will remain solely owned by each respective spouse. Such assets shall not be subject to division in the event of marriage dissolution, as part of the increase in assets.

6.2 Withdrawal benefits from the pension fund

In the event of a divorce, the pension fund assets of the spouses must also be divided. The spouse is entitled to half of the termination benefits acquired (until the dissolution of the marital union). If there are reciprocal claims, the difference between the termination benefits must be divided.

If one spouse is entitled to a credit balance, it must be transferred to his or her pension fund; if there is no pension fund, it must be transferred to a vested benefits blocked account. If the spouses agree on the division, the confirmation of the pension funds on the feasibility of the arrangement and on the amount of the assets must be submitted to the court.

7 Flat & Household

7.1 Marital home

The previous marital home should be assigned to the person who needs it more urgently, regardless of whose property it is or who is the tenant. Usually, the flat is assigned to the party, where the children mainly live.

If the matrimonial home is real-estate-owned by one or both spouses, and in the absence of an amicable settlement, the court could order the transfer of ownership from one spouse to the other. If deemed necessary, the court may also grant a right of use (rental, right of residence) for the property owned by the other party.

However, judicial assignments are the exception; as a rule, the spouses can come to an agreement. In view of the high housing costs and credit burdens, however, often neither of the spouses can afford the property. In this case, one should carefully consider what is reasonable and sustainable, taking into account all circumstances (current costs, change of residence for the children, etc.).

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7.2 Household goods

When dividing up the household goods, the spouses are free from legal constraints. As a rule, one keeps what one has bought with one's own money or brought into the marriage. What was purchased jointly during the marriage (e.g. furniture, decoration) should be divided according to need and value.

8 Debts

During the marriage, both spouses are jointly liable (solidarity) for those expenses that arise from the current needs of the family. For debts which the spouses have entered into alone and which do not fall under the current needs, each is liable alone, even after the dissolution of the marriage.

For contracts entered into by both spouses, they must also be jointly liable. This means that a spouse who has co-signed or guaranteed a bank loan, for example, continues to be liable for the loan, even if the other spouse has undertaken to repay it alone in a divorce agreement.

However, the spouses, can at the very least, reach an agreement during the divorce process or obtain a court order, wherein the spouse responsible for making the payment is also designated as the primary debtor in relation to the bank, while the other is considered a secondary guarantor for any outstanding balance. This implies that the bank is obligated to pursue the primary debtor initially. Only if efforts to secure the outstanding amount through seizure or auction against the primary debtor prove unsuccessful, action can be taken against the secondary guarantor.

9 Divorce & Costs

Divorce costs consist of any costs for the involvement of a lawyer or mediator as well as court fees.

9.1 Court costs

Court costs (court fees) occur when proceedings are initiated in court. A distinction is made between filing fees (for the initiation of proceedings in the form of motions or complaints) protocol fees (for the hours of hearings) and decision fees (for the issue of judgments or orders). Like the representation costs (for the involvement of lawyers), the court costs are also based on the respective amount in dispute. Since the amount in dispute in amicable divorces is low, the fees also remain low (for an amount in dispute of CHF 3,000 in non-contentious proceedings, fees of approximately CHF 150 are sustained). In the case of contested divorces, the fees are significantly higher, due to the fact that the amount in dispute is often many times higher.

9.2 Lawyer's fees

The costs for a lawyer are divided into advice (before initiating court proceedings) and representation in court. The costs of representation in court are based on the amount in question, i.e. the extent to which maintenance or property claims are demanded. The expected costs are usually difficult to estimate, as neither side knows in advance how many submissions (pleadings) and hours of court hearings will be required.

As far as pre-litigation advice is concerned, a lawyer usually charges a time fee. The time fee itself, is freely agreeable, but at least CHF 300 per hour should be expected. Especially if you make a habit of calling your lawyer several times a week to tell him about every exchange of words, every unpaid bill or every difference in the treatment of the children immediately, you must expect to bear the costs of this yourself.

In litigation involving maintenance and property, costs of over CHF 10,000 can easily be incurred on one side. If one wins the case, one's own legal costs must be reimbursed by the other side. If the other side cannot recover the legal costs, you will be left with your own costs despite the claim for compensation.

In any case, a divorce on joint request is more favorable, in which all or the most important points of conflict have already been clarified before the initiation of the proceedings. Ideally, both sides agree on a reasonable settlement and then save themselves high lawyer's fees. The court fees incurred in a divorce by mutual consent are comparatively modest.

9.3 Mediation costs

In phases of separation and divorce, which are usually emotionally very stressful for all concerned, mediation can promote a lasting conflict resolution and contribute to a better culture of discussion overall.

Voluntarily preceding mediation

For voluntary mediation, the spouses must pay about CHF 120 per hour. In cooperation with the Association for Men's Issues (VFM), qualified specialists can be arranged on request at a lower hourly rate.

Court-ordered mediation

If mediation is ordered by the court, the costs of up to ten hours of mediation are covered by the state.

9.4 Legal aid

If a person is unable to pay for a lawyer, the court may grant legal aid upon application (disclosing the person's income and financial circumstances). A lawyer can be freely chosen as a procedural aid. Legal aid cannot be granted for consultations prior to the initiation of proceedings.

It should be noted that legal aid only covers the costs of the proceedings (= court fees, representation costs of the legal aid lawyer). Due to an unfavorable outcome of the proceedings, it may happen that one also has to pay for the costs incurred by the opposing party for legal representation in whole or in part.

10 Courts

10.1 Jurisdiction

The Princely Court of Justice in Vaduz, as the court of first instance, always has jurisdiction if the parties are domiciled in Liechtenstein, if one of the parties is a Liechtenstein citizen, or if the defendant is domiciled or resident in Liechtenstein.

10.2 Paths of appeal

If a party does not agree with a decision of the District Court, it may appeal to the Higher Court (appeal against judgments or appeal against orders) as the second instance. Appeals against negative decisions of the higher court can be made to the Supreme Court, which is the court of last instance.

In the first instance, district court judges rule as single judges, in the upper instances; appellate-panels of five judges each.

11 Other legal consequences

11.1 Right to a name

Both spouses retain the previous family name. However, they may, within 6 months, by declaration to the civil registry office, adopt the former family name again, if it has been changed through the marriage.

11.2 Citizenship

Divorce or separation has no effect on citizenship.

11.3 Health and accident insurance

A divorce must be reported to the health and accident insurance. The divorced spouses can then switch to individual insurance if one was previously co-insured with the other.

11.4 Right of inheritance

The divorced spouses lose their right to inherit from the other. In the event of a marital separation, the right of inheritance is retained.

11.5 Tax law

In the event of a separation or divorce, the spouses must again file a separate tax return with their municipality of residence. Maintenance payments can be deducted by the person liable to pay maintenance (see tax return guide): The tax authorities or municipalities can provide more detailed information.

11.6 Residence

A derived right of residence, where a foreign spouse has been granted residence for the purpose of remaining with the spouse, may be revoked or not extended. The authorities may refrain from revoking the right of residence if there are joint children to be cared for in Liechtenstein or if there is a case of hardship due to domestic violence.

12 Help & Advice

12.1 Men's issues (Männerfragen)

We offer *emergency shelter* as well as *counselling*:

- men's coaching
- couples counselling
- violence counselling
- legal counselling

The topics of these counselling sessions can cover all areas of life, both private and professional. Detailed information is available at www.maennerfragen.li. If you have any questions or concerns about our services, please contact us: Tel. (00423) 794 07 00 Email info@maennerfragen.li

COST:

- Initial consultations for one hour are free of charge.
- Follow-up consultations cost CHF 40.00 per hour. For members, the first two are free.

12.2 More

Emergency

- Police: www.landespolizei.li Tel. 236 71 11 / Emergency 117

In alphabetical order:

- Office of Social Services, Child and Youth Services: www.asd.llv.li, tel. 236 72 72
- Parent-Child Forum: www.elternkindforum.li, tel. 233 24 38
- Princely District Court: www.gerichte.li, tel. 236 65 31 (32)
- infra: www.infra.li, tel. 232 08 80
- Ombudsman's Office for Children and Adolescents, www.oskj.li, Tel. 230 22 33
- Psychologists in Liechtenstein: www.psychotherapie.li, Tel. 237 55 77

12.3 Topic-specific

- AHV-IV-FAK (AHV: Old-age and survivors insurance; IV: disability insurance; FAK:family allowances): www.ahv.li Tel. 238 16 16
- Debt counselling, Hand-in-Hand Foundation: www.handinhand.li Tel. 384 59 90
- Bar Association: www.rak.li, Tel. 232 99 32
- Liechtenstein Mediation Association: www.vml.li, Tel. 373 79 60

13 Sources

13.1 Literature / Internet

- Eltern bleiben. Ein Leitfaden bei Trennung und Scheidung. Amt für Soziale Dienste, Schaan, 2015. (als Download unter: www.asd.llv.li)
- Väteraufbruch für Kinder e.V.: Chancen und Grenzen der Paritätischen Doppelresidenz (Wechselmodell) nach Trennung und Scheidung unter: [www.vaeteraufbruch.de /index](http://www.vaeteraufbruch.de/index)
- Vor- und Nachteile verschiedener Obsorgeregelungen. Nadine Aigner unter: [www.inter-uninet /download/bibliothek/SOZ_Obsorgeregelung_Nadine_Aigner.pdf](http://www.inter-uninet/download/bibliothek/SOZ_Obsorgeregelung_Nadine_Aigner.pdf)
- www.elternvereinbarung.de
- www.gerichtsentscheidungen.li
- Bundeskanzleramt RIS (Rechtsinformationssystem), Informationsangebote www.ris.bka.gv.at/

13.2 Legal texts

- Allgemeines Bürgerliches Gesetzbuch vom 1. Juni 1811 (ABGB) Nr. ASW (insb. §§ 130 ff ABGB)
- Ehegesetz vom 13. Dezember 1973 (EheG), LGBl. 1974 Nr.20
- Gesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz; PartG), LGBl. 2011 Nr. 350
- Gesetz vom 25. November 2010 über das gerichtliche Verfahren in Rechtsangelegenheiten ausser Streitsachen (Ausserstreitgesetz, AussStrG), LGBl. 2010 Nr. 454
- Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung), LGBl. 1912 Nr. 9/1

all available as pdf at www.gesetze.li

14 Templates

14.1 Joint Petition for Divorce

14.2 Divorce agreement

- Example case on the extended residence model
- Sample agreement

14.3 Custody arrangements

- Sole custody
- Joint custody

Both are taken from the Guide to Remaining *Parents*

14.4 Care arrangements

- Nest model
- Alternating model

14.5 Marriage agreement

- Sample