

**TTN**

TOWNSEND  
TOMAIO &  
NEWMARK L.L.C.

*-Our priority today, is protecting your tomorrow-*

# Divorce & Child Custody

## GUIDE



**SERVING FAMILIES THROUGHOUT NEW JERSEY**

**PHONE:** 973-539-0075

**FAX:** 973-539-4151

**WEBSITE:** [www.ttnlaw.com](http://www.ttnlaw.com)

**MORRIS COUNTY OFFICE**

100 South Jefferson Road, Suite 200  
Whippany, New Jersey 07981

**BERGEN COUNTY OFFICE**

Court Plaza South, West Wing  
21 Main Street, 2nd Floor, Suite 207  
Hackensack, New Jersey 07601

# TABLE OF CONTENTS

## 4 - DIVORCE FAQ'S

- 4 - What documents will I need to prepare for my divorce?
- 4 - How can I be financially prepared for divorce?
- 5 - How to choose a divorce attorney
- 5 - Do's & Don'ts of divorce
- 6 - The divorce process
- 6 - Divorce options
- 6 - Mediated divorces

## 7 - ALIMONY & PROPERTY DISTRIBUTION

- 7- Types of alimony in New Jersey
- 7 - Factors considered when determining alimony
- 7 - Division of property

## 8 - CHILD CUSTODY

- 8 - Types of custody arrangements
- 9 - Factors considered when determining custody
- 9 - Relocation
- 9 - How do New Jersey courts determine whether they should grant child relocation?
- 9 - What factors do NJ courts consider when deciding whether relocation is justified?
- 9 - What is a best interest analysis?

## 10 - CHILD SUPPORT

- 10 - What does child support cover?
- 11 - Calculating child support
- 11 - Child support for high-income families
- 12 - Child support termination/higher education obligations
- 13 - Child support enforcement
- 14 - Child support modifications



*-Our priority today, is protecting your tomorrow-*

## HELP WHEN IT'S NEEDED MOST

At Townsend, Tomaiolo & Newmark, L.L.C., we understand that there is nothing more important than you and your family. That is why, for years, we have dedicated our practice to helping those who need it most through various divorce and family law matters. No matter the challenge, we are here to help. Whether you are going through a divorce, have child custody matters that need sorting out, or are even looking to adopt a child, there is no facet of family law that we do not cover. We dedicate our practice to family law, and it shows.

## GUIDING YOU THROUGH THE DIVORCE PROCESS

Divorce is complex, which is why you need an attorney who has spent years helping individuals through every step of the divorce process. We know that divorce can sometimes take a toll, physically, emotionally, and financially. For this very reason, we are committed to guiding you through the process compassionately, efficiently, and cost-effectively. The outcome of your divorce is likely to shape your life for years to come. You can rest assured that we will be dedicated to you and your family from beginning to end.

## PROTECTING YOUR CHILDREN

If you are a divorcing parent, we know that there is nothing more important to you than protecting your children. Divorce is difficult for everybody involved, especially children, which is why we will work to ensure that in the months and years after your divorce, they will go on to live happy, stable, and productive lives.

## PRESERVING YOUR ASSETS

Oftentimes, in divorce, a couple's assets will be subjected to the equitable distribution process. That being said, "equitable" seldom means "equal," and most divorces do not result in a 50/50 division of assets. That is why, at Townsend, Tomaiolo & Newmark, L.L.C., we are committed to protecting your hard-earned assets and fighting for what is yours. Whether it is your home, your car, or anything else at stake, we are here to help.

## FIGHTING FOR YOUR TOMORROW, TODAY

As previously stated, the outcome of your divorce will impact your life in the future, which is why our goal is not to simply achieve a favorable outcome on your behalf, but it is also to prepare you, emotionally and financially for the months and years ahead. This means securing alimony, child support, and any other assistance you may need. The bottom line is that if you need a firm who has what it takes to represent you and your family's best interests through every step of the process, Townsend, Tomaiolo & Newmark, L.L.C. is here, and we are ready to help.

# DIVORCE FAQ

## WHAT DOCUMENTS WILL I NEED TO PREPARE FOR MY DIVORCE?

Before beginning the divorce process, you will have to gather various documents and paperwork to proceed. Those documents are as follows:

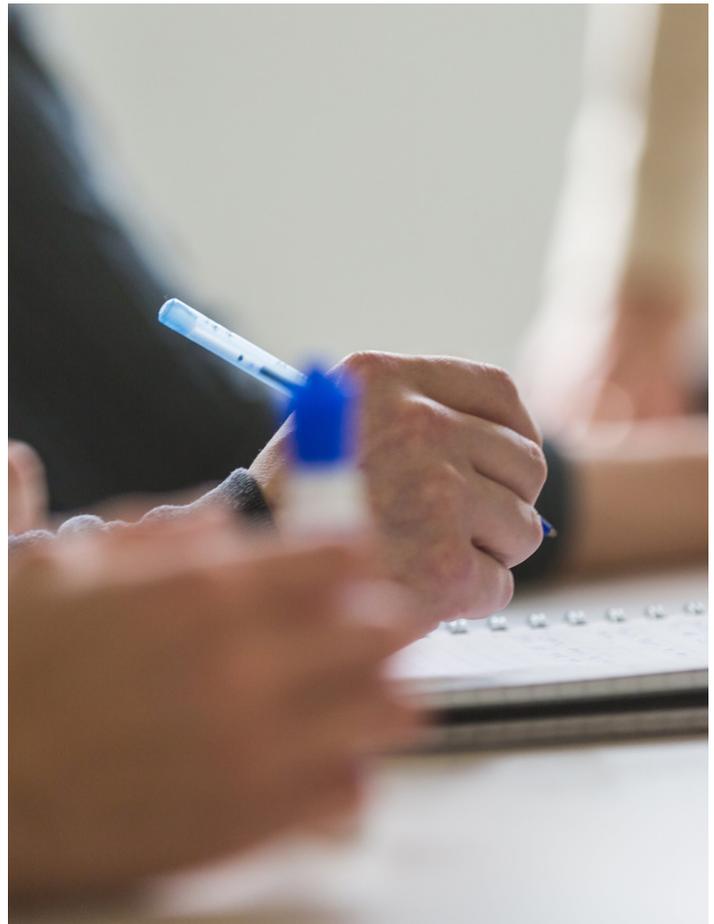
- Property tax statements
- Loan documents
- Utility bills
- Bank statements
- Pay stubs or other documentation regarding your current income
- Mortgage statements
- Retirement account statements
- Tax returns
- Information regarding stocks/bonds you may own
- Prenuptial agreement (if you have one)
- Any other documentation regarding you and your spouse's assets

## HOW CAN I BE FINANCIALLY PREPARED FOR DIVORCE?

Divorce is a very complicated issue, and if you are about to get divorced, you have a lot to consider. One of those things is your finances. When getting divorced, it is imperative that you have a comprehensive financial plan in place to ensure you can live on your own. Here are some of the factors you should consider:

**INCOME:** First and foremost, you have to consider how much you make on a yearly basis. You will no longer have another paycheck for support, so you must evaluate how much you make and ensure that it is enough to uphold your standard of living. You should also note that when getting divorced, oftentimes you will lose a portion of your income during equitable distribution.

**OWNED PROPERTY:** In most cases, the financially dependent spouse is the one who gets the house in a divorce. That being said, getting the house is far from automatic. That is why if you wish to keep your house, the most important thing you can do is retain the services of an experienced divorce attorney.



**DEBTS AND MORTGAGES:** If you or your spouse have certain debts, or a mortgage that you must pay off, judges will consider this when deciding the outcome of your divorce. For example, judges will examine whether you or your spouse have certain debts on credit cards, loans, and more.

**RETIREMENT ASSETS:** When people get divorced, they oftentimes have to give up a portion of their retirement payments. If you are someone who needs your spouse's retirement benefits, you will have to file a qualified domestic relations order to get them. Our firm has helped many individuals do so throughout the years, and we can do the same for you.

## HOW TO CHOOSE A DIVORCE ATTORNEY

When choosing a divorce attorney to represent your best interests, you should consider several factors, as divorce is a very serious legal matter, and this is most likely a pivotal time in your life. When choosing your attorney, you should select someone who you are comfortable with and someone who you trust. You should feel as though you can openly and honestly communicate with your attorney on a human level. That being said, you must also hire an attorney who is knowledgeable. Your attorney should be able to quickly and accurately answer all of your basic questions regarding your divorce.

Finally, you should hire an attorney who focuses primarily, or solely, on family and divorce law. Many attorneys will be glad to take your case, regardless of whether they truly know and practice divorce law. This is unacceptable. Think about it this way: you wouldn't hire an auto mechanic to do your plumbing, so why hire a personal injury attorney to handle your divorce? Our firm concentrates specifically on family/divorce law, so you know you're hiring a team of attorneys that truly knows their way around the practice.

## THE DO'S & DON'TS OF DIVORCE WHAT SHOULD I DO?

The steps you take during a divorce can help you to receive your desired outcome. The following are actions to take after filing for a dissolution of marriage:

- Change passwords to all email accounts and social media sites
- Disclose all assets and liabilities when filling out your inventory
- Be aware of the household budget and expenses
- Collect your last two tax returns, real estate deeds, and mortgage documents
- Examine your credit history and get a credit report
- Know the total balance on any joint checking and savings bank accounts
- Know the balance on your retirement plans, 401(k),

pension plan, etc.

- Get a copy of your spouse's last two paycheck stubs
- Seek out a CPA or accountant to help review the tax implications of your divorce
- Seek help for any alcohol or illegal substance abuse
- Keep a journal to document the exchange and pick up of any children you have
- Keep any copies of money paid to your spouse
- Be sure to pay your child support on time
- Maintain good co-parenting practices with your spouse
- Comply with any court-ordered injunctions and restrictions

## WHAT SHOULD I NOT DO?

Just as there are actions you should be taking, there are also actions that should be avoided during your divorce proceedings. These can include the following:

- Keep things from your attorney
- Post anything on social media that can be used against you
- Post information regarding your divorce on social media
- Withhold visitation from your spouse for their failure to make child support payments
- Move out of state with your children
- Start another romantic relationship during the proceedings
- Bring a new significant other around your children or the court hearings
- Get pregnant or get anyone pregnant
- Remove children from their current school
- Buy real estate or any extravagant items while the divorce is pending
- Sell property without the court's permission
- Send mean or negative emails, texts, messages, etc. to your spouse
- Increase your debt while the divorce is pending
- Give large contributions to anyone during the proceedings
- Discuss the case with your children or use them as intermediaries
- Criticize your spouse in front of your children

# THE DIVORCE PROCESS

Oftentimes, the most difficult part of the divorce process is feeling uneasy or unsure about what the weeks and months ahead may hold. For this very reason, we have briefly outlined what the divorce process looks like in the state of New Jersey. The divorce process begins with initial pleadings, where you and your attorney will file a complaint for divorce with the Superior Court. You may either file fault-based divorce or no-fault divorce. From here, you may request “pendente lite” orders, which essentially are temporary terms until your divorce is resolved. These generally have to do with alimony, child custody, or child support. Next, the court will conduct the discovery process, wherein they will obtain information regarding your case. This information can include bank records, identities of witnesses, and any other information that pertains to your case. If you cannot resolve child custody matters on your own, you will have to attend mediation before your case goes to trial. You may then attend an Early Settlement Panel where you and your spouse will attempt to hash out any economic discrepancies. If you cannot, you will have to go to trial, wherein a judge will decide on all unresolved issues. Lastly, your divorce will be finalized with a Final Judgment of Divorce that will address all issues pertaining to your divorce.

## DIVORCE OPTIONS

There are two types of divorce in New Jersey: contested and uncontested divorce. When spouses are unable to reach common ground regarding their marital issues, it is known as a contested divorce. If neither spouse signs an agreement regarding their separation, a judge is appointed to make decisions regarding these matters for the spouses. This can include child support, custody, the



division of assets, and alimony. Couples are required to cite grounds for divorce before their divorce begins. If they choose to cite “fault” grounds, it means one spouse is looking to hold the other responsible for the end of their marriage. The following are all citable fault grounds in New Jersey:

- Adultery
- Abandonment
- Desertion
- Addiction
- Incarceration
- Institutionalization
- Deviant sexual conduct
- Extreme cruelty

That being said, since New Jersey is a “no-fault” state, divorcing spouses may also choose to not file a fault-based divorce. Choosing no-fault divorce essentially means that neither spouse is legally holding the other responsible for the end of the marriage, and instead, the couple cites an irretrievable breakdown of the marriage or a separation of at least 18 months in an uncontested divorce. In these situations, couples must resolve all marital issues before they can begin the proceedings. This can be done through alternative methods such as mediation, arbitration, or collaborative divorce. During this time, couples can discuss matters of

alimony, child custody and support, parenting time, division of assets, and any payment of debts.

## MEDIATED DIVORCES

A divorce mediator is an unbiased third party of which you and your spouse agree to employ. Essentially, your divorce mediator will listen to both you and your spouse’s wants and needs regarding divorce terms, and from there, he or she will work to facilitate some sort of compromise that works for you both. Divorce mediators can help couples work out issues such as child custody, property distribution, alimony, child support, and any other issue you wish to speak about in your mediation session.

The litigation process is a costly one, and the outcome of your divorce is ultimately decided by a judge. Mediation, on the other hand, takes place outside of the courtroom setting, thus allowing your divorce to be more private, and, additionally, it can save you and your spouse a significant amount of money. Furthermore, since mediation is more or less a compromise, couples can walk away from the process feeling as though they had far more control over its outcome, making it much easier for both spouses to accept.

# ALIMONY & PROPERTY DISTRIBUTION

Spousal support is essentially court-ordered financial assistance that the financially independent spouse will provide the financially dependent spouse after a divorce. In recent years, New Jersey has ruled that alimony is no longer permanent. The four primary types of spousal support in New Jersey are as follows:

## OPEN DURATIONAL ALIMONY:

This is what has replaced permanent alimony in NJ. Essentially, financially dependent spouses who have been married for over 20 years will most likely receive open durational alimony. This is essentially a fixed alimony payment that the spouse will receive for an indeterminate period of time.

## LIMITED DURATION ALIMONY:

This is generally for financially dependent spouses in NJ who have been married for less than 20 years. The amount and duration of this type of alimony are predetermined by a judge.

## REIMBURSEMENT ALIMONY:

Reimbursement alimony is for spouses who paid for the cost of their spouse returning to school or receiving training to further their career. For example, if you paid the cost of your spouse to go to college, and your spouse shortly thereafter divorced you, that spouse may owe you reimbursement alimony.

## REHABILITATIVE ALIMONY:

This is for spouses who have deferred their career goals to support their spouse, only to have their spouse divorce them afterward. If you find yourself in this situation, you may be owed rehabilitative alimony, which should grant you the financial support you need to receive the retraining or education needed to pick up where you left off.

## FACTORS CONSIDERED WHEN DETERMINING ALIMONY

New Jersey courts will consider several factors when determining your alimony agreement, including the following:

- 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.

## DIVISION OF PROPERTY

When a couple gets divorced, their property will be divided into two categories: marital property and separate property. Marital property includes assets acquired throughout the duration of your marriage. This means that your house, car, retirement, and more are all usually considered marital property. Generally, marital property is subject to equitable distribution in divorce. On the other hand, separate property is exempt from equitable distribution, and generally includes assets such as gifts, inheritances, or other property acquired before or outside of marriage. New Jersey courts will consider several factors before deciding the outcome of your divorce including, though not limited to:

- You and your spouse's age
- You and your spouse's health
- The duration of your marriage
- The value of your property
- Whether you or your spouse have any debts or liabilities
- You and your spouse's yearly income and earning potential

# CHILD CUSTODY

Oftentimes, the court will decide on custody matters on behalf of the child's parents to serve the best interest of the child. This is one of the most emotional situations when parents divorce, which is why it is important that these matters are handled sensitively.



## LEARN ABOUT THE TYPES OF CUSTODY ARRANGEMENTS

There are several different forms of child custody in New Jersey. As all families are different from one another, there is no “one size fits all” approach to the matter. Therefore, it is important to create an arrangement that works for your family and benefits your child. The different types of custody in New Jersey are as follows:

### PHYSICAL CUSTODY:

This determines the parent that the child spends the majority of their time with. The child primarily lives with and is taken care of by this parent more than half the time. This means they must provide the child with basic stability, a home, food, clothing, etc. It is important to note that in some situations, parents can share joint physical custody.

### LEGAL CUSTODY:

This type of custody gives a parent the right to have influence in their child's life. With this, a parent can be involved in making important decisions regarding the upbringing of their child. This can include issues such as education, religion, healthcare, and the child's well-being. It is important to understand that parents do not need to have physical custody of their child to gain legal custody.

## FACTORS CONSIDERED

# WHEN DETERMINING CUSTODY

When the court makes child custody decisions, they are required to do so with the child's best interest at the forefront. The court must consider a wide variety of factors when deciding on child custody. Some of these factors include the following:

- If a parent can provide stability in the child's current life (home, school, activities, etc.)
- If the parent will act in the child's best interest
- The relationship between the child and each parent
- The physical health and safety of the child
- The needs of the child
- The geographical proximity of each parent's home
- The preference of the child if they are of sufficient age



## RELOCATION

Oftentimes, after a divorce is finalized, one parent has to move, for one reason or another. However, this move very often requires court approval. If you find yourself in this situation, you must read on to learn more about how our firm can help. Here are some of the questions you may have regarding the child relocation process:

### HOW DO NEW JERSEY COURTS DETERMINE WHETHER THEY SHOULD GRANT CHILD RELOCATION?

Under most circumstances, if you are a New Jersey resident and parent and are seeking to move to another part of New Jersey, you will not need court approval. However, if you are looking to move out of New Jersey with your child, you will most likely either need your former spouse to agree to the move, or to obtain court approval. If your spouse contests the move, it is always best to hire an

experienced attorney who knows how to prove that your move is entirely necessary and in the best interest of your child.

### WHAT FACTORS DO NEW JERSEY COURTS CONSIDER WHEN DECIDING WHETHER RELOCATION IS JUSTIFIED?

Several different factors will come into play when determining whether they should grant you the ability to move with your child. Some of the factors that have permitted child relocations in the past are as follows:

- Moving closer to your child's extended family so he or she can benefit from those relationships
- Requiring immediate or crucial medical attention
- Protecting your family from a dangerous environment or former spouse

- Moving in with a new spouse
- Getting a new job or attending college, university, or getting a higher education to benefit you and your child's financial situation

### WHAT IS A BEST-INTEREST ANALYSIS?

New Jersey courts will oftentimes conduct something known as a best-interest analysis to get a better understanding of why the move is in your child's best interest. The courts may consider the following factors when conducting the analysis:

- Your reason for moving, as well as your spouse's reasoning for protesting the move
- Whether your child is entering his or her senior year of high school
- Whether the move will benefit your child's overall situation, providing advantageous educational, economical, or social circumstances

# CHILD SUPPORT

## WHAT DOES CHILD SUPPORT COVER?



Many financially-dependent divorced parents often are very concerned about whether they can support their children and uphold their standard of living without the paycheck they initially depended on. Fortunately, child support should cover a wide array of your child's needs so he or she can go on living a fulfilling, financially stable life. To start, child support payments cover the basics, such as food and clothing. However, the term "clothing" does not include all clothing. For example,

generally, child support payments will not cover specialized footwear for sports, however, all basic needs should be met.

Additionally, many dependent spouses and their children are pleased to learn that child support also covers several recreational events or hobbies that will enrich your child's life, such as team sports and more. Furthermore, the cost of transportation, such as lease payments, car payments and

maintenance, public transportation, and more are all covered under New Jersey's Child Support Guidelines. Unreimbursed healthcare up to \$250 is also included in child support payments. Finally, though certainly not least importantly, child support payments should also cover housing and healthcare. Therefore, property taxes, home insurance, and mortgage payments should be covered, at least to a certain extent.

# CALCULATING CHILD SUPPORT

As with child custody, you should note that your child's best interests are New Jersey courts' primary concern, which is why ultimately, your child support agreement will revolve around your child's needs. That being said, New Jersey courts will also take various other aspects of you, your spouse, and your children's lives into consideration when deciding on your child support terms. Some of these factors are as follows:

- Needs of the child;
- Standard of living and economic circumstances of each parent;
- Income and assets of each parent, including any public assistance grant received by a parent;
- Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children and the length of time and cost for each parent to obtain training or experience for appropriate employment;
- Need and capacity of the child for education, including higher education;
- Age and health of the child and each parent;
- Income, assets and earning ability of the child;
- Responsibility of the parents for the support of others; and
- Debts and liabilities of each child and parent;
- Any additional factors that New Jersey courts deem relevant.



## Child Support for High-Income Families

When families have a collective income that is greater than \$187,200, New Jersey courts will calculate your child support accordingly, taking into account that you are, by law, a higher-income family. Since, generally speaking, a higher level of spending is associated with higher-income families, this adjustment makes sense. If you are in a higher-income family, New Jersey courts will decide the terms of your child support first based on the state's Guidelines, however, they will then add any additional support needed based on your remaining family income, as well as other factors, like your child's individual needs.

# CHILD SUPPORT TERMINATION/HIGHER EDUCATION OBLIGATIONS

Many supporting spouses are concerned about when child support ends in the state of New Jersey. As mentioned before, child support is an extremely complex issue, so there is no definitive answer to this question, as many variables affect when child support ends. That being said, in most cases, children are formally emancipated from child support payments in New Jersey upon their 19th birthday.

However, under certain circumstances, parents can request an extension on their child support payments even after their child turns 19. If your child is looking to attend college or pursue higher education, you and your New Jersey child support attorney can request that the courts extend his/her child support payments until he/she turns 23 years old or graduates school. Additionally, if your child has a disability or medical condition that requires additional and continuous financial assistance, you may also request an extension on child support payments as needed.

However, it is also worth noting that in some cases, your child may be emancipated from the child support order before he or she turns



19 years old. Though this is rather uncommon, it does happen, under certain circumstances. Your child may be emancipated from child support for any of the following reasons, as long as the court agrees:

- Your child is no longer living with his/her parents
- Your child has enlisted in the military
- Your child is now financially independent and has obtained a full-time job
- Your child is now married
- Your child is pregnant or has children of his/her own

# CHILD SUPPORT ENFORCEMENT

When New Jersey courts decide on the terms of your child support agreement, they are binding, meaning both you and your former spouse must abide by them. However, situations where ex-spouses refuse to pay child support arise more often than we'd like to admit. While these circumstances are far from ideal, you do not have to panic—you have legal options, and our firm can help ensure you and your child are protected. Your first option is reaching out to the Office of Child Support Services, an office of which many child support agreements are established. Keep in

mind that even if you do not receive child support through OCSS, you may still contact them if your spouse is not making child support payments as previously determined. If OCSS acknowledges that your child support payments are more than two weeks overdue, they will then work to enforce your agreement.

Though going to OCSS may resolve your issue, the unfortunate reality is that in some cases, the OCSS is a bit slow to respond to these claims. However, rather obviously, receiving child support payments is a very time-sensitive issue, which is why

many parents seek a quicker, more direct route. If you are currently waiting for OCSS to respond and are running out of time or resources, you should speak with an experienced post-judgment enforcement attorney as soon as possible. When you do, that attorney will file a motion with the court on your behalf to solicit their involvement in the matter. This should hopefully streamline the process to ensure you receive the child support payments you and your child need to uphold your standard of living.



## LEARN ABOUT

# CHILD SUPPORT MODIFICATIONS

If you have been divorced for months or years, you are most likely living a different life now than you were some time ago. This is completely natural. Things change. We get new jobs, begin new relationships, and more. Because of this, New Jersey courts allow those receiving/paying child support to request modifications to their initial child support agreement. That being said, to have your child support terms modified or adjusted after initial negotiations, you must first demonstrate to the court your circumstances have changed both significantly and for the foreseeable future. Some circumstances that may constitute a child support modification can include the following:

- One parent has lost their home
- One parent has contracted a serious illness or sustained a serious injury
- Their child has sustained a serious injury or contracted a medical condition
- One parent recently took a significant pay cut or lost their job
- There has been a change in federal income tax laws
- One parent is now living with another person/has remarried
- One parent has received a job promotion or has come into a large sum of money, via an inheritance or otherwise

**The bottom line** is that there are various circumstances in which either parent, whether the supporting or supported parent, may request a child support modification.



Sometimes, parents request these modifications and the other parent resists, saying their request is unfounded or unfair. Though in some cases, co-parents can cooperate and agree on a support modification on their own, this does not always happen. If your ex refuses to update your child support terms to better suit you and your child's needs, you can file a motion with New Jersey courts and request a modification. That being said, receiving a child support modification is seldom easy, and you will have to provide evidence to the court that you and your child truly need an updated child support agreement to uphold your standard of life.

**TTN**

TOWNSEND  
TOMAIJO &  
NEWMARK L.L.C.

*-Our priority today, is protecting your tomorrow-*

**PHONE:** 973-539-0075

**FAX:** 973-539-4151

**WEBSITE:** [www.ttnlaw.com](http://www.ttnlaw.com)

## MORRIS COUNTY OFFICE

100 South Jefferson Road, Suite 200  
Whippany, New Jersey 07981

## BERGEN COUNTY OFFICE

Court Plaza South, West Wing  
21 Main Street, 2nd Floor, Suite 207  
Hackensack, New Jersey 07601