

Modifications

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If your [divorce](#) or other [family law](#) matter is final (i.e., a judge has signed a “decree”) and you need to modify the details of the decree, you may need to file a [petition to modify the decree](#). **A petition to modify can be a lengthy process.** As with many areas of litigation, the quickest method of resolution is usually through out-of-court negotiation or mediation. But if the parties cannot reach agreement then modification requires court involvement. Successful modification typically requires the services of an attorney who has experience with this process.

Modify Child Support

Just because you signed an agreement setting mandatory [child support](#) payments, it does not mean you are unable to petition the court to change your existing agreement. The success of your petition will depend on several critical factors. Usually, the Court is unlikely to change the agreement if it was signed, or modified, within the last three years, *unless* there has been a **major life change**. These can include a **change of income of at least 30 percent** or a **shift in the custody of a child**. Judges are more likely to allow changes in agrees which are older than three years. You can learn more at [Utah's State Court website](#).

Modify Child Custody

A child's best interests are the center to any custody decision, but it's possible that the needs and best interests of a child, as well as the parent's ability to meet them may change over time. Either parent can ask a judge to modify [custody of the child](#) if there has been a **material and substantial change in circumstance**, however, courts are very wary about changing custody of a minor, and a **Child Custody Modification petition requires a complete investigation**. The Court may grant a new custody order based on:

- A marriage or domestic partnership with person deemed unfit to raise a child;
- Proof that a parent is unable or unwilling to care for the child;
- Proof of abuse or neglect;
- Or the necessity to move;

In addition, the Courts may **take into consideration the wishes of the child and the relationship the child has**

with each of his parents. You can learn more on the [Utah State Court's website](#) about child custody modification laws in Utah.

Modify Alimony

You may be able to modify an existing [alimony](#) payment agreement, even if you previously agreed to the current terms. Like changes in child support, **changes in alimony must be due to a drastic life change**. Judges are more likely to grant changes in alimony when the petitioner can show:

- That the dependent spouse has remarried. Alimony agreements typically end due to an ex-spouse remarrying except in rare cases;
- The dependent is living with a romantic partner;
- A change in employment status. The dependent spouse may petition for more alimony due to a loss of employment. The supporting spouse may ask for changes due to decreased income, including retirement, or
- An illness requires either an increase or decrease of alimony payments.

Remember, in Utah, it is unlikely that a petitioner who is seeking more alimony for an unforeseen financial need, unless there is an extraordinary reason to do so.

Substantial Change in Circumstances

The court will modify the decree only if specific circumstances are established in the petition. First, in *Hogge v. Hogge*, the Utah Supreme Court decided that the person seeking modification must show that a “**substantial or material change of circumstances**” has occurred since the original decree was signed. These circumstances range dramatically, but can include geographical relocation, drug use, physical abuse, etc.

Best Interest of the Child

Second, the *Hogge* decision also reasoned that in cases in which a child will be affected by the modification, the Petitioner must show that modification is in the “best interests” of the child. [Utah courts use dozens of factors](#) to determine the best interests of the child, including the stability of the child’s current environment, keeping siblings together, and the strength of the bond between the parent and child. Importantly, a judge may also **consider the child’s preference if he or she is of a sufficient age and level of maturity**.

Petitioning Court for Modification

Petitioning a court to modify a decree is not simple and can be just as financially and emotionally draining as filing a new lawsuit. Individuals seeking modification of a decree need to consider dozens of factors that may affect how successful they will be. The first step is to **sit down with an attorney to ensure your goals are attainable and what steps need to be taken**.

Learn how Eric can help, call him for a no-obligation 30-minute consultation at [\(801\) 850-9740](tel:801-850-9740)

Contact Eric M. Swinyard

Call: [\(801\) 850-9740](tel:801-850-9740) or Submit this form:

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Eric Swinyard is a divorce and family law attorney in Utah. He began practicing law after obtaining a law degree and MBA from the University of Arizona. While in law school Eric took advantage of several opportunities to gain real world legal experience, including clerkships with the United States Department of Justice and the Federal Judiciary. Since becoming an attorney, Eric has provided legal counsel to hundreds of individuals.



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