

## ANY SPECIAL ISSUES TO WATCH FOR?

First, alimony, maintenance, or spousal support—in many jurisdictions—must be requested in court before the divorce is granted in order to preserve the issue for the court to determine. If you don't want to pursue alimony, that is your choice. But if you're a dependent spouse and you intend to ask the court for alimony, discuss this with your divorce lawyer at the outset, long before the divorce is granted.

Second, property division should usually also be done at or immediately following the divorce. You should be sure to request this in your pleadings (the complaint or petition for divorce) to preserve this for the court to decide if you and your spouse cannot work things out by agreement (or, in the case of dividing military pension rights, a consent order). An agreement, of course, would probably be the least expensive way to resolve this, but that is not always possible if you and your spouse cannot agree. Talk to your lawyer about this also. Make a list for him or her of all the property either of you acquired during the marriage (e.g., real estate, motor vehicles, bank accounts, household furnishings, stocks and investments, retirement assets) to facilitate the decision of whether an agreement can be reached. And, don't forget the debts that either or both of you accumulated during the marriage.

Third, recognition of your divorce in the US may be a problem if you get your divorce overseas. American courts are required by the US Constitution to recognize and honor the orders and decrees of sister states (so Kentucky, for example, would have to honor and enforce your divorce decree from Arizona). But US courts do not have to recognize court decrees from other countries. Your divorce decree and child support order from Belgium, for example, may not be honored in Florida. And the courts of foreign countries cannot divide military pension benefits -- only an American court can do so. You should request in court papers filed before the divorce is granted. Be sure you know these rules before you choose to go to court overseas.



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# DIVORCE & SEPARATION

**Disclaimer:** The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.



The information in this brochure is of a general nature and is not intended as a substitute for legal counsel.

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## **CAN I GET A DIVORCE AT THE LEGAL ASSISTANCE OFFICE?**

No. You have to go to court to get a divorce, and you will probably need a private attorney too. Although you are not legally required to have an attorney, it is sometimes difficult to get a divorce without one. Even though a legal assistance attorney usually cannot go to court for you, he or she may still advise you about the issues and procedures in your case.

## **WHERE MAY I GET DIVORCED?**

You can't just file for divorce anywhere. A valid and legal divorce can only be granted in the domicile of either the husband or the wife. This means the true legal home of one of the marriage partners. It is the place where a partner can vote, pays income taxes and qualifies for in-state college tuition. It does not necessarily mean the same thing as a military "home of record." Many states will also have a law that will allow a military member or spouse currently stationed in the state to get a divorce if they meet certain requirements. A legal assistance attorney can advise you where you may get a divorce.

## **WHAT HAPPENS IN A DIVORCE?**

First, you become single again -- you are no longer married. You can date, get remarried or stay single. You must file your taxes as "Single" (or, if you have dependents living with you, as "Head of Household") rather than as "Married." Usually the ex-wife may resume using her maiden name - and often this may be requested in the divorce papers that she files or in a separate Name Change action later.

A divorce, however, does not necessarily mean that child support, alimony, property division, and custody are all resolved. This depends on the law of the particular place (state or country) where you file for divorce or dissolution of marriage. In some places, all issues in dispute between the parties must be resolved by trial (and all not in dispute must be settled by written agreement) before the court will grant a divorce. In others, however, the divorce is entirely separate from these other issues and may be granted independently of a resolution of these issues; you can go ahead and litigate (fight in court) any contested issues at any time before or after the divorce, which is granted independently of the claims for property division, custody, child support and alimony.

## **HOW LONG DOES A DIVORCE TAKE? WHAT ARE THE GROUNDS? CAN MY HUSBAND CONTEST THE DIVORCE?**

It depends entirely on the law of the place where you get divorced. And that means about 50 different answers are possible for just the United States alone. In fact, in some states the answers vary from county to county or even from city to city in the same county. You'll have to ask your legal assistance attorney or your divorce lawyer these questions in order to get the right answers.

## **DO I NEED A SEPARATION AGREEMENT TO GET A DIVORCE?**

No, you do not need a separation agreement to obtain a divorce. While a separation agreement may make the divorce simpler, cheaper, and sometimes faster to get, it is not a requirement for divorce. Some states have very simple requirements for a divorce and do not use separation agreements. In those states, a property settlement agreement may be used to resolve the same issues that are addressed in a separation agreement. Consider an agreement if you think you and your spouse can agree on its terms, since this means a full resolution of all your differences and it leaves less to fight over with lawyers in court.

## **SINCE MY SPOUSE AND I AGREE TO DIVORCE, CAN WE DO SO WITHOUT A LAWYER (AND SAVE \$\$)?**

In some states there is a simplified procedure for "pro se divorce" (basically "do-it-yourself"). In such cases, there are standard forms in which you fill in the blanks, or sometimes there are examples you can follow to start your divorce. Then you would need to serve these papers on your spouse, usually by certified mail, by sheriff or by a "process-server" (that is, a person who delivers court papers). If your spouse does not respond within a certain period of time, the court will either grant your divorce then and there, or may conduct a hearing to decide. If your spouse is in the military service, the Servicemembers Civil Relief Act (SCRA) may require additional steps before the court may grant such a "default" judgment. Please note that there is no easy way of knowing which states allow this simplified procedure or which ones make it easier or more difficult for you to get your own divorce without a lawyer. Ask a legal assistance attorney to advise you.

## **WHAT IF MY SPOUSE WON'T GIVE ME A DIVORCE?**

The judge grants a divorce, not your spouse. If your spouse won't cooperate with you, it will take longer and probably cost more to get your divorce, but you can still get one.

## **HOW DOES DIVORCE WORK IN COURT?**

In all states, you may file for divorce only if you have been a resident for at least some period of time, often six months, before the date of filing your divorce petition. You may also file for divorce in the state where your spouse is a legal resident. In addition, if there is any dispute about child custody, you may have to file in the state where the child has been living for the six months immediately preceding the filing of the lawsuit. After filing your divorce paperwork at the courthouse, your lawyer will serve a copy of the summons and complaint on your spouse. If your spouse consents or does not file an answer within the time allowed, usually a few weeks after being served, the judge may then grant your divorce. If your spouse is in the military service, the Servicemembers Civil Relief Act may require additional steps before the court may grant such a "default" judgment. If your spouse files an answer contesting the divorce, then a trial date will be set. At the trial, both of you will be allowed to testify, and then the judge will decide whether to grant the divorce. In some states the judge will also decide how to split up your property and debts, and all the other issues involved in your case. It would be very unusual for the judge not to grant a divorce, but the property and custody arrangements may not go as expected.

## **HOW CAN I SET UP A LEGAL ASSISTANCE APPOINTMENT TO SPEAK WITH AN ATTORNEY?**

For further assistance, our office offers legal assistance appointments Monday through Friday to you to come in to speak with an attorney. To schedule a legal assistance appointment, please call DSN: 315-226-4022 or Comm: 011-81-176-77-4022. Please be advised that the legal assistance attorneys can only provide information on the divorce and separation process and cannot file documents on your behalf or represent you in a civilian court.