

# Divorce and Separation

## Common Questions & Answers

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### **Q. Can I Get A Divorce At The Legal Assistance Office?**

A. 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.

### **Q. Where May I Get Divorced?**

A. 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.

### **Q. What Happens In A Divorce?**

A. Several things can or will happen:

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.

**Q. How Long Does A Divorce Take? What Are The Grounds? Can My Husband Contest The Divorce?**

A. 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.

**Q. Do I Need a Separation Agreement to Get a Divorce?**

A. 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.

**Q. Since My Spouse and I Agree to Divorce, Can We Do So Without a Lawyer (and save \$\$)?**

A. 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.

**Q. What About Attorney's Fees**

A. Be sure to ask early and often about attorney's fees. Here are some suggestions:

- Find out from your lawyer if the attorney's fees you incur can be assessed by the court against the other side (in other words, if your soon-to-be-ex can be made to pay your lawyer's bill).

- Be sure you ask your lawyer at the outset how much he or she charges. Get this written down in a contract that both you and your lawyer sign. Read the contract closely before signing; you might even want to take it home with you before signing to read it closely and to allow yourself to think about it before you commit yourself to what might be thousands of dollars of legal expenses. Be sure to ask any questions you have before you sign it. Also make sure you keep a copy of the contract.

- Ask for an estimate of the total charges and ask what services are included in this estimate. Ask what steps your attorney expects to take and how much time (or expense) they might involve -- if you hire an experienced lawyer, he or she should be able to at least "outline" the process for you with a fair degree of accuracy.

- At the same time, be aware that it's impossible to predict with any degree of accuracy what will happen in a divorce case. While many of these are resolved as standard "uncontested divorces" with no alimony, property or child-related issues involved, there are a great many cases that are completely unpredictable, so don't expect a specific dollar amount to be quoted to you as "the entire fee" in anything but a standard uncontested divorce. In fact, be wary of attorneys who promise to handle your entire case for a fixed sum, since it is impossible at the outset to tell what will occur in all except the most routine of uncontested divorce cases -- one in which both parties want to get divorced, there are no issues of alimony, property division, custody or child support, and there is no problem serving the other party with the divorce papers.

- Be sure you understand the hourly rate of your lawyer, how the billing takes place, when you're expected to "refresh the retainer" and so on.

- Be sure to ask lots of questions if you want answers and you want to know how you will be charged in your case -- after all, it's your money.

### **Q. Any Special Issues to Watch for?**

A. Lots of things, but three in particular are very important:

- First, alimony, maintenance, or spousal support (in many jurisdictions) must be requested in court before the divorce is granted in most states in order to "keep it alive" for the judge to decide. If you don't want alimony, or if you make more than your spouse, that's fine. 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 (sometimes called equitable distribution) should also be done at or before the divorce. The division of marital (or community) property is alive and well in all 50 states, and 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 make easier the job of deciding on 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 "back home" (in the U.S.) may be a problem if you get your divorce overseas. American courts are required by the U.S. Constitution to recognize and honor the orders and decree of their sister states (so Kentucky, for example, would have to honor and enforce your divorce decree from Arizona). But U.S. 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. If you get a decree of divorce and custody in Korea, it need not be recognized and enforced in California. 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.

**Q. Does It Matter Who Files For The Divorce?**

A. Not really, although some jurisdictions may charge less if a military member files.

**Q. What If My Spouse Won't Give Me A Divorce?**

A. 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.

**Q. How Does Divorce Work in Court?**

A. 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.

**Q. Is My Divorce Final When the Judge Signs the Decree?**

A. Not always. In some states there is a waiting period after entry of judgment before the divorce becomes final. In other states, it's final when signed by the judge. When in doubt, ask your divorce attorney or check the divorce judgment itself -- the decree may state its effective date.

**Q. Can My Spouse and I See the Same Lawyer?**

A. Usually no. You and your spouse have different interests and each may want legal advice independent of the other. Sometimes you may see the *same* lawyer: to receive general information on local divorce law and procedures (e.g., you'll need to go to court in state X,), but not for specific legal advice in your case. You also may also see the same lawyer to mediate your separation from your spouse. Here, if you and your spouse are likely to agree on all of the important issues in your situation, a mediating lawyer is not an advocate for either party, but is an impartial neutral individual who provides information to both parties and discusses possible solutions to the issues involved in the divorce or separation. Spouses who cooperate with each other to resolve these issues fairly and amicably can often get a separation agreement faster and easier through mediation than through traditional legal assistance. Outside of these cases, you may not use the same lawyer if the two of you dispute substantial or important issues, because it would be a "conflict of interest" for the lawyer to try to represent both of you in the separation and divorce. This means that he or she could not be loyal to one of you without doing a disservice to the other. A lawyer cannot have two clients in the same divorce case, since whatever he or she gains from one will usually be at the expense of the other. For example, if the lawyer works toward getting lots of alimony for Mrs. Smith, then SGT Smith will suffer; if, on the other hand, he or she tries to get no alimony for SGT Smith to pay, then this hurts Mrs. Smith! It's really a NO-WIN situation for the lawyer and, quite often, for the clients as well.

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