

# Divorce and Separation Overview

*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 case.*



proceed to divorce, however many states permit couples to file the separation agreement with the court. Should a separation transition into a divorce proceeding, the agreement can serve as the basis of the divorce decree.

A **divorce** is the legal termination of a marriage and can only be obtained through the court system. State law

varies but a divorce can be “contested,” meaning the parties disagree on the terms of the divorce, or uncontested. A divorce can also be considered “no-fault,” such as when the parties wish to separate based on irreconcilable differences, or “at fault” based on some misconduct by one spouse against the other (e.g., infidelity). When the divorce is final, the marriage ends and both parties may marry someone else.

**For additional information about divorce and separation,** see the FAQ’s available on the U.S. Air Force Legal Assistance website: <https://aflegalassistance.law.af.mil/>

Anyone considering a divorce or separation should consult an attorney to discuss the potential legal ramifications given their specific situation. A legal assistance attorney can discuss issues that frequently arise for servicemembers and their spouses, including military-specific considerations regarding child custody; requirements for financial support to dependents; division of military retirement and other benefits; the application of the Uniformed Services Former Spouses’ Protection Act; dependents’ rights to base privileges and military benefits during separation and after divorce; and related issues.

A **separation** is not a divorce but is a step in the legal process towards divorce. Couples initiating a separation should *consider a separation agreement*, which is a written contract in which each spouse agrees to fulfill certain obligations during the separation period. The agreement should, at a minimum, cover issues of child custody and support (if applicable) and financial obligations during the separation. The agreement should also discuss distribution of property and debts, and any other potentially contentious issues. A separation agreement is voluntary and is not generally required to

*Updated March 2023*