

# Divorce: Common Questions and Answers

*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.*



issues like child custody and support; alimony; and property division are resolved. In some states, a couple cannot receive the divorce decree without first resolving these disputes. In others, the divorce is a separate proceeding from litigation related to resolving these other issues. Regardless, in any state a spouse can ask the judge to revise the divorce decree

months, or even years, after the divorce was granted. This is most common for adjustments to child custody and support.

Family law varies widely across states. Some questions, such as how long does a divorce take, what are the grounds for divorce, and can my spouse contest the divorce, cannot be answered in a generalized FAQ. This document attempts to address common questions and facts about divorce that are broadly applicable across the U.S., but military members and their spouses considering or facing divorce should consult a legal assistance attorney for state-specific advice.

## **Q. Can my legal assistance attorney handle my divorce?**

A. No. You must go to court to get a divorce and may need to obtain a private attorney, too. Even though a legal assistance attorney cannot represent you, they may still advise you about divorce procedures and can discuss specific issues in your case.

## **Q. What happens in a divorce?**

A. The most obvious effect of divorce is the legal termination of the marriage, meaning both spouses become single again. However, the divorce decree does not necessarily mean that

## **Q. What is the difference between “no-fault” and “at-fault” divorce?**

A. States vary on whether they consider “at fault” divorces. A “no-fault” divorce simply means that the marriage is broken and cannot be saved. You may have heard someone use the phrase “irreconcilable differences” when describing the need for a no-fault divorce. An “at-fault,” sometimes called a “for cause,” divorce occurs when the basis for the divorce is some form of bad behavior by one spouse. The bases for an at-fault divorce vary by state but generally include infidelity, abuse, criminal conduct, and a spouse being lawfully married to another person at the time of their current marriage as bases for at-fault divorce. In those states that still consider “at fault” divorces, the fault can potentially be a factor in determining alimony and distributing property.

## **Q. What is the difference between “contested” and “uncontested” divorce?**

A. A contested divorce is one in which the parties cannot agree to the terms of the

divorce, or where one spouse opposes the divorce entirely. An uncontested divorce is one where neither spouse opposes the divorce, though there may be minor disagreements about the terms of the divorce. In either instance, only the judge can grant the divorce and resolve any disputes.

**Q. Do I need a separation agreement to get divorced?**

A. While a separation agreement is not required to obtain a divorce in any state, executing one can make the divorce process simpler. A separation agreement allows couples to resolve ahead of time many potentially contentious issues and may result in a smoother divorce proceeding. If you have minor children, a separation agreement that describes obligations of child custody and support during separation is a vital part of the process.

**Q. Where may I get divorced? Must I obtain a divorce in the state I got married in?**

A. A divorce can only be granted by a court in the state in which either spouse is domiciled. Your “domicile” is the place where you live and vote, pay income taxes, qualify for in-state college tuition, etc. This will often be your military “home of record,” but might not be. Additionally, many states permit military members and their spouses currently stationed in the state to get a divorce there.

**Q. Can I get divorced while stationed overseas?**

A. Recognition of your divorce in the U.S. may be a problem if you get your divorce overseas. American courts are required to recognize a divorce granted by another state, but not those issued by a foreign court. Additionally, note that a foreign court cannot divide military pensions or other benefits. Be sure you know these rules before you choose to go to court overseas.

**Q. Does it matter who files for the divorce?**

A. No, though some jurisdictions may charge less if a military member files.

**Q. When is my divorce final?**

A. In most instances, the divorce is effective the day the judge signs the divorce decree. This is not always the case, though, and you should reference the divorce decree itself for its effective date.

**Q. What is alimony?**

A. While the term varies from state to state, “alimony,” “maintenance,” and “spousal support” generally refer to the same thing -- money paid from one spouse to the other post-divorce so the recipient can maintain a certain standard of living. The judge determines whether alimony is necessary or warranted and sets the amount, and only the judge can amend the amount once set. Alimony is entirely separate from child support.

**Q. My spouse and I agree to the terms of divorce. Do we really need a lawyer?**

A. Potentially not. Many states offer simplified divorce procedures that feature standardized forms. If you and your spouse agree on the terms and distribution of marital property, you may well be able to accomplish the divorce without hiring counsel. You should still consider seeing an attorney though, particularly if military retirement or children are involved. These are complicated issues and can have a large impact on your life. An attorney can ensure that your interests are protected and that you’ve thought through future impacts.

**Q. Can my spouse and I use the same lawyer?**

A. Usually, no. Lawyers owe an ethical duty to their client to obtain the best possible result for him/her. You and your spouse have competing interests in a divorce. One attorney cannot represent you both if there is any disagreement on the terms of the divorce. You may see the same lawyer to receive general information on

local divorce law and procedures or for the purposes of mediation.

**Q. How much are attorney's fees for divorce?**

A. Attorney's fees vary significantly based on numerous factors. Whether you and your spouse agree to the terms, or the divorce is contested will significantly affect the amount of the time the attorney spends on your case, and thus the cost of representation. When talking to your attorney, be sure to:

- During your first meeting, ask your lawyer how much he or she charges and get an estimate based on your specific circumstances.
- Execute a representation contract with your attorney that describes fees that you both sign. Ask any questions you have before you sign it and make sure you keep a copy of the contract.
- Ask your lawyer if the court can require your spouse to pay your attorney's fees.
- Be sure you understand your attorney's retainer and hourly rate, how billing occurs, and whether and how often deposits are required.
- Be sure to ask lots of questions -- after all, it's your money.

**Q. What if my spouse won't agree to the divorce?**

A. The judge grants a divorce, not your spouse. If your spouse won't cooperate, you will be forced to pursue a "contested" divorce. That process will likely take longer and probably cost more – you almost certainly need an attorney to proceed through contested proceedings - but you can still get divorced if you choose to.

**Q. What is mediation in the context of divorce?**

A. In mediation, a neutral third-party works with both spouses to reach an amicable agreement. In the context of divorce, mediation is often used to reach a separation agreement. Additionally, while mediation does not replace the role of a judge during the divorce proceeding, virtually all states permit mediation to reach mutually beneficial terms that will

eventually be incorporated by the judge into the divorce decree. Mediation is strictly voluntary, but the process is almost always cheaper and faster compared to contested divorce.

*Updated March 2023*