



THE BASICS

Getting A Divorce
in New York State

Either the wife or the husband can ask a Court for a divorce. In this booklet, we say that the wife is the person who will go to Court to request a divorce from her husband. But it can happen the other way around.

A divorce case can be fairly simple. This is the case if both the husband and the wife want to get divorced and they do not have any disagreements about their finances or children. If they have children together, the parents may already have a Family Court order(s) that decides who has custody and/or visitation and who pays child support. If they also do not have money or property to divide up, they may be able to get divorced in less than a year's time and without hiring lawyers. People call this kind of case an "uncontested" divorce.

However, a divorce case can also be very complicated. This happens if either the husband or the wife does not want to get divorced, if they disagree about who is to blame or if they disagree about financial issues and/or what happens with their children after the divorce is final. These divorces take a much longer time. People call this kind of case a "contested" divorce.

DO I NEED A LAWYER?

It is usually not a good idea to try to get a divorce without a lawyer. This is because you must provide a lot of information to the Court on many different forms and because there are many things involved in ending most marriages. However, if you believe your case will be simple and uncontested, you may be able to represent yourself, since the law does not say you must have a lawyer.

The information in this booklet should help you figure out how complicated your divorce case will be. It also explains the legal requirements for getting divorced.

If you have a complicated divorce case, there are several ways you can try to get a lawyer to represent you. First, you can contact your local legal services or Legal Aid office to see if they can take your case for free. Each borough of New York City has one or more of these offices. If you qualify as low income, they do not charge you, but they often have long waiting lists of people needing divorce lawyers.

Second, if your divorce case involves any custody, visitation or order of protection issues, you have a right to have a lawyer represent you on these issues. If you do not have enough money to pay a lawyer, ask the judge to assign you a lawyer free of charge. This free lawyer will not, however, be required to handle the parts of your divorce case that do not involve custody, visitation or an order of protection.

Finally, if you do not qualify as low income, try contacting a local bar association or someone in the Courts to find out the best way for you to get a lawyer to handle your divorce.

WHAT COURT DO I GO TO FOR A DIVORCE?

The Supreme Court of the State of New York is the only court that handles divorce cases. You should go to the Supreme Court in the county where you now live or in the county where your husband now lives.

Each Supreme Court has a matrimonial clerk. The matrimonial clerk's office has uncontested divorce packets available for free.

Your divorce will be uncontested if your husband does not argue with (contest) anything you are asking the Judge to decide.

The uncontested divorce packets include all the papers and forms you will need. There are also instructions for how to fill out the forms. You can buy a packet from any legal stationery store or download and print the packet from the internet. The internet address is <http://www.courts.state.ny.us/toc-ud.htm>.

HOW MUCH WILL IT COST?

For most people, it costs at least \$335 in filing fees to get an uncontested divorce. When you start your case, you must pay a fee of \$210. At that time, the Court will give you an index number.

An index number identifies a court case in the same way that a social security number or driver's license identifies a person.

Later on, when your case goes to the Judge for a final decision, either you or your husband must pay another fee of \$125. If your divorce case is contested, there will be additional court fees.

It is also a good idea to get a certified copy of the divorce judgment at the end of your case. Each certified copy costs \$8.

However, if you are on public assistance or cannot afford to pay these filing fees, you can give the matrimonial clerk a sworn statement showing your financial situation and asking the Court to excuse you (give you a waiver) from paying the filing fees.

If you do not have the money to pay court filing fees, the sworn statement you need to give the Court is called a poor person's affidavit.

CAN I GET A DIVORCE IN NEW YORK STATE?

Yes, you can, if you do three things:

- Show a physical connection to the state (residency).
- Give a serious reason (a ground).
- Have your husband personally served.

These three things are described in the Supreme Court's uncontested divorce packet. The first two—residency and grounds are covered in more detail in this booklet.

WHAT IS RESIDENCY?

Continuously means there was no interruption.

Before a New York Court can give you a divorce, you need to show that you and/or your husband have lived in New York State a certain amount of time continuously.

Any one of these situations will work:

- You and your husband got married in New York and either you or your husband still lives in New York and has lived here continuously for one year before the divorce case starts.
- You and your husband lived in New York as a married couple at some point during your marriage and either you or your husband still lives in New York and has lived here continuously for one year before the divorce case starts.
- The reason for getting divorced happened in New York and either you or your husband lives in New York and has lived here continuously for one year before the divorce case starts.
- The reason for getting divorced happened in New York and both you and your husband still live in New York when the divorce case starts.
- Either you or your husband is living in New York and has lived in New York continuously for two years before the divorce case starts.

WHAT ARE GROUNDS FOR DIVORCE IN NEW YORK STATE?

Grounds are the legal reasons for getting a divorce.

New York does not give a divorce just because a husband and wife do not get along. You must prove that your husband has done something to you that is serious enough for the Judge to give you a divorce.

If you can show the Judge one of these legal reasons, you should be able to get your divorce:

- Cruel and inhuman treatment
- Abandonment
- Imprisonment
- Adultery (rarely used and not recommended)
- Living apart with a legal separation agreement

If you want a divorce and are having trouble figuring out your legal reason, it will help to talk to a lawyer about what is going on in your marriage.

WHAT IS CRUEL AND INHUMAN TREATMENT?

In the papers you file in court, you will need to describe your husband's behavior and say why his behavior is cruel and inhuman and how it affects you.

If your husband behaves toward you in a way that makes it unsafe or improper for you to continue living with him, this is cruel and inhuman treatment.

These are all examples of cruel and inhuman treatment:

- Physical abuse
- Mental abuse
- Sexual abuse
- Threats of physical, mental or sexual abuse against you and/or your child, a family member or a friend
- Verbal abuse
- Economic abuse

It is best to describe cruel and inhuman treatment by your husband during the most recent 5 years of your marriage just before the start of your divorce case. If your husband was cruel to you more than 5 years ago, you can give the Judge this information. But if your husband objects and says that this happened more than 5 years ago, the Judge will not look at what happened that long ago.

If you and your husband lived together before getting married and he was cruel to you when you were living together but not after you got married, his cruelty before the marriage doesn't count in your divorce case.

Usually, you need to tell the Judge about at least three times that he treated you cruelly and inhumanly, unless one thing he did was very serious.

You must say how each of your husband's actions affected you physically, mentally or emotionally. Did you:

- Fear for your life?
- Need to run away from home?
- Get medical treatment?

- Get an order of protection?
- Feel ashamed or humiliated?

You must also say when and where each act of cruelty happened, with as much detail as you can remember. You do not need to say the exact date and time. For example, you may remember that it happened in a particular month or season or during a particular holiday. And you may remember that it was during the day, at breakfast time. If another adult saw or heard what he did, include that information, too.

If your husband abused you verbally, you should give the Judge the actual words your husband used, even if they are offensive to hear. For example, you may tell the Judge he called you “a dumb bitch” in front of your best friend.

If your husband is not helping with the bills or is keeping you from going to school or getting a job, these are examples of economic abuse.

If your husband has committed adultery, you can describe this behavior as cruel and inhuman treatment. Remember that you will need to describe how his adultery affected you badly. (Adultery is described later in this booklet.)

WHAT IS ABANDONMENT?

If your husband abandons you, that means he has left you for good.

If you say you were abandoned, you need to prove three things:

- That your husband walked out on you, leaving the home where you and he were living together, planning not to return.
- That your husband has been gone for at least one continuous year.
- That you did not agree that your husband should leave you.

Your husband has to have been gone for at least one year straight at the time you start your case. If he moved out for 9 months, then moved back in for a month, then moved out again, you need to wait a year from the second time he moved out before the Judge will decide that he has legally abandoned you.

It is NOT abandonment if:

- You asked your husband to leave.
- Your husband said he was leaving and you agreed he should leave.
- Both you and your husband agreed to separate.
- You locked your husband out of your home.
- You treated your husband so badly that he had to leave.

There is a second type of abandonment. You can get a divorce if you tell the Judge about behavior by your husband called **“constructive” abandonment.**

Your husband may have forced you to leave your home (for example, locked you out) or refused to have sex with you for at least one year continuously. You and your husband cannot have had sex even once in the year just before you start a divorce case, if this is your reason for wanting a divorce. And your husband’s refusal to have sex with you must be his fault.

It is not constructive abandonment if:

- Your husband is sick and, as a side effect of the illness or medication, is impotent (can’t have sex).
- Both you and your husband agreed not to have sex.

- Neither you nor your husband asked for sex, or offered it. This is because it looks to the Judge like you agreed with your husband not to have sex.

Constructive abandonment means that even if your husband has not left you, he has done or failed to do something that is so important to your marriage that the Judge will treat it as if he did leave you.

WHAT IF MY HUSBAND IS IN PRISON?

If your husband has been in prison for 3 or more continuous years after the date you were married, a Judge will give you a divorce for this reason. Your husband must still be in prison after being there for at least 3 years when you start the divorce case. You will need to get a letter from the warden of the prison where your husband is that says how long he has been in prison.

However, if you and your husband got married when he was in prison, you cannot use this reason for getting a divorce from him.

And if your husband has been in and out of prison during the last 3 or more years, but he was never in for 3 years straight, you cannot use this reason for getting a divorce from him.

WHAT IS ADULTERY?

If your husband has sex with someone else without your consent while you and he are married, this is adultery.

Adultery is very difficult to prove in court, so this is not a reason you should try to use for getting divorced. Very few people get divorced claiming adultery as the reason for their divorce. This is because the law says someone other than you needs to actually see your husband committing

adultery with another person and be willing to come to court to tell the Judge what s/he saw. People usually do not commit adultery in public, so finding a witness is difficult and expensive.

However, if your husband has committed adultery, especially if you saw it or he brags about it, you can describe his adultery as cruel and inhuman treatment to the Judge, because this is a kind of emotional abuse. So the legal reason for your divorce will be cruel and inhuman treatment (described earlier in this booklet), rather than adultery.

HOW CAN I GET A DIVORCE USING A SEPARATION AGREEMENT?

A separation agreement is a contract in writing between a husband and a wife that covers how they will separate every important part of their marriage, including caring for their child(ren), if any, and dividing their money and property.

If you and your husband get divorced using a written separation agreement, neither of you has to accuse the other of anything.

If you want to get divorced this way, you and your husband will need to talk through and agree on all the important issues connected to ending your marriage. The agreement must cover how you will live separately for the rest of your lives.

Here are only some of the things that must be covered in your separation agreement:

- How you and your husband will divide any property you got while you were married (for example, who gets the car, the money in your bank account or money in a pension account).
- Who gets to keep the home you have been living in together (the marital home), or whether neither of you will.

- Who will get custody of your child(ren), if any, and whether and when the other gets to visit with the child(ren).
- How much child support the parent without custody has to pay.
- How much support, if any, either you or your husband has to pay to the other, and for how long.
- Whether one or both of you will provide medical or life insurance for the other or the child(ren).
- Which of you will paying which debts, if any.

Because these contracts have many technical requirements in order to qualify as a legal separation agreement, it is very difficult to get divorced using a separation agreement unless you have a lawyer.

After living separately for one year from the date you both signed the separation agreement and doing what you agreed to do in the agreement, either you or your husband can go to court and begin a divorce case. You will need to fill out forms and file for divorce in the same way that you would using any other ground for divorce. In this case, your ground will be living apart with a legal separation agreement.

WHAT WILL THE JUDGE DECIDE IN MY DIVORCE CASE?

In the legal papers, a divorce is called “dissolution of the marriage” because you are asking the Judge to order that your marriage to your husband is ended, or dissolved.

The main reason you start a divorce case is to end your marriage to your husband. But there are other important issues you can ask the Judge to decide as part of your divorce case. These are things that are connected to the ending of your marriage. Generally, they involve children, property and financial issues.

The additional things you ask the Judge to decide, such as custody, support and/or equitable distribution, are called ancillary relief.

Two issues that are often connected to ending a marriage are never handled in Family Court. So you must ask the Judge in your divorce case to decide these things at the same time as you ask for the divorce, if they are important to you:

- Use of your maiden name or some other last name you used before your marriage
- Division of property (equitable distribution)

Five other issues can be decided as part of your divorce:

- Custody
- Visitation
- Child support
- Spousal maintenance
- Order of protection

However, some people handle these five things in Family Court, even if they do not need or want a divorce. The advantages of going to Family Court for an order on any of these things are that there are no court filing fees and getting a Family Court order may be quicker than waiting for the issue to be handled as part of a divorce.

There are other booklets in *The Basics Series* that explain custody and visitation, child support, spousal maintenance and orders of protection. For more details about these subjects and how they are handled in Family Court, look at those booklets.

However, here is a short summary of these subjects.

Custody and Visitation. If you and your husband have a child(ren) under the age of 18 and there is no Family Court order giving custody to either of you, the Judge must decide which parent will get custody as part of your divorce case. You will have to list the name, birth date and social security number for each child you and your husband have together in your divorce papers.

If you want custody of your child(ren), you must ask the Judge to give custody to you in your divorce papers. You do not need to ask the Judge to give visitation to your husband in the divorce papers. If he wants visitation, he can ask for it himself in the divorce case, or he can go to Family Court later and ask for visitation there.

If you wish, however, you can ask the Judge to give your husband either “reasonable visitation” or a specific visitation schedule, if you and your husband have already have agreed on a visitation schedule.

Remember, you have a right to be represented by a lawyer if there is any disagreement between your husband and you about custody or visitation issues. And you can ask for the Judge to appoint you a free lawyer if you cannot afford to pay for one.

Child Support. In New York State, parents must support their child(ren) until they are 21 years old, unless the child(ren) is completely self-supporting. This means that you must list the name, birth date and social security number of any child(ren) under the age of 21 in your divorce papers, even though they maybe too old for a custody and/or visitation order. The Judge will then decide which parent owes child support for your child(ren). Usually, this will be the parent who does not have custody.

In some counties in New York City, the Judge usually will not grant a divorce if the husband and wife have a child(ren) under the age of 21 unless the parent who wants custody asks for child support from the other parent.

So, if you are asking for custody in one of these counties, you must also ask the Judge in your divorce case to order child support to be paid by your

husband. This is true even if he is in jail, is homeless or is receiving public assistance. You also need to ask the Judge to order either your husband or you to be responsible for paying the cost of health insurance and other healthcare expenses not covered by insurance for the child(ren).

Spousal Maintenance. You can also ask the Judge to order your husband to give you spousal maintenance for a period of time after you and he are divorced until you can get on your feet financially. And while your divorce case is going on, if your husband refuses to help with the household expenses (for example, rent payments), you can ask the Judge to order him to pay spousal support to you so you can pay these expenses.

If your ex-husband pays you financial support after you are divorced, this is called spousal maintenance.

If your husband pays you financial support while you are still married, this is called spousal support.

If you or your husband already has an order(s) from the Family Court covering custody, visitation, child support and/or spousal maintenance, then you should ask the Judge in your divorce papers to include the Family Court order(s) as part of your divorce judgment. If you want a child support order included, however, it must be “current,” which means no more than 3 years old.

You will need to state which Family Court gave the order, the docket (index) number, the date and what was decided. You must attach a copy of the Family Court order to the divorce papers you file in Supreme Court.

If a Family Court order is included (or continued) as part of your divorce order, that means that everything that the Family Court decided stays the same and does not have to be decided all over again.

Order of Protection. If you are worried about your safety and/or the safety of your child(ren), you can ask the Judge for an order of protection as part of your divorce case. The order of protection can last for a year or for a much longer period of time, depending on the history of abuse in your marriage. You can also ask the Judge to order that you stay in your home and that your husband move out (this is called exclusive possession of the marital residence), if this is necessary for your safety.

Remember, if you are asking for an order of protection, you have a right to be represented by a lawyer in this part of your divorce case. And you can ask the Judge to appoint you a free lawyer if you cannot afford to pay for one.

You may need the Judge make a temporary decision on some of these things right away. If so, you can ask for what you need as soon as you start your case or while your case is going on. For example, you can ask to Judge to order your husband to pay child and spousal support while your divorce case is going on.

You must ask in writing and have a copy of your written request given to your husband. The Judge will then schedule a hearing date in court where you and your husband will have the chance to answer questions about your request. Then the Judge will decide whether or not to grant your request.

Your written request for an immediate (temporary) order on custody, visitation, child or spousal support, or an order of protection is called a “motion.”

WHAT IF MY HUSBAND AND I HAVE PROPERTY OR DEBTS TOGETHER?

If you, or your husband, have a lot of property or debts, or if one or both of you have a pension, you should have a lawyer representing you to make sure that you get what is fair.

When the Judge decides what is the fairest way to divide money and property between you and your husband and which of you has to pay debts you owe, this is called equitable distribution.

Part of your divorce case is dividing up money and/or property and deciding who has to pay outstanding bills or taxes that have not been paid. There are no easy answers about what is fair. You and your husband may agree about

A statement of net worth is a form where you list all of your financial information in detail, including all income, expenses, assets (such as a pension or bank account), property and debts. It is a sworn statement that must be signed in front of a notary public.

how to divide these things, but if you cannot, the Judge will make the final decision, based on information you and your husband give the Judge in your case.

If your case is uncontested but you are asking the Judge to cover financial issues in your divorce judgment (for example, to pay spousal support or school tuition for your child), the Judge may ask you to fill out and file a statement of net worth form.

And if you and your husband disagree about any financial issues, the Judge will ask each of you to fill out and file a statement of net worth.

You will both need to send a copy of your statement of net worth to each other. You will be able to see the information your husband includes on his form and he will be able to see your information.

The Judge will look at the information in both forms when deciding how to divide up your and your husband's marital property and debt. The Judge is supposed to divide these things fairly.

The Judge will look at many things when deciding who gets what, including:

- Your and your husband's income and property both at the present time and at the time you got married.
- How long you were married.
- How old and how healthy you are and your husband is.

- Whether the parent who has custody should stay in the marital home with the child(ren).
- Whether one of you will pay spousal maintenance to the other.
- Whether one of you earns more money or could earn more money in the future because of your education and work experience.
- Whether one of you tried to hide or give away some marital property to keep the other from getting it in the divorce.

Marital property includes all property that you and your husband got between the date you got married and the date your divorce case starts.

It does not matter whose name is on the marital property. For example, if you bought a car sometime after you were married, even if the car is registered only in your name, the Judge considers it marital property. Also, if your husband has a pension through his job, because you were married to him while he was working at that job, his pension is also marital property.

The Judge will decide how to divide everything that you or your husband bought with money you both earned while you were married. This may include:

- Homes
- Cars
- Bank accounts
- Businesses
- Pensions
- Educational degrees

Separate property is not marital property and will not be divided up as part of your divorce.

- If you or your husband have any of the following things, this may be separate property:
- Something you or he got before you were married.
- Something you got as a gift (but not from him) or he got as a gift (but not from you).
- Something you or he inherited.
- Money for pain and suffering because of personal injuries (from insurance or a lawsuit).

Something that starts out as separate property can change into marital property. This can happen if one of you puts money or time into improving the other person's separate property. For example, your husband may have made a down payment on a house before you and he married, but you may have made most of the mortgage payments while you were married. That house will now be marital property. What started out as your house could also become marital property if you put your husband's name on the deed.

Marital debt includes anything you and your husband owe, starting with the date you got married and ending on the date your divorce case starts.

The Judge will also decide which of you must pay any money you owe. This may include:

- Credit card balances
- Income taxes

- Mortgage payments on your home
- Children's school tuition

If there is more than one debt, the Judge may order you to pay some and your husband to pay others. The Judge will look at who caused each debt and for what reason.

HOW CAN I STOP USING MY HUSBAND'S LAST NAME?

If you used your husband's last name during your marriage, you should ask the Judge to order that you can use your maiden name or some other last name you used before your marriage in the divorce judgment. This does not mean you have to stop using your husband's last name right away. It just means you can choose to stop using your husband's last name whenever you wish.

HOW DO I GET TO STAY IN OR RETURN TO MY HOME AND GET MY HUSBAND TO LEAVE?

If you and your husband own a home together, or you have a rental apartment and both of your names are on the lease, and you want to stay in the apartment but you want your husband to leave, you can ask the Judge to give you "exclusive occupancy of the marital residence." The Judge will be most likely to give exclusive occupancy to the party who needs it the most, for example, the person who is the primary caretaker of the children, or the person who is least able to afford to find another place to live. If you own the home, the sale of the home and division of the money from the sale can be put off until some future time, for example, when your children have grown and are ready to leave home.

HOW DO I START MY DIVORCE CASE?

The Supreme Court's uncontested divorce packet explains in detail how to start your case. It includes:

- A list of all the papers needed.
- Instructions for completing each form the Court requires.
- The order you need to do things in and how long you have to complete each step.
- How you place your case on the calendar of the Court so that a Judge will sign an order that gives you your divorce (your divorce judgment).

WHAT IF MY HUSBAND WANTS TO CONTEST THE DIVORCE?

If your husband doesn't want a divorce or objects to some part of the relief you have asked for, he or his lawyer will send you a notice of appearance and also file it with the Court. Or you may get a notice directly from the Court that he is contesting the case.

A notice of appearance is a paper that tells the Court that your husband wants to speak up (appear) in the divorce case.

If your husband notifies you and the Court that he is contesting by filing a notice of appearance, then you should try every way possible to get a lawyer to represent you.

HOW LONG WILL IT TAKE TO GET A DIVORCE?

If your husband does not contest your divorce, it normally takes at least 6 months to get a final judgment of divorce. The actual length of time will depend upon several things, including how many divorce cases are going on in that Court, and whether you completed the papers that you filed in your case correctly. If you make any mistakes in your papers, you will have to correct them and this will delay getting your final judgment signed.

If your husband contests the divorce, it will take much longer. It could take as long as several years, depending on how many issues you and your husband can't agree on.

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