

Divorce Basics

Requirements

- The laws in each state and territory determine who can get divorced in their court system. There are two main requirements:
 - **Residency**- how long you or your spouse have to live in that state in order to get divorced there. This period usually goes from 3-12 months.
 - **Grounds**- the reason for which you are asking for a divorce. Most states include fault and no-fault grounds.
 - No-fault grounds mean that it was no one's fault in particular that the marriage fell apart but the reason for creating that union no longer exists.
 - Fault grounds allow one spouse to claim (allege) that the other spouse was at fault for the breakdown of the marriage for reasons such as s/he was unfaithful, was imprisoned, committed domestic violence, etc.
- There are some situations in which a spouse might be legally able to file for divorce in more than one state.

Process

Paperwork

- The forms for some states might be available [online](#) or at the courthouse.
- You may need original documentation, including your marriage certificate, birth certificates of any children, and other legal and financial documents, in order to file.
- The person who files for the divorce, called the plaintiff or the petitioner, has to pay a filing fee in court unless s/he qualifies for a fee waiver. Fee waivers can be granted by the court if the person meets the low-income requirements established.

Service of Process

- The plaintiff is responsible for making sure the spouse is notified about the divorce process. This notification is called service of process.
- Generally, the preferred method for service of process is providing a copy of the petition or complaint in person to the other party. This is usually performed by a third party who is older than 18 years of age.
- If the other party can't be reached or his/her whereabouts are unknown, there might be other options for service of process.

Types of Divorce

- **Contested divorce**: if your spouse disagrees with anything in the divorce papers, then s/he will have the opportunity to file response papers telling her/his side. S/he can also file a counter-petition with his/her own grounds for the divorce and s/he may ask the judge for the same types of things you asked for, such as custody, spousal support, and

division of property, assets, and debts. There may be a series of court appearances to sort the issues out, ending with a settlement agreement or a trial.

- **Uncontested divorce:** if your spouse agrees with everything in your initial paperwork, then s/he may sign the appropriate papers and send them back to you or the court. Or if a certain period of time passes and your spouse does not sign the papers or file any papers of his/her own, the divorce may be considered uncontested.
- **Joint divorce petition:** if both parties agree on all issues, including custody, spousal support, child support, and division of property, some states allow them to file a joint petition based on mutual consent. There may be a requirement to have one or more hearings depending on the rules of that state or territory

Special considerations for survivors of domestic violence

- Safety first- When a survivor decides to leave an abusive relationship, s/he might be in more danger than before. Abusers usually become more aggressive as they know they are losing control over the victim. For this reason, it is important to create a [safety plan](#) for yourself and your children. This safety plan can include an order of protection for yourself, your children, and your pets, a safe place to live with a confidential address, a change in phone number and email address, reviewing the safety settings in your social media, as well as a change in routine.
- Every state and territory has [programs that provide free services to domestic violence victims](#).
- It is generally not recommended that a survivor of domestic violence represents him/herself in court, especially if the abuser has a lawyer. Mediation is also not recommended due to the power imbalance. Divorce is very complicated and you should try your best to get a lawyer to represent you who is knowledgeable not only about divorce but about domestic violence issues.
- If you have children, make sure to think through ways in which the custody agreement protects you from further abuse. Children are often used by abusive parents to keep control over the other parent. In some instances, a well-thought-out custody order may minimize some of the grief for you and your children.

The stress and difficulty of a divorce process can be greatly intensified when there is domestic violence in the relationship. Make sure to look for the help that you need during this process; you don't have to do it alone. If you have any questions, feel free to write to our Email Hotline by visiting <https://hotline.womenslaw.org>.

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You can find state-specific legal information on restraining orders, custody, domestic violence, sexual assault, and stalking, as well as resources for getting help on [WomensLaw.org](#). You can send us your specific legal questions by writing to our Email Hotline at [Hotline.WomensLaw.org](#).

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