



Fort Stewart Legal Assistance Office

INFORMATION BRIEF



DIVORCE

SUBJECT: Divorce

PURPOSE: To provide Legal Assistance clients with information regarding divorce.

REFERENCES:

- www.legalaid-ga.org
- Georgia Constitution Article VI. Section II. Paragraph V on Venue
- Georgia civil practice act: O.C.G.A. §9-11-2 through §9-11-14
- O.C.G.A. §19-5-2 through §19-5-17

DISCUSSION:

- **What are the grounds for divorce?**
 - In Georgia, irretrievable brokenness is grounds for a divorce. There is no separation period necessary before filing for a divorce in this state. Not all Fort Stewart Soldiers will be able to file for a divorce in Georgia. Before being allowed to file for divorce in Georgia, the parties must show that they are subject to the jurisdiction of the court. You will need to consult a legal assistance attorney to determine in which state you should file for a divorce. Some states still have traditional grounds for divorce where one party has to prove that the other party had engaged in some sort of misconduct, such as adultery, desertion, or cruelty. This misconduct was called the "ground" for the divorce. Some states retain these so-called "fault" grounds and require that one of them exist before a divorce will be granted. Many of the fault-ground states will have one exception to this rule if the parties have been voluntarily separated, usually for a year or more. However, most states have adopted "no-fault" grounds such as irretrievable brokenness. In these cases no misconduct needs to be shown. The parties tell the court that the marriage is irretrievable broken.
 - Because it takes the voluntary involvement of two persons to make a successful marriage, a statement by one that irreconcilable differences exist constitutes strong evidence that the marriage is broken, regardless of the feelings of the other party about a divorce. Thus, if one party goes to court and sues for divorce, it is almost impossible for the other party to prevent the divorce. The other party may, however,

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appear in court for the purpose of securing the most advantageous settlement of matters such as property division, support, and child custody.

- **What is the procedure by which a party obtains a divorce?**

- The spouse desiring the divorce is called the "petitioner" or "plaintiff" and files a divorce complaint with the court. The other party is called the "respondent" or "defendant". The respondent is officially notified of the divorce proceedings, normally by sheriff or by certified mail, and is given time to file a response with the court. This varies from twenty to sixty days depending upon state law and the method of service.
- A court date is then set and the matter heard by the court. Frequently, the respondent fails to file a response to the petition submitted to the court by the petitioner. In such a case the respondent is said to "default".
- If the respondent defaults, the court will proceed and usually grant the divorce on the terms (child support, alimony, child custody, property division) requested by the petitioner. It is very important, therefore, for the respondent to file a response if he or she does not agree with the terms proposed in the petition submitted by the petitioner. If the respondent contests the divorce action by filing an answer denying one or more of the statements in the complaint, a hearing will be set during which the two of you can testify and the judge rules on the outcome.

- **In what state do I file for a divorce?**

- You must file in a state court which has "jurisdiction" or control over at least one of the parties. Most states have laws which provide that divorce suits can be brought in their courts when one party to the marriage is a domiciliary of the state. Most states also provide that such suits can be brought when one party to the marriage has resided in the state for a specific length of time, normally six months to a year. Some states have a special provision allowing persons stationed there under military orders to file in their courts. Historically, a wife was presumed to have the same domicile as her husband. Today, many states recognize that a wife may have her own domicile. Talk to a Legal Assistance Attorney if uncertain where you should file. Remember, if you are seeking alimony or child support from your spouse, the divorce must be filed in the spouse's place of residence in order to be enforceable.

- **What if my spouse will not agree to a divorce?**

- Your spouse cannot prevent you from filing a divorce complaint with a court to initiate a divorce action. Ultimately, the judge is the person who grants a divorce, not your spouse.

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- **Can a military attorney obtain a divorce for me?**

- No. A legal assistance attorney can frequently assist you in preparing your divorce and can provide basic advice on divorce matters. For Sergeant (E-5) and below, we can also assist you in completing the petition for divorce in many uncontested divorce cases in which there are no children, there is no real property, and both parties agree to all terms. The Legal Assistance Office can only see whichever spouse seeks advice from our office first. Other attorneys are available to provide legal advice to the other spouse. The military does not have the power to grant your divorce, and a military attorney cannot appear with a client in court. If you are trying to find a private attorney, we recommend that you have a close friend or relative in the state approach an attorney on your behalf. The fees are likely to be more reasonable and the work will be completed more quickly when there is a personal representative in the area.

- **Can I represent myself in my divorce?**

- Representing yourself in your own divorce is possible and can work in certain circumstances, but only with adequate preparation, knowledge, and effort on your part. Legal Assistance Attorneys can advise you on self representation known as “pro se” representation. Beware of paralegals and document services which offer to prepare legal documents for you—this is considered the unauthorized practice of law, and is forbidden by many states. If you and your spouse have a simple divorce and can agree on how to split up property and other issues, you may be able to prepare your own divorce. Other cases are much more complicated—ones where the couple fights over homes, retirement plans, child custody, and other issues. Sometimes there are complications which only an attorney would notice. Here is a link to an online quiz which will help you decide whether you are capable of representing yourself:

<http://www.peoples-law.org/family/divorce/self%20quiz.htm>.

If you are obtaining a divorce in Georgia, additional information on divorce can be found online at www.legalaid-ga.org. This site has links to information on obtaining a divorce in many other states as well.

- **Who pays for my lawyer?**

- As a general rule, you must retain and pay for your own attorney in a divorce case. The charge to obtain a divorce varies widely depending on a number of factors including the attorney’s experience, the complexity of your case, if the divorce is contested or uncontested, if there are children involved, and what type of property needs to be divided.

- **If my spouse is a Soldier, can he/she delay the proceedings?**

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- Under the Servicemembers Civil Relief Act, some states will grant Soldiers a delay of up to six months or longer so he or she can obtain a local attorney. Others, however, will merely appoint an attorney on the spouse's behalf so the divorce can go forward. Still others will issue temporary custody, restraining and support orders to compel the spouse to get to court more quickly and to enable you to survive until a final hearing can be scheduled.
- **Is my divorce final when the judge signs the judgment?**
 - Depending upon state law, a divorce may be effective immediately or there may be a waiting period of up to six months after signing, in which case there is an "interlocutory" decree. If "interlocutory", parties must obtain the final decree after the waiting period expires. Otherwise, if you remarry without this final decree, you could be committing bigamy (married to two persons at the same time).
- **Can I resume use of my maiden name?**
 - Yes. Any name change request should be incorporated into the divorce papers your lawyer files. Some courts will not allow a wife to change her name if there is a minor child or children bearing the husband's name. Most, however, will not restrict you in this way. Remember, it is cheaper to include the change of name in the divorce petition itself, rather than be forced to bring a separate action later.
- **Do I need a "legal separation" or separation agreement to get a divorce?**
 - It will depend on your state. In Georgia you do not need a legal separation or a separation agreement to get a divorce. However, laws in a few states, including Georgia, enable parties to obtain a divorce in less time and with more ease if there is a separation agreement.
- **Can the judge order a property division at the time of divorce?**
 - Yes, however, what property is subject to being divided may depend on the state where the divorce is filed. In some states the judge cannot divide "separate property," which includes property acquired by either party before the marriage, by gift or by inheritance, even if it is later traded or exchanged for another item. Business and professional licenses may also be separate property if they cannot be transferred to another individual. Marital Property is always subject to division. There is a presumption that the fairest split would be an even division of all the marital property, regardless of who has title to the property, who paid for it, and so on. Under certain circumstances, however, the judge may decide that a fifty-fifty split is not fair to one or both of the parties. Many statutes have a list of factors that the judge may use to determine an equal division of property between the couple. The judge will consider such matters as monetary and homemaker contributions to the marriage by each

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party, tax consequences of an unequal division, whether alimony or child support is presently being paid, the source of property, who purchased it, and so on. Debts accrued by either spouse during marriage are usually considered joint liabilities and are generally divided equally by the court.

- **Will the court make a determination regarding child custody and support?**
 - Yes, if the parties agree on these terms, the court may accept them if it considers the agreement to be in the best interest of the child. If not, it will make a decision based on the best interest of the child. It can award custody to one parent or to both parents jointly. The primary element of joint custody is that both parties retain authority in management and control of the child and share the physical custody. Child support will vary depending upon such factors as the income and debts of the parties and the particular needs of the child. Both terms are subject to modification by the court upon a showing of changed circumstances and proof that such modification is in the best interest of the child. Parents, however, do not have the right to waive child support on behalf of their children.

- **Will the court grant spousal support or alimony?**
 - Spousal support is available in any case in which a court deems it appropriate. However, it is no longer a standard provision. The court will look at factors such as the length of the marriage, the education of the parties, their ability to work, and who has custody of the child in making a determination. Spousal support may be either temporary or permanent. Depending upon state law the fault of a party may be relevant to the issue.

- **Does the military require my Spouse to provide support for me and my children during the divorce process?**
 - If you do not have a court order, Army Regulation 608-99 requires that the military member provide support for his dependents. Please review the family support information paper available from your legal assistance office.

- **What military benefits will non-Soldier spouses and children retain after divorce?**
 - You will lose your benefits upon divorce and must surrender your identification card. However, under the Uniformed Services Former Spouses' Protection Act, if you have been married for 20 years and your spouse has been in the service for those 20 years, you are authorized commissary, post exchange, and theater privileges. If you are not in an employer sponsored health care plan, medical benefits may also be extended. These medical benefits are also available to you if your spouse was in the service for 20 years, you were married for 15 of those years, and you were divorced before April

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1, 1985. Individuals divorced on or after April 1, 1985 may get such medical benefits only for a year from the date of the divorce.

- If your spouse fails to provide court-ordered support after you are divorced, you can obtain a garnishment order from a court and the U.S. Army Finance and Accounting Center will forward up to 50%-60% of your ex-spouse's disposable income directly to you until all back payments are paid in full. Your children will also retain their military benefits until age 18 or 23, if they are enrolled full time in college.

- **Is it possible to have my marriage annulled?**

- Only in rare instances may a marriage be annulled. Annulment is a process by which a marriage is declared invalid on grounds established by state law. The party seeking annulment must go to court and the annulment must be ordered by the court. Although state laws differ, the following reasons are common grounds for annulment:

- At the date of marriage one party was underage and had not obtained the necessary consent of a parent or legal guardian.
- One or both parties were already married to somebody else at the time of the new marriage.
- The consent of one of the parties to the marriage was obtained by fraud or force.
- One party was, at the time of marriage and still is, incurably impotent.

- Soldiers or civilians who are parents of children younger than 18 years old and wish to receive a divorce from a superior court of the Atlantic Judicial District (which includes Liberty, Tattall, McIntosh, Long, Evans, and Bryan counties) must receive counseling prior to obtaining the divorce.

- Counseling services are provided free of charge by Army Community Services (ACS) through Fraser Counseling Center.

- **How do I protect my credit after my divorce?**

- The incidence of ex-spouse default on marital debt is quite high. Whatever the reasons, it is important for the non-debtor spouse to understand how to protect himself or herself. Under the law, creditors are not usually bound by the distribution of debts in a divorce decree. This means that they are free to pursue collection activities against any party that is named on the account. Thus, if your ex-spouse defaults on the car loan, you may end up being sued for any deficiency arising from repossession if you are also a named party on that car loan.

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- There are ways to protect yourself. First you should contact all creditors whose accounts your ex-spouse is now responsible for. Inform them in writing that the liability for the debt now rests with him or her. Make sure to enclose a photocopy of the divorce decree. In your letter, request that your name be taken off the account. The creditor is not required to do this, but they often do. Additionally, if they fail to respond, they will often be prohibited by courts from enforcing the debt. Another way to protect yourself, if you find out that your ex-spouse is defaulting on debts, is to have your attorney request that the Court cite your ex-spouse for contempt. Your ex-spouse will only be able to purge the contempt charge by paying the debt. Additionally, this entitles you to receive costs and attorney's fees. Finally, if you are sued, you can bring your ex-spouse into the lawsuit through a legal mechanism known as "impleading." This forces him or her to become a co-defendant, and, if judged liable, you can recover your losses.
- Expiration. Because the law is constantly changing by legislative enactment and court decision, you should obtain an updated version of this paper if it is more than one year old.
- Last Updated: 1 APR 2011, HWJ

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