

# Divorce

A marriage may only be ended through the Courts. There are different ways to end a marriage either temporarily or permanently, such as a legal separation, an [annulment](#) or a divorce. Although there are some minor differences, the process for ending a marriage is very similar.

## What if I want a divorce but my spouse doesn't?

There is no way to prevent a divorce in Utah if one spouse wants it even if the other doesn't.

## What is the difference between a legal separation, an annulment, and a divorce?

A **legal separation**, called separate maintenance in Utah, does not end your marriage. You remain legally married, but intend to live apart from each other. Since you are no longer living together, you may ask the court to enter an order for custody, visitation, child support, property division, debt payment, and other issues.

An **annulment** is an order from the court not only ending the marriage, but basically stating that the marriage never happened. Like a legal separation, the judge may enter an order as to custody, visitation, child support, property division, debt payment, and other issues. An annulment may be difficult to prove unless the marriage is clearly void under Utah law (such as where your spouse was already married to someone else when you married). In most cases, you must prove that your spouse purposely kept information from you or told you a lie to get you to marry, and that had you known the truth, you would never have married.

A **divorce** simply ends the marriage. Again, the court may enter an order as to custody, visitation, child support, property division, pensions, alimony, and other issues.

## **Do I need an attorney?**

No, you do not need an attorney to end your marriage. However, unless both you and your spouse agree on all the parts of the divorce, we would recommend that you have one. It is a good idea to have someone who knows the law and the court system to help you. You may be able to get help free of charge from the Legal Aid Society of Salt Lake if you are in Salt Lake County, or from Utah Legal Services in all other areas of the state. You should contact them to see if they may help. If they can't help you, you may still hire an attorney to help you.

## **May one lawyer represent both me and my spouse?**

No. There is always a conflict of interest in a divorce and one lawyer cannot represent both sides. But the Respondent could decide not to fight, in which case they would not need an attorney.

## **May I move either before or after a divorce is filed?**

Yes. However, it is best if you tell the other person, especially if there are children involved. While the courts will usually not prevent you from moving, they will consider the move when deciding where the children should live. A court might order the parent moving with the children to pay the costs to send the children to visit with the other parent.

## **How long does it take to get a divorce in Utah?**

The answer to this question depends upon the circumstances. Some ideas follow:

**Uncontested divorce** with or without children. Utah law imposes a 90-day waiting period after filing for a divorce before it may be granted, so even if you and your spouse agree on all the issues, it would take at least 90 days. However, you may try to waive the waiting period. Divorcing parents must take two (2) classes: the Divorce Orientation class and the Divorce Education for Parents Class.

**Contested divorce.** If you and your spouse cannot agree on the terms of the divorce, then it could take months or even years.

## **Is there an advantage to filing first?**

The only advantage to filing first is that if you may be able to affect where the case is within the state if you and your spouse live in different areas of the state. Otherwise, there is no advantage to being the first to file.

## **Where do I file for a divorce?**

Utah has a residency requirement for filing for divorce. You or your spouse have to live in the county you want to file in for at least three (3) months before you file. If you have children, you may need to live in the state with your children for at least six (6) months before filing.

## **Do I have to go to court?**

No. You only have to go to Court if you can not agree on the terms. In fact, most cases are resolved without going to Court.

## **What is mediation and do I have to go?**

Mediation is a process that may help you and your spouse talk about the issues in the divorce and come to an agreement. If you do not agree on your own, Utah law requires you to go through the mediation process before you may go to trial. This requirement may be waived, however, for good cause such as having had domestic violence in the relationship.

## **May I date or have another relationship before I am divorced?**

Any relationship with someone else before you are divorced may hurt your case. Also, this situation may anger your spouse and make settlement more difficult. If you have children, this is especially true, and you should get some professional

advice about how much your children should know about your adult relationships.

## **May I get help preparing the forms for a divorce?**

Yes. The Utah Courts have put the forms on their Online Court Assistance Program (OCAP) ([www.utcourts.gov/ocap](http://www.utcourts.gov/ocap)). After you add all the needed information, this program will prepare all the paperwork needed to file a divorce.

## **May I get an order to help me live until I am divorced?**

You may ask the Court to have a hearing to set temporary orders that will last while the divorce is pending. The court will not enter temporary orders without you taking the divorce orientation class and a hearing. However, they will usually try and schedule a hearing as soon as they can. This may be helpful if you have children so they can be taken care of with child support orders and visitation.

## **What happens after I fill out and file the paperwork?**

After filling out and filing the paperwork, your spouse must be “served” meaning they must get a copy of the paperwork and any notice of hearing for temporary orders signed so they know what you are asking. “Service” can be done by the sheriff’s office and/or a constable, or a person over the age of 18. Your spouse will have 21 days to respond if they are served within the state of Utah. If they are served outside of Utah, they will have 30 days to respond.

## **Do I have to have a reason to get divorced?**

Yes. Utah requires a reason to get divorced. The easiest and most used ground for divorce is irreconcilable differences. However, there are other grounds such as impotency at the time of the marriage; adultery; abandonment for a period over one year; willful failure to provide the common necessities of life; chronic drunkenness; conviction of a felony offense; cruel treatment (to the extent of causing bodily injury or great mental distress and suffering); the parties living apart under a decree of

separate maintenance for three consecutive years without living together; and incurable insanity.

## **What are my rights (e.g., how is property usually split up)?**

There is no one way that property, debts, and other issues are divided. You may do it any way that makes sense in your situation. However, here are some general guidelines:

### **Debt.**

The general rule is that if there is a debt on the property, the person who keeps the property will also have to pay the debt. However, when the person getting the property has no money or is disabled and the other party makes lots of money, then the person with money might have to pay the debt.

Also, a spouse is usually not responsible for the other's debt unless they have signed a loan agreeing to pay for their spouse's debt or if the debt was for a family purpose (i.e., kids' clothes, kitchen appliances, or anything that benefits the whole family).

### **Personal Property.**

Personal property is property that is considered to be moveable. This includes items like cars, furniture, dishes, etc. The general rule for property division is to divide it equally allowing each person to set up a separate home. However, as with debts, a person gets to keep personal property he or she brought into the marriage, or property that was a gift to one person, or that was inherited by one person. Unless that property has been combined with other marital property or is used in a way that it takes on the legal status of marital property.

In dividing personal property, it is best to sit down with your spouse and agree on who gets what. Each should then take the property as agreed, remembering to change titles and names on accounts as necessary. It may be helpful to include the Vehicle Identification Numbers and/or any existing serial numbers for any property in your divorce decree. However, remember that it is a public document, so consider any confidentiality/identity issues that may exist, such as social security numbers.

If you cannot decide on your own how to divide the personal property, the Judge might have one party make two lists and allow the other party to choose which list they want.

## **Real property.**

Real property is land and anything permanently attached to land, such as a house or buildings. Generally, you will get to keep any real property you brought it into the marriage, if it was a gift, or if it was inherited. Unless you have commingled it with marital property or otherwise changed the nature of your real property so that it takes on the legal status of marital property. If the home was purchased during the marriage, it will be considered marital property even if only one name is on the deed.

Often the real property is sold and the money from the sale is divided equally between the parties. However, one person may “buy out” the other by giving them what they would have gotten had the property been sold. The person giving up the house should sign a Quit Claim Deed to the other person once the divorce is final. It may be helpful to include a property description in the decree itself, so that you may record the order at the County Recorder’s Office or otherwise use the order to prove change of title to lenders, purchasers, title insurance companies and the like.

If you do not agree on who should get the house, the Court will do its best to enter a fair order. The Court may award the home to one party and award to the other party other marital assets of equal value. The Court could order the home sold and the equity split. If you have kids, the home might go to the party with custody of the children until the children move out of the house. At that time the house will be sold and the party who did not live in the home will get half of the equity as of the time of the divorce. Or the party awarded the home may have to buy out the other party by paying the cost of half the equity calculated at the time of the divorce. However, remember to calculate the equity of the home during the divorce process and include the amount of equity owing in the final order.

## **Alimony.**

The Court looks at the needs of the parties and their ability to support themselves against the ability of the other spouse to pay. In addition, alimony will generally be awarded for the same time as the length of the marriage (i.e., if the marriage was 10

years long, then alimony would only be awarded for 10 years). However, there are some exceptions to this rule.

## **Retirement/Pension Plans.**

If both parties have retirement plans, each will likely be awarded their own account. However, each spouse is likely entitled to half of any retirement benefits that were earned during the marriage. If you are not the person putting money into the plan, but you are awarded some of the benefits, you must get a Qualified Domestic Relations Order or QDRO. Until a QDRO is signed and approved by the pension/retirement plan, it will not be split. In fact, if you do not successfully complete the QDRO, your share of the pension may not be available when you need it for your retirement, and indeed, may be lost entirely.

## **May I change my name?**

Yes, you may change your name as part of your divorce. The party wishing to change his or her name needs to include a paragraph stating that their name is being changed. We recommend that you include the full new name that will be used after the divorce.

## **May I get a restraining order in the divorce?**

Yes. If you feel that the other party is harassing you, you may ask the court to enter a restraining order and say what you want the other party to be restrained from doing. A typical order might state: "John Doe should be restrained from bothering, harassing, annoying, threatening, or harming Jane Doe at any time or any place."

**Note:** Unlike the protective order discussed above, violation of a restraining order is not a crime. It is contempt of court and must be enforced by the Court.

## **What if I disagree with the Judge's order?**

If you disagree with the Judge's order on one or more issues in your divorce, you have the right to appeal. This means having a higher court review your case. You must file your appeal within 30 days of the final entry of the decree of divorce. Appealing a case is a complex and technical process and you should consider hiring

an attorney to help you.

## **What if I need to make changes after the order is signed?**

Once the court enters a divorce decree, it may be modified only if the parties can show that there has been a substantial and material change in circumstances since the divorce was entered. For example, this might mean a large change in one party's income, or the fact that one party moves from the state. Once the court finds that there is a substantial and material change in circumstances, then it needs to decide what the order should be. When reviewing a custody or visitation order, the court will always base its decision on the best interest of the children. In the event of a substantial change, a petition is filed with the court asking that the decree be changed.

***The information in this site is not intended as legal advice.***

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