

SELF-REPRESENTED UNCONTESTED DIVORCE IN NYS



LEGAL RESOURCES LIBRARY

This material is provided to answer general questions about the law in New York State. The information and forms were created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the Rural Law Center of New York (RLC) makes no claim that this information will achieve the results you desire. Also, the RLC disclaims any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State.

You may contact the Rural Law Center of New York, Inc. as follows:

BY MAIL: 22 U.S. Oval, Suite 101, Plattsburgh, New York 12903

PHONE: (518) 561-5460

FAX: (518) 561-5468

OR VISIT OUR WEBSITE: www.rurallawcenter.org

SELF-REPRESENTED UNCONTESTED DIVORCE IN NEW YORK STATE

This guide is presented in two parts:

- 1) The first set of questions and answers provides background information on Self-Represented Divorce in New York State.
- 2) The second set of questions and answers should help you get started if you decide to proceed as a “pro se” or self-represented litigant.

BACKGROUND INFORMATION

1. What are the first steps to representing myself in a Divorce in New York State?

If you are seeking a “self-represented” divorce in New York State, you need to know that the court will need to evaluate your case based on several key areas. They include:

- 1) Grounds
- 2) Equitable Distribution of Property
- 3) Maintenance (formerly alimony)
- 4) Child Custody
- 5) Child Support

In addition, you will have to be prepared to provide the court with detailed information about:

- 1) Your status as a New York State resident;
- 2) Your current address and social security number;
- 3) Your spouse’s current address and social security number;
- 4) If you have children, information about health insurance;
- 5) Income information for you and your spouse.

2. What is the difference between the Plaintiff and the Defendant?

In a divorce action, the two parties are referred to as the Plaintiff and the Defendant. Even though both parties might want the divorce, one of them has to initiate the action by filing the papers that begin the legal process. That person is called the Plaintiff. The Plaintiff is responsible for preparing the divorce papers, paying the filing fees and arranging for service of papers on the spouse. The spouse who receives the papers is called the Defendant.

3. What are “Grounds”?

In New York State, “Grounds for Divorce” is the term that is used in Matrimonial Law to specify the court-accepted reasons to grant a divorce. You must sufficiently meet the requirements for one of the acceptable reasons.

4. What are the different types of “Grounds”?

In New York State, the acceptable Grounds for Divorce are:

- 1) Abandonment
- 2) Cruel and Inhuman Treatment
- 3) Adultery
- 4) Confinement to Prison
- 5) Living apart pursuant to a Separation Judgment or Decree
- 6) Living pursuant to a Separation Agreement for one year
- 7) Irretrievable Breakdown of the Relationship for at least six months (no-fault)

What is important to understand is that in order to qualify for any one of these, your circumstances must meet specific requirements.

5. Which type of “Grounds” can I choose?

The following is a list of each type of Grounds and a description of how each must be used. Read them over carefully to make sure your situation meets the requirements.

Acceptable “grounds” are required. Simply not wanting to be married any longer is not sufficient.

ABANDONMENT

The ground of Abandonment requires that one spouse leaves the other with no intent to return. This must be without the consent of the other spouse and without justification. Additionally, this must have occurred at least one year prior to the filing of the divorce. NOTE: There is an additional term called “constructive abandonment”. This can be one spouse’s refusal to have sexual relations without both spouses agreeing. It can also be appropriate if one spouse is forced to leave because of the other’s abusive behavior. In either case, this choice of Ground will require further documentation in your papers.

CRUEL AND INHUMAN TREATMENT

If you are alleging Cruel and Inhuman Treatment as Grounds, you must be able to prove a pattern of behavior that endangers your well-being and makes it unsafe or unhealthy for you to continue living with your spouse. You will need to be able to provide substantial evidence of cruel and inhuman treatment. You can do this by fully describing your spouse’s continued behavior toward you. Be sure to include dates or time periods when describing incidents. Finally, the actions of your spouse must have occurred within 5 years of your filing for divorce. If more than five years have passed, you cannot use Cruel and Inhuman Treatment as Grounds.

ADULTERY

Under the law, adultery is defined as the commission of a voluntary act of sexual intercourse with someone other than one’s spouse. However, as Grounds for divorce in New York State, it requires very substantial proof, such as witnesses, photographs, etc.

CONFINEMENT TO PRISON

If your spouse is currently in prison and has been serving a term for at least 3 years, you may use that fact alone as Grounds for divorce. Your spouse must still be incarcerated at the time of the filing of the divorce.

LIVING PURSUANT TO A SEPARATION AGREEMENT FOR ONE YEAR

In the absence of any of the above Grounds, or where both parties wish to enter the process without either being at fault, it is possible for them to enter into a Separation Agreement that sets forth their intent on all issues that need to be addressed. Once this is written, it is then signed, notarized and then generally filed with the County Clerk. If the couple continue to live separate and apart for at least one year, they may then use that Separation Agreement and its terms to file for divorce.

IRRETRIEVABLE BREAKDOWN OF THE RELATIONSHIP (known as a No-Fault Divorce). In order to use this as your Grounds, you must meet two requirements. They are:

- 1) One of the parties must swear under oath that the relationship has broken down irretrievably for a period of over six months.
- 2) Both you and your spouse must have resolved all issues of equitable distribution, spousal support, child support, counsel and expert fees (if applicable), and custody and visitation.

It is very common today for the husband and wife to use the irretrievable breakdown ground more than any other ground. First, there is no requirement to make negative allegations against the other party. Second, it can be done rather quickly after a separation agreement is signed or after the parties reach agreement.

6. What is Equitable Distribution?

Equitable Distribution is the term used to describe the required division of the property belonging to a married couple and acquired by either or both spouses during the marriage. New York State law requires that this property be distributed equally or fairly between both parties. If you and your spouse have not agreed to the distribution of

marital property, the court, after a thorough hearing, will decide what is a fair division of your property. There are many things that the court will take into consideration in making this decision. Some of those include: the length of the marriage, each spouse's financial situation and financial contributions, and the assets, such as real estate, bank accounts and pensions. In addition to marital property, marital debt is also considered in assessing equitable distribution. It is important to note here that merely dividing your debts does not end your responsibility for those debts to your creditors.

If there is significant marital property, such as real estate or pensions, it is very important that you consult a lawyer. The valuation of these types of assets is a complicated process and often requires the work of experts in order to secure your rights and minimize the risks.

7. What if I own property separately?

There are some types of property that are considered separate and not subject to equitable distribution. This includes assets owned before the marriage or inherited, as long as this property is kept separate during the

marriage. This also includes assets that are the result of compensation for personal injury. Generally, however, property acquired during the marriage but held only in one spouse's name is still considered marital property and not exempt from equitable distribution.

8. What is Spousal Support?

Spousal Support or Maintenance are the terms for what used to be called "alimony," and is an amount of money paid by one spouse to the other as a condition of the divorce. This amount may be either agreed upon or awarded by the court.

9. How is the Custody of children determined in a divorce?

If the couple has children together and any of those children are under 18 years of age, the issue of custody must be established to the satisfaction of the court. There are many factors that the court must consider in making this determination and they all center on what is called "the best interests of the child". When determining that, the court looks at a wide range of factors, including the child's age, the home environment, the relationship with the parent, and the potential for safety and security. Based on those factors, the court will consider the type of custody and visitation arrangement most suitable for the situation.

10. Can we decide on our own what we want as a custody arrangement?

When you are both in agreement about the terms of custody and the scheduling of custodial periods, it is possible for you to enter into a formal written agreement stating your wishes. Be aware, though, that the court will look carefully at your agreement to make sure it meets the factors described above. If you do want to go ahead with an agreement, it is a good idea to contact your local mediation program for assistance.

They will provide a mediator trained in custody/visitation matters, to help you draw up your agreement.

11. What if we don't agree on a custody arrangement?

If you want to represent yourself in a divorce action and custody matters need to be determined, the very best thing to do is bring this issue to your local Family Court. Make sure your Family Court case is finished and you have the judge's Order before you file your divorce papers. The reason this is the best way to proceed is that your Family Court Order can then be included as part of your divorce. If you cannot afford to have a lawyer represent you in Family Court, you may qualify for an attorney at no charge. Check with your Family Court.

11. What will the court do about Child Support?

Child Support is awarded by the courts in order to provide for the needs of the children. For this reason, the standards are specified by legislation. The state provides a chart, which is updated each year, to help calculate what the required amount of support will be based on the combined gross income of the parents. What this means is that the income of both parties is added together. Then, the appropriate percentage is applied from the Child Support Standards to determine the amount of Support that will be provided for the child. (One child, 17%, 2 children 25%, 3 children 27%, 4 children 31%. The percent is of the parties' income). Next, based on their respective incomes, each party's contribution is calculated. Be aware that this amount is not the total obligation for Child Support. The court sets the standard to meet what it considers the child's basic needs. Other costs, such as uninsured health care or education, and daycare necessary for employment, are also generally divided based on the respective incomes.

12. That seems very complicated. Can we just make our own agreement about Child Support?

While you can make your own agreement, it must comply with the law and will be reviewed by the Court to ensure it complies with the law. Child support is not something that a parent can “waive” because it is not the parent’s support – it is the child’s support. Therefore, any attempt by the parents to “waive” support will be scrutinized by the Court to ensure there is good reason. Those reasons also have to be set forth for the Court to review.

It is possible to deviate from the Child Support Standards, but it is a difficult process and generally requires the assistance of an attorney. This is especially important to know if you are planning to represent yourself in a divorce. The court has very specific requirements and you must comply with them.

13. What should I do about Child Support to make the divorce process go more smoothly?

The very best way to deal with the issue of Child Support is to take this matter to Family Court before you begin any of the filings in your divorce. If you cannot afford an attorney, you may seek legal assistance through the Child Support Unit of your local Department of Social Services. Since no divorce will be granted without the court weighing in on the matter of Child Support, it will save you much time and energy if you get your Child Support Order before you begin any of your divorce filings.

GETTING STARTED

1) How do I begin?

You will find all of the forms and instructions that you need to use on the New York State Unified Court System website. Go to:<http://www.nycourts.gov/litigants/divorce/index.shtml> The forms are available there in either pdf. or Wordperfect format.

2) The forms and instructions look complicated. Can I really do this myself?

It depends. The instructions provided by the court system are very detailed and cover all possible situations that might arise. Be sure to read the information provided about the possible risks to proceeding without an attorney. Also, you can use the diy form/computer system that the Unified Court System makes available. Go to <https://nycourts.gov/courthelp/diy/divorce.shtml> to find the diy link. This is a series of prompts to enter information, and the forms are created by the program instead of you having to complete the forms.

3) If I decide to go ahead, is there any way to make it easier?

It is helpful if you break the process down into steps and keep a checklist to make sure you are doing things in order.

4) What are the steps to my uncontested divorce?

There are several ways to proceed, but a good way to break it down is:

1. STEP ONE: Print out the blank forms and the instructions. (You can also pick up a copy of them at your local courthouse.) You can fill these out in pencil and then transfer your answers to clean copies when you have them right.
2. STEP TWO: Put the forms in groups according to the instructions.
3. STEP THREE: Complete and file the first set of forms. Keep all of your file-stamped copies in a safe place. You will need them later.

4. STEP FOUR: Arrange for service of paper(s) on your spouse.
5. STEP FIVE: File the Affidavit of Service. Keep a file-stamped copy.
6. STEP SIX: Wait the required time to give your spouse the opportunity to respond.
7. STEP SEVEN: If there is no response from your spouse and the required time has passed, you may prepare and file your next set of papers according to the instructions on the NYS Unified Court System website.
8. STEP EIGHT: If your papers were prepared correctly, you will get them back with a Judgment of Divorce signed by the judge who reviewed your case.
9. STEP NINE: You must make copies according to the instructions. File them with your final papers and then serve your spouse with a certified copy of the Judgment. This service should be done by certified mail with a return receipt to you.

Alternatively, you may utilize the diy program at <https://nycourts.gov/courthelp//diy/divorce.shtml> which allows you to input the answers to questions and print out completed forms and instructions.

5) What is service?

Service means giving a copy of a legal document to the spouse you are divorcing. In the case of your divorce, you must arrange to have your spouse “served” with either the Summons with Notice OR the Summons and Verified Complaint. This provides your spouse with notice of your intention to seek a divorce and gives your spouse the opportunity to respond.

IMPORTANT THINGS TO KNOW ABOUT SERVICE:

1. You cannot be the one to serve your spouse.
2. Your spouse must be served by someone over 18 years of age.
3. Service cannot be done on a Sunday.
4. Before the papers are served, you must file them with your county clerk and keep 2 copies. Bring those copies with you when you file and ask the clerk to stamp your copies with date of entry.
5. Be sure that the papers that are served on your spouse are the ones stamped by the clerk.
6. When the server approaches your spouse, he or she should ask 2 questions. First: “Are you [name of spouse]?” Second: “Are you in the military service?”
7. As soon as the papers are served, the server fills out the Affidavit of Service and has it notarized. The completed Affidavit of Service is proof to the judge that your spouse has been notified about the divorce action.
8. You then need to make a copy of the Affidavit of Service.
9. Take the original and your copy to your county clerk, where you will file the original and ask to have your copy stamped with date of entry.

6) I can’t understand the forms and questions about Child Support. What can I do?

The judge will not grant your divorce unless the issue of Child Support is resolved to the court’s satisfaction. Support is determined according to a very complicated set of criteria. The only way to be certain that your child support arrangement will meet the court’s standards is to go to your local Family Court BEFORE YOU FILE ANY DIVORCE PAPERS and get an Order of Child Support. Once you have this, you can file your divorce papers and ask to have the child support arrangement in the Order become a part of your divorce. STILL NEED HELP? For anyone who applies, child support services are provided free of charge. Go to the New York Child Support website at <https://www.childsupport.ny.gov/DCSE/HomePage> and click on “Program and Services

Information” to find out how to access services in your county. Also, check out the “Quick Links” on that site for copies of the Child Support Standards Chart, a useful Glossary of terms and other specific information.

7) Are there any risks to doing my own uncontested divorce?

There are definitely possible risks. You may not be aware of certain legal rights or obligations that you have. For example: You and your spouse may have a right to a share of each other’s pensions. Or, you may continue to be responsible for a debt even after you have made arrangements to resolve them.

8) How can I be sure that I am not at risk?

If you and/or your spouse have pensions or if you have considerable assets (such as real estate, stocks or savings), you should consult an attorney for advice BEFORE PROCEEDING. An attorney who practices in Domestic Relations will be able to advise you about your rights and how to avoid risks.