



DIVORCE AND SEPARATION



1. Can I get a divorce at the Client Legal Services Office?

NO, you have to go to court to get a divorce and a legal assistance attorney can't go to court for you. A legal assistance attorney can advise you about the issues and procedures involved in your case and draft a separation agreement for you and your spouse if appropriate.

2. What is a separation agreement (SA)?

A SA is a contract between spouses who want to live apart from one another. It resolves issues such as property division, division of debts, spousal support, child custody, and child support. A SA is legally binding and may make the divorce process faster and cheaper by resolving these issues before you see a private attorney.

3. How do we divide our property in the SA?

Generally you and your spouse are free to divide your property any way you want in your SA. The SA can cover all types of property, including real estate, cars, jewelry, and furniture, bank accounts, mutual funds, pensions, and insurance.

4. Can we also divide our debts in the agreement?

Yes, you are pretty much free to divide your debts in any way you see fit. However, you may want to consider who received the benefit from the debt before deciding who should be responsible for paying it. For example, it might be fair for the spouse keeping the car to also pay off the car loan. When identifying who pays which debts, include enough information to identify the specific debt involved, including the creditor's name, and the amount owed.

5. What if my spouse fails to pay a debt as required under our SA?

The SA is binding only between you and your spouse; it has little or no effect on third parties. So if a spouse responsible under the SA to pay a joint debt fails to make any payments, it is completely legal for the creditor to demand payment from or file an adverse credit report about the other spouse, regardless of the SA. However, if a spouse violates the SA that way, the other spouse may sue him or her for the amount of money he or she had to pay.

6. Can the court modify the terms in our SA concerning our property or our debts?

Typically, the provisions for division of property and debts are seldom modified by the court except in limited circumstances such as fraud, coercion, or lack of capacity.

7. I don't have a court order, but my spouse is in the Army. Am I entitled to spousal support right now?

Unless you are in the military yourself, your Army spouse is almost always required to pay you some amount of support. See our handout on Army support requirements.

8. What is the appropriate amount of alimony / spousal support for our SA?

Like other issues in your SA, you and your spouse determine the amount of alimony you think is appropriate in your circumstances and for how long alimony should last. Factors that you may want to consider typically include the length of the marriage, the work and education history of the spouses, the financial needs and resources of the two spouses and any marital fault. You may agree that no alimony will be paid.

9. Can I get my maiden name back in the divorce?

Yes, you may want to put this in the separation agreement as well.

10. Will a SA stop my spouse from harassing me?

Although military SAs usually contain that provision, it is very difficult to enforce. For harassment by a military spouse, the military spouse's commander can order him or her not to contact the spouse. For harassment by a non-military spouse, barring him or her from the installation or getting a restraining order are probably your best options.

11. If I get a SA, does my spouse have to sign it?

No, you cannot force your spouse to sign a SA. If your spouse refuses to sign, the SA is ineffective.

12. After the SA is signed, can I "date" other people?

NO, until you have a judicial decree of divorce, you are still legally married. Soldiers may be prosecuted under the U.C.M.J. for adultery if they have sex with anyone else before the divorce has been finalized by a judge. Adultery may also have adverse consequences on the financial settlement in your divorce.

13. If I need a lawyer, who pays for that?

You have to pay for your own attorney in a divorce case unless you have agreed otherwise in a SA or other agreement or the judge requires your spouse to pay your lawyer's fees. A judge may order your spouse to pay your attorney fees if the parties will have disproportionate incomes after the divorce. When both spouses agree with the provisions of the proposed divorce, they may choose to split the attorney fees and court costs evenly.

14. What if my spouse won't give me a divorce?

Your spouse can't prevent you from getting a divorce. If your spouse won't cooperate with you, it will take longer and probably cost more to get your divorce, but you can still get one. In some states, the parties do not even need to allege wrongdoing on the part of the spouse, but rather need to demonstrate that the marriage is "irretrievably broken."

15. How does the court procedure actually work?

In most states, you may file for divorce only if you have been living there for at least some period of time, often six months or more, prior to the date of filing. You may also file for divorce in the state where you or your spouse are legal residents. If there is any dispute about child custody, then you may have to file in the state where the child has been living for the six months just prior to filing the lawsuit.

After filing your divorce paperwork at the courthouse, your lawyer will serve a copy of the summons and complaint on your spouse. If your spouse consents or does not file an answer within a few weeks after that, the judge will probably grant your divorce without any further discussion. In some state you may have a "cooling off" period after the paperwork is filed and before a divorce decree will be entered. This is true even if the parties consented to the divorce and its terms.

If your spouse files an answer contesting the divorce then the judge will set a trial date. At trial, both of you will be allowed to testify and then the judge will decide whether to grant the divorce, how to split up your property and debts, and all other issues involved in your case. It would be very unusual for the judge not to grant a divorce, but property and custody arrangements may not be what you asked for.

16. What about quick foreign divorces I see advertised?

You may see ads for quickie foreign divorces; don't be fooled. Such divorces are often invalid in the U.S.

17. Is there anything else I should do before the divorce?

- You should cancel or close all joint financial arrangements; i.e. joint credit cards, bank accounts, revolving credit, phone cards, etc.
- The military spouse should file a disclaimer with AAFES and other check-cashing facilities to avoid being held liable for the non-military spouse's bad checks, and should put a block on DPP or similar plans at AAFES for the same reason. AAFES disclaimers must be renewed every year, until the divorce becomes final.
- Revoke any powers of attorney, make a new will, and change the beneficiary of your insurance policies.
- Changing the terms of the SA may require both parties to make court appearances.
- Once both parties sign the separation agreement, the service member must notify the housing office and be prepared to move out of government quarters within 30 days.
- Once the divorce is final, the service member must update all military records to reflect the change in marital status

Remember, this handout is for general informational purposes only. For specific questions concerning individual circumstances or for questions in general on divorce, contact the Client Legal Services Office in your area.

Yongsan Client Legal Services Division, Office of the Staff Judge Advocate, Eighth US Army
Bldg 4106, room 229 (ACS building). Please call 738-8111 for an appointment.
Office hours: M, Tu, W, F 0900-1700 and Th 1300-1600.