

FREQUENTLY ASKED QUESTION FOR DIVORCE CASES

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

Simply stated, a divorce is a judgment by a court declaring that you and your spouse are no longer legally married. A legal separation is declaration of a court that a husband and wife are separated and no longer living as if they are married, but the parties are still legally married and retain the rights of spouses. An annulment is now known as a declaration of invalidity of marriage. As the name suggests, it is a determination by a court that the marriage was never valid and, therefore, is considered not to have existed.

There are different rights and obligations that apply in each instance. Those rights and obligations should be discussed with an attorney to determine how they apply in your situation.

2. What are “divorce papers”?

The term is often used on television. In Illinois, any number of documents might be considered “divorce papers”. Petition for Dissolution of Marriage is the document that is filed when a person files for divorce. A Marital Settlement Agreement is the document that contains all of the terms of a divorce when a divorce is finalized by agreement. A Judgment for Dissolution of Marriage is the court order that is entered that approves the Marital Settlement Agreement (if the terms are agreed) or imposes the terms of divorce (if the terms must be decided by the judge). A divorce is not final until a Judgment for Dissolution of Marriage has been approved by the judge and “entered” into the record and a Certificate of Divorce is issued (which requires payment of a fee).

3. If my spouse is having an affair, shouldn't that mean that I should get more of the property?

Under Illinois law, a party's fault for causing the divorce cannot be considered when dividing marital property and determining maintenance/alimony. An affair is only relevant to establishing the “grounds” for a divorce. Grounds for a divorce can also be established by other things, like “irreconcilable differences”.

4. Does it matter who files for divorce first?

For the most part, the person who files for divorce first does not get any advantage. Rather, the person who files first has the burden of proving the grounds for the divorce. For most issues, such as spousal support and property distribution, the first to file has no effect. In fact, the order of filing is irrelevant to all issues, but grounds, in terms of the legal principles that apply. Filing first, however, can sometimes give a practical advantage to the filer even though it has no legal relevance. This is especially true for issues of child custody and child support.

5. Do we need an attorney if my spouse and I agree on how we want to divide everything?

While it is a great situation when both parties settle their own divorce issues, an attorney should still be consulted and used. One of you may inadvertently give up a valuable right. Both of you may fail to consider a particular issue that must be or should be addressed. You may not understand the long term repercussions of the agreement you have worked out. You may not be very artful in the description of you agreement, which can lead to problems interpreting it in the future. Being agreeable and working out the issues between spouses is strongly encouraged. You will make your divorce and your future easier and better by doing so. Attorneys can assist you in drafting and filing the necessary documents, make sure all the bases are covered and guide you through the occasionally confusing divorce process.

During a divorce, a person faces more legal and financial issues than any other event in your life, including issues such as income tax, real estate ownership, splitting retirement funds and the status and future of your children. Having an attorney who knows the personal situation, who understands what needs to be accomplished and who has the ability to make sure that things are done right and well is important.

6. Can my spouse and I use one attorney for our divorce?

The answer to this question is no. An attorney can only represent one spouse during a divorce. With that said, the law does not require both (or either) of the spouses to be represented by an attorney. If you and your spouse agree to use only one attorney, that attorney can only represent one of you. The attorney should disclose to the other spouse that he/she does not represent them and advise the other spouse of their right and need to obtain legal counsel and representation from another attorney. The attorney will likely want the other spouse to sign a statement acknowledging those things. The attorney can draft the documents and guide the proceedings to an agreed divorce but will only represent one of the spouses in doing so.

7. Is there a way to get a “quickie” divorce?

In Illinois, there is no such thing as a “quickie” divorce. Illinois requires that one of the parties be a resident of Illinois for at least 90 days prior to the entry of a Judgment for Dissolution. Additionally, after filing a petition for divorce, the other spouse has at least 30 days to respond to the divorce petition. Depending on the grounds alleged, mandatory waiting periods may apply.

Even when both parties agree on everything and execute all of the necessary documents, delays are still an inherent part of the process. Divorce is a major decision and the State Legislature has built certain delays into the process for careful consideration, adequate opportunity for response by both spouses and to insure that necessary issues are addressed. The impact of divorce potentially affects public services, such as child support and spousal support and other things. Although people who are seeking a divorce may have already given it years of careful consideration, divorce is a process that can be accomplished efficiently, but it is still a process by design.

8. How long does it take to get a divorce? When will my divorce be final?

The length of a divorce proceeding depends on numerous factors such as the level of cooperation and communication between the parties and their attorneys, the number and complexity of the issues involved, and how quickly information and discovery are exchanged. A divorce is not considered final until a judge signs and enters the Judgment for Dissolution and Divorce Certificate is issued. Some divorces are completed in a matter of weeks. Some take months. Some take years. Divorces that take years usually involve complex issues of custody, child visitation and/or property plus contentious spouses who cannot agree on anything. Each divorce is unique because people are individuals with unique differences. The important may not be how quickly the divorce is finalized, no matter how anxious one is to be finished, but rather when the divorce is finalized, whether you are satisfied with the ultimate outcome and prepared for the next stage in life. Divorces usually do not end with both spouses being perfectly satisfied (or either spouse for that matter) – that is simply “the nature of the beast” – but beginning the next stage in life on solid footing is something not to be discounted.

9. Will my divorce have to go to trial?

Very few divorces actually go to trial. Most divorces are settled before trial and sometimes in the middle of trial. Often there are smaller hearings along the way on various issues, but the vast majority of cases settle at some point during the process.

There are many ways to avoid trials such as mediation, pre-trial conferences and settlement conferences. The key is being willing to compromise to come to an agreement. As with marriage, however, it takes both spouses (and sometimes both attorneys) being willing to agree to reach closure. We often see cases in which the emotions must run their course before both spouses are in a mindset to be able to come to agreement.

With that said, some attorneys tend to go to trial more often than others. Just as both spouses must be able to find common ground, both attorneys must have a mindset to settle. We believe that settlement by agreement is the first and best option, but we are mindful of our clients’ needs and desires and understand that the decision to settle is ultimately up to the client. We prepare each case so that we will be ready for trial if trial is the only way to reach resolution, but we will counsel and advise clients along the way of the benefits and options for settling.

10. How often will I need to go to court?

The number of times you need to go to court varies and depends upon the case. In some cases, you may need to go to court only once, but other cases may require more court appearances. As with some of the previous answers, the number of court appearances that may be required depend on the level of cooperation and communication between the parties and their attorneys, the number and complexity of the issues involved and the

ability of the parties and their attorneys to reach resolution agreement. The more agreement there is, the fewer the court appearances will be required. We strive to have good communication with clients, to help clients be as comfortable as possible in all situations and to help clients understand what to expect.

11. How much input will I have in the divorce proceedings?

Ultimately, this is your case and you should be instrumental in the direction and resolution of your case. We will consult with you prior to making any major strategic decisions and will carefully review with you options, potential outcomes, and settlement offers that arise as your case progresses. We strive to have good communication with our clients on a consistent basis. This means taking calls personally, returning calls in a timely fashion and discussing your options before we embark on a particular path in your case. As part of our effort to keep you informed, you will receive copies of all correspondences and pleadings. You will ultimately determine whether to settle or go to trial. We will determine the strategies and arguments to make based on our experience and knowledge of the law and of your situation, but your input will be of paramount importance in the process.

12. How much will this divorce cost me?

This is usually a priority question for clients, but unfortunately there is usually no clear answer. The ultimate cost of the divorce depends on many factors including the cooperation of the parties and counsel, the level of antagonism, how promptly financial information is produced and exchanged, the complexity of the issues involved and how long the proceedings take to complete. You can help keep the costs down by doing a number of things: getting answers, information and documentation to us quickly; being as cooperative, objective and reasonable as you can be under the circumstances; being efficient with phone calls; being willing to compromise to reach a resolution, and other things. We do not control your spouse or the other attorney, however. Even if you are doing everything you can do to help us be efficient and keep costs down, your spouse and the other attorney may not be as cooperative, responsive or easy to deal with. Since we charge based on time, there are too many factors involved, most of which we do not control, to give you a good answer about cost up front.

We will be as efficient and responsive to you as we can be. We are not trained in marital or personal counseling. We are trained as lawyers. If you want to call and vent to us, we will listen, but understand that we will charge for that. If we are on the phone with you, we cannot be doing the legal work that you or other people are paying us to do.

With all of that said, we have begun quoting flat fees for divorces. If you meet all the criteria for a flat fee divorce, and if there are no unforeseen issues that arise, we can do a divorce for a flat fee.

13. How can I afford the attorney fees associated with the divorce? Do I have to pay the retainer amount upfront?

Generally, the party incurring the attorney’s fees is responsible for payment of the fees. In Illinois, under the “level playing field” laws, a party without resources may seek interim attorney fees from the other party during the divorce proceedings. Additionally, a contribution to fees may be awarded to one party after the proceedings have ended. Whether you might qualify for your spouse paying or contributing to the attorney fees you incur depends on a number of factors that can be reviewed and discussed with your attorney.

Law firms usually do not finance the legal services they provide, and, therefore, they require payment up front. At the same, the payment up front is usually in the form of a “retainer” that goes into a “client trust account” and is not “paid out” until the work is done or costs are incurred. Most if not all law firms require retainers for divorce cases. The initial retainer is used to pay the filing costs of the litigation and to help pay for the initial work that needs to be done. As the case goes on, the retainer will need to be replenished when the initial retainer amount runs out. When the divorce is finalized, any retainer amount remaining in the client trust account is returned to the client. The terms regarding payment of fees are more specifically spelled out in a Legal Services Agreement that a client should be given at the beginning of a divorce.

14. How much will I have to pay or be able to receive for child support?

In Illinois, the amount of child support is based on the number of children and the net income of the paying spouse. The following table outlines the statutory guidelines:

Number Of Children	Percentage Of Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

Under rare circumstances, a court may deviate from this amount. During your consultation, we can help you determine the correct amount of child support and can help determine if a deviation is warranted.

15. Am I entitled to maintenance/alimony? Will I have to get a job after the divorce?

The answers to these questions depend on numerous factors and are decided on a case by case basis. In some counties, budget affidavits are required by the court at the beginning

of the process to help the court in making a determination about spousal support. During our consultation, we will discuss these factors and help you determine if you may be able to receive maintenance/alimony or would be subject to pay maintenance/alimony. Additionally, during the consultation and during the course of litigation we will examine and re-examine your current financial situation and help map out strategies for you to continue or even improve your financial situation.

16. What is unallocated support?

Unallocated support is the combination of child support and maintenance/alimony in a single payment. Instead of paying for both separately, the two are combined and considered by the law to be maintenance. Unallocated support may provide tax benefits in certain circumstances since unallocated support is deductible by the payor and taxable to the recipient.

17. Who pays for the kids' college after we are divorced?

Under Illinois law, both parents and the child are jointly responsible for educational expenses after high school. A parent may petition the court to have the other parent contribute to college expenses for the child. The amount of the contribution is based on several factors including the income and resources of both parents and ability of both parents to contribute as well as the child's ability to contribute to his/her own college costs.

18. How can I guarantee my spouse pays the required amount of support?

Under Illinois law, the amount of support (either child support, maintenance, or unallocated support) may be withheld from the payor's paychecks and paid directly to the State Disbursement Unit, which in turn sends the money to the recipient. This is the best way to guarantee payment because the money is taken out before the payor receives his or her check. Further, the State and local court will have a running total of the support paid or not paid, which makes the process of enforcing the obligation to pay support easier and faster.

19. What is joint custody?

There are two types of joint custody and are commonly confused. The first is joint residential custody. This type of joint custody involves both parents splitting time having physical custody of the child in each home. For example one parent may have the child for 3 days of the week, and the other parent may have the child the other 4 days. This arrangement is rare, often difficult on both the parents and child and disfavored by the courts. Only in exceptional circumstances is a court likely to approve joint residential custody.

The second type is more common and called joint legal custody. With joint legal custody, only one parent has residential custody, but both parents share in the major

decision making for the children, including where the children will go to school or if the children will have major medical procedures. Joint legal custody does not automatically mean that both parents share equally in the decision making. In fact, it usually means that the custodial parent must consult with the other parent on important issues, but the custodial parent usually has the ultimate decision-making authority. The language of the joint parenting agreement will determine the level of decision making for each parent.

20. My spouse has threatened to spend all of our money if I file for a divorce? Is there a way to stop this?

While you cannot completely cut support for your spouse or prevent them spending any money, you can take legal steps to protect the marital assets. If this is a concern of yours, you will want to communicate that concern up front so that immediate and affirmative steps we can be taken to prevent your spouse from removing, hiding or frivolously spending assets. Your concern must be more than speculative, however; there must be some verbal threat or action that justifies taking action.

21. Am I responsible for the debt my spouse had prior to the marriage?

Generally, you will not be responsible for debt or other obligations your spouse brought into the marriage. If the debt is related to a valuable asset, however, such as a house or a car, and the asset becomes marital property, the debt likewise would become marital. Marital debts are divided in the divorce along with the marital property.

22. Can my spouse and I reside in the same home during the divorce?

Yes, there is no requirement that you and your spouse reside in different homes during the divorce. For some families, this situation works well and for others this type of situation is impossible. We can discuss with you both the pros and cons of this type of arrangement to help you determine if this arrangement is beneficial to you and your family.

23. Will my spouse or I be able to move the children out of state after the divorce?

Once a divorce is filed, neither parent can move with the children out of state without either the agreement of the other parent or the permission of the court. Courts will weigh several factors and make a determination on a case by case basis to determine what is in the best interest of the child. Since these situations are so fact specific, it is impossible to attempt to answer this question in this type of format. By consulting with us, we can help advise you on affirmative steps and actions you can take to make an out of state move with the children easier or attempt to prevent your spouse from moving out of state with the children.

24. Will I still get credit for my spouse's contributions to Social Security?

Yes, provided several requirements are met. Namely the requirements are: you were married over 10 years, your spouse is entitled to receive benefits, your benefits would not be equal to or exceed your spouse's benefits, you are not remarried and you file the necessary paperwork.

25. Can we file a joint tax return in the year we are divorced?

No you cannot. Your tax filing status as a married person or single person is determined by your status on December 31. If you are divorced on December 31, you must file as a single or head of household. If you are still married on December 31, you may file as a married filed jointly or married filed separately, but you cannot file as a single.

26. What if my spouse refuses to participate or cooperate in a divorce proceeding?

Your spouse is not obligated to participate or cooperate in the divorce proceedings. On the flip side, you cannot prevent your spouse from participating in the divorce proceedings. Your spouse has a right to participate in the proceedings. If your spouse fails to file a response or an appearance you may obtain a default judgment against your spouse, and the divorce will go on without them. If your spouse files an appearance or response but does not otherwise participate in the divorce proceedings, there are other ways in which to complete the divorce process

27. Can I obtain support while the divorce is pending?

Yes, while the divorce is pending, you may file a petition for temporary support to obtain either child support and/or maintenance while the divorce is pending.

28. Can there be limitations and conditions upon my spouse's visitation with the children?

Yes, however the scope of these limitations and conditions are made on a case by case basis and only granted in limited situations. The law presumes that it is in the children's best interests for both parents to be involved in the children's lives. Visitation can only be restricted or denied in unusual circumstances in which there is danger or potential danger to the well-being of the children. If this is a concern, it should be addressed up front.

29. I was divorced several years ago, but now want to change some things such as the property distribution, child custody and support. Can I do that?

Yes and no. There are certain aspects of a divorce judgment or marital settlement agreement that may be modified if the situation warrants. Custody and support are subject to modification. The property distribution cannot be changed after the divorce is finalized except in very limited circumstances.

If this is a concern of yours, we will sit down with you and personally review your prior judgments, agreements, orders and evidence and determine whether a change may be



warranted. We will be frank with you regarding the outcome you can expect and how we would go about obtaining potential relief.