



Divorce/Separation/Annulment

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Background

In primitive civilizations marriage and marriage [DISSOLUTION](#) were considered private matters which did not require involvement of any authority above the individuals in the relationship. The Romans first placed marriage and [DIVORCE](#) under state regulation during the reign of Augustus. When Christianity spread about 300 A.D., governments came under religious control. The Catholic Church did not permit divorce unless one of the parties had not been converted to Christianity prior to marriage, which then made the marriage null and void.

During the early 1500s, the Protestant Reformation began a slow movement in Europe to separate the laws governing marriage from the precinct of the Roman Catholic Church. Henry VIII wanted the Catholic Church to grant him a divorce from Catherine of Aragon because all the male offspring she bore died shortly after birth, and Henry believed he could secure a male [HEIR](#) by marrying another woman. When Pope Clement VII refused, Henry took control of Church properties in England and made himself head of the Anglican Church. This separation from the Vatican made divorce possible in England by an act of Parliament. Still, divorce remained rare; when it occurred it was a costly legislative process and could only be initiated by husbands. The resistance toward and rarity of divorce continued well into the nineteenth century..

Divorce law in the American colonies was somewhat influenced by the British, but more so by the colonists themselves. England did not want its American colonies to enact any type of law, which conflicted with English law. Thus, a colonial divorce was not considered final until the English monarch had approved it. Nevertheless, several colonies adopted their own laws permitting divorce, often under odd circumstances. Under one late seventeenth century Pennsylvania law if a married man committed [SODOMY](#) or bestiality, his punishment was castration, after which the wife was permitted to divorce him. In Connecticut divorce was allowed on the grounds of [ADULTERY](#), desertion, and the husband's failure in his [CONJUGAL](#) duties. In Massachusetts, divorce was permitted if one of the parties committed adultery.

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The U. S. Constitution left divorce regulation to the states. State legislatures passed laws that granted divorce based on a showing of fault. If a divorce was contested, the divorcing spouse was required to establish, before a court, specific grounds for the action. If the court felt that the divorcing spouse had not sufficiently proven the grounds alleged, the petition for divorce could be denied and the case dismissed.

The most common traditional grounds for divorce were cruelty, desertion, and adultery. Other grounds included nonsupport or neglect, alcoholism or other drug addiction, insanity, criminal [CONVICTION](#), and voluntary separation. In 1933, New Mexico became the first state to allow divorce on the ground of incompatibility. In 1969 California completely revised its divorce laws, providing that a filing party merely show [IRRECONCILABLE DIFFERENCES](#) resulting in an irremediable breakdown of the marriage. California's was the first comprehensive "no-fault" divorce law, and it inspired nationwide divorce law reform. In 1970 the National Conference of Commissioners on Uniform State Laws prepared a Uniform Marriage and Divorce Act, which provides for no-fault divorce if a court finds that the marriage is "irretrievably broken." Many states adopted the act. By 1980, nearly every state legislature had enacted laws allowing no-fault divorces or divorces after a specified period of separation. Some states replaced all traditional grounds with a single no-fault provision. Other states added the ground of irreconcilable differences to existing statutes. In those states a divorce petitioner remains free to file for divorce under traditional grounds.

No-fault Divorce

By 1987, all fifty states had adopted no-fault divorce laws, exclusively or as an option to traditional fault-grounded divorce. Despite the obvious advantages, no-fault divorce laws sometimes leave parties with no real remedy for harmful acts of a spouse. Most states have laws that prevent one spouse from suing the other. Fault has survived in some aspects of divorce proceedings. Under current theories, marital misconduct is irrelevant to the divorce itself, but it may be relevant to related matters such as [CHILD CUSTODY](#), [CHILD SUPPORT](#), and child visitation rights, spousal maintenance, and property distribution.

Legal Separation

Legal separation is similar to a divorce in that papers are filed, there is often a [CUSTODY](#) or [PROPERTY SETTLEMENT](#) ordered by the court, but the parties remain married. There may be benefits to this type of arrangement, but they are few. In most states, it is difficult to convert a legal separation into a divorce, and it requires beginning the process over with the filing of a divorce petition.

Annulment

ANNULMENT is a legal process in which a court essentially determines the parties were never legally married to begin with and the marriage is null and void. Annulments are not often granted, but grounds for doing so include if one party is incapable of consent, due to mental state or [INTOXICATION](#), [FRAUD](#) about some aspect of the marriage, or a failure to [CONSUMMATE](#) the marriage. Annulments are regulated by state law.

Property Distribution

Property distribution includes issues of real estate, [PERSONAL PROPERTY](#), cash savings, stocks, [BONDS](#), savings plans, and retirement benefits. The statutes that govern property division vary by state, but they can generally be grouped into two types: equitable distribution and [COMMUNITY PROPERTY](#).

Equitable Distribution

Most states follow the equitable distribution method. Generally, this method provides that courts divide assets in a fair and equitable manner. Some equitable distribution states look to the conduct of the parties and permit findings of marital fault to affect property distribution. In others only fault relating to economic welfare is relevant in property distribution. Yet other states entirely exclude marital misconduct from consideration in [DISPOSITION](#) property. Equitable distribution rules give the court considerable discretion in which to divide property between the parties. The courts consider the joint assets held by the parties and separate assets that the parties either brought with them into the marriage or inherited or received as gifts during the marriage. Generally, if the separate property is kept separate during the marriage and not commingled with joint assets, then the court will recognize that it belongs separately to the individual spouse and will not divide it along with the marital assets.

Equitable distribution states consider contributions (often including homemaker contributions) by each spouse made to the marriage. If one party made a greater contribution, the court may grant that person more of the joint assets. Some states do not consider a professional degree earned by one spouse during the marriage to be a joint asset but do acknowledge any financial support contributed by the other spouse and let that be reflected in the property distribution. Other states do consider a professional degree or license to be a joint marital asset and have devised various ways to distribute it or its benefits.

Community Property

States that follow community property laws provide that nearly all the property acquired during the marriage belongs to the marital "community," such that the husband and wife each have a one-half interest in it upon death or divorce. It is presumed that all property acquired during the marriage by either spouse, including [EARNED INCOME](#), belongs to the community. Property obtained by gift or through [INHERITANCE](#) is considered separate, unless it is comingled with community property. Upon divorce each party gets all separate property, as well as one-half of the community property.

Military Pay

In 1982 Congress passed a law, the Uniformed Services Former Parties' Protection Act, that permits state courts to treat military retired pay as property. In community property states and many other states, a formula is used when the member has already retired. But for an active duty member, there may be no state law that specifies how the award is to be calculated.

Spousal Support

ALIMONY, or spousal maintenance, is the financial support that one spouse provides to the other after divorce. It is separate from, and in addition to, the division of marital property. It can be either temporary or permanent. Factors relevant to an order of maintenance include the age and marketable skills of the intended recipient, the length of the marriage, and the income of both parties. Maintenance is most often used to provide support to a spouse who was financially dependent on the other during the marriage. Many states

allow courts to consider marital fault in determining whether, and how much, maintenance should be granted.

Temporary Orders

Between the time a dissolution action is filed and the time a judgment of dissolution becomes effective, the court may use temporary orders to resolve any issue in the case, including temporary support and temporary allocation of assets. Temporary orders address the immediate concerns of the parties, but also frequently form the basis for the permanent orders later in the final [DECREE](#).

Court Process

JURISDICTION over a divorce case is usually determined by residency. That is, a divorcing spouse is required to bring the divorce action in the state where she or he maintains a permanent home. States are obligated to acknowledge a divorce obtained in another state. This rule is from the Full Faith and Credit Clause of the U.S. Constitution, which requires states to recognize the valid laws and court orders of other states. Under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, a state must make divorce available to everyone. If a party seeking divorce cannot afford the court expenses, filing fees, and costs attached to the serving or publication of legal papers, the party may file for divorce free of charge. Typically, in a divorce proceeding or dissolution action the parties are referred to as the "petitioner," and the "respondent." The petitioner is the spouse who initiates the dissolution proceeding. The other spouse is the respondent. A dissolution action begins with one spouse filing a document known as a petition or complaint. The other spouse must then be served with these papers and has a specific time frame in which to respond. The ultimate goal of any dissolution action is to obtain a decree or judgment. The decree will resolve every issue in the case, including child support and visitation, division of assets and debts, and spousal support.

There are basically three methods for securing a divorce decree. If the respondent is properly served, but never files a response, the petitioner can request that the court order the divorce by [DEFAULT](#). Also, the couple may agree on all the issues in the case and obtain a decree by [SETTLEMENT](#), stipulation, or agreement. If the parties cannot agree, the case can be decided by a judge after a trial.

Insurance

Insurance is considered a form of property in a divorce. The owner of the insurance policy controls the policy and has the right to name the beneficiaries. Although some laws prohibit the changing of insurance policies while a divorce is pending, once a divorce is final, insurance can become an important issue. Divorce is a qualifying event for benefits under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Under this act, any person who would lose employer-based coverage because of divorce can choose to purchase continued coverage for up to 36 months. The act applies to employers with 20 or more employees, but the coverage is not automatic. The spouse seeking coverage must contact the employer within 60 days of the qualifying event and complete the necessary paperwork. Some decrees include a provision for life insurance on the provider, to protect the support order.

Divorce From Parents (Emancipation)

One method children can use to "divorce" their parents is to become emancipated. The word "emancipation" means to become free from the control or restraint of another. In the context of emancipated minors,

[EMANCIPATION](#) is a legal procedure whereby children become legally responsible for themselves and their parents are no longer responsible. Emancipated children are freed from parental custody and control and are adults for most legal purposes. Parents of a child have not only responsibility for the child but also legal control over any money the child may earn. Many famous child performers and athletes have sued their parents, often claiming that money earning by the child star was mismanaged, seeking to have the courts declare the child an adult. In fact, it is possible for a child or a teenager to seek legal emancipation and be declared an adult before age 18, although the process can be difficult. In order to become emancipated, a minor must convince a judge he or she has a place to live and sufficient money and income to be self-supporting. But since minors are not permitted to sign legally binding contracts such as rental agreements, proving such self-sufficiency can be difficult. Emancipation does not require any proof of abuse or neglect by the parents. It can be granted for educational purposes, if a teenager is starting college early and wants to rent an apartment. Many young actors and musicians who are not fighting with their parents over money seek emancipation in order to avoid strict [CHILD LABOR LAWS](#). Emancipation laws vary from state to state. Some states have no age restrictions, while others set the age from 14 to 17. Some states also require parental consent or [ACQUIESCENCE](#), which may be demonstrated by [CIRCUMSTANTIAL EVIDENCE](#). Emancipation is typically automatic when a teenager marries or joins the military; however, emancipation does not override age restrictions for getting married. Some states require the emancipated teen to undergo counseling with an appointed advisor.

An emancipated minor is entitled to make almost all medical, dental, and psychiatric care decisions, enter into a contract, sue and be sued, make a will, buy or sell property, and apply for a work permit without parental consent. The emancipated minor is obligated to self-support but must also follow state laws regarding such requirements as compulsory school attendance. Federal age rules relating to actions such as selective service registration, and voting rights do not change simply because a minor is emancipated.

State Laws

State law varies considerably with respect to divorce. States have various residency requirements, property rules, and spousal support provisions. In the United States, each state regulates its own domestic relations. Most courts ignore marital fault in determining whether to grant a divorce, but many still consider fault in setting future obligations between the parties. To determine the rights and obligations of the parties in a dissolution proceeding, one must consult the divorce laws for the state in which the divorce was filed.

ALABAMA: The party filing for divorce must have resided in the State for at least six months before filing for divorce. At a minimum, Alabama law has a 30-day waiting period before a divorce can be granted.

ALASKA: No period of residence is required. After filing of complaint, however, 30 days must elapse before divorce action may be heard. A divorce may be granted for any of the following grounds: failure to consummate the marriage at the time of the marriage and continuing at the commencement of the action; adultery; conviction of a [FELONY](#); willful desertion for a period of one year; cruel and inhuman treatment calculated to impair health or endanger life; personal indignities rendering life burdensome; incompatibility of temperament; [HABITUAL](#) gross [DRUNKENNESS](#) contracted since marriage and continuing for one year prior to the commencement of the action; incurable mental illness when the spouse has been confined to an institution for a period of at least 18 months immediately preceding the commencement of the action; addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine, or a similar drug. Parties may jointly petition for dissolution of marriage on ground of incompatibility of temperament causing an irremediable breakdown of the marriage, so long as they have agreed to property distribution, support, custody, and visitation. Alaska's equitable distribution [STATUTE](#) establishes a three-tier version of the dual classification model. Property acquired during the marriage, except for gifts and

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inheritance, is classified as marital property, and it is divided equitably upon divorce. Property acquired before the marriage is not marital property but can be divided upon divorce if "the balancing of the equities between the parties requires it." The court may allow an amount of money for spousal support, for either a limited time or an indefinite time, in gross or in installments, without regard to fault.

ARIZONA: One party must be domiciled in the state for 90 days prior to the filing of the action. Arizona requires only that the filing party [ALLEGE](#) irretrievable breakdown of the marriage. Arizona is a community property state. Property held in common must be divided equitably without regard to marital conduct. The court may consider excessive or abnormal expenditures, destruction, concealment, or [FRAUDULENT](#) disposition of community, joint [TENANCY](#), and other property held in common in dividing the property. Spousal support may be granted to either spouse if the spouse seeking such spousal is unable, through appropriate employment, to provide self-support or is the custodian of a child at home. Support can also be awarded if a spouse contributed to the educational opportunities of the other spouse or had a long marriage and is of an age that may preclude employment. If spousal support is awarded it is without regard to marital fault. Factors the court will consider include: the couple's standard of living during marriage; the duration of the marriage; the age, employment history, earning ability, physical and emotional condition of the recipient spouse; financial resources and earning abilities of parties; any reduced income or career opportunities; and excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community assets.

ARKANSAS: Presence is required in the state by one party for 60 days before commencement of the action, plus another 30 days before the final decree may be entered. Grounds for divorce in Arkansas include voluntary separation without [COHABITATION](#) for 18 months; impotency; felony conviction; habitual drunkenness for one year; cruel and barbarous treatment; indignities to the person; adultery; three year separation by reason of confinement for incurable insanity; willful nonsupport. Marital property is divided equally between the parties unless the court finds that equal division is inequitable. The only usual aspect of Arkansas equitable distribution law is its treatment of property held as tenants by the entireties, which is divided by legal title. Spousal support may be awarded to either party in fixed installments for a specific period of time.

CALIFORNIA: Either party must be a resident of the state for six months, and a resident of the county for three months. A filing party need only allege irreconcilable differences or incurable insanity. California is a community property state. Community property is property acquired by either party during the marriage in any type of joint form. Unless the parties otherwise agree, the court divides the community property estate equally. The court may award spousal support in an amount, and for a period of time, that the court determines is just and reasonable, based upon the standard of living established during the marriage. In awarding spousal support, there is a goal that the supported spouse be self-supporting within a reasonable period of time. The court retains jurisdiction to modify spousal support in all cases of marriages over ten years unless the parties otherwise agree. There is a presumption for spousal support decreases on the recipient's cohabitation.

COLORADO: Either party must be domiciled in the state for 90 days before commencement of the proceeding. A filing party need only allege irretrievable breakdown of the marriage. Colorado adopts the traditional dual classification of property under Uniform Marriage and Divorce Act. Separate property, defined as property owned before the marriage and property acquired by gift, inheritance, is retained by the owning party. Marital property includes property that is not separate property, property acquired during the marriage, including the increase in value of separate property. The court divides the marital property as it deems just, without regard to marital fault, considering the contributions of each spouse to the acquisition of the marital property, the value of each party's separate property, the economic circumstances of the parties, depletion of separate property for marital purposes. The court may order spousal support if a spouse lacks sufficient property to provide for his/her reasonable needs, is unable to support him/herself through appropriate employment, or is the custodian of a child whose age or condition makes it inappropriate for the

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spouse to seek employment outside the home.

CONNECTICUT: There is no residence requirement for filing; however, the Decree of Divorce can only be entered after one party has been a resident for a year. The party filing may allege irretrievable breakdown of the marriage or that the parties have lived apart for 18 months due to incompatibility, with no reasonable prospect of reconciliation. Adultery, fraudulent contract, desertion for one year, seven years' absence, habitual intemperance, intolerable cruelty, or sentencing to [IMPRISONMENT](#) for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for over one year are also valid grounds. The court values and distributes all property and awards spousal support by considering the causes of the dissolution, the length of the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs of each party, opportunity for future acquisition of capital assets and income, contribution of each party to the marital and separate estates.

DISTRICT OF COLUMBIA: The party filing must live in the jurisdiction for six months. The parties must have mutually and voluntarily lived separate and apart without cohabitation for a period of six months, or the parties have lived separate and apart for one year. Factors for equitable division of property include length of the marriage, and the age, health, and occupation of parties. The court takes into consideration the value of homemaker services. The court may grant spousal support and may decree that a party retains dower rights in the other's estate.

FLORIDA: One party must live in the state for six months prior to the commencement of the action. The filing party need only allege irretrievable breakdown of the marriage or spousal mental incapacity for three years. If there are minor children, or if a claim of irretrievable breakdown is denied the court may order counseling, continue the proceedings for three months, or take such other action as may be in the best interests of the parties and children of the marriage. Florida follows an equitable distribution of property policy, based on dual classification of property into separate and marital estates. In distributing the marital estate, the court presumes a 50/50 division, but that may be altered by factors including the contribution to the marriage by each spouse, including homemaker services, the economic circumstances of the parties, the duration of the marriage, any interruption in career or educational opportunities, the contribution of each spouse to the acquisition, enhancement, and production of income or marital assets, and any action during the pending divorce proceedings which depletes marital assets. The court may grant spousal support to either party, which may be permanent or rehabilitative in nature. The court may order periodic payments or payments in lump sum, or both. The court may consider the adultery of each spouse. The court considers the standard of living established during the marriage, the duration of the marriage, the age and health of the parties, the financial resources of the parties, the time necessary to become fully employed, and the contribution of the parties to the marriage.

GEORGIA: One spouse must have resided in Georgia for six months prior to filing. Grounds include irretrievable breakdown; mental incapacity or impotency at the time of the marriage; fraud in obtaining the marriage; adultery; desertion for one year; conviction of an offense involving moral turpitude and imprisonment for two or more years; habitual intoxication or other drug addiction; cruel treatment; incurable mental illness. A dual classification system was adopted, with separate property comprising property acquired before marriage, property acquired by gift, and property acquired by inheritance. Temporary or permanent spousal support may be granted, except in cases of adultery and desertion. The court may consider the conduct of the parties toward one another, in addition to needs and ability to pay, in deciding whether to award spousal support. If spousal support is to be awarded, the court considers, in deciding the amount, the standard of living established during the marriage, duration of the marriage, age and physical and emotional condition of the parties; contributions to the marriage, and financial condition of the parties.

HAWAII: The filing party must have lived in Hawaii for six months prior to filing. The filing party need only allege irretrievable breakdown of the marriage or that the parties have lived separate and apart for more than

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two years. Hawaii law provides for equitable distribution of all property, whether community, joint, or separate. The court considers the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. The court may award indefinite or rehabilitative periodic spousal support. The court considers the respective merits of the parties, the usual occupation of the parties during the marriage, and the vocational skills and employability of the party seeking support and spousal support.

ILLINOIS: The filing party must have lived in the state for 90 days prior to filing. The filing party need only allege irreconcilable differences causing the irretrievable breakdown of the marriage. Fault grounds are impotency, **BIGAMY**, adultery, desertion for one year, habitual drunkenness or other drug addiction for two years, an attempt to take the life of the other, physical or mental cruelty, conviction of a felony or other infamous crime, or infecting the other with a sexually transmitted disease. Illinois law provides for equitable distribution of marital property upon divorce, without regard to marital misconduct, based on dual classification of property. Marital property is all property acquired during the marriage, except property acquired by gift, **BEQUEST**, devise, or descent, and property acquired before the marriage. The court may award rehabilitative, periodic, or permanent spousal support, without regard to marital misconduct. Spousal support terminates on cohabitation.

INDIANA: The party filing must live in the state for six months and for three months in the county where the petition is filed. The party filing need only allege irretrievable breakdown of the marriage. Fault grounds include conviction of a felony, impotency existing at the time of the marriage, and incurable insanity for three years. Division of property carries a presumption that equal division is just and reasonable. The presumption may be overcome by sufficient proof. Rehabilitative spousal support may be granted for a maximum of three years. The court may order permanent periodic spousal support if a spouse is physically or mentally incapacitated or where a spouse lacks sufficient property and is the custodial parent of a child whose incapacity requires the **GUARDIAN** to forego employment.

IOWA: The complainant must live in the jurisdiction one year. Divorce may be granted upon breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be saved. Marital property is property acquired during the marriage except that acquired by gift or bequest. The court may grant limited or indefinite spousal support.

KENTUCKY: The filing party must reside in the state for 180 days prior to filing. The filing party need only allege irretrievable breakdown of marriage. The decree cannot be entered until the parties have lived separate and apart for at least 60 days. Kentucky follows an equitable division of property theory, based on dual classification of property found in the Uniform Marriage and Divorce Act. Property is divided without regard to marital misconduct. Spousal support may be rehabilitative, periodic, or lump sum. The court may order spousal support only if it finds that the spouse seeking spousal support lacks sufficient property, is unable to be self supporting, or is the custodian or a child whose age or condition makes it appropriate that the custodian not seek employment outside the home.

LOUISIANA: Six months residence is required of the filing party. Except in the case of a covenant marriage, divorce shall be granted upon motion of either spouse upon proof of 180 days' lapse since service or petition and separation of 180 days before filing of motion. Louisiana is a community property state. Community assets and liabilities are divided so that each spouse receives property of equal value. The court may award final periodic support, up to 1/3 of the obligor's **NET** income, to a party free from fault based on the needs of that party and the ability of the other to pay.

MARYLAND: Maryland requires residence or one year residence if the cause of action for divorce occurred outside the state. Marital property is defined as property acquired during the marriage. This includes pensions and profit sharing plans. In dividing the marital property, the court considers: contributions, monetary and

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non-monetary, of each party to the well-being of the family; the value of the property interest of each party; the economic circumstances of the parties at the time the award is made; the circumstances that contributed to the estrangement of the parties; the duration of the marriage; the age of each party; the physical and mental condition of each party; how and when specific marital property or interest in a [PENSION](#), retirement, profit sharing, or deferred compensation plan was acquired; contribution of non-marital property to retiree's property; any spousal support award; any other factor deemed necessary. The court may award rehabilitative or indefinite spousal support, periodic or lump sum. Indefinite spousal support, however is awardable only if the requesting spouse cannot reasonably be expected to make substantial progress toward becoming self-sufficient or the parties' respective standards of living would be unconscionably disparate.

MAINE: The filing party must live in the jurisdiction for six months prior to filing. Marital property is defined as all property acquired by either spouse during the marriage, except property acquired by gift, bequest, devise or descent; property acquired in exchange for pre-marital property or in exchange for property acquired by gift, bequest, devise or descent; property acquired after decree of legal separation; property excluded by valid agreement of the parties; increase in value of property acquired prior to the marriage. The court divides the marital property after considering the contribution of each spouse to the acquisition of marital property, including homemaker efforts; the value of each spouse's separate property; the economic circumstances of each spouse. The court may award periodic or lump sum spousal support. The court may also award nonmodifiable spousal support.

MASSACHUSETTS: Either party can be a resident if the cause of action occurred within the state. Otherwise, there is a one-year residency requirement. Fault grounds include: adultery; impotency; desertion for one year; confirmed habits of intoxication caused by the use of alcohol or other drugs; cruel and abusive treatment; refusal to provide suitable spousal support. The parties also have the option of filing affidavits that the marriage is irretrievably broken, and can then, within 90 days, file a separation agreement. Parties may also file a complaint alleging irretrievable breakdown without a separation agreement, and the court may order the divorce after six months have elapsed. The court may assign to either the husband or the wife part of the estate of the other. The court may award periodic or lump sum spousal support. Factors in awarding spousal support include: homemaker's contributions; the employability of each party; the needs of each party; the opportunity for the future acquisition of capital assets and income.

MICHIGAN: Immediately prior to filing for divorce, one of the parties must have been a resident for 180 days and a resident of the county where the divorce is filed for 10 days. The filing party need only allege breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The court can award one spouse any property owned by the other party if it appears from the [EVIDENCE](#) in the case that the party contributed to the acquisition, improvement, or accumulation of the property. Either spouse may be ordered to pay spousal support "in gross" or otherwise. Factors to be considered include the ability of either spouse to pay and the respective circumstances of the parties.

MINNESOTA: One of the parties must have been a resident for 180 days immediately before the petition for divorce is filed. The petition may be filed in a county where either spouse resides. The filing party need allege irrevocable breakdown of the marriage relationship demonstrated by living separate and apart for 180 days or serious marital discord adversely affecting the attitude of one or both parties. In dividing marital property, the court considers the contribution of each spouse to the acquisition of the property, including homemaker contributions; the economic circumstances of the parties; the length of the marriage; the age and health of the parties; the occupation of the parties; the amount and sources of income of the parties; the vocational skills of the parties; the employability of each spouse; the liabilities and needs of the parties, and the opportunity for further acquisition of capital assets; any prior marriage of each spouse; any other factor necessary to achieve equity and justice between the parties. The court may order temporary or permanent spousal support, without regard to marital fault, after the consideration of eleven factors, including need, the ability to become

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employed, the standard of living during the marriage, the duration of the marriage, loss of earnings, age and condition of both parties.

MISSISSIPPI: One of the parties must have been a resident for at least six months prior to filing and not have secured residency solely for the purpose of procuring a divorce. Special venue provisions based on whether the divorce is no-fault or fault-based. Irreconcilable differences are sufficient for divorce. Other grounds include: impotence; adultery; imprisonment; alcoholism and/or other drug addiction; confinement for incurable insanity for at least three years before the divorce is filed; the wife was pregnant by another man at the time of the marriage without husband's knowledge; willful desertion for at least one year; cruel and inhumane treatment; spouse lacked mental capacity at time of marriage; [INCEST](#); bigamous marriage. Mississippi is an equitable distribution dual classification state. Either spouse may be awarded spousal support if it is equitable.

MISSOURI: One of the parties must be a resident of Missouri for 90 days before filing. The dissolution petition must be filed in the county where the plaintiff resides. There is a 30-day waiting period after filing before the dissolution will be granted. Irretrievable breakdown of marriage is sufficient for divorce. Missouri adopted the Uniform Marriage and Divorce Act. The court may award rehabilitative, periodic, or lump sum spousal support. The spousal support shall be in such amounts and for such periods of time as the court deems just.

MONTANA: One of the parties must be a resident of Montana for 90 days immediately prior to filing. The dissolution of marriage petition must be filed in the county where the petitioner has been a resident for the previous 90 days. The party must allege irretrievable breakdown of marriage, supported by evidence that the parties have lived separate and apart for 180 days. Montana adopted the all-property provisions of the Uniform Marriage and Divorce Act. The court may divide, without regard to marital misconduct, the property of the parties and assets belonging to either or both. Either spouse may be awarded spousal support. The award is made without regard to marital fault.

NEBRASKA: One of the parties must have been a resident for at least one year, or the marriage must have been performed in Nebraska and one of the parties lived in Nebraska for the entire marriage. The dissolution may be filed in a county where either spouse lives. There is a 30-day waiting period after service of the petition before the court can decide the case. Irretrievable breakdown of marriage or lack of mental capacity at time of marriage is sufficient to obtain a divorce. The parties keep any separate property acquired before the marriage. All marital property, which includes gifts and inheritances acquired during the marriage, may be divided. Either spouse may be ordered to pay reasonable spousal support, without regard to marital fault.

NEVADA: One of the parties must have lived in Nevada for at least six weeks prior to filing to divorce. The filing party need only allege. Nevada is a community property state. The court can make an unequal disposition of community property if the court finds a compelling reason to do so. The court may award such spousal support to the husband or the wife in specified principal sum or a specified period of payments.

NEW HAMPSHIRE: Both parties must be residents of the state when the divorce is filed, or the spouse filing for divorce must have been a resident of New Hampshire for one year immediately prior to the filing of the divorce and the other spouse was personally served with process in New Hampshire, or the cause of divorce must have arisen in New Hampshire and one of the parties must be living in New Hampshire when the divorce is filed for. Irreconcilable differences, which have caused irremediable breakdown of the marriage, are sufficient grounds for divorce. The court may award spousal support to either party in need, either temporary or permanent, for a definite or indefinite period of time.

NEW MEXICO: One of the parties must have been a resident of New Mexico for at least six months immediately preceding the filing and have a home in New Mexico. Incompatibility because of discord and

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conflicts of personalities such that the legitimate ends of the marriage relationship have been destroyed, preventing any reasonable expectation of reconciliation is [JUST CAUSE](#). New Mexico is a community property state. Each spouse retains his/her separate property acquired before the marriage. Separate property comprises property designated as such by written agreement, gifts, or inheritances. Community property shall be divided equally between the parties. "Quasi-community property," defined as property acquired outside New Mexico, which would be community property if acquired in New Mexico, is also be divided equally. Either spouse may be awarded a just and proper amount of spousal support, without regard to marital fault. Factors considered include: duration of the marriage, parties' current and future earning capacities, [GOOD FAITH](#) efforts to maintain employment or become self-supporting, needs and obligations of each spouse, age and health of each spouse, amount of property each spouse owns, standard of living during the marriage, medical and life insurance maintained during the marriage, assets of the parties, each spouse's liabilities, and any marital settlement agreements.

NEW JERSEY: One party must be a resident of New Jersey for at least one year prior to the filing for divorce, unless the cause of divorce is adultery and took place in New Jersey, in which case one of the spouses must be a resident at the time of filing. Living separate and apart for 18 months and no reasonable prospect of reconciliation is sufficient to obtain a no-fault divorce in New Jersey. Marital property is property legally and beneficially acquired during the marriage, except for property acquired by gift, devise, interstate [SUCCESSION](#), except that gifts between spouses are considered marital property. Either party may be awarded spousal support without regard to marital fault. Spousal support may be permanent or rehabilitative.

NEW YORK: If both spouses resided in New York at the time of the filing of the divorce and the grounds for divorce arose in New York, there is no residency requirement. No-fault divorce is obtainable by living separate and apart. Fault grounds include: adultery; [ABANDONMENT](#) for one year; imprisonment for three or more consecutive years; and cruel and inhuman treatment. Separate property comprises property acquired before the marriage, gifts, inheritances, increase in value of separate property, and property acquired in exchange for separate property. Marital property is property acquired during the marriage and not separate property. Marital property is divided based on factors including custodial provisions, dissipation, and contributions as spouse, parent, wage earner, and homemaker. Either spouse may be awarded maintenance without regard to marital fault.

NORTH CAROLINA: Either spouse must have been a resident of North Carolina for at least six months prior to filing for divorce. Living separate and apart without cohabitation for one year is sufficient grounds to obtain a no-fault divorce. Separate property comprises any property acquired before the marriage, gifts and inheritances, property acquired in exchange for separate property, increase in value of separate property, expectation of a non-vested pension, retirement, or other deferred compensation rights. Marital property is property acquired during the marriage. Either spouse may be awarded spousal support. The amount, duration, and manner of payment is in the court's discretion; however, an award of spousal support is barred by "illicit sexual behavior."

OHIO: The spouse filing the divorce must have been a resident of Ohio for at least six months and a resident of the county for at least 90 days immediately prior to filing incompatibility is sufficient to obtain a divorce. Divorce may be obtained by filing a separation agreement, according to specific procedures. Each party retains separate property, defined as gifts, inheritances, property acquired prior to the marriage, income or [APPRECIATION](#) of separate property, individual proceeds from [PERSONAL INJURY](#) awards. Marital fault and spousal support are not to be considered in the division of property. Either spouse may be awarded reasonable spousal support, in real property or personal property, or both, or by decreeing a sum of money, payable either in gross or by installments, from future income or otherwise. Marital fault is not a consideration.

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OKLAHOMA: Either party must have been a resident of Oklahoma for six months immediately prior to filing for divorce. Incompatibility is sufficient to obtain a divorce. Each spouse keeps separate property, defined as property owned prior to the marriage, gifts, and inheritances. All property held or acquired jointly during the marriage is divided between the spouses in a just and equitable manner. Marital fault is not a factor. Spousal support may be awarded to either spouse, in money or property, in lump sum or installments, having regard for the value of the property at the time of the award. Marital fault is not a consideration.

OREGON: If the marriage was not performed in Oregon, one spouse must have been a resident for six months immediately prior to filing. If the marriage was performed in Oregon and either spouse is a resident of Oregon, there is no residency requirement. Irreconcilable differences between the spouses that have caused the irretrievable breakdown of the marriage is the only grounds on which to obtain a divorce. Fault is abolished completely. Regardless of whether the property is held jointly or individually, there is a presumption that the spouses contributed equally to the acquisition of the property, unless proven otherwise. Either spouse may be required to make allowances for support of the other for his or her life or for a shorter period, having regard to the circumstances of the parties respectively.

PENNSYLVANIA: Either spouse must have been a resident for at least six months before filing. Pennsylvania's no-fault provisions require [ALLEGATION](#) of an irretrievable breakdown of the marriage with the spouses living separate and apart without cohabitation for two years. The couple can also file alleging irretrievable breakdown of the marriage with affidavits from both spouses that they consent to the divorce. The divorce can then be granted after 90 days. Separate and apart is defined as no cohabitation but is not precluded by living in the same residence. The parties retain their separate property, defined as property acquired before marriage, acquired in exchange for separate property, gifts and inheritances, and property designated separate by valid agreement. All other property is marital and is divided by the court equitably between the parties. A court may allow alimony to either party only if it finds that alimony is necessary. Pennsylvania has statewide spousal support guidelines that are presumed to be correct unless there is a showing that the amount would be unjust or inappropriate under the circumstances of the case.

RHODE ISLAND: Either spouse must have been a resident for one year prior to filing. Irreconcilable differences, which have caused the irremediable breakdown of the marriage, are sufficient grounds to obtain a divorce. Each spouse shall keep separate property, defined as property owned prior to the marriage, gifts, and inheritances. All property held or acquired jointly during the marriage is be divided in an equitable manner. Marital fault is not a factor. Spousal support may be awarded to either spouse, in money or property, in lump sum or installments. Marital fault is not an issue.

SOUTH CAROLINA: If both spouses are residents, the spouse filing for divorce must have been a resident for three months. If one of the spouses is not a resident, then the other spouse must have been a resident for one year. No-fault grounds are sufficiently established by the couple living separate and apart without cohabitation for one year. Fault grounds include: adultery; alcoholism or other drug addiction; physical abuse or reasonable apprehension of physical abuse; and willful desertion. During the marriage, a spouse acquires a vested special equity and ownership right in marital property. Each party retains separate property, defined as property acquired before the marriage, by gift or inheritance, in exchange for separate property, or from an increase in value of separate property. All other property is marital, subject to division on divorce. Fault is a factor. Either spouse may be awarded spousal support; however, no alimony may be awarded to a spouse who commits adultery.

SOUTH DAKOTA: The spouse filing the divorce must be a resident of South Dakota or a member of the Armed Forces stationed in South Dakota at the time of filing and must remain a resident until the divorce is final. Irreconcilable differences, which have caused the irretrievable breakdown of the marriage, are sufficient to obtain a divorce. Marital fault is not to be considered in apportioning the property. Either spouse may be awarded permanent or time-limited maintenance, based on the needs of the spouses.

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TENNESSEE: No residency requirement if the party filing was a resident of Tennessee when the grounds for divorce arose. If the cause for divorce arose outside of Tennessee, then either spouse must have been a resident of Tennessee for six months. Irreconcilable differences are sufficient to obtain a divorce if there is no denial of this ground or if the spouses submit an executed marital dissolution agreement. Fault grounds include: impotence; adultery; conviction of a felony and imprisonment; alcoholism and/or other drug addiction; wife is pregnant by another man at the time of the marriage without husband's knowledge; and refusing the move to Tennessee with a spouse and willfully absenting oneself from a new residence for two years. Each spouse keeps separate property, defined as property owned prior to the marriage, gifts and inheritances, property acquired in exchange for separate property, income and appreciation of separate property. All property held or acquired jointly during the marriage shall be divided between the couple. Marital fault is not a factor. Spousal support may be lump sum, periodic, or rehabilitative, based on sixteen factors. Rehabilitative support is favored.

TEXAS: One of the parties must have resided in Texas for six months and must have resided for 90 days in the county prior to the filing of the petition. There is a 60-day waiting period between filing for and granting of divorce. That the marriage has become unworkable because of discord or conflict that has destroyed the legitimate ends of marriage is sufficient grounds to obtain a no-fault divorce. Texas is a community property state. Property acquired by either spouse during the marriage is presumed to be community property, and such property shall be divided equally. The court may also divide property acquired by either party during the marriage while residing outside the state of Texas which would have been community property had the parties been residing in Texas. The court may award maintenance for a spouse in limited circumstances. Spousal support may be ordered if the spouse from whom maintenance is sought has been convicted of [DOMESTIC VIOLENCE](#) within 2 years before the suit for dissolution. Spousal support may also be ordered if the duration of the marriage is over 10 years and the spouse seeking maintenance lacks sufficient property to provide for his/her reasonable minimum needs or is unable to support him/herself through employment because of an incapacitating physical or mental [DISABILITY](#) or is the custodial of a child who requires substantial care and supervision on account of a physical or mental disability or clearly lacks earning ability in the labor market to provide for minimum reasonable needs. A maintenance award may not last longer than three years unless there is a compelling impediment to the recipient spouse obtaining gainful employment.

UTAH: Either spouse must have been a resident of Utah or a member of the armed forces stationed in Utah and a resident of the county where the divorce is filed for more than three months immediately prior to the filing. There is a 90-day waiting period after filing before a divorce may be granted. Irreconcilable differences are sufficient grounds for a divorce to be granted. All of the couple's property, including gifts, inheritances, and any property acquired prior to or during the marriage, is divided by the court. Either spouse may be ordered to pay an equitable amount of spousal support, based on fault and the equity of equalizing the parties' incomes. Typically the court will not order spousal support for a period longer than the marriage existed.

VIRGINIA: One of the spouses must have been a resident of Virginia for at least six months prior to filing for divorce. Living separate and apart without cohabitation is sufficient grounds for a no-fault divorce. Marital property comprises property acquired during the marriage, excluding gifts from third parties and inheritances. Separate property is property acquired before the marriage, gifts from third parties and inheritances, any increase in value of separate property, property acquired in exchange for separate property. The court cannot order the conveyance of separate or marital property not titled in the names of both parties, but it can award a monetary payment. Either spouse may be awarded maintenance, to be paid either in a lump sum, periodic payments, or both.

WASHINGTON: The spouse filing for dissolution must be a resident of Washington or a member of the armed forces stationed in Washington. The court will not act on the petition for divorce until 90 days after the filing of the complaint and service of the [SUMMONS](#). Irretrievable break-down of marriage is sufficient grounds for the court to order a divorce. Washington is a community property state. The court divides

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community property in a just and equitable manner, without regard to marital conduct. Property acquired in another state is "quasicommunity property" and is divided as community property. The court may award rehabilitative, periodic, or lump-sum alimony to either spouse without regard to marital fault.

WEST VIRGINIA: One party must have been a resident for one year immediately prior to the filing. If the marriage was performed in West Virginia and one spouse is a resident at the time of filing, there is no residency requirement. Irreconcilable differences are sufficient grounds for a no-fault divorce. The court divides the marital property equally. Marital property is property acquired during the marriage, the increases in value of separate property that is the result of the use of marital funds or work performed by either party during the marriage. Either spouse may be ordered to provide the other spouse with spousal support; however, spousal support will not be ordered for a party who committed adultery, was convicted of a felony during the marriage, or deserted or abandoned the other spouse for six months.

WISCONSIN: One of the spouses must have been a resident of Wisconsin for six months and a resident of the county where the divorce is filed for thirty days immediately prior to filing. Irretrievable breakdown of marriage is sufficient grounds for divorce. Wisconsin is a community property state. The court may also divide any spouse's separate property in order to prevent a hardship for a spouse or for the children of the marriage. The court may award rehabilitative, limited, or indefinite, maintenance, without regard to marital misconduct. Additionally, the court may combine spousal and child support payments into a single family support payment.

WYOMING: The spouse filing for divorce must have been a resident of Wyoming for 60 days immediately prior to filing, or if the marriage was performed in Wyoming, then the spouse filing must have resided in Wyoming from the time of the marriage until the time of the filing. Irreconcilable differences are sufficient to obtain a divorce. The state follows a plan of equitable distribution of all property of both spouses, including gifts and inheritances. Either spouse may be awarded spousal support.

Additional Resources

What Every Woman Should Know About Divorce and Custody: Judges, Lawyers, and Therapists Share Winning Strategies On How to Keep the Kids, the Cash, and Your Sanity. Rosenwald, Gayle, Berkley Publishing Group, 1998.

Your Divorce Advisor: A Lawyer and a Psychologist Guide You through the Legal and Emotional Landscape of Divorce. Mercer, Diana, Diane and Pruett, Marsha Kline. Simon & Schuster, 2001.

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