

I'm getting divorced.
Or, I want to get divorced.

What's next?

Getting divorced is rarely easy. Added to the emotional factors, especially if children are involved, are a number of sometimes complex financial issues that need to be disposed of before a marriage can be dissolved.

This guidebook introduces you to some of the major issues addressed in a divorce proceeding, including grounds and New York's new no-fault divorce, child custody and support, maintenance and equitable distribution. As you read through its contents, please contact us with any questions you may have.



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This guidebook is for informational purposes.
Since individual situations and legal issues vary, it is important to
contact an attorney to discuss your specific legal situation.

General Considerations

You must know that recent changes to the divorce law have compelled great differences in how you proceed. But the basics remain the same. A separation is just that: the two spouses live separately, cooperating with each other as best can be done under the circumstances. A divorce is a final dissolution of the marriage, with a final equitable distribution of the assets of that marriage. Separation agreements, which often merge into a final divorce, often dispose of many issues usually argued over without an agreement, including child support/custody, equitable distribution, maintenance and other matters.

Grounds

Still Around But Easier to Obtain

New York State was the very last state requiring "grounds" for a divorce, meaning a "reason" for the divorce to be granted by a judge to make the divorce final. These grounds still include adultery, cruelty/inhumane treatment, actual abandonment (the guilty spouse left the marital home), constructive abandonment (essentially the cessation of sexual activity between the husband and wife for a period of one year or more), and the imprisonment of one spouse for three years or more. As described above, you could also proceed on the basis of a final separation agreement, under which the spouses lived apart for a period of at least one year. Now, under DRL 170(7), one spouse can allege an "irretrievable breakdown" of the marriage for at least five months. Depending on recent developing law, the other's consent to this allegation might not be needed.

Once the legal basis of the divorce is determined, every divorce addresses the following issues, if applicable:

Child Custody and Support

Child custody laws are somewhat complex, but can be reasonably said to be seeking the "best interests" of the child in question. Courts invariably state that, while you can divorce a spouse, you cannot divorce your children. New state guidelines also require courts to make child support orders to accommodate children with special needs, either minor or adult. There's a mandatory child support standards pay scale, called the Child Support Standards Act, which allows judges to more

accurately assess the needs and capacities of the parents and children. Here's the general guideline, based on the number of children, used by the courts in almost all cases. The amounts are enforced against both the custodial and noncustodial parents, with the custodial parent paying off-premises. The standards are usually not mandatory above \$130,000 of combined income.

Number of children in the family	Percentage of Gross Income
1	17%
2	25%
3	29%
4	31%
5	35%

For more than five children, at least 35% of the gross income of both parents is ordered paid.

Maintenance

Percentage of Gross Income

Maintenance used to be called alimony, and consists of payments, either temporary or permanent, paid by one spouse for the everyday living expenses of the other. Maintenance depends on such factors as length of marriage, presence of children with special needs, and the standard of living of the family before the separation or divorce started. There is a new standard of likely payments which courts use since the system was reformed in 2010. The new standard seeks to close the gap between the higher-paid spouse and the lower-paid spouse, using a mathematical formula awarding a percentage of the gap to the lower-paid spouse, subject to further restrictions.

Equitable Distribution

Equitable distribution of the assets of the marriage means just that: it is fair, and not necessarily equal. Property under certain conditions may be subject to equitable distribution, or sharing, and other conditions, or may be deemed by the Court to be separate property, which is not shared. Shared, or marital, property usually arises during the marriage but there are exemptions, such as gifts of property, inheritances and property clearly intended to be separate anyway. Equitable distribution, as a rule, is considered by a judge at the very end of a divorce case.



So Where Do I Start?

If you were served with a summons for divorce, you should seek an attorney immediately because certain rights are lost if you do not file what is called an "answer" to the complaint. If just considering a divorce, seek an experienced attorney who can help guide you through the process.

- Bring the legal papers (whatever you were served with) with you to the attorney's offices.
- You will also need to obtain your income taxes for at least three years, as well as W-2s.
- Corporation/partnership records, marriage certificate, birth certificates, expenses and receipts of your household, and deeds/titles to major items like houses, property, co-ops, condos and cars.