



The Spirit of the Law

The divorce rate in the United States has almost quadrupled over the past 25 years. In 1991, the annual number of divorces, per 1,000 existing marriages, reached 21.2. The probability of a marriage ending in divorce today ranges from 44 percent to 66 percent, depending on the method of calculation. Families have changed, too. People are getting married later in life. The number of single-parent families has risen sharply. More young adults are living with their parents. In addition, the number of unwed couples living together has increased, with roughly 25 percent of today's children born to unwed mothers.

Legal Issues:

1. Can someone file for a divorce on the grounds of desertion two weeks after his or her spouse has left home?
2. What is the difference between a divorce and an annulment?
3. Do mothers always have the right to the custody of their children?
4. What is the most important factor in determining who gets the custody of children?
5. Does the law provide a method for obtaining support payments from spouses who live out of state?

Ending A Marriage

A marriage comes to an end in any of three ways: (1) the death of one of the parties, (2) annulment, and (3) divorce. An **annulment** is a declaration by the court that the marriage was never effective; it was void from the beginning. In contrast, a **divorce** (called *dissolution of marriage* in California) is a declaration by the court that a valid marriage has come to an end.

Although the laws vary from state to state, marriages generally can be annulled on the ground of duress and fraud. When one is forced to marry against one's will, it is duress. When one is persuaded to marry by the use of a misrepresentation, it is fraud. The most common frauds that are grounds for annulment are:

- being under the age allowed by state law to marry;
- not having the intent to marry (such as being intoxicated or going through a marriage ceremony as a joke);
- secretly intending never to have children;
- concealing pregnancy by someone other than the husband;
- concealing incurable venereal disease;
- suffering from mental illness at the time of the marriage; and
- being impotent (unable to have sexual relations).

Grounds for Divorce

The grounds (basis) for a divorce are different in each state. Figure 26-1 on page 381 shows a summary of divorce laws among the states. The

Divorce Laws Among the States

Some grounds for absolute divorce*

State	Residence	Adultery	Cruelty	Desertion	Alcoholism	Impotency	Non-support	Insanity	Pregnancy at marriage	Bigamy	Separation	Felony conviction or imprisonment	Drug addiction	Fraud, force, duress
AL	6 mos.	yes	phys.	1 yr.	yes	yes	2 yrs.	5 yrs.	yes	A	2 yrs.	2 yrs.	yes	A
AK	none	yes	yes	1 yr.	1 yr.	yes	no	18 mos.	no	A	no	yes	yes	A
AZ	90 days	no	no	no	no	no	no	no	no	A	no	no	no	no
AR	60 days	yes	yes	1 yr.	1 yr.	yes	yes	3 yrs.	no	no	3 yrs.	yes	no	A
CA	6 mos.	no	no	no	no	A	no	yes, A	no	A	no	no	no	A
CO	90 days	no	no	no	no	no	no	no	no	A	no	no	no	A
CT	1 yr.	yes	yes	1 yr.	yes	A	no	5 yrs.	yes	A	18 mos.	life	no	yes
DE	6 mos.	yes	yes	yes	yes	A	no	A	no	yes	6 mos.	yes	no	no
FL	6 mos.	no	no	no	no	no	no	3 yrs.	no	no	no	no	no	no
GA	6 mos.	yes	yes	1 yr.	yes	yes	no	2 yrs.	yes	A	no	yes	yes	yes
HI	6 mos.	no	no	no	no	no	no	A	no	A	2 yrs.	no	no	A
ID	6 wks.	yes	yes	yes	yes	A	yes	3 yrs.	yes	A	5 yrs.	yes	no	A
IL	90 days	yes	yes	1 yr.	2 yrs.	yes	no	no	no	yes	2 yrs.	yes	2 yrs.	no
IN	6 mos.	no	no	no	no	yes	no	2 yrs.	no	A	no	yes	no	A
IA	1 yr.	no	no	no	no	A	no	A	no	A	no	no	no	no
KS	60 days	no	no	no	no	no	yes	2 yrs.	A	A	no	no	no	A
KY	180 days	no	no	no	no	A	no	no	no	no	no	no	no	A
LA	1 yr.	yes	yes	yes	yes	no	yes	no	no	A	6 mos.	yes	no	A
ME	6 mos.	yes	yes	3 yrs.	yes	yes	yes	no	no	no	no	no	yes	no
MD	1 yr.	yes	no	1 yr.	no	no	no	3 yrs.	no	A	1 yr.	1 yr.	no	no
MA	1 yr.	yes	yes	1 yr.	yes	yes	yes	no	no	A	no	5 yrs.	yes	no
MI	180 days	no	no	no	no	no	no	no	no	A	no	no	no	A
MN	180 days	no	no	no	no	no	no	no	no	no	no	no	no	A
MS	6 mos.	yes	yes	1 yr.	yes	yes	no	3 yrs.	yes	yes	no	yes	yes	A
MO	90 days	no	no	no	no	no	no	no	no	no	no	no	no	A
MT	90 days	no	no	no	no	A	no	no	no	no	180 days	no	no	A
NE	1 yr.	no	no	no	no	A	no	no	no	A	no	no	no	A
NV	6 wks.	no	no	no	no	no	no	2 yrs.	no	A	1 yr.	no	no	A
NH	1 yr.	yes	yes	2 yrs.	2 yrs.	yes	2 yrs.	no	no	no	no	1 yr.	no	no
NJ	1 yr.	yes	yes	1 yr.	1 yr.	A	no	2 yrs.	no	A	18 mos.	18 mos.	1 yr.	A
NM	6 mos.	yes	yes	yes	no	no	no	no	no	no	no	no	no	no
NY	1 yr.	yes	yes	1 yr.	no	no	no	no	no	A	1 yr.	3 yrs.	no	no
NC	6 mos.	no	no	no	no	A	no	3 yrs.	no	A	1 yr.	no	no	no
ND	6 mos.	yes	yes	1 yr.	1 yr.	A	1 yr.	5 yrs.	no	A	no	yes	1 yr.	A
OH	6 mos.	yes	yes	1 yr.	yes	yes	yes	no	no	yes, A	1 yr.	yes	no	yes
OK	6 mos.	yes	yes	1 yr.	yes	yes	yes	5 yrs.	yes	yes	no	yes	no	yes
OR	6 mos.	no	no	no	no	no	no	no	no	no	no	no	no	A
PA	6 mos.	yes	yes	1 yr.	no	no	no	18 mos.	no	yes	2 yrs.	yes	no	no
RI	1 yr.	yes	yes	5 yrs.	yes	yes	1 yr.	no	yes	yes	3 yrs.	no	yes	no
SC	1 yr.	yes	phys.	1 yr.	yes	no	no	no	no	no	1 yr.	no	yes	no
SD	none	yes	yes	1 yr.	1 yr.	A	1 yr.	5 yrs.	no	A	no	yes	no	A
TN	6 mos.	yes	yes	2 yrs.	yes	yes	yes	no	yes	yes	2 yrs.	yes	yes	A
TX	6 mos.	yes	yes	1 yr.	no	A	no	3 yrs.	no	A	3 yrs.	1 yr.	no	no
UT	3 mos.	yes	yes	1 yr.	yes	yes	yes	yes	no	A	3 yrs.	yes	no	A
VT	6 mos.	yes	yes	7 yrs.	no	no	yes	5 yrs.	no	no	6 mos.	3 yrs.	no	A
VA	6 mos.	yes	yes	1 yr.	no	A	no	no	A	A	1 yr.	1 yr.	no	no
WA	bona fide	no	no	no	no	no	no	no	no	no	no	no	no	no
WV	1 yr.	yes	yes	6 mos.	yes	A	A	3 yrs.	A	A	1 yr.	yes	yes	no
WI	6 mos.	no	no	no	no	A	no	no	no	A	1 yr.	no	no	A
WY	60 days	no	no	no	no	no	no	2 yrs.	no	A	no	no	no	no

*As of June 1, 1990.

A indicates grounds for annulment.

Adapted from *The World Almanac*, 1991.

Figure 26-1 Most states have other divorce laws in addition to those listed here. Divorce laws can change, however, and a check of current state laws is advised. How would you learn about your state's current divorce laws?

most common grounds for divorce are (1) breakdown of the marital relationship (commonly called no-fault), (2) adultery, (3) physical or mental cruelty, (4) desertion, (5) alcoholism or drug addiction, (6) nonsupport, (7) conviction of a felony, and (8) impotency.

No-Fault

The acceptance of the idea of a divorce without fault has now become widespread. Almost all states have what is commonly called a **no-fault divorce law**, which eliminates the need to prove that one party is at fault when seeking a divorce. All that must be proved, under the law of most states, is that the marriage relationship has broken down. The procedure for obtaining this type of divorce is less traumatic than a fault-finding divorce. It is often less expensive, too.

States give different names to the breakdown of the marriage relationship. Some call it *irretrievable breakdown*; others call it *irreconcilable differences*. In New Hampshire, for example, a divorce may be granted without further regard to the fault of either party on the ground of irreconcilable differences that have caused the *irremediable* (incurable) *breakdown* of the marriage. Under the law of that state, a spouse, in most instances, cannot introduce evidence in court of misconduct by the other spouse if a no-fault divorce is sought.

A no-fault divorce is called a *dissolution* in some states. For example, in Ohio, a dissolution is granted quickly when both parties sign a separation agreement and make it part of the petition for dissolution, filed with the court. The agreement, providing for the division of property and custody of minor children, must be fair and equitable. The parties appear before the judge, acknowledge their desire to dissolve the marriage, and state that they accept the terms of the separation agreement. If the judge determines that the agreement is fair to both parties, the marriage will be dissolved. If the agreement is not fair, or the parties fail to agree, a divorce on another ground must be sought.

The Uniform Marriage and Divorce Act, which has been adopted by Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, and Washington, has eliminated the fault-finding divorce in favor of no-fault. In these states, the procedure is referred to as a dissolution rather than a divorce, and the ground for a dissolution is irretrievable breakdown.

A few states, such as Nevada, have for many years allowed divorce on the ground of *incompatibility*. One spouse does not have to prove that the other spouse is at fault. All that is required is evidence indicating that the couple has a personality conflict so deep that there is no chance for a reconciliation (a return of friendship).

In California, couples who have been married less than five years, own less than \$10,000 worth of community property, and have no minor children may obtain a dissolution of marriage without going to court. They simply advise the authorities of the marriage dissolution.

Some states require that the parties live apart from each other for a period of time before a divorce is allowed. In New York, for example, the parties must either enter into a separation agreement approved by the court or one of them must obtain a *judicial separation* (whereby the court allows the couple to live "separate and apart"). A divorce may then be granted after the husband and wife have lived apart for one year.

Reconciliation bureaus have been established in some states in an attempt to reunite couples and save marriages. Certain states have established procedures for couples to seek reconciliation. In Connecticut, for example, either spouse may submit a request for reconciliation. The county clerk of courts then orders the parties to meet at least twice a week with a marriage counselor. If either party refuses to meet with the counselor, no further action is taken on the case for a period of six months.

A few states allow a no-fault divorce if one of the parties first obtains a *limited divorce* (judicial separation). The *absolute divorce* (final divorce) is allowed at the end of a waiting period.

Adultery

Adultery is a voluntary sexual relationship involving a married person and someone other than his or her spouse. It is a crime in many states in addition to being a ground for divorce.

Because of its private nature, adultery is most commonly proved by *circumstantial evidence* (evidence that is indirect). It is often proved by showing that the person charged with adultery had (1) the opportunity to commit adultery and (2) the inclination or tendency to do so. This is generally sufficient for a court to grant the complaining party a divorce. However, criminal adultery must be proved beyond a reasonable doubt.

Example 1. A husband sought a divorce from his wife in Illinois on the ground of adultery with a man who roomed in the same house with them. There was evidence that a sexual relationship between the husband and wife had not existed for many years. The wife often visited barrooms and went on dates with other men. The court granted the divorce, saying that both the opportunity and the inclination to commit adultery existed.

In Example 1, if the wife had been charged with criminal adultery, the circumstantial evidence would not have been enough. To convict someone of any crime, the state must prove the defendant guilty beyond a reasonable doubt.

Cruelty

Until the introduction of no-fault divorce laws, cruelty was probably the most common ground for divorce. The requirements to obtain a divorce because of cruelty are similar throughout the country. Generally, there must be actual personal violence that endangers the life or health of a spouse and that makes living together unsafe or unbearable. Usually, more than one act of violence is required, although in some instances a single act may be enough.

Example 2. A drunken wife once struck, knocked down, and beat her husband during an argument. The husband had bruises on his back, throat, arms, and legs. The court allowed the divorce even though there was only a single act of violence.

Cruelty may be established without proving actual physical contact if a spouse is threatened with bodily harm. Sometimes it is possible to obtain a divorce because of mental suffering alone, without physical violence or the threat of physical violence. In such a case, it must be proved that the mental suffering damaged the health of the spouse.

FYI

The first written divorce regulations were incorporated in the ancient Babylonian Code of Hammurabi around 1750 B.C. Some societies, however, govern divorce through custom. For instance, in some Pueblo Native American groups, a woman could divorce her husband by leaving his moccasins on the doorstep.

Example 3. A wife persisted in going out with other men against the objections of her husband. His emotional upset over her conduct caused his health to deteriorate. The court granted a divorce on the ground of cruelty, even though there was no physical violence.

Desertion

Desertion is the unjustified, voluntary separation of one spouse from the other, for a period of time set by law, with the intent of not returning. In answer to Legal Issue 1, the time period is one year in most states.

Example 4. A wife left her husband because he got drunk several times a week and beat her. The husband would not be able to use desertion as a ground for divorce because the wife had a good reason for leaving him.

Usually, the deserting spouse leaves home. On some occasions, however, both spouses stay at home and live in different rooms. In older cases, the courts have also held that the refusal of a wife, without just cause, to live at the residence of her husband is desertion by the wife. This occurred, for example, when the husband went to another state to get a job and the wife refused to follow. More recent cases do not follow this reasoning.

In all cases, the marital relationship must cease for the entire time period established by state law. If the marital relationship resumes, even for one day, the time period must begin over again. In addition, the one seeking the divorce must want his or her spouse to return. He or she cannot consent to the other spouse's absence.

Alcoholism or Drug Addiction

Habitual intoxication, either with alcohol or drugs, is a ground for divorce in most states. The habit must be confirmed (well established), persistent, voluntary, and excessive. It is the abuse of alcohol or drugs, rather than the mere use of them, that is a ground for divorce.

Nonsupport

In the past, nonsupport could be used as a ground for divorce only by the wife and only in states that recognized it. In recent years, however, more states have begun to allow the husband to use nonsupport as a ground for divorce.

The person seeking the divorce must show that the party had the ability to provide economic support and willfully failed to do so. In some states, the person seeking the divorce must "grossly or wantonly and cruelly" refuse or neglect to provide suitable support.

Example 5. A wife sought a divorce from her husband on the ground of nonsupport. During their marriage, the couple had lived with the wife's parents, who supported them. The court refused to grant the divorce, saying that the wife at no time suffered or was ill because of lack of support by the husband.

Conviction of a Felony

Many states allow a divorce if either party is convicted of a felony, an infamous (disgraceful) crime or a crime of moral turpitude (one that is

morally wrong). The New York statute allows a divorce if either party to a marriage is in prison for three or more consecutive years after the marriage. The Massachusetts statute allows a divorce if either party is sentenced to five or more years in prison. (See Figure 26-1 on page 381.)

Domicile and Residence Requirements

In order for a court to hear a case, it must have the authority to do so. Such authority is called jurisdiction. (See Unit 1.) In a divorce case, jurisdiction is based on where the person seeking the divorce makes his or her home.

Domicile

The person asking for the divorce must be domiciled within the geographic area over which the court has jurisdiction. A **domicile** is a person's principal place of abode (home). It is a place to which, whenever a person is absent, he or she has the present intent of returning. A domicile cannot be abandoned or surrendered until another is acquired. Persons may have several residences, but they can have only one domicile at any given time.

At common law, a wife had no capacity to acquire a domicile of her own. Her domicile was that of her husband. In modern times, however, the courts have held that a wife may acquire a domicile separate from that of her husband. The husband usually must be guilty of some marital wrong that will justify the wife's living apart from him.

Members of the military are presumed to retain the domicile of their home state unless they are able to prove otherwise. Under the Uniform Marriage and Divorce Act, however, a divorce may be obtained by a member of the armed services in the place where he or she is stationed.

Residence Requirements

A **residence** is a place where a person actually lives, or resides. It may or may not be that person's domicile.

Example 6. Kathleen Horak, while attending college, lived in a dormitory in California (her residence). She spent the summer working at Yellowstone National Park in Wyoming (another residence). Her domicile during this entire period, however, was her home in Kansas because it was her principal place of abode and it was her present intent to return there to live at some future time.

In addition to requiring that persons seeking divorces be domiciled in their jurisdiction, most states have particular residence requirements.

Example 7. Myrna Zelin lived with her husband in Arizona. When marital difficulties arose, she left Arizona and went to live with her parents in New Mexico. Upon seeking a divorce in that state, she was told that she would have to live in New Mexico for at least six months before bringing the divorce action.

The residence requirements vary from six weeks in Idaho and Nevada to one year in many states. Court decisions in Massachusetts, Rhode Island, and Wisconsin held that a two-year residence requirement is unconstitutional. Such a requirement, the courts held, restricted the right of interstate travel. See Figure 26-1 for the divorce residence requirements of the various states.

Reducing Legal Risks

Know your state's divorce laws. If you seek a divorce, be sure you apply to the court that has jurisdiction over the area in which you are domiciled. If you are ordered to pay alimony, abide by the court's ruling. If you are a separated parent visiting your child, know and follow the visitation guidelines.

Out-of-State Divorce

Sometimes people go to another state or country to get a divorce. They usually do so either because they do not have grounds for divorce in their own state or because they want an immediate divorce without a long waiting period. Many people have gone to Nevada to get a divorce because of its relatively short waiting period (six weeks) and because a divorce may be obtained on the ground of incompatibility. Mexico, at one time, attracted people who wanted a quick, easy divorce. Even a mail-order divorce was legal there. The laws were amended years ago, however, to end such practices. Haiti and the Dominican Republic were, at one time, popular sites for quick, easy divorces. A divorce there, however, may not be recognized as valid in all states of the United States.

Alimony

Alimony (from the Latin meaning "sustenance," or "nourishment") is an allowance made to a divorced person by his or her former spouse for support and maintenance. In former years it was awarded to the wife only. Today the majority of states allow alimony to be awarded to either spouse, dependent on the discretion (judgment) of the court. One state's statute, for example, reads: "Upon a divorce or upon a petition at any time after a divorce, the court may order either of the parties to pay alimony to the other." The allowance is usually in the form of a payment of money at regular intervals. However, it can be a lump-sum payment. Alimony is not intended as a penalty against the person who is ordered to pay it.

Temporary alimony is alimony granted to one of the spouses while he or she is waiting for a divorce or separate support action to be completed. It is sometimes called *alimony pendente lite*, meaning "alimony pending a lawsuit."

Usually, a spouse who is found to have been at fault during the marriage will not be awarded alimony.

Example 8. Stephen Gagne obtained a divorce from his wife on the ground of cruelty. The court did not order him to pay alimony. His wife's misconduct during the marriage (being cruel to her husband) eliminated her entitlement to an award of alimony.

There is no fixed rule for determining the amount of alimony. It depends on the judgment of the court. Such factors as the one spouse's income and earning capacity, financial resources, future prospects, current obligations, the number of dependents, and the number of former and/or subsequent spouses are taken into consideration. Also considered are the other spouse's situation in life, earning capacity, separate property, contribution to the other's property, age, health, obligations, and number of dependents. Some states refuse to award alimony to a spouse who has sufficient wealth or income to provide for his or her own support.

In most instances, the court reserves the right to modify the alimony award at a later date. Under many state laws, if the court does not reserve the right to do so, the award of alimony must stand and cannot be changed after the expiration of the appeal period. Some states allow an alimony award to be modified by mutual agreement of the parties.

The remarriage of a spouse who is receiving alimony does not necessarily end the former spouse's obligation to pay it. Usually, however, the

YOU And The LAW

In your state, may alimony be awarded to either spouse? Can children choose which parent they want to live with after a divorce? Where can you go to find out?

