



THE BASICS

Getting a Divorce in
New York State

ACKNOWLEDGEMENTS

The Cross-Borough Collaboration (“CBC”) originated as a joint project of the Brooklyn Bar Association Volunteer Lawyers Project and Her Justice (formerly known as inMotion). Originally launched in 2002, the goal of the CBC was and continues to be the dissemination of clear and concise informational booklets for the general public on various common legal issues. Also known as “The Basics” series, these booklets have been updated periodically by Her Justice and continue to be distributed to our clients on an ongoing basis. We would like to extend our thanks to the Brooklyn Bar Association Volunteer Lawyers Project for their initial involvement in this important project.



THE BASICS

Getting a Divorce in
New York State

**BEFORE YOU LOOK FURTHER
PLEASE READ THIS:**

Throughout this booklet, you will see references to “spouse” and “parent.” The definitions of these terms are evolving as the courts endeavor to address and expand upon them to include all the many types of families that exist in our modern world, and take into account the rights of the LGBTQ community. While there are some areas where the rights of LGBTQ individuals are addressed specifically, there are others in which the courts and the laws have yet to catch up with the times. With regard to divorce, the law is clear that the spouse is the person to whom you are married, regardless of your gender or sexual orientation. The laws about divorce apply equally. However, with regard to “parental” relationships and child custody and support, the law is evolving and less clear. If you are not biologically related to a child in your marital or former marital household, you may be granted full parental rights or only limited/no rights depending on your circumstances. If you have questions about your rights with regard to a child in your household who is not biologically related to you, and whom you have not adopted, seek the advice of an attorney by calling a local bar association or a legal services organization in the borough where you live.

A divorce case can be fairly simple if both spouses want to get divorced and they do not have any disagreements about their finances or children. If they have children together, the parents may already have a Family Court order that states who has custody and/or visitation and who pays child support. If they also do not have money, property, or debt to divide, they may be able to get divorced in less than a year's time and without hiring lawyers. People call this kind of case an "uncontested" divorce.

However, a divorce case can also be very complicated. This happens if the spouses disagree about financial issues and/or what happens with their children after the divorce is final. These divorces take a much longer time. People call this kind of case a "contested" divorce.

DO I NEED A LAWYER?

It is usually a bad idea to try to get a divorce without a lawyer. This is because you must provide a lot of information to the court on many different forms and because there are many steps involved in ending most marriages. However, if you believe your case will be simple and uncontested, you may be able to represent yourself, since the law does not say that you must have a lawyer.

The information in this booklet should help you figure out how complicated your divorce case may be. It also explains the legal requirements for getting divorced.

If you have a complicated divorce case, there are several ways you can try to get a lawyer to represent you. First, you can contact your local legal services or Legal Aid office to see if they can take your case for free. Each borough in New York City has one or more of these offices. If you qualify as "low income," they do not charge you, but they often have long waiting lists of people in need of divorce lawyers.

Second, if your divorce case involves any custody, visitation or order of protection issues, you have a right to have a lawyer represent you on these issues. If you do not have enough money to pay a lawyer, ask the judge to assign you a lawyer free of charge. This free lawyer will not, however, be required to handle the parts of your divorce case that do not involve custody, visitation or an order of protection; however, you can contact your local bar association to find a lawyer who may be able to assist you on a free or low-cost basis.

Finally, if you do not qualify as low income, try contacting a local bar association or someone in the courts to find out the best way for you to get a lawyer to handle your divorce.

WHAT COURT DO I GO TO FOR A DIVORCE?

The Supreme Court of the State of New York is the only court that handles divorce cases. You should go to the Supreme Court in the county where you live now or in the county where your spouse lives now.

Each Supreme Court has a matrimonial clerk. The matrimonial clerk's office has uncontested divorce packets available for free. The uncontested divorce packets include all the papers and forms you will need. There are also instructions for how to fill out the forms.

You can download and print the packet for free from the internet. The internet address is **www.nycourts.gov/divorce/forms.html**



YOUR DIVORCE WILL BE UNCONTESTED IF YOUR SPOUSE DOES NOT ARGUE WITH (CONTEST) ANYTHING YOU ARE ASKING THE JUDGE TO DECIDE.



You can scan this QR code to access the webpage with the divorce packet.

HOW MUCH WILL IT COST?

For most people, it costs at least \$335 in filing fees to get an uncontested divorce. When you start your case, you must pay a fee of \$210. At that time, the court will give you an **index number**.*

***An index number identifies a court case in the same way that a social security number or driver's license identifies a person.**

Later on, when your case goes to the Judge for a final decision, either you or your spouse must pay another fee of \$125. If your divorce case is contested, there will be additional court fees, including motion fees of \$45 per motion. If you need to discontinue a prior case or to file a settlement, you will need to pay a \$35 fee.

It is also a good idea to get a certified copy of the divorce judgment at the end of your case. Each certified copy costs \$8.

However, if you are on public assistance or cannot afford to pay these filing fees, you can give the matrimonial clerk a sworn statement showing your financial situation and asking the Court to excuse you (give you a waiver) from paying the filing fees, so that you can file for free. You can obtain a sample of the sworn statement at the Office for the Self-Represented in the Supreme Court. This is an office for people without attorneys to get information and basic forms. However, the court employees are not allowed to give you legal advice.

CAN I GET A DIVORCE IN NEW YORK STATE?

Yes, you can, if you do three things:

- Show a physical connection to the state (residency, or that you live there).
- Give a reason (a ground).
- Have your spouse personally served.

These three things are described in the Supreme Court’s uncontested divorce packet. The first two—residency and grounds—are covered in more detail in this booklet.

WHAT IS RESIDENCY?

Before a New York court can give you a divorce, you need to show that you and/or your spouse have lived in New York State for a certain amount of time **continuously**.*

***Continuously means there was no interruption.**

Any one of these situations will work:

- You and your spouse got married in New York, and one of you still lives in New York and has lived here continuously for one year before the divorce case starts.

THE BASICS: DIVORCE IN NEW YORK STATE

- You and your spouse lived in New York as a married couple at some point during your marriage, and one of you still lives in New York and has lived here continuously for one year before the divorce case starts.
- The reason for getting divorced happened in New York, and one of you lives in New York and has lived here continuously for one year before the divorce case starts.
- The reason for getting divorced happened in New York, and both you and your spouse still live in New York when the divorce case starts.
- Either you or your spouse is living in New York and has lived in New York continuously for two years before the divorce case starts.

WHAT ARE GROUNDS FOR DIVORCE IN NEW YORK STATE?

If you can show the Judge one of these legal reasons, you should be able to get your divorce:

- Irretrievable breakdown of the relationship (“No fault”)
- Cruel and inhuman treatment
- Abandonment
- Imprisonment
- Adultery (rarely used and not recommended)
- Living apart with a legal separation agreement



**GROUNDS ARE THE
LEGAL REASONS FOR
GETTING A DIVORCE.**

If you want a divorce and are having trouble figuring out your legal reason, it will help to talk to a lawyer about what is going on in your marriage.

WHAT IS IRRETRIEVABLE BREAKDOWN?

You may get a divorce if you state to the Court in your divorce papers that the relationship between you and your spouse has been broken for at least six months and the relationship cannot be fixed. This is also known as a “no fault” divorce.

If you file your divorce papers using “no fault” grounds, you do not have to prove that your spouse did anything wrong, or that one of you is at fault for the break up. You do not have to give a reason for why the relationship broke down. You simply have to state that the relationship has been broken for six months, and cannot be fixed.

You can choose “no fault” as your grounds even if you also have other grounds for divorce.

WHAT IS CRUEL AND INHUMAN TREATMENT?

In the papers you file in court, you will need to describe your spouse’s behavior and say why this behavior is cruel and inhuman and how it affects you. These are some examples of cruel and inhuman treatment:

- Physical abuse
- Mental abuse
- Sexual abuse
- Threats of physical, mental or sexual abuse against you and/or your child, a family member or a friend
- Verbal abuse
- Economic abuse



IF YOUR SPOUSE BEHAVES TOWARD YOU IN A WAY THAT MAKES IT UNSAFE OR IMPROPER FOR YOU TO CONTINUE LIVING WITH THEM, THIS IS CRUEL AND INHUMAN TREATMENT.

It is best to describe cruel and inhuman treatment by your spouse during the most recent five years of your marriage—just before the start of your divorce case. If your spouse was cruel to you more than five years ago, you can give the Judge this information. But if your spouse objects and says that this happened more than five years ago, the Judge will not look at what happened that long ago.

If you and your spouse lived together before getting married and your spouse was cruel to you when you were living together but not after you got married, the cruelty before the marriage does not count in your divorce case.

Usually, you need to tell the Judge about at least three times that your spouse treated you cruelly and inhumanly, unless one thing that your spouse did was very serious.

You must say how each of your spouse's actions affected you physically, mentally or emotionally.

Did you:

- Fear for your life?
- Need to run away from home?
- Get medical treatment?
- Get an order of protection?
- Feel ashamed or humiliated?

You must also say when and where each act of cruelty happened, with as much detail as you can remember. You do not need to say the exact date and time. For example, you may remember that it happened in a particular month or season or during a particular holiday. And you may remember that it was during the day, at breakfast time. If another adult saw or heard what your spouse did, include that information, too.

If your spouse abused you verbally, you should give the Judge the actual words your spouse used, even if they are offensive to hear. For example, you may tell the Judge if your spouse called you "a dumb bitch" in front of your best friend.

If your spouse is not helping with the bills or is keeping you from going to school or getting a job, these are examples of economic abuse.

If your spouse has committed adultery, you can describe this behavior as cruel and inhuman treatment. Remember that you will need to describe how the adultery affected you badly. (Adultery is described later in this booklet.)



IF YOUR SPOUSE ABANDONS YOU, THAT MEANS THEY HAVE LEFT YOU FOR GOOD.

WHAT IS ABANDONMENT?

If you say you were abandoned, you need to prove three things:

- That your spouse walked out on you, leaving the home where the two of you were living together, planning not to return.
- That your spouse has been gone for at least one continuous year.
- That you did not agree that your spouse should leave you.

Your spouse has to have been gone for at least one year straight at the time you start your case. If your spouse moved out for nine months, then moved back in for a month, then moved out again, you will need to wait a year from the second time they moved out before the Judge will decide that they legally abandoned you.

It is **NOT** abandonment if:

- You asked your spouse to leave.
- Your spouse said they were leaving and you agreed they should leave.
- Both you and your spouse agreed to separate.
- You locked your spouse out of your home.
- You treated your spouse so badly that they had to leave.

There is a second type of abandonment. You can get a divorce if you tell the Judge about behavior by your spouse called **“constructive” abandonment**.

Your spouse may have forced you to leave your home (for example, locked you out) or refused to have sex with you for at least one year continuously. You and your spouse cannot have had sex even once in the year just before you start a divorce case, if this is your reason for wanting a divorce. And your spouse’s refusal to have sex with you must be their fault.

It is not constructive abandonment if:

- Your spouse is sick and, as a side effect of the illness or medication, is impotent (cannot have sex).
- Both you and your spouse agreed not to have sex.
- Neither you nor your spouse asked for sex, or offered it. This is because it looks to the Judge like you agreed with your spouse not to have sex.

WHAT IF MY SPOUSE IS IN PRISON?

If your spouse has been in prison for three or more continuous years after the date you were married, a Judge will give you a divorce for this reason. Your spouse must have been in prison for at least **three years before** you start the divorce case, and they cannot have been released from prison more than five years ago.

You will need to get a letter from the warden of the prison where your spouse is or that says how long he has been or had been in prison.

However, if you and your spouse got married when they were in prison, you cannot use this reason for getting a divorce from them.

And if your spouse has been in and out of prison during the last three or more years, but was never in for three years straight, you cannot use this reason for getting a divorce from them.

WHAT IS ADULTERY?

Adultery is very difficult to prove in court, so you should try not to use this as your reason for getting divorced. Very few people get divorced claiming adultery as the reason for their divorce. This is because the law says someone other than you needs to actually see your spouse committing adultery with another person and be willing to come to court to tell the Judge what they saw. People usually do not commit adultery in public, so finding a witness is difficult and expensive.

However, if your spouse has committed adultery, especially if you saw it or they brag about it, you can describe this adultery as cruel and inhuman treatment to the Judge, because this is a kind of emotional abuse. In this case, the legal reason for your divorce will be cruel and inhuman treatment (described earlier in this booklet), rather than adultery.



IF YOUR SPOUSE HAS SEX WITH SOMEONE ELSE WITHOUT YOUR CONSENT WHILE THE TWO OF YOU ARE MARRIED, THIS IS ADULTERY.

HOW CAN I GET A DIVORCE USING A SEPARATION AGREEMENT?

If you and your spouse get divorced using a written separation agreement, neither of you has to accuse the other of anything.

If you want to get divorced this way, you and your spouse will need to talk through and agree on all the important issues connected to ending your marriage. The agreement must cover how you will live separately for the rest of your lives.

Here are only some of the things that must be covered in your separation agreement:

- How you and your spouse will divide any property you got while you were married (for example, which one of you gets the car, the money in your bank account or money in a pension account).
- Who gets to keep the home you have been living in together (the marital home), or whether neither of you will.
- Who will get custody of your children, if any, and whether and when the other gets to visit with the children
- How much child support the parent without custody has to pay.
- How much spousal support, if any, either you or your spouse has to pay to the other and for how long.
- Whether one or both of you will provide medical or life insurance for the other or the children.
- Which one of you will be paying any debts you may have.

Because these contracts have many technical requirements in order to qualify as a legal separation agreement, it is very difficult to get divorced using a separation agreement unless you have a lawyer.

After living separately for one year from the date you both signed the separation agreement and doing what you agreed to do in the agreement, either you or your spouse can go to court and begin a divorce case. You will need to fill out forms and file for divorce in the same way that you would using any other grounds for divorce. In this case, your grounds will be living apart with a legal separation agreement.

WHAT WILL THE JUDGE DECIDE IN MY DIVORCE CASE?

The main reason you start a divorce case is to end your marriage to your spouse. But there are other important issues you can ask the Judge to decide as part of your divorce case. These are things that are connected to the ending of your marriage. Generally, they involve children, property and financial issues.

Three issues that are often connected to ending a marriage are never handled in Family Court. So you must ask the Judge in your divorce case to decide these things at the same time as you ask for the divorce, if they are important to you:

- Use of your maiden name or some other last name you used before your marriage (prior surname).
- Division of property or debts (equitable distribution).
- Maintenance (support for you after the divorce is done). This is sometimes called alimony in other states.



IN THE LEGAL PAPERS, A DIVORCE IS CALLED “DISSOLUTION OF THE MARRIAGE” BECAUSE YOU ARE ASKING THE JUDGE TO ORDER THAT YOUR MARRIAGE TO YOUR SPOUSE IS ENDED, OR DISSOLVED.



THE ADDITIONAL THINGS YOU ASK THE JUDGE TO DECIDE, SUCH AS CUSTODY, SUPPORT AND/OR EQUITABLE DISTRIBUTION, ARE CALLED ANCILLARY RELIEF.

Other issues that can be decided as part of your divorce:

- Custody
- Visitation
- Paternity
- Child support
- Health insurance
- Maintenance, while the divorce is pending. You can ask a court to order spousal support for you while you are still married even if you do not have a divorce case. Please see The Basics Series booklet on spousal support for more information.
- Order of protection

However, some people handle these things in Family Court, even if they do not need or want a divorce. The advantages of going to Family Court for an order on any of these things are that there are no court filing fees, and getting a Family Court order may be quicker than waiting for the issue to be handled as part of a divorce.

There are other booklets in The Basics Series that explain custody and visitation, child support, spousal support and maintenance, and orders of protection. For more details about these subjects and how they are handled in Family Court, look at those booklets.

However, here is a short summary of these subjects.

Custody and Visitation:

If you and your spouse have children under the age of 18 and there is no Family Court order giving custody to either of you, the Judge must decide which parent will get custody as part of your divorce case. You will have to list the name, birth date and social security number for each child you and your spouse have together in your divorce papers.

If you want custody of your children, you must ask the Judge to give custody to you in your divorce papers. You do not need to ask the Judge to give visitation to your spouse in the divorce papers. If your spouse wants visitation, they can ask for it themselves in the divorce case or they can go to Family Court later and ask for visitation.

If you wish, however, you can ask the Judge to give your spouse either “reasonable visitation” or a specific visitation schedule, if you and your spouse have already agreed on a visitation schedule.

When deciding custody, courts will look to all related custody and visitation decisions in court proceedings, abuse or neglect decisions, the sex offender registry, and the order of protection registries.

Remember, you have a right to be represented by a lawyer if there is any disagreement between your spouse and you about custody or visitation issues. And you can ask for the Judge to appoint you a free lawyer if you cannot afford to pay for one.

Paternity:

Children born while the parties are married are considered to be children of the marital relationship, regardless of who signed the birth certificate. For example, if a woman has a child with a man she is not married to while she is separated from but still legally married to her spouse, that child will be considered to be a child of her spouse even if the biological father’s name is on the birth certificate. A court will have to decide which person is the legal father.

Child Support:

In New York State, parents must support their children until they are 21 years old, unless the children are completely self-supporting. This means that you must list the name, birth date and social security number of any children under the age of 21 in your divorce papers, even though they may be too old for a custody and/or visitation order. The Judge will then decide which parent owes child support for your children. Usually, this will be the parent who does not have custody.

In most counties in New York City, the Judge will not grant a divorce if the spouses have children under the age of 21 unless the parent who wants custody asks for child support from the other parent.

So, if you are asking for custody, you must also ask the Judge in your divorce case to order child support to be paid by your spouse. This is true even if your spouse is in jail, is homeless or is receiving public assistance. You also need to ask the Judge to order either your spouse or you to be responsible for paying the cost of health insurance and other healthcare expenses not covered by insurance for the children.

Health Insurance:

In most cases, if you are covered under your spouse's health insurance plan, your health insurance will end (terminate) immediately once a divorce is final (entered). You will then be responsible for obtaining your own health coverage through a COBRA option or through another health plan.

If you and your spouse have children, then the parent who has health insurance will be required to continue providing health insurance for the children, if reasonable to do so. If both you and your spouse have health insurance, then the court will determine whose health insurance plan the children will be on. The cost of providing health insurance will be shared between the parties in proportion to their income. If neither party has health insurance, the court will direct the custodial parent (the parent with the greatest proportion of custody) to apply for the state's child health insurance plan.

If you or your spouse already has an order from the Family Court covering custody, visitation, and/or child support, then you should ask the Judge in your divorce papers to include the Family Court order as part of your divorce judgment. If you want a child support order included, however, it must be "current," which means no more than three years old.

You will need to state which Family Court gave the order, the docket (index) number, the date and what was decided. You must attach a copy of the Family Court order to the divorce papers that you file in Supreme Court.



IF A FAMILY COURT ORDER IS INCLUDED (OR CONTINUED) AS PART OF YOUR DIVORCE ORDER, EVERYTHING THAT THE FAMILY COURT DECIDED STAYS THE SAME AND DOES NOT HAVE TO BE DECIDED ALL OVER AGAIN.

Automatic Orders:

When starting a divorce action, regardless of whether you or your spouse ask for equitable distribution (dividing up assets, money, or debts), you and your spouse will be subject to an automatic order that you may not sell or do anything to lessen the value of the property (for example, take out a loan using the property as collateral), sell, transfer, conceal or assign any of this property until the divorce is concluded. In addition, neither of you may take on additional unreasonable debt. This order does not apply to your usual expenses, household expenses or reasonable attorney's fees for your divorce case.

Maintenance:

You can ask the Judge to order your spouse to give you financial support for a period of time after you are divorced until you can get on your feet financially. This type of support is called "permanent" or "post-judgment" maintenance. In some states, this type of support is called alimony. Maintenance may not last forever and may have an end date. The court will take into consideration how many years you and your spouse have been married in order to determine for how long you will receive maintenance.

The judge looks at your and your spouse's current finances and then, uses a formula to figure out how much maintenance must be paid.

If you are the one asking for maintenance, the judge looks at your income and your spouse's income up to \$178,000. If you and your spouse have children together, the judge also looks at who is paying child support and who has custody of the children. The judge takes all of this information and uses a mathematical formula to figure out how much spousal support your spouse will be required to pay you.

After figuring out the amount of maintenance that your spouse will have to pay, the judge will then look to see if the amount is too little or too much for him to pay. The judge looks at:

- Your and your spouse's age and health
- Your and your spouse's ability to work in the future and your work history
- Your and your spouse's need for education or training expenses
- If your spouse's obligation to pay child support ends, then spousal support may need to be recalculated

- If you or your spouse wasted marital money or hid money from each other
- If you or your spouse stopped the other from working

While your divorce case is going on, if your spouse earns more than you, you may also ask the Judge to award you temporary financial support, which your spouse will pay to you until the divorce becomes finalized. This type of support is called “temporary” or “pendente lite” maintenance.

Even if your spouse earns more than you, the Judge will not order your spouse to pay temporary maintenance if they would not be able to support themselves while making payments.

There are maintenance calculators available to determine whether you are entitled to temporary maintenance under the law:

www.nycourts.gov/divorce/calculator_013116.pdf



You can scan this QR code to access the webpage with maintenance calculators

If you are seeking temporary maintenance and child support, the amount you receive in temporary maintenance gets subtracted from your spouse’s income and added to your income before child support is calculated.

Also, remember that maintenance works both ways, so if you earn substantially more than your spouse, they may ask the Judge to make you pay them maintenance.

Order of Protection:

If you are worried about your safety and/or the safety of your children, you can ask the Judge for an order of protection as part of your divorce case. The order of protection usually lasts for at least two years but can last for a much longer period of time, depending on the history of abuse in the marriage. You can also ask the Judge to order that you stay in your home and that your spouse move out (this is called **exclusive possession of the marital residence**), if this is necessary for your safety.

Remember, if you are asking for an order of protection, you have a right to be represented by a lawyer in this part of your divorce case. And you can ask the Judge to appoint you a free lawyer if you cannot afford to pay for one.

You may need the Judge to make a decision on some of these things right away. If so, you can ask for what you need as soon as you start your case or while your case is going on. For example, you can ask the Judge to order your spouse to pay temporary child support, temporary maintenance, and attorneys' fees while your divorce case is going on.

You must ask in writing and have a copy of your written request given to your spouse. The Judge will then schedule a hearing date in court where you and your spouse will have the chance to answer questions about your request. Then the Judge will decide whether or not to grant your request.

ATTORNEYS FEES AND EXPERT FEES

Attorneys' Fees:

If your spouse earns substantially more than you, you can also ask the Judge to order your spouse to pay your attorneys' fees. This way, you may be able to hire a lawyer even if you cannot afford one yourself. Just like temporary maintenance, though, if you are the one who earns more money, your spouse may ask the Judge to make you pay their attorneys' fees.

Expert Fees:

Sometimes in a divorce, people need to hire experts to help present evidence to the judge. For example, you may need an expert to determine the value of a home or a pension, so that the judge can decide how to divide the assets in the divorce. If your spouse earns substantially more than you, you can also ask the Judge to order your spouse to pay your expert fees. However, if you earn more than your spouse, your spouse may ask the Judge to make you pay the expert fees.



WHEN THE JUDGE DECIDES THE FAIREST WAY TO DIVIDE MONEY AND PROPERTY BETWEEN YOU AND YOUR SPOUSE AND WHICH OF YOU HAS TO PAY DEBTS YOU OWE, THIS IS CALLED EQUITABLE DISTRIBUTION.

WHAT IF MY SPOUSE AND I HAVE PROPERTY OR DEBTS TOGETHER?

If you, or your spouse, have a lot of property or debts, or if one or both of you have a pension, you should have a lawyer representing you to make sure that you get what is fair.

Part of your divorce case is dividing up money and/or property and deciding who has to pay outstanding bills or taxes that have not been paid. There are no easy answers about what is fair. The division will not necessarily be equal or 50-50. You and your spouse may agree about how to divide these things, but if you cannot, the Judge will make the final decision based on information you and your spouse give the Judge in your case.

If your case is uncontested but you are asking the Judge to cover financial issues in your divorce judgment (for example, child support or school tuition for your child), the Judge may ask you to file **a statement of net worth form***.

***A statement of net worth is a form where you list all of your financial information in detail, including all income, expenses, assets (such as a pension or bank account), property and debts. It is a sworn statement that must be signed in front of a notary public.**

If you and your spouse disagree about any financial issues, the Judge will ask each of you to fill out and file a statement of net worth. You will both need to send a copy of your statement of net worth to each other. You will be able to see the information your spouse includes on his form and he will be able to see your information.

The Judge will look at the information in both forms when deciding how to divide up your and your spouse's marital property and debt. The Judge is supposed to divide these things fairly.

The Judge will look at many things when deciding who gets what, including:

- Your and your spouse's income and property both at the present time and at the time you got married.
- How long you were married.
- How old and how healthy you and your spouse are.
- Whether the parent who has custody should stay in the marital home with the children.
- Whether one of you will pay maintenance to the other.

- Whether one of you earns more money or could earn more money in the future because of your education and work experience.
- Whether one of you tried to hide or give away some marital property to keep the other from getting it in the divorce.



MARITAL PROPERTY INCLUDES ALL PROPERTY THAT YOU AND YOUR SPOUSE ACQUIRED BETWEEN THE DATE YOU GOT MARRIED AND THE DATE YOUR DIVORCE CASE STARTS.

It does not matter whose name is on the marital property. For example, if you bought a car sometime after you were married, even if the car is registered only in your name, the Judge considers it marital property. Also, if your spouse has a pension through their job, if you were married to them while they were working at that job, their pension is also marital property.

The Judge will decide how to divide everything that you or your spouse bought with money you both earned while you were married.

This may include:

- Homes
- Cars
- Bank accounts
- Businesses
- Pensions
- Educational degrees



SEPARATE PROPERTY IS NOT MARITAL PROPERTY AND WILL NOT BE DIVIDED UP AS PART OF YOUR DIVORCE.

If you or your spouse has any of the following things, it could be separate property:

- Something one of you got before you were married.
- Something you got as a gift (but not from your spouse) or something your spouse got as a gift (but not from you).
- Something you or your spouse inherited.
- Money for pain and suffering because of personal injuries (from insurance or a lawsuit).

Something that starts out as separate property can change into marital property.

This can happen if one of you puts money or time into improving the other person’s separate property. For example, your spouse may have made a down payment on a house before you got married, but you may have made most of the mortgage payments while you were married. That house will now be marital property. What started out as your house could also become marital property if you put your spouse’s name on the deed. The Judge will also decide which of you must pay any money you owe.

This may include:

- Credit card balances
- Loans
- Income taxes
- Mortgage payments on your home
- Children’s school tuition

If there is more than one debt, the Judge may order you to pay some and your spouse to pay others. The Judge will look at who caused each debt and for what reason.



MARITAL DEBT INCLUDES ANYTHING YOU AND YOUR SPOUSE OWE, STARTING WITH THE DATE YOU GOT MARRIED AND ENDING ON THE DATE YOUR DIVORCE CASE STARTS.

HOW CAN I STOP USING MY SPOUSE’S LAST NAME?

If you used your spouse’s last name during your marriage, you should ask the Judge to order that you can use your maiden name or some other last name (former surname) you used before your marriage in the divorce judgment. This does not mean you have to stop using your spouse’s last name right away. It just means you can choose to stop using your spouse’s last name whenever you wish.

HOW DO I GET TO STAY IN OR RETURN TO MY HOME AND GET MY SPOUSE TO LEAVE?

If you and your spouse own a home together, or you have a rental apartment and both of your names are on the lease, and you want to stay in the apartment but you want your

spouse to leave, you can ask the Judge to give you “exclusive occupancy of the marital residence.” The Judge will be most likely to give exclusive occupancy to the party who needs it the most, for example, the person who is the primary caretaker of the children, or the person who is least able to afford to find another place to live. If you own the home, the sale of the home and division of the money from the sale can be put off until some future time, for example, when your children have grown and are ready to leave home.

HOW DO I START MY DIVORCE CASE?

The Supreme Court’s uncontested divorce packet explains in detail how to start your case.

It includes:

- A list of all the papers needed.
- Instructions for completing each form the Court requires.
- The order you need to do things in and how long you have to complete each step.
- How you place your case on the calendar of the Court so that a Judge will sign an order that makes your divorce official (gives you a divorce judgment).

WHAT IF MY SPOUSE WANTS TO CONTEST THE DIVORCE?

If your spouse does not want a divorce or objects to some part of the relief you have asked for, your spouse or their lawyer will send you a notice of appearance and also file it with the Court. Or you may get a notice directly from the Court that they are contesting the case.



A NOTICE OF APPEARANCE IS A PAPER THAT TELLS THE COURT THAT YOUR SPOUSE WANTS TO SPEAK UP (APPEAR) IN THE DIVORCE CASE.

If your spouse notifies you and the Court that they are contesting by filing a notice of appearance, then you should try every way possible to get a lawyer to represent you. There are important deadlines to meet in a contested divorce and it is important that you respond in time. You should try to get a lawyer’s advice in a contested divorce, even if you decide you want to represent yourself.

HOW LONG WILL IT TAKE TO GET A DIVORCE?

If your spouse does not contest your divorce, it normally takes at least six months to get a final judgment of divorce. The actual length of time will depend upon several things, including how many divorce cases are going on in that Court, and whether you completed the papers that you filed in your case correctly. If you make any mistakes in your papers, you will have to correct them and this will delay getting your final judgment signed.

If your spouse contests the divorce, it will take much longer. It could take as long as several years, depending on how many issues you and your spouse cannot agree on.

NOTES:

SOURCES CONSULTED

The Brooklyn Bar Association Volunteer Lawyers Project and Her Justice thank the following agencies and organizations for generously contributing both written materials and advice to assist in the preparation of the booklets in THE BASICS series.

CITY, STATE AND NATIONAL GOVERNMENT AGENCIES

Administration for Children's Services, Parents' & Children's Rights Unit and Division of Legal Services

C-PLAN: Child Planning and Advocacy New, Public Advocate's Office

New York City Department of Health

New York State Department of Social Services

New York State Office of Court Administration

Social Security Administration

State of New York Unified Court System

U.S. Department of Justice, Immigration and Naturalization Service

U.S. Department of Justice, Violence Against Women Office

U.S. Department of State Office of Children's Issues

ORGANIZATIONS

Association of the Bar of the City of New York

Bronx Legal Services

The Door

The Family Center

Family Violence Prevention Fund

Lambda Legal Defense and Education Fund

Law Tek Media Group, LLC

The Legal Aid Society, New York City, Juvenile Rights and Civil Divisions

Legal Information for Families Today (LIFT)

MFY Legal Services, Inc.

New York Association for New Americans, Inc.

New York County Lawyers Association

New York Legal Assistance Group

New York Bar Association

Pace University School of Law

Safe Horizon Domestic Violence Law Project

Sanctuary for Families Center for Battered Women's Legal Services

South Brooklyn Legal Services

Urban Justice Center

Women's Prison Association



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