



DIVORCE

Legal Information Guide

HER JUSTICE

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What Do I Need to Know Before Getting a Divorce in New York?

There are two types of divorce: **Uncontested Divorce** and **Contested Divorce**. All divorces happen through the Supreme Court.

Uncontested Divorces

In an Uncontested Divorce, there are no issues to be argued (litigated) or decided in court, and there will be no court appearances. This means that the following must be true:

- **Property:** Either there is no property of the marriage, **or** you don't want to divide (distribute) the property, **or** you have already divided the property and you and your spouse are satisfied with what you have.
- **Maintenance:** is financial support your spouse pays you after your divorce. It's paid to help you get back on your feet, and is usually in effect for a certain period of time. In an Uncontested Divorce, you either already have an agreement with your spouse for Maintenance, **or** you are not asking for Maintenance. For more information, see our guide on [Spousal Support and Maintenance](#).

If there are children of the marriage, the following must also be true:

- **Custody:** You have already been to Family Court and have an Order of Custody/Visitation from there, **or** you don't think your spouse will challenge your request for Custody. For more information, see our guide on [Custody](#).
- **Child Support :** You have already been to Family Court and have an Order of Child Support from there, **or** you are fine with getting only the minimum monthly amount (\$25 per month), **or** you have proof of your spouse's income such as a recent paystub or w-2. For more information, see our guide on [Child Support](#).

Contested Divorces

A divorce becomes a Contested Divorce if there is at least one issue to be argued (litigated) and decided in court. Contested Divorces require several court appearances and can take longer.

The time depends on how much you and your spouse disagree about who gets what.

Examples of situations that would lead to a Contested Divorce include:

- Either spouse wants maintenance
- There is property of the marriage and either spouse wants a share of that property
- There is marital debt in one or both spouses' names and they need help paying that debt

Do I Need a Lawyer?

You don't need a lawyer for a divorce case, but it's a good idea to have one, because Supreme Court is very hard to navigate without a lawyer. This is especially true if you have a Contested Divorce case. Here are a couple of ways to get a lawyer:

1. You can try to contact your local legal services organization. Examples for the New York area include: Legal Aid Society, New York Legal Assistance Group (NYLAG), or Legal Services NYC (LSNYC)
2. You can also go to your local Bar Association for legal referrals. If you are low income, a lawyer can represent you for a reduced price, or even for free. However, it usually takes a long time to get a divorce lawyer.
3. If your divorce involves any Custody, Visitation or Order of Protection issues, the court has to give you a lawyer. Ask the Judge to assign you a lawyer free of charge. This lawyer will not be able to help you with other parts of your divorce. They are only allowed to help you get Custody, Visitation or an Order of Protection.

If you think your divorce will be Uncontested and you don't want a lawyer, use this guide on the New York Courts website:

http://ww2.nycourts.gov/divorce/divorce_withchildrenunder21.shtml

To get a hard copy of this document, go to the Supreme Court in the borough where you live, and go to the Matrimonial Support Office. Ask for the packet of Uncontested Divorce information and forms.

The guide includes:

- A list of all the papers you need
- Instructions for completing each form
- The order of things you need to do to get a Divorce
- The amount of time in which you have to complete each step

How Much Will it Cost?

1. It can cost at least \$335 in fees to get an Uncontested Divorce: \$210 to start your case, and \$125 to end your case. If it is a Contested Divorce, it can cost much more than that.

The cost will depend on several factors:

- The issues being litigated
 - The complexity of the case
 - How much you and your spouse disagree
2. If your income is limited and you can't afford to pay these fees, you can ask the Court to waive them. Go to the Office of the Self Represented in Supreme Court and ask for

papers to file to waive your divorce case fees. Fill out the forms and bring them back with proof of your income. Ask the clerk when you should come back to see if your application has been approved. Go back to the office at that time, and get a copy of the signed Order. Keep a copy of this Order handy until your divorce case is done—you will need to show it to the clerk every time you file papers in your case.

Your Spouse's Address

To get a divorce in New York State, **you must know your spouse's address**. This is necessary for serving the papers, which we explain in more detail in the next section. Without your spouse's address, the server won't be able to reliably find them to serve the papers. If you are not able to serve your spouse with the papers, you won't be able to begin your divorce. If you don't know where your spouse is, you should consult with an attorney about what steps you can take to try to find and serve your spouse.

Steps to Getting a Divorce

These are the first steps to getting a divorce:

1. Show you and/or your spouse live in New York – “Residency”
2. Show your reason for getting a divorce – “Grounds for Divorce”
3. Notify your spouse about the divorce – “Serving the Papers”

The few sections explain more about those three steps.

Residency

Before you can get a divorce in New York, you need to show that you or your spouse have lived in New York for a certain amount of time. These 2 scenarios are the most common ways to fulfill this requirement:

- You and your spouse got married in New York **and** one of you has lived in New York for at least one continuous year before you file for divorce
- You didn’t get married in New York, but either you or your spouse has lived in New York for two continuous years before the divorce case starts

You should talk to a lawyer if neither of these options apply to you. There are other options, and you may be eligible under a different option.

What are Grounds for Divorce?

“Grounds for Divorce” is just the official name for the reason why you’re getting divorced.

While there are many options to choose from as your Grounds for Divorce, you should say it’s a “No Fault” divorce when you file.

If you say it’s a “No Fault” divorce, you don’t have to claim that your spouse did anything wrong. You don’t have to give a reason for why the relationship broke down. You just have to say that your marriage has been broken for at least six months, and that in your view, it can’t be repaired.

Why No Fault?

What you list as your Grounds for Divorce isn’t important. Instead what’s important are the outcomes of the divorce that you seek, like financial relief and custody. All the other Grounds for Divorce besides “No Fault” are more adversarial (meaning they may give your spouse a reason to contest the divorce), and can lengthen the amount of time that the case takes to be resolved in court.

Starting Your Case:

To start your case, you need to get the packet of forms that you'll file in court. You can either print these out from the website below, or get them from the New York State Supreme Court.

http://ww2.nycourts.gov/divorce/divorce_withchildrenunder21.shtml#ucdforms

Go to either the Office of the Self-Represented or the Matrimonial Support Office within the Supreme Court for the papers.

Once you've filled out the papers, you must file the Summons with Notice in the Supreme Court. This costs \$210. If you can't afford this fee, go to the Office of the Self-Represented, and ask to fill out the application to continue without paying the fee. Make sure to make 3 copies of the Summons with Notice. You'll file the original document in court, serve the 1st copy to your spouse, keep the 2nd copy for yourself, and file the last copy at the end of your case with the other final documents.

How Do I Serve the Papers?

1. Serving the papers means giving the court documents to your spouse. You must find someone to serve the papers for you. We'll call this person the Server. This person:

- Can't be you
- Must be at least 18 years old
- Can't be directly involved in the case, such as your child under 21
- Must live in the state where your spouse is served
- Can be the sheriff of the county in which your spouse lives

For serving papers outside New York State: The requirements for who's allowed to serve papers are different in each state. If you're having papers served to someone outside New York State, make sure the server is legally permitted to serve papers there. You may find out who can serve from an attorney, law office, or court located in that state. You can also check lawhelp.org for more information.

2. Once you've found a Server, give them the following documents:

- **Summons with Notice** – this notifies your spouse that you're filing for divorce, and tells them of relief you're seeking
- **Affidavit of service** – document the server signs after serving the papers
- **Affidavit of defendant** – a document that gives your spouse a chance to agree to the divorce
- Any other court documents (these depend on your case)

For additional instructions about documents that need to be served, refer to the court website.

<http://ww2.nycourts.gov/divorce/forms.shtml>

3. Server must give everything **except** the Affidavit of Service to your spouse. Papers must be served:
 - In person
 - Within 120 days of when the Summons was filed in court
 - Not on a holiday or on Sunday, or on a different day of religious observance
4. Next, the Server must fill out the Affidavit of Service in front of a Notary Public. A Notary Public is a person licensed by the state government who confirms that you signed a document. You can find their locations online. The Server must then give you the original Affidavit of Service. Make a copy of the signed document for your records.
5. Sometimes the spouse will hide from the Server. **The server must try to serve the papers at least 3 times on different dates, and at different times.** If the Server is not able to serve the papers within 3 attempts, they must give you an **Affidavit of Due Diligence** (it may also be called an **Affidavit of Non-Service**). Go to the Office of the Self-Represented in Supreme Court, and bring the Affidavit with you. They'll give you a Template for a Motion for Alternative Service, which you can complete and then file with the Affidavit.

What's Next?

Uncontested Divorces:

Once you serve your spouse, what happens next depends on how and if they respond. There are 3 different outcomes:

1. Your spouse gets the papers, and signs the **Affidavit of Defendant**, the document that gives your spouse a chance to agree to a divorce. You can then prepare the final divorce papers. This scenario is called a **waiver**.
2. Your spouse is served the papers, but doesn't respond. If they don't respond within 40 days of the date they were served, your spouse will be in **default**. This means that they're out of time to respond. On day 41 if you haven't received a response, you can prepare and file the final divorce papers on a default basis.
3. Your spouse responds by contesting, or disagreeing, with what's in the divorce papers. If your spouse plans to fight you on the terms of the divorce, you can't continue with an Uncontested Divorce. The Divorce will now be litigated, or contested. See the section below for information on Contested Divorces.

Contested Divorces:

If your spouse fights you on terms of the divorce, you'll receive a **Notice of Appearance and Demand for a Complaint**. This is a document that says your spouse may intend to fight the divorce. When you get this, your divorce has become contested. You must prepare a **Verified Complaint**, which is in your packet of divorce papers. Have someone mail it to your spouse within 25 days of when you receive the Notice of Appearance. **If you don't do this within 25 days, you may be in default.**

If you want to continue with the divorce, you should go to the Office of the Self-Represented. They will provide you with more information about where to go from here.

What is Decided in My Divorce Case?

The main reason to get a divorce is to end your marriage. But there are many other issues that the Judge can decide in your divorce. Three issues that can **only** be decided in supreme court during a divorce are:

- Dividing your property
- Dividing your debts
- Spousal Maintenance

The Judge can also decide on issues within your divorce case that are usually decided in Family Court. These issues include:

- Custody/Visitation
- Child support
- Order of Protection

Family Court is much easier to navigate without a lawyer than Supreme Court. If you don't want Spousal Maintenance and there's no property to divide, or you don't want to divide whatever property there is, then you can go to Family Court for your Child Support, Custody/Visitation, and/or Order of Protection, and then go to the Supreme Court for an Uncontested Divorce.

For more information on these topics, check out Her Justice's other guides.

<https://herjustice.org/get-help/legal-reference-guides-english-spanish/>

How Does the Judge Split our Property and Debts?

A big part of your divorce is when you decide who gets what. What happens to your money and property? Who has to pay bills or taxes that haven't been paid?

Property:

Any property you and/or your spouse gained during your marriage is marital property. It doesn't matter who officially holds the title. This can include:

- Homes
- Co-op apartments
- Pensions and other retirement benefits
- Bank accounts

Debts:

Any debts acquired during the marriage for **marital purposes** are considered marital debts. This can include debt connected to paying for:

- The marital home (mortgage or home equity loan)
- Food for the household
- Clothing or tuition for children
- Family vacations
- Medical expenses

During a divorce, a Judge will figure out how to split both marital property and marital debt.

Making Decisions About Your Children:

If you have children with your spouse, and you disagree about how the children should be taken care of and financially supported, then the following topics may need to be addressed in your divorce.

Custody and Visitation:

If you have children under the age of 18 and you haven't been to Family Court, the Judge will decide who gets custody. If you want custody of your children, you must ask the Judge to give you custody in your divorce papers. You have a right to be represented by a lawyer for a Custody case. Ask a Judge to appoint you a free lawyer if you can't afford to pay for one. To learn more about his process, check out [Her Justice's Custody and Visitation Guide](#).

Child Support:

The Judge will also decide who must pay Child Support. Usually whoever doesn't have physical custody pays child support to the parent who has custody. Child Support must be paid until the children are 21. The Judge will not grant a divorce unless the parent who wants custody asks for child support from the other parent. To learn more, check out [Her Justice's Child Support Guide](#).

Health Insurance:

The parent who has a health insurance plan must provide coverage for the children after the divorce, until the children reach 21. If both parents have a health insurance plan then the Judge will choose one of the plans for the children.