

# Ask the Lawyer: Divorce

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While one's wedding day is arguably the most exciting and life changing day of a person's life, it is a fact that a number of marriages do not last 'unto death do us part.' When divorce becomes a consideration, there are certain critical elements to consider. Here are a few:

## Requirements that must be met before you can file for a divorce in the State of New York:

**Residency Requirement**—Under the provisions of New York's Domestic Relations Law, Section 230, you may file for a divorce in New York if you (the Plaintiff) and the Defendant (your spouse) are residents of New York State, or have been living in the state continuously for at least one year, and your grounds for divorce happened in the state.

**Grounds**—Simply stated, the term "grounds" means your legal reason for filing for a divorce. Historically, New York has six (6) legally acceptable grounds for divorce, which include adultery, cruelty, abandonment, imprisonment and separation by agreement and separation by decree.

In 2010, New York modified its laws to include a ground for divorce called "irretrievable breakdown," which is commonly known as "no fault divorce."

When filing for a no-fault divorce, the Plaintiff must establish that the marriage has been broken for a period of at least six months, and that there is no hope of reconciliation.

The Plaintiff must also swear under oath that all matters regarding economics, support, child custody and

visitation have been resolved.

Unlike many other states, New York requires no period of separation (living apart from your spouse) prior to filing for a divorce.

## The length of time required before you can receive a divorce decree:

There is no formula for determining the length of time your divorce will take.

How long your divorce proceeding lasts is a product of multiple factors, which include the complexity of your situation, the cooperation you receive from your spouse and the volume of cases before the court.

Length of time also varies by county, but it is generally four to six months for an uncontested matter.

## Service of Process:

New York requires that your spouse be personally served with the divorce papers. You may not serve your spouse with the summons yourself, and your server must be over the age of 18.

You may use a friend, relative or process server. Requirements for service vary based on whether your spouse lives in New York, or is out-of-state, so you should contact legal assistance for guidance before proceeding.

Service must be made within 120 days of the date you file your complaint with your County Clerk's Office.

If you have been served and fail to answer, the court will likely issue a default judgment against you.

If you default, the court will proceed and usually grant the divorce on the terms requested.

To ensure your interests are best represented, you should contact legal assistance immediately if served

divorce papers.

## What to do when you have decided that divorce is the right option for you:

You should also consult with a legal assistance attorney if you are considering initiating a divorce action.

A legal assistance attorney cannot actually grant a Soldier a divorce, but he or she can help you further understand the requirements for filing for a divorce; your rights and responsibilities before, during and after the divorce process; and help determine which state has jurisdiction to hear your case.

Legal assistance can also help you draft a petition for divorce, provided your divorce is uncontested.

In New York, divorces are handled by the Supreme Court, and only a Supreme Court judge can actually grant you a divorce.

If you and your spouse are having difficulty agreeing on whether to seek a divorce and resolving financial matters, or if your case involves substantial division of property, parenting issues and other complicated matters, you should consider contacting a civilian attorney practicing family law in the county where you reside.

You may also consider some form of alternative dispute resolution (e.g.—mediation), which may save you time and money while preserving an amicable relationship between you and your soon-to-be ex-spouse.

Your West Point Legal Assistance office is here to support you and provide guidance. Please call us or contact us for further information.

The West Point Legal Assistance offices are located in buildings 606 and 626. Contact the offices at 938-4541.

## SHARP Community Resources

- USMA SARC Program Manager, Samantha Ross;
- Garrison SARC, Dan Toohey—call 845-938-5657 or email dan.toohey@usma.edu;
- USCC SARC, Maj. Damon Torres—call 845-938-7479 or email damon.torres@usma.edu;
- KACH SARC, Dr. Scotti Veale—call 845-938-4150 or email scotti.l.veale.civ@mail.mil;
- USMAPS SARC, Dr. Stephanie Marsh—call 845-938-1950 or email stephanie.marsh@usma.edu;

## Parking ALERT:

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- Personnel are not allowed to

park on Thayer Roof;

- Areas (parking lots) behind Lincoln/Cullum Hall/West Point Club will be inaccessible;
- All personnel that have handicap

and/or special accommodation parking on Thayer Roof can park in Doubleday lot;

- Twenty-five parking spaces will be reserved for HC/special

accommodations parking at the north side of Doubleday parking;

- West Point personnel are encouraged to utilize Washington gate to enter the installation.

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