



# Wiesbaden Legal Center Legal Assistance Office



## Getting a Divorce Overseas

### **Q. Can I get a divorce at the Legal Assistance Office?**

**A.** No. You have to go to court to get a divorce, and you will probably need a private attorney to do that. Although you are not legally required to have an attorney, it is sometimes difficult to get a divorce without one. Even though a legal assistance attorney (LLA) can't go to court for you, a LAA can still help you by advising you about the issues and procedures involved in your case and, if appropriate, by preparing a separation agreement for you and your spouse.

### **Q. Where can I get divorced?**

**A.** You can't just file for divorce anywhere. A valid and legal divorce can only be granted in the "home state" or domicile of either the husband or the wife. This means the true legal home of one of the marriage partners. It is the place where a partner can vote, pays income taxes and qualifies for in-state college tuition. It does not necessarily mean the same thing as a military "home of record." You will likely have to hire a lawyer in that place (state or country) to start the divorce proceedings.

### **Q. What happens in a divorce?**

**A.** Several things can or will happen:

- First of all, you become single again -- you are no longer married. You can date, get remarried or stay single. You can file your taxes as "Single" (or, if you have dependents living with you, as "Head of Household") rather than as "Married." Usually, the ex-wife can also resume the use of her maiden name and often this may be requested in the divorce papers that are filed by her.
- A divorce, however, doesn't necessarily mean that child support, alimony, property division and custody are all resolved. This depends on the law of the particular place (state or country) where you file for divorce or dissolution of marriage.
- In some places, before the divorce is granted, all issues in dispute between the parties must be resolved by trial (and all not in dispute must be settled by written agreement) before the court will give you a divorce.
- In others, however, the divorce is entirely separate from these other issues and may be granted independently of a resolution of these issues; you can go ahead and litigate (fight in court) any contested issues at any time before or after the divorce, which is granted independent of the claims for property division, custody, child support and alimony.

### **Q. How long does a divorce take? What are the grounds? Can my spouse contest the divorce?**

**A.** The answers to these questions depend entirely on the law - the law of the place where you get divorced, that is. And that means about 50 different answers are possible for just the United States alone. In fact, in some states the answers vary from county to county or even from city to city in the same county.

First of all, let's try some answers according to "state law," that is, what might happen if you got your divorce from one of the 50 states. Then we'll look at divorce law in some countries overseas.

## **DIVORCE IN THE STATES**

### **Q. I heard you have to have a separation agreement to get a divorce. Is that true?**

**A.** No. As a general rule, you do not need a separation agreement in order to obtain a divorce. While a separation agreement will usually make the divorce simpler, cheaper and sometimes faster to get, it is not a requirement for a divorce. You should consider a separation agreement if you think you and your spouse can agree on its terms, since this means a full resolution of all your differences and it leaves less to fight over with lawyers in court. Please pick up a copy of our 1<sup>st</sup> AD handout, "Separation Agreement Survival Guide for Soldiers and Spouses" if you want to learn more about separation agreements.

### **Q. We don't have anything to fight over -- no kids, no property. Can't we file for divorce without a lawyer and save some money?**

**A.** In some states there's a simplified procedure for "pro se divorce" (which basically means "do-it-yourself"). In such cases, there are standard forms in which you can fill in the blanks, or sometimes there are examples you can use (but which you'll have to re-type) in order to start your divorce case. Then you would need to serve these papers on the other side, usually by certified mail, by sheriff or by a "process-server" (that is, a person who delivers court papers). If the other side doesn't respond within a certain period of time, the court will either grant your divorce then and there, or else may allow a hearing to be held which should result in an uncontested divorce.

### **Q. What about attorney's fees? I sure don't want to pay a lot of money for my separation and divorce. Let my spouse pay all my attorney's fees! Why do I have to pay?**

**A.** There are many factors which will affect attorney fees such as whether you already have a Separation Agreement or the number and type of any items in dispute. The fewer items in dispute, the less expensive the divorce. Ask your attorney early and often about their fees. Here are some suggestions:

- Find out from your lawyer if the attorney's fees you incur can be assessed by the court against the other side (in other words, if your soon-to-be-ex can be made to pay your lawyer's bill).
- Be sure you ask your lawyer at the outset how much he or she charges. Get this written down in a contract that both you and your lawyer sign. Read the contract closely before signing; you might even want to take it home with you before signing to read it closely and to allow yourself to think about it before you commit yourself to what might be thousands of dollars of legal expenses. Be sure to ask any questions you have before you sign it. Also make sure you keep a copy of the contract.
- Ask for an estimate of the total charges and ask what services are included in this estimate. Ask what your attorney expects to be the steps you go through and how much time (or expense) they might involve -- if you hire an experienced lawyer, he or she should be able to at least "outline" the process for you with a fair degree of accuracy.
- At the same time, please be aware that it's impossible to predict with any degree of accuracy what will happen in a divorce case. While many of these are resolved as standard "uncontested divorces" with no alimony, property or child-related issues involved, there are a great many cases that are completely unpredictable in this field of law, so don't expect a specific dollar amount to be quoted to

you as “the entire fee” in anything but a standard uncontested divorce. In fact, be wary of attorneys who promise to handle your entire case for a fixed sum, since it is impossible at the outset to tell what will occur in all except the most routine of uncontested divorce cases -- one in which both parties want to get divorced, there are no issues of alimony, property division, custody or child support, and there is no problem serving the other party with the divorce papers.

- Be sure you understand the hourly rate of your lawyer, how the billing takes place, when you're expected to "refresh the retainer" and so on.
- Be sure to ask lots of questions if you want answers and want to know how you will be charged in your case -- after all, it's your money.

**Q. What should I watch out for?**

**A.** Lots of things, but three in particular are very important:

- Alimony, maintenance or spousal support (in many jurisdictions) must be requested in court before the divorce is granted in most states in order to "keep it alive" for the judge to decide. If you don't want alimony, or if you make more than your spouse, that's fine. But if you're a dependent spouse and you intend to ask the court for alimony, discuss this with your divorce lawyer at the outset. That means before the divorce is granted.
- Property division (sometimes called equitable distribution) should also be done at or before the time of the divorce. The division of marital (or community) property is alive and well in all 50 states, and you should be sure to request this in your “pleadings” (the complaint or petition for divorce) so as to preserve this for the court to decide if you and your spouse cannot “work things out” by agreement (or, in the case of dividing military pension rights, a consent order). An agreement, of course, would probably be the cheapest way to resolve this issue, but that’s not always possible if the two of you don’t see eye-to-eye. Talk to your lawyer about this also. Make a list for him or her of all the property either of you has acquired during the marriage (real estate, motor vehicles, bank accounts, household furnishings, stocks and investments, retirement assets) to make easier for the job of deciding on whether an agreement can be reached. Remember, the debts that either or both of you accumulated for marital purposes during the marriage are considered marital property. Military pensions are also considered marital property.
- Recognition of your divorce “back home” (in the U.S.) may be a problem if you get your divorce overseas. American courts are required by the U.S. Constitution to recognize and honor the orders and decree of their sister states (so Kentucky, for example, would have to honor and enforce your divorce decree from Arizona). But U.S. courts do not have to recognize court decrees from other countries. Your divorce decree and child support order from Belgium, for example, may not be honored in Florida. If you get a decree of divorce and custody in Korea, it need not be recognized and enforced in California. And the courts of foreign countries cannot divorce military pension benefits -- this can only be done by an American court and should be requested in court papers before the divorce is granted. Be sure you know these rules before you choose to go to court overseas.

**Q. Does it matter who files for the divorce?**

**A.** Not really. Some jurisdictions may charge less for filing by a military member, but other than this small difference, it usually doesn't make any difference.

**Q. What if my spouse won't give me a divorce?**

**A.** The judge is the person who grants a divorce, not your spouse. If your spouse won't cooperate with you, it will take longer and probably cost more to get your divorce, but you can still get one.

**Q. How does the court procedure actually work?**

**A.** In all states, you may file for divorce only if you have been a resident for at least some period of time, often six months, prior to the date of filing. You may also file for divorce in the state where your spouse is a legal resident. The term "legal resident" means your home state or your "domicile" (see above section, WHERE CAN I GET DIVORCED?). In addition, if there is any dispute about child custody, then you may have to file in the state where the child has been living for the six months immediately preceding the filing of the lawsuit.

After filing your divorce paperwork at the courthouse, your lawyer will serve a copy of the summons and complaint on your spouse. If your spouse consents or does not file an answer within the time allowed, usually a few weeks after being served, the judge may then grant your divorce.

If your spouse files an answer contesting the divorce, then a trial date will be set. At the trial, both of you will be allowed to testify, and then the judge will decide whether to grant the divorce. In some states the judge will also decide how to split up your property and debts, and all the other issues involved in your case.

**Q. That seems pretty long. Is there a quicker way?**

**A.** Not really. If you believe everything you see, you may remember seeing ads for quickie foreign divorces, but don't be fooled. The U.S. does not recognize those divorces, unless you have your spouse's consent. And if you have your spouse's consent, it's usually cheaper to file in the U.S.

**Q. Is my divorce final when the judge signs the decree?**

**A.** Not always. In some states there is a waiting period after entry of judgment before the divorce becomes final. In other states, it's final when signed by the judge. When in doubt, ask your divorce attorney or check the divorce judgment itself -- the decree may state its effective date.

**Q. Can my spouse and I see the same lawyer?**

**A.** No. You and your spouse must be seen in separate Legal Assistance offices because it would be a "conflict of interest" for the lawyer to try to represent both of you in the separation and divorce. This means that he or she could not be loyal to one of you without doing a disservice to the other. A lawyer cannot have two clients in a divorce case, since whatever he or she gains from one will usually be at the expense of the other. For example, if the lawyer works toward getting lots of alimony for Mrs. Smith, then SGT Smith will suffer; if, on the other hand, he or she tries to get no alimony for SGT Smith to pay, then this hurts Mrs. Smith! It's really a NO-WIN situation for the lawyer and, quite often, for the clients as well.

**Q. Is there anything else I should do before the divorce?**

**A.** Yes. Among other things:

- Both spouses should consider canceling joint financial obligations, accounts and other arrangements, such as credit cards, bank accounts and phone calling cards. The military spouse should file a disclaimer with AAFES and other check-cashing facilities to avoid being held liable for the non-

military spouse's bad checks, and he or she should put a block on DPP or similar plans at AAFES for the same reason. AAFES disclaimers must be renewed every year until the divorce becomes final.

- Both spouses should consider canceling powers of attorney, making new wills, and changing the beneficiaries of IRA's and life insurance policies, including SGLI.
- If you and your spouse get back together and live with each other after the separation agreement is signed, the validity and legal effectiveness of the agreement may be damaged or destroyed.
- If you both agree not to follow one or more of the provisions of the separation agreement (for example, if you decide that one of the children should live with someone other than the custodial parent named in the agreement), then you should sign a new agreement or an amendment to the separation agreement. To change court-ordered child support, you must go back to court and ask the judge to make the change.
- In accordance with USAREUR REGULATION 210-50, "When the assigned occupants divorce, legally separate, or are absent from the quarters for more than 90 days, the departure is considered permanent and the quarters assignment will be terminated. The sponsor will notify the housing office in writing within 5 days of the change in circumstances and the quarters will be terminated within 30 days of the occurrence". Exceptions to this policy may be authorized by the ASG commander.
- You should also notify your commander to update the military spouse's personnel records and the non-military spouse's ID card, passport stamps, no-fee passport, ration cards, driver's license, POV registration, and residence permit.

### **DIVORCE IN OTHER COUNTRIES**

Now let's see what the answers might be if you got divorced in a foreign country.

#### **Q. What's separation and divorce like in Germany?**

**A. Divorce:** To file for divorce in Germany (assuming one of you is a legal resident of the country), you must have *lived apart for at least one full year* to get an uncontested divorce, and at least three full years to get a contested divorce. The only ground for a divorce is an irretrievable breakdown of the marriage. The German system uses a so-called "package divorce". This means that, by law, the judge not only has to address the issue of the dissolution of the marriage, but also of custody and retirement benefits, both military and civilian. All the other issues will only be addressed on a petition to the court. Retirement benefits and marital property (money, bank accounts, real property, debts) are two completely different issues in Germany and they are always treated separately. Also household goods are subject to specific legal provisions. Other specific points are:

- A German court cannot divide American retirement benefits, and the spouse (usually the wife) of a soldier with valuable pension rights will find herself "out in the cold" if she tries to get help in a German court for the division of her husband's military retirement. Even if the judge states (and this often occurs) that he or she will not decide the issue of retirement benefits but will leave it open to the parties to reach an agreement about solving the problem, this probably won't solve anything. Here's why:

- What if the parties cannot come to an agreement? Only a handful of lawyers in Germany really know how to do it and their experience only covers a possible agreement between two Germans. It will be almost impossible to solve this problem through the German system because it is not designed for a German/American contract solution. And even if such a contract were signed, it does not provide the same protection as a court order for custody, child support or spousal support, and a contract on military pension division simply won't be recognized in the United States when the nonmilitary spouse applies for a division of her husband's pension payments.
- What if the American courts, which generally can divide military pension rights before divorce are not asked to act until after the parties have divorced? In this case, because the nonmilitary spouse (ordinarily the wife) waited too long, she may be unable to receive any portion of her husband's retirement.

**Divorce Procedure:** If both spouses agree, the marriage will be divorced after this one year. If one of them contests it, the judge will look for evidence of the breakdown and, if he finds it (living separate will very often be sufficient anyway) he will issue the divorce after all. The breakdown of the marriage is presumed by law if the spouses have lived separate for three years. The judge will most likely grant the divorce at the initial hearing if the divorce is not contested, but this doesn't mean that the divorce is final yet or the parties are legally divorced at that time. In Germany it is possible to appeal a divorce decree, just like any other civil judgment from a court. The time for appeal is within one month after the parties have been served with the divorce decree. After that time is up, the decree is final and the parties are legally divorced. It is possible to finalize the divorce right at the hearing if both parties waive the right to appeal, AND only if there is no custody involved. But in order to do this, both parties must be represented by attorneys to make and accept this petition to the judge. If one party does not want to be divorced quickly, the other will have to wait at least a month for the divorce decree to become final.

**Use of Separation Agreements:** Separation agreements are not that common in Germany. Under normal circumstances, an ordinary couple with a normal income would not sign one because it has to be drafted by and signed before a German Notary Public who will charge a considerable fee for these services. In the divorce procedure both parties might still need a lawyer. So why spend money twice? It is more common to sign a marital agreement right after the marriage, especially if there is a lot of money or some real property involved. (NOTE: If two nationalities are involved, a separation agreement will be even more complicated because it will be difficult to find a German Notary who speaks English well enough to explain the legal questions involved. By the way, a German Notary is legally liable for the contents of the document that he or she drafts, as well as for the correctness of its form!)

**Attorney's Fees:** Attorney fees in Germany are usually much higher than in the United States, particularly for an uncontested divorce. German attorneys do not charge their client on an hourly rate. Their fee is based on the so-called "value of a case". The latter is determined by the amount of money in dispute or it is assessed by the judge himself, who attributes a certain value to a certain legal question. A strictly binding ordinance will inform the client how much "one share of the total fee" is. Depending on the work that is done, the attorney can get one, two or three shares (for counseling and paperwork, for filing the petition and for court representation). This system permits a fairly exact estimate on the future costs right from the first consultation. It also means that attorney's fees are going to be the same no matter which attorney you hire. It is the attorney's ethical obligation to counsel his or her client on the total costs of the legal dispute. Of course, any attorney will request a retainer if

the client wants to fight the case. The attorney must make a deposit for court fees when the case is filed in the first place. In small towns (and also depending on the competition between attorneys in the specific locality) it is not uncommon, however, for the first divorce counseling session to be given at no charge to the client.

**Q. How do I get a German attorney?**

**A.** We are not allowed to recommend any specific German attorney. However, for your convenience, each office has a German attorney referral list. This list contains the many local German attorneys who speak English and practice domestic law.

If you have any further questions, please contact your local Legal Assistance Office.