

DIVORCE IN SOUTH CAROLINA

Residency Requirements

Husband and wife must have lived in South Carolina for at least three months. If only one is in South Carolina, the residency requirement is one year.

Grounds For Divorce

Unlike most states in the Union, South Carolina continues to maintain a fault-based system for divorce. Adultery, physical cruelty, habitual intoxication by alcohol or drugs, desertion for a period of one year, and continuous separation for a period of one year are thus the sole divorce grounds. Separation for one year means complete separation from each other. As such, a sole evening during which both spouses reside together starts the one year clock running again. If spouses have been separated for 8 months, after which the husband resides with his wife for one evening-even for convenience purposes-the separation is calculated at one day on the morning he leaves.

Length of Time to Get a Divorce

Except in cases where the ground for divorce is separation for a period of one year, no divorce can be granted until three months have passed from the date the action began. In one year separation cases, a divorce could be granted 30 days after the other spouse received the divorce papers. These are minimum times; actual times may be longer.

What to Do in the Meantime

What you do here depends upon whether you and your spouse can agree to settle issues of child support, property distribution and spousal support. If you can agree to all issues, nothing further must be done. However, it is advisable to have attorneys reduce the agreement to writing and have both parties sign the agreement. If, on the other hand, no agreement can be reached, either party may petition the court for a temporary hearing. The court will then decide temporary questions of child custody and support, visitation, spousal support and temporary possession of marital property.

Custody

Either the parties agree as to custody, or the court decides. The court must decide in whose care the best interests of the children will be served. The non-custodial parent is usually awarded visitation privileges which will be spelled out by the court if the parties cannot agree.

Spousal Support

Spousal support is given by one spouse to his or her former spouse. It was formerly known as "spousal support". Spousal support however, is not mandatory in all cases. For example, a party who is proven to have committed adultery will not receive spousal support. In other cases, spousal support is left to the court to decide. The court considers a wealth of factors, including income and obligations of the parties, earning capacities, and property distribution awards. A court may award "rehabilitative spousal support" which is spousal support payments for a specific period of time during which the supported spouse retrains in order to enter or reenter the job market. Spousal support ends when the supported spouse remarries.

Property Division

The court can divide marital property equitably between the parties. "Equitable" however, does not mean 50-50. Property distribution is based upon the desires, needs and contributions of the spouses and the type and value of the property. Property acquired prior to the marriage or by inheritance or gift to one spouse generally is not marital property. It is therefore distributed to the one spouse to whom it was given originally. Property acquired during the marriage is generally marital property. In South Carolina, military retirement benefits may be awarded or divided as marital property.

Selecting Your Attorney

The attorneys in the base legal office are available to advise you and to review documents for you, but they cannot prepare papers or make court appearances for you. You will therefore have to hire a civilian lawyer if your situation requires formal papers or court action. Selecting a lawyer is a personal matter. You may want to call the Lawyer Referral Service of the South Carolina Bar at 1-800-868-2284 for referral to a lawyer who practices domestic law. If you feel you cannot afford a lawyer, you should contact the Legal Aid Office in the city where you live. In Sumter, the telephone number for Palmetto Legal Services is 773-1471.

DO NOT RELY EXCLUSIVELY ON THIS PAMPHLET, IT PROVIDES ONLY A GENERAL EXPLANATION OF DIVORCE IN SOUTH CAROLINA. FOR ANSWERS TO SPECIFIC QUESTIONS AND FOR DETAILED ADVICE FOR MILITARY MEMBERS, DEPENDENTS, AND RETIREES, CONTACT THE BASE LEGAL OFFICE FOR AN APPOINTMENT AT 895-1560.