

divorce

A divorce formally dissolves a legal [marriage](#). While married couples do not possess a [constitutional](#) or legal right to divorce, states permit divorces because doing so serves public policy. To ensure that a particular divorce serves public policy interests, [some states](#) require a "cooling-off period," which requires spouses seeking to initiate divorce proceedings to wait a specified time period, typically 60 days, after legally separating before a divorce is granted. In the event of a [fault divorce](#), however, this “cooling-off period” may not be required. Issues related to divorce are typically resolved in [family court](#).

Courts in the United States currently recognize two overarching types of divorces: [absolute divorce](#), known as "divorce a vinculo matrimonii" and limited divorce, known as "divorce a menso et thoro." An absolute divorce is a judicial termination of a legal marriage and reverts both parties back to the state of single in the eyes of the law. Traditionally, obtaining an absolute divorce required a showing of [fault](#) like [adultery](#) or [domestic abuse](#) on the part of one of the spouses.

Limited divorces, also referred to as separation decrees, result in termination of the right to cohabitate but the court refrains from officially dissolving the marriage and the parties' statuses remain unchanged. Additionally, some states permit conversion divorce. Conversion divorce transforms a legal separation into a legal divorce after both parties have been separated for a statutorily prescribed period of time.

While originally obtaining an absolute divorce required a showing of [fault](#), all states have since enacted [no-fault divorce statutes](#). A no-fault divorce allows a party to obtain a divorce without establishing any misconduct by the other party. That said, some states still require a party seeking a no-fault divorce to cite the reason why. Typically, this cited reason is “irreconcilable differences.”

Look to various [state laws](#) to determine the divorce law within a particular jurisdiction. [The Uniform Marriage and Divorce Act](#) may provide further guidance.

Following a divorce, the court must divide any [property](#) owned between the spouses. Before legislatures equalized property allocation between both spouses, many divorce statutes substantially favored property allocation to the wage-earning spouse. These statutes disproportionately disadvantaged women because during the 18th, 19th, and early-20th centuries, the participation of women in the workplace was much less than it has become during the latter-half of the 20th century and early part of the 21st century. As these statutes looked strictly at monetary income, they failed to account for the contributions of the spouse as homemaker and child-raiser.

Modern courts recognize two different types of property during property division proceedings - [marital property](#) and [separate property](#). Marital property includes any property that the spouses acquire individually or jointly during the course of marriage. Separate property includes any property that one spouse purchased and possessed prior to the marriage and that did not substantially change in value during the course of the marriage because of the efforts of one or both spouses. If the separate property-owning spouse trades the property for other property or sells the property, the newly acquired property or funds in consideration of the sale remain separate property.

Modern division of property statutes strive for an [equitable division](#) of the marital assets. An equitable division does not necessarily involve an equal division but rather an allocation that comports with fairness and justice after a consideration of the totality of the circumstances. By dividing the assets equitably, a judge endeavors to enable both parties to start their post-marital lives with some degree of financial self-sufficiency.

While various jurisdictions permit recognition of different factors, most courts at least recognize the following factors in determining an equitable division of marital assets:

- Contribution to the accumulation of marital property
- The respective parties' liabilities
- Whether one spouse received income-producing property while the other did not
- The duration of the marriage
- The age and health of the respective parties
- The earning capacity and employability of the respective parties
- The value of each party's separate property, the pension and retirement rights of each party
- Whether one party will receive custodial and child support provisions
- The respective contributions of the spouses as a homemaker and as a parent
- The tax consequences of the allocations
- Whether one spouse's marital misconduct caused the divorce

When assigning property, judges cannot transfer the separate property of one spouse to another spouse without the legislature having previously passed an enabling statute. Whether such an enabling statute exists varies between jurisdictions.

Additionally, while not property, family courts also regularly resolve [child custody](#) issues during a divorce proceeding. Typically, both spouses have joint guardianship over any children and therefore have equal rights to custody of those children.

As part of a divorce, a court may order one spouse to pay [alimony](#), or payments from one spouse to the other. A court can order one spouse to pay three different types of alimony - permanent alimony, temporary alimony, and rehabilitative alimony. Permanent alimony requires the payer to continue paying either for the rest of the payer's life or until the spouse receiving payments remarries. Temporary alimony requires payments over a short interval of time so that the payment recipient has time to become economically self-sufficient. The period of time covers the length of the property division litigation. Similar to temporary alimony, rehabilitative alimony requires the payer to give the recipient short-term alimony after the property division proceedings have concluded. Rehabilitative alimony endeavors to help a spouse with lesser employability or earning capacity become adjusted to a new post-marital life.

Courts allocate alimony with the intention of permitting a spouse to maintain the standard of living to which the spouse has become accustomed. Factors affecting whether the court awards alimony include the marriage's length, the length of separation before divorce, the parties' ages, the parties' respective incomes, the parties' future financial prospects, the health of the parties, and the parties' respective faults in causing the marriage's demise.

If a couple had children together while married, a court may require one spouse to pay [child support](#) to the spouse with custody. Child support differs from alimony because child support payments are for the benefit of the child while alimony payments are for the benefit of the spouse.

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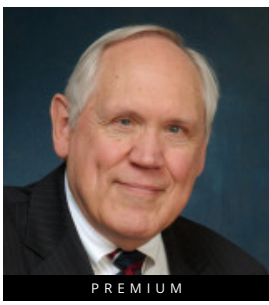
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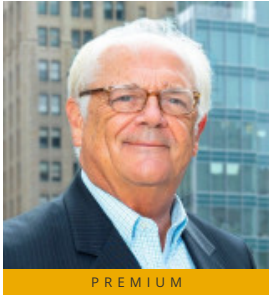
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