

DIVORCE, ALIMONY, AND PROPERTY DIVISION

1. Q: CAN A MILITARY ATTORNEY OBTAIN A DIVORCE FOR ME?

A: No. Air Force policy prohibits Air Force attorneys from representing clients in a court or administrative proceeding. The laws of North Carolina do not require that you have an attorney to obtain a divorce, and couples may be able to obtain the divorce on their own. Please contact your local Clerk of Court and especially your legal assistance attorney for guidance.

2. Q: WHO PAYS FOR MY LAWYER?

A: As a general rule, you must retain and pay for your own attorney in a divorce case.

3. Q: WHAT IF MY SPOUSE WON'T GIVE ME A DIVORCE?

A: The judge is the person who grants a divorce, not your spouse. Once you have filed the divorce complaint at the courthouse, your attorney will serve a copy of the summons and complaint on your spouse, by sheriff or by certified mail. If no answer is filed within thirty days after service, you will probably be granted a divorce by default. If your spouse contests the divorce action by filing an answer denying one or more of the statements in your complaint, a hearing will be set during which the two of you can testify and the judge can decide what the truth is.

4. Q: IS MY DIVORCE FINAL WHEN THE JUDGE SIGNS THE JUDGMENT?

A: Yes. You are then legally divorced. There is no waiting period after entry of judgment.

5. Q: CAN I RESUME THE USE OF MY MAIDEN NAME AT THE TIME OF DIVORCE?

A: Yes. You may ask for the right to resume your maiden name in the divorce papers your lawyer files for you. This is routinely granted by the judge. Even if you do not ask for your maiden name back at the time of the divorce, you can file for resumption of your maiden name after the divorce is granted.

6. Q: CAN I USE "MENTAL CRUELTY" OR "ADULTERY" AS A GROUND FOR DIVORCE HERE?

A: You can use these grounds in a longer and more expensive process, but in North Carolina the simplest and most common ground for divorce is separation for over one year. Most divorces granted on these separation grounds are uncontested and are essentially "no-fault" divorces. No proof is necessary as to who left whom or what reason was involved.

7. Q: IF MY HOME IS IN ANOTHER STATE, BUT I AM STATIONED IN NORTH CAROLINA, CAN I FILE FOR DIVORCE IN THIS STATE?

A: North Carolina law states that you may file for divorce here if you are a true legal resident of North Carolina and have been living here for at least six (6) months prior to the date of filing. If your spouse is a legal resident of North Carolina and resides here you may also file for divorce here. You may want to find out whether you can file for divorce in your home state (other than North Carolina), and for this you should see a legal assistance attorney.

8. Q: DO I HAVE TO HAVE A "LEGAL SEPARATION" TO GET A DIVORCE HERE, OR DO I HAVE TO "FILE FOR SEPARATION" IN NORTH CAROLINA?

A: All you need to do to obtain a divorce in North Carolina is live separate and apart from your spouse for more than one year with the intention that the separation be permanent. You do not need to show the judge a copy of a separation agreement, since such a document doesn't necessarily prove that you have indeed separated from your spouse. There is no such thing as "filing for separation" in North Carolina, although there are certain cases in which a judge can grant a "divorce from bed and board," or judge-approved separation, which allows you to live separate and apart from your partner.

9. Q: CAN THE JUDGE IN NORTH CAROLINA ORDER A PROPERTY DIVISION AT THE TIME OF DIVORCE?

A: The judge cannot divide the marital property of the couple **after** the divorce has been granted. The court may divide the marital property if either party requests a division of property prior to the signing of the final divorce decree.

10. Q: IS THERE SOME PROPERTY THAT THE JUDGE CANNOT DIVIDE?

A: The judge in North Carolina cannot divide separate property. The following are considered separate property and cannot be divided:

- Property acquired by either party before the marriage
- Property acquired by either party by gift or by inheritance, even if it is later traded or exchanged for another item.
- Business and professional licenses

11. Q: HOW WILL THE JUDGE DIVIDE OUR PROPERTY?

A: There is a strong presumption in North Carolina law that the fairest split would be an even division of all the marital property, regardless of who has title to the property or who paid for it. Under certain circumstances, however, the judge might decide that a fifty-fifty split is not fair to one or both of the parties. The statutes have a list of factors that the judge may then use to determine an unequal division of property between the couple. These factors include: monetary and homemaker contributions to the marriage by each party; tax consequences of an unequal division; efforts of a spouse to preserve and increase the value of marital property; attempts by a spouse to squander, waste or dissipate assets; the health of each party; and the financial situation of each spouse.

12. Q: CAN I GET THE JUDGE TO ORDER MY SPOUSE TO PAY MY ATTORNEY'S FEES IN A PROPERTY DIVISION CASE?

A: The courts in North Carolina can't award attorney's fees in most property division cases. You will have to retain and pay for your own attorney to represent you, and you may also have to pay for an accountant or an appraiser if expert witness testimony is necessary in your case. You can, however, ask the court to allow you an "advance" or interim allocation of marital property pending a final hearing, and this could be used by you to pay the above fees.

13. Q: WILL I HAVE TO PAY ALIMONY TO MY WIFE?

A: It depends. The courts in North Carolina allow for the payment of two kinds of spousal support -- alimony and postseparation support (PSS). PSS will be ordered if 1) your wife is the dependent spouse; 2) you are the supporting spouse; and 3) her financial resources aren't enough to meet

her reasonable monthly needs and personal living expenses. Alimony will be ordered if 1) your wife is the dependent spouse; 2) you are the supporting spouse; and 3) an award of alimony is equitable under the circumstances after considering numerous factors set out in the statute. These factors include such matters as marital fault before the separation, the incomes and needs of the parties, the length of the marriage, the physical, mental and emotional conditions of the parties, the property and debts of the parties, the tax impact of alimony and any other relevant economic factor.

14. Q: WHAT IF MY WIFE COMMITTED ADULTERY -- DOES THAT HAVE ANY IMPACT ON THE ALIMONY CASE?

A: Yes. The statute covers three possible scenarios regarding illicit sexual behavior (ISB), a term that includes, but is broader than, adultery: If only the dependent spouse is found to have committed ISB, then no alimony can be awarded and the case is over; if only the supporting spouse has committed an act of ISB, then the court must award alimony to the dependent spouse; and if both parties have committed ISB, then the court has the discretion to grant or deny alimony based on all the circumstances. Illicit sexual behavior is not a defense against the payment of PSS.

15. Q: WHAT IS A DEPENDENT SPOUSE?

A: A dependent spouse is one who is actually and substantially dependent upon the other spouse for support or who is actually in need of support from the other spouse.

16. Q: WHAT IS A SUPPORTING SPOUSE?

A: The supporting spouse is one who is actually capable of providing support for the alimony claimant. If there is no "surplus" left when the reasonable needs of the defendant are subtracted from his net monthly income, then it is arguable that he is not the "supporting spouse." Be careful with this sort of logic, however, since most alimony defendants will claim poverty and proclaim loudly their inability to provide spousal support. It is up to the judge to make a determination of the amount of the defendant's reasonable monthly needs so that the court can then find out how much money is "left over" to be used as alimony.

17. Q: ARE THERE ANY "ALIMONY GUIDELINES"? HOW IS THE AMOUNT OF ALIMONY DETERMINED?

A: The amount of alimony is determined by the judge. In some cases there may be an award of limited-term alimony; however, it is more likely the judge would grant an open-ended award of alimony. In the event that the judge grants an open-ended award of alimony, it would be reviewable by the court upon a motion alleging grounds for modification, such as a substantial change of circumstances since the date of the original court order. Unlike the area of child support, there are no clear guidelines as to the amount of alimony. The award is completely at the discretion of the court, subject to the "factors" listed above for alimony. As a practical matter the judge will usually attempt to ascertain the unmet needs of the claimant. This is the difference between her reasonable monthly needs and expenses and her net monthly income, if any. This amount is referred to as the "deficit." Next, the judge will attempt to find out the "excess income" of the defendant. If this exists, it becomes the "surplus" which is applied against the "deficit" in order to support the claimant properly. The judge will often take the deficit of the plaintiff (or the surplus of the defendant) and convert it into the amount of alimony to be paid in a case.

18. Q: HOW CAN ALIMONY BE PAID?

A: North Carolina law gives the judge the power to order alimony on a periodic basis. This can be in a monthly sum paid directly to the claimant or paid through the Clerk of Superior Court. Alternatively, it can be paid in a lump sum, for example, "the sum of \$5,000 due on October 1 of this year" or even "the sum of \$5,000, due in monthly installments of \$500 each for ten months." Alimony can be paid indefinitely or

for a specific period of time, such as "for the next 24 months." These options are also available to the judge when awarding PSS.

19. Q: WHEN DOES ALIMONY END?

A: Alimony ends at the **earlier** of...

- the date set by the court for termination, if any;
- the date of death of either party; or
- the remarriage or cohabitation of the dependent spouse.

20. Q: ARE THERE ANY OTHER WAYS TO STOP ALIMONY?

A: There are two legal acts that will bar the award of alimony (or PSS). The first is the granting of a judgment of absolute divorce with no claim pending for alimony. One of the effects of absolute divorce is to bar a claim for alimony if it has not been asserted in a pleading before the divorce is granted. The second bar is found when there has been a waiver of alimony in an agreement of the parties. A waiver of alimony can be obtained in a separation agreement or an antenuptial agreement. When a party gives up a right to alimony, she or he may not thereafter go back and retrieve the lost support right.

21. Q: WHAT IF I HAVE OTHER QUESTIONS?

A: Please set up an appointment to see one of our legal assistance attorneys by calling the Base Legal Office at 722-5322. They are here to help you.

HELPFUL WEBSITES:

North Carolina Lawyer Referral

<https://www.ncbar.org/public/lrs/search.aspx>

North Carolina Legal Aid

<http://www.legalaidnc.org/>

North Carolina Divorce

<http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=14&language=1>

<http://www.nccourts.org/County/Wayne/Courts/Family/Default.asp>

Armed Forces Legal Assistance Website

<http://legalassistance.law.af.mil/>

Divorce Law of the 50 States

<http://www.abanet.org/family/familylaw/tables.html>

http://www.law.cornell.edu/topics/Table_Divorce.htm