



## **DIVORCE IN ARIZONA**

Office of the Staff Judge Advocate, Luke AFB, AZ, (623) 856-6901  
(A.R.S. §§ 25-101-906)

Thinking about a divorce? A legal separation? Here are some things to consider in making that decision. First, realize that with divorce comes, both financial and emotional strains for all parties involved. Financial expenses include paying legal fees, dividing property and maintaining separate living arrangements. Emotional costs come with child issues and the adjustment to a new life style. The Family Support Center offers military members and dependents assistance in both of these areas to help ease the transition. For more information on their services, contact the Family Support Center at (623) 856-6841. Remember, this is one of the most complicated areas of law.

**In Arizona, all family law related matters to include divorce, paternity, child support, parental rights (often referred to as custody), modification/enforcement, and third-party domestic cases are governed by Title 25 of the Arizona Revised Statute (ARS).**

### **ANNULMENT**

An annulment declares a marriage null and void from its beginning, i.e., the marriage never occurred. Many people may prefer an annulment for religious reasons; however, a person may not elect to annul their marriage. Courts may judge a marriage to be null and void only when the reason to request the annulment is recognized by law (ARS §§ 25-301). Some grounds may include the following: one party did not formally dissolve a prior marriage; one party conceals impotence from the other; one party is under age at the time of the marriage; one party did not have the mental capacity to marry; one party was intoxicated at the time of the marriage (no intent to marry); or one party threatened the other with force to marry (duress).

### **LEGAL SEPARATION**

A legal separation does not dissolve the marriage. Both parties are still married and maintain the same legal rights and responsibilities as before, e.g., neither can remarry. However, the court will address issues related to children, visitation and support issues, spousal maintenance, attorney fees, division of property and debts, and terminate community property rights and liabilities. If a separation decree orders the termination of community liabilities, each spouse will be protected from liability for subsequent debts incurred by the other spouse.

Legal separation requires that one or both of the parties declare the marriage irretrievably broken or one or both of the parties desire to live separate and apart. The court will not grant a legal separation decree if the responding party objects to the separation. In such a case, the court can direct that the petition for legal separation be amended to seek a dissolution of marriage (divorce) instead. Once a decree of legal separation has been issued by the court, however, if either party later wants to seek a divorce, a new petition for a decree of dissolution (divorce) has to be filed. A new filing fee will be assessed and the case will proceed as a new and separate

action. **Usually, the property disposition in the separation decree *cannot* be modified in the new action.**

There are many considerations in choosing between a legal separation and a dissolution of marriage. Remember, a legal separation does not terminate the marriage. **An agreement to live apart, without a court order, is *not* a legal separation.** A legally separated spouse will continue to be a “surviving spouse” for purposes of inheritance, Social Security and military benefits. For more information on military benefits, see the preventive law handout entitled “Divorce and Military Benefits,” available at the legal office.

## **DIVORCE**

Divorce, referred to as "*dissolution*" of marriage, terminates the marriage allowing the parties to re-marry, if so desired. There are two basic types of divorce: contested and non-contested. Non-contested divorces are by far the easiest, quickest, and least expensive method of divorce. Essentially, after a designated statutory waiting period, both parties sign a Consent Decree that details how issues of child support, spousal maintenance, distribution of community property and other domestic relations issues will be handled. The Consent Decree is signed in front of a notary and both parties must acknowledge agreement of all terms. Once a Judge signs the Consent Decree, it becomes the divorce decree or formal order and the terms that both parties must comply with going forward. A contested divorce occurs when there is a disagreement on one or more issues mentioned earlier and the parties are asking the court to conduct a formal trial and enter orders. It can often be lengthy, costly, and emotionally trying.

Consider seeking legal assistance to obtain dissolution of a marriage. While the law allows an individual to represent himself/herself, it is always advisable to seek legal counsel, especially where the divorce is contested or where child support/custody issues may arise. The Maricopa County Bar Association’s lawyer referral service at (602) 257-4434 is available to help you find an attorney. Under no circumstances should one attorney represent both the husband and wife in a dissolution action.

## **90 DAY RESIDENCY REQUIREMENT**

Arizona requires a party to be domiciled or stationed on active duty in Arizona for ninety days prior to filing for legal separation or dissolution of marriage.

## **THE DIVORCE PROCESS AND FILING OF PAPERS**

The process of divorce in Arizona requires the filing of several papers with the court, most significantly the Petition for Dissolution of Marriage. A filing fee is required (paid by cash or Money Order made out to Clerk of the Superior Court) and must accompany the initial Petition and associated paperwork that is filed along with the Petition. The other party will also be required to pay a fee to file a Response to the Petition. If you cannot afford the filing fee, you may request a waiver or deferral of Court Fees and Costs. There are specific forms and documents that must be executed before the court will grant a waiver. In most cases, the court will not waive court fees and costs.

The necessary forms for dissolution and legal separation can be found from a variety of sources. If you are represented by an attorney, he/she will file the required forms after obtaining information from you. Forms may also be obtained from:

Clerk, Maricopa County Superior Court  
201 W. Jefferson Street  
Phoenix, Arizona 85003  
Mon-Friday 8:00am-5:00pm  
(602) 506-1561

or online at <http://www.superiorcourt.maricopa.gov/ezcourtforms2/>

## **SERVICE OF PROCESS**

After filing the Petition and associated documents with the Clerk of the Superior Court, copies of all documents **must** be served on the opposing party. This can be done by various methods including registered mail, private process server, service by sheriff, or consent acceptance of service. Please be aware that if you are unable to serve the other party, you must first seek the court's permission to pursue alternative service through publication or some other method by filing a Motion of Alternative Service with the court. Under most circumstances, the opposing party has twenty days to respond. These deadlines change if the person is living out of state or if they are on military orders, etc.

## **COOLING-OFF PERIOD**

After opposing party has been served, a sixty day mandatory waiting period occurs. During this time the court will take no further action on the divorce. After the sixty day "cooling-off" period, the case will go forward either after the opposing party has filed their response or through a default process if they do not respond. If the dissolution is being conducted by Consent Decree, after the cooling off period, the parties are permitted to submit the Consent Decree to the court to consider as a final order.

## **COMMON ISSUES IN DIVORCE**

Here is a brief explanation of some of issues pertaining to divorce.

### **CHILD "CUSTODY"**

It is not common to hear the word "custody" in the context of divorce cases that include children. Child custody refers to the rights and relationships between parents and children outlined in court orders. There are two distinct parts, however, to "custody" as defined in Arizona: 1) Legal Decision Making and, 2) Parenting Time. Legal Decision Making refers to the right to make non-emergency decisions related to a child including decisions regarding education, healthcare, and religion, among others. Arizona law allows the court to award Joint Legal Decision Making, Joint Legal Decision Making with one party having Final Authority if there is a disagreement, or Sole Legal Decision Making to one parent. Regardless of what the court orders as to Decision Making, the court will enter separate Parenting Time orders that lay out with specificity when a parent is entitled to have the children in their care. In Arizona, the court is guided by ARS 25-403 that require the court to consider listed "factors" before entering orders related to Decision Making and Parenting Time. The court is always guided by the "Child's Best Interest" based on the evidence and information presented by the parties in entering orders. The law recognizes that absent abuse, neglect, drugs, or domestic violence concerns, the presumption is that the court will award Joint Legal Decision Making and substantially Equal Parenting Time. Often, disputes

regarding Decision Making and Parenting Time are among the most contested issues in a divorce.

### **CHILD SUPPORT**

Child support is the amount of money the state deems is necessary to maintain a child's well-being. In Arizona, the court will apply the Arizona Child Support Guidelines to calculate each parent's support obligation under the law. The information used to determine each parent's share of the support obligation is their individual income, the amount of Parenting Time awarded, whether they have other court ordered support obligations including spousal maintenance, whether there are other children not subject to the order, and any out of pocket costs for insurance and childcare. If the calculation determines that one parent owes more support than the other, a Child Support order will be entered by the Court obligating the owing party to pay monthly support to the other. Child support is calculated in **every** case. Only the court can determine whether it will decline to order Child Support or whether to accept a waiver of Child Support by one party. This is because the Court is always guided by the Child's Best Interest in entering orders related to children. In order to calculate Child Support, the court **requires** parties to submit an Affidavit of Financial Information and Child Support Worksheet during their case.

### **SPOUSAL MAINTENANCE**

In determining whether or not one spouse has to pay another spousal maintenance, commonly referred to as "alimony," Arizona courts consider eleven factors including such considerations as the duration of the marriage, financial resources of the party seeking maintenance, contribution of the party seeking maintenance to the income of the other party, etc. All eleven factors can be found in the ARS § 25-319. The Court can elect to order Spousal Maintenance for a certain amount for a defined period of time or indefinitely. Spousal Maintenance, however, automatically ends if the party remarries.

### **PROPERTY DIVISION**

Arizona is a community property state, meaning that all property acquired during the marriage is presumed to be community property, regardless of whose name is on the title. Each spouse owns an equal share of the community property. Separate property is all property owned prior to marriage, and any property acquired during the marriage by gift or inheritance, or that the parties formally acknowledge by deed is "separate." At dissolution, all community property will be divided in a substantially equal manner. Similarly, debts incurred during the marriage are presumed to be community debts, and are divided equally between the spouses.

**THIS HANDOUT IS DESIGNED TO PROVIDE GENERAL INFORMATION ON TERMINATING A MARRIAGE. IF YOU HAVE ADDITIONAL QUESTIONS CONCERNING YOUR INDIVIDUAL SITUATION, THE LEGAL OFFICE AT LUKE AFB WILL BE HAPPY TO ANSWER THEM OR REFER YOU TO A CIVILIAN ATTORNEY THROUGH THE MARICOPA COUNTY BAR ASSOCIATION'S LAWYER REFERRAL SERVICE. CALL (623) 856-6901 FOR WALK-IN LEGAL ASSISTANCE HOURS.**

Also consult our other pamphlets on divorce such as "Divorce and Military Benefits" and "Maricopa County Superior Court Family Court Department" for further details or call the base legal office at (623) 856-6901.

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