



DISSOLUTION OF MARRIAGE IN ARIZONA

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(A.R.S. §§ 25-101–906)

Pondering divorce? Legal separation? There are a number of factors to consider in making that decision. First, realize that with divorce come both financial and emotional strains for all parties involved. Financial expenses include legal fees, division of property, and separate living arrangements. Emotional strains involve separation from children 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.

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. In Arizona, Superior courts may dissolve a marriage and judges it to be null and void when the cause alleged constitutes an impediment rendering the marriage void. *A.R.S. § 25-301*. Such grounds may include the following: one party did not dissolve a former 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 child custody, 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. Once legally separated, either spouse can obtain a decree of dissolution if he/she desires to terminate the marriage.

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 dissolution of marriage (divorce) instead.

Once a decree of legal separation has been issued by the court, either party can later petition the court for a decree of dissolution (divorce). 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 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.

DISSOLUTION OF MARRIAGE (DIVORCE)

Divorce, called dissolution of marriage in Arizona, terminates the marriage allowing the parties to re-marry, if so desired. Arizona requires a party to be domiciled or stationed on active duty in Arizona for **90 days** prior to filing for dissolution of marriage. There are two basic types of dissolution: contested and non-contested.

Non-contested divorces are by far the easiest, quickest (can occur in as few as 61 days), and least expensive method of divorce. In a non-contested divorce, both parties sign a Consent Decree detailing how issues such as child support, spousal maintenance, distribution of community property, and other domestic relations concerns will be handled. The Consent Decree is formulated by both parties and both parties must agree to the terms. Once a Judge signs the Consent Decree, it becomes the divorce decree and the terms by which both parties must abide. A contested divorce is proper when the parties disagree on dissolution issues such as child support and spousal maintenance. A contested divorce is essentially a lawsuit that is conducted in court to determine the contested issues. 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.

THE PROCESS AND FILING OF PAPERS

The process of dissolution of marriage in Arizona requires the filing of several papers with the court, most significantly the Petition for Dissolution of Marriage. The current initial filing fee is \$338 paid to Clerk of the Superior Court and must accompany the first set of documents to be filed. The current fee for filing the Response is \$269. If you cannot afford the filing fee, you may request a waiver or deferral of Court Fees and Costs. 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 the Clerk of the Superior.

The Self Service Center is another county service that provides forms to those wishing to file for divorce without paying for an attorney. Divorce and related forms may be obtained from the court three different ways:

1. By calling (602) 372-5375;
2. Through the Internet at (packets can be downloaded and printed for free):
<https://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/Forms/FamilyCourt/index.asp>
3. At the Self-Service Center offices located at (there is a cost):

<p><u>Downtown Phoenix</u> 101 W. Jefferson, 1st Floor (East Court Building, Law Library) Phoenix, AZ 85003-2243 Family Court Administration: (602) 506-1561</p>	<p><u>Northeast (Phoenix)</u> 18380 N. 40th Street (Northeast Regional Center) 40th & Union Hills Phoenix, AZ 85032 (602) 372-7601</p>
<p><u>Northwest (Surprise)</u> 14264 W. Tierra Buena Lane (Northwest Regional Center) Surprise, AZ 85374 Phone: (602) 372-9400</p>	<p><u>Southeast Court (Mesa)</u> 222 E. Javelina Avenue, 1st Floor (Southeast Court Complex, Law Library) Mesa, AZ 85210-6234 Phone: (602) 506-2020</p>

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 or certified mail, private process server, service by sheriff, or publication. Consult your attorney with regards to which method of service would be appropriate and best in your situation. The opposing party has twenty days to respond. If both parties are cooperative the respondent may sign the acknowledgment of service voluntarily, thus avoiding additional fees.

COOLING-OFF PERIOD

After opposing party has been served, a 60 day mandatory waiting period occurs. During this time the court will take no further action on the divorce. After the 60 day “cooling-off” period, the court will hold a hearing. If the dissolution is being conducted by Consent Decree, the judge will view the proposed Consent Decree at the hearing. If the divorce is contested, the court will begin to take up the contested matters at that time.

MANDATORY CLASS

Parents of minor children seeking dissolution must take a class about the impact of dissolution on the children.

COMMON ISSUES IN DIVORCE

Below is a brief explanation of some of issues pertaining to dissolution of marriage.

CHILD CUSTODY

Child custody refers to the rights and relationships between parents and children after the divorce decree is final. There are two basic types of custody: parenting time and legal decision making. Parenting time means a determination of who the child will be with at any given time and where the child will live. Legal decision making is the right to make major, non-daily decisions in the child’s life such as in what school will the child enroll, what church the child will attend, will the child get braces, etc.? This authority can be granted to either parent separately or to both equally.

CHILD VISITATION

If a child will not primarily reside with one parent, issues of visitation arise. Visitation is a highly flexible issue and practically any type of visitation schedule can be formulated.

CHILD SUPPORT

Child support is the amount of money the State deems is necessary to maintain a child's well-being. Child support is typically paid by *both* parents. A system has been devised where the State calculates the total income of both parents. Whatever percentage each party contributes to combined income is the percentage of child support they must pay. For example, if a husband earns 60% of the combined household income and a wife earns 40%, the husband will be responsible for 60% of the child support, and the mother for 40%. The actual amount of child support can be found by using the child support guidelines propounded by the State.

SPOUSAL MAINTAINENCE

In determining whether or not one spouse has to pay another spousal maintenance, commonly known elsewhere as "alimony," Arizona courts consider a number of 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 factors can be found in the Arizona Revised Statues § 25-319.

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 (*not* separate property). Separate property is all property owned prior to marriage, and any property acquired during the marriage by gift or inheritance. 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 between the spouses.

CONCILIATION COURT

Conciliation Services are offered by the Superior Court for those spouses who are considering, or who are in the process of divorce. The services offered are free and include the following: assisting parties in the reconciliation process; assisting parties in coming to a fair and equitable separation agreement; and assisting parties in settling child custody differences or joint custody considerations.

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 "Arizona Child Custody and Child Support" or "Divorce and Military Benefits" for further details or call the base legal office at (623) 856-6901.

(Revised August 2015)