

## Separation and Divorce

*Sometimes marriages do not work out as planned. When that happens, couples separate and later divorce. The purpose of this pamphlet is to explain the law of separation and divorce by answering frequently asked questions on those matters.*



*This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1-800-662-7660; local 677-8574) or online ([www.ncfindalawyer.org](http://www.ncfindalawyer.org)).*

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Revised 2008  
Reviewed 2011

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*Published as a Public Service by the Communications Committee of the North Carolina Bar Association*

### How Do I Find an Attorney?

You may contact the N.C. Lawyer Referral Service; contact information is provided on the back panel of this pamphlet and on the Web site of the North Carolina Bar Association ([www.ncbar.org](http://www.ncbar.org)). If you cannot afford an attorney, you should contact the Legal Aid of North Carolina office serving your county.

### **Do I File for Separation?**

No. Separation happens once husband and wife begin living separate and apart and at least one of them has the intent to remain separate and apart.

### **Do I Need an Agreement or Court Order to be Legally Separated?**

No. You are legally separated once you begin living separate and apart and at least one spouse intends to remain that way.

### **Is it OK if We Continue Living in the Same House?**

No. Living separate and apart means you must be living in separate residences.

### **What are the Grounds for Divorce?**

There are only two grounds for divorce: 1) Separation for One Year; or 2) Incurable Insanity of One Spouse and Separation for Three Years. The vast majority of marriages are dissolved based on the ground of separation for one year. In order to get divorced, you must have been separated for one year and at least one spouse must have had the intent to remain separate and apart. In addition, one of you must have been a resident of North Carolina for at least six months. Fault is not necessary to obtain a divorce.

### **What Do I Need to Do to Get Divorced?**

You have to file a Complaint (lawsuit) asking for a divorce. You cannot file a divorce complaint until after you and your spouse have been separated for one year. You have to serve your spouse with the Complaint. Service is usually accomplished by certified mail or Sheriff. Then you will need a hearing in front of a judge. The judge has to enter a Judgment declaring you divorced. You are not divorced until the judge signs a Judgment and the clerk file stamps it.

### **Does it Matter Who Files for the Divorce?**

No. The person who files for the divorce is responsible for filing the appropriate papers, paying the filing fee and getting the hearing scheduled. However, there is no advantage to filing first.

### **How Long Does the Divorce Process Take?**

The length of the process varies based on how long it takes to get service of your spouse and how soon the clerk schedules the divorce hearing. Generally, it should take approximately 60 days after the Complaint is filed.

### **What is the Effect of a Divorce?**

There are many important effects of a divorce. First, the entry of a divorce cuts off your right to alimony and property division. If those claims have not been resolved in a valid and binding Agreement or properly filed with the court prior to the entry of the divorce judgment, they are lost forever. The loss of those claims can be devastating. If you have a claim for alimony or if you or your spouse acquired property during the marriage (house, cars, bank accounts, retirement), you need to consult an attorney to protect those claims. Second, the entry of a divorce changes your tax filing status. Third, the entry of a divorce enables you to remarry. Fourth, the entry of a divorce cuts off your rights to inherit from your spouse. Fifth, it can alter the way your house is owned if you own a house with your spouse.

### **How Do I Change My Name Back?**

You may include a request to change your name in your divorce complaint. The name change can be included in the divorce judgment. You cannot change your name to any name in this process. You may resume your maiden name. You may also resume a former married name under certain circumstances.

### **What About Custody, Child Support, Alimony, and Property Division?**

These issues are complicated and beyond the scope of this pamphlet. You may resolve these issues by agreement with your spouse, in which case you would execute a Separation Agreement. In order to be valid and binding, a Separation Agreement needs to follow certain formalities. You should consult an attorney for assistance in negotiating and drafting the Agreement. If you and your spouse are not able to agree, you can try mediation or arbitration as alternatives to court. If those options do not work for you, you will have to file a Complaint (lawsuit) seeking relief in court. Regardless of which approach you choose, you should consult an attorney first.

### **What is Mediation?**

Mediation is when a neutral third party helps facilitate an agreement between the parties. The mediator does not make decisions. The parties make the decisions, but the mediator helps them along. You can do private mediation before or after a Complaint has been filed. You can address custody, child support, alimony, and property issues in mediation. Mediation is generally less expensive and not as time-consuming as court. The parties control the outcome. The entire process can be settled in one day, and you can leave a private mediation with a binding settlement document. The process is very civil and dignified. It can set the tone for how the parties deal with each other from that point forward. If the parties are able to resolve the issues incident to their separation at mediation, typically they work together and treat each other better in subsequent dealings with children or otherwise. You do not necessarily need a lawyer for mediation, but we recommend it. A non-lawyer mediator will not know the law. Without an attorney, you could lose or waive rights you did not know you had.