

# COLORADO DIVORCE



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The focus of this briefing paper is on Colorado law. While much of this information is generally applicable, if you are contemplating divorce in another state you should consult an attorney from that state.

## The Basics About Colorado Divorce

- At least one spouse must have been a resident of Colorado for 90 days prior to filing for divorce.
- The divorce action must be heard in the judicial district where both spouses live, where the respondent lives, or where your house is or was.
- There are costs for filing for divorce in El Paso County, plus copying fees. Additionally, if there are children, all districts (including El Paso County) require that you enroll in a parenting skills class. Current filing fees can be found at the Colorado Courts website: [www.courts.state.co.us](http://www.courts.state.co.us); use search bar to search "Filing fees." Instructions for obtaining a fee waiver can be found here as well.
- A divorce is a legal proceeding that is initiated by filing a petition with the clerk of the district court. If you file the petition, you are known as the **petitioner**, and your spouse is the **respondent**. If you file together, you are **co-petitioners**.
- You and your spouse are not required to hire attorneys to divorce, but you may talk to a legal assistance attorney to see if hiring an attorney would be wise in your situation.

## Legal Separation as an Alternative to Divorce

- Legal separation may be accomplished upon petition to the court, which may be helpful to temporarily divide assets, split parenting time, etc., while you decide if you want to proceed with divorce. See also Temporary Orders, which may be necessary while a divorce action is pending, in order to ensure that both parties and any children involved are adequately provided for. The legal separation process is very similar in costs, required time, and required forms to the divorce process, so in many cases, it is an unnecessary step. Colorado does not require parties to be legally or physically separated before filing for or obtaining a divorce.

## Forms

You will need to obtain a divorce (dissolution) packet. The specific packet you need will depend on whether you are filing for divorce with or without children. You can obtain this packet at the El Paso county courthouse or at <http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Divorce>.

- The first documents you must give the court and your spouse are the **case information sheet (JDF 1000) and petition (JDF 1101)**. The petition is your formal request to have the

court dissolve your marriage. After you file this initial paperwork, if the divorce is contested, you must provide your spouse with formal notice of the proceedings, and show the court proof of such notice. This is done with the **Summons (JDF 1102)**. Proof can be provided in one of the following ways:

- Your spouse may accept service by signing the Waiver & Acceptance of Service form on the back of the summons; or
  - The petition and summons can be delivered to your spouse by a sheriff's officer, private process server, or any other person over the age of 18, not a party to the court action. You cannot serve the petition and summons on your spouse. The person who serves the papers must sign the Return of Service and return it to you. You must file it with the court; or
  - If the above options are impracticable ask the Clerk's Office at the court about service by certified mail and service by publication (newspaper notice).
- Remember, if you and your spouse file jointly, no Summons/notice is necessary, because you will sign the Petition as Co-Petitioners.

## Temporary Orders

- Temporary orders allow you to keep things stable while you are waiting to get a final divorce. Temporary orders are available for child support, spousal support, allocation of parental responsibilities, parenting time, payment of debt, and maintenance of property. Note, however, that by signing the Petition, or receiving service of a contested petition, you are agreeing to a Temporary Injunction stating that you will maintain the financial status quo and will not remove minor children of the marriage from Colorado without consent or a court order. The full wording of the Injunction can be found on page 4 of the Petition; violation of its terms could result in the violating party being held in contempt of court, and fined and/or taken into police custody.

## Additional Forms

- After you have filed the initial paperwork along with your filing fee, if either or both parties are proceeding without an attorney, you will appear before the Family Court Facilitators for an **Initial Status Conference**. The date of your Initial Status Conference will be set when you file your Petition. Usually, the Conference will take place about a month after you file, for an uncontested divorce. For a contested divorce, the timing varies depending on what documents the respondent files.
- At the Initial Status Conference, you must have the remainder of your paperwork filled out for review by the Family Court Facilitator. Each party must fill out a **Sworn**

**Financial Statement (JDF1111)**; this form does NOT have to be submitted to the Court but must be supplied to the other party. The first task in completing your financial affidavit will be to distinguish **separate** from **joint** property. Separate property is anything you or your spouse acquired before the marriage and kept separate, or obtained at any time by gift/inheritance. Joint property is anything acquired during the marriage, regardless of who paid for it, or whose name is on it. **Joint debt** includes any liability that was incurred during the marriage.

- The forms that the Family Court Facilitator will review are the **Certificate of Compliance (JDF 1104)**, wherein you will affirm that you have filled out the JDF 1111 as required by statute; the **Separation Agreement (JDF 1115)**, the caption of the **Decree (JDF 1116)**, and the **Parenting Plan (JDF 1113)**, if there are minor children of the marriage. You will also need to be prepared to provide proof that you have attended the parenting class. If there are no children of the marriage, you may complete an **Affidavit for Decree Without Appearance (JDF 1201)** if both parties agree on all issues and neither wants a hearing before a Magistrate.

- For purposes of distribution, military retirement is treated as marital property, regardless of the duration of marriage. DFAS requires a minimum length of marriage (10 years) to directly pay an ex-spouse retirement benefits. Typically an ex-spouse is entitled to a maximum of 50% of a member's retirement pay after deductions, where deductions include military retirement waived in lieu of disability pay. There are multiple calculations which may be used to determine the amount of an ex-spouse's entitlement. An ex-spouse can also receive a flat monthly rate or waive his or her right to the member's retirement compensation. Where there is a large military pension, consider seeking the advice of a domestic law attorney in private practice..

#### **Military Benefits**

- A non-military spouse will be automatically entitled to full military benefits if he or she meets the "20/20/20" rule. This rule requires that the parties be married for at least 20 years, that there have been at least 20 years of creditable military service, and that there be at least 20 years of overlap between the service and the marriage.

- If there is only 15 years of military and marital overlap, then the dependent spouse is entitled only to 1 year of continued Tricare coverage, and no other benefits.

- Any continued medical coverage and other military benefits terminate if the former spouse remarries.

- If there are less than 15 years of overlap of the military member's service and the term of the marriage, Tricare coverage stops at midnight on the date of the decree. The former spouse retains no other benefits or privileges.

#### **Severing Finances**

During the course of a marriage, the finances of the parties become very intertwined. As soon as possible, it is advisable to begin severing those finances.

- Contact credit card companies and have your joint accounts closed, with new accounts created in each individual's name.

- If you and your spouse can agree, divide checking and other banking accounts, close the accounts and open new, individual accounts.

- If your house or cars are jointly owned you should have a new title issued in the name of the individual who will keep the property, assuming you can agree on these issues. To have a new title issued for a house, contact your title company and they will assist you in obtaining a **quit claim** deed. For a new car title contact the Department of Motor Vehicles.

- Remember, property or accounts that are jointly owned could become an issue in bankruptcy. For example, if you and your spouse agree that you will keep the car, but your spouse's name remains on the title, if your spouse later declares bankruptcy, those creditors could still claim the car is one of your spouse's assets.

#### **Separation Agreement**

You will be required to complete a Separation Agreement form. If you and your spouse agree about all the issues of support, division of property and debts, you will file a completed agreement, signed by both of you. If you don't agree, or agree on only some of the issues, you should fill it out to show the court what you would like the order to look like. A separation agreement must contain the following details: 1) property division, 2) debt division, 3) spousal support/maintenance (if appropriate), and 4) how the costs of the divorce are to be divided. Do not assume that either party will be entitled to legal fees; the Courts rarely award attorney fees to parties in a divorce.

#### **Permanent Orders and Decree**

Permanent orders are entered by a judge or magistrate. Once you have completed all the required steps, shown proof of residency, and at least 90 days have elapsed since service was completed, you may request that the judge enter a divorce decree. If you cannot agree on the important aspects of your divorce: children, property, support; you will have to have a court hearing to get a divorce. If you have any children from the marriage, you will be **REQUIRED** to attend a hearing. The hearing is waivable where there were no children of the marriage, if both parties agree. If a woman wishes to restore her maiden name, she can do so as part of the divorce proceeding, and the order allowing the name change will be in the final decree.

#### **Final Papers Checklist**

- Financial affidavits for each party
- Notice of hearing
- Affidavit for decree without appearance (if there are no children of the marriage)
- Separation agreement
- Parenting plan
- Decree
- Support Order (if applicable)

*The information provided in this document is meant for the sole use of Active Duty service members, retirees, and their families. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the facts and circumstances in each case. Laws can vary across states, services, and civilian jurisdictions. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.*