

# NYCOURTS.GOV NEW YORK STATE UNIFIED COURT SYSTEM

## Divorce



### Divorce Information & Frequently Asked Questions

This page provides basic information about divorce and a general overview of the divorce process in New York. You may also want to read about [divorce resources available in your county](#). Please be aware that some counties may have their own forms and filing instructions. For further information, please contact the [Supreme Court in the county where you reside](#) before attempting to file your divorce papers.

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### What is a divorce?

Divorce is the final, legal ending of a marriage by court order. If you have a divorce case in court, you may hear lawyers and court staff call it a matrimonial [action](#). The person who starts the divorce is called the [plaintiff](#), and the other [spouse](#) is called the



[defendant](#).

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## Where do I go to for a divorce?

The [Supreme Court](#) of the State of New York is the only court that handles divorce cases, and a Supreme Court judge is the only person who can legally grant a divorce. You should go to the Supreme Court in the county where you or your spouse now live. You cannot get a divorce in [Family Court](#).

Although [Family Court](#) cannot give you a divorce, you can go to your local Family Court for help with child [support](#), child [custody](#), child [visitation](#), spousal support (also known as spousal [maintenance](#)), and paternity. Visit [CourtHelp.org](#) for more information on choosing the right court for your particular issue.

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## What is an annulment?

Unlike a divorce that ends a valid marriage, an [annulment](#) establishes that the marriage is not legally valid, and the grounds for annulment are different from a divorce. To get an annulment, you will need to prove ONE of the following:

- Bigamy: one of the [parties](#) was still married to someone else at the time of the second marriage.
- Either [spouse](#) was incurably unable to have sexual intercourse at the time of the marriage.
- After marriage, either [spouse](#) becomes incurably insane for five (5) years or more. The Court may require the sane spouse to support the Marriage between persons under 18, if the spouse under 18 wants the [annulment](#). The annulment will not be granted if the person under 18 freely [cohabited](#) (had sexual relations) with the other spouse after turning 18.
- [Spouse](#) is unable to understand the nature, effect and consequences of marriage because of mental incapacity.
- [Spouse](#) agreed to marry as a result of force or duress by the other.
- Fraud (most common ground): the consent to marry was obtained by fraud that would have deceived an ordinarily prudent person and was material to obtaining the other [party](#)'s consent. The fraud must go to the essence of the marriage contract. Concealment of a material fact may constitute fraud. Sexual intercourse evidencing forgiveness is an absolute defense.

To learn about religious [annulment](#), you should consult the religious faith that performed the marriage.

[Annulment](#) is defined in Domestic Relations Law §140. If you would like an annulment, you should seriously consider speaking to a lawyer. The court does not provide forms for annulment.

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## How do I start a divorce case?

You will need to buy an [Index Number](#) at the [County Clerk's Office](#) and file a [Summons with Notice](#) or a Summons and [Verified Complaint](#) (which has the reasons for the divorce). Next, you will need to have another person over the age of 18 who is not a [party](#) to the [action](#) serve your [spouse](#) with the papers. For more information on [filing fees](#), completing and serving papers, placing your case on the court's calendar, and other procedures, please carefully follow the [Uncontested Divorce Forms Packet Instructions](#). You can also use the [DIY \(Do-It-Yourself\) Uncontested Divorce Program](#) if you are filing for an uncontested divorce, your marriage has been over for at least six months, there are no children under 21, and all marital property issues, including debt, have been settled.

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## Do I need a lawyer to get divorced?

Because divorce law can be complicated, you should [meet with a lawyer](#) — even if you think your divorce will be [uncontested](#). If you and your [spouse](#) have resolved all financial and parenting issues, and you do not have a lawyer, you can use the free [Uncontested Divorce Forms Packet](#). You must first read the Uncontested Divorce Forms Packet [Instructions](#) before trying to complete the process on your own. You can also use the [DIY \(Do-It-Yourself\) Uncontested Divorce Program](#) if you are filing for an uncontested divorce, your marriage has been over for at least six months, there are no children under 21, and all marital property issues, including debt, have been settled.

If you have parenting or financial issues to work out, you may want to consider alternative dispute resolution (ADR) processes like [divorce mediation](#) or [collaborative family law](#). These out-of-court processes often save time and money, reduce stress, and even improve relationships between parents and their children after divorce. ADR may not be appropriate in cases involving [domestic violence](#), child abuse, or where one spouse cannot locate the other. [see [What if I cannot locate my spouse?](#)]



### What if I cannot locate my spouse?

New York state law requires that the [defendant](#) in a divorce action be personally served with the [Summons with Notice](#) or Summons and [Verified Complaint](#). To have your [spouse](#) served in any other way, you must get permission from the court. You can apply for such permission by filing an application for alternate [service](#) with the [Supreme Court Clerk's Office](#) in the county where you filed your divorce case.



### To start a divorce case, what legal requirements do I need to meet?

(1) **Residency**: Before a New York Court can give you a divorce, you need to show that you and/or your [spouse](#) have lived in New York State for a certain amount of time, without interruption, generally for one year. For more information on the residency requirement, see pp. 1-3 of the [Uncontested Divorce](#) Forms Packet [Instructions](#).

(2) **Grounds**: You need to have grounds – a legally acceptable reason – to get divorced in New York. That means that you need to prove one of the grounds listed below:

- [Cruel and Inhuman treatment](#)
- [Abandonment](#)
- Confinement in prison for 3 or more consecutive years
- [Adultery](#)
- Living separate and apart pursuant to a [separation](#) judgment or decree
- Living separate and apart pursuant to a [separation agreement](#)
- [Irretrievable breakdown](#) in the relationship for a period of at least 6 months (for divorce proceedings started on/after October 12, 2010)

For more details on grounds, see pages 3-5 of the [Uncontested Divorce](#) Forms Packet [Instructions](#).



### What is the difference between a Contested and an Uncontested Divorce?

**UNCONTESTED**: Your divorce will be uncontested if both you and your [spouse](#):

- Want to get a divorce
- Agree about what will happen with your children, your finances, your property after the divorce

If your divorce is [uncontested](#), and you and your [spouse](#) have reached agreement on all financial and parenting issues, you may use the Court's free [Uncontested Divorce Forms Packet](#). You can also use the [DIY \(Do-It-Yourself\) Uncontested Divorce Program](#) if you are filing for an uncontested divorce, your marriage has been over for at least six months, there are no children under 21, and all marital property issues, including debt, have been settled.

If you have not reached agreement, and you think you and your [spouse](#) could come to an agreement with some help, you might want to consider [divorce mediation](#) or [collaborative family law](#).

**CONTESTED**: Your divorce will be contested if either you or your [spouse](#):

- Do not want to get a divorce

- Disagree about the [grounds](#) (legal reasons) for the divorce
- Disagree about what will happen with your children, your finances, your property after the divorce

Because the judge will require detailed information to decide the issues you disagree about, your contested divorce will require you and your [spouse](#) to go to the Supreme Court numerous times. If your divorce will be contested, you should seriously consider [finding a lawyer](#) to represent you.

You might want to consider [divorce mediation](#) or [collaborative family law](#).



### What is a Statement of Net Worth?

A [Statement of Net Worth](#) is a form required by the court where you list all of your financial information in detail — income, expenses, assets, property and debts. It is a sworn statement that must be signed in front of a notary public before it is submitted.



### How can I get a divorce using a separation agreement?

A [separation agreement](#) is a written contract between a husband and wife that divides all the important aspects of the couple's lives: care and custody of children, money and property, and more. The husband and wife must be living separate and apart for a period of at least one year after signing a separation agreement to use it for a divorce. Because these and many other technical requirements for the contract to be considered a legal separation agreement, it is difficult to get divorced using a separation agreement unless you have a lawyer. [Collaborative lawyers](#) or [divorce mediators](#) may also be able to help.



### Where can my spouse and I get help to work out our differences outside of court?

If you and your [spouse](#) need help to work out parenting arrangements, you might want to consider [divorce mediation](#) or [collaborative family law](#). These out-of-court processes often save time and money, reduce stress, and even improve relationships between parents and their children after divorce. These processes may not be appropriate in cases involving [domestic violence](#) or child abuse.



### What will the judge decide in my divorce case?

The main reason you start a divorce case is to end your marriage. But you can also ask the judge to decide issues involving children, property and finances.



### How do I get certified copies of my divorce papers?

Copies of [divorce judgments](#) or other written [orders](#) in divorce cases can be obtained from the [County Clerk](#), however, there is a fee for a "certified" copy. Copies of documents (other than the [Judgment of Divorce](#) itself) can only be obtained by one of the [parties](#) or an attorney who is representing one of the parties. Divorce records are not open to public inspection.

If you know you were divorced in New York some time ago, but cannot remember in which county, contact the [County Clerk](#) of the county where you were living at the time of the divorce, or try the County Clerks of neighboring counties. If you are unsuccessful, you can also try getting a divorce certificate from the New York State Department of Health, however, the Department of Health charges a fee for this service.



### What types of cases that are related to divorce can be heard in Family Court?

Although you cannot get a divorce in [Family Court](#), Family Court judges hear cases involving child abuse and neglect (child protection), adoption, child [custody](#) and [visitation](#), [support](#), domestic violence, guardianship, juvenile delinquency, paternity, and persons in need of supervision (PINS).

In New York State, a married person may file a petition in the [Family Court](#) seeking spousal [support](#) from their husband or wife. A divorced person cannot seek a new [order](#) of spousal support in Family Court — that would need to be done in [Supreme Court](#). However, a divorced person can ask the Family Court to modify (change) an already

existing order of support.

If parents are already involved in a divorce case in [Supreme Court](#), a request for child [support](#) should be made in the Supreme Court so that all the issues can be heard together.



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### What is custody?

[Custody](#) is a parent's legal right to control his or her child's upbringing. It may also be referred to as parenting. A parent who does not have custody will still likely be entitled to [visitation](#), also known as spending time with the child(ren). Both parents have a legal right to ask for custody and visitation in a divorce proceeding.



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### What is the difference between legal custody and physical custody?

Custody has two parts: [legal](#) and [physical](#).

[Legal custody](#): the right to make major decisions about your child. This includes where your child goes to school, what kind of religious training a child receives, whether your child gets surgery.

[Physical custody](#): who the child lives with on a day-to-day basis. A parent with primary physical custody is sometimes called the "custodial parent" or the child's "primary caretaker."



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### How will a judge decide custody?

When determining [custody](#) and [visitation](#), a judge will consider what is in the best interests of the child(ren). Some factors a judge may consider include:

- who has been the child's primary caretaker
- the quality of each parent's home environment
- how "fit" the judge thinks each parent is (stable home and lifestyle, good judgment, has a job, good mental and physical health)
- which parent the child is living with now, and for how long
- each parent's ability to provide emotional and intellectual support for the child
- which parent allows the other parent into the child's life (does not try to cut out the other parent)
- if the child is old enough, which parent the child wants to live with
- whether your child would be separated from any siblings
- whether either parent has been abusive

A judge must consider whether there has been [domestic violence](#).

For more detailed answers to frequently asked questions on custody, visit [CourtHelp](#).



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### What is child support?

New York law says that children are entitled to share in the income and standard of living of both parents. Child [support](#) is the money that the non-custodial parent pays to the custodial parent if the child is under 21. Child support is based on a strict formula. See the [Child Support Standards Chart](#).

Child [support](#) may be awarded by the [Supreme Court](#) as part of a divorce, or in [Family Court](#) as part of a child support proceeding.



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### How does a court calculate child support?

First, the court determines each parent's net income. Net income is gross income minus certain deductions, such as FICA, NYC income tax, Yonkers income tax, spousal support and child support paid for other child(ren). Second, the court adds the parents' net income together and multiplies that number by a percentage, depending on how many children they have:

- 17% for one child
- 25% for two children

29% for three children

- 31% for four children
- no less than 35% for five or more children

That amount is then divided based on the proportion of each parent's net income to the combined parental net income.

In addition to the basic child [support](#) obligation, a [spouse](#) may also be required to pay for child care expenses, educational expenses and medical expenses.

#### [How to Calculate Child Support](#)

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### What happens to property after a divorce?

During the divorce both [spouses](#) have to tell the judge about their income and any debts they owe. When the court grants a divorce, property will be [divided equitably](#) (though not always equally) between the spouses.

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### What is the Equitable Distribution Law?

New York's [Equitable Distribution](#) Law recognizes marriage as an economic as well as a social partnership. The law requires that a judge divide property as fairly as possible.

The [Equitable Distribution](#) Law talks about two types of property for purposes of divorce: [marital property](#) and [separate property](#). Marital property will be divided between the two [spouses](#).

[Marital Property](#): all property either [spouse](#) bought during the marriage, regardless of whose name is on the property. Pension plans and other retirement plans are considered marital property. The portion of marital property earned during the marriage will be divided by the court.

[Separate Property](#): property a [spouse](#) owned before the marriage, or any inheritance or personal injury payments or gifts from someone other than the spouse during the marriage.

To see the factors a court should consider in making an equitable distribution award, see Domestic Relations Law § 236(B)(5)(d).

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### Can I get spousal maintenance (sometimes called "alimony") ?

Spousal [maintenance](#) (sometimes called alimony) is money an ex-spouse may be required to pay the other [spouse](#) after they get divorced. Temporary maintenance is money a spouse may be required to pay the other spouse while the action is pending in contested actions only. A new law was passed in 2015 providing guidelines for both types of maintenance. For more information, see

[Maintenance Child Support Tools](#)

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### What if I am a victim of domestic violence?

Please visit the court's [Domestic Violence](#) web page for domestic violence information and resources.

If you or your children are the victims of [Domestic Violence](#), you can apply to the court for an [Order of Protection](#).

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### Where can I find out more information?

- Visit Supreme Court Web Sites: Even if you do not live in these counties, the web sites in [Bronx](#), [Kings](#), and [Queens](#) Counties have helpful answers to Frequently Asked Questions

- Check out [LawHelp.org](#) for information on a wide range of topics tailored to your geographical area.

- [Find a lawyer](#) for a consultation on how the law affects your individual circumstances

and to get legal representation.

