

Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio



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Termination of Marriage and Legal Separation in Ohio

There are three ways to terminate a marriage in the State of Ohio. These include **annulment**, **dissolution** and **divorce**.

Annulment

An **annulment** means that a marriage is declared a legal nullity. The granting of an annulment voids the marriage.

You may obtain an annulment for the following reasons:

- An underage spouse (age 18 for males and age 16 for females **with** parental consent)
- Prior valid marriage with surviving spouse (bigamy)
- Mental incompetence of one party
- Consent to marry obtained by fraud or force (coercion);
- Failure to consummate the marriage

The time period for seeking an annulment varies depending on the reason for the annulment. An action can be brought within the time prior to reaching the legal age to marry, the life of the former spouse or incompetent party or within two years after the marriage or discovery of the fraud.

Dissolution

A **dissolution** of marriage terminates the marital relationship by agreement of the parties. A dissolution action is initiated by the filing of a petition for dissolution with a separation agreement attached.

In order to obtain a dissolution of marriage, the husband and wife **must** agree on both the termination of the marriage and all of the terms and conditions of the separation agreement.

A separation agreement must provide for a division of all property; spousal support (alimony)

where allowed; and all matters related to minor children of the marriage, including custody, visitation and support. It must be signed by both spouses and is a binding and valid contract. The husband and wife must be living separate and apart at the time of the signing of the separation agreement.

The Court must approve the terms of the separation agreement before a decree of dissolution can be granted. A hearing will be held sometime between 10 and 90 days after the petition is filed. For the case to proceed, both spouses must appear at this hearing. For the Court to approve the separation agreement, both husband and wife must state under oath that he/she agrees to the dissolution of the marriage and that he/she is satisfied with terms of the separation agreement.

If one spouse advises the Court that he/she does not want the marriage to be terminated or that he/she is dissatisfied with the separation agreement, the Court **cannot** grant the dissolution. If this happens, one spouse can file a motion asking the matter be converted to the divorce action.

If the Court grants the dissolution of marriage, the terms of the separation agreement become an enforceable court order.

Divorce

A **divorce** action is a contested proceeding that is initiated by the filing of a complaint alleging reasons or grounds for termination of the marriage. The other spouse can file a counterclaim alleging his/her own grounds for divorce.

Ohio does not provide for a "no-fault" divorce. Any party seeking a divorce must establish grounds for the divorce. Some the grounds or reasons are bigamy; adultery; habitual drunkenness; and imprisonment in a state or federal correctional facility at the time of the filing of the complaint. However, the most commonly alleged grounds for divorce are gross neglect of duty; extreme cruelty; lived separate and apart without cohabitation without interruption for one year, and incompatibility.

Generally, you will need at least one corroborating witness at the divorce hearing to confirm or support your testimony regarding the grounds for divorce. (For example, a corroborating witness can testify that they know that you and your spouse have lived separate and apart for one year.)

The issues that will be considered by the Court in a divorce action can be numerous and will vary from case to case. Usually, the Court will address the following issues:

1. Grounds for termination of the marriage
2. Division of marital assets (real and personal property including bank accounts, pensions and retirement accounts)
3. Custody, visitation and support of any minor children born as issue of the marriage and/or adopted by the parties
4. Spousal support (alimony)
5. Division of liabilities (determination of responsibility for marital debts)

Restoration of Name

At the time of termination of the marriage, a spouse may be restored to any name that the person had before the marriage.

Legal Separation

A **legal separation** is a court order where the husband and wife remain married but live separately.

A legal separation is a civil court order that does not legally end a marriage, but allows the court to issue orders concerning division of property, spousal support (alimony), and visitation and custody for any minor children. The parties remain married but live separately.

A legal separation is **not** required to live separate and apart from your spouse. However, a legal separation creates an enforceable court order setting forth the rights and obligations of each spouse, such as spousal support (alimony) or child support.

Residency Requirement

The spouse filing the complaint (annulment, divorce or legal separation) and at least one petitioner/spouse (dissolution) must be:

1. A resident of the State of Ohio for at least 6 months immediately prior to the filing of the complaint or petition; and
2. A resident of the county for at least 90 days immediately prior to the filing of the complaint or petition.

Note: There are some exceptions to the residency requirement in cases involving domestic violence.

If there is domestic violence in the marital relationship, a Civil Protection Order (CPO) may be helpful prior to the filing of the annulment, dissolution, legal separation, or divorce. The police will be able to provide more assistance to the abused if a CPO is in force.

It is recommended that you obtain the advice of an attorney. You may obtain an attorney referral from your local bar association. If you cannot afford an attorney, you may contact our Legal Aid HelpLine.

*This article is meant for your general information and not to give you specific legal advice.
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