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KENTUCKY DIVORCE

Eligibility for Divorce in Kentucky

Persons residing in Kentucky and Soldiers stationed in Kentucky for at least six months may file for divorce in Kentucky. If you live on the Tennessee side of Fort Campbell, you should file in Tennessee. To obtain a divorce, the parties must be separated for at least 60 days. Separation may include living in the same house so long as no sexual contact between the parties is involved.

Grounds for Divorce

Kentucky is a “no fault” state. The only basis for divorce is marital breakdown with no reasonable prospect for reconciliation. The court will decide whether the marriage is irretrievably broken. Before granting a divorce, the court may order the parties to attend a conciliation conference. You and your spouse are encouraged to consider counseling and reconciliation. Contact your unit chaplain. You may also obtain marital counseling through the Department of Social Work Service.

Cost and Length of Divorce

The cost to obtain a divorce depends primarily on whether it is uncontested or contested. An uncontested divorce is one in which the parties agree to all matters. A contested divorce is one in which the parties are unable to agree on at least one issue. In general, an uncontested case will cost about \$350-\$600. Since the cost may be much greater for contested cases, couples should attempt to discuss and agree upon key issues to reduce the cost of a divorce. If you decide to hire a private attorney, make sure you discuss the cost of the divorce. Ensure you understand what legal services you receive for the quoted fee. An uncontested case with no children averages 45 days. An uncontested case with children averages 75 days. Contested cases may take much longer.

Support Requirement

Until a divorce is final, a soldier must support his/her spouse in accordance with AR 608-99. The amount of support will be determined by the BAH RC/T schedule, assuming there is no court order or written agreement between the parties. See Family Support info paper for more information.

Divorce Issues

Typical issues to be decided during a divorce are custody and visitation of children, distribution of property (which may include an agreement on how retirement benefits will be divided), who pays what debts, child support (there are state guidelines which the court almost always follows), who gets the dependent tax exemptions, and relocation of the non-military spouse. The final divorce decree will also contain a parenting plan.

New Wills

If you are in the process of obtaining a divorce or you just finalized one, it is advised that you execute a new will. This will ensure that your assets are distributed in accordance with your wishes.

How to File and FAQs on reverse →

How to File

If you and your spouse cannot agree on all the issues, your case is considered contested and you will need to hire a civilian attorney to represent you. If your divorce will be uncontested and you do not have substantial assets, you may not need to hire an attorney and can do a Pro Se (self-representing) divorce.

If you want to do a pro se divorce, complete the divorce filing forms and then you may make an appointment for one of our attorneys to review them. We are in the process of developing our own forms to provide free of charge, but that project is not yet complete.

FREQUENTLY ASKED QUESTIONS**Who gets to claim the children on the tax return?**

Normally the spouse who has custody claims the children. However, an agreement or court order can allow the non-custodial parent to claim the children or alternate which parent may claim the children.

Who determines the amount of child support?

The parties may agree to an amount higher than, lower than, or equal to the state's child support guidelines. However, if the parties cannot agree, the court will determine the amount based on the state child support guidelines.

Can my spouse receive any of my retired pay?

There is no federal right to retired pay. However, under Tennessee law military retirement pay is divisible marital property. The portion of retired pay a spouse may be entitled to depends upon the length of the marriage and the time the marriage overlapped with military service. A common formula is the number of years of marriage divided by the number of years the marriage overlaps with the military service, multiplied by 1/2. If a court decides to divide the retirement pay, usually the spouse will not receive his/her portion until the soldier retires. For more information, check the Uniform Services Former Spouses Protection Act (USFSPA).

Can we use the same lawyer?

In an uncontested divorce, it is possible for only one spouse to hire a lawyer but it is important to remember the lawyer is only working for the paying party. If both spouses feel the need to consult with a lawyer, or if the spouses cannot agree on important issues, it is recommended that the parties hire separate lawyers.

If the divorce decree requires my spouse to pay certain debts, what happens if he fails to pay them?

You remain fully liable for any joint debts. Your divorce decree has no effect on the creditor to whom the money is owed, though it may entitle you to sue your former spouse for amounts you are required to pay.

Will I have to pay (or can I get) maintenance (spousal support)?

Either spouse may request maintenance. The court may award maintenance based on the need of one spouse to receive it and the ability of the other spouse to pay it. The parties can also agree to the payment of maintenance.

You can find the answers to many more frequently asked questions regarding divorce at www.kyjustice.org.