



# **Divorce in Louisiana**



## **Basic Information**

A Louisiana court has jurisdiction over a divorce action if, at the time of filing, one or both of the spouses have established and maintained a residence in Louisiana for a period of six months. You will need to file for divorce in the Parish in which you have been residing for the ninety days prior to the filing.

A divorce can be granted by a Louisiana court upon motion of a spouse when either spouse has filed a divorce petition and shown

- Proof that the required time period has elapsed from when process was served on the other spouse (or waiver of process by that party) and
- Proof that the spouses have lived separate and apart continuously since the filing of the petition for either 180 or 365 days (see time period discussion below).
- Proof that the spouses had already been living separate and apart continuously for the required time period before the divorce petition was filed.

A spouse may be granted an “immediate” divorce in Louisiana by presenting proof that

- The spouses have been living separate and apart continuously for the required amount of time as of the date the petition is filed (see below for the required amount of time) or
- The other spouse has committed adultery or
- The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

The divorce petition need not allege marital breakdown or fault.

Time period: The required time or waiting period for divorce is now either:

- 180 days (or approximately 6 months) only if
  - There are no minor children of the marriage or
  - A court has found the existence of physical or sexual abuse upon the spouse seeking divorce or the children of one of the spouses or
  - A protective order or injunction has been issued by a court against the other spouse to protect the spouse seeking divorce or the children from abuse and is in effect at the time the divorce petition is filed; or
- 365 days if there are minor children in the marriage and no protective orders or abuse.

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The spouse of a military person presumed dead may ask the court for permission to remarry. If a judge grants the request, the judgment effectively terminates the marriage of the person presumed dead, even if he/she is actually alive at the time.

Reconciliation of the parties extinguishes the divorce action. Also, a divorce action may be deemed abandoned if not finalized within two years of either the filing of the original petition or waiver of service of process of the same. In other words, if one spouse files for divorce and two years pass without either party taking the steps to make the divorce final, the petition is deemed void.

Upon filing for divorce (or after the other party has filed), either spouse may request that the court determine incidental matters, such as

- Child custody
- Child support
- Visitation
- Spousal support
- Injunctive relief
- Use and possession of the family home
- Use and possession of the community movables and immovables

The test for awarding use or possession of property is the best interest of the family. For more information see our handout, Child Custody and Support of Dependents.

### **Property Division**

Courts usually divide property (including savings and debts) obtained during the marriage roughly in half, regardless of who actually purchased the property or acquired the debt. This is especially true in Louisiana, which is a “community property” state. In a “community property” state, each spouse owns half of the joint property, which in most cases will be any property acquired after the marriage. Spouses can avoid the court deciding property division by agreeing on the division of property in a separation agreement, which is a contract between the spouses. In the absence of a separation agreement, the court will determine which items are marital property and decide who gets what. Spouses who spitefully use up, dispose of, or hide marital assets prior to divorce will be held accountable by the court. A final judgment of divorce terminates the accrual of community property retroactively back to the filing date of the divorce petition. If a spouse needs to retrieve personal property from the marital domicile (spouses’ home), the spouse may obtain a court order or injunction requesting that the sheriff or other law enforcement officer accompany him or her to remove the property belonging to that spouse pending a suit for divorce.

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## Retirement Pay

A non-military ex-spouse is normally entitled to request half of the disposable retired pay (DRP) that the military member “earned” while married to that spouse and on active duty. For example, if the ex-spouse was married to an active duty military member for 10 years and the military member retires after 20 years, the non-military spouse may ask the court for up to one-fourth of DRP. This is calculated as the spouse’s one half of the benefits accrued over the member’s ten years of his twenty years of service. DRP equals total monthly retirement pay minus Survivor Benefit Plan premiums. Note that retirement pay must be requested for award by the state court handling the divorce; it is not automatically granted to or denied a non-military ex-spouse by federal law. Also, an award of retirement pay must be specifically stated in the divorce decree, particularly if the non-military ex-spouse wants direct payment of the award.

Louisiana courts take a proportionate-interest approach to military retirement pay attributable to service during the marriage. The formula for determining the spouse’s community share has been defined as half the portion of the member’s pension attributable to creditable service during the marriage.

To receive direct payment of retirement pay (like an allotment), the two ex-spouses must have been married for at least 10 years while one was on active duty, and a written request and certified copy of the divorce decree must be sent to DFAS-CL/DG, 1240 E. 9th St., Cleveland, OH 44199-8002. DFAS will only allow an allotment of 50% of the retirement pay. If the court order more than 50%, the spouse will have to obtain the difference directly from the military member. If there will be no claim for retirement pay, the divorce decree should state so.

Survivor Benefit Plan (SBP): SBP provides for a portion of retirement pay to be paid to a surviving spouse after the retiree’s death. Notably, a retiree’s initial designation by name of a spouse as an SBP beneficiary is not affected by divorce and cannot be revoked unless the ex-spouse consents or the divorce decree order the military member to change the SBP beneficiary. Also, an ex-spouse not initially named as an SBP beneficiary may later become an SBP beneficiary if there is a provision to that effect in the divorce decree.

## Spousal Support

While some states are doing away with spousal support or alimony, others still award it on a case-by-case basis. The length of the marriage and the spouse’s ability to work are key factors in this decision. Any award of alimony is likely to be for a limited time.

Airmen undergoing divorce must always meet the requirement of AFI 36-2906, *Personal Financial Responsibility*, to provide adequate support to their dependents. Thus, until a judge

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signs a final decree of divorce, an Airman must provide support to his/her spouse, and that spouse maintains all dependent benefits and entitlements, including an identification card and medical care. Commanders—and courts—may require Airmen to provide proof of support, so Airmen should be careful to document the support they provide. (Additional note: in the eyes of the Air Force, including all Air Force regulations and the Uniform Code of Military Justice, once an Airman is married, he/she remains married until a judge decrees the divorce. Mere filing for divorce does not change the Airman's marital status.)

## **20 Issues to Consider and Resolve for Divorce**

1. Child custody and support
2. Visitation/parenting time, and who will pay for travel costs related to visitation or custody for the child.
3. Medical, dental, hospital, pharmaceutical, and psychological expenses for the children
4. Claiming of income tax exemptions regarding children
5. Special child-care provisions for matters such as summer camp or religious upbringing
6. College education expenses for children and/or spouse
7. Alimony/spousal support
8. COBRA or medical insurance for a former spouse for up to 3 years from the entry of the divorce judgment where applicable
9. Property division, including division of real estate, transfers, and deeds
10. Investments including limited partnerships, stocks/bonds, savings, 401Ks and pensions
11. Personal property, including furniture, art, and collectibles
12. Motor vehicles, including trailers, and boats
13. Finalizing joint income tax issues, including liabilities
14. Debts, including loans and mortgages, and bankruptcy
15. Discovery of hidden assets
16. Indemnification clause to hold the other spouse harmless in case one spouse fails to live up to his/her obligations
17. Life insurance policies as payment protection for support orders
18. Spousal abuse and restraining orders
19. Restoration of a prior maiden name
20. Legal fees, including court costs

## **Information on the Web**

Additional information may be found at the following websites:

<http://family.findlaw.com/>

<http://divorcesupport.about.com/>

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