Divorce

A divorce is known as “Dissolution of Marriage.” It is the legal dissolution of a marriage by the court. You do not have to be represented by an attorney, but it is always best to get the advice from one if you can.

What to consider

Financial impact of Divorce.

A divorce will affect:

- your right to inherit from your spouse,
- your ability to collect Social Security Benefits from your spouse, and
- will likely end your ability to be covered on your spouse’s health insurance.

Parents must follow the Relocation Law.

When a court case is pending before the court or a final Parenting Plan is in place, the law about relocation applies. Relocation is when a parent moves further than 50 miles for longer than 60 days. A parent may not move with the children without following the relocation law. The relocation law sets the rules that a parent must follow when relocating with the other parent’s agreement **and** rules to follow without the other parent’s agreement. Failure to follow the relocation law can cause a parent to be forced to move back to the area where they used to live, pay the other party’s court costs, and could even cost them their time with the children.

Request Alimony or waive your right to it.

You must request alimony in your divorce proceeding. You will not be allowed to request it after the divorce case is over.

Florida Courts Self-Help

For people who are trying to file a case in family court in Florida, visit the Florida Courts webpage for a self-help location in your county.

The Divorce Process

In a Dissolution of Marriage, a married person may ask for:

- Equitable Distribution
- Alimony
- Parental responsibility
- Parenting plan
- Child support

If all you are requesting if for the court to dissolve your marriage, you may be able to file a “Simplified Dissolution”. To file for a simplified dissolution, you must:

1. Have no children,
2. Not be asking for alimony,
3. No argument over the division of debts or assets, and
4. You and your spouse must be willing to go to the clerk of court and sign the petition

How to File for Divorce

The Florida Supreme Court has approved forms that can be used to file your divorce on your own. The forms can be found at www.flcourts.org under the *Family Law Forms* section of the site and contain detailed instructions to assist with completion and filing.

There are different Petitions for different situations:

- Petition for Simplified Dissolution of Marriage – **form 12.901** (a)
- Marital Settlement Agreement for Simplified Dissolution of Marriage – **form 12.902 (f)(3)**
- Petition for Dissolution of Marriage with Dependent or Minor Child(ren) – **form 12.901** (b)(1)
- Petition for Dissolution of Marriage with Property but No Dependent or Minor Child(ren) – **form 12.901 (b)(2)**
- Petition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property – **form 12.901 (b)(3)**

Cases where there are children involved must include the Uniform Child Custody Jurisdiction and Enforcement Affidavit – **form 12.902(d).**

If you cannot afford the court fees, you can file an **"**Application for Determination of Civil Indigent Status**."** You can also request a copy of the form from the clerk of the court.

Every case will require the following forms, also available on the Self Help section of the Florida courts website:

- Summons – form **12.910(a)**
- Family Law Financial Affidavit – **form 12.902(b) or 12.902(c)**
- Notice of Social Security Number – **form 12.902(j)**
- Cover Sheet for Family Court Cases – **form 12.928**
- Notice of Related Cases – **12.900(h**)
- Designation of Current Address and E-mail Address – **form 12.915**
    - If you do not have access to the internet or an email account, you can complete **Form 2.601, Request to be Excused from E-mail Service by a Party Not Represented by an Attorney**, which is a sworn document to declare you do not have internet or an email account.

Court notices, pleadings, and other documents filed in the case will then be served to you by US Mail.

Where to file your divorce case

You must file the documents listed above in the county where the other party lives or where you last lived as married spouses. The clerk will complete the Summons with an official seal. The Summons must be served to the other party.

Service of Process

"Service" is the process of sending court documents to the other party – usually delivered by a sheriff. This informs the other party that the case was filed and tells them how to respond to you and the court.

After you have filed the case, the clerk may help you by sending the documents to the local sheriff for service to the other party. If the clerk sends the documents to

the sheriff, then the sheriff will take the papers to the other party, so they know about the case. There is usually a small fee for the clerk to arrange service on your behalf. The fee might be waived if you qualify for indigent status.

If the clerk does not forward the documents on your behalf, you will need to send a copy of each document that you filed to the sheriff in the county where the other party lives so the sheriff can complete the service of process.

After Service of Process: Motions, Answer, Counterpetition.

Upon receiving the documents, the other party has 20 days to file a written response with the court and mail you a copy. If the other party **does not** file a written response, the clerk may enter a Clerk's Default against them. You may also file a Motion for Default, which is a written request to the court to make a decision about a case. If the other party never participates in the case, the court will likely grant your Motion for Default and you may receive everything you have requested in your petition. Even if the other party has a default entered against them, they may still appear at hearing.

The court will want to make sure it knows what is in a child's best interest before it enters an order. So, while the case is still open, the other party can present evidence about what is in the child's best interest.

On the other hand, if the other party **does** file a written response, they will file an **Answer**, which might also include a **Counterpetition.** The other party is not required to file a Counterpetition, only an Answer. A Counterpetition is the other party's request to the court. You must respond to a Counterpetition by filing an Answer to Counterpetition. You must file your Answer within 20 days from when you are served. The Answer will list whether you agree disagree or if you are unable to answer due to lack of knowledge. You may respond with Answer to Counterpetition, **form 12.903 (d**).

Answering a Divorce Filed by Your Spouse

If a sheriff or process server serves you with a Petition for Dissolution of Marriage, you may file an Answer to Petition for Dissolution of Marriage using form **12.903 (b**).

- You must file the Answer within 20 days to avoid having a default entered against you.
- If the clerk enters a default against you, you may lose your right to participate in the case and may owe support.
- You must file your Answer with the same court where other party filed the petition and mail the other party a copy of your Answer.

If you want to make requests to the court, you should file an Answer and ***Counterpetition***. If you do not file a Counterpetition, you may waive your right to seek what you want out of the divorce. For example, if you want alimony, you should file a Counterpetition and request it. You may use one of the following Counterpetition forms:

- Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren), **form 12.903 (c)(1**)
- Answer to Petition and Counterpetition for Dissolution of Marriage with Property but No Dependent or Minor Child(ren), **form 12.903 (c)(2)**
- Answer to Petition and Counterpetition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property, **form 12.903 (c)(3)**

You must also file a Designation of Current Address and E-mail Address (**form 12.915**) for service of court documents during the case.

Mandatory Disclosures.

Forty-five days after service on the responding party, each party is required to exchange certain financial documents, such as pay stubs and tax returns. The documents that are required will be listed on the Certificate of Compliance with Mandatory Disclosure, **form 12.932**.

- Parties do not file their documents with the court; they give them to the other party.
- If a person does not have a required document on the list because it is not something they have ever had, then there will be nothing to give the other party.
- If a document on the list is not in that person’s possession but is something they can get, such as a bank statement, the person needs to get the document

and give it to the other party.
- The Certificate of Compliance with Mandatory Disclosure is the only document filed with the court. Complete the form by placing a check next to the item provided to the other party, then sign the form under oath before a notary or a clerk.

Case Management Conference.

Once each party has filed their initial documents, the court may schedule a Case Management Conference, a hearing set by a judge to make sure the case moves forward. The Case Management Conference is typically not a time for the court to receive evidence from the parties. The court will likely check to see if the necessary documents are in the file from each party and may schedule mediation.

Mediation.

In most family law cases, the court will require mediation. Mediation is a process where the parties sit down with a neutral third party to work on resolving their case without the judge. The mediator cannot give either party legal advice. Mediation is a confidential process so if you are unable to reach an agreement at mediation, the Judge will not hear what you may have discussed as possible settlements.

The parties to a case may resolve all issues, some of their issues, or none of their issues at Mediation. Issues not resolved at Mediation will be dealt with by the court at a final hearing or trial.

There is usually a cost for Mediation, paid to the Mediator (the neutral third party.)

Attorney’s Fees, Suit Money, and Costs.

The court may order one party to pay the other party’s reasonable attorney’s fees and court costs. The court will evaluate the parties’ financial situations to determine whether one party needs the other to pay the expenses, and whether that party can afford to pay those expenses.

The court could also order a party to pay the other’s attorney fees for wrongful conduct during the litigation, for example, not appearing to a scheduled mediation.