A Guide to the Legal Basics of Divorce

If you are considering a divorce, understanding your options can save you time, energy and money.

- Understanding Divorce Alternatives
- Dividing Property in Divorce
- Pensions and Retirement Plans
- Alimony
- Children and Divorce
- Taxes and Health Insurance
- Divorce When You Can’t Locate Your Spouse
- What You Need to Know if You or Your Spouse are on Active Military Duty

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Disclaimer: The information provided in this brochure is not legal advice, but general information on legal issues commonly encountered. LegalZoom is not a law firm and is not a substitute for an attorney or law firm. LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction.
Introduction

Are you considering divorce?

Getting divorced is a big decision. You may have a lot of people giving you well-meaning advice, but in the end it is your decision whether to end your marriage or not. And if you decide that you do want a divorce, you have many other decisions to make—about your children, your home, your finances, and more. One of the most important decisions you’ll make—along with your spouse—is the decision about who will help you process the paperwork that is necessary to have your divorce made legal.

How LegalZoom can help with your divorce

If you and your spouse can agree on the terms of your divorce, instead of getting lawyers involved and fighting the issues in court, the divorce process can be simpler and much less expensive. Studies have shown that spouses who actively participate in settling a divorce have the best chance of avoiding post-divorce conflict. LegalZoom’s simple, inexpensive online process can save you a great deal of money, but much more importantly, it can save you from many months of hassle and misery. If you and your spouse can agree to settle the issues yourself instead of using lawyers for a lengthy negotiation and possibly a court battle, LegalZoom can help you with the paperwork and provide you with clear instructions on completing your divorce.
Understanding Divorce Alternatives

When you divorce, there are a lot of decisions to be made. You must decide how to divide your property and your debts, what to do with your home, whether either of you will pay support to the other, and how you will share time with your children, if you have them. Whether you and your spouse can agree on these issues will determine what kind of divorce you’ll have. There are a lot of ways your divorce could go—from simple and amicable to expensive and nasty. Here’s some information about your different divorce options.

Ways to Divorce

Uncontested Divorce

In an uncontested divorce, you and your spouse are able to agree on how you want to resolve property, financial, and parenting matters without asking lawyers to do the negotiating for you and without fighting it out in court and having a judge decide for you. Most people do this by sitting down together and working things out or by having a neutral third party—a friend or a professional mediator—help them work things out. Either way, once you have a resolution, you can simply complete your divorce paperwork, file the appropriate documents, and complete the legal process of ending your marriage.

With LegalZoom’s legal documentation service, you can complete your own uncontested divorce without an attorney.

An uncontested divorce is by far the most cost-effective way to end your marriage. For one thing, you won’t use up your resources fighting over who keeps what. It also allows you to maintain a positive relationship with your spouse, which is a real benefit if you have children. It’s usually faster than a contested divorce, and it’s more private—while the final result of your agreement will be part of the court record, the process you used to get there will not be. An uncontested divorce is much less stressful than a long, drawn out fight—on you, your spouse, and your children.

Collaborative Divorce

A collaborative divorce is a middle ground between mediation (see below) and a fully contested divorce. In a collaborative process, you and your spouse will each have your own attorney, but the four of you will agree together that you won’t go to court. Instead you’ll work together in four-way meetings to resolve the issues in your divorce, and you agree that you’ll disclose relevant information and work cooperatively to reach a settlement. If one of you decides to abandon the process and ask a judge for a resolution, you’ll both be required to get new attorneys to represent you in the trial. This provides an incentive for everyone to work hard toward a settlement. Collaborative divorce sometimes also involves other professionals, like custody evaluators and financial analysts. It can be expensive, but you’ll get a resolution you can both live with.

LegalZoom has helped tens of thousands of couples complete uncontested divorce documents, quickly and affordably.
Mediation

In a mediation, you and your spouse meet with a neutral third party called a mediator. Usually, but not always, the mediator is a divorce lawyer. But, the mediator doesn’t represent either of you—instead, the mediator works with the two of you together to reach a settlement by helping you talk about how you see things, what’s important to you, and what kind of agreement you can see that might work for both of you. You may or may not have your own attorney in a mediation process—but if you don’t, you’ll have to hire one at the end to prepare your divorce paperwork, or you’ll have to do your paperwork yourselves. Once you’ve reached an agreement in mediation, you can use LegalZoom’s uncontested divorce process to complete your divorce. Mediation can be significantly less expensive than other types of divorce, but it will still be more expensive than an uncontested divorce.

Contested Divorce

A contested divorce means that you and your spouse can’t agree on some or all of the issues in your divorce. Complex issues, high financial stakes, and disputes over technical legal rules are the marks of a contested divorce. Although you could represent yourselves, most likely you will each hire an attorney, and the lawyers will take charge of the case.

LegalZoom’s Uncontested Divorce

When you use LegalZoom to complete your uncontested divorce, you’ll get help with the most complicated part of the process—the court paperwork. In even the simplest uncontested divorce, you must submit certain papers to your local court, explaining your agreements about how you want to divide your property and debts and share time with your children. LegalZoom’s uncontested divorce package includes state specific documents you will need along with simple instructions for finalizing the divorce—without using an attorney.

You can start your LegalZoom divorce by filling out a questionnaire on our web site, answering questions about your marriage, your children, your property, and the decisions you’ve made about the future. If we need more information to make sure everything is complete and correct, our document preparation specialists will contact you. Once the information is complete, we’ll generate the documents that are necessary to get your divorce case underway in your local court. We’ll send all of those documents to you along with clear, straightforward instructions about your next steps. You’ll take the papers to court and get everything filed and processed—from the first paper that starts your divorce to the final judgment that says you’re no longer married.

An uncontested divorce using LegalZoom is quick and easy and can save you thousands of dollars in legal fees. Plus, you’ll have access to knowledgeable customer support specialists—from start to finish.
LegalZoom’s Divorce Package comes with all of the following features and benefits.

✓ Easy and secure online questionnaire developed by attorneys with over 30 years of experience in family law
✓ Unlimited toll-free telephone and email support to get you through each step of the process
✓ Completion of state-specific divorce documents for both spouses, which may include a Petition, Complaint, Summons, Decree, Request of Judgment, financial declarations, and other documents
✓ Detailed, easy-to-follow instructions for filing, serving, and finalizing your divorce
✓ Marital Settlement Agreement (a $200 value): a contract detailing the terms of the divorce settlement, including property and debt division
✓ Provisions to change the wife’s last name back to the name she had prior to the marriage
✓ Parenting Plan for specifying child-related agreements such as child custody arrangements and visitation schedules
✓ Child support documents, including calculation worksheets and for securing court-ordered support
✓ LegalZoom Peace of Mind Review for grammar, consistency and completeness
✓ Hassle-free revisions for 30 days

Dividing Property in Divorce

How property is divided at divorce

One of the first steps in your divorce will be to gather all of your financial information together so that you know exactly what you have and exactly what you owe. All of your marital property and debts must be accounted for and divided in your divorce. The definition of “marital property” is different depending on where you live. Ten states (Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) are called “community property” states, and in those states everything that you earned or acquired during your marriage, and all of the debts you incurred during your marriage, are shared 50/50 between the spouses. In other states there are different rules about property, but in general, property and debts are divided equally between the two spouses at divorce. One or both of you may also have “separate property,” meaning property and debt that was yours before the marriage and that you kept separate throughout the marriage. Most of the time each spouse gets to keep separate property, but not always.

Even though most states’ rules call for an equal division of property, you can decide to divide your property unequally, too, if that’s what you both think is fair. One of the advantages of doing your own divorce through LegalZoom is that you can make your own decisions—you don’t have to let a judge decide for you. As long as the agreement you make isn’t clearly unfair to one person, the judge will typically approve your divorce.
Pensions and Retirement Plans

Along with your house, a pension or retirement plan is often one of your most valuable assets. It’s important to take care when making decisions about retirement assets when you get divorced. In almost all states, retirement benefits earned during the marriage are the property of both spouses and must be divided at divorce. There are different types of retirement plans, and different ways to deal with each one.

If both spouses have retirement plans and have been earning about the same amount of income and putting aside about the same amount of money during the marriage, it’s easy for couples to each keep their own retirement benefits. And if there’s some difference but not a lot, and the marriage hasn’t been that long, some people decide not to bother with the calculations but just to have each person keep their own pension. But it’s important for spouses to carefully consider their options before giving up the rights to a partner’s retirement—once made, that decision can’t be undone.

**Defined Contribution Plans – 401(k)**

These days, the most common retirement benefit plan is what’s called a “defined contribution plan,” usually in the form of a 401(k) plan. It’s fairly simple to determine the value of a 401(k) plan, generally by looking at a recent statement or asking the plan administrator. However, remember that it’s possible that only part of the 401(k) is marital property—if the employee spouse earned part of it before the marriage, then you’ll need to know what percentage is marital property and then divide that amount. Because of interest accruals and the like, you may decide to seek help in determining this calculation. Once you know what portion of the benefits is marital property, you can simply roll over the non-employee spouse’s share into another tax-deferred savings account when the divorce is finalized. You will need to ask your plan administrator whether your plan requires a QDRO to do this rollover. A QDRO is a special court order called a Qualified Domestic Relations Order (QDRO, pronounced “quadro”). You don’t always need a QDRO when it comes to dividing a defined benefit plan, but if your plan administrator advises you that you do need one, then you will usually need a lawyer to draft your QDRO.

**Employer Sponsored Pension Plans**

Although not many people have pension plans anymore, this is an important topic for those who do. If you have a true pension—meaning an employer-sponsored plan that accrues value throughout the employee’s time at the company and then pays benefits at retirement (also called a “defined benefit plan”)—then you might want to get some help in valuing the pension at the time of the divorce. This involves determining the current value of the pension then dividing it by the marital share (determined by pension length as it coincides with the marriage).

Legalzoom’s Tools For Dealing With Your Finances

LegalZoom’s online questionnaire helps you gather together all of your financial information. Our questions will make sure you don’t forget about things that have value but that you might not think of as assets, like sports tickets or frequent flyer miles. Having all the information means that you can make fully informed decisions about how you want to divide your property and debts. Once you’ve made those decisions, you’ll enter the information into the questionnaire and LegalZoom will complete the court papers you will need.
Even if you need help valuing your pension, you can still get an uncontested divorce. Generally, people contact their plan administrator to get more information about how the plan can be divided, and some also seek the help of an accountant or actuary to calculate these amounts. You can decide how to divide the benefits once you have the calculations—you can either keep your own pension and give your spouse some other asset that’s worth about the same, or split the benefits at retirement by having benefit checks sent to each spouse when the employee spouse retires. If you’re going to split the benefits at retirement, you’ll need to have a QDRO. A lawyer or actuary can help you prepare the QDRO (see above under Defined Contribution Plans). Just having a court judgment of divorce isn’t enough.

**Alimony (Spousal Support)**

Alimony, also sometimes called “spousal support” or “maintenance,” is when one spouse makes payments to the other for a specified period of time, to provide support while the recipient spouse does whatever is necessary to become self-supporting again.

Some states have spousal support calculators, but many don’t—usually spouses simply negotiate spousal support based on the recipient spouse’s needs and the paying spouse’s ability to pay. In a court divorce, the judge will decide whether support should be paid and for how long. The judge usually makes a decision after evaluating the details of each case. The following factors, typically reviewed by a judge, are important to consider when deciding upon an alimony amount:

- The age and health of both parties
- Each party’s employment history and ability to find work, and whether one person gave up a career to stay home and care for the couple’s children
- Each party’s income
- Each party’s other resources besides income, including what property that spouse received in the divorce settlement
- The length of the marriage

These are just some of the major factors most people take into consideration. It’s also important to know that for a marriage that lasted less than five years, alimony is rarely ordered by the court; for a marriage lasting longer than ten years, it almost always is ordered. You can use this information as a starting point and then negotiate from there to figure out an amount that you both agree on.

In some situations, you can agree to a lump sum for spousal support, that will be paid all at once at the time the divorce is resolved—basically, the paying spouse pays alimony in advance instead of paying it monthly. If you want to do this, it’s a good idea to consult an accountant first to make sure you don’t run into tax problems.
Children and Divorce

Custody

When you get divorced and you have children, one of the most important parts of your settlement agreement is your parenting plan. You must decide who will have legal custody (the right to make decisions about your children’s education and activities), who will have physical custody (the right to have the children live with them), and how you’ll each spend time with your children.

LegalZoom’s tools for planning for your children

LegalZoom’s carefully designed online questionnaire will help you gather and evaluate all of the information you need to make the important decisions about your children. The questionnaire includes a section on child custody, so that you can state your decisions about custody and visitation, including details you might not otherwise have thought of, like how you’ll deal with school holidays and how you’ll make decisions in the future if you disagree about something. When you’re finished answering all of the questions, you’ll have a very clear sense of what your parenting plan will look like—and LegalZoom will turn that information into a legally binding parenting plan that will become part of the court’s order after your divorce. We’ll also do all the paperwork to establish your child support arrangement.

Support

Every state requires parents to support their children, and every state has its own guidelines for calculating whether one parent must pay child support to the other, and how much. At the most basic level, the support amount is based on each parent’s income and the amount of time each parent spends with the children. Other elements, such as which parent is paying for health insurance for the children, whether a parent has special medical needs, and whether a parent is supporting children from a previous marriage, also may be factors. Parents can increase or decrease the guideline amount if the following conditions are met:

• Both parents acknowledge they are fully informed of their rights under state law and the amount of child support is mutually agreed on,

• Both parents declare the agreed upon amount is in the children’s best interests and will adequately meet their needs, and

• For Welfare recipients, the right to support has not been assigned to the county, and neither parent has a public assistance application pending.

• When you divorce, you and your spouse will need to calculate and agree on the amount of child support that one of you will pay to the other. If you use LegalZoom’s uncontested divorce product, in most states we will automatically calculate this amount for you using your state’s guidelines.¹ You can also do it yourselves using online child support calculators—in most states the calculator is very easy to find online.

¹ LegalZoom automatically calculates child support amounts for the following states: AK, AZ, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, KS, KY, MA, MD, ME, NC, ND, NH, NM, NV, NY, OH, OK, OR, RI, SD, TX, UT, WA, WI, WV, WY.
States with no calculation, where you will need to provide or insert later: District of Colombia, IA, MI, MN, NJ, PA, SC, VT.
Taxes and Health Insurance

Divorce and taxes

You and your spouse can transfer real estate and money back and forth during your divorce without any tax consequences, with the exception of alimony. Alimony is deductible to the payer and taxable to the recipient, so it is important to factor that into your calculations. And there can be tax consequences to some of the other decisions you make during your divorce. For example, if you divide up stock, the person who keeps it may face capital gains tax when the stock is sold. If the other person took an asset of equal value that doesn’t have any tax liability in the future, then the trade wasn’t entirely even. That’s the sort of tax issue you’ll need to consider when you divide your property. An accountant can help you if you get stuck on some of these issues.

As noted above, if you’re considering paying lump sum alimony, you should consider getting tax advice first—the IRS doesn’t like for you to do too much front-loading.

Health insurance after divorce

Every divorcing person should be aware of a federal law called “COBRA” (short for Consolidated Omnibus Budget Reconciliation Act). COBRA allows the divorced spouse of an insured employee to stay on the employer’s group health insurance for as long as 36 months after the divorce becomes final. All private employers with 20 or more employees are covered by COBRA (and your state probably has a similar law for smaller employers). The non-employee spouse is required to pay the insurance premiums plus up to 2% as an administrative fee to the employer. The 36-month COBRA period doesn’t start running until your divorce is final, but there are deadlines to meet once that happens. If you want to be sure you get COBRA coverage through your spouse’s employer, do two things:

1. Find the name and contact information of the health plan administrator at your spouse’s company.
2. When your divorce is final, notify the health plan administrator and then pay close attention to the deadlines for letting the employer know you want the insurance and to start paying your premiums.

It’s also a good idea to make a note in your settlement agreement that you’re going to be taking advantage of the COBRA benefits.

To learn more about COBRA coverage, go to the U.S. Department of Labor website at www.dol.gov/ebsa.

More About Mediation and Divorce

It’s possible that you and your spouse might find that you agree on most things, but you’re stuck on certain decisions. For example, you may agree that alimony will be paid but not agree on the amount or on how long it should last. Or you might have a disagreement about whether you’re going to sell your house or whether one of you will buy out the other. This doesn’t necessarily mean that you can’t use LegalZoom’s uncontested divorce process. A good way to resolve disputed issues is to ask an unbiased person or mediator to help you figure out the issues that are not resolved. Once you’ve come to an agreement, you can turn back to LegalZoom to finish your paperwork and complete your court divorce. See “Understanding Your Divorce Alternatives,” above, for an explanation of how mediation works.
Special Divorce Situations

Divorce when you can’t locate your spouse

You have an obligation to notify your spouse that you’re asking for a divorce, so if you’ve lost track of each other you must make a reasonable effort to find your spouse. This means checking your spouse’s last known address, asking your spouse’s friends and family whether they know how to contact your spouse, checking with former employers and union or other membership groups, and using a military locator service if your spouse is in the armed forces. You’re not required to go as far as hiring a private investigator, but you do have to put in some effort before giving up, and you have to document everything you do so that you can tell a judge.

If you do all of these things and you still can’t locate your spouse, you can ask the court to either allow you to notify your spouse about the divorce by publishing notice in the newspaper, or allow you to proceed without notifying your spouse at all. In this case you’ll proceed with a “default” divorce, where the entire process is completed without your spouse’s participation. Typically, you will need a lawyer to complete a default divorce.

Military and Divorce

What you need to know if you or your spouse are on active military duty

If either you or your spouse is in the military, there may be some special rules that apply to you. Military service could affect where you decide to file for divorce, how you will deal with child custody and support, how health care will be provided after divorce, and how pension rights are allocated. But you can still use LegalZoom’s uncontested divorce process—in fact, LegalZoom can help you decide where to file your divorce and can provide the necessary documents to comply with the Service members Civil Relief Act in your state.

If a military spouse has more than ten years of service, the divorce may involve important pension rights and other benefits for each spouse which may require an attorney. Having a military divorce expert look over the documents and evaluate your situation can provide extra peace of mind.

For more about military divorce, see our publication “A Guide to Understanding Divorce When Either Partner is in the Military.”

Questions?

To learn more about LegalZoom’s divorce services or for help getting started, please call us at (800) 962-7490, M-F 7:00 AM – 6:00 PM PST or email our customer support at customersupport@legalzoom.com.