

**This information is found at:**

<http://www.marylandlawonline.com/md/family/divexpln.htm>

### **Maryland DIVORCE Law**

This section explains the subject of divorce law in Maryland. It is designed to provide general legal information and is not a substitute for legal advice provided by an attorney who is a member of the Maryland Bar. However, if your divorce is uncontested, (there are no conflicts concerning child custody, child support, alimony, or marital property,) you should be able to represent yourself as a pro se litigant, using the Domestic Relations Pro Se Forms that are available at this web site.

### **DIVORCE (ABSOLUTE AND LIMITED)**

Under Maryland Law, you have the right to represent yourself in all legal cases, including divorce.

The legal term for representing yourself is "pro se," pronounced "pro say") which is Latin for "on your own behalf." Representing yourself is not a good idea for everyone. It is important to understand that by representing yourself, you may be giving up important rights. It is very important for you to find out if your spouse has a pension, retirement account, insurance or other significant property before you decide whether to file your own divorce. If you do not ask for such things in the divorce, you will give them up forever.

Before you file for divorce on your own, you need to talk to your spouse, if possible, and find out how he/she feels about the divorce and about the issues mentioned above. This will give you an indication on how to proceed with the divorce.

The law limits the authority of the court to grant divorces (known as a question of jurisdiction-can this court hear this divorce?). The law also dictates when the court has jurisdiction over a divorce proceeding.

Within Maryland, the circuit courts have jurisdiction to hear divorce cases. Generally, the circuit court with jurisdiction for your case is the circuit court in the county where you live or the circuit court in the county where your spouse lives. When you file the relevant papers, you must have stated your grounds for that court to have jurisdiction. If not state correctly, your spouse could file a motion to dismiss your case.

After you file your papers, your spouse has 30 days (if your spouse lives in Maryland), 60 days (if your spouse lives outside of Maryland, but in the United States), or 90 days (if your spouse lives outside the United States) to respond to your request for divorce (known as a Complaint). If your spouse fails to respond, the court will proceed with the divorce so long as service of process has been

completed correctly. Whether or not your spouse responds, you and your corroborative witness will have to appear before the court (in almost all cases the hearing will be before a master) in a hearing scheduled by the clerk. After your corroborative witness testifies and you have presented other evidence, and if your spouse answers or shows up, then your spouse will also have a chance to do the same. At the end of the hearing, the court (in most cases it will be a master who makes a recommendation to the court) will decide at some later time (normally 30 days) to grant a divorce and a settlement of marital issues.

## **RESIDENCY**

In order to start the divorce process you must file a complaint in the circuit court where you or your spouse lives. In your complaint or at the hearing, you will have to meet the residency requirement for the ground you specified above. Divorce laws apply only to the residents of a state, and each state has its own residency requirements. For the ground of voluntary separation without cohabitation, the residency requirement is one year in Maryland. The law absolutely requires that you or your spouse has been a resident for the stated period of time immediately prior to and at the time that you file for a divorce. For example, you cannot have lived in Maryland for six months before moving to Nebraska for another six months and then come back to Virginia to file for a divorce. However, after you have filed, you can move anywhere in the world.

## **SAME STATE, DIFFERENT ADDRESSES**

You do not have to remain at the same address to fulfill your residency requirement. You can move anywhere within the state from which you are filing.

The forms do not require you to list all addresses, but you should be prepared to prove where you lived during the separation in the final hearing.

## **PROOF OF RESIDENCY**

Your residency is substantiated by your corroborating witness. The testimony is all that most courts require to verify residency. But cases have been dismissed and even overturned because of improper proof of residency. To be safe, bring copies of your leases with you to court if you have moved a lot.

## **RESIDENT VERSUS NONRESIDENT**

A court may take on a divorce proceeding even if your spouse is not a resident of Maryland. If you or your spouse move to another state after the divorce has been filed, you may still have your case heard in Maryland.

## **HOW TO ESTABLISH RESIDENCY**

Register to vote. Get a driver's license. Get a job. Open charge accounts. Register your car. Take out a library card. The list is endless. But whatever you do, do not maintain a residence in another state that could imply that you do not intend to remain in the state from which you file.

## **COUNTY JURISDICTION**

Maryland has counties that govern which court your divorce will take place in. This is called venue. The divorce must be filed where either the plaintiff or defendant resides or where either is regularly employed or has a place of business.

## **DIVORCE, SEPARATION, AND ANNULMENT**

Divorce is the ending of a marriage ordered by a court. In Maryland, however, you could ask for two types of divorce: absolute and limited. When the court decrees (orders) an absolute divorce, it means that the divorce is permanent, permits remarriage, and terminates property claims. When the court decrees a limited divorce, it means that the divorce is not permanent, does not permit remarriage, and does not terminate property claims (but the limited divorce may settle these claims); it serves only to legalize the separation and provide for support. You are not required to get a limited divorce before you can get an absolute divorce - there is a common misconception that you need a legal separation in order to get a divorce. This is not the case. Since divorce in Maryland is statutory, the law is located in The Maryland Annotated Code under the Family Law section of the Code in subsection 7.

Annulment establishes that your marital status never existed. The court will declare that you were never married. Because the courts rarely grant an annulment, you should think twice about using this route if you want to end your marriage. The court may look to, but is not limited to, the legitimacy of children and the preservation of the sanctity of marriage. Because of these considerations a court will look to granting a divorce instead of an annulment.

## **FOUNDATIONS**

There are three principal players involved in your marriage that will also be involved in your divorce: you, your spouse, and the state. You cannot simply break up, saddle your charger, and ride off into the sunset. Among other legal considerations, you have to give the state an acceptable reason why you should be allowed to break up. The reason is known as the ground for your divorce.

Over the years each state has enacted legislation that governs acceptable grounds.

There are different grounds for a divorce, separation, and annulment. In the case of an absolute divorce, there are six (6) grounds for a court to grant an absolute divorce:

- Adultery;
- Desertion (constructive and actual);
- Voluntary separation;
- Criminal conviction of a felony or misdemeanor;
- Two-year separation;

Or insanity

Any one of these grounds, if proved, will result in the complete dissolution of the marriage (look to each ground in order to find out how to prove that ground). You can file for divorce under more than one ground: for instance, adultery and desertion.

In the case of a limited divorce, there are four (4) grounds for a court to grant a limited divorce:

Cruelty (against the child of the complaining party and/or against the complaining party);  
Excessive cruelty;  
Desertion (construction and actual);  
Or voluntary separation

Although any one of these grounds is enough for a limited divorce, a limited divorce will not completely terminate your marital status. In order to do so you must either seek an absolute divorce or an annulment.

In Maryland there are two types of annulment. In the first type the marriage is declared void ab initio, or from its inception, as though it had never existed. You do not legally have to go to court to have the marriage declared void ab initio, although it's a good idea to do so. In the case of an annulment, a marriage must be "totally void" in order for it to be considered annulled.

There are two characteristics of a "totally void" marriage: the marriage possesses some defect rendering it susceptible to collateral attack (some evidence that shows the marriage never happened or should have never happened) even after the death of one or both spouses; and no direct step or proceeding to annul is necessary (although the latter may be desirable).

One such defect is if your spouse was formally married to someone else and still has not divorced that person. Your marriage to this spouse is considered totally void.

Another defective marriage is one done between "blood" relatives.<sup>10</sup> There is also a provision that a minor of 16 and 17 years of age or younger than 16 could not marry unless the statutory provision of the Family Law code §2301 is met.

The second type of annulment is called voidable. A voidable marriage can only be annulled by going to court and having it declared void. . Annulment is available in Maryland, and in some cases it can be obtained under the name of a divorce. Along with obtaining an annulment for bigamy and for lack of consensual age, a marriage may be declared void if the parties did not really intend to marry or if they are incapacitated, as in insanity, intoxication, fraud, and duress.

Although annulments may be granted, the preference of the court is not to annul, but for the parties to divorce. Also, any marriage that is expressly prohibited by statute is void by annulment.

### **WAITING PERIODS FOR ABSOLUTE DIVORCE**

Under each ground for an absolute divorce, there is a provision for when you can bring the lawsuit against your spouse to the court. However, if you claim that your spouse committed adultery, you can bring the action for absolute divorce at any time. As long as you can fulfill the residency requirement (discussed in the residency section) there is no time limit when claiming adultery. In a claim of desertion, however, you may have a time-limit problem. Whether the desertion was actual or constructive, you must wait a year after the event of desertion before you file for an absolute divorce. For a voluntary separation, you must have been voluntarily separated for at least 12 months without cohabitation (without a single night under the same roof and without any sexual intercourse) before you can file for absolute divorce.

If your spouse has been convicted of a felony or misdemeanor with a sentence of at least three years or an unspecified sentence in a penal institution, and has served 12 months of that sentence, you can then file for absolute divorce.<sup>16</sup> In a two year separation, before filing for absolute divorce, you and your spouse must have lived separate and apart, without cohabitation for two years without interruption. Finally, if your spouse has been confined to a mental institute, hospital or other similar institution for at least three years, you can then file for an absolute divorce, provided you have met the residency required for this particular ground.

### **ADULTERY**

Adultery is sexual intercourse between a married person and someone other than the spouse. In Maryland, neither cunnilingus nor fellatio, which the law defines as sodomy, is a ground for divorce and generally neither is considered adultery. The sexual intercourse must involve some penetration of the female organ by the male organ, but a "completion" of the sexual intercourse is not required.

### **HOW TO PROVE ADULTERY**

There probably is no such thing as a pleasant adultery case; because names, dates, places, paramours, and the like have to be brought out in the open. If your spouse no longer cares about what you know and is open about the affair, you're lucky. You can then catch your spouse *flagrante delicto*, which means you have your spouse in the flagrant wrong and may not have to worry about hiring detectives. However, you may still need a detective to prove your case in court.

There is still a need for a corroborative witness, such as a mutual friend or neighbor, who has no stake in the matter except telling the court what he (she) witnessed.

Most adultery cases are proven by circumstantial evidence, which means that you have to establish that your spouse had the disposition and opportunity to commit adultery.

Public displays of affection, such as hand-holding, kissing, and hugging, between the guilty spouse and the paramour are generally sufficient evidence to indicate an adulterous disposition. Opportunity may be proven by showing that your spouse was seen entering the paramour's apartment at 11 P.M. and not coming out until 8 A.M. the following morning and that they were alone. If you can only prove disposition but not opportunity, the courts may not allow your divorce because the court may reason that it is just mere speculation. The same is true if you only show that there was opportunity, but cannot prove disposition. When you think about it, this seems to make sense.

### **NAMING THE CO-RESPONDENT**

Sometimes known as a paramour, the co-respondent is the person whom you charge as having committed adultery with your spouse. The co-respondent has the right to hire a lawyer and file an answer to your complaint. Naming correspondents can get sticky, particularly if your facts are incorrect. You might be damaging the reputation of an innocent person.

### **THE ADULTERERS**

Adulterers are not equal under the blanket of the law. In Maryland, adultery may impact custody if the adultery is proven to have harmed or impaired the children.

Adultery does not necessarily affect alimony awards in Maryland. It will, however, be a factor for consideration in awarding alimony. .

### **CONDONATION**

Generally, if you knew your spouse committed adultery but continued to live and cohabit with your spouse, then adultery cannot be used as a ground. Once you resume marital relations, after you learned of the adulterous act, the courts feel that you have forgiven, or "condoned," the act. But, if your spouse starts having affairs again, you can then sue on grounds of adultery. Or, if your spouse has had several affairs and you knew of and condoned only one, you may file on adultery regarding the newly discovered affairs.

In Maryland, however, condonation does not necessarily bar the action for divorce; it now only a "factor for consideration."

## **CRIMES**

If your spouse has been convicted - not simply charged - of a crime, that is a ground for divorce in Maryland. The conviction can be for either a misdemeanor or a felony in any state, and the spouse has to serve at least 12 months of a minimum three-year sentence in a penitentiary or penal institution.

## **DESERTION AND ABANDONMENT**

For all practical purposes, desertion and abandonment are one and the same.

There are two elements that have to be present in order to constitute desertion: the willful desire or the intent to desert and the cutting off of the marital relationship. In Maryland, the abandonment has:

Continued for 12 uninterrupted months;  
Must be deliberate and final; beyond any reasonable expectation of reconciliation.

There are two types of desertion-actual desertion and constructive desertion.

### **ACTUAL DESERTION**

When your spouse packs bags, books, and toothpaste, walks out the door, moves into another apartment, and stays there, he or she is guilty of actual desertion. The spouse voluntarily leaves and has no plans to return except perhaps to pick up a forgotten belonging.

### **CONSTRUCTIVE DESERTION**

You also can be deserted even if your spouse does not leave. If your spouse's behavior is so cruel or despicable that you find yourself dialing suicide prevention, you can leave and charge your spouse with constructive desertion.

Constructive desertion is basically defined as one person leaving the relationship-not necessarily the home. The following are some cases of marital misconduct that have been applied to constructive desertion:

Willful refusal of sex, without just cause and nonperformance of other marital duties as to practically destroy the home life. The denial of sex alone does not constitute desertion. The spouse also has to stop carrying out the mutual responsibilities of the marital relationship.

Conduct that endangers a spouse's life, safety, health, and even self-respect (although an isolated assault or two will not necessarily constitute cruelty unless the act was particularly severe and atrocious).

One spouse's failure to move if, for example, the other gets a job transfer. The exception is if one spouse's choice of domicile is unsafe or unsuitable for the other.

### **IF THE DESERTER RETURNS**

Your spouse has left you, spent six months chasing butterflies, and suddenly wakes up one morning and decides that you are the one after all. In good faith, your spouse shows up at your doorstep and begs you to forgive and forget. In Maryland, if you say yes, then all is well. But if you say no and refuse to even see or listen to your spouse, then, strange but true, your spouse could sue you for desertion. The waiting period would start all over again beginning with the time of your refusal. Keep in mind that "good faith" is the key. If, for example, your husband deserted you and then tried to return only after realizing what the high costs of his alimony and legal fees would be, his desire to return would not necessarily be considered "good faith".

### **INSANITY**

Your spouse must be judged permanently and incurably insane and be confined in an institution or a hospital for a minimum of three years before filing. To prove insanity, two or more psychiatrists are needed to testify that your spouse is incurable and that there is no hope of recovery. The court will appoint an attorney to act in the defense of your spouse whom you purport to be insane. These costs are usually borne by you. In Maryland, you also must be a resident for two years before filing.

### **VOLUNTARY SEPARATION**

The State of Maryland has a "no fault" divorce known as voluntary separation. It usually means that you and your spouse have separated after mutually and voluntarily agreeing that you no longer wish to live together as husband and wife and that there is no hope for reconciliation. Your spouse cannot threaten or blackmail you into leaving; you separate because you both want to. To get a divorce on this ground you have to be separated (not living under the same roof) without interruption (not even one night) without cohabitation (not a single incident of sexual intercourse) for one year and there is no hope of reconciliation.

Remember though, if this is not a mutual and voluntary situation you will have to use another ground to get a divorce.

There are two types of voluntary separation: one for limited divorce; and for absolute divorce. Remember that a limited divorce does not completely end your marriage.

### **SEPARATION WITHOUT COHABITATION**

If your spouse wants a separation and you do not, it is still possible to file under this ground, but the wait is longer. Maryland requires two years of living apart.

Whether the separation is voluntary or not so voluntary, it has to be continuous.

This does not mean that you and your spouse can't meet for lunch or dinner on occasion, but it does mean that you cannot have sexual relations with each other. If a candlelight dinner intended to discuss your children's report cards ends up kindling your sexual desire for each other, and you follow your passions into bed, then your waiting period has to start all over again. It will begin the day after your bedroom encounter even if you've been on good behavior for 11 ½ months.

Sex between you and your spouse is strictly forbidden during your waiting period.

Sex with others can be a problem, too; the grounds for your divorce could change.

You must live in separate abodes. Even if one person were to live in the attic and the other in the basement, it won't count for "living separate and apart."

### **GROUND FOR LIMITED DIVORCE OR LEGAL SEPARATION**

Many people who, for personal or religious reasons, do not wish to obtain a full divorce can get a "limited divorce" instead. Maryland has no legal separation. A "Limited Divorce" in Maryland is similar to what is called a "Legal Separation" on other states. Limited divorces are very much like an absolute divorce with the major difference being that the parties cannot remarry. You are, in effect, still legally married at the same time that you are legally separated.

In order to obtain a limited divorce in Maryland, you must meet residency requirements, grounds, and other legally prescribed laws just as you have to in a case for absolute divorce. Limited divorces can also involve property settlements, alimony, and child support and custody.

The grounds for obtaining a limited divorce in Maryland are cruelty or excessively vicious conduct to complainant or minor child; desertion; and voluntary separation beyond any reasonable expectation of reconciliation. The court may require that the parties participate in reconciliation efforts.

The Maryland courts may grant a limited divorce even though you are seeking an absolute divorce. The courts also may decree these divorces forever or for a limited time only. And finally, Maryland's limited divorces may be revoked by the courts at any time upon the joint applications of the parties to be discharged. In such cases, you return to the state of being legally married.

### **PROVING GROUNDS FOR LIMITED DIVORCE OR LEGAL SEPARATION**

In order to prove the grounds for a limited divorce, you must go through the same processes of proof as you would in a case for an absolute divorce. The courts give the same serious weight to limited divorces as they do to absolute divorces.

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