



FAQ — Separation & Divorce



What are the grounds for divorce in South Carolina?

Courts in South Carolina recognizes four “fault” grounds for divorce:

- Adultery
- Physical Cruelty
- Desertion
- Habitual Drunkenness and/or Drug Abuse

In addition, there is one “no-fault” ground recognized by South Carolina courts:

- “Living Separate and Apart for One Year without Cohabitation.”

In order to obtain a divorce, the party filing for divorce must prove at least one of these grounds with legally sufficient evidence. “Legally sufficient evidence” refers to that evidence which satisfies the Court that one of the grounds exists. For example, third party testimony, a witness or private detective who can testify to a couple’s lack of cohabitation, or a party’s infidelity.

Do my spouse and I need to agree to get a divorce?

No. Your spouse cannot stop you from obtaining a divorce if you can prove your ground for divorce and your spouse does not have a legitimate defense to dispute your claim.

What is a legal separation?

South Carolina does not recognize a legal separation. A couple is either married or not married. However, there is a similar type of action called “An Action for Separate Support and Maintenance.” This action is very similar to other states’ legal separations.

What is separation?

A separation is when the parties live in two separate locations. Living in two separate bedrooms in one house does not qualify as a separation. If you have a separate guesthouse or a garage apartment, you need to discuss this situation with an experienced attorney.

Do I need to live in South Carolina to be able to file for divorce here?

To file for divorce in South Carolina, one party has to have resided in South Carolina for at least one year if the other spouse lives in another state. If both parties have lived in South Carolina for at least three months, either party can file for a divorce in South Carolina. If one party has lived in South Carolina for at least one year that party can file for divorce in South Carolina even if the

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other spouse has never set foot in this state but the other party can contest personal jurisdiction and WIN!!!

Other issues such as the division of property, alimony, visitation, and child support, however, require obtaining personal jurisdiction over the nonresident spouse. Obviously, jurisdiction questions are intricate; to avoid having his or her case dismissed due to a failure to adequately satisfy jurisdiction, please seek the advice of qualified counsel.

Where do I file for divorce?

In South Carolina, the Family Court has exclusive jurisdiction over actions for divorce. Each of the 46 counties in the Palmetto State has a Family Court. Actions for divorce are tried in the county where the Defendant resides at the commencement of the action, or the county where the parties last resided together as husband and wife. If the Defendant is not a South Carolina resident, then the action is tried in the county where the Plaintiff resides.

Does fault play a role in the divorce?

The court may consider fault by either party when determining alimony, separate support and maintenance, and the equitable distribution of property.

In South Carolina, adultery by the party who would otherwise receive alimony is a complete bar to the receipt of alimony except under certain circumstances. Given the severe ramifications fault has in the divorce process, please consult an experienced divorce attorney who can answer your questions and address your concerns.

How long does it take to finalize a divorce? How fast can I obtain a divorce?

While each case is different, there are a few general rules to consider. Unless the Plaintiff seeks a divorce on the ground of one year's continuous separation, any request for a divorce on a fault ground cannot take place at a hearing until two months after the Summons and Complaint is filed. The actual divorce, though, cannot be granted until three months have passed since the case was filed.

With the no-fault divorce on the ground of one year's separation, the Plaintiff may file the action one year and one day after the year of continuous separation passes. Then, a hearing and divorce are possible either thirty days after service upon the Defendant, or if the Defendant files an answer before the thirty days, one could immediately request a hearing.



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Whether filing on fault or no-fault grounds, for a divorce to become final a Family Court judge must sign the Decree, and the Decree must be filed with the Clerk of the Family Court. Different county courts have different backlogs so obtaining a final hearing can vary greatly by county.

Should I leave the marital home? Could this negatively impact my case?

Whether or not a spouse should leave the marital home and whether there would be any detrimental consequences of doing so truly depends on the individual circumstances of each case.

The choice to move out of the marital home does not forfeit a spouse's right to an equitable division of marital property. However, if you move out and want to move back in, the potential for complications arise.

How will property be divided? Does my spouse automatically get half of our marital assets and debts?

South Carolina Family Court has jurisdiction to equitably divide the parties' marital property. There is no preset rule regarding the division of assets, however equitable division begins with the idea of an equal division of marital assets. Instead, the Courts consider a variety of factors set out in South Carolina statutes, including:

- duration of the marriage
- separate maintenance and/or alimony award
- child custody arrangements; physical and emotional health of each spouse
- financial/economic circumstances of each spouse
- vested retirement benefits of each spouse
- need for additional training or education to achieve spouse's income potential
- liens or encumbrances on marital and separate property/debts; non-marital property of each spouse
- tax aspects of divorce
- support being paid or received by either spouse regarding a prior marriage or child
- desirability of retaining the marital home
- each spouse's contribution to the marriage
- fault or marital misconduct of either party
- and any other factors necessary to achieve equity



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What is the difference between marital and non-marital property?

On a very basic and general level, non-marital property is usually considered any asset owned prior to the marriage, inherited by a party during the marriage, or given by a third party as a gift during the marriage. Marital property includes all real and personal property acquired by the parties during the marriage, gifts between spouses given during the marriage, and vested and non-vested benefits or funds accrued during the marriage such as retirement accounts, pensions, and real property.

There are, however, many exceptions and nuances to this list, and there are situations where non-marital property can transform into marital property. To adequately protect your interests, we recommend that you consult with an experienced family law attorney who can give you sound legal advice on this topic, tailored specifically to your own situation.

What is alimony? How is it different from separate support and maintenance?

Alimony is post-divorce support payments made by one former spouse to another former spouse. There are five types of alimony:

- Periodic
- Lump sum
- Rehabilitative
- Reimbursement,
- Other

Alimony can be modifiable (it can be changed later based on a change of financial circumstances of either party) or non-modifiable (cannot be changed.) Separate maintenance and support refers to pre-divorce support payments made by one spouse to another spouse.

While either the Plaintiff or Defendant may be eligible for alimony, fault by either party is considered by the court when determining the alimony amount. It is important to note that if one spouse can prove the other spouse has committed adultery the recipient spouse can be barred from receiving alimony or separate maintenance and support except under certain situations. [Talk to an experienced attorney to learn more about this important aspect of divorce cases.]

In South Carolina, the courts consider the following factors when awarding alimony:

- duration of the marriage together with the ages of the parties at the time of the marriage and divorce



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- physical and emotional condition of each spouse
- education background of each spouse including the need for additional training to reach his or her income potential
- employment history and earning potential of each spouse
- custody of the children
- standard of living established during the marriage
- tax consequences
- the existence of a support obligation from a prior marriage
- current and reasonably anticipated earnings of each spouse
- current and reasonably anticipated expenses of each spouse
- marital misconduct or fault of either party
- such other factors the court may wish to consider

Can my spouse and I use the same attorney?

No. Every divorce, regardless of how amicable, is inherently adversarial. For that reason, South Carolina's Model Rules of Professional Conduct does not permit one lawyer to represent both parties.

One exception does apply, though. This statement does not apply to instances where parties hire an attorney to act as their mediator. In that case, the mediator cannot represent or give either party legal advice, but the mediator can help the parties reach a mediated agreement that they can later use as a Settlement Agreement that the Court can approve and make an Order of the Court.

What is the difference between mediation and arbitration?

Mediation is a negotiation tool in which the parties agree to present all or select issues in dispute before a third-party neutral, called the mediator. The mediator works with the parties and assists them in settling their issues, but mediators cannot advise either party or make a decision for them. Further, the parties are not bound by the mediated agreement. In addition, there is no requirement that the mediator reach a certain result; thus, it is possible that the parties may settle all of their issues, some of their issues, or none of their issues. Mediators are generally experienced Family Law attorneys or financial experts that are trained and skilled in the mediation process.

In arbitration, the parties agree to submit their issue or issues to one or more third-party neutral parties, called an arbitrator. The arbitrator will listen to each party's side of the case and then, acting as if he or she is a judge, the arbitrator will issue a binding decision called an arbitration



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award. Unlike mediation, an arbitration award is final and may only be appealed in extremely limited situations.

