



# Legal Briefs

From the Fort Knox Legal Assistance Office

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## MICHIGAN DIVORCE LAW

### WHAT ARE THE GROUNDS FOR DIVORCE?

Under Michigan law, the grounds for a divorce may be no fault on the basis of irretrievable breakdown. The defendant may either object or deny that there has been a breakdown. An admission by the defendant for divorce may be considered by the court but is not binding on the court's determination. There is no statutory provision for a period of separation.

### WHAT ARE THE PROCEDURES?

One party must be a resident of Michigan for 180 days prior to commencement of action and must have resided in the county in which the complaint is filed for ten days prior to commencement of the action, unless defendant was born in or is a citizen of another country or parties have a minor child or children. There is no statutory provision for military members. A nonresident defendant may be served outside the state, either personally, by publication or by certified, restricted delivery mail. An answer must be filed within 21 days if served in state; 28 days if served outside the state. A petition for divorce must be verified. There is no waiting period required before remarriage. The court will recognize a decree of foreign jurisdiction where the party against whom the decree was rendered was in court or personally served with process within that jurisdiction.

### WHAT MAIN ISSUES ARE ADDRESSED IN THE DIVORCE DECREE?

The divorce decree issued by the judge will address issues of child custody and visitation, child support, spousal maintenance, and property division. If the parties can agree on these issues, the terms of their agreement can be incorporated into the decree. If the parties cannot agree, the judge will decide these issues as follows:

#### *a. Child Custody and Visitation*

Child custody is determined in accordance with the best interests of the child. The court may grant visitation rights to grandparents when in the best interests of the child.

#### *b. Child Support and Alimony*

The following guidelines concerning child support and alimony may be addressed:

- Alimony may be terminated by the court as of the date the party receiving alimony remarries unless a contrary agreement is specifically stated in the judgment of divorce. Termination of alimony due to the remarriage of the party shall not affect alimony payments that accrue prior to the termination.
- The court may enter an order in a divorce action concerning the custody and care of the minor children of the parties and their suitable maintenance during the pendency of such suit as shall be deemed proper and necessary for the benefit of the children.
- After the divorce decree has been entered, the court may make further decrees as it shall deem just and proper concerning the care, custody and support of the minor children of the parties.
- The court is authorized to order either parent to pay such allowance as it deems proper for the support of a minor child. Support may include medical, dental, and other child health care expenses and educational expenses.
- In unusual circumstances, the court may order support for a child after he or she reaches the age of 18, or until further order of the court.

- In a divorce or separation action, the court may require either party to pay alimony for suitable maintenance of the adverse party, to pay what is necessary to conserve any real or personal property owned by the parties, and to pay any sums necessary to enable the adverse party to carry on the action during its pendency, as well as costs.
- If the estate in the divorce action is insufficient for the support and maintenance of either party and such children of the marriage, the court may further award such part of the real and personal property of either party and such alimony out of the real and personal property to be paid to either party in gross or otherwise.
- A married parent who has a minor child or children and who is separated from his or her spouse, may petition the circuit court, if the noncustodial parent fails to provide necessary shelter, food, care and clothing for them, for an order for support for the custodial parent and minor children. The parent may also complain to circuit court for support for a child or children who are beyond 18 years of age.
- Where alimony or support and education of the child shall be awarded, the amount thereof constitutes a lien on the defendant's real and personal property upon default of payment, and execution may be issued.
- In an action for divorce, separate maintenance, annulment, and separate petitions to modify the judgment, the plaintiff may have the court order the defendant party to pay plaintiff's attorney's fees.
- Upon entering an order for support, the court may require either parent to file a bond in a sum to be fixed by the court, guaranteeing payment of the support ordered in the judgment.
- Each support order entered by the court shall provide that each party keep the office of one friend of the court informed of the name and address of his or her current source of income, and any health care coverage available to him or her as a benefit of employment.

***c. Property Division***

The method of property distribution is equitable distribution. The court may award attorney's fees and costs. Rights to vested retirement benefits shall be considered part of the marital estate subject to award by the court. The right to invested retirement benefits may be considered part of the marital estate subject to award by the court where just and equitable.

**WHAT ARE THE TAX CONSEQUENCES OF DIVORCE?**

Spousal maintenance may be deducted by the payor on the federal income tax return if certain conditions are met. If the maintenance is deducted from the payer, then it will be included in the gross income of the payee. Child support payments are not deductible from the payor's federal income tax return and are not included in the custodial parent's gross income. The custodial parent is entitled to an exemption for the child. The custodial parent can waive this right, in writing, allowing the noncustodial parent to claim the exemption.

A legal assistance attorney cannot represent you in court for a divorce. You must obtain a civilian attorney for filing the petition for divorce and obtaining the divorce decree. A legal assistance attorney can advise you on divorce matters, negotiate with your spouse on alimony, child support and custody, and division of property, and refer you to a civilian attorney. If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at [www.knox.army.mil/center/sja/](http://www.knox.army.mil/center/sja/). Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.