



# Legal Briefs

From the Fort Knox Legal Assistance Office

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## ILLINOIS DIVORCE LAW

### WHAT ARE THE GROUNDS FOR DIVORCE?

Under Illinois law, a divorce may be granted on the basis of the fault of one spouse or on no fault provisions. Under the **“fault” dissolution provisions**, the grounds are: impotency, bigamy, adultery, willful desertion (one year), alcoholism (two years), drug addiction (two years), attempted murder of spouse, physical or mental cruelty, convicted of felony, and infected spouse with venereal disease. On spouse my use the fact that the accusing spouse condoned the activity as a defense against a fault provision, but there may be limitation to this defense.

Under the **“no fault” provisions**, the spouses must have lived separate and apart for a continuous period in excess of two years and irreconcilable differences must have caused the irretrievable breakdown of the marriage. The court must determine that efforts at reconciliation have failed or that future attempts at a reconciliation would be impracticable and not in the best interests of the family. If the spouses have lived separate and apart for a continuous period of more than six months before the entry of the judgment of dissolving the marriage, as evidenced by testimony or affidavits of the spouses, the requirement herein of living separate and apart for a continuous period in excess of two years may be waived upon written stipulation of both spouses filed with the clerk of the court.

### WHAT ARE THE PROCEDURES?

One party must be domiciled in Illinois for 90 days prior to commencement of the divorce action. A member of the Armed Forces stationed in Illinois for 90 days prior to commencement of action satisfies this jurisdictional requirement. Within two days of filing the dissolution petition, the defendant may be personally served outside the state or served by publication in compliance with the Illinois Supreme Court Rules. The Answer must be submitted within 30 days of service of process. The Petition for Dissolution must be verified. There is no waiting period required before remarriage. There is no statutory provision for the recognition of foreign divorces.

### 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. In determining the best interests of the child, the judge considers the wishes of the child’s parents, wishes of the child, interaction of the child with the parents, the child’s adjustment to home, school and community, mental and physical health of all involved, physical violence or threat thereof, and the willingness of each parent to facilitate a close relationship with the other parent and child. The court may grant visitation to grandparents if it is in the best interests of the child. Any person who intentionally violates the custody terms of a court order, or conceals, detains, or removes a child without consent of the lawful custodian is guilty of child abduction. A parent not granted custody of a child is entitled to reasonable visitation rights, unless the possibility of endangering the child’s physical, mental, moral, or emotional health exists.

#### *b. Child Support*

In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage the court may, without regard to marital misconduct, order either or both parents to pay child support after considering the financial resources of the child, the financial resources and needs of the custodial parent, the standard of living the child

would have enjoyed if the marriage had not been dissolved, the physical and emotional condition of the child, the child's educational needs; and the financial resources and needs of the non-custodial parent. The basis of the decision is not limited to the criterion mentioned above. Under family expenses provisions of the Husband and Wife Act, parents are liable for medical expenses of their minor children.

*c. Spousal Maintenance*

The court may require either party to pay temporary maintenance and expenses, including attorney's fees, to the other party. In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage the court may grant a maintenance order (formerly known as permanent alimony) for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct. In determining maintenance the court considers financial resources of party seeking maintenance; time needed for employment training of party seeking maintenance; the standard of living established during the marriage; the duration of the marriage; the age, physical, and emotional condition of both parties; and the ability of the spouse from whom maintenance is being sought to meet his own needs while paying maintenance; and the tax consequences on the parties.

*d. Property Division*

The method of property distribution in Illinois is equitable distribution. This means that a judge, in the absence of an agreement, will divide the marital property in a just and fair manner. Marital property includes all property that was acquired after the husband and wife were married. Either party can present relevant evidence as to what distribution would be fair.

**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 non-custodial parent to claim the exemption.

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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.

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