



# Legal Briefs

From the Fort Knox Legal Assistance Office

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## OHIO DIVORCE LAW

### WHAT ARE THE GROUNDS FOR DIVORCE?

Under Ohio law, a divorce may be granted on the basis of bigamy, willful absence for one year, adultery, extreme cruelty, fraudulent contract, gross neglect, habitual drunkenness, imprisonment, unilateral procurement of divorce outside state, separation for one year and incompatibility. Also, “no-fault” divorce may be granted where both parties agree to dissolution and prepare a separation agreement providing for property division, alimony, and care and custody of children.

### WHAT ARE THE PROCEDURES?

The plaintiff must have been a resident of the state for six months immediately prior to filing the complaint. There is no statutory provision for military members. The nonresident defendant shall be served by certified mail. A court may order personal service outside the state. Service by publication is permitted when the defendant’s address is unavailable by court order. An answer is required within 28 days of service of process. Verification is not required.

### 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 interest of the child. Shared parenting is permitted by agreement of the parties upon submission of a suitable plan to the court.

#### *b. Child Support*

Child support is an allowance in support of a minor child or children. Under the laws of Ohio, the duty of parents to support their children extends to the age of majority or so long as the child attends high school.

#### *c. Spousal Maintenance*

Alimony is an allowance which the court may grant to either spouse, based upon consideration of eleven factors including the relative earning abilities of the parties, their retirement benefits, the duration of the marriage, and the contribution of a spouse and homemaker. A court has no jurisdiction to modify alimony payments unless the parties have agreed (dissolution of marriage cases) or the court has specifically reserved jurisdiction (court ordered divorce cases). The court may award reasonable spousal support to either party. In determining whether spousal support is appropriate and reasonable, and in determining the amount of duration of and terms of payment, the following factors may be considered: income of the parties, earning abilities of the parties, ages and physical and mental health of the parties, duration of the marriage, standard of living during the marriage, education of the parties, assets and liabilities of each party, contribution of each party to the education or earning ability of other party, tax consequences, lost income production capacity of either party that resulted from party’s marital responsibilities. Attorney’s fees may be awarded as additional alimony. Temporary alimony may be awarded by a court during the pendency of an action for divorce.

#### *d. Property Division*

The court will divide property under the principles of equitable distribution. Military retirement pension is an asset which is appropriately classified as “property” in a marital dissolution proceeding.

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

Spousal maintenance (alimony) 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.

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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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