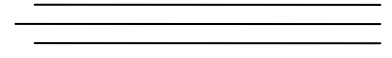


Legal Briefs

From the Fort Knox Legal Assistance Office



INDIANA DIVORCE LAW

WHAT ARE THE GROUNDS FOR DIVORCE?

Under Indiana law, a divorce may be granted on the basis of irretrievable breakdown of the marriage, a felony conviction, impotency at the time of marriage, or incurable insanity lasting two years or longer. A divorce based on irretrievable breakdown of the marriage is known as “no-fault” divorce, and it is not grounded upon wrong-doing or marital misconduct of the husband or wife.

WHAT ARE THE PROCEDURES?

Either party may file a petition for dissolution of marriage. One party must reside (or be stationed) in Indiana for six months and reside (or be stationed) in a county for three months before filing the petition. Petitions are heard by the court after a minimum of 60 days after filing. The parties may be required to appear in court.

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. In determining the best interests of the child, the judge considers the parents’ wishes, the age and sex of the child, the child’s relationship with parents and siblings, the child’s adjustment to home, school and community, the child’s wishes, and the health of all concerned. Non-custodial parents will normally receive reasonable visitation rights. The parties may agree to more specific arrangements concerning visitation and request that these arrangements be incorporated into the divorce decree.

b. Child Support

Child support may be ordered against either parent. Under Indiana law, the duty to support a child normally ceases when a child attains the age of 21 or is emancipated. In awarding child support, the court will consider the financial resources of the custodial parents, the standard of living the child would have enjoyed absent a divorce, the child’s physical and mental condition, the child’s educational needs, and the financial resources and needs of the non-custodial parent.

c. Spousal Maintenance

There is no alimony under Indiana law. Unless the parties agree otherwise, spousal maintenance may be ordered only on a temporary basis and only under certain conditions. This is sometimes called rehabilitative maintenance. Spousal maintenance may be ordered when a spouse is physically or mentally incapacitated, has custody of a child who is physically or mentally incapacitated, or in need of rehabilitative maintenance. In determining whether a spouse is in need of rehabilitative maintenance, the judge considers the education level and earning capacity of each spouse, any interruption in education or training during the course of the marriage as a result of homemaking or child care responsibilities, and the future education and training expenses necessary for a spouse to find appropriate employment. Rehabilitative maintenance may last a maximum of three years.

d. Property Division

In the absence of an agreement, the judge will presume that an equal division of the marital property is just and reasonable. Either party may present relevant evidence to establish that equal division would not be just and reasonable. Marital property includes all property that was acquired after the husband and wife were married. Marital debts are also considered in the division. Under Indiana law, a soldier's military retirement pension is considered marital property if the soldier has reached retirement eligibility. The judge will use a formula which awards the non-military spouse a percentage of the soldier's military pension based upon the number of years they were married while the spouse was in the military. If a soldier has not reached retirement eligibility, the court will consider the military retirement benefits in adjudging a just and reasonable property division.

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/. 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.
