



FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Kansas Separation & Divorce Options



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1. PURPOSE: To provide information about Kansas separation and divorce laws.

a. WHAT ARE MY OPTIONS IF MY SPOUSE AND I ARE NOT GETTING ALONG? Your first option is to seek counseling. Counseling is provided on post by the chaplains and at Family Advocacy. The Emergency Chaplain call number is available 24/7 at (785) 239-4357. To be seen at Family Advocacy, either spouse can call Army Community Service at 239-9435 to make an appointment. The service member can also seek help at the Department of Behavioral Health (DBH) for Irwin Army Community Hospital. DBH can be reached at (785) 239-3627. Talk to your chain of command for the service member to move into the barracks for a limited time for a “cooling off” period, and the rest of the family can remain in government quarters. If marital problems continue, you may seek a divorce, provided you meet certain state requirements (See Paragraph d, below), or you may live separately from your spouse indefinitely.

b. WHAT IS “SEPARATION”? If you voluntarily live apart from your spouse, you are separated. The term “legal separation” refers to a court-imposed separation. A separation agreement is a written legal agreement which may be enforced in a court and may include support provisions that the parties are to follow while living separately.

c. WHAT ARE MY OBLIGATIONS IF MY SPOUSE AND I HAVE SEPARATED? The service member has specific support obligations under Army regulations. Army Regulation 608-99 requires Servicemembers to follow their court orders or agreements for separation. If the married couple does not have a court order or written agreement, then the Army requires Servicemembers to provide a certain amount of support to family members. The amount depends on Servicemember rank. For dual military couples, special rules apply regarding support. See From Counsel: AR 608-99 discussing these issues. While separated, military dependents, including nonmilitary spouses, remain eligible for all military benefits and entitlements.

(1) Medical. During a period of separation, spouses continue to be legally married, and the non-military spouse remains entitled to any military benefits. If the spouse moves out of the local area, he or she should call Tricare to enroll in the new location’s region. For assistance, find your Tricare region’s contact information at <https://www.tricare.mil/>. For out of area care, please contact your TRICARE Regional

Contractor or your current Military Treatment facility (MTF) for guidance on how to properly receive care to help minimize out-of-pocket costs.

(2) Transportation. Divorcing spouses do not have an entitlement to ship household goods at government expense. However, if the member is entitled to ship household goods (e.g., PCS move) the spouse may be able to coordinate a shipment as well. Dependents who are victims may also be entitled to a shipment of household goods in their own right. Contact the passenger service section, (785) 239-3087, for specific entitlements.

(3) Other Benefits. Military dependents may continue to use Commissary and Post Exchange privileges on any military installation while the parties live separate and apart, until no longer a military dependent. Dependents may also seek Legal Assistance at any military installation near where they reside. It does not have to be the installation where the Servicemember is on orders.

(4) Criminal Issues. Military personnel are subject to prosecution for adultery under the UCMJ. Failure to provide support to family members under AR 608-99 is also enforced by commanders and may be investigated and punishable under the UCMJ.

d. HOW DOES DIVORCE WORK? Kansas does not require a period of separation before one of the parties is permitted to file for divorce. If you file a divorce action in Kansas state court, the end result will be that the court will issue an order declaring the marriage terminated, dividing all property of the parties, and setting parenting time, child support and/or spousal maintenance. To file for divorce in Kansas state court, the filing party must have resided in Kansas or have been at Fort Riley for at least 60 days. If children are involved, the waiting period is 6 months. Once the divorce petition has been filed, there is a mandatory 60-day waiting period before the filing party can pursue the divorce decree from the court. After a divorce is final in Kansas, the parties must wait over 30 days before marrying another person. Divorce laws vary by states.

(1) WHO WILL GET CUSTODY? Kansas has a preference for joint legal custody. Normally, the child or children will have a primary residence with one of the parents. The other parent will be granted parental visitation (called "parenting time" in Kansas). Under a joint custody arrangement, both parents are equally responsible for raising the children and making decisions about them. In less common instances, one parent will receive sole custody. The court will ultimately order the custody arrangement that is in the "best interests" of the children. If child custody is an issue and you are filing in either Geary or Riley County district court, you are required to attempt to settle any issues through mandatory mediation prior to the final divorce hearing. The court will presume that any parenting plan agreed to during mediation is in the children's best interest.

(2) WHAT ABOUT CHILD SUPPORT? The court can and will set an amount for child support based upon who has primary custody and the parties' respective incomes. These amounts are contained in child support guidelines. The law does not allow the parties to choose not to have the child supported. For help preparing a child support worksheet, contact Kansas Legal Services (800) 723-6953. The court may award

spousal maintenance (alimony)—based on a fair, just, and equitable standard—to either party based on a number of factors.

(3) WHAT ABOUT OUR PROPERTY? Any property acquired during the marriage is subject to division by the court. The court can divide this property, and it need not be split equally. Kansas law merely requires that the property division be just and reasonable. If a party inherited property or kept property completely separate from the marriage that they owned prior to the marriage, they generally may be allowed to retain the property that was not acquired during the marriage.

(4) WHAT ABOUT OUR DEBTS? The court can also divide the parties' debts. If both spouses co-signed for a debt, both spouses will be held to "joint and several liability" for the debt. "Joint and several liability" means that each spouse is responsible for the entire debt, but also the spouses are jointly responsible for the debt. Often, one spouse is made responsible for the entire amount of the debt. This is generally offset by an "equalization" payment; that is, the spouse who pays the debt receives more property in the settlement than the spouse who is left free from the debt. Creditors, however, can still pursue either spouse on joint debts that become delinquent, on the basis of the "joint and several liability". Debt incurred prior to the marriage belongs to the person in whose name the debts were acquired.

(5) WHAT ABOUT MILITARY BENEFITS? After the divorce is finalized, the children will retain some military benefits, including PX and health care. The non-military spouse will not usually retain any military benefits. However, if the marriage lasted at least twenty years, the Soldier served at least twenty years on active duty, and twenty years of active duty military service overlap with twenty years of marriage, then the spouse can retain full military benefits. For more information, see From Counsel: Uniformed Services Former Spouses' Protection Act. Any children will need to obtain an ID card to be able to receive their benefits. Check with the ID Card Section (Building 212, phone number 239-3654) to inquire about the procedure to obtain an ID card.

(6) CAN I SUE FOR DIVORCE IN A STATE OTHER THAN KANSAS? That depends. Each state has its own divorce laws regarding who can or cannot file for divorce there. Before trying to file in another state, you should check that state's divorce laws. Be aware that some states may have longer residency requirements than Kansas does. Also be aware that if children of the marriage have been residing outside Kansas for 6 months or more, it will be necessary to file for divorce where they are located.

(7) IF MY SPOUSE SUES ME FOR DIVORCE, DO I NEED AN ATTORNEY? You are not required to hire a civilian attorney, and it may be tempting to avoid having to pay an attorney. If your spouse is represented and you do appear in court without an attorney, however, you will be distinctly disadvantaged, so be prepared to lose every issue. Appearing without an attorney will probably hurt you badly in the long run.

e. WHAT SERVICES DOES THE LEGAL ASSISTANCE OFFICE PROVIDE? We have a briefing available with more information regarding divorce, on our Fort Riley Legal Assistance FaceBook page. If you choose to meet privately with an attorney of

our office, we can provide you with legal advice about your divorce and separation, referrals to civilian attorneys, and prepare a voluntary separation agreement for you. ***Except for extremely limited circumstances, our office cannot represent you in the divorce. You will need a civilian attorney who can represent you in Kansas state court.*** The Legal Assistance office can only see whichever spouse seeks advice from our office first. Appointments are made by calling (785) 239-3117.

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