

## **Divorce & Property Division (General)**

Q. Can a military attorney obtain a divorce in North Carolina for me?

A. No. You will need to obtain a private attorney to file for divorce and get a judgment of divorce in North Carolina. While the state laws do not specifically require that you have an attorney, it is sometimes very difficult to get the judge to grant you a divorce if you are not represented by a civilian lawyer when you go to court.

Q. Who pays for my lawyer?

A. As a general rule, you must retain and pay for your own attorney in a divorce case. There is no law allowing the judge to require your spouse to pay your lawyer's fees in a divorce action in North Carolina.

Q. What if my spouse won't give me a divorce?

A. The judge is the person who grants a divorce, not your spouse. Once you have filed the divorce complaint at the courthouse, your attorney will serve a copy of the summons and complaint on your spouse, by sheriff or by certified mail. If no answer is filed within thirty days after service, you will probably be granted a divorce by default. If your spouse contests the divorce action by filing an answer denying one or more of the statements in your complaint, a hearing will be set during which the two of you can testify and the judge can decide what the truth is.

Q. Is my divorce final when the judge signs the judgment?

A. Yes. There is no waiting period after entry of judgment.

Q. Can I resume the use of my maiden name at the time of divorce?

A. Yes. You may ask for the right to resume your maiden name in the divorce papers your lawyer files for you. This is routinely granted by the judge. Even if you do not ask for your maiden name back at the time of the divorce, you can file for resumption of your maiden name after the divorce is granted.

Q. Can I use "Mental Cruelty" or adultery as a ground for divorce here?

A. No. In North Carolina the only ground for divorce that is ever used is separation for over one year. The other ground, three years' incurable insanity, is almost never used. Most divorces granted on separation grounds are uncontested. This is essentially a "no-fault" divorce with no proof necessary as to who left whom or what reason was involved.

Q. If my home is another state, but I am stationed in North Carolina, can I file for divorce in this state?

A. North Carolina law states that you may file divorce here if you have been living in North Carolina for at least six (6) months prior to the date of filing. This includes residence here because of military orders. You may, of course, wish to inquire whether you can file for divorce in your home state, and for this you should see a legal assistance attorney. He or she can discuss with you the laws of your home state as to procedures, grounds, cost of filing and so on.

Q. Do I have to have a "Legal Separation" to get a divorce here, or do I have to "File for Separation" in North Carolina?

A. All you need to do to obtain a divorce in North Carolina is live separate and apart from your spouse for more than one year with the intention that the separation be permanent. You will testify to this in divorce court. You do not need to show the judge a copy of a separation agreement, since such a document doesn't necessarily prove that you have indeed separated from your spouse. There is no such thing as "filing for separation" in North Carolina, although there are certain cases in which a judge can grant a "divorce from bed and board," or judge-approved separation, which allows you to live separate and apart from your partner.

Q. Can the judge in North Carolina order a property division at the time of divorce?

A. After the divorce has been granted, the judge can divide the marital property of the couple if the court has been requested by either or both of them to do so. The court would not have the power to divide the marital property if neither party asked the court to do so before the divorce judgment was entered or if the parties had already executed a separation agreement that fairly divided their property.

Q. Is there some property that the judge cannot divide?

A. The judge in North Carolina cannot divide separate property and there are several kinds of separate property. Property acquired by either party before the marriage cannot be divided. Neither can property acquired by either party by gift or by inheritance, even if it is later traded or exchanged for another item. Business and professional licenses are also separate property. And finally nonvested pension rights are separate property that cannot be divided by the courts in this state. For more on pensions and retirement rights, see our TAKE-1 on that subject.

Q. How will the judge divide our property?

A. There is a strong presumption in North Carolina law that the fairest split would be an even division of all the marital property, regardless of who has title to the property, who paid for it, and so on. Under certain circumstances, however, the judge might decide that a fifty-fifty split is not fair to one or both of the parties. The statutes have a list of factors that the judge may then use to determine an unequal division of property between the couple. The judge will consider such matters as: monetary and homemaker contributions to the marriage by each party; tax consequences of an unequal division; efforts of a spouse to preserve and increase the value of marital property; attempts by a spouse to squander, waste or dissipate assets; the health of each party; and the financial situation of each spouse.

Q. Can I get the judge to order my spouse to pay my attorney's fees in a property division case?

A. The courts in North Carolina can't award attorney's fees in property division cases. You will have to retain and pay for your own attorney to represent you, and you may also have to pay for an accountant or an appraiser if expert witness testimony is necessary in your case. You can, however, ask the court to allow you an "advance" or interim allocation of marital property pending a final hearing, and this could be used by you to pay the above fees.

Q. What if I have other questions?

A. Please set up an appointment to see one of our legal assistance attorneys. They are here to help you.