

DIVORCE IN LOUISIANA

Q. What are Grounds for Divorce?

A. Under Louisiana law, you must live apart from your spouse for a period of time before a judge will grant a divorce:

- 180 days if there are no children of the marriage (or if there are children and a court finds evidence of abuse), or
- 365 days if there are children of the marriage.

The only other way to get divorced in Louisiana is if your spouse commits adultery (provable by corroborated testimony at trial) or if your spouse is convicted of a felony and sentenced to imprisonment at hard labor or death. If neither of these applies to you, you must live separate and apart from your spouse for the appropriate time period.

Q. I don't want a divorce; I just want a legal separation. Can Legal Assistance help?

A. There is no "legal separation" in Louisiana. You are married until you are divorced. Legal Assistance can help you draft a separation agreement, which is a contract voluntarily between a husband and a wife where they agree to resolve a division of property, debts, custody, and support when they separate from each other. A separation agreement is not a court ordered legal separation.

Q. What is the procedure for filing for divorce?

A. In order to file for divorce in Louisiana, you or your spouse must have lived in the state for the preceding six months. You may be able to file sooner if you have "domicile" in Louisiana (if it is your Home of Record, for instance). There are two ways of obtaining a divorce based on living separate and apart. You can either file for divorce, then live apart for the requisite time period; or live separate and apart for the time period and then file for divorce.

Q. How long does it take to get a divorce in Louisiana?

A. It depends on several things: the current court docket in the parish you are filing in, the schedule of your divorce attorney, or how long it takes to serve your spouse with the divorce papers. If your spouse will waive his/her right to service, all legal delays and notice of trial, you could possibly get your divorce quicker. If you don't know your spouse's address, it will take longer to get your divorce. A divorce judgment does not become final until the 30 day period to appeal the judgment has run. You should not remarry until you are sure that your divorce judgment is final.

Q. What happens to our property when we get a divorce?

A. Unless you entered into a valid separate property agreement before getting married, property that either of you got during the marriage is called community property. This may include land, buildings, vehicles, bank accounts, military or civilian retirements or pensions, furniture, personal belongings and debts. A judge divides the community property after one of you files a petition for dividing ("partition of") the community property.

Separate property is anything owned by you or your spouse before the marriage or that either of you got after the marriage from inheritance or a personal cause of action. Separate property remains the property of you or your spouse. If separate property is mixed in ("commingled") with community property, or gains value (is "enriched") from the use of either community property or the separate property of the other spouse, the court can consider a claim for reimbursement.

An action for partition of the community is very complex. Before you file for divorce you should talk with a lawyer about time periods and other important issues about partition of community property.

Q. Can I get alimony in Louisiana?

- A. Alimony in Louisiana is called spousal support. There are two types of spousal support:
- Interim spousal support. This is based on your needs, the ability of your spouse to pay, and the standard of living enjoyed during the marriage. Interim support ends upon divorce unless there is a pending claim for final spousal support. If a claim for final spousal support is pending at the time of divorce, interim spousal support ends with the final support judgment or 180 days after the divorce, whichever happens first.
 - Final spousal support. You can only get this if you were free from fault before filing for divorce. A judge will look at you and your spouse's needs, income, means, health and earning capacity, how long your marriage lasted, and other things.

These issues are not simple. You should talk with a lawyer about spousal support before you file for divorce. You may lose your right to get spousal support if you don't file for it in the time the law allows. In the absence of a court order or a written agreement, Soldiers will be required to provide support for their dependants according to AR 608-99.

Q. Can I get part of my spouse's military retirement or civilian pension?

- A. Maybe. For military retirement it generally depends on how long you were married, how long your spouse was on active duty status, the state in which you are filing for divorce, and your Soldier's home state. In Louisiana, military retirement or civilian pensions may be divided between spouses in an action to partition property. But you need to discuss these issues with a lawyer before filing for a divorce.

Q. What can I do if my spouse is hurting or abusing me? Do I have to get a divorce to get help?

- A. Louisiana has laws that protect victims of family violence whether they are getting a divorce from their abusive partner or not. The Victim Advocate at Army Community Services can help; the number for the Fort Polk Victim Advocate is (337) 531-6333/1938. The Victim Advocate can help you apply for a protective order to protect you and/or the children. A women's shelter, district attorney's office, court clerk's office and/or a legal aid office can also help you get a protective order.

For Further Help or Questions:

For appointments concerning this issue and other personal legal matters, please call the Fort Polk Legal Assistance Office at (337) 531-2580 for an appointment. Hours of operation are Monday through Friday, 0800 – 1130 and 1230 – 1630. We are located in Building 1454 on Alabama Avenue, next to the Showboat Theater.