

COLORADO DIVORCE



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The focus of this briefing paper is on Colorado law. While much of this information is generally applicable, if you are contemplating divorce in another state you should consult an attorney from that state.

The Basics About Colorado Divorce

- At least one spouse must have been a resident of Colorado for 90 days prior to filing for divorce.
- The divorce action must be heard in the judicial district where both spouses live, where the respondent lives, or where your house is or was.
- The cost for filing for divorce is \$230.
- A divorce is a legal proceeding that is initiated by filing a petition with the clerk of the district court. If you file the petition then you are known as the **petitioner**, and your spouse is the **respondent**. If you file together, you are both **co-petitioners**.

Alternatives to Divorce

Under the best of circumstances, divorce is an extremely difficult, painful, and costly process. Mediation may be a viable alternative to divorce. Resources for mediation include:

- Base Chaplain
- Your personal clergy
- Family Advocacy Office
- Public Library—numerous books are available which cover marriage counseling
- Online Research

Forms

You will need to obtain a divorce packet. The specific packet you need can be found at this website:

https://www.courts.state.co.us/Self_Help/divorce/forms/index.cfm

The first document you must give the court is the **petition**. This is your formal request to have the court dissolve your marriage. After you file the petition you must give your spouse formal notice that you have filed and you must prove to the court that you have given notice to you spouse. Proof can be provided in one of the following ways:

- You and your spouse may each sign as co-petitioners; or
- Your spouse may accept service by signing the Waiver & Acceptance of Service form on the back of the summons; or
- The petition and summons can be delivered to your spouse by a sheriff's officer, private process server, or any other person over the age of 18, not a party to the court action. You

- cannot serve the petition and summons on your spouse. The person who serves the papers must sign the Return of Service and return it to you. You must file it with the court; or
- If you cannot find your spouse, you may file a motion with the court to have "Service by Publication". The divorce packet contains the necessary forms to accomplish this. If your request is granted the clerk will publish the notice in a newspaper.
- The summons gives the Respondent 20 days to file a response if they are personally served within the state, or 30 days if served outside the state.
- For a fee, the Respondent may then file a "response" with the clerk of the court.
- After the summons is filed there is a 90 day "cooling off" period, during which time a final decree cannot be entered. This cooling off period applies regardless of how long the parties may have been informally separated or living apart.

Temporary Orders

Temporary orders allow you to keep things stable while you are waiting to get a final divorce. Temporary orders are available for child support, spousal support, allocation of parental responsibilities, parenting time, payment of debt, and maintenance of property.

Financial Affidavit

Each party will have to complete and file a Financial Affidavit. The court will not consider your agreement or enter your divorce decree without a Financial Affidavit. Each party will list their assets, income, and debts. The financial affidavit is a very important document, take your time and fill it out carefully and completely.

The first task in completing your financial affidavit will be to distinguish **separate** from **marital** property. Separate property is anything you or your spouse brought into the marriage by gifts or inheritance and subsequently maintained separately from the rest of the marital property. Marital property is anything acquired during the marriage, regardless of who paid for it, or whose name is on it. **Marital debt** includes any liability that was incurred during the marriage.

For purposes of distribution, military retirement is treated as property, regardless of the duration of marriage.

Military Benefits

A non-military spouse will be automatically entitled to military benefits if they meet the “20/20/20” rule. This rule requires that the parties be married for at least 20 years, that there have been at least 20 years of creditable military service, and that there be at least 20 years of overlap between the service and the marriage.

Spousal Maintenance

In Colorado, what is more commonly known as alimony is now called **spousal maintenance**. There is no specific formula for determining how much maintenance the court will award. Factors that may be considered by the court include: the duration of the marriage, each party’s need, the standard of living enjoyed during the marriage, each party’s ability to pay, the age and health of each party, and each party’s relative contribution to the marriage.

Child Custody & Support

Colorado has done away with the notion that either parent has “custody”. Rather, Colorado courts now divide the parenting responsibilities between the two parties. You must submit a parenting plan to the court. If you and your spouse cannot agree on a plan, submit the plan you want to the court. In the absence of a parenting plan submitted by each party, the court will decide the matter for that party. The court’s plan may not be what you want, but if you do not submit a parenting plan you won’t have any choice in the matter.

The amount that you or your spouse will have to pay in child support is governed by statute. An attorney with a specialty in Family law, can tell you within a reasonable range, what a judge would be likely to award in child support.

Once a court order has been entered, if your spouse fails to make the court-ordered payments you may be able to have the ordered amount deducted directly from their military paycheck. Contact your legal office for help in this matter.

Absent a court order, the military still requires that a member provide “adequate support” to their dependents. Failure to provide adequate support may subject a member to disciplinary or administrative action.

Severing Finances

During the course of a marriage, the finances of each individual become very intertwined. As soon as possible, it is advisable to begin severing those finances.

- Contact credit card companies and have your joint accounts closed, with new accounts created in each individuals name.
- If you and your spouse can agree, divide checking and other banking accounts, close the accounts and open new, individual accounts.

- If your house or cars are jointly owned you should have a new title issued in the name of the individual who will keep the property, assuming you can agree on these issues. To have a new title issued for a house, contact the your title company and they will assist you in obtaining a **quit claim** deed. For a new car title contact the Department of Motor Vehicles.

Remember, property or accounts that are jointly owned could become an issue in bankruptcy. For example, if you and your spouse agree that you will keep the car, but your spouse’s

name remains on the title, if your spouse later declares bankruptcy, those creditors could still claim the car is one of your spouse’s assets.

Separation Agreement

In your packet is a Separation Agreement form. If you and your spouse agree about all the issues of support, division of property and debts, you will file a completed agreement, signed by both of you. If you don’t agree, or agree on only some of the issues, you should fill it out to show the court what you would like the order to look like. A separation agreement must contain the following information: 1) property division, 2) debt division, 3) spousal support/maintenance (if appropriate), and 4) how the costs of the divorce are to be divided.

Permanent Orders and Decree

Permanent orders are entered by a judge or magistrate. Once you have completed all the required steps, shown proof of residency, and at least 90 days have elapsed since the service was completed, you may request that the judge enter a divorce decree. If you cannot agree on the important aspects of your divorce: children, property, support; you will have to have a court hearing to get a divorce.

Final Papers Checklist

- Financial affidavits for each party
- Notice of hearing
- Affidavit for decree without appearance
- Separation agreement
- Parenting plan
- Decree
- Support Order

Other Resources

[Colorado Bar Association](https://www.cobar.org)

<https://www.cobar.org/Licensed-Lawyer>

Attorney referrals

The information provided in this document is meant for the sole use of Active Duty service members, retirees, and their families. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the facts and circumstances in each case. Laws can vary across states, services, and civilian jurisdictions. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.