



Family Law: Divorce



Divorce in New York

In New York State, you cannot get a divorce in Family Court. However, you may need Family Court to address custody, visitation, and/or child support issues before you formally file for divorce.¹

Types of Divorce

When filing for divorce in New York, your divorce will be considered either uncontested, or contested. Your divorce is considered uncontested if you and your spouse can agree on every aspect of your divorce (i.e. child custody, property division). If your divorce is considered uncontested, you may choose to file yourself. The New York Courts' website, nycourts.gov, has both an online DIY filing program and a paper uncontested divorce packet that you may use. Legal assistance attorneys can give you basic information about this process, but you must file yourself.

If you and your spouse cannot agree on issues like child custody, finances, property division, or on whether to get a divorce in the first place, your divorce will be considered contested. If your divorce is contested, you will need to seek a civilian attorney to aid you with your divorce proceedings.

I think my divorce is uncontested, now what?

Ensure you Meet the Baseline Requirements

Even an uncontested divorce has certain residency and grounds for divorce requirements. The residency requirements for divorce in New York State require that:

- (1) You or your spouse have been living in New York State continuously for at least two years prior to filing for divorce; or
- (2) You or your spouse have been living in New York State continuously for at least one year before filing for divorce and either (a) you were married in New York State, (b) you lived in New York state as a married couple, or (c) the ground for your divorce happened in New York State; or
- (3) Both you and your spouse are residents of New York State on the day you file for divorce and the grounds for your divorce happened in New York State.

If you meet at least one of the three residency requirements, then you must also have one of the seven grounds, or legally acceptable reasons, for getting a divorce.

- (1) Irretrievable breakdown in marriage for a period of at least 6 months prior to filing. This ground is the most common, and you have heard it referred to as a "no-fault divorce." To be able to file using this as the ground for your divorce, all issues between you and your spouse must be resolved.
- (2) Cruel and inhuman treatment. To file under this ground, you must be able to identify specific acts of cruelty that have occurred in the last 5 years of your marriage. Acts of

¹ For assistance with other Family Law issues see <https://www.nycourts.gov/CourtHelp/Family/index.shtml>.

cruelty require you to show that you were physically or mentally in danger, and that it is unsafe or improper for you to continue living with your spouse.

- (3) Abandonment. Abandonment occurs if your spouse has either (1) physically left the home without any intention of returning, or (2) where the spouse refuses to have sex with the other spouse for a period of one year or more.
- (4) Imprisonment. If you spouse was imprisoned after your marriage for a period of three or more years in a row, this can be a ground for divorce. You can claim this ground while your spouse is imprisoned, or for up to 5 years after your spouse has been released from prison.
- (5) Adultery. You must be able to show that your spouse committed adultery during your marriage with evidence from some other source outside of you and your spouse.
- (6) Divorce after a legal separation agreement. If you and your spouse sign a valid separation agreement and live apart for one year you may claim this ground for divorce. Note that there are certain legal requirements that make a separation agreement valid in the State of New York.
- (7) Divorce after a judgement of separation. This ground is extremely uncommon, but requires the Supreme Court to draw up a judgement of separation and for you and your spouse to live apart for one year.

Filing for Divorce

If you have met both the residency and grounds for divorce requirements, you must complete the required divorce paperwork. The New York Courts' website provides both hard copy and interactive divorce paperwork aids.² After you have completed the required paperwork, you can file for divorce with your County Clerk's Office. The filing fee is \$210, and your case will be assigned an index number, or case number. In general, you should expect to pay at least \$335 total for court and filing fees. However, expect to pay additional costs for process server fees and other requirements throughout your divorce. If you are experiencing extreme financial hardship, your county clerk may be able to assist you in receiving a filing fee and court fee waiver.

Serve your Spouse

Once you have filed with your county clerk, your spouse must receive the filing papers called either the "Summons with Notice" or "Summons and Complaint" in person. There are some alternatives to personal service, but generally in-person service is required in New York State. If you believe that your spouse will not contest any aspect of your divorce, you can deliver the divorce papers yourself.³ If delivering the divorce papers yourself, your spouse will have to sign and notarize the "Affidavit of Defendant," and deliver it back to you. If you believe your spouse

² See <https://www.nycourts.gov/courthelp/diy/divorce.shtml> for the Uncontested DIY Divorce program.

³ Required papers include: photocopy of the Summon with Notice or Summons and Complaint; photocopy of the Notice of Automatic Order; photocopy of the Notice Concerning Continuation of Health Care Coverage; photocopy of the Sworn Statement of Removal of Barriers to Remarriage (if married in religious ceremony); and the Affidavit of Defendant (your spouse is the Defendant if you have filed). Ensure that the index number you were given is at the top of each document.

will contest aspects of your divorce, then you must have someone else serve your spouse the divorce papers.⁴

Your Spouse's Response

After your spouse has been served with the divorce papers they must respond within 20 days if in New York State, or within 30 days if outside of New York State. There are three ways that your spouse could respond.

- (1) Your spouse could sign and return the "Affidavit of the Defendant" to you, making your divorce uncontested. You can then file the rest of your divorce papers and put your case on the court's calendar immediately.
- (2) Your spouse files a Notice of Appearance, meaning your divorce is now contested, and you should seek the assistance of a divorce lawyer as soon as possible.
- (3) Your spouse does not return the "Affidavit of the Defendant" or a "Notice of Appearance" within the required time period. This means that your spouse has defaulted, and your case is now uncontested. You can schedule your case on the court's calendar 40 days after your spouse was originally served the divorce papers.

File Remaining Divorce Papers

Prior to receiving a calendar date for your case, you must prepare and file the remaining divorce papers. The New York Courts' website provides these forms for you.⁵ Once you have completed the required forms, you will file these papers with the County Clerk's or Supreme Court Clerk's Office. Check with your Clerk's Office to determine if online filing is available.

A Judgment is Entered

Once you have filed all of the required papers and the court determine there are no errors, a judge will sign a Judgment. You will be contacted by either your County Clerk's Office or the Supreme Court Office that your Judgement is ready for pick-up. Once you pick-up your Judgement, you must file this Judgement with the County Clerk's Office. When you file it with the County Clerk, your Judgement will be officially recorded. It is wise to get a certified copy of your Judgment at this time, and retain it for your records.

File and Record the Judgement and Serve it on Your Former Spouse

After you have filed your Judgment with the County Clerk, and it has been properly recorded, you must fill out a "Notice of Entry" and sign it in front of a notary. Once you have completed the "Notice of Entry", you must have someone serve the Judgment and the "Notice of

⁴ Divorce papers must be served within 120 days of filing by a person 18 years or older. If the papers are being served within New York State, the person who is serving must be a New York State resident. If the papers are being served outside of New York State, the person can be either a New York State resident, or be able to serve papers according to the law of that state. The person serving your spouse must fill out the "Affidavit of Service" and return it back to you signed and notarized.

⁵ See <https://www.nycourts.gov/courthelp/Family/divorceCalendaring.shtml> under the heading "What to File" for links to the DIY Uncontested Divorce Program, or the paper Uncontested Divorce Packet.

Entry" on your former spouse. Your former spouse must complete another "Affidavit of Service" to show that they were properly served the Judgment and "Notice of Entry."