

Divorce in New Hampshire

A Place to Start - going to Court without an Attorney

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ABOUT THIS HANDBOOK

This booklet is designed to help people who who are considering a divorce, and might not have have an attorney to help.

A person who goes to Court without a lawyer is said to be *pro se*. There are many reasons to go to Court without a lawyer, but anyone who does is taking certain risks.

Married people and parents have rights that will be affected forever by a divorce order. Just because you can complete the forms necessary to get the process started DOES NOT MEAN that you understand the process or the issues that will face you.

Before filing a divorce on your own, or responding to a case filed by your spouse, we urge you to consult with an attorney. If there is no way for you to hire an attorney, call Legal Advice & Referral Center at 1-800-639-5290. LARC can help you find sources of assistance, or provide you with advice and counsel over the telephone. In some cases LARC can refer your case to the Pro Bono Program of the New Hampshire Bar Association. Pro Bono tries to get volunteer attorneys to represent low income people for free. However, once your case is filed it is MUCH harder for Pro Bono to convince a volunteer to help. If you want to be considered for this service, please call LARC before you file.

If you must proceed without an attorney, we hope that this handbook will help. Read it carefully before you do anything else.

If you choose to use this book as an aid to appearing pro se, you do so at your own risk. We have tried to make this handbook as useful as possible, but it is not a substitute for legal advice or representation. We cannot be held responsible for your use of this handbook.

Avoid hasty decisions! No matter how anxious you are to be done with your marriage, the long term effects of the divorce must be carefully considered.

GETTING STARTED

These materials deal with Filing a Petition for Divorce. If you are not married to your child(ren)'s other parent please read the material on Parenting Petitions. This document can give you useful information about the process, but the forms have different names and it might be confusing.

If you are filing for Divorce and have children, PLEASE review our Parenting materials. The Court will need to make Parenting Orders in the Divorce, and the materials will explain how to draft the documents that will be required.

FILING FOR DIVORCE

THINGS TO CONSIDER BEFORE YOU FILE:

It is a good idea, before you fill out any form, or file anything with the Court, to think through all of the issues that the Court will need to decide when it makes an order for Divorce. The following is a list to get you started, many of these may not apply to your situation. You also may think of other issues that you will need the Court to consider.

- 1) What is the reason for the breakdown of your marriage?
 - a) Is there "cause", like adultery or extreme cruelty?
 - b) Did your marriage break down because of "irreconcilable differences" – which is the term used for New Hampshire's version of "no fault" divorce.
- 2) Are there children involved in this family? If so, the Court will need to consider what is **in the best interest of the children** and make orders regarding:
 - a) Decision-making Responsibility
 - b) Residential Responsibility
 - c) Whether to not a Guardian ad Litem is necessary to communicate the best interests of the child to the Court (and in such case who should pay what portion of the GAL fees)
 - d) Whether restrictions on the child(ren)'s future relocation is necessary or appropriate
 - e) Child support
- 3) Do you and/or the other party own any real estate? If so, how should it be divided and who should bear what kind of financial responsibility?

- 4) Do you and/or the other party own any other personal property, household furnishings, or motor vehicles? If so, how should they be divided, and how should any financial responsibility be assigned?
- 5) Do you and/or the other party own any bank accounts, stocks, bonds or investments, business interests, or any other intangible property? If so, how should they be divided?
- 6) Is health insurance coverage for either party going to be a problem? What kind of orders might the Court make regarding health insurance?

If this list seems intimidating, or you are just not sure how to deal with all of these issues, then you should think carefully before you decide to file without assistance from an attorney. If you go to Court without an attorney, you will still be expected to follow the rules. If things turn out badly for you, you cannot ask the Court to start over simply because you did not have an attorney.

WHO CAN FILE:

Any person can file for divorce in New Hampshire IF the courts of this state have jurisdiction over the parties and the subject matter. The Court only has jurisdiction over the parties if:

- Both parties live in NH when the divorce starts; or
- The Respondent lives out of NH, but the Petitioner has lived in NH for more than one year before filing; or
- The Respondent lives out of state, the Petitioner has lived in NH for less than one year, but the Respondent is actually served in NH; or
- The Respondent lives out of NH, the Petitioner has lived in NH for less than one year, but the parties file a joint petition or the Respondent files a waiver of service.

After the case has been properly filed it can continue even if one or both parties move out of state.

In New Hampshire the Superior and Family Courts have subject matter jurisdiction over divorces and unwed custody cases. Family Division Courts are being phased in to the different counties. Check with your county's Superior Court to find out if there is a Family Division Court in your area.

WHERE TO FILE:

Where to file your petition is controlled by the rules of venue. In general, you file in the County where you live. If your county has the Family Division there may be more than one court location. A telephone call will usually clarify where to file.

HOW TO FILE

“Filing” is a term that means to submit a document to the Court. Documents are filed at the Clerk of Court’s office in the Courthouse. To file your Petition you must submit to the Clerk’s office the original signed and notarized Petition along with 2 copies. You will also need to pay a filing fee. If you are low-income, you can file a Motion to Waive Filing and Service Fees. Ask the Clerk’s office for such a Motion and they should be able to give you the form and a Financial Affidavit. The Financial Affidavit will require that you detail your finances, and swear that the information is true and complete. Once the Motion to Waive fees and Financial Affidavit are filed with the Court the Judge will decide whether or not to allow you to proceed without paying the filing fee. Then your Petition can be filed.

WHAT TO FILE

The Petition for Divorce

Whether you are filing an individual petition, or you and your spouse are filing a joint petition, the first step is preparing the petition. These instructions will cover filing an individual petition.

The Superior Courts and Family Division Courts have fill-in the blank forms that you can use to get started. The form is fairly straight forward, but you must remember that it is legal document. Anything you file with the Court will be binding upon you – you are responsible for everything you tell to a Court, and you will have to sign the form and say that everything in it is true.

Just because it is easy for file a Petition does not mean that the legal process itself is not complex. Carefully consider your circumstances before filing on your own.

Heading: the heading is the part of the document that says this is a New Hampshire Court document. In our example it says “State of New Hampshire” and “Judicial Branch”, and it has the Court system website address.

Caption: the next item on any pleading is the caption. This tells name of the Court hearing the case, the name of the case and the docket number. When filing a petition, you will not have a docket number yet, so leave this blank. The name of the case

usually will look something like: “In the Matter of Joe Smith and Mary Smith”. The person who files the petition puts his or her name first.

Allegations: the next part of any pleading is the allegations. This is the part of the document where the facts necessary for the Court to hear the case are set out. In divorces, the allegations are facts like: who the parties are, the names of their children, whether or not they own real estate, etc. In a divorce case, the easiest way to get the case started is to use one of the Court’s pre-printed forms, like the example which follows. Filling out the form carefully and completely will provide the Court with the facts necessary to get started.

Requests for relief: this is the part of the document where you ask the Court to issue certain orders. In a divorce there can be temporary orders and final orders. Almost everything the Court can order in a final order can also be ordered on a temporary basis (except the divorce and privilege of remarrying). Again, filling out the Court’s preprinted form should insure that you ask for all the relief to which you might be entitled.

Signatures: you must sign your petition and have your signature notarized. This is how the Court knows that everything in the petition is true.

The Personal Data Sheet

In addition to the Petition for Divorce, you must also file a Personal Data Sheet. This is a fairly straight forward form, designed to give the Court basic information about the parties to this case.

WHAT HAPPENS AFTER YOUR PETITION IS FILED?

After your Petition is filed (how long after depends upon the Court, but you should expect to wait several weeks) you will receive in the mail 3 stapled groups of paper. One will be marked “copy” and one will be marked “service”, the third is the original. The Copy is for your records. The original and the one marked Service must be **served** on the other party. All of the packets will have **Orders of Notice**.

Orders of Notice are Court Orders that apply to you, and after service, to the other party. READ THE ORDERS OF NOTICE CAREFULLY AND THOROUGHLY. FAILURE TO COMPLY WITH THESE ORDERS COULD RESULT IN UNFORTUNATE CONSEQUENCES. If you are not sure what they mean you should get advice immediately.

The Orders of Notice will contain instructions for properly serving the other party. **Service** is the formal term which means that the other party was properly notified of the proceedings.

After you have complied with the instructions from the Court regarding service you must file the **Return of Service** with the Court. This way the Court knows that the other party was given proper notice, and the Court's future orders will be binding on the other party.

If you have the papers served on the other party by the Sheriff (one acceptable way of completing service), the Sheriff will return to you one copy of the papers with the **return of service** attached. You should make a copy and then file the whole package with the Court - now the Court knows that the other party was properly notified and Orders will be binding. If the Court does not receive a return of service from you, you might not be able to have your case heard.

SCHEDULING:

The kind of Court you filed in will affect the way that your case gets scheduled.

In the **Superior Court**, if you asked the Court to make "Temporary Orders" – Orders governing the parties until the case is final – then the Orders of Notice will include the time and date of the Temporary Hearing. If there is no need for Temporary Orders, then the scheduling notice will probably just include the time and date of the Structuring Conference.

In the **Family Division** your Orders of Notice are unlikely to include any hearing notice. Instead, after service is completed, the parties are sent a First Appearance notice.

Structuring Conferences and First Appearances are very different, but they do accomplish some of the same things. Both provide the Court with the opportunity to evaluate how the case is likely to progress. In either case, it is a good idea to take your calendar in case the judge wants to schedule the next events in the case.

Your case is now filed, and you have a Notice which tells you what your next steps are. **Make sure you read everything you receive from the Court very carefully. The Court now has your address, and anything it sends to that address it will expect you to read and understand. Don't let your rights be affected by not giving this matter the attention it deserves.**

Child Impact Seminar

Attached to the Orders of Notice will be information about the Child Impact Seminar. Both parties in any case involving minor children are **required** to attend a seminar. This seminar is intended to educate parents about how children are affected by divorce. The seminar takes into consideration the different effects divorce has on children depending on their ages. This seminar is extremely useful for parents who are splitting up. It can help them minimize the negative outcomes for children whose parents are not together.

The seminar is **MANDATORY**. You do not have any choice but to attend. If you do not, you will be called into Court to explain, and may be held in contempt. Failing to comply with Court orders is not recommended, and could negatively impact on the outcome of your case. In the Family Division, a parent who does not attend may be denied the opportunity to participate in future actions as well. Failing to comply with Court orders is not recommended, and could negatively impact on the outcome of your case.

BASICS OF DIVORCE LAW

This section is designed to explain certain principles of divorce law. These principles will affect the way cases are handled in the Court, and the way that Judges make decisions. Also, these principles will help you understand the attorney on the other side.

How long does it take to get a divorce?

There is no way to answer this question. How long a divorce takes will depend on how many issues need to be resolved, whether or not the parties can agree on any/all issues, and where the case is filed – some courts are busier than others.

Grounds for divorce

New Hampshire is technically a “no-fault” divorce state. This means that neither party has to prove that the other is more at fault in causing the breakdown of the marriage. We say that: “irreconcilable differences have caused the irremediable breakdown of the marriage.” This means that the parties have differences that cannot be fixed and that those differences have caused the marriage to be permanently broken.

It is possible to file for divorce based on grounds other than irreconcilable differences. The divorce statute lists the following grounds:

- I. Impotency of either party.
- II. Adultery of either party.
- III. Extreme cruelty of either party to the other.
- IV. Conviction of either party, in any state or federal district, of a crime punishable with imprisonment for more than one year and actual imprisonment under such conviction.
- V. When either party has so treated the other as seriously to injure health or endanger reason.
- VI. When either party has been absent 2 years together, and has not been heard of.
- VII. When either party is an habitual drunkard, and has been such for 2 years together.
- VIII. When either party has joined any religious sect or society which professes to believe the relation of husband and wife unlawful, and has refused to cohabit with the other for 6 months together.
- IX. When either party, without sufficient cause, and without the consent of the other, has abandoned and refused, for 2 years together, to cohabit with the other.

Filing for divorce on fault grounds makes getting divorced more difficult.

First of all, your Petition must contain the correct language in it to get a fault divorce, and, in the case of adultery, there are special service provisions. Filing on fault grounds is just the beginning. Then the Petitioner must PROVE the grounds, and must prove that the grounds are what caused the breakdown of the marriage. For example, a claim of adultery can be defeated if the “guilty” spouse can prove that the marriage was broken before s/he became involved with the other person.

Before filing for divorce on fault grounds, consult with an attorney. In many cases, there is nothing to be gained by claiming fault. There are also specific pleading and process requirements for certain fault grounds.

Jurisdiction

Before filing a divorce or other family case it is important to make sure that the Court has jurisdiction over the parties and the subject. Otherwise the divorce can be challenged, even years later.

In a divorce, the Court only has jurisdiction over the parties if:

- Both parties live in NH when the divorce starts; or
- The Respondent lives out of NH, but the Petitioner has lived in NH for more than one year before filing; or
- The Respondent lives out of state, the Petitioner has lived in NH for less than one year, but the Respondent is actually served in NH; or
- The Respondent lives out of NH, the Petitioner has lived in NH for less than one year, but the parties file a joint petition or the Respondent files a waiver of service.

After the case has been properly filed it can continue even if one or both parties move out of state.

In New Hampshire the Superior and Family Courts have subject matter jurisdiction over divorces and unwed custody cases. Family Division Courts are being phased in to the different counties. Check with your county’s Superior Court to find out if there is a Family Division Court in your area, or go to the Judicial Branch website: <http://www.courts.state.nh.us/>

Venue

Venue means which court location will actually handle your case. There are 10 counties in New Hampshire. A Petitioner can file in the county where s/he lives or in the county where the Respondent lives. If your county has the Family Division there may be more than one court location. A telephone call will usually clarify where to file. The Judicial Branch website can also identify the right court for you.

Relief

The relief in a case is made of different parts, depending on the kind of case. In a case to establish Parental Rights and Responsibilities, where the parents are unmarried, the relief will be limited to orders pertaining to the children. In a divorce, the relief will include all the same issues related to the children, but will also include orders for divorce, the division of real estate and personal property, allocation of debts, alimony, insurance for the divorcing spouses, and any other issue involved in the dissolution of the marriage.

The more issues in a divorce, and the more contested they are, the more complex the case will be. It is not recommended that you handle your own divorce if your case has any issues related to property or children. If you cannot hire an attorney, or find free legal services, it is still advised that you at least consult with an attorney to understand the laws and your rights, regarding these issues.

Property Distribution

Property Distribution means the way that all of the assets and debts (what you own and what you owe) are divided up in a divorce. This includes assets and debts that are in one person's name or in both names. New Hampshire law requires that all divorce decrees include an equitable division of property. "Equitable" means fair, and courts will start off with the idea that fair means even. If you want some division that is not 50/50, then you will need to explain to the judge why your request is fair.

A **bankruptcy** after divorce can undo all of the work that goes into working out an agreement. If two spouses owe money, and in the divorce decree one spouse is held responsible for the debt, that spouse can still discharge his or her obligation to pay the debt in bankruptcy. The spouse who was not supposed to be responsible for the debt under the terms of the divorce may still have to pay the debt, unless s/he files bankruptcy also. The creditor is not a party to the divorce, so the divorce court cannot change the creditor's rights.

More detailed information about property distribution in divorce can be found in our materials on **PROPERTY DIVISION**

Parental Rights and Responsibilities

Issues pertaining to children used to be called “legal custody” and “physical custody”. Today, these terms have been abandoned in favor of “decision-making responsibility” and “residential responsibility”.

DECISION-MAKING RESPONSIBILITY

This term refers to the authority of a parent to make decision for and about their child. In a divorce or unwed case, this responsibility can be allocated between the parents, or it can be given only to one parent.

RESIDENTIAL RESPONSIBILITY

This term refers to the parents’ responsibility to provide a home for their child. Once the parents are no longer together, there needs to be a mechanism for deciding where a child should actually live.

Whether the case is a divorce or a parental rights case, the mechanism for allocating these responsibilities is a Parenting Plan. Both parties will be expected to submit a Parenting Plan to the Court, unless they have agreed on one and want the judge to make it a part of the orders. If a judge must decide how to divide decision-make and residential responsibility, the judge will make orders that s/he finds to be in the “best interests” of the child.

CHILD SUPPORT

Another issue in any Parenting Case is the payment of child support. Child support is calculated according to a set formula, and is based on the financial affidavits filed by both parents. Any case in which there is a child support order will require that the parties file financial affidavits, child support worksheets and Uniform Support Orders. If a parent is going to receive their child support through the Division of Child Support Service s/he must file an application for services at a local Department of Health and Human Services office.

More information about Parental Rights and Responsibilities can be found in our Parenting materials.

Name Change

If either you or your spouse want to resume the use of your name from before you were married, you will need to ask for this order. You cannot change the name of your child as a part of the divorce process.

Compliance with Court Rules and Procedures

Before you try to use this book it is important to understand that the same rules and procedures that apply to attorneys handling divorces will apply to a pro se person. Even if you are not aware of a particular rule, law or procedure you will be held accountable if you run afoul of it. Ignorance of the law is not an excuse to its violation. If you have questions, you need to talk to a lawyer, court staff cannot provide you with advice.

Truth in Filings

All documents filed at the clerk's office are signed by a party to show that the information contained in it is true and correct. Some documents, like the financial affidavit, are signed under oath, and false statements can be treated as perjury.

Failing to accurately provide the court with information can have lots of negative effects. If you do not disclose assets, your divorce can be re-opened, even years later, and you could not only lose the asset but be found in contempt, charged with fraud, and incur enormous costs.

Any document you file with the clerk must also be provided to the other side – whether or not there is a lawyer on the other side. Each document you file will have to include a “certificate of service” which is your signature attesting that you provided the other side with a copy.

Effect of Divorce

The terms of your divorce decree are binding on **both** parties. Failing to comply with the terms of the decree can result in a finding of contempt.

Property division orders cannot be modified later, except for a few unusual circumstances.

Other matters, like parental rights and responsibilities, child support, and alimony can be reviewed later, but there are special laws about when you can do so.

If you want to try and change an order it is important to get legal advice first. The rules for modification of existing orders is really beyond the scope of this handbook.

A divorce decree is final 30 days after the date on the clerk's notice of decision, unless a party files a Motion for Reconsideration or an Appeal to the NH Supreme Court. In either of those events, the decree is final 30 days after the date on the clerk's notice of decision on those motions, or after the ruling on the appeal.