



What You Need To Know About Divorce



There are four main steps in a divorce:

1. Your lawyer writes the divorce papers and files them with the court.
2. The sheriff's department gives (serves) your husband or wife the divorce papers.
3. Your husband or wife has 30 days to file an answer to your divorce paper.
4. Your divorce is set for trial.

Your divorce is up to the Judge



No lawyer can promise that you will get your divorce. The judge follows the law and decides based on the facts in your case. Your lawyer will do the best he or she can for you.

Advice from friends or TV

Don't listen to divorce advice from your friends and neighbors. If they are not lawyers or paralegals, they are not trained to help you. Don't pay attention to divorces on TV. Divorces on TV are not the same as divorces in Tennessee.

Divorce laws are different in different counties and in different states. Your divorce will not be the same as a divorce in another county or state.

Step 1: Your lawyer files the divorce papers

The divorce papers are called the **complaint for divorce**. Your lawyer will put in the divorce papers the facts you give him or her. Before the divorce complaint is filed, you must sign it, swearing what it says is true.



Reasons for divorce

In the divorce papers, you give the reason or **grounds** why you want a divorce. The law lets you get a divorce for two types of reasons:

1. "Irreconcilable differences" and
2. "Fault grounds."

Irreconcilable differences mean no one is to blame for the divorce. You two just cannot work out your problems.

Fault grounds mean your husband or wife did something bad enough that you want to divorce them. In this kind of divorce, you must prove that the divorce is the other person's fault.

Your lawyer may put both types of grounds for divorce in your divorce papers.

Divorce when no one is to blame (irreconcilable differences)

It means that no one is to blame. You and your spouse just cannot work out your problems. In this kind of divorce, you don't have to prove that your husband or wife caused the divorce. You don't need witnesses to prove they did something wrong. For this kind of divorce you and your spouse must agree on everything about the divorce. "Everything" means you agree on:

- who gets what
- who pays what debts
- who pays court costs, etc.
- who gets custody of the children
- when the other parent can see the children and
- child support.



Your lawyer will work with your spouse's lawyer to get an agreement in writing. Your lawyer will

get your okay before agreeing to anything for you.

Do you have children under age 18? Then this kind of divorce can be set for trial about **90 days** after filing it. What if you don't have young children? Then your divorce can be set for trial about **60 days** after filing.

Fault grounds for divorce

In this kind of divorce, you must prove the divorce is your husband's or wife's fault. You must have witnesses. You must prove that your husband or wife did one of the things listed below:

- Cheated on you (adultery) **OR**
- Was married to 2 people at the same time (bigamy) **OR**
- Left you for good (desertion) **OR**
- Refused to support you (abandonment) **OR**
- Was convicted of a serious crime after you were married **OR**
- Tried to kill you **OR**
- Often got drunk or used illegal drugs **OR**
- Was very mean to you (cruel or inhuman treatment) **OR**
- Did other things a married person should not do (inappropriate marital conduct).

Restraining Orders

There are four orders that are filed with every divorce. The court calls them **temporary injunctions**. They keep **both** the husband and wife from doing certain things until the divorce is final. They keep both parents from:

- 1) Spending, giving away, destroying, wasting or using up property from the marriage **OR**
- 2) Harassing each other **OR**
- 3) Stopping or changing insurance policies **OR**
- 4) Moving the children out of the area the Court covers **OR**
- 5) Interfering with your custody of the Children.

Do you need the court to order anything else until the divorce is final? Tell your lawyer. Your lawyer can ask for it with your divorce papers.

The judge may have a hearing before deciding. At the hearing, the judge will ask you why you need another order. The judge will ask your spouse why an order is not needed. Then the judge will decide if you get the order. You will get one if you have a good reason.

Protective Orders

Has your spouse done any of these things to you?

- hit you **OR**
- slapped you **OR**
- pushed you **OR**
- choked you **OR**
- beaten you **OR**
- threatened to hurt you.

If the answer is yes, then it is a good idea to get an Order of Protection (See page 15). An Order of Protection orders your spouse to leave you alone. It orders your spouse **NOT** to come around you, follow you or call. It orders your spouse **NOT** to threaten you or come to your job.



What if your spouse bothers you after the protective order is served? Then the police can arrest him or her on the spot.

Your lawyer will tell you more about getting an Order of Protection. If you ask for an Order of Protection, the judge will set a hearing to decide if you will get one.

Children and Parenting Plans

All parents who divorce now must have a written parenting plan. This is true **IF** they have children under age 18.

The plan says when the children will stay with each parent. This includes holidays, vacations and birthdays. The plan says how you will decide about the children's medical care, schools and religion. The plan says how you will decide if you disagree about the children. The plan says how much child support will be paid.

There are 2 kinds of parenting plans. One is a short-term (temporary) plan. It just says where the children will live **until** the divorce is final. The other kind of plan is a long-term (permanent) plan. It says what each parent will do for the children **after** the divorce.



Short-term plan

One or both parents can give the judge a short-term parenting plan. What if both of them give a short-term plan to the Judge? The Judge will decide where the children will live until the divorce is final.

Filing fee

There is usually a fee for filing divorce papers. But you may not have to pay it. Your lawyer can file a paper for you called an **Affidavit of Indigency**. This paper says that you cannot afford to pay the fee. You have to swear this is true. The paper lets you file your divorce without the filing fee. Later, the judge decides who will pay the filing fee -- you or your spouse.

Step 2: The sheriff's department gives (serves) your husband or wife the divorce papers

Your husband or wife is called the defendant. The sheriff's office will serve him or her the divorce complaint.



Please do not call your lawyer to find out if the divorce complaint has been served. Your lawyer will let you know when the papers have been served. Your lawyer will tell you if there is a problem getting them served.

Very Important! Give your lawyer the exact home and work address of your husband or wife. This can get the divorce papers served quickly and speed up your divorce. Also give any addresses where your husband or wife might be. This could be places like a friend's or relative's house.

Step 3: Your husband or wife gets 30 days to file an answer

This is 30 days after they get your divorce complaint. They may or may not file an answer.

STEP 4: Your divorce is set for trial What if your husband or wife doesn't file an answer?

If your spouse does nothing during the next 30 days, then the divorce is **uncontested**. Next your lawyer files a paper called a **motion for default judgment**. This paper asks the Court to go ahead and set a hearing for the divorce. The court sets a hearing date for the next 2 to 3

weeks. Most of the time, your divorce trial is usually within a month after the motion hearing.

Your lawyer will write to you when your case is set for trial. You **MUST** tell your lawyer right away if your address or phone number changes. It is the only way your lawyer can keep you up-to-date on your case.

What if your spouse does file an answer during the 30 days?

Then the divorce is **contested**. This means your husband or wife doesn't agree with everything you said in the divorce papers. Your lawyer will tell you if your spouse answers the divorce papers. Your lawyer will send you a copy of the answer your spouse filed. There is no way to know how long this kind of divorce will take.



Getting ready for the Divorce Trial The Court may send you to programs that could help you or your children.

Do you have children? Then the Judge may order both parents to get help to decide about the children. This is called **mediation**.

Mediation can help you decide about custody, visitation and meeting the children's special needs.

If the Court orders it, you and your spouse meet with a mediator. Both of you talk about the things you disagree on or are worried about. You talk about the things you want. The mediator helps you make an agreement **both of you feel OK about it**.



Mediators don't take either person's side. They try to help you agree on something that is fair for everyone. They help you write out an agreement. The lawyers put the agreement in legal words and ask the court to OK it.

Mediation works only when everyone listens to both sides. What if you think no one is listening to your side during mediation? Tell your lawyer right away.

Has your husband or wife ever hit, threatened or bullied you? Do you have an Order of Protection to keep you safe from your husband or wife?

Then tell the Judge. You will **NOT** have to go to mediation unless you want to.

Helping Children Cope with Divorce is a workshop for parents who are getting divorced. Every parent who gets a divorce must go to this workshop. It explains:



- How the divorce will affect family members,
- How children feel about their parents' divorce,
- How to help your children

cope with your divorce,

- Problems to avoid and where to get more help.

Parents do not have to go to the same class together. It is **free** for anyone who has filed an Affidavit of Indigency. Everyone else must pay.

Long-term parenting plan

What if you can't agree on a long-term plan? Then both parents give a plan to the Judge. The Judge can choose one of the plans or write a new one.

The Judge usually orders that the children live with one parent during the week. The other parent usually gets to spend time with the children every other weekend. Usually this is from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. Please work with your spouse on visitation. This is important for your sake and the sake of your children.

Child Support

State law says all parents must support their children until the children are grown. The parent who has the children most of the time should get child support. Support pays for housing, utilities, food, clothes, school costs, transportation and other things children need.

The Tennessee Child Support guidelines tell how much child support should be paid. The amount of support depends on:

- how many children there are;
- how much money the parent who will pay support earns; and

- the expenses for the children, like medical insurance or child care.

Want to look up the child support guidelines on a computer? Go to www.tennessee.gov/human_serv/is/incomeshares.htm on the internet

Property

Courts usually divide the property from the marriage at the final hearing. The judge does not do it in the middle of the case.

What if you and your spouse agree about how to divide the property? It is not legal until the Court OKs it.



Alimony

Sometimes the Court orders your husband or wife to pay support to you after the divorce. This happens only when the judge thinks it is necessary for your well being. Your spouse also has to be able to pay. Each case is different.

Witnesses

Is your divorce based on a fault ground? Then you will need at least 2 witnesses to prove what your spouse did. The witnesses can be family or friends. They must have seen or heard **in person** the things they will testify about. They will need to come with you to talk with your lawyer before the divorce. They will also need to come to Court for the divorce trial. It is better if witnesses come to Court because they want to. But, your lawyer can ask the court to order (subpoena) them to come.

Do NOT date during the divorce

You are still a married person. You must act like a married person until the divorce is final. This means you should not date or have sex with anyone. If you do, you could lose the divorce and lose custody of your children.



What if you have sex with your spouse after you file for divorce? Tell your lawyer at once. (The next morning is soon enough.) The Court thinks having sex means you are trying to get back together.

Getting back together

You can stop your divorce any time if you get back together. There are two ways to do this.

1. You can **drop the divorce**. Tell your lawyer you changed your mind. Your lawyer will tell the court. What if you did not pay the fee when the divorce papers were filed? The court will bill you for the filing fee and any other court costs. If you can't pay all at once, ask the Court Clerk for a payment plan. If you don't pay, the court may garnish your paycheck. They will take the money out of your pay before you get it.

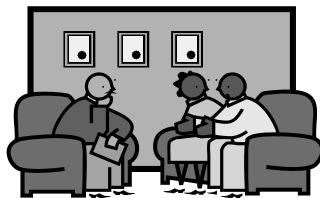
What if you decide later, that you **DO** want the divorce? You will have to file divorce papers again. You will have to pay the filing fee again. Some lawyers won't file divorce papers again if you change your mind. You may have to find a new lawyer.

OR

2. You can **stop the divorce for six months**. This gives you time to see if getting back together will work. Your lawyer will file a paper called an Order of Reconciliation. You have six months to decide if you want the divorce. Then tell your lawyer if you want the divorce or not. Do you want the divorce? Then you have to file a paper called an **Amended Complaint for Divorce**. It tells the judge what happened. You don't have to pay filing fees again.

Divorce And Marriage Counseling

Your lawyer will only help you with **legal** problems with your divorce. Lawyers and paralegals are not marriage counselors.



Do you want to talk with a marriage or family counselor? They can help with the problems of becoming a single-parent family. To find a counselor near you, look in the Yellow Pages of your phone book. Look under **Marriage, Family Counselors**. Ask how much they charge.

Costs

Did Legal Aid or a pro bono lawyer take your case? Then the lawyer does your divorce for free. Sometimes you may have to pay:



- The Clerk's filing fee,
- Court costs when the divorce is over and
- Up-front costs for serving divorce papers if your husband or wife lives outside this county.

Is another lawyer taking your case? Then ask what fee the lawyer will charge you.

After the Divorce

Getting Child Support

The judge usually orders child support to be paid by **income assignment**. The employer must take the child support payment out of the other parent's pay check. The support money comes out before the parent is paid. The employer mails the child support payments to the State Child Support Collection office. They send the payments on to you.



It may take awhile for the employer to start taking out the support payments. What if the other parent gives you the support money during this time? Tell your lawyer right away.

Helpful hints about child support

After the divorce, you may have problems getting your child support. If the support doesn't come, don't give up.

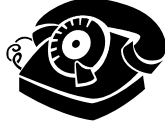
If your ex-spouse gives the child support directly to you, be sure to keep accurate records of it. You should have written records of all dates and amounts of child support you get. If the parent pays by check, keep a record of his/her bank account number and current address.



Do not wait too long before you try to collect child support. If you have to take your former spouse back to Court, be ready to give the lawyer or paralegal as many facts as you can. They will need to know the other parent's exact address, Social Security number, car license number and description, and work places. Picture of the parent would also help the Sheriff serve papers.

Contact the other parent or his employer right away. Ask if they sent in the child support payment.

If the parent did **not** pay, go to the child support enforcement office near you. Their lawyer must give you free help to collect your support.



If the parent **did** pay, call the Child Support Information Line. Their number is **1-800-838-6911**. Ask where your money is. Tell them you want a review of your child support case.

Want to find out how much child support has been paid? Call the Child Support Information Line at **800-838-6911**. Or look it up on the internet (www.tennesseeanytime.org/tceses/start.html). You need to know your Member or Case ID number and your Social Security number.

Let your lawyer know if your address or phone number change

This is very important. If your lawyer cannot reach you when he or she needs to, the Court may dismiss your case. You could be charged with the court costs.

Are You a Victim of Battering? An Order of Protection May Help You

This list can help you recognize if you or someone you know is in a violent relationship. Check off those behaviors that apply to the relationship. The more checks on the page, the more dangerous the situation may be.

What is an Order of Protection?

It is a court process for victims of battering (male or female) to get immediate court protection from their abuser.

What can an Order of Protection do?

An Order of Protection can:

- Order a person to stop abusing or threatening to abuse you.
- Prohibit the abuser from stalking you.
- Order the police to remove the abuser without having to get a warrant if he or she continues to bother you

- Make the abuser move out or pay for you a place to live.
- Give you temporary custody of your children.
- Give you support money for you and your children.
- Make the abuser pay court costs and attorney's fees.

How can I get an Order of Protection?

You need to get a form from the clerk of the court that handles domestic violence and Orders of Protection in your county.

A phone call to the courthouse can tell you which court that is. In most counties, that court is General Sessions; however, in some counties it might be Chancery.

The court clerk will give you the form and help you fill it out. You do not have to have a lawyer.

You must describe on the form, specific instances of battering. Be specific. Start with the most recent assault or threat and go backwards to the first incident.

Describe the abuse in as much detail as possible to enable the judge to get a clear picture of what happened. Be sure to note on the form if the children were involved and if they saw or heard the abuse.

What happens after I file?

1. The "Ex Parte" Order.

The Ex Parte Order is a temporary order, issued first, before the abuser is notified and before a hearing. The ex parte order demands that the batterer not abuse you in any way. However, it does not necessarily demand that the abuser leave the home, nor does it address issues of child custody or support. Those issues are decided at the hearing, which is held within 10 days.

2. The Hearing

You are not required to have an attorney, but you must attend the hearing.

The judge will ask you questions about the abuse, and why he or she should grant an order of protection. You should give short, simple, and truthful answers and stick to the facts about when, where, and how you were abused. Although it is a difficult and emotional time, don't cloud the issue with information that doesn't matter.

Bring to the hearing anyone who saw the abuse, heard the threats, or has seen the injuries. Bring any evidence of abuse or threats such as photographs of injuries or damage to your property and threatening or harassing messages from an answering machine.

Be sure to tell the judge about any previous assaults that resulted in arrests or doctor visits.

If you prove domestic violence has occurred, the judge will issue a final order of protection, effective for 1 year.

Note:

- Make copies of all important papers including your Order of Protection, divorce, custody and support papers.
- Keep these in a safe place where the abuser can't find them.
- If you have children, give a copy to their school or daycare.

What if the abuser threatens or hurts me again?

Call 911 immediately! Be sure to tell them about the protective order. Have a copy ready to show police when they arrive. The police can arrest him or her for violating the Order of Protection, and that person could go to jail.

Important Things to Remember

Help is available.

Local agencies like West Tennessee Legal Services, Wo/Mens Resource and Rape Assistance (WRAP), and Northwest Safeline are there to help victims overcome the problems that affect family stability.

Wo/Men's Resource and Rape Assistance Program (WRAP)
731.668.0411 or toll free 1.800.273.8712

Northwest Safeline
731.285.6470 or toll free 1.800.957.0055

Tennessee Domestic Violence Hotline
1.800.356.6767

Pathways
1.800.372.0693

**Domestic Violence:
The Warning List**

Verbal Abuse

Name calling, Mocking, Accusing, Blaming, Yelling, Swearing, Making humiliating remarks or gestures

Pressure Tactics

Rushing you to make decisions through guilt, and intimidation, Sulking, Threatening to withhold money, Manipulating the children,

Abusing Authority

Always claiming to be right, Insisting statements are "the truth", Telling you what to do, Making "big" decisions, Using logic

Disrespect

Interrupting, Not listening or responding, Putting you down in front of other people, Saying bad things about your, friends & family

Breaking Promises

Not following through on agreements, Not taking a fair share of responsibility, Refusing to help with childcare or housework

Emotional Withholding

Not expressing feelings, Not giving support or attention

Minimizing, Denying and Blaming

Making light of his behavior, Saying the abuse didn't happen, Shifting responsibility for his behavior by saying you caused it

Economic Control

Interfering with your work, Not letting you work, Refusing to give you money, Taking your money, Not allowing use of the car

Self-destructive Behavior

Abusing drugs or alcohol, Threatening suicide or self-harm

Abusing Trust

Lying, Withholding Information, Cheating on you, Being overly jealous

Isolation

Preventing you from seeing friends or relatives, Monitoring phone calls
Telling you where you can and can't go

Harassment

Making uninvited visits or calls, Following you, Checking up on you, Embarrassing you in public, Refusing to leave when asked

Intimidation

Making angry or threatening gestures, Using physical size to intimidate, Out-Shouting you, Driving recklessly

Destruction

Destroying your possessions, Punching walls, Throwing/Breaking things

Sexual Violence

Using force, threats or coercion to obtain sex,

Physical Violence

Being violent to you, your children, your pets

Weapons

Use of weapons, Keeping weapons around which frighten you, Threatening or attempting to kill you or those you love

Tennessee Legal Services Offices

West Tennessee Legal Services:

Jackson Office 1-800-372-8346

Dyersburg Office (731) 285-8181

Huntingdon Office (731) 986-8975

Selmer Office (731) 645-7961

Legal Aid Society of Middle

Tennessee and the Cumberland:

1-800-238-1443 - It's a free call.

Offices in Clarksville, Columbia, Cookeville,

Gallatin, Murfreesboro, Nashville, Oak

Ridge and Tullahoma

Memphis Area Legal Services:

Memphis Office 1-888-207-6386

Covington Office (901) 476 -1808

Legal Aid of East Tennessee:

Knoxville Office (865) 637-0484

Johnson City Office 1-800-321-5561

Kingsport Office 1-800-821-1309

Chattanooga Office 1-800-572-7457

Cleveland Office 1-800-445-3219

NOTE: This pamphlet cannot take the place of legal advice. Each case is different and needs individual attention.

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