



FORT SILL LEGAL ASSISTANCE

DIVORCE IN OKLAHOMA



Oklahoma is one of many states with a type of no-fault divorce. The state recognizes incompatibility as a ground for marital dissolution (divorce), and incompatibility is the most frequently used basis for marital dissolution in the state. Once there is an irretrievable breakdown of the marriage, either spouse may file a petition in the district court to dissolve the marriage and may do so even though the other party does not want a divorce and does not agree to participate.

1. How long must one live in Oklahoma to file for divorce?

To file for divorce in Oklahoma, either spouse must have been an actual resident having a physical presence in the state for six or more months or be a permanent resident of the state who is only temporarily absent. As a further requirement, one of the parties must also have been a resident of the county where the case is filed for at least thirty days before filing.

2. Can divorce occur in Oklahoma if both spouses do not reside here?

Generally speaking, yes. However, problems arise when a spouse is on active military duty and is not assigned in Oklahoma. A federal law, the Servicemember's Civil Relief Act, provides protection to military personnel who are unable to participate in court actions because they are assigned away from the court which will decide the case. This protection is particularly important if the servicemember is assigned overseas. However, such protection is not automatic and is sometimes not a barrier to obtaining a divorce.

Another potential area of difficulty is when one spouse asks the court to order the other party to pay debts, alimony, attorney fees, or court costs. Oklahoma courts have no jurisdiction (are without the legal authority) to order a party who has never lived in the state, had contact with the state, conducted business in the state, or consented to the jurisdiction of the court to take action. However, the Court does have the authority to dissolve the marriage (grant the divorce) and, if there are children of the marriage residing in Oklahoma, to determine who will have primary custody of the children, how visitation will occur, and the amount and payment of child support for such children.

3. How are alimony and child support awarded?

Oklahoma courts may award both temporary and permanent alimony if the factors to support such award are present in the case. There is no requirement that there be a finding of fault to award alimony, but the court may consider the conduct of the parties as a factor in deciding whether to award alimony. Other factors which the court will consider are the assets, income, education, and estate of the one being asked to pay alimony, and health, education, income-earning ability, and financial needs of the party requesting alimony. More recently, courts tend to award only temporary alimony until the parties can reposition themselves financially after the divorce. However, the court may award permanent alimony in cases involving abuse or injury, lack of education or ability to earn income, illness or disability, etc.

If the court has jurisdiction over the children, the Court must award custody, provide for visitation by the noncustodial parent (if in the best interests of the children), and order one or both parties to provide child support. The amount of child support each parent is ordered to pay will depend partially upon the incomes of the parents. The overriding factor will be the support needs of the children. Child support in Oklahoma is computed based upon a set of guidelines adopted by the state legislature and enacted into law. The incomes of both parents are considered and when the guidelines are applied, usually the party not having custody of the children is ordered to pay support to the party who was awarded custody. Once the court orders child support, the amount cannot be changed by a joint agreement between the parents outside of court. The parties must request a new court order. The legal obligation to pay child support continues until each child reaches eighteen years of age, or if the child is in school, continues through age nineteen, unless ordered otherwise by the court.

4. How is marital property divided in divorce?

In Oklahoma, all property acquired during the marriage shall be divided equitably (or fairly) between the parties. Property owned by either spouse prior to the marriage generally remains his or her separate property, unless the property has been converted into marital property by the original owner, such as depositing funds into a joint bank account or retitling property in both parties' names. In dividing the property acquired during the marriage, the court can make such division as will be just and reasonable by either an actual physical division of property or an order for a specific cash payment to compensate one party for property received by the other party. The judge will further determine how the payment of existing debts of the marriage will be divided. It is possible that one spouse could be required to pay debts relating to property awarded to the other spouse. The court often approves the property and debt division agreed upon by both spouses UNLESS the agreement is clearly unfair to one of the parties.

5. How is custody of minor children awarded?

The primary and overwhelming concern of the courts in determining the custody of children is what is in the *best interests of the child*. Factors, which are usually considered, are the age of the child, the preferences of older children, fitness of the parents, and the ability to provide love, affection, and security to the child, and the willingness to obey the court's orders regarding the children. The award of custody to one parent does not mean that the other is unfit, but rather that at the time of the order, the court believes that it is in the best interests of the child to be in the custody of a particular parent. The non-custodial parent is entitled to reasonable visitation in all but the exceptional case in which the court decides that there is such misconduct or threat of injury that visitation would be detrimental to the child. The divorce decree may contain specific visitation terms and conditions or visitation may be part of a separate agreement between the parties that is included in the decree.

6. When does an Oklahoma divorce become final?

A dissolution of marriage or divorce is final at the time the judge pronounces the parties divorced, but Oklahoma law prohibits the divorced parties from remarrying in Oklahoma anyone other than the divorced spouse for a period of six (6) months after the divorce pronouncement.

7. Can a Legal Assistance Attorney represent me or my spouse in a divorce?

No. Legal assistance attorneys in this office do not represent parties in state civilian court proceedings. However, legal assistance attorneys will provide advice, discuss procedure, answer questions, and refer to civilian counsel whom you may employ to represent you. Legal assistance attorneys do not recommend using nor will they review or provide advice on self-help divorce forms and kits. They will, however, review and provide advice regarding legal documents received from opposing parties.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0800 – 1600, and Thursdays 1200-1600. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall on Mow-Way Road.