

HOW TO GET A DIVORCE (WITH CHILDREN)

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WARNING:

You cannot use this guide and the forms unless you have an address for your spouse.

This guide will give you general instructions on how to complete a simple divorce case.

It cannot and does not try to cover everything that might happen in a divorce case.

If you do not understand whether these instructions apply to your case, you should speak with a lawyer.

How divorce cases are handled by a judge can vary from county to county.

There may be requirements in your county that are not covered in these instructions.

Ask the Circuit Clerk if your county has local rules and, if so, where you can get a copy.

INTRODUCTION TO GETTING A DIVORCE IN ILLINOIS (WITH CHILDREN)

These instructions apply to marriages and civil unions. Whenever the instructions say “marriage” it also means “civil union.”

Can I ask the court for a divorce in Illinois?

You can ask for a divorce if:

- You are married;
- You or your spouse have lived in Illinois for at least 90 days; AND
- There is no other divorce case already filed and still pending anywhere else (not dismissed).

NOTE: if your spouse is on active military service, you can ask for divorce, but the court might not be able to give you a divorce. If your minor children have not lived in Illinois for at least 6 months, the court may not be able to decide on a parenting plan for the children.

What forms do I need to ask the court for a divorce?

Below are some of the common forms used in divorce cases. Depending on your specific situation, you may not need all of the forms listed or you may need other forms not listed here.

- **Petition for Dissolution of Marriage/Civil Union (Divorce with Children):** asks the court for a divorce and gives information needed to begin a divorce case.
- **Certificate of Dissolution of Marriage*:** lists information about your case that is sent to the Illinois Department of Public Health after your divorce is final.
- **Summons:** tells your spouse that you are asking the court for a divorce.
- **Entry of Appearance:** is completed by your spouse to tell the court that they do not need to receive a *Summons* or is completed by your spouse after being served by a *Summons*.
- **Judgment of Dissolution of Marriage/Civil Union (Divorce with Children):** is used by the judge to grant or deny your divorce. If granted, the *Judgment* will also divide property, assign debt, and determine whether maintenance will be paid.
- **Parenting Plan:** lists who is responsible for decision making for the children and a schedule for when the children are with you and when they are with the other parent.
- **Certification of Agreement:** is used if you and your spouse have agreed on what will be in the *Judgment* and *Parenting Plan*
- **Qualified Domestic Relations Order (QDRO):** is used to divide a pension or retirement plan. You will need this if the Judge orders that a QDRO be prepared.

There is no statewide form. Contact the Pension Plan Administrator and ask if they provide a form.

Where can I find the forms I need?

*You can get the Certificate of Dissolution of Marriage at the Circuit Clerk’s office.

You can find the rest of the forms online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

What information will help me fill out the court forms?

- Date you were married;
- Date you were physically separated;
- City, county, state, and country where you were married;
- Current home address for your spouse or other address where your spouse can be found;
- List of all personal property, including bank accounts that you and your spouse own together or separately;
- List of all real estate that you and your spouse have an interest in together or separately (with or without a mortgage), etc.;
- List of all pension and retirement accounts that you or your spouse have;
- List of all the debts that you and your spouse have made since you got married, together or separately;
- Full names and birthdates of children you have with your spouse, including any children that were adopted by both of you; AND
- Full names and birthdates of children that were born or adopted during the marriage, but only one of you is a parent or adoptive parent of these children.

What costs will I need to pay to ask the court for a divorce?

- **Filing Fee:** To file your forms with the Circuit Clerk of the Circuit Court in the county where you are filing your divorce.
- **Service Fee:** To serve the summons on your spouse.
- **Certified Copy Fee:** If your divorce is granted and you need certified copies of the court order.
- **Transcript Fee:** In some counties, you may be ordered to get a transcript. A transcript is a written record of your divorce court date.

What if I cannot afford to pay the costs?

- If you cannot afford to pay the fees, you can ask the court to file for free. Fill out the *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

Do I have to take a Parenting Class?

Yes. There is a statewide requirement that parents complete a class about parenting and divorce as part of their divorce case. Ask the Circuit Clerk for information about completing this class. There is normally a fee for the class. If you have an *Order for Waiver of Court Fees* you do not have to pay the fee.

Who will assist me during my divorce case?

- Circuit Clerk: you will file your divorce forms with the Circuit Clerk. The Circuit Clerk will accept your divorce forms, collect fees for filing your divorce case, and help schedule a court date. The Circuit Clerk cannot give you legal advice.
- Sheriff: You will ask the Sheriff in the county where your spouse lives to serve legal notice on your spouse.
 - The Sheriff's office is normally located in the county seat along with the county courthouse.
- Judge: You will see and speak to the judge at your court dates. The judge will listen to evidence from you and your spouse and then decide whether you get a divorce. The judge cannot give you legal advice.

When will I be divorced?

You are divorced when the judge signs the *Judgment of Dissolution of Marriage/Civil Union (Divorce With Children)*.

STEP 1: COMPLETE FORMS

A. *Petition for Dissolution of Marriage/Civil Union (Divorce With Children)*

To help you fill out the form, the *Petition* has line-by-line instructions on the left-side of the form. Below is more information.

Section 5(e): Reason for Divorce

All divorces are granted because of irreconcilable differences.

- Irreconcilable differences means you and your spouse do not get along anymore and you do not want to be married.
- If you have been separated 6 months or more, tell this to the judge.
- If you have been separated less than 6 months, you will have to show the judge that you and your spouse:
 - Separated because you cannot get along anymore; AND
 - Tried to fix the problems in your marriage, but could not, or the problems are so bad that trying to fix them is not best for your family.

Section 6: Information About Children

You must give the court information about children who are and are not part of the marriage.

- **Section 6(c): Minor Children of the Marriage/Civil Union**
 - List children that under the age of 18 and were either born to or adopted by both of you.
 - The children could have been born or adopted before or during the marriage.
 - The court can decide decision-making and parenting time only for the children listed in Section 6(c).
 - The court can order support for the children listed in Section 6(c).
- **Section 6(f): Adult Children of the Marriage/Civil Union**
 - List children that are 18 years old or older and were either born to or adopted by both of you.
 - The children could have been born or adopted before or during the marriage.
 - The court can order support for the children listed in Section 6(f) only if they are still in high school or are disabled.

The court can order payment for educational expenses for children listed in Section 6(f) if they are in college or another type of education program.

- **Section 6(g): Children Not of the Marriage/Civil Union**
 - List children that:
 - You gave birth to, but your spouse is not the other parent;
 - Your spouse gave birth to, but you are not the other parent;
 - You adopted, but your spouse did not; OR
 - Your spouse adopted, but you did not.

The court cannot make decisions about decision-making, parenting time, or order support for the children listed in Section 6(g).

Section 7(c): Parenting Plan

A *Parenting Plan* contains information about who will make decisions for the children and a schedule for when the children are with each parent. If you have completed the *Parenting Plan* by the time you are ready to file your case, you can attach it to your *Petition for Dissolution of Marriage/Civil Union (Divorce with Children)*. If not, you must file it within 120 days of the date you file your *Petition*. Follow the instructions on the *Parenting Plan* for help in completing it.

Section 8: Debts

You must tell the court if you and your spouse have debts from the marriage that are still owed. If you and your spouse cannot agree on how to divide the debt, the judge will decide who is responsible for each debt.

Sections 9, 10, 11 & 12: Personal Property, Real Estate, Pension/Retirement Accounts & Money Claims

You must tell the court if you and your spouse own personal property (clothing/furniture), real estate, or pension/retirement accounts. If you and your spouse cannot agree on how to divide the property, the judge will decide who gets the property.

Section 13: Maintenance (also known as alimony)

Maintenance is money paid from one spouse to the other on a regular basis.

- To get maintenance, you must show the court there is a good reason such as a long marriage, poor health, or an inability to support yourself.
- The judge is not required to order maintenance.

Section J: Former Name

You must tell the court if you want to go back to using a former name.

- The judge can allow you to return to any name you have used before.

STEP 2: WHAT DO I DO AFTER I FILL OUT MY FORMS?

File your forms with the Circuit Clerk in the county where your court case should be filed.

- File your case in the county you live in or the county your spouse lives in.
- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, or (2) you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer, (2) you have a disability that keeps you from e-filing, or (3) you have trouble reading or speaking in English.
 - Fill out a *Certification for Exemption from E-Filing* found online at here: illinoiscourts.gov/Forms/approved/Circuit.asp.
 - File the original and 1 copy of your forms and the *Certification* with the Circuit Clerk's office in person or by mail.
- To e-file, create an account with an e-filing service provider.
 - Visit efile.illinoiscourts.gov/service-providers.htm to select a service provider. Some service providers are free while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see the self-help user guides online at: illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp.

- If you do not have access to a computer or if you need help e-filing, take your form to the Circuit Clerk's office where you can use a public computer terminal to e-file your form.
 - You can bring your form on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your form.

Provide notice to your spouse.

There are 2 ways to give notice to your spouse:

1. Entry of appearance
 - If your spouse signs an *Entry of Appearance*, you do not have to have your spouse served by the Sheriff. You are ready to get a court date (skip to "Ask for a court date" below); OR
2. Serve your spouse with a *Summons* and *Petition*
 - Give the Circuit Clerk your *Summons* and they will issue it.
 - Staple the *Summons* to the front of the copy of the *Petition* that will go to your spouse.
 - Get the name, address, and telephone number of the Sheriff for the county and the state where your spouse lives.
 - Call the Sheriff in that county to find out:
 - If it is the correct Sheriff's department for the address where you want your spouse served;
 - The address where you should bring or mail your *Summons* and *Petition*;
 - The number of copies of your *Summons* and *Petition* to bring or send; AND
 - The cost of Sheriff's fees for service and if they will honor your *Order for Waiver of Court Fees* (if you have one). If the Sheriff is in Illinois, the Sheriff must honor the waiver.
 - Anything else you need to do to get the *Summons* and *Petition* served on your spouse.
 - In person or by mail, ask the Sheriff in the county where the case was filed to serve your *Summons* and your *Petition* on your spouse.
 - In Person
 - Bring the correct number of copies of your *Summons* and your *Petition* to the Sheriff's office.
 - Pay the Sheriff's fees OR give the Sheriff a copy of your *Order for Waiver of Court Fees* (if you have one) to not be charged a fee.
 - By Mail
 - Mail the correct number of your *Summons* and your *Petition* to the Sheriff's office.
 - Include payment for the fees or your *Order for Waiver of Court Fees*.
 - Include the *Letter to the Sheriff* online at: illinoiscourts.gov/Forms/approved/Circuit.asp.
 - Include a self-addressed and stamped envelope for the Sheriff to mail the *Return of Service* to you.

Confirm the Sheriff served your *Petition* on your spouse.

- After the Sheriff serves your spouse with your *Petition*, they will fill out the *Return of Service* section of your *Summons* form and file it with the Circuit Clerk or mail it to you.
- If the Sheriff files the *Summons* with the completed *Return of Service* directly with the Circuit Clerk, call the Circuit Clerk to find out if it has been filed. If it has been filed, ask the Circuit Clerk how to get a copy.
- If the Sheriff mails the *Summons* with the completed *Return of Service* to you, make a copy for yourself and file the original with the Circuit Clerk.
- If the Sheriff was not able to serve your spouse, ask them why. You should try to fix the problem and then fill out another *Summons* (called an Alias Summons), have it issued by the Circuit Clerk, and ask the Sheriff to try to serve your spouse again.

Wait for your spouse to file a response with the Circuit Clerk.

- Once the Sheriff serves your forms on your spouse, your spouse has 30 days to file an Appearance and a response with the Circuit Clerk.
- If you do not get a copy of your spouse's Appearance and response within the 30 days, call the Circuit Clerk to ask if there is an Appearance and response in the file or log into the EFSP you used to file your document and see if it is there.
- If your spouse files an Appearance and response, you may then get a court date from the Circuit Clerk.
- After the 30 days from the date of service, you may get a court date from the Circuit Clerk whether or not your spouse filed an Appearance and response.

Ask for a court date.

- Ask the Circuit Clerk if you have to schedule a court date or if one will be scheduled automatically.
- If you need to schedule the court date, ask the Circuit Clerk how to do so. The Circuit Clerk may schedule the court date or you may have to speak with other court staff.
- When you get your court date, ask if the court will send notice of the hearing to your spouse or if you need to.
- If you need to send notice, complete a *Notice of Court Date* found online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

STEP 3: HOW TO GET READY FOR COURT AND PRESENT YOUR CASE TO THE JUDGE

Follow the instructions in **Part A** if you and your spouse agree on all issues and your spouse will attend the court date with you.

Follow the instructions in **Part B** if you and your spouse do not agree on all issues. This includes cases where your spouse has not filed an *Appearance* or response in the case and may not appear at the court date.

A. AGREEMENT

Get ready for your court date.

- Decide and write down all the things you and your spouse have agreed on including:
 - What property will be awarded to each of you;
 - Who will be responsible for each of the debts;
 - Whether either of you will receive maintenance and how much; AND
 - Who will make decisions for the children and the parenting time schedule.
- Follow the instructions on the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)* to add all of your agreements to the *Judgment*. Both you and your spouse must initial each page of the *Judgment*.
- Follow the instructions on the *Parenting Plan*, to add all of your agreements to the *Parenting Plan*. Both you and your spouse must initial each page of the *Parenting Plan*.
- If child support is going to be ordered, complete an *Order for Support*. That form and instructions are found online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

Go to your court date.

- You should have either received a court date and time from the Circuit Clerk in person or on a written notice from the Circuit Clerk. If you cannot find your court date and time, call the Circuit Clerk.
- Bring these items with you to court:
 - Copies of all the documents you filed with the Circuit Clerk; AND
 - Copies of the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support* (if needed).
- Get to the courthouse at least 30 minutes early.
- Go to the courtroom number listed on your court form. If your forms do not have a courtroom number, look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself.

Present your case to the judge.

- Give the judge your prepared *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support* (if needed).
- Tell the judge you and your spouse have an agreement and the details of that agreement.
- If the judge approves your agreement, the *Judgment*, *Parenting Plan*, and *Order for Support* will be signed.
 - Get a copy of the *Judgment*, *Parenting Plan*, and *Order for Support* that were entered by the judge.

B. NO AGREEMENT**Get ready for your court date.**

- Decide and write down:
 - What you want to ask the judge to do for you;
 - What you will say to the judge if asked to tell your side of the case; AND
 - Questions you have for witnesses, if there are any.
- Gather and make copies of pictures and documents you want the judge to see. Bring the original for the judge and one copy for you and your spouse.
- If you want the judge to hear from other people, those people will have to come to court and be witnesses (in most cases, you cannot bring in written statements of witnesses).
- Follow the instructions on the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)* to complete only those sections you can fill out in advance.
- If you have not already completed and filed your *Parenting Plan*, complete it now. The instructions on the *Parenting Plan* will help you do this.
- If child support is going to be ordered, complete an *Order for Support*. That form and instructions are found online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

Go to your court date.

- You should have either received a court date and time from the Circuit Clerk in person or on a written notice from your spouse or Circuit Clerk. If you cannot find your court date and time, call the Circuit Clerk.
- Bring these items with you to court:
 - Copies of all the documents you filed with the Circuit Clerk;
 - Any witnesses you want to testify and any documents you want the judge to look at; AND
 - Copies of the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support* (if needed).
- Get to the courthouse at least 30 minutes early.
- Go to the courtroom number listed on your court form. If your forms do not have a courtroom number, look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself.

Present your case to the judge.**If your spouse does not come to court.**

- Give the judge your prepared *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support* (if needed).
- Tell the judge what you want ordered in the *Judgment*, *Parenting Plan*, and *Order for Support* (if needed).
- Tell the judge if you have documents to present or witnesses to testify.
- The judge will decide if documents and witnesses are necessary.
- The judge might ask you questions rather than look at documents and listen to witnesses.
- If the judge gives you the divorce, the *Judgment*, *Parenting Plan*, and *Order for Support* will be signed.
 - Get a copy of the each order that was entered by the judge.
 - If your spouse was not in court to get a copy, you must send them a copy of each order by 5:00 p.m. on the date you get the *Judgment*. Fill out and file a *Proof of Delivery* form with the Circuit Clerk to show that you sent the copy. You can find the *Proof of Delivery* online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

If your spouse comes to court.

- Tell the judge your side of the case and answer questions.
- Show evidence including documents and photos.
- Give a copy to the judge and a copy to your spouse. Be prepared to explain why the document or photo is important.
- Question witnesses.
 - Tell the judge the name of your witnesses.
 - Ask the witnesses questions you prepared in advance.
 - The judge and your spouse can ask questions of your witnesses when you are done.
- The judge decides whether the documents, photos, or witness testimony can be considered in making a decision about your case.
- Tell the judge you have brought a *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support* (if needed).

What do I do when my spouse presents their case? (If your spouse does not appear for the court date, this part will not happen.)

- Your spouse will also get to present their case by testifying, giving the judge evidence, and questioning witnesses.
- You will get to see any documents and photos your spouse brings to court. If you do not think the judge should consider them in making a decision about your case, tell the judge why.
- You may ask questions of your spouse's witnesses. Write down your questions while they are speaking to your spouse or judge.

What happens after both sides present their case? (If your spouse does not appear for the court date, this will happen after you present your case to the judge.)

- The judge has to make a decision. The decision is called the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*.
- If the judge needs more information to make a decision, the judge may set up another court date. Make sure you understand what information is needed and get it before the new court date.
- If the judge needs more time to make a decision, the judge will let you know the decision later by mailing a court order or at another court date.
- If the judge has enough information, the judge may decide right then to enter the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*, *Parenting Plan*, and *Order for Support*.
 - Get a copy of the each order that was entered by the judge.

- In other counties, if the judge orders you to get a transcript, speak with the Circuit Clerk for more information about how to do that.
- Send a copy of the *Judgment* to your spouse either by hand or by mail and file a *Proof of Delivery* with the Circuit Clerk. You can find the *Proof of Delivery* online at: illinoiscourts.gov/Forms/approved/Circuit.asp.

STEP 4: WHAT DO I DO AFTER THE COURT DATE?

There are several things you need to do after your court date.

- If you got permission to go back to a former name, ask the Circuit Clerk to certify your copy of the *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)*. There may be a fee for this.
- The Secretary of State and Social Security Administration will want to see a certified copy of the *Judgment* before changing your name in their records.
- Keep your copies of all of your court papers in a safe place. If you lose any court papers that were filed with the Circuit Clerk, you can get another copy there. There may be a charge for those copies.
- In Cook County, and in some other counties, the judge may ask you to get a transcript of the court hearing from the court reporter for the court file. Some judges will not sign your *Judgment of Dissolution of Marriage/Civil Union (Divorce with Children)* until you return the transcript to the court.
- In Cook County, if the judge orders you to get a transcript follow these steps:
 - If you have a fee waiver, ask the judge to enter an Order for Free Transcript;
 - Call the court reporter's office 3 to 4 weeks after your court date at (312) 603-8405 to make sure the transcript is ready; if you do not have the Order for Free Transcript, ask what you will be charged for the transcript;
 - When the transcript is ready, pick it up at 69 W. Washington St., 9th Floor, Chicago; you will need to bring the Order for Free Transcript or pay the transcript fee; AND
 - Sign the last page of the transcript and return it to the judge's clerk in the courtroom where you got the divorce.