

# FILING FOR DIVORCE IN NORTH CAROLINA

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## **Table of Contents**

- Q:** What is an absolute divorce?
- Q:** What is the difference between a divorce and an annulment?
- Q:** What are the requirements for an absolute divorce?
- Q:** What does it mean to be separated?
- Q:** What is a separation agreement?
- Q:** What is a divorce from bed and board?
- Q:** What documents do I need to file for absolute divorce?
- Q:** How much could filing for divorce cost?
- Q:** What happens after I file my paperwork with the Clerk of Court?
- Q:** What does it mean to have my spouse served?
- Q:** What should I expect on the date of my divorce hearing?
- Q:** Will I automatically be awarded child support, alimony, and child custody?
- Q:** What is equitable distribution?
- Q:** Am I eligible for alimony?
- Q:** After my divorce, can I legally change my child's last name?
- Q:** After I'm officially divorced, how do I change my name?
- Q:** Do I need an attorney?

**Q: What is an absolute divorce?**

An absolute divorce is a court order permanently terminating your marriage. North Carolina is a no-fault state, which means that you can file for divorce without having to prove that you or your spouse did anything wrong. An absolute divorce will void any and all legal rights you were entitled to as a spouse. Both parties do not need to consent to the divorce for it to be valid.

**Q: What the difference between a divorce and an annulment?**

A finalized divorce recognizes that a marriage previously existed but has now ended. An annulment differs because it treats the previous marriage as never having existed in the first place. Unlike absolute divorce, North Carolina has very strict requirements for granting an annulment. A party may only be granted an annulment for the following six reasons:

1. A marriage between close family members
2. A marriage when one party is under the age of 16
3. A marriage where one party is already married
4. A marriage where one party is physically impotent (must be medically diagnosed)
5. A marriage where one party lacked the mental capacity to enter into the marriage
6. A marriage where the wife life about being pregnant

**Q: What are the requirements for an absolute divorce?**

To be eligible to file for an absolute divorce you or your spouse must have been a resident of North Carolina for at least the last six (6) months and you must have been continuously separated for at least one year and one day.

**Q: What does it mean to be separated?**

To be legally separated, you and your spouse must reside in different homes and have an intent for this separation to be permanent. It is not acceptable for you and your spouse to live in the same home even if you are living in different bedrooms or on different sides of the house. It is important to have a reliable alternative living arrangement as moving back into the same space as your spouse will restart your separation period and prolong your ability to file for divorce.

**Q: What is a separation agreement?**

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To be considered legally separated, you do not need proof of the separation in writing. However, it may be helpful for many couples to consider signing a separation agreement if they have children or bills they would like to clearly assign responsibility for. A separation agreement is a written contract signed by both spouses and notarized. Oftentimes, the terms of the separation agreement can become part of the judge's final divorce order so it is beneficial for parties to agree to resolutions of these issues in advance. We encourage you to seek the advice of an attorney who will be able to prepare and negotiate the terms of a separation agreement on your behalf.

**Q: What is a divorce from bed and board?**

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A divorce from bed and board (DBB) is a court ordered (i.e. forced) legal separation. If granted, the right to cohabitation, your spouse's right to contest your will, and your spouse's right administer your estate are terminated. A divorce from bed and board will only be granted under the following circumstances:

1. Your spouse abandoned the family
2. Your spouse maliciously kicked you out of the home
3. Your spouse engaged in cruel or barbarous behavior that endangers your life
4. Your spouse committed an indignity more than once
5. Your spouse excessively uses alcohol or drugs
6. Your spouse committed adultery

**Q: What paperwork do I need to file for an absolute divorce?**

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To file for absolute divorce you must first complete several forms and bring them to the Clerk of Court where you or your spouse resides. You must fill out a Complaint for Absolute Divorce, Domestic Civil Action Cover Sheet, Servicemembers Civil Relief Act Affidavit, and Civil Summons. You must serve your spouse with a copy of the complaint and civil summons. You can find downloadable versions of these forms at [nccourts.gov/forms](http://nccourts.gov/forms)

**Q: How much could filing for divorce cost?**

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The fee to file all of the necessary paperwork typically costs about \$225. If you are unable to afford your court costs you may be eligible to file a Petition to

Proceed as an Indigent, which will allow the court to waive the usual filing fees that accompany a divorce proceeding.

**Q: What happens after I file my paperwork with the Clerk of Court?**

Once you file your paperwork with the Clerk of Court, you will have to wait until your spouse is served with the civil summons and complaint before you can proceed with a divorce hearing before a judge. Your spouse will have thirty (30) days to respond and can even be granted an extension if necessary. After the appropriate period of time has passed, you will be given a hearing date.

**Q: What does it mean to have my spouse served?**

The law requires that your spouse be provided with notice of your divorce request through a process called “service”. For service to be proper, your spouse will need to be given a copy of the Complaint and Summons you filed with the Clerk of Court’s office and you will need to obtain proof of service. You cannot personally serve your spouse! The most common forms of service are requesting that the Sheriff’s office personally serve your spouse or going to the post office and mailing a copy of the Summons and Complaint to the other party by registered or certified mail with return receipt requested or by signature confirmation. Service will be subject to a fee that may vary by county. In some circumstances, you may not know the current location of your spouse. If this is the case, you should serve them by newspaper publication.

**Q: What should I expect on the date of my divorce hearing?**

Due to COVID-19, the judge may grant you an online or in-person hearing depending on the county. You should plan to arrive early and dressed appropriately. Your spouse does not need to attend the divorce hearing but may do so if he/she is contesting the divorce or denying/requesting additional services from the court. When your case is called, the judge will likely ask you to testify truthfully about the details of your marriage and the facts proving your legal separation. If you have additional witnesses or documents you may present them to the judge as well. After reviewing the evidence, the judge will either grant or deny the divorce. If your divorce is granted, you should be prepared to provide the judge with three (3) copies of a Judgment of Absolute Divorce to sign. Typically, an uncontested divorce proceeding will last less than 30 minutes. You should be prepared to remain in the courtroom for a longer

period of time if you or your spouse is requesting the courts assistance with equitable distribution, child support, alimony, and child custody.

**Q: Will I automatically be awarded child support, alimony, and child custody?**

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No! If you believe you are entitled to any of these benefits you should consult with an attorney. If you do not file for property division or spousal support before your divorce is finalized, you will permanently lose the right to these benefits. Child custody and child support may be filed at any time and will not be affected by the finalization of a divorce.

**Q: What is equitable distribution?**

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Equitable distribution is the division of “marital property” between spouses. Prior to your divorce being finalized, you must file a separate complaint if you plan to request the court’s assistance with equitable distribution. Marital property is anything the couple acquired during marriage. It usually includes homes, cars, debts, retirement benefits, pets, and assets. Marital property is not restricted solely to property within the state of North Carolina even if the proceeding will take place in a North Carolina court. Typically, the court will divide marital property 50/50 between the spouses. However, if the circumstances permit a judge may adjust the distribution to be more fair. The judge will not consider marital misconduct as a factor unless one spouse engaged in financial misconduct after separation.

**Q: Am I eligible for alimony?**

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It depends. Alimony is a court order for one spouse to provide financial support and maintenance of a current or former spouse. To be eligible for alimony, the court must find that you are financially dependent on and in need of support from your spouse. The amount of alimony awarded is generally at the discretion of the judge. The judge can consider evidence of martial misconduct, infidelity, or “illicit sexual behavior” when determining an appropriate amount of alimony. Payment of alimony may continue indefinitely; however, if one spouse remarries or moves in with a new partner alimony must end.

**Q: After my divorce, can I legally change my child’s last name?**

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It depends. Although you are legally divorced, North Carolina requires the consent of both parents before changing a minor’s last name. Under the

following circumstances the consent of the other parent is not required: if they have abandoned the child, if the parent has been convicted of child abuse, rape, a crime of violence, indecent liberties with a minor, or if the minor child is sixteen (16) years old.

**Q: After I'm officially divorced, how do I change my name?**

If you would like to reclaim your maiden name you may file a Resumption of Former Name with the court for \$10.

**Q: Do I need an attorney?**

You are not required to hire an attorney to represent you in a divorce proceeding or to file the necessary paperwork on your behalf. We highly encourage you to contact an attorney as contested divorce proceedings require extensive preparation and can be emotionally exhausting. Depending on the complexities of your case, you may benefit from discussing all of your legal options and having an attorney negotiate on your behalf.

**If you are considering filing for divorce, or if you have questions about your next steps, feel free to reach us at [www.smithdominguez.com](http://www.smithdominguez.com).**