

# DIVORCE IN IDAHO



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## GETTING STARTED

Grounds for divorce in Idaho include adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction of a felony, permanent insanity, or irreconcilable differences determined by the court as substantial reasons to dissolve the marriage. A divorce based on irreconcilable differences is referred to as a *no-fault divorce*.

Selecting Grounds on which to base a complaint for divorce involves three considerations:

- (1) What can you prove or what will your spouse admit?
- (2) Is what you have to gain by alleging *fault* (grounds other than irreconcilable differences) worth the extra effort which proving fault involves? If *fault* is alleged and proven, the innocent spouse may be awarded maintenance (alimony), subject to a showing of need on the part of the innocent spouse. The court may also consider *fault* when it divides the property acquired during the marriage.
- (3) If you seek a *no-fault* divorce, you may be able to obtain your divorce without retaining an attorney. Obtaining a divorce on grounds of *fault* is not something you should try without the assistance of a competent attorney.

## THE COMPLAINT

Idaho Code § 32-701 requires the plaintiff to reside in Idaho for six (6) full weeks preceding the filing of the complaint. Active duty personnel are not required to change their state of residency to Idaho.

Legal assistance is available to military members and their dependents. Such assistance, however, is limited to explaining the law and helping you understand how the law applies to your situation. Legal assistance attorneys will not prepare your complaint, nor can they represent you or your spouse in court.

Self help divorce forms can be obtained at [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov). You may use these forms to obtain a divorce without the assistance of an attorney. However, you should consider hiring an attorney to review your completed forms. Legal assistance officers may answer specific questions about divorce forms but will not prepare them for you.

Self-help forms are not recommended when a divorce is contested or child custody is at issue. Under certain circumstances, **Idaho Legal Aid Services** ([www.idaholegalaid.org](http://www.idaholegalaid.org)) may provide assistance to an individual doing a self-help divorce.

## WHILE THE DIVORCE IS PENDING

Temporary Support may be ordered by the Court in amounts and on terms determined

by the Court to be just and proper given the circumstances of the parties.

Upon application of one party, the Court may require the parties to explore the possibility of reconciliation. If there are minor children, the Court may delay the proceedings for 90 days to determine the practicability of reconciliation.

## SETTLEMENT AGREEMENTS AND PROPERTY DIVISION

Settlement Agreements may be entered into by the parties, and such agreements are usually accepted by the Court and made a part of the final divorce decree.

Property may be divided in two ways if there is no agreement between the parties. Separate property (property owned by either party prior to the marriage, gifts, inheritances) remains the separate property of each party and is divided accordingly.

Community property (all property which does not qualify as separate property) is divided either in accordance with any agreement which may exist between the parties, or it is divided *equitably* by the Court between the parties. “*Equitably*” means that, in certain circumstances, the Court may divide the community property unequally so as to make the division fair.

## WHAT ABOUT THE CHILDREN?

Joint Custody means an order awarding custody of minor children to both parents. Joint custody means that physical custody will be shared by the parents in such a way as to assure each child frequent and continuing contact with both parents. Joint custody does not mean that children will spend equal time with each parent. However, both parents are entitled and required to share the decision-making rights,

responsibilities, and authority relating to the health, education, and general welfare of each child.

A parenting agreement may be required by the Court before entry of the final decree. Parents may be required to attend a parenting class after which the parents negotiate the parenting agreement between themselves. These agreements are incorporated into the divorce decree.

Child support payments are made to the parent who has primary physical custody. The amount of child support is determined in accordance with guidelines handed down by the Idaho Supreme Court. Payments are typically made through the Court or through the Idaho Department of Health and Welfare.

Military pay may be garnished to pay child support or alimony.

Failure to comply with a child custody or visitation order is a felony.

Child support and custody issues are generally matters of state law. However, the federal Servicemembers Civil Relief Act (“SCRA”) does provide some protection for military members involved in custody disputes. SCRA prohibits a court from considering the fact that a service member is or may be deployed as the only basis for a *permanent* custody order. 50 U.S.C. § 3938(b). If a court issues a *temporary* order based solely on the service member’s deployment, then the order must expire once the order is no longer justified by the deployment. 50 U.S.C. § 3938(a).

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website: <https://aflegallassistance.law.af.mil>