FREE LEGAL INFORMATION

Is Divorce the Answer for You?

If you are contemplating divorce, you likely have questions about the process. Some of the most frequently asked questions are answered here.

Q: What are the grounds for divorce in Oklahoma?

A: Although there are 12 grounds for divorce in Oklahoma, only a few are commonly used. They are:

- Incompatibility
- Extreme physical or mental cruelty
- Abandonment for a period of one year
- Adultery

In almost all cases, incompatibility is the basis stated in the petition. Although there may be a legitimate legal basis for alleging one of the other grounds, you will be expected to "prove" the allegation if the opposing party contests it.

Q: What power does the divorce court have after the case is started?

A: The court will, at the time of trial or settlement, equitably divide the marital property and debts; address child custody, visitation and child support; and grant the divorce. It may award support alimony and attorney fees and costs but does not always do so.

Q: What happens after my petition has been filed?

A: At the time your petition is filed, a summons is issued by the court clerk. The petition and the summons must be served on your spouse by a private process server, deputy sheriff or certified mail. At the same time your petition is filed, your attorney can make an application for a temporary order to be issued that would include a temporary division of certain personal and marital property, direct your spouse to take specific actions or restrain the spouse from doing certain things. You will be required to appear in court to testify as to your need for each of the temporary requests you are making.

After the papers have been served, the spouse has 20 days in which to file an answer with the court clerk. After an answer has been filed, you will need to file a response within 20 days if a counterclaim is made.

Once the petition is served, an automatic temporary injunction (ATI) is in effect. The ATI is intended to protect both parties. It prohibits certain financial expenditures and modifications to certain accounts and policies, such as retirement accounts and insurance policies, and it prohibits the parties from hiding their children from each other and removing the children from Oklahoma without the consent of the other parent. The ATI also requires the parties to exchange certain documents and information within 30 days of service. Reading and abiding by the terms of the ATI is crucial. A party violating the ATI is subject to contempt of court.

Q: When is the temporary order granted?

A: You must file an application for a temporary order listing your requests to the court. The court cannot grant a temporary order for custody, child support, possession of property, alimony or exclusion from your home until your spouse has been served with notice of a hearing at least five judicial or "business" days prior to a hearing on your request.

Q: How long does a divorce take?

A: If both parties are in agreement to the divorce and there are no children, a divorce may be granted 10 days after the filing of the petition. It is necessary for your spouse to execute a waiver, which will include a waiver of process, and file that waiver with the court.

In a divorce where there is a minor child(ren) involved, there is a 90-day waiting period from the date of service of the summons, the first date of publication or an entry of appearance by the respondent, whichever occurs first.

The 90-day waiting period may be waived under certain circumstances, such as when there is extreme cruelty in your marriage or your spouse has abandoned you for a period of one year. If your spouse hires an attorney and contests the action, the case could take longer than 90 days.

Q: If my case is settled, do both my spouse and I have to go to court?

A: No. As a general rule of thumb, only one of the parties must go to court and give brief sworn testimony if the parties each sign an agreed decree and complete any requirements of the court or Oklahoma law, such as completion of a parenting class.

Q: What if my spouse violates the terms of the temporary order or divorce decree?

A: You have several options for violations of court orders. If a violation occurs, you may file an application for indirect contempt of court. If a court finds a party guilty of contempt of court, the court may assess a jail term of up to six months, a fine of up to $500 or a combination of fines and jail time. A failure to pay money – such as child support, alimony or debt – can result in garnishment of wages and bank accounts and seizure of personal property. You may request an income assignment, which directs your spouse's employer to deduct wages from your spouse's paycheck to fund child support or alimony.

Once a parent fails to pay child support for a year, the arrears exceed $5,000 or the parent has left the state, you can request the district attorney file felony criminal charges and have an arrest warrant issued.

If the violation of a court order includes criminal conduct, such as assault and battery or breaking and entering, a police report should be filed and pursued. You may also seek an emergency protective order if you or you and your children have been the victims of domestic abuse, stalking or harassment. The petition for a protective order may be filed in the county where the incident occurred, the county where the victims live or the county where the defendant lives.

Q: If my case goes to trial, is it before a jury?

A: No. In Oklahoma, all divorce cases are tried before a judge only. However, an action for contempt filed in a divorce proceeding may be tried by a jury if requested by the offending party.

Q: When is my divorce final?

A: The divorce is final the day it is granted by the judge, and the decree is filed with the court clerk. You are a single person once the judge pronounces you divorced. Oklahoma law prohibits remarriage or cohabitation with someone other than your now former spouse in the state of Oklahoma for a period of six months after the divorce is granted. During these six months, should you and your spouse decide to reconcile, a joint application can be filed in the court, and the decree will be set aside so long as neither party has remarried a third party during the interim.

Q: For the benefit of the children, can the court make orders regarding the parents' moral conduct?

A: The following are some guidelines concerning children of separated parents called the "Ten Commandments of Proper Conduct for Separated Parents."

As you know, children are usually the losers when their parents separate. They are deprived of the full-time, proper guidance two parents can give – guidance and direction essential to their moral and spiritual growth.

Although there is probably some bitterness between you and your spouse, it should not be inflicted upon your children. In every child's mind, there must and should be an image of *two* good parents. Your future conduct with your children will be helpful if you follow these suggestions:

- Do not poison your child's mind against either parent by discussing their shortcomings.
- Do not expose your children to any member of the opposite sex with whom you may be emotionally involved.
- Do not argue with the other parent during visitation exchanges.
- Do not visit your children if you have been drinking.
- Do not visit your children at unreasonable hours.
- Do not fail to notify your spouse as soon as possible if you are unable to keep your visitation. It's unfair to your children to keep them waiting – and worse, to disappoint them by not coming at all.
- Make your visitation as pleasant as possible for your children by *not* questioning them regarding the activities of your spouse and by *not* making extravagant promises you know you cannot or will not keep.
- The parent with whom the children live must prepare them both physically and mentally for the visitation. The children should be available at the time mutually agreed upon.
- If one parent has plans for the children that conflict with the visitation and these plans are in the best interests of the children, be adults and work out the problems together.
- Always work for the spiritual well-being, health, happiness and safety of your children.

Q: What visitation does the court generally award to the alternate custodial parent?

A: There is no fixed visitation schedule required under Oklahoma law; however, each county and/or judge may have a standard visitation schedule and advisory guidelines that may be used when parties cannot agree. Most visitation schedules will provide a regular weekday and/or weekend visitation schedule, a holiday schedule and/or a summer visitation schedule. Check with your local county bar association or online with your county court website for more specific examples.

Oklahoma policy is to ensure that children have frequent and continuing contact with parents who have shown the ability to act in the children's best interests. As of Nov. 1, 2021, if requested by a parent, the court may provide substantially equal access to the minor child(ren) in a temporary order of final decree, unless the court finds that shared parenting would be detrimental to the child(ren). Liberal telephone communications between the noncustodial parent and child(ren) are encouraged and should occur.

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(Revised November 2025)
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Prepared and Issued by
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