

# Basics of NH Divorce Law

## Basics of Divorce Law in New Hampshire

This page explains basic principles of divorce law in NH. These principles will affect the way cases are handled in court, and the way that judges make decisions. Also, these principles will help you understand what the attorney on the other side is doing.

## How long does it take to get a divorce?

There is no way to answer this question. How long a divorce takes will depend on how many issues need to be resolved, whether or not the parties can agree on any/all issues, and where the case is filed - some courts are busier than others.

## Grounds for divorce

New Hampshire is technically a "no-fault" divorce state. This means that neither party has to prove that the other is more at fault in causing the breakdown of the marriage. We say that: "irreconcilable differences have caused the irremediable breakdown of the marriage." This means that the parties have differences that cannot be fixed and that those differences have caused the marriage to be permanently broken.

It is possible to file for divorce based on grounds other than irreconcilable differences. The divorce statute lists the following grounds:

1. Impotency of either party.
2. Adultery of either party.
3. Extreme cruelty of either party to the other.
4. Conviction of either party, in any state or federal district, of a crime punishable with imprisonment for more than one year and actual imprisonment under such conviction.
5. When either party has so treated the other as seriously to injure health or endanger reason.

6. When either party has been absent 2 years together, and has not been heard of.
7. When either party is an habitual drunkard, and has been such for 2 years together.
8. When either party has joined any religious sect or society which professes to believe the relation of husband and wife unlawful, and has refused to cohabit with the other for 6 months together.
9. When either party, without sufficient cause, and without the consent of the other, has abandoned and refused, for 2 years together, to cohabit with the other.

**Filing for divorce on fault grounds makes getting divorced more difficult.** First of all, your Petition must contain the correct language in it to get a fault divorce, and, in the case of adultery, there are special service requirements. Filing on fault grounds is just the beginning. Then the Petitioner must PROVE the grounds, and must prove that the grounds are what caused the breakdown of the marriage. For example, a claim of adultery can be defeated if the "guilty" spouse can prove that the marriage was broken before s/he became involved with the other person.

**Before filing for divorce on fault grounds, consult with an attorney.** In many cases, there is nothing to be gained by claiming fault. There are also specific pleading and process requirements for certain fault grounds.

## Jurisdiction

Before filing a divorce or other family case, it is important to make sure that the court has jurisdiction over the parties and the subject. Otherwise the divorce can be challenged, even years later.

The court only has jurisdiction over the parties if:

- Both parties live in NH when the divorce starts; or
- The Respondent does not live in NH, but the Petitioner has lived in NH for more than one year before filing; or
- The Respondent does not live in NH, the Petitioner has lived in NH for less than one year, but the Respondent is actually served in NH; or

- The Respondent does not live in NH, the Petitioner has lived in NH for less than one year, but the parties file a joint petitioner or the Respondent files a waiver of service.

After the case has been properly filed it can continue even if one or both parties move out of state.

In New Hampshire, the Superior Courts and Family Courts have subject matter jurisdiction over divorces and unwed custody cases. If you are not sure which court in your County is handling Divorces go to the [Judicial Branch website](#).

## Venue

Venue means which court location will actually handle your case. There are 10 counties in New Hampshire. A Petitioner can file in the county where s/he lives or in the county where the Respondent lives. A telephone call will usually clarify where to file, and the Judicial Branch website can also identify the right court for you.

## Relief

"Relief" is an order given by the court. The relief in a case is made of different parts, depending on the kind of case. In a case to establish Parental Rights and Responsibilities, where the parents are unmarried, the relief will be limited to orders pertaining to the children. In a divorce, the relief will include all the same issues related to the children, but will also include orders for divorce, the division of real estate and personal property, allocation of debts, alimony, insurance for the divorcing spouses, and any other issue involved in the dissolution of the marriage.

The more issues in a divorce, and the more contested they are, the more complex the case will be. It is not recommended that you handle your own divorce if your case has any issues related to property or children. If you cannot hire an attorney or find free legal services, it is still advised that you at least consult with an attorney to understand the laws and your rights, regarding these issues.

## Property Distribution

Property Distribution means the way that all of the assets and debts (what you own and what you owe) are divided up in a divorce. This includes assets and debts that are in one person's name or in both

names. New Hampshire law requires that all divorce decrees include an equitable division of property. "Equitable" means fair, and courts will start off with the idea that fair means even. If you want some division that is not 50/50, then you will need to explain to the judge why your request is fair.

## Bankruptcy

A bankruptcy after divorce can undo all of the work that goes into working out an agreement. If two spouses owe money, and in the divorce decree one spouse is held responsible for the debt, that spouse can still discharge his or her obligation to pay the debt in bankruptcy. The spouse who was not supposed to be responsible for the debt under the terms of the divorce may still have to pay the debt, unless s/he files bankruptcy also. The creditor is not a party to the divorce, so the divorce court cannot change the creditor's rights.

## Parental Rights and Responsibilities

Issues pertaining to children used to be called "legal custody" and "physical custody". Today, these terms have been abandoned in favor of "decision-making responsibility" and "residential responsibility". [See our Primary Rights & Responsibilities page for full details.](#)

### **Decision - Making Responsibility**

This term refers to the authority of a parent to make decision for and about their child. These decisions often have to do with religion, medical choices or where a child is to attend school. In a divorce or unwed case, this responsibility can be allocated between the parents, or it can be given only to one parent.

### **Residential Responsibility**

This term refers to the parents' responsibility to provide a home for their child. Once the parents are no longer together, there needs to be a mechanism for deciding where a child should actually live.

Whether the case is a divorce or a parental rights case, the mechanism for allocating these responsibilities is a Parenting Plan. Both parties will be expected to submit a Parenting Plan to the court, unless they have agreed on one and want the judge to make it a part of the orders. If a judge must decide how to divide decision-making and residential

responsibility, the judge will make orders that s/he finds to be in the "best interests" of the child.

## **Child Support**

Another issue in any Parenting Case is the payment of child support. Child support is calculated according to a set formula, and is based on the financial affidavits filed by both parents. Any case in which there is a child support order will require the parties to file financial affidavits, child support worksheets and Uniform Support Orders. [See our page on Child Support.](#)

If a parent is going to receive child support through the Division of Child Support Services s/he must file an application for services at a local [Department of Health and Human Services office.](#)

## **Name Change**

If either you or your spouse want to resume the use of your name from before you were married, you will need to ask for this order. You cannot change the name of your child as a part of the divorce process.

## **Compliance with Court Rules and Procedures**

Before you try to use this book it is important to understand that the same rules and procedures that apply to attorneys handling divorces will apply to a pro se person. Even if you are not aware of a particular rule, law or procedure you will be held accountable if you run afoul of it. Ignorance of the law is not an excuse to its violation. If you have questions, you need to talk to a lawyer, court staff cannot provide you with advice.

## **Truth in Filings**

All documents filed at the clerk's office are signed by a party to show that the information contained in it is true and correct. Some documents, like the financial affidavit, are signed under oath, and false statements can be treated as perjury.

Failing to accurately provide the court with information can have lots of negative effects. If you do not disclose assets, your divorce can be re-opened, even years later, and you could not only lose the asset but be found in contempt, charged with fraud, and incur enormous costs.

Any document you file with the clerk must also be provided to the other side - whether or not there is a lawyer on the other side. Each document you file will have to include a "certificate of service" which is your signature attesting that you provided the other side with a copy.

## Effect of Divorce

The terms of your divorce decree are binding on both parties. Failing to comply with the terms of the decree can result in a finding of contempt.

Property division orders cannot be modified later, except for a few unusual circumstances.

Other matters, like parental rights and responsibilities, child support, and alimony can be reviewed later, but there are special laws about when you can do so. [See our page on Child Support Modification.](#)

If you want to try and change an order it is important to get legal advice first. The rules for modification of existing orders are beyond the scope of this handbook.

A divorce decree is final 30 days after the date on the clerk's notice of decision, unless a party files a Motion for Reconsideration or an Appeal to the NH Supreme Court. In either of those events, the decree is final 30 days after the date on the clerk's notice of decision on those motions, or after the ruling on the appeal.

## Try Also Reading...

- [Filing for Divorce in New Hampshire](#)
- [Grandparents' Visitation Rights in a Divorce](#)

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