

DIVORCE

D Instruction 1

The following general information may or may not apply to your specific case. If you have a question about any of the information, please be sure to talk to the attorney assisting you with your divorce.

For further information, please ask to see the video “**Family Law in the Courtroom**” at your Court Assistance Office or public library.

- 1. RESIDENCE REQUIREMENTS.** To file for divorce in Idaho you must have lived in Idaho for at least six (6) weeks prior to filing.
- 2. WHO SHOULD FILE?** There is no legal significance as to whether the husband or the wife files a Complaint, and the fact that your spouse has filed first should have no effect on the ultimate outcome of your case. Use D Instruction 1-1, **FILING FOR DIVORCE**.
- 3. WAITING PERIOD.** Generally, no divorce will be granted until at least twenty (20) days have passed following the date of the service of the Complaint on the non-filing party. If a divorce case is contested, (a settlement/agreement cannot be reached), a period of six (6) months before the case is resolved is not unusual. **Your divorce will be final on the day the Decree of Divorce is signed by the Judge.**
- 4. GROUNDS FOR DIVORCE.** The Idaho Code has a “no fault” theory as grounds for divorce. This is characterized as the grounds of “irreconcilable differences”. The traditional grounds of adultery, cruelty, drunkenness, etc., are also still part of the code.
- 5. PROPERTY DIVISION.** The Idaho Code has adopted community property principles in determining rights to property acquired during the marriage. What this means to you and your spouse is that generally all property acquired during the marriage is presumed to be community property. Generally community property will be divided equally by the Judge. The Judge can make an unequal division, if the Judge finds there are compelling reasons for doing so. Separate property is property acquired before marriage or property acquired during marriage by gift, inheritance, or with the proceeds of separate property. It should be noted that net income on separate property is considered community property. The separate property of one spouse will be awarded to that spouse. If you and your spouse can agree on a property division, normally the Judge will approve it. If you do not agree, the Judge will divide the property after hearing evidence from you, your spouse, and any other persons that either party may decide to call as witnesses concerning the value and nature of the property and how it should be divided.

Note: Prenuptial and postnuptial agreements may alter property rights.

- 6. UNCONTESTED DIVORCE.** Your divorce may be contested by your spouse unless you and your spouse agree that a divorce should be entered and agree on all aspects of custody, visitation, support, property settlement, and the payment of your joint debts.

7. ALIMONY/SPOUSAL MAINTENANCE. Spousal maintenance is usually ordered only where the party seeking alimony/maintenance is unable to support herself/himself through employment and lacks sufficient property to provide for his/her reasonable needs. Generally, the duration of the alimony/maintenance will be for the length of time reasonably necessary for the spouse to become self-supporting.

8. CHANGE OF WIFE'S NAME. A wife's former name may be returned to her as part of the final decree. If this is something you want, be sure to fill out that section on the Complaint asking for a return of your maiden name.

9. REMARRIAGE. You may remarry at any time **AFTER** the Judge signs the final Decree of Divorce.

10. CREDITORS. Creditors of you and your spouse are **NOT** parties to this divorce action and are **NOT** legally bound by any debt division of the final decree. Even though your spouse may agree to or be ordered to pay a creditor, you may still be responsible to that creditor if your spouse does not pay the bill.

11. GENERAL INSTRUCTIONS.

a. Your well-meaning friends may offer you advice about your case. This advice may be inaccurate even when based upon their personal experiences. Circumstances may have been different from your case.

b. Follow all court orders. Failure to do so may be considered contempt of court.

c. Make debt payments as ordered.