

SEPARATION AND DIVORCE





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The system of free legal aid was set up to help people with low incomes. Free legal aid comprises free legal advice: you can have the costs covered of seeking a lawyer's advice. It also offers free legal proceedings. That means that lawyer's and court fees in connection with legal proceedings will be paid for you wholly or partly, if your income is low.

NAV (the Norwegian Labour and Welfare Service), can give information regarding both social security matters and maintenance matters.

Crisis centres and telephone lines give free advice and assistance to persons who have been exposed to domestic violence.

Free advice and guidance by law students can be obtained from;

Juss Buss

Arbinsgt. 7, 0253 Oslo, tlf. 22 84 29 00

Juridisk Rådgivning for Kvinner (JURK)

Arbinsgate 7, 0253 Oslo, tlf. 22 84 29 50

Jussformidlingen

Sydneshaugen 10, 5007 Bergen, tlf. 55 58 96 00

Juss-Hjelpa

Universitetet i Tromsø, Breivika senter, 9037 Tromsø, tlf. 77 64 45 59

Act no. 47 of 4 July 1991 relating to Marriage Act no. 7 of 8 April 1981 relating to Children and Parents Act no. 19 of 28 February 1997 relating to National Insurance Act no. 2 of 17 February 1989 relating to Advance Payments of Child Maintenance.

These Acts can be read at the web-site: www.lovdata.no or off-prints can be bought or ordered from bookshops.

FREE LEGAL AID



CRISIS CENTRES



RELEVANT LEGISLATION

INTRODUCTION

Problems can arise in all marriages. But married couples can in some cases be helped to understand their problems and perhaps to solve them.

FAMILY COUNSEL-LING SERVICES

Help can be sought from family counselling services, which employ specialists who can be consulted in a number of fields: doctors, psychologists, social welfare workers, lawyers etc. At some offices you can also consult a clergyman.

In connection with separation, the health services, clergymen in various congregations and NAV (the Norwegian Labour and Welfare Service) offices can provide advice and assistance.

OTHER BROCHURES

The Ministry of Children and Family Affairs has published three brochures in English entitled "Parental Responsibilities and right of Access", "Mediation for Parents" and "Property Relations between Spouses".

All the brochures are available at the web-site: www.regieringen.no

To illustrate the questions which arise in connection with the breakdown of a marriage, we have chosen to name an imaginary couple Mary (the wife) and John (the husband).

From 1 January 2009, the Marriage Act also applies to couples of the same sex. This brochure therefore also applies to separation and divorce of same-sex married couples and of couples who have previously contracted registered partnerships.

SEPARATION AND DIVORCE

Actual break down of the marriage

If John and Mary move apart because they no longer want to live together as man and wife, this is known as a breakdown of marriage. This applies whether they both wish to terminate the cohabitation, or Mary for instance leaves against John's will because she does not wish to continue living with him. There is no breakdown if Mary for instance leaves home in connection with a job or course of study, as long as they both wish to continue the marriage.

Separation and divorce procedures

All separations and nearly all divorces must be dealt with by the County Governor. Divorce proceedings are only brought before courts of law in special cases, for instance when divorce is being sought because of abuse or bigamy.

If John and Mary have children of their marriage under 16 years of age, they must attend mediation before they can apply for separation. They must attend one hour of mediation. After this hour, the mediator issues a mediation certificate, which is to be enclosed with the separation application together with the other required documents. All couples are offered a further three hours of mediation. If, after four hours of mediation, John and Mary fail to reach agreement, they may be offered three hours more mediation if the mediator considers that this may result in reaching an agreement. Read more about mediation in the brochure "Mediation for parents".

Separation

If John or Mary or both wish to be separated, they can apply for separation on a form obtainable from the County Governor. (The application form is also available on the Ministry of Children and Equality Affairs' web-site: www.regjeringen.no/bld) The application should be addressed to the Governor of the county in which they last lived together. If they have both moved out of that county, the application should be addressed to the Governor of the county in which one of them now lives.

APPLICATION TO THE COUNTY GOVERNOR

TERMINATION OF SEPARATION

John and Mary are of course free at any time to resume their cohabitation by moving together again, or continuing to live together in which case the separation automatically ceases to have legal effect. Should they subsequently change their minds and decide on a divorce all the same, they must apply to the County Governor for a new separation.

BAN ON CONTRACTING A NEW MARRIAGE

INSURANCE

BENEFITS

Effects of separation

During the separation period, John and Mary are still formally married, and may consequently not contract a new marriage.

If the children are to live with John after the separation, he will been titled to child maintenance payments and supplementary child care benefit. In some cases, John may also be entitled to benefit as a single supporter according to the National Insurance Act.

Information about this can be obtained from local offices of the Norwegian Labour and Welfare Service (NAV), which has responsibility for both social security matters and maintenance matters.

With regard to relations with the children, maintenance payments to the spouse and/or children, division of property, inheritance and certain other questions, the same rules apply during separation as after a divorce.

PROPERTY

Separation terminates John's and Mary's joint responsibility for the support of the family. One or both of them can at that time demand that their property be divided according to the rules in the Marriage Act. For more information on this, see the folder "Property Relations between Spouses" at www.regjeringen.no/bld

AFTER ONE YEAR OF SEPARATION

Divorce

John or Mary can petition the County Governor for a divorce licence after one year has elapsed since they were granted a separation licence. It is not necessary for them to have agreed on a divorce. If only Mary wants a divorce, she is entitled to one even though John is against it. Nor do John and Mary need to agree on the division of property benefits, pension entitlements or the like in order to obtain a divorce. If John and Mary have failed to agree on them at the time of the divorce, such matters can be taken up later.

TWO YEARS AFTER THE TERMINATION OF COHABITATION

If John and Mary have not been separated by licence, but have simply moved apart, either of them can demand a divorce after they have lived apart for two years. It is not necessary in these cases, either, for John and Mary to agree on a divorce.

If Mary wants a divorce after she and John have lived apart for two years, but John maintains to the contrary that they have lived together for long periods since the breakdown of cohabitation, the divorce case must be heard by a court of law. If John and Mary both agree that they have lived apart for the two-year period required by law, the divorce petition must be sent to the County Governor.

DIVORCE ON GROUNDS OF ABUSE

Even though the parties have not been separated, a court of law can grant a divorce if one of the parties has tried to kill the other or the children or has subjected them to severe abuse. The same applies if the spouse has threatened to carry out such acts.

Divorce without prior separation may also be demanded in cases where either of the parties has been forced to contract marriage. The spouses may in such cases choose to institute legal proceedings to have the marriage declared null and void. There are time limits that apply to institution of legal proceedings.

John can demand a divorce without having been separated if Mary marries Paul without being divorced from John. In such a case, John must bring his divorce petition before a court of law.

Dissolution of marriage

If Mary marries Paul without being divorced from John, Paul can demand that the marriage be dissolved.

If spouses are found to be parents and children, or brothers and sisters, or half-brothers and half-sisters, they can demand dissolution of the marriage. If neither of the spouses wishes to institute proceedings, the County Governor shall institute proceedings for dissolution of the marriage. Such cases shall be heard by courts of law.

BIGAMI

BIGAMI

MARRIAGE BETWEEN CLOSE RELATIONS

QUESTIONS THAT CAN BE DECIDED IN CONNECTION WITH SEPARATION/ DIVORCE

MEDIATION

Agreements concerning the children

If John and Mary have children together, the questions arise of parental responsibility, where the child is to live permanently, and of the right of access to children when the parents move apart. If the children are under 16, the parents must attend mediation proceedings before bringing their separation or divorce case before the County Governor. Mediation is mandatory, even though John and Mary may have reached an agreement. The purpose of mediation is to help the parents to enter into an agreement concerning the children. Such an agreement should be concluded in writing. The Ministry of Children and and Equality has published a folder on "Mediation for Parents" at www.regieringen.no/bld

Child maintenance payments

John and Mary are both obliged to contribute to the well-being of their children while they grow up, and to see that they receive an education appropriate to their abilities and skills. If the children live with John, Mary must meet her share of the obligation by making a monthly maintenance payment.

AGREEMENT ON CHILDMAINTENANCE PAYMENTS Each parent i obliged to contribute to the support of their children according to his or her ability to pay. They may themselves agree on the amount of the child maintenance payment. If they cannot agree, they may ask a NAV office (the Norwegian Labour and Welfare Service) to fix the amount of the payment. Parents may also be ordered to make payments to cover special one-off expenses. You can read more about the way child maintenance payments are calculated at www.nav.no

INDEX-LINKING

Child maintenance payments are index-linked, and adjusted on 1 June each year, provided nothing has been agreed or laid down to the contrary. NAV will answer questions concerning child maintenance payments.

Maintenance payments

When John and Mary move apart or are separated or divorced, either of them can in certain cases demand maintenance payments from the other.

Mary can for instance demand maintenance payments if her ability to support herself has been reduced in consequence of the marriage or caring for the children. In other cases, payments can only be ordered for special reasons. Payments are generally imposed for a maximum period of three years, but may also be imposed indefinitely if the couple has been married for a long time.

John and Mary can agree on the amount of such payments. If they agree to have the case dealt with administratively, NAV decides whether to order payments and the amount payable. If John and Mary do not agree to have the matter decided on administratively, the question must be decided by a court of law.

REMARRIAGE

If Mary marries again, she ceases to be entitled to maintenance payments from John, but the child maintenance payments continue as before.

INDEX-LINKING

As a general rule, maintenance payments to spouses are not index-linked.

Property settlement and right to use of the dwelling

When John and Mary move apart, the question may arise of who is to have the dwelling and how their property is to be divided between them.

The main rule is that each of them can keep undivided such property or assets as he or she brought into the marriage or has inherited or received as a gift in the course of the marriage.

See the brochure "Property Relations between Spouses" for more information on settlements and the right to use of the dwelling.

FROM NATIONAL INSURANCE

FROM PRIVATE PENSION SCHEMES

Pensions for spouses

If John dies within five years of the divorce, Mary will be entitled to a National Insurance surviving spouse's benefit if their marriage lasted 25 years, or 15 years if the parties has a child together. Mary loses this right if she marries again. NAV has more information on spouses' pensions under the National Insurance scheme.

John may have contributed to a private pension scheme under which Mary will be entitled to a surviving spouse's pension if John dies. The rules governing entitlements depend to some extent on the terms of the pension agreement.

If the marriage lasted at least 10 years, and Mary was at least 45 years of age at the time of the divorce, Mary will retain her right to a spouse's pension under a private pension scheme despite the divorce.

Surnames

If Mary took John's family name when they were married, she may keep the name even if they are divorced. If she wishes to change her name after separation or divorce, she must send an application entitled "Melding om endring av navn" (Notice of Change of Name) to the National Population Register in the municipality in which she is registered as a resident. The application form is available on www.skatteetaten.no

ACT. NO 47 OF JULY 1991 RELATING TO MARRIAGE

Chapter 4. Dissolution of marriage. Separation.

Section 19. Dissolution of marriage

A marriage may be dissolved by divorce after prior separation pursuant to section 21 or without prior separation pursuant to sections 22 and 23. A marriage may also be dissolved pursuant to section 24.

Section 20. Separation

A spouse who finds that he or she cannot continue cohabitation may demand a separation.

A separation ceases to have legal effect if the spouses continue or resume cohabitation. However, cohabitation for a transitional period until cohabitation is terminated, or brief attempts to resume cohabitation, will not have this effect.

Section 21. Divorce after separation

Each of the spouses may demand a divorce when they have been separated for at least one year.

Section 22. Divorce after cohabitation is terminated

Each of the spouses may demand a divorce if they have not cohabited for at least two years.

Section 23. Divorce on grounds of abuse and forced marriage

A spouse may demand a divorce if the other spouse has intentionally attempted to kill him or her or their children or wilfully exposed them to severe maltreatment. The same applies if the spouse has behaved in a manner that is likely to arouse grave fear of such conduct.

A demand for divorce pursuant to the first paragraph must be made within six months after the spouse learned of the act, and not later than two years after it took place.

A spouse may also demand divorce if he or she has been forced by unlawful conduct to contract the marriage. This applies regardless of who has exercised such force. Section 16, fourth paragraph, shall apply correspondingly.

Section 24. Dissolution of a marriage contracted contrary to section 3 or section 4

Each of the spouses may demand that the marriage be dissolved if it was contracted contrary to section 3 or section 4.

If neither of the spouses institutes proceedings, the county governor shall institute proceedings for dissolution of the marriage. If there are strong reasons for doing so, the county governor may nevertheless decide that no proceedings shall be instituted or that legal action shall be post-poned.

A spouse may demand a divorce when the other spouse has contracted a new marriage contrary to section 4.

No demand for the dissolution of a new marriage contrary to section 4 may be made pursuant to the first or second paragraph if the previous marriage has been dissolved.

Section 25. Entry into effect of separation and divorce

A separation or divorce enters into effect on the day the licence is issued by the county governor or judgment is pronounced, unless otherwise specially provided.

A licence or judgment for divorce does not give persons the right to contract a new marriage until the licence has become final or the judgment becomes finally binding.

If the decision to grant the licence has been the subject of appeal, the decision shall not be deemed final until the expiry of the time limit for instituting legal proceedings referred to in section 29, fifth paragraph.

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