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Divorce and legal separation



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1 What are the conditions for obtaining a divorce?

Divorce arrangements are set out in Chapter IV of Part 2 of Book III “Family Law” of the Civil Code of the Republic of Lithuania (hereinafter – ‘Lithuanian Civil Code’)(Civilinis kodeksas).

Article 3.51 sets out the conditions for obtaining divorce by mutual consent of the spouses. A marriage may be dissolved provided that all of the following conditions are met:

1. over a year has elapsed since the marriage took place;
2. the spouses have signed a divorce settlement agreement (division of property, child maintenance, etc.);
3. both of the spouses have full legal capacity.

In the cases provided for in this Article, divorce is obtained under a simplified procedure.

Article 3.55 of the Lithuanian Civil Code sets out the conditions for a divorce at the request of one of the spouses, which must be filed with the district court of the place of residence of the applicant. In this case, a marriage may be dissolved if at least one of the following conditions is met:

1. the spouses have been separated for over a year;
2. one of the spouses was declared legally incapacitated by a court judgment after the marriage took place;
3. the whereabouts of one of the spouses have been recognised as unknown by a court judgment;
4. one of the spouses is serving a prison sentence of more than a year for committing a non-premeditated crime.

Article 3.60 of the Lithuanian Civil Code sets out the conditions for a divorce on grounds of fault by one (or both) of the spouses. A spouse may apply for a divorce if the marriage has broken down through the fault of the other spouse. A spouse is recognised as being at fault for the breakdown of the marriage if he or she has substantially breached his or her obligations in marriage as set out in Book III (Family Law) of the Lithuanian Civil Code (Civilinis kodeksas), making married life together impossible as a result. A marriage is presumed to have broken down through the fault of the other spouse if he or she has been convicted of a pre-meditated crime or has committed adultery or is abusive towards the other spouse or other members of the family or has deserted the family and has not been caring for it for over a year.

The respondent in divorce proceedings may dispute his or her fault and put forward evidence that the applicant is responsible for the breakdown of the marriage. Having considered the circumstances of the case, the court may declare that both spouses are at fault for the breakdown of the marriage. If the court finds that both spouses are at fault for the breakdown of the marriage, the consequences are the same as for the dissolution of a marriage by mutual consent.

2 What are the grounds for divorce?

A marriage is ended by the death of one of the spouses or by termination under law. A marriage may be dissolved by a mutual consent of the spouses, on the application of one of the spouses or through the fault of

one or both spouses.

3 What are the legal consequences of a divorce as regards:

A marriage is considered to be dissolved from the day on which the divorce judgment enters into force. Within three working days of the entry into force of the divorce judgment, the court must send a copy of that judgment to the local civil registry office, which registers the divorce.

3.1 the personal relations between the spouses (e.g. the surname)

After a divorce, a spouse may retain his or her married surname or revert to the surname he or she had before the marriage. Where a marriage is dissolved through the fault of one of the spouses, the court may, at the request of the other spouse, prohibit the spouse at fault from retaining his or her married surname, except where the spouses have children together.

3.2 the division of property of the spouses

The division of the spouses' property depends on the matrimonial property regime, which may be established by law or by contract. In the absence of a marriage contract, the property of the spouses is covered by the statutory property regime. Matrimonial property regimes are governed by Chapter VI of Part 3 of Book III of the Lithuanian Civil Code.

3.3 the minor children of the spouses

If the marital home is owned by one of the spouses, the court may establish usufruct and allow the other spouse to remain in the marital home if minor children will continue to live with him or her after the divorce. Usufruct remains valid until the child reaches (the children reach) the age of majority. If the marital home is rented, the court may transfer the tenancy to the spouse with whom the minor children will live or a spouse who is incapable of working and may evict the other spouse if he or she has been ordered to live separately.

3.4 the obligation to pay maintenance to the other spouse?

When handing down a judgment in a divorce case, the court will also award maintenance payments to a former spouse in need of support, unless the issue of maintenance has been dealt with in the divorce settlement drawn up between the spouses. Spouses have no right to maintenance if their assets or income are sufficient to fully support them. It is assumed that a spouse will require maintenance if he or she is bringing up a minor child of the marriage, or if he or she is incapable of working through old age or ill health. A spouse who was unable to obtain any qualifications (complete his or her studies) because of the marriage and the common interests of the family or the need to care for the children is entitled to require the former spouse to cover the costs of completing his or her studies or retraining.

The spouse at fault in the divorce is not entitled to maintenance.

When awarding maintenance and determining the amount, the court must take into account the duration of the marriage, the need for maintenance, the assets of both former spouses, their state of health, age and capacity to work, how likely an unemployed spouse is to find employment and other important circumstances.

Maintenance payments are reduced, awarded only temporarily or refused if any of the following circumstances exist:

1. the marriage lasted for less than a year;
2. the spouse entitled to maintenance has committed a crime against the other spouse or his or her next of kin;
3. the financial difficulties being experienced by the spouse entitled to maintenance are a result of his or her own wrongful conduct;
4. the spouse requesting maintenance did not contribute to the growth of common assets or deliberately harmed the interests of the other spouse or the family during the marriage.

The court may require the former spouse ordered to pay maintenance to the other spouse to provide an

adequate guarantee that this obligation will be met. Maintenance may be awarded as a lump sum or in the form of regular monthly payments (instalments) or a transfer of assets.

If a spouse applies for a divorce because of the incapacity of the other spouse, the spouse initiating the divorce must pay for the treatment and care of the incapacitated former spouse, unless they are covered by state social security funds.

A maintenance order constitutes grounds for a forced pledge (mortgage) of the respondent's assets. If the former spouse defaults on his or her obligation to pay maintenance, his or her assets may be used to make the payments in accordance with the statutory procedure.

In the event of the death of the former spouse ordered to pay maintenance, the obligation devolves to his or her successors in so far as the inherited estate allows, irrespective of the manner of acceptance of the estate.

Where a former spouse who has been awarded maintenance dies or remarries, the payment of maintenance ceases. In the event of death, the right to claim arrears or as yet unpaid maintenance payments passes to the late spouse's successors. If the new marriage is dissolved, the former spouse may apply for the renewal of maintenance payments provided that he or she is bringing up a child or caring for a disabled child from his or her previous marriage. In all other cases the duty of the spouse from the subsequent marriage to pay maintenance takes precedence over the duty of the former spouse from the previous marriage.

4 What does the legal term 'legal separation' mean in practical terms?

When the court issues a judgment granting legal separation, the spouses no longer live together, but their other rights and obligations are not extinguished. Legal separation may be a first step towards divorce. However, it does not mean that the spouses may not start living together again. Unlike in the case of divorce, spouses who are separated may not remarry, as they are not formally divorced.

5 What are the conditions for legal separation?

One of the spouses may apply to the court for a legal separation if certain circumstances, which may not depend on the other spouse, mean that their life together has become intolerable/impossible or could substantially harm the interests of their minor children, or the spouses are no longer interested in living together. The spouses may jointly apply to the court for a legal separation if they have signed a separation agreement providing for the living arrangements, maintenance and education of their minor children, the division of their property and mutual maintenance.

6 What are the legal consequences of legal separation?

Separation does not affect the rights and obligations of the spouses in respect of their minor children; the spouses merely live apart. When granting a separation order, the court must always issue a property adjustment order, unless those matters have been settled in the marriage contract between the spouses. The legal consequences of separation in terms of the property rights of the spouses take effect from the opening of proceedings. However, unless a spouse has been deemed to be at fault for the separation, he or she may ask the court to make the legal consequences of separation with regard to the spouses' property rights retroactive to the date on which the spouses actually ceased to live together. If one of the separated spouses dies after the separation order has been issued, the survivor retains all the statutory rights of a surviving spouse, unless the surviving spouse has been declared by the court to be at fault for the separation. The same rule applies where the court grants a separation on the basis of a joint application by the spouses, unless the separation agreement between the spouses provides otherwise. However, the surviving spouse cannot inherit the deceased spouse's estate.

When issuing a separation order, the court may order the spouse at fault for the separation to pay maintenance to the other spouse if he or she is in need of support, unless the issue of maintenance has been settled in the separation agreement between the spouses.

A separation ends if the spouses start living together again and their life together confirms their intention to live together permanently. The separation ends when the court issues an order granting the spouses' joint

application to end the separation and revoking its earlier separation order.

On the resumption of their life together, the spouses property remains separate until they conclude a new marriage contract and choose a new matrimonial property regime. The end of legal separation produces legal effects for third parties only if the spouses conclude a new marriage contract and register it in accordance with the procedure set out in Article 3.103 of the Lithuanian Civil Code.

If the spouses have been separated for more than a year since the court order entered into force, either spouse may seek a divorce.

7 What does the term 'marriage annulment' mean in practice?

Only the courts can annul a marriage. A marriage that has been declared void by a court is void ab initio. The legal consequences of the annulment of a marriage (see point 9) depend on whether the spouses, or at least one of them, acted in good faith when entering into the marriage. However, in any case, the law defends the rights of children of a marriage that has been annulled (they are deemed to have been born in wedlock). After the annulment of their marriage, the parties may enter into a new marriage or register a partnership.

8 What are the conditions for marriage annulment?

A marriage may be declared void if the following conditions for entering into a marriage are not met:

A marriage may be entered into only with a person of the opposite sex.

A man and a woman must enter into marriage of their own free will. Any threat, coercion, deceit or other absence of free will constitutes grounds for annulling the marriage.

A marriage may be entered into by persons who are aged 18 or over on the day of the marriage. At the request of a person who wishes to marry before the age of 18, the court may lower the age of consent to marriage for that person by simplified procedure, but by no more than two years. Pregnancy is an important reason for lowering the age of consent to marriage. If the person is pregnant, the court may allow marriage before the age of 16.

A person who has been declared legally incapacitated by a court judgment that has entered into force may not enter into a marriage. If it transpires that a case has been brought to court to have one of the parties to an intended marriage declared legally incapacitated, the registration of the marriage must be postponed until the judgment in that case enters into force.

A person who is married and has not obtained a divorce in accordance with the procedure laid down by law may not enter into another marriage.

Marriage between parents and children, adopted parents and adopted children, grandparents and grandchildren, siblings or half-siblings, cousins, uncles and nieces, and aunts and nephews is prohibited.

A fictitious marriage may also be annulled. A marriage entered into just for the sake of appearances and without the intention of creating a legal family relationship may be annulled on the petition of either spouse or a public prosecutor.

A marriage may be annulled if it was not entered into freely. A spouse may petition for annulment if he or she can prove that, at the time of the marriage, he or she was incapable of understanding the meaning of his or her actions or was not in control of them. An annulment may be sought by a spouse who was induced to marry by threat, duress or fraud.

A spouse who consented to marriage on account of a substantial error may seek annulment of the marriage. An error is deemed to be substantial if it concerns circumstances in relation to the other party which, if known, would have deterred the spouse from entering into the marriage. The error is presumed to be substantial if it is about: (i) the health of the other party or a sexual abnormality which makes normal family life impossible; or (ii) a serious crime committed by the other party.

9 What are the legal consequences of marriage annulment?

Children of a marriage that was subsequently annulled are deemed to have been born in wedlock. Where both spouses acted in good faith, i.e. they did not know and could not have known about the impediments to their marriage, the legal consequences of their marriage, even though it was declared void, are the same as for a valid marriage, except for the right of succession. Evidence that the spouses acted in good faith must be provided in the court judgment.

Legal consequences of annulment where one or both spouses acted in bad faith: where only one of the parties acted in good faith, the rights conferred on him or her by a void marriage are those of a married person. Where both parties acted in bad faith, the void marriage confers none of the rights or obligations of married persons on either party. Each of them is entitled to recover their own property, including gifts to the other party. If in need of maintenance, the spouse who acted in good faith is entitled to petition for maintenance from the spouse who acted in bad faith for a period not exceeding three years. The amount is to be determined by the court, taking into account the financial situation of both parties. The court may order the payment of monthly instalments or a single lump sum. If the financial situation of one of the parties changes, the interested party may apply to the court for the maintenance payments to be increased, decreased or terminated. An order to pay maintenance to the spouse who acted in good faith terminates automatically if that spouse enters into a new marriage or at the end of the three-year period for which maintenance is to be paid.

10 Are there alternative non-judicial means for solving issues relating to a divorce without going to court?

Lithuanian legislation provides for no alternative non-judicial means of resolving issues relating to the divorce, so these can be resolved only by going to court.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

An application for a divorce by mutual agreement of the spouses must be filed with the district court (apylinkės teismas) of the place of residence of one of the spouses. The application must state the grounds for the divorce and how the applicant will fulfil his or her obligations towards the other spouse and their minor children and must give any other of the particulars specified in Article 384 of the Lithuanian Code of Civil Procedure (Civilinio proceso kodeksas).

An application for a divorce at the request of one of the spouses, must be filed with the district court of the place of residence of the applicant.

An application for a divorce on grounds of fault by one of the spouses must be filed with the district court of the place of residence of the respondent. Where the applicant has minor children living with him or her, the application for divorce may also be filed with the district court of the place of residence of the applicant.

An application for annulment of a marriage must be filed with the court of the place of residence of the respondents or one of the respondents.

Applications for legal separation are examined by the court of the place of residence of the respondent.

12 Can I obtain legal aid to cover the costs of the procedure?

The Law of the Republic of Lithuania on state-guaranteed legal aid (Lietuvos Respublikos Valstybės garantuojamos teisinės pagalbos įstatymas) governs the provision of free legal aid to low-income earners. Such legal aid also covers family matters.

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

Yes A decision relating to divorce/marriage annulment may be appealed in accordance with the general provisions governing appeal procedures.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

A court decision on divorce/legal separation/marriage annulment issued in another Member State is recognised in the Republic of Lithuania under Council Regulation (EC) No 2201/2003. Under that Regulation, judgments issued in one Member State are recognised in other Member States without any special procedure.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

Under Council Regulation (EC) No 2201/2003, an interested party may oppose the recognition in the Republic of Lithuania of a decision on divorce, legal separation or marriage annulment issued in another Member State.

In accordance with Article 21 of Council Regulation (EC) No 2201/2003, any interested party may file an application with the district court (apylinkės teismas) for a judgment issued in another Member State not to be recognised in Lithuania.

A person in respect of whom recognition of a judgment is sought may also oppose its recognition in Lithuania in view of recognition proceedings that are already under way and following the district court's decision to recognise the judgment. Accordingly, the respondent may oppose the recognition in Lithuania of the judgment in that case by appealing against the district court's decision to recognise it. In accordance with Article 33 of Council Regulation (EC) No 2201/2003, the district court's decision on the recognition of a judgment issued in another Member State may be appealed in the regional court (apygardos teismas).

The respondent may oppose the recognition of a judgment issued by a court in another Member State on the grounds for non-recognition laid down in Article 22 of Council Regulation (EC) No 2201/2003.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

Legal separation and divorce are subject to the laws of the place of habitual residence of the spouses. If the spouses do not have a common place of habitual residence, the laws of the country in which they had their last common place of habitual residence apply, or failing that, the laws of the country of the court. If the laws of the country of which both spouses are citizens do not permit divorce or impose special conditions for divorce, a divorce may be obtained in accordance with the laws of the Republic of Lithuania if one of the spouses is also a Lithuanian citizen or is habitually resident in the Republic of Lithuania.

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