

Divorce - France

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1 What are the conditions for obtaining a divorce?

There is one type of non-judicial divorce:

- divorce by mutual consent through a private instrument countersigned by lawyers and filed in the official records of a notary.

There are four types of divorce:

- divorce by mutual consent,

- divorce by acceptance of the principle of marital breakdown or ‘accepted divorce’,
- divorce due to irretrievable breakdown of the marriage,
- divorce on the grounds of fault.

2 What are the grounds for divorce?

- Divorce by mutual consent through a private instrument countersigned by lawyers and filed in the official records of a notary can be chosen if the spouses agree on the principle of the breakdown and on all the consequences of the divorce. With their lawyers, they draw up an agreement that is signed by both parties and their lawyers after a cooling-off period. If they have any children, the latter must be informed of their right to be heard. If any child asks to be heard, the parties must then submit an application for divorce by judicial mutual consent to the family judge (*juge aux affaires familiales*) so that the child can be heard.
- Divorce by judicial mutual consent can be applied for by spouses only where a child who has the necessary intellectual capacity asks to be heard and where they agree on the principle of the breakdown and on all its consequences. In this case, they are not required to reveal the grounds for the divorce and only have to submit, for the judge’s approval, a draft agreement setting out the consequences of the divorce. The judge will refuse approval only in cases where the interests of the children or one of the spouses are insufficiently protected.
- Accepted divorce can be applied for by one of the spouses and accepted by the other or it can be applied for jointly by both spouses. Unlike divorce by mutual consent, the spouses accept the principle of divorce but cannot agree on its consequences. The judge must therefore rule in this regard.
- Divorce due to irretrievable breakdown of the marriage can be applied for by one spouse provided that the couple have not been living together for two years on the date when the divorce petition is submitted. This assumes an absence of cohabitation and a desire to end the marriage.
- Divorce on the grounds of fault can be applied for by one spouse due to acts attributable to the other spouse where such acts constitute a serious or repeated infringement of marital duties and obligations and render the continuation of life together intolerable.

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

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

- The obligations of fidelity, cohabitation and assistance come to an end when the court decision to grant a divorce becomes final, i.e. when there is no longer any possibility of appeal.
- Each spouse is thereafter free to remarry.
- Following the divorce, each spouse forfeits the right to use the surname of the other spouse. However, one spouse may continue to use the other spouse’s surname, either with the latter’s agreement or with the judge’s authorisation, if they can provide reasons why this is particularly important for them or for their children.

3.2 the division of property of the spouses

- Divorce leads to dissolution of the matrimonial property regime and, where appropriate, the division of assets.
- Divorce has no impact on marital benefits that take effect during the marriage or on gifts of existing assets. In contrast, it does lead to automatic revocation of the marital benefits that take effect on dissolution of the matrimonial property regime, on the death of one of the spouses or on transfers *mortis causa*.
- In cases of divorce by judicial or non-judicial mutual consent, the granting of the divorce is conditional upon the agreement of the spouses to the liquidation of their financial interests. In other types of divorce, the spouses can agree to this liquidation before the divorce is granted, but they are not obliged to do so. In this case, the liquidation takes place after the divorce is granted.

3.3 the minor children of the spouses

Divorce has no particular consequences on the rules regarding the exercise of parental authority, which therefore, in principle, continues to be entrusted to both parents. The judge may, however, decide to entrust the exercise of parental authority to just one of the parents if this is in the interests of the child. The terms for exercising parental authority must be determined (habitual residence, access rights, etc.).

Each parent must continue to contribute towards the child's maintenance and education. This contribution takes the form of a maintenance allowance paid by one of the parents to the other, but it may also take the form of the full or partial direct payment of costs incurred for the child. It can also be paid in the form of a right of use and habitation.

3.4 the obligation to pay maintenance to the other spouse?

NB: The payment of maintenance by one spouse to the other is an interim measure, i.e. maintenance is paid only until the divorce is granted. Once the divorce has been granted, one spouse may claim only a compensatory payment (*prestation compensatoire*) or damages from the other spouse. This can be set amicably in a divorce by judicial or non-judicial mutual consent or by the judge in other cases.

- The aim of this compensatory payment is to compensate for the disparity that the breakdown of the marriage may create in the respective living conditions of the spouses. Its amount is set by the judge according to the incomes and needs of each spouse. It is by nature a lump sum that is paid, in principle, in the form of capital:
 - either through the payment of a sum of money for which terms of payment may be agreed;
 - or through the allocation of owned assets or a right of use, habitation or usufruct, either on a temporary basis or for life.

Exceptionally, the compensatory payment may be set as a life annuity, which may, in the event of changes in the resources or needs of the spouses, be revised downwards.

- Damages can be awarded to a spouse if the divorce has particularly severe consequences for him/her:
 - where he/she is the respondent in a divorce due to irretrievable breakdown of the marriage and has not applied for divorce; or
 - where the divorce is granted against the other spouse and the blame lies entirely with the latter.

(See 'Maintenance claims - France').

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

Legal separation (*séparation de corps*) is a legal arrangement that ends certain marital obligations, such as the duty of cohabitation, whilst not dissolving the marriage itself. Remarriage is therefore not possible and the duty of support remains.

5 What are the conditions for legal separation?

- The types and procedure are the same as for judicial divorce, but legal separation by non-judicial mutual consent does not exist.
- In principle, the spouse against whom an application for legal separation is made can file a cross-petition for divorce or legal separation and, conversely, the spouse against whom an application for divorce is made can file an application for divorce or legal separation.
- In the event of an application for divorce due to irretrievable breakdown of the marriage, there is no possibility of a cross-petition for legal separation, with only an application for divorce being possible.
- When an application for divorce and an application for legal separation are filed concurrently, the judge must first consider the application for divorce. Only if the judge decides not to grant the divorce will the application for legal separation be examined. When both applications are made on the grounds of fault, the judge will consider them simultaneously and, if they are both accepted, grant the divorce on the basis of shared fault.

6 What are the legal consequences of legal separation?

Effects of legal separation.

- Legal separation ends the duty of cohabitation, but the duties of assistance, fidelity and support remain. In addition, unless otherwise decided by the court, the wife may continue to use her husband's surname. The duty of support means that one spouse may be required to pay a maintenance allowance to the other spouse if they should need it. The amount of this allowance is set irrespective of fault unless the spouse receiving payment seriously failed to fulfil their duties during the marriage. The maintenance allowance may be replaced by a capital sum if the assets of the spouse making the payment permit this.
- As regards the assets, the judgment results in dissolution and liquidation of the matrimonial property regime, as in the case of a divorce.

- If one of the spouses dies, the inheritance rights of the other spouse remain unchanged and the latter benefits from the legal provisions applying to a surviving spouse. However, in a legal separation by judicial mutual consent, the spouses may include a waiver of their inheritance rights in the agreement.

Conversion of a legal separation into a divorce

At the request of one of the spouses, a legal separation judgment is automatically converted into a divorce judgment when the legal separation has lasted for two years. In this case, the judge grants the divorce and rules on its consequences. The grounds for the legal separation become the grounds for divorce. The allocation of fault cannot be changed.

In all types of legal separation, the latter may be converted into divorce by mutual consent at the request of both spouses. However, when a legal separation is granted through judicial mutual consent, it can only be converted into a divorce by mutual consent.

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

The annulment of a marriage, which requires a judgment, retroactively erases all the effects of the marriage as if it had never existed.

This is different from divorce or legal separation, which has effects only in the future.

8 What are the conditions for marriage annulment?

The grounds for a marriage annulment differ depending on whether this involves a relative nullity (where a defect of consent or failure to obtain the authorisation of persons who should have authorised the marriage is invoked) or an absolute nullity (in the case of non-fulfilment of a public policy requirement).

Types of relative nullity

There are three possible cases:

- mistaken identity or mistake as regards a person's essential qualities;
- coercion;
- failure to obtain the authorisation of persons whose authorisation was necessary.

The application for annulment can be made by certain persons only: the spouse whose consent was wrongfully obtained or who was legally incapable when the marriage was contracted, persons who should have consented to the marriage and the public prosecutor.

An application for annulment is admissible only if made within five years of the date of the marriage (or five years of the date when the person concerned reached the legal age to agree to the marriage).

Types of absolute nullity

Total failure to obtain consent, under-age marriage, bigamy, incest, absence of one of the spouses at the marriage, lack of authority of the registrar and clandestine marriage.

The application may be made by anyone who has an interest in taking action or the public prosecutor, within thirty years of the date of the marriage (or five years of the date when the person concerned reached the legal age to agree to the marriage).

9 What are the legal consequences of marriage annulment?

The effects are the same for both relative nullity and absolute nullity.

- The personal and financial effects of the marriage are erased as the marriage bond is deemed never to have existed. For example, if one of the spouses has died, annulment of the marriage will deprive the other spouse of any inheritance right.

However, this principle can be mitigated if one or both of the spouses acted in good faith at the time of the marriage. In this case, the 'putative' marriage remains null and void, but is treated as if it had simply been dissolved. Consequently, all the civil, personal and financial effects occurring prior to the annulment judgment are maintained.

- As regards children, the annulment of the marriage of their parents has no legal effects and their situation is the same as in divorce cases.

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

A divorce and its consequences can be settled using the divorce by non-judicial mutual consent procedure, which requires the involvement of two lawyers and a notary but no judge, except in cases where a child who has the necessary intellectual capacity asks to be heard.

In all other cases, a judge must be involved, but the parties can use family mediation before going to court or at the same time.

Mediation may also be proposed by the judge. It is entrusted to a natural person or an association, which is responsible for hearing the parties, weighing up their points of view and helping them to find a solution to their dispute.

Following such mediation, parties who have reached agreement can submit their agreement to the judge for approval or choose the divorce by non-judicial mutual consent procedure.

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?

Where to lodge my application

- Application for judicial divorce or legal separation

This application must be filed by a lawyer with the registry of the regional court (*tribunal de grande instance*).

The court with territorial jurisdiction is:

- the court in the family's place of residence;
- if the spouses live separately and exercise joint parental responsibility, the court in the place of residence of the spouse with whom any minor children live;
- if the spouses live separately and parental authority is exercised by only one of them, the court in the place of residence of that spouse;
- in other cases, the court in the place of residence of the spouse who did not lodge the application;
- in the case of joint applications, the spouses choose the court in the place where one or other spouse lives.

- Application for annulment

The application for a marriage annulment is made to the regional court in the place where the respondent lives. It takes the form of a summons served by a court officer.

- Divorce by mutual consent through a private instrument countersigned by lawyers:

The agreement signed by the parties and the two lawyers must be filed in the official records of a notary practising in France.

Documents to be submitted

- Application for judicial divorce or legal separation

In all divorce cases, the spouses must provide all the information needed to identify them and their health insurance fund, plus information on the services and organisations that pay them benefits or pensions or any other allowances.

Where an application for a compensatory payment is made to the judge, the spouses must provide a statement certifying on their honour the accuracy of their incomes, resources, assets and living conditions.

In the case of divorce by judicial mutual consent, the application need not indicate the grounds for the divorce, but it must include an annexed agreement, dated and signed by the spouses and their lawyer(s), settling all the effects of the divorce and including, where appropriate, a statement of liquidation of the matrimonial property regime (*état liquidatif du régime matrimonial*).

In other cases, the application need not mention either the legal basis or grounds for the divorce, but it must include, where appropriate, requests made for interim measures.

- Application for annulment

No specific documents are required, but the applicant must submit documents proving that the ground(s) invoked can result in annulment of the marriage.

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

Legal aid, whether total or partial, can be obtained depending on financial means (see 'Legal aid - France').

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

These court decisions are open to the normal types of appeal.

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?

Divorce decisions are automatically recognised without the need for any specific procedures.

The same applies to marriage annulment decisions.

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?

To oppose the recognition of such a decision, an action to have the judgment declared unenforceable (*action en inopposabilité*) may be submitted to the regional court. An unenforceability decision provides a basis on which to oppose any further request for enforcement made by the other party (i.e. a request to have a decision of another State declared enforceable in France). Refusal of such an action is equivalent to enforcement.

The procedure is the same as for an enforcement action.

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?

Under Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, the law applicable to a divorce or legal separation may be chosen by the spouses.

In the absence of such choice, the divorce or legal separation is subject to the law of the State:

- where the spouses are habitually resident at the time the court is seized; or, failing that
- where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, insofar as one of the spouses still resides in that State at the time the court is seized; or, failing that
- of which both spouses are nationals at the time the court is seized; or, failing that
- the law of the *forum*.

However, if the application concerns the conversion of a legal separation into a divorce, the law applicable to the divorce will be the law applied to the legal separation, unless the spouses choose otherwise.

These rules also apply to spouses in the case of divorce by mutual consent through a private instrument countersigned by lawyers and filed in the official records of a notary. However, the spouses may not use the law of the *forum* as no court has been seized.

Related links

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