

**Chapter 1 : New York Separation Agreements Law “ Divorce**

*Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.*

If you are getting divorced in New York, do you know what property you get to keep and what you have to split with your spouse? You may also have questions about who will be responsible for the marital debt. Equitable Division New York is an equitable distribution state, meaning that the marital property will be divided between spouses in a way that is equitable, or fair. The division does not have to be equal to be considered fair. The court will be involved in the division only if you could not work together with your spouse to resolve your property disputes. Throughout the divorce process, you will have opportunities to decide with your spouse how you want to split your property between yourselves. The court will usually accept a written separation agreement on how you want to divide your property. It is only if you cannot reach a compromise with your spouse that the court will step in and divide your property for you. Only Marital Property Will be Divided Before the court can divide your property, it needs to know which property belongs to the marriage, which belongs to each spouse separately, and how much there is of each. Generally, marital property is all property acquired or earned during the marriage, regardless of what the title says. Separate property is property you owned before marriage. It also includes some property you receive during marriage, like a gift, an inheritance, or personal injury award to you alone. If you exchange your separate property for new property during marriage, then that new property remains yours alone. There are circumstances, however, when an increase in the value of your separate property will be characterized as marital property. On the other hand, if you bought an apartment in an up-and-coming neighborhood before marriage and it improves in value during the marriage simply because the rest of the homes in the area do the same, then that increase in value remains your separate property. At divorce, the court divides only the marital property. It can, however, consider all your financial resources “ both your share of the marital property and your separate property “ when deciding how much spousal maintenance alimony to award, if any. Factors Considered in Dividing Property The types of property commonly divided at divorce are real property like the family home, personal property like jewelry, and intangible property like income, benefits, and debts. The court treats debts the same as any other real, personal, or intangible property. Before dividing an asset or debt, the court will have to characterize it as either marital or separate and then assign ownership or responsibility for it based on a set of factors designed to give an equitable result. For the family home, if you have custody of your children, then you have a better chance of keeping that property, or at least the right to live there while you raise the children. In addition to any other factor that might be relevant to the particular circumstances of your marriage, the court specifically considers what the spouses may have lost at divorce, such as an interest in an inheritance, pension rights, or health insurance. It also evaluates future losses the spouses face in terms of taxes. Something like cash, which is very liquid, can easily be split between the spouses. The court has the option to order a distributive award “ a payment to balance out an uneven distribution of property “ if it is impractical to divide a substantial asset. Although fault in causing the marriage to fail is not part of the calculation, the court can award less of the marital property to you if you wasted marital assets. If you do, the court can penalize you for it during the division. Spousal Maintenance Determined Separately Spousal maintenance is a payment from one spouse to the other to help sustain the recipient spouse after divorce. Payments can be periodic monthly, for example or in a lump sum, and for a set or indefinite period of time. A spouse can request temporary maintenance payments during the divorce process, the amount of which will be based on specific income guidelines. When the court orders the divorce and the property has been divided, the court can also make a permanent maintenance award. In New York, an award for spousal maintenance is based on many of the same factors as the division of property. The court also considers domestic violence during the marriage, which may have kept the battered spouse from seeking or improving employment. Part A applies only to divorces filed in New York before July 19, For all later cases, use part B.

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In order to file for a divorce in New York, residency requirements must be met for the court to accept the case. If the court discovers it does not have jurisdictional rights to hear the case it will not be accepted or it will eventually be dismissed. The requirements are as follows: Required residence of parties. An action to annul a marriage, or to declare the nullity of a void marriage, or for divorce or separation may be maintained only when: 1. The parties were married in the state and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or 2. The parties have resided in this state as husband and wife and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or 3. The cause occurred in the state and either party has been a resident thereof for a continuous period of at least one year immediately preceding the commencement of the action, or 4. The cause occurred in the state and both parties are residents thereof at the time of the commencement of the action, or 5. Either party has been a resident of the state for a continuous period of at least two years immediately preceding the commencement of the action. The Complaint for Divorce must declare the appropriate New York grounds upon which the divorce is being sought. The appropriate lawful ground will be that which the parties agree upon and can substantiate, or that which the filing spouse desires to prove to the court. The divorce grounds are as follows: An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds: Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in Subdivision Two of Section 236.1. Such agreement shall be filed in the office of the clerk of the county wherein either party resides. In lieu of filing such agreement, either party to such agreement may file a memorandum of such agreement, which memorandum shall be similarly subscribed and acknowledged or proved as was the agreement of separation and shall contain the following information: The Plaintiff is the spouse who initiates the filing procedure with the family law or domestic relations court. The Defendant is the spouse who does not file the initial divorce papers, but rather receives them by service. This is the New York court where the divorce will be filed. The court will assign a case number and have jurisdictional rights to facilitate and grant the orders concerning, but not limited to: The name of the court is clearly represented at the top of all documents that are filed. Complaint for Divorce and Judgment of Divorce. These are the essential documents needed to start and finalize a divorce according to New York law. There are anywhere from ten to twenty other documents that may be required throughout the filing process. A few other documents that are typically filed during the process are: Office of the Clerk of the County Court. Since New York is an "equitable distribution" state, the marital property shall be divided in an equitable fashion. Equitable does not mean equal, but rather what is fair. The court will encourage the parties to reach a settlement on property and debt issues otherwise the court will declare the property award. Disposition of property in certain matrimonial actions. Except where the parties have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment. Separate property shall remain such. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties. The court shall consider the following factors when distributing property upon divorce: Not all cases involve support from one spouse to the other. Such direction may require the payment of a sum or sums of money either directly to either spouse or to third persons for real and personal property and services furnished to either spouse, or for the rental of or mortgage amortization or interest payments, insurance, taxes, repairs or other carrying charges on premises occupied by either spouse, or for both payments to either spouse and to such third persons. In determining appropriate temporary or permanent maintenance which has been

paid. In determining the amount and duration of maintenance the court shall consider: When minor children are involved in a divorce, the New York courts will do everything possible to help lessen the emotional trauma the children may be experiencing. If the parents cannot come to an agreement regarding the issues involving the children, the court will establish the custody order at its discretion. New York child support guidelines are based on the Income Shares Model for calculating child support. These two support amounts are then offset to establish which parent will pay the other parent for support of the child. Order of support by parent. When the court makes an order of support pursuant to the support guidelines, and where permitted under Federal Law and where the record of the proceedings contains such information, the court shall require the Social Security Number of such parent to be affixed to such order; provided, however, that no such order shall be invalid because of the omission of such number. Where the record of the proceedings contains such information, such order shall also include on its face the name and address of the employer, if any, of the person chargeable with support provided, however, that failure to comply with this requirement shall not invalidate such order. In determining the appropriate support amount the court will consider the following factors, but not limited to: Financial resources of the parties involved, including the children. The standard of living prior to the divorce. The physical and mental health of the children. Educational needs of the parents and children. Other children outside the marriage each parent may have. The above synopsis of New York divorce laws is original material which is owned and copyrighted by Divorce Source, Inc. This material has been adapted from applicable state laws and unauthorized reproduction is prohibited. Violation of this notice will result in immediate legal action.

## Chapter 3 : New York Consolidated Laws :: US Codes and Statutes :: US Law :: Justia

*An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds: (1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to.*

However, the requirement is reduced to one year if: The spouses were married in New York and either spouse is still a resident; They once resided in New York and either spouse is still a resident; or The grounds for divorce arose in New York. In addition, there is no residency time limit requirement if both of the spouses were residents of New York at the time of filing the divorce and the grounds for divorce arose in New York. The divorce may be filed for in a county where either spouse resides. In order to file for divorce in New York, the proper grounds must be established. Both spouses are involved in establishing these grounds, and both must substantiate and agree upon these, unless the divorcing spouse is trying to prove otherwise to the court. Living separate and apart for one year under the terms of a separation agreement which is in writing and signed and notarized [proof of compliance with the terms of the settlement agreement must be submitted when the divorce is filed. In addition, a copy of the agreement or a brief memorandum of the agreement must be filed in the office of the clerk of the county] or Living separate and apart for one year under the terms of a judicial separation decree. The relationship between husband and wife has broken down irretrievably for a period of at least six months. Adultery; Abandonment for one year; Imprisonment for three or more consecutive years; and Cruel and inhuman treatment. Custody of the Children in New York Joint or sole child custody is to be determined according to the best interests of the child. Neither parent is entitled to a preference. There are no factors specified in the statute. Separate property, including property acquired before a marriage and any gifts or inheritances whenever acquired, is to remain with the spouse who owns it. Separate property also includes any increase in value or property acquired in exchange for separate property. Marital property acquired during the marriage will be equitably divided between the spouses, based on the following factors: Marital fault may be considered. Financial disclosure of assets and income are mandatory. New York Spousal Support Guidelines Either spouse may be awarded maintenance, without regard to marital fault, based on a consideration of the following factors: Marital misconduct of either parent is not to be considered. The factors to be considered are: Security may be required for the payments.

## Chapter 4 : Laws of New York

*The Complaint for Divorce must declare the appropriate New York grounds upon which the divorce is being sought. The appropriate lawful ground will be that which the parties agree upon and can substantiate, or that which the filing spouse desires to prove to the court.*

## Chapter 5 : Grounds for Divorce in New York - New York Divorce Source

*Read this complete New York Consolidated Laws, Civil Rights Law - CVR Â§ Optional change of name upon marriage, divorce or annulment on Westlaw FindLaw Codes are provided courtesy of Thomson Reuters Westlaw, the industry-leading online legal research system.*

## Chapter 6 : NY - Fur - Chapter Of the Consolidated Laws. | Animal Legal & Historical Center

*Mckinney's Consolidated Laws of New York AnnotatedCurrentness Domestic Relations Law (Refs & Annos) for a divorce, the court may direct either spouse to provide.*

## Chapter 7 : New York Code and Statutes

*Find your Senator and share your views on important issues. find your senator. The Laws of New York.*

## Chapter 8 : Consolidated Laws of New York - Wikipedia

*The official home page of the New York State Unified Court System. We hear more than three million cases a year involving almost every type of endeavor. We hear family matters, personal injury claims, commercial disputes, trust and estates issues, criminal cases, and landlord-tenant cases.*

## Chapter 9 : New York Divorce Laws - New York Divorce Source

*(Consolidated Laws of New York - Domestic Relations Laws - Article 13 - Sections: and ) New York Divorce Grounds:  
(1) Irretrievable breakdown in relationship for at least six months.*