



Legal Service Support Section Pacific
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DIVORCE / LEGAL SEPARATION

This document will explain the steps you can take to facilitate the divorce / legal separation (1.), the difference between divorce and legal separation (2.), what is a Separation Agreement (3.) and divorce in Japan (4.).

1. PREPARING FOR DIVORCE / LEGAL SEPARATION

Generally, obtaining a divorce takes time. All states have residency requirements that must be satisfied prior to filing for divorce. Further, some states require spouses live separate and apart from one another for a specified period of time before filing for divorce. As you prepare for divorce, the Legal Assistance Office recommends considering the following:

- ☐ **Counseling.** Counseling may help couples effectively communicate with one another, addressing and resolving issues affecting the family. On-base resources include, but are not limited to, chaplains and Behavioral Health professionals. If a dependent spouse of a servicemember is considering returning to the United States before the end of an overseas tour and is seeking to be transported at government expense, family counseling may be required.
- ☐ **Close Joint Accounts.** Joint accounts, whether credit card or bank accounts, should be closed or frozen. This will prevent one spouse from incurring debt that you may be held responsible for later and/or withdrawing funds from a jointly held account. Common joint accounts include, but are not limited to, Navy Federal Credit Union accounts and/or credit cards, Military Star credit cards, and USAA bank accounts and/or credit cards.
- ☐ **Live Separate and Apart.** Although not all states require spouses to live separate and apart from one another prior to divorce, living separate and apart may, in certain cases, reduce stress in the home. It can also provide you and your spouse time apart to consider all options available.
- ☐ **Review and Change Beneficiaries.** Certain assets, such as bank accounts, insurance policies (including SGLI), and investments, transfer upon death to designated beneficiaries outside of a will. You should review the named beneficiary (or beneficiaries) for such assets and change them as desired.
- ☐ **Update Life Planning Documents.** Life planning documents, such as wills, powers of attorney, advance directives, and trusts, should be reviewed and updated as desired.

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- ☐ **(Optional) Obtaining a Separation Agreement.** A Separation Agreement is a written legal document or contract between two spouses wanting to separate before or during the divorce process, and establishes terms by which each spouse will have to abide until the divorce is final. A separation agreement may be helpful to discuss terms and come to an agreement in advance.

2. CHOOSING BETWEEN DIVORCE AND LEGAL SEPARATION

WHAT IS A LEGAL SEPARATION?

A legal separation will most of the time require a Judge. It is an arrangement in which a married couple lives apart, but remains legally married. In most states, a legal separation is a civil court order that does not legally end a marriage, but allows the court to issue orders concerning division of property, spousal support, and visitation and custody for minor children. Legal Separation varies from state to state. Some state laws do not permit a legal separation (such as Texas, North Carolina, and South Carolina).

CAN YOU HELP ME FILE FOR A LEGAL SEPARATION?

It depends. Come to our office walk in hours to speak with an attorney about your legal options. We may be able to direct you to needed forms in order to file for legal separation, but you also may need to hire your own, private attorney in the state you want to obtain a legal separation.

CAN YOU HELP ME FILE FOR DIVORCE?

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3. SEPARATION AGREEMENT

WHAT IS A SEPARATION AGREEMENT?

A Separation Agreement is a written legal document or contract between two spouses wanting to separate before or during the divorce process, and establishes terms by which each spouse will have to abide until the divorce is final. It addresses matters such as property, debt, and financial asset division, spousal maintenance, child custody, and child support. Once signed by each spouse, it becomes a binding contract between them. It contains binding and – in most cases – final promises. Please speak to an attorney to see if a separation agreement may benefit you and your family.

DO I HAVE TO SIGN A SEPARATION AGREEMENT?

No one can compel a spouse to sign a separation agreement, not even a First Sergeant or Commander! A separation agreement must be voluntarily entered into and signed. No law or regulation can require a separating couple to execute a separation agreement, including ERD requests. Coercion, fraud, undue influence, or lack of knowledge may void the terms of a separation agreement. Fair agreements are more likely to be upheld by a court. Terms regarding child support, custody, and visitation may always be reviewed by the court.

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HOW CAN I OBTAIN A SEPARATION AGREEMENT?

Email the Legal Assistance Office to schedule an appointment. After meeting with an attorney, you will be provided a Separation Agreement worksheet for you to fill out. Once the worksheet has been completed and turned in, our office will draft the Separation Agreement. Once the final Separation Agreement has been approved, your attorney will set up an appointment for the Agreement to be executed (signed).

Please note: OUR OFFICE IS ONLY ABLE TO REPRESENT ONE PARTY. The first party to come into the office and to establish a Attorney-Client relationship will be the only one represented. The other party will be conflicted and will not be eligible for legal advice from our office.

WHAT IS THE DIFFERENCE BETWEEN A SEPARATION AGREEMENT AND A LEGAL SEPARATION?

A separation agreement does not have to be filed with a court. Separation agreements are contracts between spouses and not approved by a court.

WHICH IS BETTER FOR ME?

Come to our office walk in hours to speak with an attorney about your legal options

DOES A SEPARATION AGREEMENT ALLOW ME TO DATE OTHERS?

Our office cannot advise you on whether a separation agreement permits you to date under the UCMJ. Please visit defense during their walk-in hours if you have questions.

4. GETTING DIVORCE IN JAPAN

I AM A U.S. CITIZEN AND SO IS MY SPOUSE. CAN WE GET DIVORCED IN JAPAN?

Yes, you can get divorced by family court mediation. However, it is recommended that you or your spouse file directly in the U.S. A Japanese family court divorce is generally recognized in the U.S. as long as the parties were present for the proceeding and at least one party was residing in Japan. For a U.S. court to recognize and enforce the terms of any Japanese divorce decree, it must be translated into English, and subsequently filed in a U.S. court of competent jurisdiction. However, there is no guarantee that the U.S. court of competent jurisdiction will recognize or approve the terms of the divorce awarded in Japan. It is best that you go through the divorce process once in the U.S., rather than filing in Japan and seeking recognition in the U.S. This is the most risk adverse option if enforcement of terms through U.S. court is anticipated.

WHAT ARE THE THREE TYPES OF DIVORCE IN JAPAN?

There are three types of divorces in Japan, but not all of them are available when both parties are US nationals.

- **Divorce by Mutual Consent** ("City Hall Divorce") (*kyogi rikon*): This type of divorce is available only when one party is a Japanese national. Both parties sign a divorce paper and turn it in to the city hall of the Japanese party's residence or permanent address. That specific city hall will issue a "certificate of acceptance of report divorce," which is the proof of your divorce. This is an extra-judicial divorce because no court or Judge is involved. Since all states in the U.S. require divorce

Commented [OLL2]: Should I add the steps/forms needed to get divorce in Japan, even though we give the advice above to get divorce in the US instead?

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be granted by a court, the legality of this Japanese extra-judicial divorce is uncertain when its validity is attacked or questioned in a state court. However, the U.S. Navy and other federal agencies, such as Social Security Administration, U.S. Citizenship and Immigration Services and Department of State, accept the certificate of acceptance of report of mutual consent divorce as valid documentation to prove dissolution of marriage to a Japanese citizen.

PROS: Easy, fast, and least expensive.

CONS: There will be no formal agreement on child support or division of marital assets unless the parties enter into a separation agreement. Some U.S. federal agencies or state agencies may not recognize child custody arrangements made by the mutual consent divorce.

- **Divorce by Mediation in Family Court** (*chotei rikon*): This type of divorce can be obtained regardless of the citizenship of the parties. Both parties must attend a mediation session and agree to all terms of the divorce for the family court to grant the divorce petition. Once a judge grants the divorce, the court will issue a record of mediation, which has the same effect as a judgement. If both parties are from the same U.S. state, the Japanese family court will apply that state's substantive law to the divorce. For example, if both parties are residents of VA, they must satisfy the statutory period of separation before the family court grants the divorce petition. If the parties are residents from different U.S. states or countries, Japanese law would apply to all aspects of the divorce.

PROS: Parties receive a "judicial divorce," i.e., divorce granted by a court. Parties can agree to the terms of divorce, including amount of child support and division of marital assets. All or some of these terms may be acknowledged and enforced in the U.S.

CONS: A Japanese court order can only be enforced against properties in Japan. It cannot be used to garnish pay that comes from DFAS or U.S. sources. It cannot divide military retirement. An order from a U.S. court is required to enforce monetary obligations against members or divide military retirement. Also, in cases where Japanese law is applicable, one parent must be designated as a sole custodial parent. Joint custody cannot be awarded under Japanese law.

- **Contested Divorce in Family Court** ("Litigation") (*shimpan rikon*): If a party does not agree to divorce through the abovementioned mediation process, a Judge may grant the divorce petition upon finding grounds for divorce. Japan has very distinct grounds for divorce. Consulting with a Japanese attorney is the best way to learn the likelihood of a court granting a divorce in your case.

PROS: Parties may still be able to get divorced even when the mediation fails.

CONS: Lengthy, expensive, and requires a Japanese attorney.

A list of Japanese attorneys can be found here: <https://japan2.usembassy.gov/e/acs/tacs-lawyers-naha.html>

I AM MARRIED TO A JAPANESE NATIONAL AND I HAVE KIDS

If a U.S. citizen parent is concerned that a current or former Japanese spouse may surreptitiously file a notification of divorce or declaration naming themselves as the sole custodian of the children, the U.S. citizen parent can file a Petition for Non-Acceptance of Notification of Divorce (*rikon fujuri moshidesho*) at the municipal office where the Japanese parent resides and/or where the Japanese parent's permanent address (*honsekichi*) is located. The Ministry of Foreign Affairs tells the Embassy that this action will halt any submission of a divorce petition or recognition by Japanese authorities of a sole custody petition by of the Japanese parent.

I GOT DIVORCED IN JAPAN. DO I NEED TO REGISTER THE DIVORCE IN THE U.S. FOR IT TO BE VALID?

There is no requirement for the foreign divorce certificate or judgement to be registered in the U.S. for it to be valid. It is considered valid until a party challenges the validity of the divorce and that court finds it invalid. Some states allow the out-of-state divorce decrees to be registered in the U.S., and some states allow such decrees to be acknowledged only when the terms of the decrees must be enforced by that state court. Please check with your state for the registration process. Generally, the registration process for international decrees is the same as that required for domestic decree from other U.S. states. However, some states may not acknowledge the terms on the foreign divorce decree automatically.

HOW CAN I ENFORCE A JAPANESE JUDGEMENT?

For any U.S. agency to enforce financial obligations contained in the Japanese divorce judgment, a competent U.S. state court must first recognize that judgment. You may need a civilian attorney to do this. To enforce a child support obligation, the Child Support Agency in the obligor's state of residence may be able to assist.

ARE US CUSTODY ORDERS EFFECTIVE IN JAPAN?

It is important that a U.S. citizen parent divorcing locally understands that U.S. child custody court orders are not immediately effective in Japan. There are conditions that must be met before a foreign court judgment can be recognized in Japan. Sole custody orders from the United States are generally recognized in Japanese law as "formative judgments" (*keisei hanketsu*) that merely define a relationship and are not considered "judgments ordering performance" (*kyufu hanketsu*) that require performance or enforcement, such as requiring the return of a child to a U.S. parent's custody. U.S. citizen parents may benefit from the assistance of a Japanese attorney in trying to get their U.S. court orders validated in Japan, though this is just the first step in a long process and does not guarantee a positive outcome.

IF YOU WOULD LIKE TO SCHEDULE AN APPOINTMENT

Please email LegalAssistMCB@usmc.mil stating your full name, your status (AD, dependent, etc) and the reason for your appointment

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