

Information Sheet: Divorce and Related Legal Matters

Divorce – An Overview

Divorce is not only a significant event in a person's personal, social, and financial life, but it can also give rise to a wide range of legal issues.

This information sheet provides a brief overview of the most common legal matters that may arise in connection with a divorce. However, it cannot replace individual legal advice, as every case is unique and must be assessed on the basis of its specific facts and legal circumstances. Comprehensive legal advice can only be provided after all relevant aspects of the individual case have been carefully considered.

This information sheet addresses only selected issues that should be taken into account in the event of a divorce and provides general guidance on these matters. It is intended solely for informational purposes and does not replace a personal consultation with a lawyer.

I. Divorce

1. General Information

Pursuant to Section 1565 of the German Civil Code (BGB), a marriage may be dissolved only if it has irretrievably broken down (the so-called *principle of irretrievable breakdown*). A marriage is deemed to have broken down if the marital relationship no longer exists and there is no reasonable prospect of the spouses resuming their marital life.

Whether a marriage has irretrievably broken down must always be assessed on the basis of the individual circumstances of each case. One of the key indicators of the breakdown of a marriage is that the spouses are living separately.

2. Irretrievable Breakdown of the Marriage

To avoid unnecessary disputes during divorce proceedings and to prevent the court from having to examine the intimate details of the spouses' relationship, the legislator has established certain statutory presumptions of the irretrievable breakdown of a marriage. Where these presumptions apply, the court must assume that the marriage has irretrievably broken down without conducting a detailed examination of the marital relationship. The irretrievable breakdown of the marriage is deemed to be conclusively established if:

- the spouses have been living separately for more than three years; or
- the spouses have been living separately for more than one year, and both spouses file for divorce, or one spouse files for divorce and the other consents to the dissolution of the marriage. In addition, by no later than the court hearing, the spouses must have reached an agreement regarding parental responsibility and arrangements for contact with their children. They must also have agreed on matters relating to child maintenance, spousal maintenance, the future use of the matrimonial home, and the division of household property.

Contrary to a common misconception, a divorce may also be granted where the spouses have been living separately for more than one year, even if one of them does not consent to the divorce. In such cases, the court must determine whether the marriage has irretrievably broken down.

If the spouses have been living separately for less than one year, a divorce may be granted only if the spouse filing for divorce can demonstrate that continuing the marriage would constitute an unreasonable hardship. This is an exceptional provision and applies only in cases involving particularly serious circumstances, such as domestic violence, persistent physical or emotional abuse, or repeated serious verbal abuse.

3. Child Welfare Clause and Exceptional Hardship Clause

Even where the legal requirements for divorce have been satisfied, the dissolution of the marriage may be refused only in the exceptional circumstances provided for in Section 1568 of the German Civil Code (BGB), commonly referred to as the Child Welfare Clause and the Exceptional Hardship Clause. These provisions apply only where preserving the marriage is necessary in the best interests of the parties' children or where the divorce would impose exceptional hardship on one of the spouses. The statutory threshold for the application of these exceptions is very high. Consequently, they are invoked only rarely in practice.

II. Marriage Annulment

In exceptional cases, a marriage may be annulled.

The grounds for annulment are exhaustively listed in Section 1314 of the German Civil Code (BGB). Examples include:

- one spouse being under the age of majority
- bigamy
- a marriage entered into for the sole purpose of obtaining legal advantages (so-called sham marriage)

III. Ancillary divorce matters

Legal disputes arising in connection with divorce proceedings that may be decided by the court are referred to as **ancillary divorce matters**. As a general rule, such matters are only brought before the court upon application by one of the parties (with the exception of pension rights adjustment proceedings).

The decision as to whether an ancillary matter will be dealt with within the divorce proceedings (so-called *combined proceedings*), prior to the divorce decree (for example, issues of child maintenance or parental responsibility), after the divorce has been finalised (for example, property division claims), or not at all (where the parties have reached an

agreement on the relevant legal issues), depends on the parties' choice. In practice, this choice is often influenced by financial considerations or procedural strategy.

Excursus: Separation Maintenance

Spousal maintenance during separation does not form part of the matters dealt with in combined divorce proceedings. It refers to maintenance that one spouse is obliged to pay to the other following the de facto cessation of cohabitation. Accordingly, entitlement to such maintenance exists for the period from the commencement of the spouses' separation until the divorce becomes legally binding.

Spousal maintenance during separation does not form part of the ancillary divorce proceedings. It refers to maintenance payable by one spouse to the other following separation of the parties. Such entitlement exists for the period from the date of separation until the divorce becomes final and legally binding.

The amount of spousal maintenance is determined on the basis of the principle of equal sharing of the spouses' financial resources. As a general guideline, the difference between the spouses' disposable incomes is divided equally between them. However, the maintenance-obliged spouse must be left with a so-called self-retention minimum (*self-support reserve*) of EUR 1,600.

Spousal maintenance during separation does not form part of the divorce proceedings and must be claimed in separate proceedings.

a) Post-Marital Maintenance

Post-marital maintenance may be asserted within the combined divorce proceedings (*ancillary proceedings*). It is subject to stricter requirements than spousal maintenance during separation. In particular, following the 2008 reform of German maintenance law, there is a general obligation on the entitled spouse to pursue gainful employment.

Post-marital maintenance may take several forms, including maintenance due to childcare responsibilities, old-age maintenance, maintenance due to illness or infirmity, unemployment maintenance, supplementary maintenance, maintenance during education or training, and maintenance on equitable grounds. It may also be limited in duration.

b) Child Maintenance

In the context of divorce proceedings, the parent with whom the minor child resides may also bring a claim for child maintenance.

Child maintenance is determined primarily on the basis of the child's age and the income of the maintenance-obliged parent. The applicable amount is derived from the so-called *Düsseldorf Table*, which is updated on an annual basis. In principle, half of the child benefit (*Kindergeld*) is deducted from this amount.

The maintenance-obliged parent is generally entitled to retain a self-support reserve of 1,450€.

Parental Responsibility and Contact Rights

In the context of divorce proceedings, decisions may also be made regarding parental responsibility and contact rights.

As a general principle, both parents continue to exercise joint parental responsibility even after divorce. Sole parental responsibility is granted only in exceptional cases where it is required in the best interests of the child. In such cases, the court will, in particular, rely on reports from the Youth Welfare Office (*Jugendamt*) and, where appropriate, on expert psychological assessments.

In addition, contact arrangements may be regulated, i.e. the times and frequency with which the parent with whom the child does not reside may have contact with the child.

Pension Equalisation

The pension equalisation (*Versorgungsausgleich*) is the division, upon divorce, of pension entitlements acquired by the spouses during the marriage.

As a general rule, it must always be carried out unless the marriage lasted only a short period of time.

The pension equalisation procedure is highly complex and often prolongs divorce proceedings, as the individual pension entitlements of both spouses must first be calculated, which may take several months.

Equalisation of Accrued Gains

During a marriage, spouses typically acquire assets either jointly or individually. These may include bank balances, the family home, insurance policies, or even a business.

Furthermore, even the repayment of debts during the marriage is considered an increase in assets in a broader sense.

The *accrued gain* is defined as the difference between a spouse's assets at the time of divorce and their assets at the time of marriage.

Under German law, it is presumed that both spouses should, in principle, share equally in the increase in assets accumulated during the marriage.

For the calculation of the equalisation of accrued gains, a full disclosure of assets is required. All existing assets must be taken into account; it is therefore not possible to settle only individual assets in isolation.

The equalisation of accrued gains does not necessarily have to be carried out in the context of divorce proceedings.