



LAW & MORE
ATTORNEYS



DIVORCE FROM LEGAL PERSPECTIVE

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INTRODUCTION

Are you about to get divorced? If so, there will undoubtedly be many issues facing you. From arranging spousal and child support to non-financial matters such as drawing up a custody plan, divorce can have a major impact from both an emotional and legal perspective. To help you prepare, in this white paper we have compiled information on issues involved in settling a divorce.

Please note; the information is intended to provide you with some relevant insights to give you an idea of what to expect. However, always consult an expert to find out together what issues (more) apply in your situation.

Of course, the divorce lawyers at Law & More are ready to help you further.



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DIVORCE WITH THE HELP OF A DIVORCE LAWYER

Engaging a divorce lawyer is required to get a divorce. Only a lawyer may file a petition for divorce with the court. A divorce is pronounced by the court and there are several juridical aspects in divorce proceedings on which the court passes judgment, including:

- How will your joint assets be divided?
- Is your ex-partner entitled to part of your pension?
- What about the tax consequences of your divorce?
- Is your partner entitled to spousal support?
- If yes, how high is the alimony?
- And if you have children, how will access be arranged?

In the sections below, we will elaborate on the course of the divorce procedure, using 10 steps.

THE DIVORCE PROCESS IN 10 STEPS

It is difficult to tie the knot and decide that you are getting divorced. Once you have decided that this is the only solution after all, the process really begins. All sorts of things need to be arranged and emotionally it will also be a tough period. To get you started, here is an overview of all the steps you can go through during a divorce.

1. Separation notification

It is important that you first tell your partner yourself that you want a divorce. This communication to your partner, is often also called the notice of divorce. It is wise to make this announcement to your partner in person. No matter how difficult it is, it is good to talk about it together. This way, you can explain why you have come to this decision. Try not to blame each other. It is and remains a difficult decision for both of you. The important thing is to try to keep good communication. Furthermore, it is good to avoid tensions. This will prevent your divorce from becoming a fighting divorce.

Engage a lawyer together or alone?

You may be wondering whether you and your partner can engage a divorce lawyer separately, or jointly. This depends entirely on the situation: do you and your partner agree on the (consequences of) the divorce? Are you filing for divorce together? Is communication with your partner good? Then you can choose to engage a lawyer together. If there is a conflict, or the divorce is filed unilaterally, you and your partner will each need your own lawyer.

2. Engage lawyer/mediator

As highlighted above, only lawyers are allowed to file a petition for divorce with the court. Whether it is best to choose a divorce lawyer or a mediator depends on how you want to divorce. With mediation, you choose together to be guided by one lawyer/mediator. If you and your partner each hire your own lawyer, you will end up opposing each other in the proceedings. In that case, the proceedings will also take longer and cost more.

Divorce with the help of mediator?

Divorce often involves disagreements between partners. When you and your partner separate and cannot come to an agreement, conflicts will arise and, in some cases, may even escalate. In such a case, you can hire a lawyer to get your legal right. However, you can also try to avoid tensions by engaging a mediator. A mediator's role in a divorce is to guide the conversation between you and your ex-partner as an impartial third party. Through mediation, solutions are sought to which both parties agree. In other words, you do not face each other, but try to resolve conflicts and make sound agreements through cooperation. Law & More also offers mediation, more information can be found on our [mediation page](#).

Introduction meeting lawyer

- So to file for divorce, you will need to engage a lawyer individually or jointly. If you approach one of our divorce lawyers, they will first ask a number of questions over the phone to get an idea of the situation. This will be followed by an introductory meeting with the lawyer who will further guide you through the process. During this first appointment, you can tell your story and the background of your situation will be reviewed. Our specialized divorce lawyers will also ask the necessary questions.
- It then discusses the specific steps to be taken in your situation.

- Furthermore, during this meeting we will explain what divorce proceedings look like, what you can expect, how long the proceedings will generally take, what documents we will need et cetera.

This will give a clear picture of what you are facing and what needs to be done.

3. Important data and documents

To file for divorce, a number of personal details of you, your partner and any children are important. These include a marriage certificate, birth certificates of the children, BRP extracts from the municipality, extracts from the custody register and any prenuptial agreements. The list below gives an indication of the documents required. Not all documents are necessary for all divorces. Your divorce lawyer will indicate in your specific case which documents are required to settle your divorce.

In principle, the following papers are required:

- The marriage or cohabitation agreement.
- A deed with prenuptial or partnership conditions.
This does not apply if you are married in community of property.
- The mortgage deed and related correspondence or the lease of the house.
- List of bank accounts, savings accounts, investment accounts.
- Annual statements, pay slips and benefit statements.
- The last three income tax returns.
- If you have a company, the last three financial statements.
- Health insurance policy.
- Insurance overview: in which name are the insurances?
- Information on accrued pensions. Where was the pension built up during the marriage?
Who were the principals?
- If there are debts: collect supporting documents and the amount and term of the debts.

If you want the divorce proceedings to start quickly, it is wise to collect these documents in advance. Your lawyer can then start working on your case immediately after the introductory meeting!

4. Assets and debts

During a divorce, it is important that you identify all assets and debts of you and your partner and collect supporting documents. Examples are the title deeds to your house and the notarial mortgage deed. The following financial documents may also be important: capital insurance, annuity policies, investments, bank statements (of savings and bank accounts) and the income tax return for the past few years. Furthermore, an infusion list should also be drawn up in which you indicate who will receive what.

The matrimonial property arrangement made when the marriage was entered into has a major impact on the property of you and your (former) partner during and after the marriage.

- Read more here about the [different matrimonial property regimes](#) that we separate, and what they mean for dividing property when you divorce.

5. Child support / spousal support

Alimony in the Netherlands is a financial contribution to the living expenses of your former partner (partner alimony) and any children (child alimony) after a divorce. It is an amount you receive or have to pay monthly. To determine this, the income details and fixed expenses of both parties need to be reviewed. Based on this data, your lawyer/mediator can make an alimony calculation.

Alimony is a complex matter. If you would like to learn more about all kinds of issues surrounding (settling) alimony, you will find more specific information on our website:

- [All about alimony](#)
- [Duration of maintenance obligation](#)
- [Having initial alimony recalculated](#)
- [Alimony-eligible ex-partner does not want to work](#)
- [Partner maintenance legislation as it applies from January 2020](#)
- [More on child maintenance](#)

Of course, the team at Law & More is ready to work out how alimenatation can be designed in your situation.

6. Pension

A divorce may also affect your pension. To determine this, evidence of all pension entitlements accrued by you and your partner is needed. Next, you and your (ex-)partner can agree on the division of the pension. For example, you can choose between the legal equalization or conversion method. You can ask your pension fund to help you make the choice.

7. Parenting plan

If you and your (former) partner also have children, you are obliged to draw up a parenting plan together. This parenting plan is submitted to the court together with the divorce petition. In this plan, you record agreements together on, among other things:

- The way you divide care and parenting tasks;
- The way you inform and consult each other on important events for the children and on the assets of the minor children;
- The costs of caring for and bringing up minor children.

It is important that the children are also involved in drawing up the parenting plan. Your lawyer may be able to work with you on the parenting plan to ensure it meets all court requirements.

Want more information on (drafting) a parenting plan? Then check out the following articles on our site:

- [Drawing up a parenting plan](#)
- [More information on divorce with children](#)
- [More information on divorce and parental authority](#)

8. Submit petition

Once all agreements have been made, your joint lawyer or your or your partner's lawyer will draft a petition for divorce and then file it with the court. In a unilateral divorce, the other party will be given a deadline to file a defense and then a hearing will be scheduled at the court. If you have opted for a joint divorce, your lawyer will file the petition and, in most cases, a hearing is no longer necessary.

9. Oral treatment

At an oral hearing, the parties must appear together with their counsel. During this oral hearing, the parties will have the opportunity to tell their story. The judge will also be able to ask questions. If the judge is of the opinion that he has sufficient information, he will end the hearing and indicate the period within which he will rule.

10. The divorce decision

Once the court has pronounced the divorce decree, you can appeal within 3 months of the decree if you disagree with it. After 3 months the decision becomes irrevocable and the divorce can be registered in the civil registry. Only then is the divorce final. If you do not wish to wait the 3-month period, you and your partner can sign a deed of resignation that your lawyer will draw up. In terms of resignation, the following options are available:

I Both parties sign an instrument of acquiescence

With this, the parties indicate that they do not wish to appeal the divorce decision. In this case, the three-month appeal period will lapse and the divorce proceedings will be faster. The divorce can be registered in the municipality's civil registry immediately.

I One of the two parties signs a deed of acquiescence, the other party does not. But neither does he or she appeal

Here, the possibility of appeal remains open. The 3-month appeal period must be waited for. If your (future) ex-partner still does not lodge an appeal, the divorce can still be definitively registered with the municipality after 3 months.

I One of the two parties signs an instrument of acquiescence, the other party appeals

In this case, the proceedings enter a whole new phase, and the court will hear the case again on appeal.

I Neither party signs an instrument of acquiescence, but the parties do not appeal either

The divorce decree becomes irrevocable after the 3-month appeal period has expired. Once it has become irrevocable, the decree must be registered in the civil registry within 6 months, otherwise it will expire and the marriage will not be dissolved!

You need a deed of non-appeal to register the divorce with the municipality. You should apply for this deed of non-appeal to the court that rendered the judgment in the divorce proceedings. In this deed, the court declares that the parties have not appealed the judgment. The difference with the deed of resignation is that the deed of non-appeal is applied for at the court after the appeal period has expired, whereas the deed of resignation should be drawn up by the parties' lawyers before the appeal period has expired.

International divorce

Do you and your partner currently live in a country other than the country in which you entered into the marital union? Or do you both possess Dutch nationality, but do not currently live in the Netherlands? We have developed a special article on international divorces, in which you can read more on this topic:

- More on [international divorces](#).

Separate table and bed

Legal separation is often considered an interim solution, however- this situation can remain in place for the rest of the spouses' lives. In a legal separation, the marriage with your spouse officially remains intact. Only the cohabitation between you and your spouse is terminated. This is a substantial difference from a usual divorce. The choice to divorce may stem from the religious beliefs of (one of the) spouses, or because of financial or practical reasons.

The procedure is similar to that of a usual divorce. However, the consequences of a legal separation, compared to those of a standard divorce, do differ. We have listed the main consequences of legal separation, for you:

Does not change after legal separation	Does change after legal separation
<p>You cannot marry, enter into a registered partnership or set up a cohabitation contract with a new partner</p>	<p>If you have minor children, a parenting plan should be drawn up which may include access arrangements, child support and arrangements around care and custody</p>
<p>The maintenance obligation you and your partner had towards each other during the marriage will continue to apply</p>	<p>Dissolution of the community of property, to be replaced by prenuptial agreements. Each spouse is responsible for his or her own financial situation. Wealth, assets and income must be divided</p>
<p>Your marriage remains officially intact</p>	<p>If you want to reverse the legal separation, you can do so by filing an application with the court. Getting married again is not necessary</p>
<p>A legal separation can lead to a dissolution of the marriage, if requested in court</p>	<p>If the dissolution of marriage is filed by only one of the spouses, the dissolution can only be pronounced after the legal separation has lasted for three years. If the application is filed by both, no specific time limit applies</p>

FAST SHEETS

Divorce is almost always an emotionally demanding event. To reduce the burden, you can ensure that the above process, consisting of the ten steps, goes as quickly as possible. Some tips to speed up this process:

1. Avoid argument

In most cases, a lot of time is lost in mutual strife. When ex-partners communicate well with each other and keep their emotions under control to a certain extent, a divorce can be considerably faster. Not only does this save the time and energy of the (ex-)partners, it can also make the legal proceedings run smoother and faster.

2. Together to lawyer

By going to the same lawyer together, the divorce arrangements can be included in the divorce covenant by the joint lawyer. This will avoid double costs that you would have if you each went to a lawyer separately. It can also save a lot of time. After all, if there is a joint request for divorce, you do not have to go to court. Together with your ex-partner, you can discuss and work out the following matters in advance, to save even more time and money when you visit a lawyer (jointly):

- Discuss in advance with your ex-partner what agreements you will make and also put these on paper in advance. This way, some of the issues no longer need to be discussed at length with the lawyer and the lawyer only needs to include these agreements in the divorce agreement;
- You can already take stock of the assets to be divided. Consider not only assets, but also any debts;
- Arrange as much as possible regarding the property, such as a notary, mortgage, valuation and possible purchase of a new home.

3. Mediation

If you do not manage to come to an agreement on the divorce with your ex-partner, it is wise to engage a mediator. We explained earlier that the role of a mediator in a divorce is to guide the conversation between you and your ex-partner as an impartial third party. Mediation is used to find solutions that both parties agree on. Instead of opposing each other, the mediator tries to resolve conflicts and reach good agreements through cooperation. The mediator puts these down on paper, and this can be included by a lawyer in the divorce covenant.

DURING THE DIVORCE PROCEEDINGS

If the divorce proceedings in the court have not yet been finalized, interim relief can be sought in separate proceedings. A preliminary injunction is a kind of emergency procedure in which a ruling is given for the duration of the divorce proceedings. An example of such a provisional measure that can be applied for is, for example, the exclusive use of the marital home.

- Read more about [home occupancy](#) during and after divorce proceedings.

FIGHTING DIVORCE

Unfortunately, it regularly happens in practice that the future ex-partners do not manage to reach agreements together. Parties can sometimes even be diametrically opposed on certain issues. In such cases, mediation will not be able to provide a solution.

If partners already know in advance that they will not be able to work things out together, it is wise to hire their own divorce lawyer right away. The right help and support will save you a lot of time, money and disappointment. This is because an in-house lawyer will be fully committed to your interests. Your future ex-partner will then probably also hire their own lawyer. Then, the lawyers will start the negotiations. In this way, lawyers try to achieve the best for their clients. During the negotiations between the lawyers, both partners will have to give and take something in turn. This way, in most cases, the divergent positions are resolved and laid down in a divorce agreement. However, it also sometimes happens that the partners still do not come to an agreement, as they are not willing to add water to the wine. In such a case, a nasty fighting divorce may ensue between the parties.

Often in a fighting divorce, mud is thrown back and forth. Parties sometimes try to do everything to thwart each other. This often involves swearing and mutual recriminations. Such divorces can often last unnecessarily long, sometimes for years! In addition to emotions, these divorces also involve costs and are physically and mentally exhausting. When children are also involved, a fighting divorce is even more unpleasant.

The children often bear the brunt of a fighting divorce. A fighting divorce psychologically affects the children a lot, as they are caught between both parents and sometimes even end up in a loyalty conflict. Studies show that children of parents involved in a fighting divorce have an increased risk of emotional problems and depressive feelings. In addition, performance at school may deteriorate and the child may experience problems later on when they enter into a relationship themselves. In short, it is important to prevent a fighting divorce in all cases.

Preventing a fight divorce

Below, we provide some tips so that you continue to communicate well with your ex-partner during the difficult period of your divorce:

- It is important to keep seeing each other and having face-to-face conversations. Try to avoid making difficult decisions via WhatsApp or a phone conversation.

- Listen to the other person (but watch yourself!). Listen carefully to the other person and only address what he or she says. Do not bring in issues that are not at issue in this conversation.
- Always try to remain calm and respectful of each other. If you notice during a conversation that emotions are running high, stop the conversation so that it can be continued calmly later.
- If you put all your demands on the table right away in a conversation, it may deter your partner. Therefore, try to calmly make decisions on issues one by one.
- As soon as you discuss a topic, always try to let your ex-partner respond and talk it out. This will give you a clear picture of how your ex-partner thinks about the issue.
- In conversations, try to really get things done instead of begrudging your ex-partner things. You will see that you will have better conversations with positive attitude.
- To help further conversations, it is helpful to avoid closed words like 'always' and 'never'. This way, you keep an open conversation and can continue to have good conversations.
- Make sure you start the interview well prepared. This includes thinking ahead about what issues are complicated or emotional for you.
- Agree with each other that irritations are expressed immediately, and not bottled up.
- Talk about the conversations you have with the people around you. This way, you have an out-let valve for your emotions and they can help you put things into perspective or, on the contrary, can give you tips for future conversations.



Extra help for troubled divorce process

There are various forms of help available if the divorce is difficult, beyond the support of your lawyer and/or your mediator. For example, you can also seek support from people close to you, social workers or fellow sufferers. For child support, there are voluntary organizations and youth aid agencies that can offer guidance. Talking about difficult choices gives peace of mind, overview and contributes to a positive attitude.

- Find out more about [fighting divorces](#), how to prevent them and what to do if you find yourself in a fighting divorce.

Have you ended up in a fighting divorce, or do you foresee a difficult divorce process? If so, you can always contact our specialists without any obligation. Our mediators and lawyers can advise you on the best things to do in your situation to prevent a fighting divorce, or to move towards a solution if you are stuck in a (v)divorce process.

