
THE LANGUAGE OF DIVORCE: A Glossary of Legal Terms

A

Action: The legal term for lawsuit.

Affidavit: A written statement of facts made under oath and signed before a Notary Public.

A.D.R.: Alternate Dispute Resolution. Settlement techniques used to resolve a case without a trial.

Agreement: A transcribed or written resolution of the disputed issues when the parties have resolved issues in the case. Sometimes called a Stipulation.

Alimony: Payment of support from one party to another; in some states may include property division and attorney's fees. See also maintenance.

Alimony pendente lite: A temporary order of court that provides support for one spouse and/or children while the divorce is in process.

Allegation: Statement contained in a pleading or affidavit setting forth what the pleader intends to prove.

Annulment: The legal ending of an invalid marriage; according to law, neither party was ever married, but all children born of the annulled marriage remain legitimate. Grounds for annulment vary from state to state.

Answer: The second pleading in a divorce, separation, or annulment, which is served in response to the petition for divorce and which admits or denies the petition's allegations and may also make claims against the other party. Sometimes called a response.

Appeal: The process whereby a higher court reviews the proceedings resulting in an order or judgment of a lower court and determines whether there was a reversible error.

Appearance: A respondent's formal method of telling the court that he or she submits to the court's jurisdiction. Appearance also can refer to a party's physical presence in court.

C

Change of venue: A change of the place within the state where the case is to be tried.

Child support: Financial support for a child (not taxable to the recipient or deductible to the payor spouse).

Common-law marriage: A relationship between a man and a woman, recognized as a marriage in some states, although no license or ceremony was involved. A divorce is required to terminate a common-law marriage.

Community property: Generally, property acquired during a marriage as a result of the party's work and effort. Applied in states known as community-property states.

Contempt of Court: The willful and intentional failure to comply with a court order, judgment, or decree by a party to the action, which may be punishable in a variety of ways.

Contested cases: Any case in which the court must decide one or more disputed issues.

Court order: A written document issued by a court, which becomes effective only when signed by a judge.

Cross-examination: The questioning of a witness by the opposing party during a trial or at a deposition, to test the truth of that testimony or to develop it.

Custody: The legal right and responsibility awarded by a court for the care, possession, and rearing of a child. Distinctions are sometimes made between legal custody, which relates to decision making responsibility, and physical custody, which relates to residence or physical access.

D

Default or default judgment: An order or judgment granted by a court without hearing the other side because that side failed to submit papers within the time allowed or failed to appear at a hearing.

Defendant (respondent): The person (husband or wife) who is sued for divorce.

Deposition: The testimony of a witness taken out of court under oath and in writing.

Direct examination: The initial questioning in court of a witness by the lawyer who called him or her to the stand.

Disclosure, discovery, or production of documents: Procedures followed by lawyers to determine the nature, scope, and credibility of the opposing party's claim and his or her financial status.

Dissolution: The act of terminating a marriage; divorce; does not include annulment.

E

Emancipation: The point at which a child may be treated as an adult and in some states when the duty to support may terminate.

Equitable distribution of property: A system of distributing property in connection with a divorce or dissolution proceeding on the basis of a variety of factors without regard to who holds title.

Evidence: Documents, testimony, or other demonstrative material offered to the court to prove or disprove allegations.

Ex parte: An application for court relief made without the other party being present; in some states the other party is present but has been given very short notice of the application.

G

Grounds: In the eyes of the law (under statute), the reason for granting a divorce.

Guardian ad litem (GAL): A lawyer or mental health professional appointed by the court to represent the children.

H

Hearing: Any proceeding before the court for the purpose of resolving disputed issues through presentation of testimony, offers of proof, and argument.

Hold-harmless: A situation in which one spouse assumes liability for a debt or other obligation and promises to protect the other spouse from any loss or expense in connection with it.

I

Indemnification: The promise to reimburse another person in case of an anticipated loss; the same as hold-harmless.

Injunction: A court order forbidding someone from committing a particular act that is likely to cause injury or property loss to another party; the same as a restraining order.

Interrogatories: A series of written questions served on the opposing party to discover certain facts regarding the disputed issues in a matrimonial proceeding. The answer to interrogatories must be under oath and served within a prescribed time.

J

Joint custody: The shared rights and responsibility of both parents awarded by the court for possession, care, and rearing of the children.

Joint property: Property held in the name of more than one person.

Jurisdiction: The authority of the court to rule on issues relating to the parties, their children, or their property.

L

Legal separation: A court judgment or written agreement directing or authorizing spouses to live separate and apart. A decree of separation does not dissolve the marriage, or allow the parties to remarry, but may resolve all financial claims.

M

Maintenance: Spousal support. See also alimony.

Marital property: Accumulated income and property acquired by spouses, subject to certain exclusions in some states.

Marital settlement agreement: The parties settlement is reduced to a written document or orally placed on the record in open court. This agreement also may be called a property settlement agreement or separation agreement.

Mediation: A process by which a neutral third party facilitates negotiations between the parties. The mediator generally has no decision-making authority.

Motion: A written application to the court for some particular relief, such as temporary support, injunction, or attorney's or expert's fees.

Motion to modify: A party's formal written request to the court to change a prior order regarding custody, child support, alimony, or any other order that the court may change by law.

Motion to vacate the premises: Upon a showing of good cause by one party, the court orders the other spouse to leave the marital residence.

N

No-fault divorce: When divorce is granted without a party having to prove the other party's marital misconduct. "Fault" is marital misconduct that may be considered for some issues in some states.

Notice of hearing: A paper that is served on the opposing lawyer or spouse listing the date and place of a hearing and the motion or motions that will be heard by the court.

O

Order: The court's ruling on a motion requiring the parties to do certain things or setting forth their rights and responsibilities. An order is reduced to writing, signed by the Judge, and filed with the court.

P

Party: The person in a divorce action whose rights or interests will be affected by the divorce.

Petition (complaint): The first pleading in an action for divorce, separate maintenance, or annulment, setting forth the allegations on which the requested relief is based.

Petitioner (plaintiff): The party who files the petition for divorce or any other petition.

Plaintiff: The petitioner.

Pleading: Formal written application to the court for relief and the written response to it. Pleadings include petitions, answers, counterclaims, replies, and motions.

Privilege: The right of a person to make statements to his or her spouse or lawyer, member of the clergy, psychiatrist, doctor, or certified social workers that are not later admissible in evidence.

Pro se: A litigant who is not represented by a lawyer (also *Apro per*).

Provisional motions: Applications to the court for interim relief pending the final decree of divorce, separation, or annulment. Typical temporary motions include motions for temporary maintenance, child support, attorney's fees, costs, expert's fees, custody, visitation, enforcement, or modification of prior temporary orders, or requests for exclusive possession. The court enters a provisional order after determining a motion.

R

Relief: Whatever a party to a divorce proceeding asks the court to do: dissolve the marriage, award support, enforce a prior court order or decree, divide property, enjoin certain behavior, dismiss the complaint of the other party, and so on.

Reply: The pleading filed in answer to the allegations of a counterclaim.

Report of referee with notice: The written document prepared by a referee or court-appointed officer after a hearing and submitted to the parties (husband and wife) and the judge; it is not law and not final or an order of the court, but it is recommended to become an order of the court.

Respondent (defendant): The one who defends the divorce proceeding brought by another.

Request for production of documents: A series of written requests served on the other party seeking the production of documents, such as financial records. Responses must be provided within a fixed time.

Rules of evidence: The rules that govern the presentation and admissibility of oral and documentary evidence at court hearings or depositions.

S

Separate property: Property that is not *Amarital property* but belongs only to one spouse.

Set off: A debt or financial obligation of one spouse that is deducted from the debt or financial obligation of the other spouse.

Settlement: The agreed resolution of disputed issues.

Show cause: Written application to the court for some type of relief, which is made on such notice to the other party as the court directs.

Stipulation: An agreement between the parties or their counsel.

Subpoena: A document served on a party or witness requiring appearance in court. Failure to comply with the subpoena could result in punishment by the court. A subpoena duces tecum is a subpoena requesting documents.

Summons: A written notification that legal action has commenced, requiring a response within a specified time period.

T

Temporary restraining order (TRO): An order of the court prohibiting a party from doing something - for example, threatening, harassing, or beating the other spouse or the children, selling personal property, withdrawing money from accounts, denying access to a motor vehicle.

Testimony: Statements under oath by a witness in court or during a deposition.

Transcript: A typewritten record of testimony taken by a court reporter during a deposition or court.

Trial: A formal court hearing to decide disputed issues raised by the pleadings.

U

Uncontested divorce: A divorce proceeding where the parties have reached an agreement on all issues.