

# How to file for a Joint Simplified Dissolution divorce in Illinois©

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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

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Look for these symbols to tell you when to:



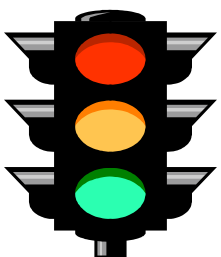
**STOP!**

You need legal representation or advice to continue.



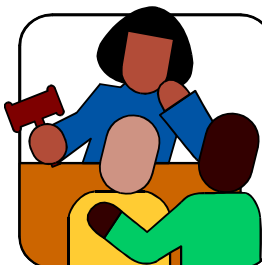
**USE CAUTION!**

This is very important so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

# Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

## 1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## 2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## 3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

### Free sources of legal help

#### **Land Of Lincoln Legal Assistance**

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

#### **Prairie State Legal Services**

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

#### **Coordinated Advice and Referral Program for Legal Services**

serving Cook County

312-738-9200

#### **Will County Legal Assistance**

Serving Will County

815-727-5123

# How to use this self help packet



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

## People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

## Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

## How to file a document in a court file

This section answers commonly asked questions about filing documents.

## Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



# Who these people are



## Judge:

The judge is the person who presides over the courtroom. In most cases, including divorce cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



## Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



## Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



## Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.

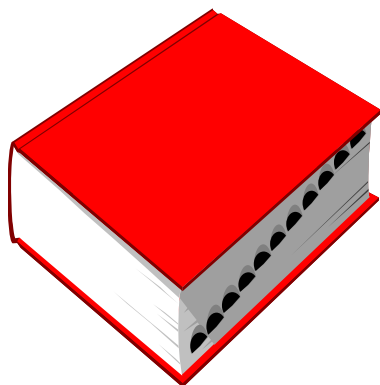


## Mediator:

A mediator is someone who can meet with you and the person with whom you have a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases, including child custody.

# What these legal words mean

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## **affidavit**

A sworn statement by a person. Lying in an affidavit can result in a charge of perjury which could mean a fine, imprisonment, or both.

## **circuit**

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

## **defendant**

A person who is sued.

## **divorce**

The end of a marriage. The legal proceedings that you go through to end your marriage, divide property and debt.

## **hearing (trial)**

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

## **judgment**

A final decision or order of the court.

## **jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

## **marital debt**

Generally, debts acquired after the date of a marriage and before the date of a divorce.

## **marital property**

Generally, property bought after the date of a marriage and before the date of a divorce.

## **motion**

A written or oral request to the judge after a lawsuit has been started (see petition).

# What these legal words mean

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## **non-marital debt**

Generally, debts acquired before the date of a marriage or after the date of a divorce.

## **non-marital property**

Generally, property acquired before the date of a marriage or after the date of a divorce.

## **notary public**

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

## **petition**

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

## **plaintiff or petitioner**

The person who starts a lawsuit.

## **pro-se**

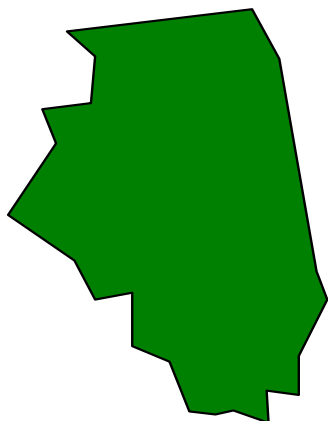
A person who is not represented by an attorney and is involved as a party in a lawsuit.

## **serve or service**

The process where a person is officially notified of a pending lawsuit.

## **statute**

The law that the state legislature or federal government enacted on a particular subject.



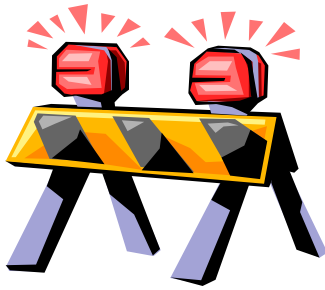
The law which governs the Joint Simplified Dissolution procedure is the Illinois Marriage and Dissolution of Marriage Act. It can be found in Section 5/450 of Chapter 750 of the Illinois Compiled Statutes. The legal citation for this statute is 750 ILCS 5/451-457.

## **How the court decides if you should get a divorce:**

To get a joint simplified divorce in Illinois you have to establish the grounds of "irreconcilable differences". You cannot use any other grounds in a joint simplified dissolution proceeding. To prove these grounds, you must certify that the following conditions exist when the proceeding is commenced:

- (a) Neither party is dependent on the other party for support or each party is willing to waive the right to support; and the parties understand that consultation with attorneys may help them determine eligibility for spousal support.
- (b) Either party has met the residency requirement of Section 401 of the Act.
- (c) Irreconcilable differences have caused the irretrievable breakdown of the marriage and the parties have been separated 6 months or more and efforts at reconciliation have failed or future attempts at reconciliation would be impracticable and not in the best interest of the family.
- (d) No children were born of the relationship of the parties or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant by the husband.
- (e) The duration of the marriage does not exceed 8 years.
- (f) Neither party has any interest in real property.
- (g) The parties waive any rights to maintenance.
- (h) The total fair market value of all marital property, after decuting encumbrances, is less than \$10,000, the combined gross annualized income from all sources is less than \$35,000, and neither party has a gross annual income from all sources in excess of \$20,000.
- (i) The parties have disclosed to each other all assets and their tax return for all years of the marriage.
- (j) The parties have executed a written agreement dividing all assets in excess of \$100 in value and allocating responsibility for debts and liability between the parties.

# Important Warnings



Some things you should know before you file a Petition for Joint Dissolution of Marriage in Illinois:

1. A judgment for dissolution of marriage permanently ends all financial rights arising out of the marriage, including the right to property in the name of one spouse and the right to spousal support.
2. A judgment is final and the parties waive their right to appeal. However, a final judgment may be set aside if it was obtained because of fraud, threats, accident, mistake, or on other legal or fairness grounds.

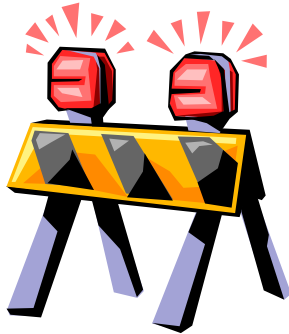
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**According to Section 5/457 of Chapter 750 of the Illinois Compiled Statutes, or the "Marriage and Dissolution Act," the requirements, nature, and effect of a simplified dissolution are:**

- (a) It is in the best interests of each of the parties to consult attorneys regarding the dissolution of their marriage, and that the services of an attorney may be obtained.
- (b) The parties should not rely exclusively on the brochure, and the brochure is intended only as a guide for self-representation.
- (c) A concise summary of the provisions and procedures of the simplified dissolution procedure.
- (d) The nature and availability of counseling services.
- (e) If the parties waive their rights to maintenance (alimony), neither party can in the future obtain maintenance from the other.
- (f) A statement in boldface type that a judgment for dissolution of marriage permanently adjudicates all financial rights arising out of the marriage, including the right to property in the name of one's spouse and the right to support from one's spouse (maintenance or alimony), that a judgment is final, and the parties waive their right to appeal, except that neither party is barred from instituting an action to set aside a final judgment for fraud, duress, accident, mistake, or other grounds at law or in equity.
- (g) The parties to the marriage remain married persons and cannot remarry until a judgment dissolving the marriage is entered.

# Can you file for divorce in Illinois?

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The court must have jurisdiction over you to give you a divorce. Similarly, to order your spouse to do something — like pay support or give you a piece of personal property (a tv, a chair), the court must have jurisdiction over your spouse. To know if the court has jurisdiction over you or your spouse, you need to know the following rules.

## How the court gets jurisdiction over you:

The court can have jurisdiction over you and your spouse both if you have lived in the State of Illinois for at least 90 consecutive days.



# Steps To Getting A Divorce

## Step One: Make the necessary decisions

Before you can proceed with completing the paperwork you need to file for divorce, you need to make some major decisions. This packet will not help you make these decisions. If you need help making these decisions, you should consult other reference books or an attorney .



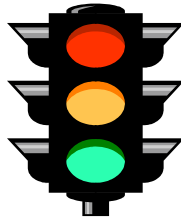
### Grounds:

The only grounds you can use in a joint simplified divorce is irreconcilable differences.

\*Remember, that to use the grounds of irreconcilable differences, you must have been separated from your spouse for 2 years or more. However, you can use the grounds of irreconcilable differences if you have been separated from your spouse for at least 6 months, if your spouse will sign a Stipulation waiving the two year requirement. A Stipulation to Waiver of the Two Year Requirement form is found in the supplement to this packet. *Please note that your spouse's signature must be notarized.*

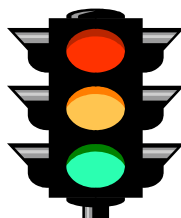
### Property and debts:

What marital property do you want? What marital debts will you assume responsibility for? What debts will you and your ex-spouse share?



## Step Two: Prepare the necessary forms to start the process.

In the supplement to this packet you will find 4 forms: the Joint Affidavit Regarding Separation of the Parties Division of Property and Waiver of Bifurcated Hearing, Agreement as to Assets and Debts, Joint Petition for Simplified Dissolution of Marriage, and Judgment for Dissolution of Marriage. Using the Forms Guide, you and your spouse will need to complete these forms.



## Step Three: File your documents

Select the county in which you will file your divorce. Most of the time, you will file your divorce in the county in which you live. You can, however, file your divorce in the county where your spouse lives. The courthouse for your county usually resides in the county seat.

Your first step is to give the Application To Sue as A Poor Person to the Circuit Clerk and ask that it be presented to a judge for his/her approval. Wait (this may take several days) to see if it is approved, and if it is, you can then file your Petition without paying any filing fees. If you do not receive a waiver of the filing fee, you will have to pay to file your divorce.

After your fee waiver is either approved or denied, you should file your Joint Petition for Simplified Dissolution of Marriage. Remember to take the original and 2 copies of the Petition with you to the Circuit Clerk's office. (One for yourself and one for your spouse).



## Step Four: Request/Get a hearing date:

The parties shall appear before the court for a hearing. An affidavit stating that the marital property has been divided as agreed by the parties and that all of the necessary documents have been executed is required at the time of the hearing. The court may require the parties to testify. If all of the requirements are met, the court may enter a judgment of dissolution at the end of the hearing.

Depending upon the county in which you filed your divorce, you will need to contact either the Circuit Clerk or the secretary of the judge who usually handles the divorce cases to request a hearing date. You can do this either by phone, or by mail. When contacting the clerk or the judge's secretary, be sure to ask for the default or pro se hearing date.



## Step Five: Prepare for the hearing:

You will need to prepare the Judgment of Dissolution of Marriage form. The Judgment is the document which the judge signs which grants you your divorce.

The Judgment is a final order on such issues as custody, property, debts, maintenance, visitation, and child support and can only be changed by another court order. The Judgment is the form which you will present when someone asks you for proof of your divorce and its terms. Consequently, this is a very important form.

# Steps To Getting A Divorce

Prepare your testimony using the Judgment of Dissolution of Marriage as your guide. You will need to testify about all of the facts you have alleged in your petition (the numbered parts of the Judgment) and you will need to testify as to what you want the court to do (the letter parts of the Judgment). If you ask the court to do something that was not in your Petition, you may have to either amend your Petition, or you may not get it.

## Step Six: Attend the hearing:

While there is no way to know exactly what will happen at your hearing. Here are some things you should do:

- Bring with you your copies of all the documents you filed with the Circuit Clerk and any other papers relating to your divorce.
- Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the Clerk exactly what room you will be in. Tell the Clerk or the Judge's secretary that you are ready to proceed when called and wait for your case number and name to be called.
- When the Judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the Judge as "your honor".
- Before you begin, the judge may then ask you and your spouse preliminary questions about your case.
- To testify, you will need to call yourself as a witness. At this time, the Judge will put you under oath and you will present your testimony using your written testimony as your guide.
- After you have testified, present your Judgment of Dissolution of Marriage to the Judge for his/her signature. If the Judge wants corrections made, don't panic, you can ask for permission to submit a corrected version by mail.



## Step Seven: Wrap it up:

After the judge has signed the Judgment of Dissolution of Marriage, you will need to file your Judgment with the Clerk and give a file-stamped copy of the Judgment to your spouse.

If you asked the Court to give you your maiden name back, have the Circuit Clerk certify your copy of the Judgment. In most cases, you will need a certified copy to change your name with either the Social Security Administration or the Secretary of State of Illinois.



**Q: What is a court file?**

**A:** The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

**Q: When do you need to file a document in a court file?**

**A:** Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

**Q: What does it mean to file a document in a court file?**

**A:** Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

**Q: Does filing a document make it legal?**

**A:** No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

**Q: Why is filing so important?**

**A:** Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.

## 2 Commonly held beliefs about divorce

which are not true:



**Myth 1: A “default” divorce is not as binding or as “legal” as when both parties appear in court, have attorneys, or agree on the terms of the divorce.**

Wrong!! A default divorce is just as legal and binding as any other divorce.

**Myth 2: If one party is “responsible” for a marital debt in a divorce judgment, his/her spouse can’t be sued for that debt.**

Wrong!! A divorce is only binding on those people who are the parties to the lawsuit. Consequently, unless a creditor (someone you owe money to) was a party to your divorce, he/she can still collect a marital debt from you. If your ex-spouse agreed to be “responsible” for a particular marital debt and he/she does not pay the debt, your only recourse is to take him/her back to court to either a) get him to pay the debt or b) reimburse you for any monies you spent on the debt for which your spouse was responsible. Of course, if your ex-spouse does not have the money to reimburse you or to pay the debt, taking him/her back to court would probably be a waste of your time and money.



## **Work out a settlement before you go to the clerk's office**

Work out a settlement with your spouse on property and debts before you go to the clerk's office.

## **Go to other pro-se or default hearings before yours**

If your county courthouse has a special date when they schedule the pro-se (no attorneys) or default (uncontested) divorce hearings, try to attend at least one hearing before the date of your hearing. This way, you can watch what happens, (including what mistakes others make) take notes, and be more prepared for your hearing date.

## **Get help if you need it**



If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, doing your own divorce may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of



the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if doing your own divorce proves to be too difficult a task for you, talk to an attorney.