

## **DIVORCED & OTHER HELP WITH MARRIAGE PROBLEMS**

For non-Muslim and non-customary native marriages

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1. **What are the grounds for divorce?**
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## 1. WHAT ARE THE GROUNDS FOR DIVORCE?

### a) If both spouses agree to the divorce, can file joint petition:

Requirements:

- Marriage is registered or considered to be registered under Malaysia law or a foreign law which provides for monogamous marriages, and
- Both spouses live in Malaysia or consider Malaysia to be their permanent home and
- Married for at least 2 years, except for exceptional or hardship cases.

### b) If one spouse disagrees with the divorce, can only file single petition:

Requirements:

- Marriage is registered or considered to be registered under Malaysia law or a foreign law which provides for monogamous marriages, and
- Both spouses live in Malaysia or consider Malaysia to be their permanent home AND
- Married for at least 2 years, except for exceptional or hardship cases AND
- Marriage **has completely broken down**, and you must prove at least one of the following:
  - Your spouse has committed adultery and you cannot bear living with him/her, or
  - Your spouse has behaved in such a way that you cannot be expected to live with him/her, or
  - You and your spouse have lived apart continuously for at least 2 years, or
  - Your spouse has left you for a continuous period of at least 2 years, AND
- The spouses must go for meetings at the Marriage Tribunal and get a Certificate from the Tribunal to state that you and your spouse cannot get back together.

### c) Spouse declared by Court as considered to be dead:

If he/she disappeared for at least 7 years and you believed he/she is dead

### d) Conversion to Islam:

If your spouse has converted to Islam, you can get divorced 3 months later.

**e) If husband is not permanently living in Malaysia or does not consider Malaysia to be his permanent home:**

A wife can still petition for divorce if:

- He left her or was deported from Malaysia, and he considered Malaysia to be his permanent home before the desertion or deportation, or
- She has lived in Malaysia for 2 years.

**2. WHAT IS THE PROCEDURE FOR DIVORCE?**

**a) If both spouses agree to the divorce and terms, simpler and faster:**

- i. Get a lawyer to file joint petition.

The joint petition must state:

- Details of marriage and children, if any
- Previous Court cases relating to marriage
- Agreed terms on maintenance, custody and division of assets.

- ii. Both spouses must appear in Court.

- iii. This process can take a few months.

**b) One spouse disagrees with the divorce:**

- i. Meetings by both spouses with the Marriage Tribunal.

The Marriage Tribunal will issue a Certificate of Tribunal if it fails to bring the spouses back together.

But a spouse can apply to Court to be exempted from the meeting if:

- He/she does not know where the other spouse is, or
- The other spouse lives overseas and is not likely to come back to Malaysia within the next 6 months, or
- The other spouse refuses to attend the meetings, or
- The other spouse is sent to prison for 5 years or more, or
- The other spouse is suffering from an incurable mental illness, or
- Court is satisfied that due to exceptional circumstances the meetings are not practical.

- ii. Get a lawyer to file a **single petition**.

The single petition must state:

- Details of marriage and children, if any
- Previous Court cases relating to marriage

- Proof of complete breakdown of marriage
  - Claim for maintenance, custody and/or division of assets.
- iii. The petition must be served on the other spouse, who will then engage a lawyer to file an Answer to the petition to dispute:
- The breakdown of the marriage, and/or
  - Claim for maintenance, custody and/or division of assets.
- iv. The spouse who wants the divorce must appear in Court.
- v. This process can take more than 2 years.

**c) Decree nisi and Decree made absolute:**

- If Court is satisfied that there should be a divorce, you will get a Decree Nisi, which will be made absolute after a stipulated period, usually 3 months.
- During the stipulated period, you cannot re-marry.
- If the Court sees no reason why the Decree cannot be made absolute, the Court will make the Decree absolute.
- Before the Decree Nisi is made absolute, if the spouses get back together, either spouse can apply for the Decree to be cancelled.
- After the Decree Nisi is made absolute, you can re-marry:
  - Immediately, if the Decree is made absolute with no right of appeal
  - Upon expiry of the time period for appeal, if there is a right of appeal but no appeal is filed
  - After the appeal, if any, is dismissed.

**3. OTHER THAN DIVORCE, WHAT ARE THE OPTIONS?**

**a) Judicial separation:**

- Same ground, i.e. marriage has completely broken down, and same circumstances as for a single divorce petition
- At any time, i.e. no need to be married for at least 2 years
- No need to live together after obtaining the decree of judicial separation
- Can still petition for divorce afterwards
- Can also get maintenance, custody of children and/or division of assets.

## **b) Annulment (cancellation) of marriage:**

Requirements:

- Marriage is registered or considered to be registered under Malaysia Law or a foreign law which provides for monogamous marriages, and
- Both spouses live in Malaysia, and
- Marriage is not valid or there is a reason for the Court to cancel the marriage, e.g. non-consummation or unsoundness of mind at the time of marriage.

## **4. CAN I KEEP THE CHILDREN?**

- You can apply to Court at any time for custody of the child/children, even if no divorce or judicial separation case ongoing
- Generally the mother keeps the children, especially those less than 7 years old
- The welfare of the child is the most important factor: the parents will be consulted, and if the child is old enough, he/she will also be consulted.
- If there is more than one child, it is not necessary that one parent keeps all the children, but as far as possible the children are kept together
- In exceptional circumstances, neither parent may get to keep the children.

## **5. WHO CAN GET MAINTENANCE?**

- A wife or ex-wife, during or after the divorce case or judicial separation, or if she is declared by Court as dead but she is alive
- A husband or ex-husband, only if he is unable to earn a living because of mental or physical injury or poor health and the wife is able to pay maintenance.

(Can also apply for maintenance even if no divorce or judicial separation case)

## **6. HOW MUCH MAINTENANCE CAN I GET?**

- Depends on how much one spouse needs and how much the other spouse can afford to pay
- Generally based on things such as:
  - Proof of income of both spouses
  - Proof of expenses of both spouses
  - Proof of who is more at fault for the breakdown of the marriage.

## **7. WHEN DOES MAINTENANCE STOP?**

- If payment is made through a court-appointed trustee, upon the death of the recipient, or otherwise, upon the death of either spouse, or
- If the recipient re-marries or lives in adultery with another person.

## **8. WHAT OTHER USEFUL THINGS SHOULD I KNOW ABOUT MAINTENANCE?**

- Maintenance can be paid in one lump sum instead of instalments if both spouses agree.
- Can make maintenance secured by getting a court-appointed trustee to hold assets. The trustee will pay the maintenance with income from the assets.
- Can apply at any time to Court to vary the terms of the maintenance.
- Must sue for unpaid maintenance within 3 years.

## **9. HOW WILL THE COURT DIVIDE OUR ASSETS IF WE CANNOT AGREE?**

Joint efforts:

- Court can divide assets obtained during marriage by joint efforts of the spouses, or owned before marriage by one spouse and substantially improved during the marriage by the other spouse or by their joint efforts.
- Court can also order the assets to be sold and the money divided between the spouses.
- Court should usually divide the assets/money equally, and consider:
  - Contribution by either spouse in money, assets or work
  - Debts of a spouse for the benefit of both spouses
  - Needs of young children.

Sole effort:

- Court can divide assets obtained during the marriage by sole effort of a spouse.
- Court can also order the assets to be sold and the money divided between the spouses.
- Court must give more of the assets/money to the spouse who made the sole effort to acquire the assets (e.g. 2/3), but consider:
  - Contribution of the other spouse in caring for the home and family
  - Needs of young children.

## **10. WHAT OTHER HELP CAN I GET FROM THE COURT?**

- Injunction to prevent the other parent from removing a child from Malaysia, or for the right to remove the child out of Malaysia.
- Reversal of or an injunction to prevent a sale/transfer of assets which is intended to reduce maintenance payments or to deprive the other spouse of a share in the assets.
- Injunction to prevent your spouse from bothering you, during or after a court case relating to marriage.
- Compensation from a co-respondent for adultery under a divorce petition.

## **11. WHAT IF THE MARRIAGE WAS IN A FOREIGN COUNTRY?**

You have the same rights under Malaysian law, but the requirements are:

- You are legally married in that country, and
- Each spouse would have been qualified to be married under his/her home country law, and
- Either spouse is a citizen of Malaysia or considers Malaysia to be his/her permanent home and both are qualified under Malaysian law to be married.

**The leaflet is based on the law as at 1 January 2001. We are not liable or responsible for any loss or damage however caused to any person relying on the information in this leaflet.**

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