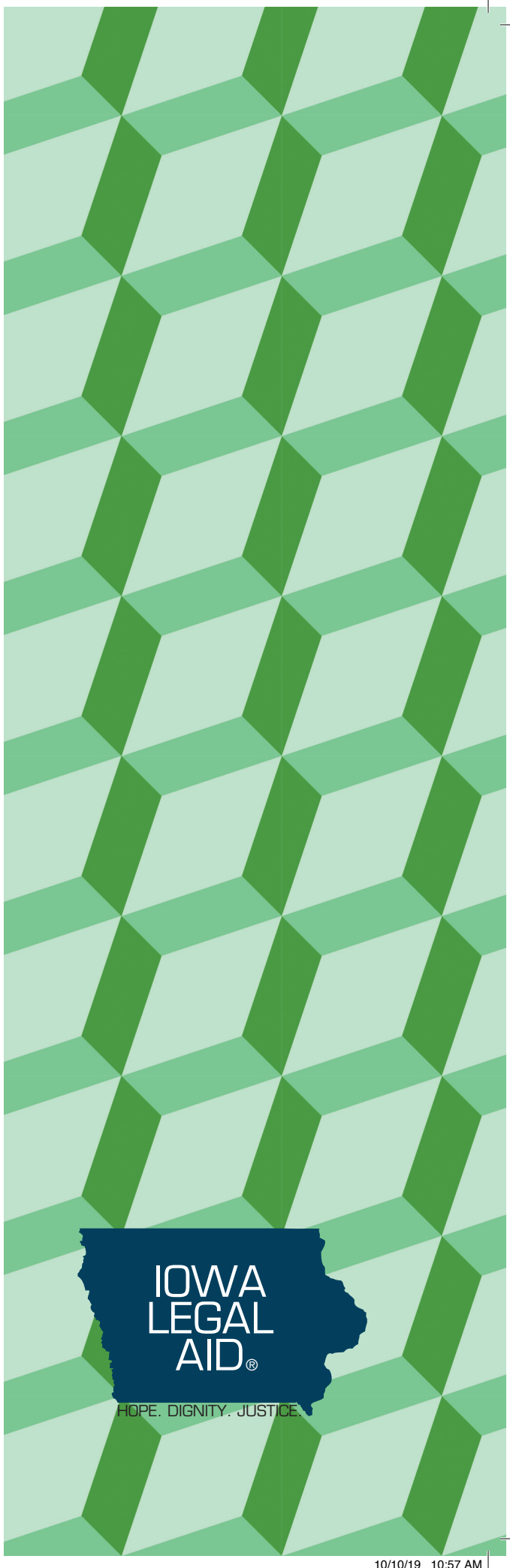
Divorce Law In Iowa With No Children & No Lawyer

A Guide To Using The Court Forms For Divorce Without Children



Visit our website for more self-help resources:

iowalegalaid.org

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Introduction

Sometimes a marriage no longer works. One or both spouses think about a divorce. A divorce takes time and you must plan and make decisions. This booklet may help people thinking about divorce prepare for the dissolution of their marriage. If you are divorced and hope to change a term in your original decree, the part on "After The Divorce," page 10, may be useful.

Iowa is a "no-fault" state. This means you do not have to prove one spouse was at fault in the breakdown of the marriage. Courts will grant a divorce where one or both parties say there has been a breakdown of the marriage relationship with no reasonable hope of making it work.

This booklet explains the process of divorce. It is a summary of what the court looks at in making final decisions about alimony and property.

The Iowa Judicial Branch provides the forms to use to get a divorce. The forms can be used by both parties in the divorce. These forms can only be used if there are no minor children. You must use the court forms if:

- You are getting a divorce
- You do not have minor children
- You do not have children age 18 years or older who still need your support
- You have not hired an attorney to help you with the divorce

You can get the forms for free online at:

http://www.iowacourts.gov/for-the-public/court-forms

A guide explains the process and defines common legal terms. If you represent yourself, you must use the court forms. The Iowa Judicial Branch plans to make interactive forms available on its website in early 2020.

General Information

What If There Is A Child But The Husband Is Not The Father?

If a child was born during the marriage, or the wife is pregnant, but the husband is not the father you cannot use the forms. In Iowa a child born to the wife during the marriage is by law the child of the husband. This is also true if the wife is pregnant. If you are in this situation, you cannot use the court forms for divorce without children. You can "disestablish" the husband as the father of the child. You can do this using the divorce with children forms. The forms are free on the Iowa Judicial Branch website. The law is not clear about the status of a child of a same sex couple who may have been born during the marriage.

Do I Need To Have A Lawyer?

It is best to have a lawyer. There are times when parties are able to work out a settlement on their own. No law says people must have a lawyer in order to get a divorce. However, in these cases you should talk to a lawyer:

- When there are children from this marriage
- When either of you own real estate
- When you don't agree about how to divide what you own
- When one party thinks he or she may be entitled to support from the other party
- When there is any dispute

If you handle the case yourself, get the forms that are available from the Iowa Judicial Branch.

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How Much Does It Cost To Get A Divorce?

You must pay a fee of $185.00 to the Clerk of Court when the divorce Petition is filed. There are also service fees to the Sheriff if service must be made by the Sheriff. Service fees are usually $20 to $30. If you are unable to pay the fees, you can ask the court to defer payment of the costs using Form 109. You must provide specific details about your income and expenses. A petitioner who asks to defer payment can file without paying a fee. The fee will still be charged to a party at the end of the divorce. Also, a $50 fee must be paid when the final decree is filed.

Many lawyers require "retainers" or money up front to start a divorce action. Fees vary from city to city and from law firm to law firm. Lawyers often want at least a $500.00 to $3,000.00 retainer. Discuss fees and payment options with your lawyer. Be sure you know how much your lawyer charges per hour. If he or she charges a flat rate, find out what it will be. Ask if that flat rate goes up if the case gets more difficult than it seemed at first.

A contested divorce is when the parties cannot agree on the issues. Most of the time this costs more than an uncontested one. The reason is because a trial is often involved. Courts may require the party in the best financial position to pay part or all of the legal fees. This may include some of the other side's fees.

How Do I File The Divorce?

All counties in Iowa now file cases electronically. You will need to sign up for electronic filing or ask the court to exempt you from filing electronically. In order to file electronically, you need to have internet access and an email account. Use Form 122 to ask to be exempted from electronic filing. You can sign up for electronic filing at https://www.iowacourts.gov/efile/efile-instructions/. The electronic filing system is known as EDMS (Electronic Data Management System). https://www.iowacourts.gov/efile/efile-instructions

What If I Can't Afford A Lawyer?

Many people worry about the cost in deciding whether or not to hire a lawyer. If you do not have a lawyer, your rights may not be addressed in your divorce petition and decree. This may end up costing more in the long run. It can happen since you must pay later to try to get changes in the initial decree. Courts are reluctant to make any changes later unless there has been a major change of circumstances. Property decisions cannot be changed later by the court in any event. Consider, too, the negative feelings you will have if you feel that your rights were not considered in the initial petition and decree.

In some parts of the state, special programs help reduce the expenses involved, such as attorney's fees. Talk to the Clerk of Court in the county the divorce is filed to find out if there is such a program in your area.

The court may order your spouse to pay attorney's fees. This will not occur until after a hearing on temporary support and fees or the decree is final. In the meantime, most lawyers will want payment in order to start the divorce.

Talk to your lawyer to see if you can pay in installments.

If you are a victim of domestic abuse and are low-income, Iowa Legal Aid may be able to help. Call the toll-free number on the back of this booklet or go to iowalegalaid.org to find out which office serves your county.

What Is The Difference Between "Divorce" And "Annulment"?

"Divorce" ends a valid marriage. "Annulment" means the marriage was never valid and should never have happened. The reasons to annul a marriage are very limited. They include marriages prohibited by law and where either person was already married to someone else.

What Is The Difference Between "Divorce" And "Legal Separation"?

They are very similar. The main difference is the couple stays married. They simply ask the court to decide how to handle things like support, property, and debts while they are separated. This is because they plan to be separated a long time.

Legal separations are quite rare. The person whose spouse files for a legal separation can ask the court to grant a divorce instead. In both actions, the court looks at the topics this booklet covers.

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What If I'm Not Sure I'm Married?

Common law marriage is generally an informal marriage. There is no ceremony. It is an agreement between two persons who are legally capable of marrying. You must be able to show that:

- Both parties intended to be married and agreed to it
- There must be some degree of living together, though no set length of time is required. The simple act of living together, without more, is not enough to establish a common-law marriage
- There must be public declaration or "holding out" as married. While there is no formula to determine if the parties have been "holding out" as a married couple, the following activities have been convincing
    1. Introducing one another as "my spouse"
    2. Exchanging wedding rings
    3. Filing state taxes as a married couple
    4. Going to social events as a married couple
    5. Naming as spouse in an insurance policy
    6. Joint checking account
    7. Marital status on employment application

A party cannot be married to more than one person at a time. A married person who knowingly marries before dissolving the first marriage could be guilty of bigamy. The innocent "spouse" in such a case can seek to have the marriage annulled.

If you are not sure if you are married, it is safest to ask the court to decide. You can ask in a divorce or just ask the court to declare the rights of the parties, whether you are married at common law or not. Remember that while you can be married at common law, there is no common law divorce. If there is a common law marriage, you must get a formal divorce from the court before you can marry again, either by common law or by formal, licensed means.

You can find out more on common law marriage from Iowa Legal Aid or on the website at iowalegalaid.org.

PLEASE NOTE: Iowa is one of several states recognizing common law marriage. In most states, the couple has to sign a marriage certificate or they are not married, no matter whether all the above elements are met or not.

The Divorce Process

Can Anyone File For Divorce In Iowa?

You must meet certain requirements before bringing a divorce action in Iowa. Some concern the parties' residency. Iowa law states:

- The person filing a petition for divorce (Petitioner) must live in Iowa for at least one year before bringing a divorce action, unless
- The person's spouse (Respondent) is a resident of Iowa and is personally served (notified in person)

The petition must contain a statement showing that Petitioner's residence in Iowa has been in good faith and not just to get a divorce. The court form petition, Form 101, includes all of this information.

What If You Don't Know Where Your Spouse Is?

You can still file for divorce, but the spouse must be served by publication. In such a case, the court is limited in what it can do. For example, you can be divorced but you may not be able to get money from your spouse. The court forms have information about serving by publication. Look at Form 107 and 108 and the *Guide to Representing Yourself in an Iowa Divorce Case*.

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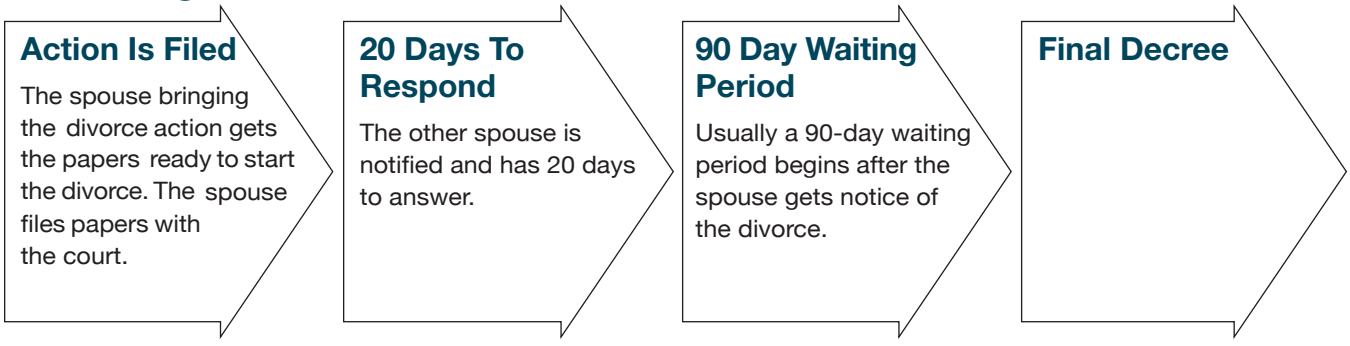
How Long Does It Take To Get A Divorce?



The spouse bringing the divorce action gets the papers ready to start the divorce. The spouse files papers with the court. The other spouse is notified and has 20 days to answer. A 90-day waiting period begins after the spouse gets notice. (If the court orders marriage counseling, the waiting period will not start until counseling is done.)

A spouse who brings a divorce action will have to fill out the petition and other papers or hire a lawyer to do this. If the person is handling the divorce without a lawyer, then the person should look at Forms 101, 102, 103 and instructions to those forms. The spouse files the papers that start the divorce through the electronic filing system. These papers include the Petition, Forms 101, 102, 103.

The other party must be "served" with the papers. There is information about serving a spouse in Forms 104, 104a, 105, and 106 and the *Guide to Representing Yourself in an Iowa Divorce Case*. Once a spouse is served, a spouse has 20 days to respond or answer the petition. Once the other spouse has been served usually a 90-day waiting period begins. A spouse can use Forms 115 or 116 to answer a petition.

Once the other spouse has been served usually a 90-day waiting period begins. During the waiting period, some parties get counseling or work out the terms of their divorce. Usually no decree can be entered until this 90-day period is over. In certain situations, the court can shorten the 90-day waiting period. To ask to shorten the waiting period, use Form 122. If the court orders conciliation (marriage counseling), the 90-day period will not start until the conciliation is done. Couples are usually ordered to take part in the counseling for 60 days.

The parties usually have to file a Financial Affidavit, Form 124 unless the judge agrees that it is not needed. If the parties can work out the terms of their agreement, a hearing date is scheduled. The parties can use Form 128, if they can work out an agreement. Most hearings can be scheduled soon after the 90-day waiting period has ended. It may take more than 90 days to work out the agreement.

If the parties are unable to work out an agreement, their divorce is contested. This means a trial must be scheduled. If the case is contested, the parties will probably need to file a Request for Relief, Form 127. The Request for Relief tells the court what you want the court to give you in the divorce. Depending on the number of issues and how difficult they are, a trial date may be months away. Once a judge hears the case, it may be weeks or even months before getting a final decision and decree.

In certain cases, it is possible to get the divorce without a court hearing. Among other requirements, all the necessary documents must be on file. The parties must also have entered into a written agreement settling all the issues involved.

What Is The Petition And What Information Does It Contain?

In a divorce action, the petition is a formal, written request to the court. It asks the court to dissolve the marriage. The petition must say that the marriage is broken and can not be saved. In addition, the petition should have:

- *Names of the parties.* If a spouse decides to use her maiden name or any other last name once the divorce is final, the petition can say so.
- *What county the Petitioner lived in*? Unless the Respondent is a resident of the state and is to be personally served, the petition must state that the Petitioner has been a resident of Iowa for the last year. It must say the Petitioner has lived in Iowa not just to get a divorce.
- *What the Petitioner wants the court to do.* For example, end the marriage, divide the debts, or order alimony. All of this information is included in the court form Petition, Form 101.

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What Are Temporary Orders?

Certain issues may need to be dealt with between the time a Petition is filed and the Divorce is granted. For example, one spouse may have concerns about finances. If so, a spouse may request temporary orders from the court for attorney's fees or alimony. The right to sole occupancy of the family home can be ordered, but only if there has been domestic violence. Before the court will rule on temporary matters, the need to have a hearing is likely. Such hearings are not automatically scheduled. A form Motion, Form 122 and a form Response to Motion, Form 123 are found in the court forms. Alimony is difficult to get. Look at "Will the Court Order Spousal Support (Alimony)?" on page 9 to see what the court will consider.

What If There Is Domestic Abuse?

You may be filing for divorce because your spouse has harassed or physically abused you. It is important that you tell this to your lawyer. If you have a protective order or no-contact order, you should note this on the petition, Form 101. If you do not have a protective order but need one, you can ask for a protective order in the divorce. The protective order forbids your spouse from contacting you. You should make sure that the protective order allows you to send papers and talk to your spouse about the divorce.

An abusive spouse tends to say he or she is sorry and promises not to repeat the abusive behavior. However, the abuse usually continues. It often becomes more violent in time, especially when the abuser believes he/she is "losing" the other spouse. Domestic violence intervention programs offer temporary housing and counseling for victims of violence.

Also, evidence of abuse has an effect on decisions about counseling and mediation. Some courts require mediation in divorce cases. Mediation is a way of helping the parties come to an agreement. See "What is Mediation," page 8. If domestic abuse is involved in the relationship, a party can ask the court to waive any court-ordered mediation.

Contact Iowa Legal Aid and ask for the booklet *Domestic Abuse and the Law*. Call the 24-hour statewide, toll-free number to find out about the local Domestic Abuse Program that can help you.

Statewide Domestic Abuse Hotline:
1-800-770-1650

What Should I Do If I Was Served Divorce Papers?

If you are the Respondent and have been served the Original Notice, you must file an Answer with the court within 20 days. Use Form 115 if the petitioner used court Form 101 or use Form 116, if the petitioner did not use Form 101.

If you do not file an Answer, the divorce will continue but you will not be taking part. The court will grant a divorce without your input. You might not even know about it (divorce by default). So, if you get notice and cannot afford a lawyer, you can file an Answer on your own using the court forms. There are instructions included with these forms that tell you what you need to do. Also look at the *Guide to Representing Yourself in an Iowa Divorce Case With no Minor or Adult Dependent Children*.

The Answer tells the court what parts of the petition you agree with, and which ones you don't. It is also the place to ask the court for certain things you might want that are not in the petition. For example, you may ask for both spouses to go to counseling to try to save the marriage.

What Happens After The Answer Is Filed?

After the petition has been filed, and the other spouse is served with (gets a copy of) the petition, a waiting period of 90 days is required. After the waiting period, the final hearing takes place and the divorce decree is granted.

Please note that the court does not automatically enter a decree after 90 days have passed. If the case is contested, you may need to give to the other spouse certain documents. This could include pay stubs, tax returns and other account information. The decree is entered only after the parties have filed their stipulation settling all issues arising out of the divorce. A short hearing may be needed to finalize the divorce. In certain cases, a decree can be entered without a hearing. If no settlement can be reached, the court enters a decree after a trial takes place before the court. The trial allows the court to hear all the testimony and to review the evidence.

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What If One Spouse Wants Marriage Counseling?

Either spouse or the court may request counseling. The court may require the parties to take part in these efforts for a period of 60 days or less.

Working Out A Stipulation

The 90-day waiting period and after is also used by the parties to negotiate a settlement. Spouses can use Form 128 to work out a settlement agreement. Matters such as property ownership, spousal support (alimony), and division of debts should be decided. In most cases settlements are agreed upon through this negotiation process and approved by the court at a final hearing.

If the parties cannot reach an agreement, a pre-trial conference is scheduled. The parties and their lawyers (if any) meet with court personnel or a judge to determine which issues the court will resolve. A trial will be scheduled sometime after the conference and at least 90 days after the petition was filed. Divorce cases are heard by a judge without a jury. Most of the time these trials are closed to the public.

What Is Mediation?

Mediation is when a neutral third person agrees to help the spouses work out an agreement. It is used when the spouses can't agree on how to divide property or debts. The court can require the spouses to take part in mediation if the judge thinks it will help resolve their differences. A spouse can also request it. However, if there is a history of domestic abuse, a spouse can ask the court that mediation not be required. Use Form 122 to ask the court to waive mediation. The law is starting to favor mediation more and more. The court will often require parties to go through mediation or some type of settlement conference before granting the divorce. They want to give the parties every chance to work differences out before they actually go to trial.

What Financial Information Will The Court Want?

Both parties are required by the court to make a true and complete statement of their financial status. In addition to details on current income and expenses, each party must list his/her property. This includes cars, real estate, cash value of life insurance policies, cash and bank accounts, household contents, investments, pension or retirement plans, and other property.

This is called a "Financial Affidavit." Fill out Form 124. It must be filed before the divorce hearing, unless waived by both parties. Parties who want alimony will generally not be able to waive financial information. The court must be aware of the parties' finances to make an informed decision on alimony.

How Will The Court Divide The Marital Property?

The standard for how to split up property in Iowa is that it must be divided "equitably." This means it must be fair under the circumstances. Equitable does not always mean each party will get half of the property, unless giving each half is the fairest solution after considering all factors.

The court will consider more than just income and expenses to create a fair division of property. Listed below are some of the areas the court considers when dividing the property:

- The length of the marriage
- The age and physical and emotional health of the parties
- How much each party contributes to the marriage, including what each party pays towards homemaking
- The property brought to the marriage by each party
- How much one party contributes to the education, training or increased earning power of the other
- How much each party is able to earn

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The court will also consider other economic factors. Gifts received by either party should continue to be separate property unless it would be unfair to consider them as such. Gifts given to the parties jointly are subject to division, just like all of the other marital assets.

Retirement benefits earned during the marriage are marital assets. Retirement benefits include 401(k)s and pensions. Dividing retirement benefits in a divorce is complicated. The court must enter a Qualified Domestic Relations Order (QDRO). You probably will need a lawyer to help you divide retirement benefits.

The property settlement is final once a divorce decree is entered. A property settlement can be challenged within one year of the entry of the decree, but only where one party deceived the other, or threatened the other with harm to force an agreement, or where there was a mistake. (Alimony payments may be changed in the future, however.)

Will The Court Order Spousal Support (Alimony)?

The court may order alimony payments to either party. Alimony is not a right or automatic. Generally, alimony is hard to get. The Court will look at many of the same concerns mentioned earlier under property. Other factors include:

- Whether or not the party asking for support can become self-supporting at a standard of living close to that enjoyed during the marriage
- What property has been awarded to the spouse asking for support
- Any tax consequences to each party
- Any agreement made by the parties on their finances or services

The court will take into account anything else that matters in this particular case. It is important to note that if alimony is not included in the original decree, it will not be possible to have it added later.

Alimony can be ordered for a specific period of time (for example, three years) or until the recipient spouse dies or remarries. In some situations, living with someone else may be enough to stop alimony payments. Some people have argued that this is the same as being remarried.

What Is A “COLA”?

COLA stands for “cost-of-living adjustment.” In five years prices for basic necessities such as food and clothing will probably be higher. You may want to include terms for a cost-of-living increase. This is an automatic adjustment for alimony payments as costs rise from year to year.

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After The Divorce

What If A Party Ignores An Order Or The Final Decree?

Sometimes a party fails to pay support, turn over property, or disobeys another order within the decree. When this happens, the other party may bring a contempt action to try and get the uncooperative party to obey the court's orders.

Also, parties who fail to comply with court orders may be given a jail sentence, or be deprived of some right that was awarded in the divorce decree.

There is a court fee of $50 to file a contempt.

Can We Change The Final Decree Later?

Certain terms within a divorce decree such as alimony can change in the future if the party who asks the court to modify the orders can show a substantial change in circumstances. The court knows that reasonable and ordinary changes are likely to occur. So this change must be one that the trial court had no knowledge of at the time of the original decree. Also the change must be permanent and not temporary.

In most cases, if the spouse who gets alimony remarries, a court will end that person's right to alimony. Also, alimony can only be increased if the original decree awards alimony. If the original decree does not mention alimony, or if it states that no alimony will be awarded, then alimony cannot be ordered later. For this reason, some decrees will order alimony of $1.00 per month, just so that the right to it isn't lost and the amount can be increased later. Generally, if the spouse getting alimony payments remarries, these payments will end. Sometimes a spouse does not remarry but has a longterm relationship with someone. This may be enough to stop alimony if it is like a marriage relationship.

Property divisions established in the divorce cannot be changed once the divorce is final.

IOWA LEGAL AID

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Toll-Free Phone: 1-(800)-532-1275 or call 1-(515) 243-2151

Visit our Website for More Self-Help Resources:

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Iowa Legal Aid office hours are Monday through Friday from 8:30 a.m. to 4:30 p.m. Offices are closed on holidays. To apply for help, call Iowa Legal Aid during intake hours: 9:00 a.m. to 11:00 a.m. and 1:30 p.m. to 3:30 p.m., except Thursday afternoon. Emergencies are taken during regular office hours. You may also come to the regional office listed below serving your county but it is helpful to first call for an appointment.

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Iowa Legal Aid is committed to providing quality legal services to eligible low-income people. However, due to limits placed on our program, we cannot help every person who applies for service. Complaint procedures have been established for clients and members of the general public who disagree with Iowa Legal Aid decisions. For a detailed copy of our complaint procedures, contact any Iowa Legal Aid office.

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by

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For Additional Copies, Contact: Iowa Legal Aid

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1-(800)-532-1275

(515) 243-2151

Visit Iowa Legal Aid on the Web at iowalegalaid.org

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