

99046008017002

# Claiming the advance on legal costs from the spouse or civil partner in court

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Modul	Sachverhalt
Leistungsschlüssel	99046008017002
Leistungsbezeichnung I	Claiming the advance on legal costs from the spouse or civil partner in court
Leistungsbezeichnung II	Claiming the advance on legal costs from the spouse or civil partner in court
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Sachsen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	
Leistungsgruppierung	
Verrichtungskennung	

Modul	Sachverhalt
SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> <li>• Familienrecht: § 1360 a Absatz 4, Bürgerliches Gesetzbuch (BGB) – Umfang der Unterhaltspflicht</li> <li>• §§ 114 bis 127 Zivilprozessordnung (ZPO) – Prozesskostenhilfe und Prozesskostenvorschuss</li> <li>• § 231 ff. Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) – Verfahren in Unterhaltssachen</li> </ul>
Teaser	<p>A typical situation as an example: Day after day the same argument between two spouses, one decides for a divorce. Because of the children, one partner works part-time, he lacks the money for a lawsuit. The other partner, on the other hand, has a fairly good income. Family law provides for an entitlement to an advance on legal costs in such cases. This follows from the duty of solidarity in marriage and is therefore ultimately part of the maintenance obligation.</p>
Volltext	<p>A typical situation as an example: Day after day the same argument between two spouses, one decides for a divorce. Because of the children, one partner works part-time, he lacks the money for a lawsuit. The other partner, on the other hand, has a fairly good income. Family law provides for an entitlement to an advance on legal costs in such cases. This follows from the duty of solidarity in marriage and is therefore ultimately part of the maintenance obligation.</p> <p>Note: The regulations described below also apply analogously to registered civil partnerships, which, however, can no longer be newly established since 01.10.2017. The Act on the Introduction of the Right to Marriage for Persons of the Same Sex opened up marriage to same-sex couples with effect from</p>

## Modul

## Sachverhalt

01.10.2017.

An advance on legal costs can be claimed by the partner entitled to maintenance both for disputes between themselves (and also for divorce) and for disputes with a third party.

However, the prerequisite is that the dispute is a personal matter and that the granting of an advance on legal costs is equitable, whereby the overall property situation must be taken into account. The dispute must have its roots in the cohabitation. This may include, for example, proceedings before the criminal court or the labour court, but not disputes from previous marriages or over inheritance claims.

Furthermore, the entitlement to an advance on legal costs presupposes a sufficient likelihood of success of the legal action.

Note: If the claim for an advance on legal costs can be enforced in a timely manner, it has priority over support from the public purse.

## Erforderliche Unterlagen

Your lawyer will advise you on which documents and evidence should be attached to the application for an interim injunction in each individual case.

## Voraussetzungen

- an existing marriage or registered civil partnership
- a legal dispute in a personal matter (for example family matters)
- the intended legal action must be neither wanton nor without prospect of success
- the beneficiary must be indigent
- the obligee must be able to pay

Sufficient prospect of success

In addition to indigence, the most important criterion for determining whether you are entitled to an advance on legal costs is the likelihood of success. The court makes a prognosis, but does not impose excessive requirements.

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No wanton litigation

Entitlement to an advance on legal costs would be excluded, for example, if you were to bring an action for maintenance even though your spouse pays maintenance punctually and appropriately.

Indigence

You are considered to be indigent if you are unable to meet the costs of litigation yourself, or only partially. Although the requirements for indigence in the case of legal aid are lower than those for state legal aid, you will usually have to fall back on your own assets first. Under certain circumstances, you might even be expected to finance the litigation by selling your own home before claiming an advance from your spouse.

Partner's ability to pay

The spouse or partner obliged to pay is entitled to an appropriate deductible, which must not be jeopardised. The same applies to priority maintenance claims of minor children. As a rule, the assets of the obligor remain untouched. Depending on the debtor's ability to pay, there may be only a partial claim to advance on legal costs. If the debtor is unable to meet the claim in full, the court may also grant payment in instalments.

**Kosten**

none

**Verfahrensablauf**

If you find that you cannot afford the legal costs, please find out in good time from a lawyer you trust whether you are entitled to an advance on legal costs or legal aid. The maintenance payment of your spouse or life partner has priority in any case.

If you want to claim an allowance, you can do so by applying for a temporary injunction. Your lawyer will usually take care of this.

Repayment

Whether the advance on legal costs must be repaid

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	<p>after the conclusion of the proceedings depends on the individual case. It may turn out later that the advance was not justified or that the conditions for a claim no longer exist.</p> <p>For example, you as the applicant could be in a considerably better position after the divorce as a result of the property settlement than you were before. Then you would have to expect repayment.</p> <p>The fact that a case was lost is usually not sufficient for a claim for repayment.</p>
Bearbeitungsdauer	
Frist	none
weiterführende Informationen	
Hinweise	
Rechtsbehelf	Application for a temporary injunction at the family court.
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	