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Petition for divorce, amicable proceedings

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<https://fimportal.de/xzufi-services/6000511/L100009>

Modul	Sachverhalt
Leistungsschlüssel	99046039221000
Leistungsbezeichnung I	Petition for divorce, amicable proceedings
Leistungsbezeichnung II	Petition for divorce, amicable proceedings
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	
SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher	

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Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • Familienrecht: §§ 1564 ff. [Bürgerliches Gesetzbuch (BGB)](https://www.gesetze-im-internet.de/bgb/) Viertes Buch – Scheidung der Ehe <ul style="list-style-type: none"> • §§ 133 ff. [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG)](http://www.gesetze-im-internet.de/famfg/index.html) – Verfahren in Scheidungssachen und Folgesachen <ul style="list-style-type: none"> • § 43 [Gesetz über Gerichtskosten in Familiensachen (FamGKG)](http://www.gesetze-im-internet.de/famgkg/) \- Ehesachen
Teaser	In Germany, the petitioner is also obliged to be represented by a lawyer in divorce proceedings by mutual consent, i.e. the proceedings can only be conducted with legal representation.
Volltext	<p>In Germany, the petitioner is also obliged to be represented by a lawyer in divorce proceedings by mutual consent, i.e. the proceedings can only be conducted with legal representation.</p> <p>Every divorce is an individual case. The family and property circumstances are so different that individual decisions have to be made in each proceeding. The following description of an amicable divorce proceeding can only give you a general insight into the process.</p> <p>Other family matters to be decided in the event of divorce - such as matters of parental custody, access and maintenance - are heard by the court on application in joint proceedings.</p> <p>Only in the case of pension rights adjustment does the family court decide ex officio, even without an application, in joint proceedings with the divorce. Only when all decisions are ready for decision can the</p>

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overall decision be made and the marriage divorced. Only in exceptional cases is it possible to separate individual matters from the combined proceedings.

****Tip:**** Always seek legal advice in a specific case. The party filing petitions for divorce proceedings is generally required to have a lawyer. The bar association can help you find a lawyer.

As obvious as it may sound, you must first clarify whether a valid marriage exists at all before filing for divorce. You can prove this by presenting the marriage certificate (the burden of proof lies with the applicant). The principle of fault has been abolished in German law and replaced by the principle of breakdown. According to this principle, the only reason for divorce is a failed marriage. What is meant by "breakdown" is defined by the Civil Code as follows:

- The cohabitation of the spouses no longer exists.
- Its restoration is no longer to be expected.

Non-existence of cohabitation

A cohabitation is not the same as a domestic community. One spouse may work and live in Görlitz, the other in Dresden - that says nothing about a happy relationship. The cohabitation no longer exists if the spouses have broken off all marital relations or at least one spouse has definitely turned away from the other. Even if one spouse wants to continue the marriage, the marriage may have failed because the marital cohabitation is based on a mutual commitment. The reasons no longer matter after the abolition of the principle of fault.

Restoration is no longer to be expected

The all-important question is: Do we want to overcome the marital crisis? If there is no willingness to reconcile, then the marriage no longer serves any purpose.

Indications for the failure of a marriage

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- Duration of separation
- insurmountable intention of one or both spouses to divorce
- Spouses no longer speak to each other
- there is no longer any sexual relationship between the spouses
- serious and lasting relationship with another partner

A breakdown of the marriage is to be assumed if the spouses have been living separately for one year and both apply for divorce or one of the spouses agrees to the divorce application of the other.

No divorce despite a failed marriage?

Only very exceptional reasons could move the court not to grant a divorce. A marriage should not be divorced, even if it has failed, if and as long as

- a divorce would have serious consequences for the interests of the minor legitimate children, or
- the divorce is such a severe hardship for the respondent that the maintenance of the marriage seems exceptionally necessary.

Which court has jurisdiction?

- By law, the family court at the local court in whose district one of the spouses with the joint minor children has his or her habitual residence has primary jurisdiction.
 - If there are no joint minor children, the family court at the local court in whose district the spouses last had their common habitual residence has jurisdiction if one of the spouses still has his or her habitual residence in the district of this court when the petition for divorce is filed.
 - If neither of the spouses still resides at their last common place of residence or in the district court district belonging to it, the family court at the district

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court in whose district the respondent has his or her habitual residence shall have jurisdiction.

Contact

a legal representation of your choice

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[Anwaltssuche](<http://www.rak-sachsen.de/fuer-buerger/anwaltssuche/>)**

Rechtsanwaltskammer Sachsen

Erforderliche Unterlagen

- the petition of the spouse applying for divorce, drawn up by a licensed lawyer

In the case of a divorce by mutual consent, the petition must generally contain the following information:

- Notice that the other spouse consents to the divorce or similarly applies for divorce
 - unanimous declarations by the spouses that, as a result of an agreement, no petitions will be filed for divorce
 - Transfer of parental care of the children to one parent, and
 - on contact with the children
 - if a court settlement is to be made: Submission of the relevant applications and the consent of the other spouse thereto
 - Agreement of the spouses on
 - Settlement of the maintenance obligation towards a child
 - Maintenance obligation arising from the marriage (spousal maintenance)
 - Legal relationships to the marital home and household effects

Voraussetzungen

An uncontested divorce is possible if the spouses have been living separately for a year and

- both apply for divorce or

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• one of the spouses agrees to the other's petition for divorce.

However, the court will usually only grant the petition for divorce if there are pending consequential matters, such as

- Pension rights adjustment,
- Maintenance,
- Matrimonial home and
- Household effects

and household effects can also be decided.

Kosten

• Court and lawyer's fees: depending on the procedural value determined by the court

Procedural value

- Minimum amount: EUR 3,000
- Maximum amount: EUR 1 million

****Notes:****

• How high the procedural value is essentially depends on the assets and income of the spouses. The calculation is based on the sum of the net income of both spouses from three months and the assets.

• The law firm will usually submit the final account to you when it sends you the divorce decree.

Verfahrensablauf

In the first step, choose a lawyer you trust (if necessary, enquire at the bar association).

Petition

- After the consultation, you give the lawyer the

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divorce order and the power of representation (prepared by the lawyer).

- The lawyer sends you a draft of the divorce petition.
- You confirm to the lawyer that you agree with the draft and transfer the advance payment for court costs and, if applicable, the advance payment for the lawyer's fee.
- After receiving the payment, the lawyer submits the divorce petition to the competent district court.

before the court

- The court serves your spouse with the divorce petition and gives him or her the opportunity to comment.
- As a rule, the court sends both spouses questionnaires on pension equalisation to determine claims to pensions or other retirement benefits.
- The court sets a date for the hearing as soon as the information on the pension rights is available.
- Your lawyer represents you in the proceedings, but the court is required to order the appearance of both spouses and to hear both spouses in person.
- The family court makes the divorce decree when it is convinced that the marriage has failed. The decision takes into account the arguments presented in writing by the spouses and the outcome of the hearing. As a rule, the court also decides on matters related to the divorce (consequential matters such as equalisation of pensions or custody of children).
- If both the petitioner and the respondent are each represented by a lawyer, the divorce can become immediately final through a mutual waiver of appeals and cross-appeals.

Bearbeitungsdauer

nine months (average duration of divorce cases at Saxon district courts in 2019)

Frist

none

weiterführende Informationen

Hinweise

Modul	Sachverhalt
Rechtsbehelf	Petition for divorce
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	