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Applying for divorce, contentious proceedings

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Modul	Sachverhalt
Leistungsschlüssel	99046039221000
Leistungsbezeichnung I	Applying for divorce, contentious proceedings
Leistungsbezeichnung II	Applying for divorce, contentious 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	

Modul	Sachverhalt
Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • §§ 1564 ff. [Bürgerliches Gesetzbuch (BGB)](https://www.gesetze-im-internet.de/bgb/) Viertes Buch – Scheidung der Ehe • §§ 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 • § 43 [Gesetz über Gerichtskosten in Familiensachen (FamGKG)](http://www.gesetze-im-internet.de/famgkg/) \- Ehesachen
Teaser	Every divorce is an individual case - all the more so when there are many details in dispute. In contested divorce proceedings, both parties must therefore be represented by a lawyer.
Volltext	<p>Every divorce is an individual case - all the more so when there are many details in dispute. In contested divorce proceedings, both parties must therefore be represented by a lawyer.</p> <p>The family and property law circumstances are so different that individual decisions have to be made in each case. The following description can only give you a very general insight into contested divorce proceedings</p> <p>Other family matters to be decided in the event of divorce - such as matters relating to parental custody, contact and maintenance - are heard by the court in joint proceedings on application. The family court only decides on pension equalisation ex officio in conjunction with the divorce, even without an application. Only when all decisions are ready for judgement can the overall decision be made and the marriage divorced. Only in exceptional cases is it possible to separate individual matters from the joint</p>

Modul

Sachverhalt

proceedings.

****Tip:**** The Bar Association can help you find a lawyer.

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

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

Non-existence of the marital partnership

A cohabitation is not the same as a domestic partnership. One spouse may work and live in Görlitz, the other in Dresden - that says nothing about a happy relationship. 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 broken down because the marital relationship is based on a mutual commitment. After the abolition of the principle of fault, the reasons are no longer relevant.

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 of the breakdown of a marriage:

- Duration of separation
- insurmountable intention of one or both spouses to divorce

Modul

Sachverhalt

- Spouses no longer speak to each other
- there is no longer any sexual relationship between the spouses
- serious and lasting relationship with another partner

Spouses disagree about the divorce

If the spouses have been separated for three years, it is irrefutably presumed that the marriage has broken down. Separation presupposes that there is no longer a domestic partnership between the spouses and that at least one spouse clearly does not want to establish a domestic partnership because he or she rejects marital cohabitation. The absence of domestic cohabitation is easy to establish if one spouse has moved out of the marital home. However, the domestic community also no longer exists if the spouses live separately within the marital home. In this case, the dissolution of the domestic community must be brought about as far as possible (no shared bedroom). Living together for a shorter period of time in order to reconcile the spouses does not suspend or interrupt the required separation period.

If the respondent does not agree to the divorce after one year of separation, the petitioner must prove that the marriage has broken down. Such proof is usually difficult to provide.

Disputed means that the parties disagree as to whether the marriage has broken down or not, whether the period of separation has expired and how matters relating to the divorce are to be settled. These so-called subsequent matters can only be separated from the joint proceedings in certain cases. For example, separate negotiations on parental custody and contact between children and parents are conceivable.

If consequential matters such as household effects, maintenance or the marital home are in dispute, the court will divorce the marriage even after just one year of separation if the respondent agrees to the divorce

Modul

Sachverhalt

itself.

The condition is that the issues in dispute have been resolved by the court and all subsequent matters are ready for a decision. Only then may the judge make the overall decision, unless the strict requirements for separating the ancillary matters are met and the family court separates the ancillary matters from the divorce proceedings.

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 their 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 their habitual residence in the district of this court when the divorce petition is filed.
- If neither of the spouses lives at their last common place of residence or in the district of the local court belonging to it, the family court at the local court in whose district the respondent has his or her habitual residence has jurisdiction.

Erforderliche Unterlagen

To open the proceedings, the court requires the petition of the spouse applying for divorce, drawn up by an authorised lawyer.

The petition must contain

- The names and dates of birth of the joint minor children, details of their place of residence ("habitual residence")
- a declaration as to whether the spouses have made arrangements with regard to their joint minor children concerning
 - parental custody
 - contact
 - the maintenance obligation
- a declaration as to whether the spouses have made arrangements regarding
 - the maintenance obligation arising from the

Modul

Sachverhalt

marriage

- the legal relationship to the matrimonial home and household effects
- an indication of whether any other family cases are pending in court in which both spouses are involved

Further documents:

The application should be accompanied by the marriage certificate and the birth certificates of the joint minor children.

Voraussetzungen

- A contested divorce is only possible after three years of separation.

Unless the petitioner can prove that the marriage has broken down.

As a rule, the court will only grant the application for divorce once the pending consequential matters such as

- Pension equalisation,
- Maintenance,
- Matrimonial home and
- Household effects

can also be decided.

Kosten

- Court and lawyer's fees: depending on the value of the proceedings determined by the court

Value of the proceedings

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

Modul

Sachverhalt

****Notes:****

- The value of the proceedings 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 provide you with the final calculation when it sends you the divorce decree.

Verfahrensablauf

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

Petition

- After the consultation, you give the lawyer the divorce order and the power of attorney (prepared by the lawyer).
- The lawyer will send 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.
- Once payment has been received, the lawyer submits the divorce petition to the competent district court.

In court

- The court will serve the divorce petition on your spouse and give him or her the opportunity to comment.
- As a rule, the court sends both spouses questionnaires on pension equalisation in order to determine entitlements to pensions or other retirement benefits.
- The judge will set a date for an oral hearing as soon as the information on pension entitlements is available.
- Your lawyer will represent you in the proceedings, but the court is obliged to order the appearance of

Modul
Sachverhalt

both spouses and to hear both spouses in person.

- The court will decide on the applications for ancillary matters.

In this context, it may be necessary for witnesses to be heard.

- The family court issues the divorce decree if it is convinced that the marriage has broken down.

The arguments put forward by the spouses in writing and the outcome of the hearing are taken into account in the decision.

- If both the petitioner and the respondent are each represented by a lawyer, the divorce can become final immediately if both parties waive their right to appeal and cross-appeal.

Bearbeitungsdauer

- Nine months (average duration of divorce cases at the district courts in Saxony in 2019)

Frist

none

**weiterführende
Informationen**
Hinweise
Rechtsbehelf

non applicable

Kurztext
Ansprechpunkt
Zuständige Stelle
Formulare
Ursprungsportal