

# Divorce

New Hampshire has approximately 5,000 divorces each year. Most divorcing couples (+90%) reach an agreement that resolves all divorce issues. Over 95% of divorces in New Hampshire are "no-fault." Under the *no-fault* divorce statute, you are entitled to a divorce even if your spouse objects or thinks the marriage can be repaired.

Some people consider a *legal separation*, instead of a divorce. However, in New Hampshire, legal separation is not an easier, tentative step to take. It is a distinct legal procedure which takes as long as a divorce, and costs as much. After all the time, effort, and money, the marriage itself is not dissolved.

**How Long it Takes?** It usually takes at least 2 months to get a divorce in New Hampshire. That is from the time the couple starts working on the settlement. If one or more issues are contested, the case can take 10-12 months; in some cases, it can take as long as 2 years. However, contrary to other states such as Massachusetts, when the divorce is granted it is final; there is at most a 30-day waiting period.

**How Are Divorce Decisions Made?** - Most people work out a written agreement that is the basis of their divorce. There are 5 ways through which the issues can be resolved:

1. Informal negotiation by the spouses;
2. Mediation with the help of a trained mediator;
3. Collaborative Practice with a professional team;
4. Traditional negotiation through lawyers; or
5. By the judge/master after a contested hearing.

The first method is not possible in many cases. (After all, a very common reason for divorce is communications problems.) Mediation works well for many couples. Collaborative practice is a new method of making decisions - both lawyers and both clients agree not to go to court. A series of group meetings are held to work out all issues. A neutral financial professional and coach assist in the process. See the article on **decision-making** options for more details.

Because the terms of the divorce may affect the family for many years, it's wise for the couple to come to an agreement by themselves with the help of a mediator, in collaborative practice, or through their lawyers. Judges decide less than 10% of cases.

**Do I Need a Lawyer?** - A common question is "Do I need a lawyer to represent me in a divorce?" My advice is that anyone facing a divorce should at least *consult* a lawyer. The cost of a ½-1 hour of time is a good investment to learn about your rights and responsibilities. Having a lawyer advise before you sign the divorce agreement is most important.

I recommend having a lawyer to advise you throughout the divorce unless you meet *all* of the following qualifications: no children, no house, no other substantial assets, short marriage, and feel comfortable with being your own advocate. (Many serious after-divorce problems result from a person not having a lawyer for the divorce.)

Can one lawyer handle the divorce for both people? Not in New Hampshire; it is considered unethical to do so. One lawyer cannot represent the different and conflicting interests of both spouses in a divorce. It is possible for one lawyer to represent one spouse, and the other spouse choose not to have a lawyer. (But he or she should at least consult a lawyer.)

**Issues/Decisions** - People rarely fight about *the divorce*. If they disagree, it is usually about one or more of the following issues:

Parenting (custody)	Asset division
Child support	Division of debts
Taxes	Alimony

**Parental Rights and Responsibilities** - Both the word and the concept “custody” have been abolished in New Hampshire. My article entitled, **Parental Rights and Responsibilities** has more information. A parenting plan is a detailed agreement on how to share parental rights and responsibilities. If there are minor children, a parenting plan is required. Parents must also attend a 4-hour Child Impact Program.

**Child Support & Alimony** - In most cases, one parent will have to pay child support, and may have to maintain life and medical insurance. Child support is based on a complicated formula. (See my article **Child Support** for more information.) To get a *rough* idea of what support will be, use the State’s Child Support Calculator: <http://www.dhhs.nh.gov/dcss/calculator.htm>. The residential schedule and income levels may result in adjustments to the formula.

Alimony is rare in New Hampshire divorces. Characteristics of an alimony case is a substantial income difference. When ordered, it is based on need and ability to pay. This means a man could receive alimony if he needed it and his ex-wife had the ability to pay.

**No Fault and Fault** - A no-fault divorce is based on "irreconcilable differences" which have caused the irremedial breakdown of the marriage. This means that the marriage has so broken down that one or both spouses are unwilling to continue it. A spouse's agreement is not needed. It is also possible to get a divorce based on *fault*: adultery, extreme cruelty, etc. Less than 5% of divorces mention fault.

**Dividing Assets** - Unless the couple reaches an agreement, the court will divide the property/assets in a fair and equitable way. This could mean 50/50 or something else, but 50/50 is what happens in most cases. The assets to be divided include his assets, her assets, and joint assets. In doing so, the court may consider, among other things:

- Relative incomes of wife/husband
- Each spouse's contribution as homemaker/wage earner
- Health of each
- Total amount of family property
- Length of the marriage
- Fault (adultery, extreme cruelty, etc.)

This information was written by Honey Hastings  
Counselor at Law and Mediator

P. O. Box 1112 • 17 Main Street • Wilton, NH 03086 • Phone 603.654.5000 • Fax 603.654.6000  
[www.NHDivorce.com](http://www.NHDivorce.com)      [www.FamilyMediationNH.com](http://www.FamilyMediationNH.com)