



Getting Divorced

Leaflet about divorce and legal separation

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How do you go about leaving each other?

A divorce can be very difficult. You have to rethink your life and start all over again. This brochure is designed to help you make the most of a difficult situation.

All married couples are entitled to a divorce.

You cannot enter into a new marriage until you are divorced.

If you want to give your marriage a second chance, you can turn to a minister or priest for reconciliation.



In the period 2005-2008, parents with children under 18 will have the option of receiving couple counselling against a payment of only DKK 300 for a full course of counselling. Twelve pilot projects have been selected. Read more on www.familiestyrelsen.dk/parraadgivning.

Divorce and legal separation

If you find it impossible to live together, you can get a legal separation. When you have been legally separated for a year, you are entitled to a divorce. However, if both of you agree, you can divorce after only six months of legal separation.

You are entitled to an immediate divorce if, for example, either of you has committed adultery, or if you have lived apart for two years due to irreconcilable differences.

You can get a divorce without legal separation under the following circumstances:

- Adultery.
- You have lived apart for the last two years because of irreconcilable differences.
- Violent abuse.
- Abduction of one of your joint children to a foreign country.
- Bigamy.

In most cases, separation and divorce are granted by the regional state administration (*statsforvaltningen*). The only requirement is that both of you have agreed in advance on the decision and on the basic conditions, or can reach such agreement during the regional state administration's processing of your case. Otherwise, the case will have to be brought before the court.

In any event, first you have to submit an application for legal separation/divorce to the regional state administration, where all divorce and separation cases are initiated. In order for the regional state administration to conclude your divorce/separation case and bring it before the court, you must also attend a meeting at the regional state administration.

A divorce granted by the regional state administration costs DKK 500 and it is up to the two of you to decide how to divide this payment between you. The fee is non-refundable.

Divorce is not automatically obtained after a legal separation. You must apply for divorce. Otherwise, you remain legally separated indefinitely.

If you continue living together or you get together again, the legal separation is no longer valid. You should inform your local registration office (*folkeregistret*) so that you can be registered as no longer legally separated.

After having lived together, splitting up again does not automatically restart the legal separation. You have to apply for a new legal separation if you want to divorce.

A divorce is final. You have to remarry if you wish to be husband and wife again.

Decisions and applications

You must reach agreement on the following basic conditions for separation/divorce before the regional state administration can issue a grant for separation or divorce:

- The obligation to pay spousal maintenance and for how long.
- Which spouse is to continue the lease for rented accommodation (including housing association property).
- Compensation if one of the spouses owns separate property, etc. (Section 56 requirements).

It is thus important that you decide on some very specific issues before submitting an application for separation/divorce to the regional state administration.

- Who is going to stay in the home, either rented or housing association (*leje- eller andelsbolig*), and who is going to move out?
- Will one of you provide for the other financially after the separation or divorce? If so, for how long?
- Does one of you possess a very valuable separate property? If yes, then you should be aware that in some circumstances, a certain amount of compensation must be paid if the other spouse is left in a poor financial position after the separation/divorce.

Once you have considered these issues, you can apply to the regional state administration for separation/divorce. Please use the regional state administration's application form.

The agreement on basic conditions can be changed in a new agreement or by a court order.

Help from the regional state administration

You are not, however, required beforehand to have reached agreement about where your children will live, how to pay child support, or how to divide up your assets and belongings between you. The regional state administration will provide advice and guidance on these matters. The more you are in agreement, the easier the whole process will be.

Meeting at the regional state administration

In your application for separation/divorce you can decide not to attend a meeting at the regional state administration if you are seeking separation or divorce on the grounds of infidelity, having lived apart for the past two years, violent abuse, the abduction of one of your joint children to a foreign country or bigamy *and* if you are in full agreement about the conditions for the separation/divorce.

You can also opt out of the meeting if you are applying for divorce after separation provided you decided on the conditions for divorce in connection with your separation. All you have to do is fill in the separation/divorce papers and submit them to the regional state administration. Your application will then be dealt with in writing.

You can opt out of the meeting if, for example, you are sure that you have a full understanding of all the aspects of the separation/divorce, or if you have placed the matter in the hands of your lawyer(s).

In all other circumstances, the regional state administration will summon you to a meeting. The regional state administration can also decide to call a meeting even if you have decided against a meeting at the regional state administration. This meeting is called a negotiation of terms (*vilkårsforhandling*), and both of you are required to attend. The purpose of the meeting is to help you reach agreement about the conditions for separation/divorce. You will also be offered advice on such matters as child support, contact rights, custody and division of property.

If you also disagree about contact and/or custody and/or the child's place of residence, you can inform the regional state administration when you apply for separation/divorce. The regional state administration can then summon you to a meeting to discuss all these issues: separation/divorce, contact rights and/or custody and/or the child's place of residence. At the meeting, the regional state administration can help you find an overall solution to your problems.

If you cannot reach agreement about the conditions for separation/divorce at the meeting, the regional state administration may offer you family mediation. Family mediation can help you to agree on the conditions for the separation/divorce.

The basic terms and conditions

The idea behind the basic terms and conditions is to equip you to face the reality of life after the legal separation/divorce.

Maintenance obligation

When you are married, you have a duty to provide for each other financially. This obligation comes to an end when you are legally separated or divorced. You may, however, agree that one of you will continue to provide for the other (spousal maintenance). If you agree to a maintenance obligation, you must also agree on how long it will last, that is, a certain number of years from the separation/divorce or indefinitely. If you are unable to agree about the maintenance obligation during the regional state administration's processing of your case, the court can make a decision.

You do not need to stipulate a certain amount. The regional state administration can help you calculate it. You can also agree to have a maintenance obligation but stipulate that maintenance is not going to be paid for the time being. In that case, the amount will not be fixed until one of you submits a request.

If you agree on a certain amount, you should also agree if the amount can be changed by the regional state administration or only by the courts.

When negotiating the conditions of a legal separation, you can choose whether the maintenance agreement should only be valid until the divorce. It is up to you. You will then have the opportunity to raise the question of maintenance obligation again during the divorce proceedings.

Whether or not you retain the right to a spouse's pension may be dependent on a maintenance obligation. This is described in greater detail below.

If you agree on the amount of maintenance, you should also agree if the amount can be changed by the regional state administration or only by the courts:

- The regional state administration can alter the amount if circumstances change, e.g. if the financial circumstances of one of the spouses changes.
- The courts can only modify the amount if the financial situation has changed to such an extent that it would be unfair to continue with the current agreement.

If the maintenance period is indefinite, or longer than 10 years, and the regional state administration has fixed the amount, the regional state administration is empowered – upon application – to phase out the contribution and reduce it to DKK 0 once maintenance has been paid for longer than you actually lived together.

Spouse's pension

If you have a pension scheme, it may also include a spouse's pension. Contact your pension fund and ask how legal separation/divorce will affect the spouse's pension.

The Spouse's Pension Act (ægtefællepensionsloven)

A spouse has a right to a spouse's pension if the other spouse has a pension scheme that is part of, or was set up as part of, the terms and conditions of employment or as part of the ATP scheme (Danish Labour Market Supplementary Pension), and it includes provision for a collective spouse's pension scheme.

The provisions of the Spouse's Pension Act also apply to registered partners.

Once legally separated/divorced, you lose the right to a spouse's pension unless one spouse has an obligation to provide for the other at the date of the legal separation/divorce, and the marriage has lasted for at least five years.

If the conditions for retaining the right to the spouse's pension after legal separation/divorce have been met, you should register this right with the pension fund in order to safeguard your entitlement.

'Collective' refers to a pension scheme under which the size and payment of contributions are independent of the member's marital status. Under the terms of the Spouse's Pension Act, these are:

- Public service pensions (*Tjenestemandspensioner*)
- ATP payments made before 1 January 2002
- The majority of pension fund schemes
- A number of insurance schemes.

Public service pensions and the ATP scheme always include provision for a spouse's pension. Depending on the statutes, etc., pension funds and insurance schemes may include provision for a spouse's pension.

Under the provisions of the Act, legally separated/divorced spouses only have the right to a spouse's pension if the spouse by virtue of his/her job has a collective pension scheme that also includes provision for a spouse's pension and if the marriage has lasted at least five years. Spouse's pensions also include compensation or the surrender value on withdrawal from the pension scheme without any pension entitlement.

Furthermore, it is a condition for retaining the right to a pension after legal separation/divorce that one of the spouses has an obligation to pay maintenance to the other spouse after separation/divorce. Retention of the right to a pension is not conditional on maintenance payments having been agreed or set. It is sufficient that a maintenance obligation exists. If the maintenance obligation is of limited duration, the spouse only retains the right to a spouse's pension during that period.

When agreeing on the maintenance amount, you should be aware of the following:

- If the size of the contribution can be changed by the regional state administration, the right to a spouse's pension is retained.
- If the amount cannot be changed by the regional state administration, it is a condition for retaining the right to spouse's pension that the maintenance amount agreed at the time of separation/divorce for the entire maintenance period represents an annual basic amount that at least corresponds to the standard rate of maintenance applicable at that time.

If the maintenance obligation is the result of an agreement to mutually provide for each other, you should be aware that the right to spouse's pension is only retained if:

- maintenance payments have been fixed for the maintenance period, *and*
- maintenance was being paid at the time of the former spouse's death.

A spouse can waive the right to spouse's pension after separation/divorce. In that case, no spouse's pension is paid out. This agreement must be registered with the pension fund.

The Spouse's Pension Act also covers survivorship annuity (*overlevelsesrente*), if taken out as part of the spouse's terms and conditions of employment. Survivorship annuity gives the separated/divorced spouse the right to regular payments, which commence on the death of the other spouse and continue until the death of the separated/divorced spouse entitled to the insurance.

Survivorship annuity taken out as part of the other spouse's terms and conditions of employment and which safeguards this spouse's pension right can thus be withdrawn by the separated/divorced spouse.

Retention of the right to survivorship annuity is not conditional on the marriage having lasted at least five years and the spouse having a maintenance obligation to the other spouse after separation/divorce.

If the value of the survivorship annuity can be transferred to the pension scheme of one of the spouses, survivorship annuity can only accrue to the other spouse if the first spouse has a maintenance obligation towards the other spouse at the time of separation/divorce and only if the marriage before separation or divorce without prior separation has lasted at least five years.

The spouses can agree that the right to survivorship annuity should not be retained.

An agreement to retain or waive the right to survivorship annuity must be registered with the pension fund.

You should contact your pension fund for further information about the implications of a spouse retaining the right to survivorship annuity after separation/divorce.

The marital home

If you live in rented accommodation (*lejebolig*), you must agree which one of you will continue the lease (*lejemålet*) after the legal separation or divorce. This is also the case if you are members of a housing association (*andelsboligforening*). It does not matter who signed the lease or the association membership forms.

If you are owner-occupiers, the matter of the marital home should be raised during discussions of the division of property. The value of your share in a housing association should also be raised at the same time.

Separate property etc. (Section 56 requirements)

Separate property does not have to be divided in the event of legal separation or divorce. If a large amount of separate property means that one of you will be left in a poor financial position, the other spouse may have to pay compensation.

The same is true if one of the parties has other assets, which are not included under community of property, e.g. personal injury compensation, goodwill, copyright, pension rights, etc.

If compensation is to be paid according to Section 56 of the Danish Marriage Act, you must agree on the size of the amount and the date(s) of payment.

The application

On the last page of this leaflet, you will find the address of the appropriate regional state administration to which you should submit your application for separation/divorce.

If you wish to apply for separation/divorce only, please send the application to the regional state administration in the area where your spouse lives or is currently residing. If your spouse does not live in Denmark, you should send the application to your own regional state administration. If neither of you lives in Denmark, you should send the application to the Regional State Administration of Copenhagen (Statsforvaltningen Hovedstaden). If you are already involved in an ongoing family law case with a particular regional state administration, please send the application to that authority. If both of you want another regional state administration to process the application, you must stipulate this on the application form.

If you are legally separated, you can send the divorce application to the regional state administration that processed your application for legal separation.

If you were not married in Denmark, please enclose the original marriage certificate with the application.

If you are seeking divorce on the grounds of a separation, you must enclose your original grant for legal separation or separation decree along with the application.

Registered partnership

The same rules apply to registered partners as to spouses, with a few exceptions, e.g. you do not have the right to reconciliation meetings with a minister or priest. If you are in any doubt, ask the regional state administration.

Custody, contact rights and the child's place of residence

Children are probably the biggest dilemma for people who split up. You continue to have joint custody after legal separation or divorce. If you do not wish to have joint custody after the legal separation or divorce, you must submit a written agreement on the appropriate regional state administration form.

If you later agree to resume joint custody, or if you want to transfer responsibility to the other parent, this must also be done in writing on a form available from the regional state administration.

If you get back together during the period of legal separation, you automatically resume joint custody. You should inform the local registration office (*folkeregistret*) if this happens, so that you can be registered as no longer legally separated and once more having joint custody.

If you are unable to reach an agreement about custody, contact and/or the child's place of residence, the regional state administration can help you resolve the issue, for instance through meetings, family mediation sessions or child welfare counselling.

If you fail to reach agreement, the regional state administration will be able to conclude your case and bring it to court. However, the regional state administration can only conclude cases regarding custody and bring them to court if you have attended a meeting at the regional state administration.

You can ask the regional state administration to make a temporary decision on custody, contact and/or the child's place of residence, which will apply until a final decision is made.

You should read 'Putting the Child First', which is available from the regional state administration, or their homepage www.statsforvaltning.dk.

The parent with custody decides where the child will live.

Child support, child benefit and family allowance

(børnebidrag, børnetilskud, børnefamilieydelse)

You have a duty to provide financially for your child until he or she reaches the age of 18. The spouse who does not live with the child must continue to help provide for the child. The two of you can make your own agreement about providing for the child. If you are unable to reach an agreement or if you have questions, the regional state administration can help.

The parent living alone with the child is entitled to apply to the local municipal authority (*kommunen*) for ordinary and/or extraordinary child benefit.

Normally, family allowance is paid to the child's mother. However, the child's father may apply to the local municipal authority to have family allowance paid to him instead if he meets the requirements.

Division of property

When married, you automatically assumed community of property, unless you agreed on separate property for all or parts of your estate. Separate property can also result from an inheritance or from gifts.

If you are unable to reach an agreement on dividing your estates, the court can make the decision for you. However, this can be an expensive solution.

The children's property and money belong to the children and are kept out of the division of property.

Dividing up 'the joint estate' is not merely a matter of sharing the furnishings. It consists of everything covered by community of property, e.g. the car, real estate, bank accounts, securities, etc.

Debt

Each of you is personally responsible for your own debt. If you incurred the debt jointly, e.g., by buying a house or a car together, then both of you are responsible for it.

Inheritance and life insurance

When you are legally separated or divorced, you no longer automatically inherit each other, and the right to life insurance is normally waived.

If you still wish to inherit each other after legal separation/divorce, you must register a (new) will. This is also the case if you made a will while you were married.

Ending of cohabitation, legal separation and divorce all normally entail one of the spouses losing the right to receive any life insurance paid out if the other spouse dies. Contact your insurance company for more information.

Surname

When you get legally separated or divorced, you decide whether to retain your current surname or revert to your old one. If you want to change your surname, please contact the parish in which you live (*bopæls sogn*).

Paternity

If you are expecting a child together at the time of legal separation or divorce, the father will not automatically be registered as the father of the child. If you are legally separated at the time of birth, you can sign a mutual statement of care and responsibility and submit it to the regional state administration along with the child's birth certificate. If, however, you are divorced at the time of birth, you can sign a mutual statement of care and responsibility and submit it along with the child's birth certificate to the church office in your local parish.

Tax

Legal separation and divorce will probably influence your tax situation. If necessary, contact the tax authorities before submitting your application to the regional state administration.

Ending of cohabitation, legal separation and divorce can all have an impact on joint taxation, unclaimed basic and personal tax allowances and the transfer of any tax deficit between spouses.

Social benefits

Legal separation and divorce can also affect some social benefits. You may wish to talk with the social services department about this before you apply for legal separation or divorce.

Foreign citizens

When foreign citizens (other than Nordic citizens) are legally separated or divorced, the regional state administration informs the immigration service because the decision may impact upon the foreign spouse's residence permit. If you are in any doubt, further information is available from the Danish Immigration Service (*Udlændingetjeneste*) or the regional state administration.

Not all countries acknowledge a separation or divorce decree issued by the regional state administration. If you want to know whether a country acknowledges your separation or divorce decree, you must talk to the embassy of that country. All of the Nordic countries recognise separation and divorce decrees issued by the regional state administration.

Free legal aid

If you are unable to reach agreement about legal separation, divorce or parental responsibility, a judge can make those decisions for you. The judge can decide whether you are entitled to free legal aid for the legal proceedings. Free legal aid is not provided during the regional state administration's processing of your case.

The Faroe Islands and Greenland

The Danish rules governing legal separation and divorce do not apply in full in Greenland and on the Faroe Islands. For example, you must always attend a meeting to negotiate the terms for divorce or legal separation, and you must reach agreement about custody before you can be separated or divorced by the High Commissioner.

Would you like further information?

Please note that some information on the following sites is available in Danish only.



Custody, contact rights, the child's place of residence, matrimonial property regime, paternity, registered partnership, child support, spousal maintenance, child welfare counselling or family mediation:

Application forms and further information: www.statsforvaltning.dk

Family law: www.familiestyrelsen.dk

Child benefit and family allowance: www.borger.dk/forside/familie-og-boern

ATP-Pension: www.atp.dk

Residence permit: www.nyidanmark.dk

The courts, division of property, dividing up of estates: www.domstol.dk

Free legal aid for family law cases: www.domstol.dk

Free legal aid for other cases: www.civilstyrelsen.dk

Pensions, division of property: www.forsikringsoplysningen.dk

Civil marriage authority: www.kl.dk

Church marriage authority: www.sogn.dk

Addresses

Regional State Administration for Greater Copenhagen

Borups Allé 177
DK-2400 Copenhagen NV
Tel. +45 7256 7000
hovedstaden@statsforvaltning.dk
Local office in Rønne.

Regional State Administration for Zealand

Dronningensgade 30
DK-4800 Nykøbing F.
Tel. +45 7256 7600
sjaelland@statsforvaltning.dk
Local office in Roskilde.

Regional State Administration for Southern Denmark

Storetorv 10
DK-6200 Aabenraa
Tel. +45 7256 7900
syddanmark@statsforvaltning.dk
Local offices in Odense and Ribe.

Regional State Administration for Mid-Jutland

St. Blichers Vej 6
DK-6950 Ringkøbing
Tel. +45 7256 8300
midtjylland@statsforvaltning.dk
Local office in Århus.

Regional State Administration for Northern Jutland

Aalborghus Slot
Slotspladsen 1
DK-9000 Aalborg
Tel. +45 7256 8700
nordjylland@statsforvaltning.dk
Local offices in Odense and Ribe.

Department of Family Affairs

Stormgade 2-6
DK-1470 Copenhagen K
Tel. +45 3392 3302
Fax +45 3927 1889
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The High Commissioner of Greenland

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P.O. Box 1030
3900 Nuuk
Greenland
Tel. +299 32 10 01
Fax +299 32 41 71
riomfr@fo.stm.dk

The High Commissioner of The Faroe Islands

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110 Torshavn
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riomfr@fo.stm.dk



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Borups Allé 177
2400 København NV
Tel 7256 7000

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Sjælland

Dronningensgade 30
4800 Nykøbing F
Tel 7256 7600

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Storetorv 10
6200 Aabenraa
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