

# Indiana Divorce FAQ



## ***How long does a divorce take in Indiana?***

It depends on several factors. First is the divorce contested or uncontested? If it is uncontested you agree on property division, child support, custody, visitation, debts, and alimony, and divorce proceedings can usually be completed in less than six months after filing. A contested marriage, where any of these issues must be decided by the court, can take six months to several years depending on how complicated the case is. Most cases do not make it to trial, though, and either settle or are mediated. However, all divorce cases must go through an initial 60 day waiting period before any court action can occur.

## ***Do I really need a lawyer?***

Although you can get a divorce without a lawyer, the bigger question is: Should you? Indiana provides copies of the necessary documents for filing for divorce (<http://www.in.gov/judiciary/self-service/2333.htm>). However, the law is complicated, and if you decide to proceed without a lawyer you will still be held to the same standard as if you did have one. This means that even if you do not fully understand the rules of evidence or court procedure, you still have to follow them. A lawyer can help you understand your rights and liabilities under the law, and knows which factors the court will consider when making its decisions regarding your case.

## ***How often will I be able to see my children?***

Indiana has a baseline parenting plan which is defined under the Indiana Parenting Time Guidelines. Basically, the non-custodial parent will get every other weekend and one night a week for a few hours with the children. This is the State's baseline, but it does not have to be yours. Agreements between the parents can be for almost any schedule, but if you cannot agree the court is likely to fall back to this position.

## ***How will the court decide which parent has custody?***

When deciding who has primary custody of the children, the court will look to a number of factors within the "best interest of the child" standard. This standard looks at multiple factors such as who has been the primary care-giver to the child in the past, and whether the parents encourage a healthy relationship with the other parent, but it is always at the court's discretion. The best solution is always for the parents to agree to an arrangement rather than require the Court to decide for them.

## ***Do I have to prove fault in my divorce?***

No. Indiana is a no fault state, and the court will generally not take behavior into account. The standard is that one spouse must live in Indiana for at least 6 months and claim that the "marriage is irretrievably broken."

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### ***What is the first step to getting a divorce?***

You must file a document with court called a “Petition for Dissolution of Marriage” which will state any claims for things like child support, custody, alimony, and division of property and debts. Typically, this petition must be personally served to the other spouse (“service of process”).

### ***Can I get an annulment in Indiana?***

An annulment acts as if the marriage never occurred. Annulments in Indiana are allowed in certain circumstances. For example: Underage or mentally incompetent to consent; obtained by fraud; unsound mind; married in another state with intent to evade marriage laws of Indiana. (Here, “impotence” means the inability to have sex, not the inability to procreate.)

### ***Is there a residency requirement in Indiana?***

One spouse must be a resident of Indiana for at least 6 months before becoming eligible to file for divorce in the state, and 3 months in a county. If you are temporarily living outside the state, the court must determine if you intend to return and whether or not you should be considered an Indiana resident. If you are in the military, being stationed outside of Indiana does not affect your residency.

### ***Do I have to stay in Indiana after I file for divorce?***

No. If you meet the residency requirement when you file for divorce you are not required to remain a resident of Indiana. Residency is only required at the time of filing. However, Indiana will retain jurisdiction over your case even after you move to another state, and you will likely be required to prosecute your case in Indiana courts.

### ***What if my spouse does not want a divorce?***

The court will not force one spouse to remain in a marriage that they no longer want, even if the other spouse does not want the divorce. If the spouse that does not want the divorce will not cooperate with the proceedings the court may have to provide a default judgement where the spouse who does not cooperate loses their right to participate in the decisions surrounding the case.

### ***What can I do if I can't find my spouse?***

Although the court generally requires serving papers (service) on the non-filing spouse, there are steps you can take if you cannot find them. Indiana law requires a diligent and good-faith search, such as contacting the Bureau of Motor Vehicles, talking to family and friends, contacting their employer or former employer. If you still cannot find your spouse, you must publish notice in an appropriate newspaper three times at least seven and not more than fourteen days apart.

### ***Can my spouse and I use the same lawyer?***

No. Even if you believe you and your spouse have the same goals and agree on everything, lawyers are ethically prohibited from representing both parties in a divorce. However, a lawyer can be hired to mediate a settlement of your divorce. The difference here is that all parties are aware that the mediator does not represent either party and is a disinterested third party.

### ***What if I can't afford a lawyer?***

If your income is very low, you may qualify for free or discounted representation through Legal Aid. However, most legal aid groups require you to qualify for services by having less than a specified amount of income. If you can't qualify at legal aid, these groups can usually provide you with the name of an attorney who takes some cases at a reduced rate.

### ***Can I pay my attorney from what I get in the divorce?***

No. Attorneys cannot ethically have a stake (contingency) in the outcome of family or criminal actions. This includes an attorney deferring their fees until the case is settled or accepting property awarded in settlement as payment.

### ***Does mediation help?***

YES! Many cases are resolved through mediation, and the current trend in family law is to at least attempt mediation before going to trial. Mediation can also be less expensive and quicker than a full blown trial. Although mediators cannot force the parties to settle, sometimes having a disinterested third party explain the situation and likely outcomes of a trial can bring both parties to an agreement.

### ***What if my spouse is violent or harassing me?***

If your spouse has ever hurt you, or if you believe they are capable of hurting you, you should have a plan in place before you proceed with filing anything. If you believe you are in danger, call the police or a domestic violence hotline, immediately. Before you file for divorce, you may want to seek a restraining order from the court. A restraining order can be given without notifying your spouse for a short time which will then be followed quickly by a full hearing. Domestic violence hearings can be heard quickly and are given priority by the courts.

***What if I need maintenance or child support now?*** Temporary maintenance and child support, can be requested from the court until your case can be settled and a final decision on support can be made. This request can be made after you have filed your initial Petition for Dissolution of Marriage.

### ***Can I get my former name back?***

Yes. In a dissolution you can have your maiden name restored as part of the final order for dissolution for free. However, if you decide to change your name after the final paperwork has been filed it may cost you.

### ***Can I change my child's name?***

Not without a specific court ruling. A parent must petition the court for a change of name and personally serve the other parent with the petition.

### ***Is there common law marriage in Indiana?***

Indiana does not recognize common law marriage, but if you are from another state where common law marriage is recognized and you have met the requirements of that state before moving to Indiana, then Indiana will recognize that marriage.