

Divorce ^[1]

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Divorce

by Melissa Semcer, 2006

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Divorce, like marriage, is a civil contract between the parties involved. Religious and social attitudes toward marriage and property rights made divorce in nineteenth-century North Carolina rare but not impossible. In the [colonial period](#) ^[3] the General Court occasionally ordered separate maintenance, and it often called for alimony. For the marriage contract to be broken, certain conditions had to exist. The marriage must have been legal under North Carolina law and the cause for its termination adultery, cruelty, or desertion (desertion was the most commonly cited). These causes were often cited by women seeking release from restrictions on their right to own or control separate property.

There are two forms of legal divorce in modern-day North Carolina. The older form is absolute divorce, rendering the marriage nonexistent by dissolving it; this was formerly granted only for serious causes, such as adultery or impotence. More recently, divorce from bed and board, a state of legal separation, became possible. After the [American Revolution](#) ^[4] and into the early nineteenth century, the [General Assembly](#) ^[5] had the sole authority to grant both types. After 1827 the superior court in each county could also award divorces, and after a constitutional reform in 1835 only the court could do so.

Over the years, it has become easier to obtain a divorce in North Carolina. Either husband or wife may be granted a divorce without the consent of the other spouse, making it possible for either person to leave the marriage. North Carolina has a no-fault divorce policy, meaning that plaintiffs do not have to prove that they are the injured party. Children cannot be used as grounds for divorce.

North Carolina has two technical requirements for divorce: the husband and wife must prove that they have resided separately for one year, and the plaintiff must have been a resident of North Carolina for at least six months. In instances of spousal abuse, being turned out of the home, adultery, or abandonment, the mandatory one-year separation can be waived and the divorce obtained immediately. All other laws have been added, as deemed necessary, on a case-by-case basis. Just as with divorce, mutual agreement is not required to become legally separated; however, the plaintiff may not move from the state until the divorce is final. If the husband and wife live together during the one-year period of separation, regardless of whether they resume sexual relations, the separation is considered to be null and void.

Divorces involving children must address the issue of child custody. As in other states, custody in North Carolina is determined through a mediation process. Child support and alimony are considered on a need-basis system. The amount of child support, awarded to the parent who has sole custody of the child or children, is determined by the other spouse's ability to pay and the amount needed by the child or children to maintain a "normal" lifestyle. Alimony is decided by the same standards.

References:

Helen F. M. Leary, *North Carolina Research, Genealogy, and Local History* (1996).

Michael H. McGee, *Separation and Divorce in North Carolina* (1984).

Additional Resources:

Senate Bill 514, NC General Assembly <https://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S514v5.pdf> ^[6]

Marriage, Chapter 51, NC General Assembly:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByChapter/Chapter_51.pdf ^[7]

Divorce and Alimony, Chapter 50, NC General Assembly:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_50/Article_1.pdf ^[8]

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Encyclopedia of North Carolina, University of North Carolina Press.^[14]

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