



The New Civil Code for Everyone

DIVORCE

- this is an institution regulated by the Family Code, and in the New Civil Code the text are in articles 373 - 403), with some improvements;
- divorce means the dissolution of marriage;

Reasons for divorce (art. 373 Civil Code)

The divorce may take place:

- a) by agreement of the spouses, on petition of both spouses, or on petition of one of the spouses accepted by the other;
- b) when, due to serious reasons, the relationship between spouses are severely damaged and the continuation of the matrimony is no longer possible; the court establishes the guilt of one of the spouses for the dissolution of the matrimony or the common guilt of the spouses, even if only one of them has filed for divorce.
- c) on demand of one of the spouses, after a de facto separation which lasted for at least 2 years; the divorce can be pronounced even as due to the exclusive guilt of the plaintiff spouse, except for the situation when the respondent declares to agree with the divorce, when it is pronounced without mentioning the guilt of the spouses.
- d) on demand of the one spouse, the health of whom makes it impossible to continue the matrimony, in which case the dissolution of the marriage is pronounced without making any mention of the guilt of the spouses.

Divorce Procedures:

1. through the **administration** the divorce may be solved **by agreement**, regardless of the duration of the matrimony, if the following conditions are fulfilled:
 - the spouses express their consent out of their free volition and without any coercion or undue influence whatsoever, before the registrar at the place of celebration of matrimony or at the last common domicile of the spouses,
 - none of them is placed under injunction
 - they do not have any under age children born out of the matrimony, outside the matrimony or adopted.The petition for divorce is filed by the spouses together, and after a waiting period of 30 days after the registration of the petition, the spouses appear in person and, if both insist on the divorce, the registrar, after checking the validity of the consent, issues the divorce certificate **without any mention on the guilt of the spouses**.
2. by **notary procedure** the following can be solved:
 - divorce **by agreement** of spouses who have no minor children,
 - divorce of spouses with under age children born out of the matrimony, outside the matrimony or adopted, if **the spouses agree on all aspects** concerning:
 - the family name they shall bear after the divorce,
 - exertion of parental authority by both parents,
 - establishment of the residence of the children after the divorce,
 - manner of maintaining the personal connections between the separated parent and each of the children,
 - establishment of the parents' contribution to the expenses for the raising, education, studies and professional training of the children.

The competent notary is the one from the place where the marriage took place or of the last common

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domicile of the spouses. Also in this case neither of the spouses may be placed under injunction, and the consent must come out of their free volition and without any coercion or undue influence whatsoever. The petition for divorce is filed by the spouses together, but it can also be filed by proxy with authenticated mandate. After a waiting time of 30 days, the spouses appear in person, and, if they insist on the divorce, the notary public, after checking the validity of the consent, issues the divorce certificate *without any mention on the guilt of the spouses*.

3. by **action in court** petitions for divorce may be solved for any of the reasons indicated, if the spouses address directly to the court of law or if the administrative or notary divorce is rejected. The guardianship court is competent, and until it is created, the competence is vested with the local court;

Effects of divorce on the relationships between spouses:

Date of dissolution of matrimony:

- The matrimony is dissolved from the date when the decree by which the divorce was pronounced remained *final*.

- By way of exception, if the plaintiff dies during the trial and the divorce action is continued by the heirs of the plaintiff spouse, the marriage is considered as dissolved as of the date of the *death*.

- In case of the administrative or notary divorce, the marriage is dissolved on the *date of issuance of the divorce certificate*.

Family Name after Marriage

- When marriage is dissolved by divorce, the spouses can agree to keep the name they had during matrimony.

- For serious reasons, justified by the interest of one of the spouses or by the superior interest of the child, the court may approve that the spouses keep the names they had during matrimony, even if there is no agreement between them.

- If no agreement has intervened or if the court did not approve, each of the former spouses will bear the name they had prior to the marriage.

Effects concerning the matrimonial regime

- In case of divorce, the matrimonial regime between spouses ceases as of the date when the petition for divorce is filed.

- Any of the spouses or both of them together, in case of a divorce by mutual agreement, may ask the divorce court to ascertain that the matrimonial regime has ceased on the date of their de facto separation.

- The deeds of alienation or encumbrance, as well as the deeds which create obligations incumbent to the community, signed by one of the spouses after the date of filing of the petition for divorce may be annulled if they were made in fraud against the other spouse.

Compensations, compensatory considerations, alimony duties between former spouses

- **compensations:** the non guilty spouse, who suffers a damage by the dissolution of the marriage, may ask the guilty spouse to disburse him/her. The guardianship court solves the petition by means of the divorce decree. The compensations may be requested distinctly from the right to a compensatory consideration.

- **the alimony duty** between spouses ceases by the dissolution of the matrimony. The divorced spouse is entitled to alimony, if he/she is in need due to some inability to work appeared before the marriage or during matrimony. The same duty intervenes when the inability appears within a year after the dissolution of the marriage, but only if the inability is caused by a circumstance related to the matrimony.

- **compensatory consideration:** in case the matrimony lasted for at least 20 years, and the divorce is pronounced from the exclusive guilt of the respondent spouse, the plaintiff spouse may be entitled to receive a consideration to compensate, as far as possible, a significant imbalance which the divorce may cause in the life conditions of the one applying for it. The spouse applying for a compensatory consideration cannot also ask for alimony from the former spouse. The compensatory consideration can be requested only once the matrimony is dissolved. The compensatory consideration may be quantified in money, as a lump sum or as a life annuity, or in kind, as usufruct (benefit brought by the use of an asset) on real or personal assets belonging to the debtor.

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