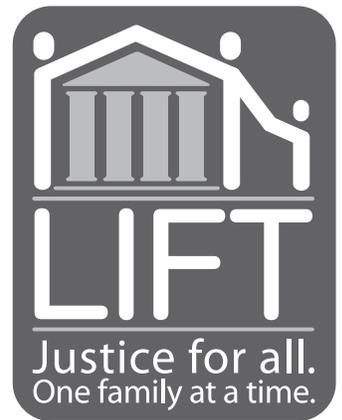


Uncontested Civil Divorce Basics

for the Orthodox Jewish Community



This guide is written for women in the Orthodox Jewish community. However, the information in this guide applies to both men and women. The guide answers questions that you may have about the uncontested civil divorce process. It is important to know that the process for a contested divorce process is very different.

This information is applicable in all counties of New York.

I want a divorce. How do I get one?

In general, Jewish couples that were married religiously and civilly must go through two divorce processes: Jewish and civil. A Jewish divorce means that you are divorced under **halacha**. Halacha is Jewish law. A civil divorce means that you are divorced under the laws of your state.

In Orthodox Judaism, a marriage ends when the husband gives his wife a **Get** and the wife accepts it. A Get is a document that formally ends a marriage under Jewish law. You must go through a special ceremony to obtain a Get. For more information on the Get process, see the LIFT guide “Jewish Divorce Basics.”

How do I get a civil divorce in New York?

The civil divorce process is very different from the Jewish process. In New York, there are two types of divorce: **contested** and **uncontested**. A divorce is contested if you and your husband disagree on at least one of the issues. Examples of issues are custody and dividing property. The process for a contested divorce is more complicated. It also takes much longer. This guide will cover the basics of how to get an uncontested divorce in New York.

What is an uncontested divorce?

An uncontested divorce means that:

- You and your husband agree about every aspect of your divorce, including what should happen with your children, finances, maintenance (or alimony), and property after you get divorced; or
- Your husband was properly served with the divorce papers but did not participate in the process.

You can still get a civil divorce even if your husband does not want one. However, if you and your husband do not agree on any of the issues, the divorce is contested. There is a different set of forms you must fill out. You may want to consult with a lawyer if you are going through a contested divorce.

Where do I file for a civil divorce?

In New York, you must file for a civil divorce in Supreme Court. You cannot get a divorce in Family Court. You should file in the county where either you or your husband currently live.

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What forms do I need to file for an uncontested divorce?

When you go to the Supreme Court to start your case, the clerk will give you an Uncontested Divorce Packet. The Packet has forms and instructions. You can also use the online DIY (Do-It-Yourself) Uncontested Divorce Program if:

- Your marriage has been over for at least six months, and
- You do not have children under the age of 21.

Visit the New York State Courts website to learn more about the DIY program. If you have children under the age of 21, you must use the paper packet. You can pick up this packet at the Supreme Court.

How much does it cost to get an uncontested divorce?

An uncontested divorce usually costs at least \$335. This includes the \$210 fee for an index number to start your case and the \$125 filing fee to calendar your case. The total cost can be more if you plan to hire a lawyer.

What can I do if I cannot afford the court fees?

You can ask the County Clerk's office to waive, or cancel, the fees. Some courts refer to this as poor person's relief. To ask for the fee waiver, you must fill out a financial hardship application. This application is part of the Uncontested Divorce Packet.

What are the steps to getting an uncontested divorce?

In general, there are five steps to getting an uncontested divorce:

1. **Filing:** First, you must buy an index number from the County Clerk's office at the Supreme Court and file your initial papers. The index number is used to identify your case. You are now known as the **plaintiff** (PLEYN-tif). The plaintiff is the person who starts a court case.
2. **Serving the Defendant:** You must have your husband served within 120 days. Your husband is the **defendant** (de-FEN-dant). The defendant is the person against whom a case has been started.
3. **Waiting for the Defendant's Response:** The defendant has 20 days to respond if he was served within the state of New York, or 30 days if he was served in another state. There are different ways a defendant can respond. Or, he can choose not to respond at all. See page 4 for information on the ways a defendant can respond. Depending on the response, you may be able to move on to step 4.
4. **Filing the Final Papers:** You must fill out the rest of the forms and file them at the County Clerk's office. Your case will then be sent to the judge to review.
5. **Waiting for the Judgment:** You must wait for the judge to review your case. The judge has discretion to decide whether or not to approve to the terms of your divorce. If the judge does approve, the judge will sign a document called the **judgment of divorce**. The court will notify you when the judgment of divorce is ready for pickup. You must file the judgment with the County Clerk's office. You must also serve the defendant with a copy of the judgment and a **Notice of Entry**. The Notice of Entry is a record of the entry of your judgment of divorce.

Is there a specific order in which I must file the divorce papers?

Yes. If the papers are not filed in the right order, the court may reject them. The order may vary depending on the county. Check with the County Clerk's office for more information.

What are the requirements to getting divorced in New York?

You must meet the following requirements:

1. **Residency:** You and/or your husband have lived in New York for a certain period of time, usually for a year or two.
2. **Grounds:** As defined below, you have a legal reason for getting divorced. In New York, the most common ground is irretrievable breakdown.

What is the residency requirement?

You must be a resident of New York to get divorced here. Residency can be met one of five ways:

1. Either you or your husband have been living in New York for at least two years when you file for divorce;
2. You and your husband were married in New York, and at least one of you has been living in New York for a year or more before you file for divorce;
3. You and your husband lived in New York together as a married couple at some point, and one of you has been living in New York for a year or more before you file for divorce;
4. Either you or your husband have been living in New York for one year or more before you file for divorce, and the ground for divorce happened in New York; or
5. The ground for divorce happened in New York, and both you and your husband live in New York at the time you file for divorce.

What are the grounds to getting divorced in New York?

To get divorced in New York, you must have a **ground**. A ground is a legal reason. You and your husband must agree to the ground for the divorce to be uncontested. Below are the grounds for getting divorced:

- **Irretrievable Breakdown:** Your marriage has been broken down for at least six months and cannot be fixed. This is known as a **no-fault divorce**. A no-fault divorce means that no one is to blame. This is the most common ground for getting divorced.

There are also **fault-based** grounds. Fault-based means that one spouse can prove the other is to blame for ending the marriage. Fault-based grounds are rarely used. They include:

- **Separation Agreement:** You and your husband have lived apart for at least a year. You also have a written separation agreement that you have been following.
- **Legal Separation:** You and your husband have lived apart for at least a year. You also have a **judgment of separation**. A judgment of separation is a court order stating that you are legally separated.
- **Cruel and Inhuman Treatment:** Your husband committed cruelty against you. Cruelty can be physical, verbal, sexual, or emotional. It is not enough that you do not get along. You must show that your physical or mental health would be in danger if you stayed together.
- **Abandonment:** Your husband abandoned you for at least a year. For example, he left your home and does not plan on coming back.
- **Imprisonment:** Your husband went to jail after you got married. He has been there for three or more years.
- **Adultery:** You have proof that your husband had an affair.

Does it matter which ground for a divorce I choose?

Generally, no. However, it is often more difficult to prove a fault-based ground. You and your husband also have to agree on the ground to get an uncontested divorce. This is why most people choose a no-fault divorce. Plus, some grounds may have negative consequences on a spouse's immigration status. You may want to consult with a lawyer before starting the divorce process.

What are the different ways my husband can respond to being served?

Your husband can respond with the **Affidavit of Defendant**. An affidavit (aff-i-DAYV-it) is a sworn statement made in writing and signed. If your husband responds with the Affidavit of Defendant, the divorce is still uncontested. You can file the rest of the papers right away. Your husband can also respond with a **Notice of Appearance**. This means that he does not agree to the same issues in the divorce as you. The divorce is now contested.

Can I still get a divorce if my husband does not respond?

Yes. You can still get a civil divorce if your husband does not respond. This is different from the Jewish divorce process. The Jewish divorce process requires both of you to participate. In a civil divorce, once you serve your husband with the divorce papers, he has a set amount of time to respond. If he does not respond, you must wait 40 days from the date he was served. Then, you can file the rest of your papers.

The judge can issue a **default (de-FALT) judgment**. A default judgment is an order that is made when someone does not show up for court after they were properly served. For more information on service, see the LIFT guide "Serving Court Papers."

Do I need to go to Family Court first before filing for a civil divorce?

Not necessarily. You can go directly to Supreme Court to file for divorce. As long as you have an agreement or a **Beit Din** decision about the issues related to your divorce, the divorce can be uncontested. A Beit Din is a Jewish court. If you do not have an agreement or a Beit Din decision, you have to file for a contested divorce. Or, you can go to Family Court first. Family Court can issue orders about custody, visitation, and child support before you file for divorce. The Family Court orders can then be **incorporated** into your divorce. Incorporate means to make part of.

Some people prefer to go to Family Court first. One reason why is because the Supreme Court may be more willing to accept your custody and visitation arrangement if the Family Court ordered it. Other reasons include:

- Family Court does not have filing fees.
- The forms in Family Court are shorter and easier to fill out.
- Family Court tends to process cases faster than Supreme Court.
- The Family Court can appoint, or assign, a lawyer to your child free of charge. This lawyer is called an **attorney for the child**, or law guardian. The attorney for the child is appointed to protect your child's interests. In Supreme Court, you may have to pay for the attorney. This can be expensive.

Can I start cases in both Family Court and Supreme Court?

No. In general, you cannot have cases open in both Family Court and Supreme Court for the same issues. If you start a case in Family Court, you may want to wait until that case is over before filing for divorce. Otherwise, your Family Court case could be transferred to the Supreme Court. This could also mean that your divorce is no longer uncontested.

Do we need to have a written separation agreement before filing for divorce?

No. If you do not have a written agreement, you need to fill out the section of the divorce forms called **ancillary** (AN-suh-ler-ree) **relief**. Ancillary relief means that you are asking for other things besides the divorce itself. This includes division of **assets** and debts, custody, visitation, and support. An asset in a divorce is anything that has value. Examples of assets are the money in your bank account and property that you own.

Once you agree on certain issues, you cannot change your mind. For example, if you want maintenance (alimony), you must ask for it as part of your divorce. You cannot **waive** your right to maintenance and then request it later. Waive means to give up.

Do we need a Get?

In general, the person who files for a civil divorce must remove any **barriers to remarriage**. A barrier is anything that prevents you from remarrying according to your religion. You may want to discuss the issue of barriers to remarriage with a lawyer. If you do not have a lawyer, see the LIFT guide "Jewish Divorce Basics" for resources that may be able to help.

Without a Get, you are still married under Jewish law. This is true even if you have been separated for some time. Issues may include:

- You cannot remarry within the Jewish community;
- Any children you have in the future will be considered **mamzerim**, or illegitimate, which has consequences in Jewish law; and
- In many communities, starting a new intimate relationship is a serious violation of Jewish law.

How will the civil court know if I have a Get?

You must provide the court with a document called the **Sworn Statement of Removal of Barriers to Remarriage**. This document lets the judge know that you have taken all steps necessary to obtain a Get. The document must be signed and notarized.

Where can we go to try to settle issues related to our divorce?

You can avoid the contested divorce process if you settle the issues related to your divorce. If you and your husband cannot reach an agreement on your own, you have options:

- **Beit Din:** The Beit Din can arrange for a **Din Torah**. A Din Torah is a formal **arbitration** (ahr-buh-TRAY-shun) proceeding. Arbitration means a process for settling a dispute. The Beit Din can help you try to reach agreements about property division, financial matters, and custody and visitation. If you cannot agree, the Beit Din will decide for you. In general, Beit Din decisions are legally binding. For more information, see the LIFT guide "Jewish Divorce Basics".
- **Mediation** (mee-dee-A-shun): Mediation is when someone called a mediator tries to help people resolve a dispute. If you reach an agreement in mediation, the mediator can put the agreement into writing. The agreement is not binding, but you can ask the court to make it binding by incorporating it into the divorce. You must include a copy of the agreement with your divorce papers. Mediation is not recommended if there is a history of domestic violence.
- **Family Court:** Family Court can make decisions about paternity, custody, visitation, child support, and spousal support. When you file for divorce in Supreme Court, you can ask that any Family Court orders be incorporated into the divorce. You must attach copies of the Family Court orders to your divorce forms.

Do we have to see a judge if we agree on everything?

Not necessarily. If there are no issues with your paperwork, you may never need to go to court and see the judge. However, the judge can still require a hearing even if you agree on everything. This is especially true if there was domestic violence.

How does the judge decide whether to grant the divorce?

The judge will review all of the paperwork that you filed. If there are no issues, the judge will sign a document called the **judgment of divorce**. The judgment of divorce is the order from the court which says that you are now divorced. You will receive notice in the mail when your judgment is ready. The notice will have instructions on how to pick it up.

Do I need to do anything else after I receive the judgment of divorce?

You must file the judgment with the County Clerk's office. Depending on your county, the Supreme Court may file the judgment for you. Ask the clerk for more information. When you file the judgment, request a **certified** copy. When a document is certified, it is stamped as an official copy. Keep this copy in a safe place. You may need it later on if you need to go back to court to enforce or modify the order. If you lose the copy, you must go back to the Supreme Court to get another. There is usually a fee for every certified copy.

Are there free legal services available?

If your case involves custody or an order of protection, you may be able to get an assigned attorney at no cost to you. The judge makes this decision. You must submit your current financial information so the judge can determine if you qualify. If you qualify, the attorney can help you only for certain issues. You can also hire your own lawyer to represent you. There may be local resources and agencies that can help. Contact your local Supreme Court to learn more. There are also resources listed at the end of the LIFT guide "Jewish Divorce Basics" that may be able to help. Keep in mind that you should try to find legal help as early as possible. Some agencies may not be able to take your case if you have been in court for a while.

Where can I go for more information?

Visit the New York State Courts website for more information on the divorce process. Some Supreme Courts also offer free legal clinics to help people fill out the uncontested divorce paperwork. Contact your local Supreme Court to find out if they offer a clinic.

For questions about the Jewish divorce process, call One Step Forward at 1-844-673-5463. One Step Forward is a free divorce helpline that provides support, guidance, and resources to the Orthodox Jewish community.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals going through a divorce to consult with a lawyer.

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