

Family law – DIVORCE FACTSHEET (May 2019)

French law distinguishes four types of divorce proceedings:

- Divorce by MUTUAL CONSENT (most used procedure): available since 1st January 2017 allows parties to divorce without the obligation to go through court by simply filing their divorce agreement (*convention de divorce*) with a Notary. Such a procedure presupposes that the spouses agree on the divorce and its consequences. If the spouses do not agree, they will have to go through a contentious divorce i.e.:
 - an ACCEPTED divorce;
 - a divorce for DEFINITIVE ALTERATION OF THE MARITAL BOND;
 - a divorce for FAULT (i.e. misconduct).

1) Amicable divorce: DIVORCE BY MUTUAL CONSENT

In France, more than one divorce out of two is a divorce by mutual consent which is the simplified form of divorce. It has the advantage of being fast, less expensive and respectful of family peace.

Since January 1st, 2017, a divorce by mutual consent without the intervention of a judge has been introduced under French law. Husband and wife must appoint their own legal representative.

Article 229 of the Civil Code provides:

"The spouses may mutually consent to their divorce by deed under private signature countersigned by legal representatives, deposited in the rank of minutes of a notary".

A reflection period of 15 days is mandatory pursuant to article 229-4 of the Civil Code:

"The lawyer sends to the husband that he attends, by registered letter with acknowledgment of receipt, a draft agreement, which cannot be signed, on pain of nullity, before the expiry of reflection of a period of fifteen days from the receipt".

Since March 25th, 2019, article 1175-1 of the Civil Code allows spouses and their legal representatives to electronically sign (which allows all parties to work remotely) the mutual consent divorce agreement.

Some exceptions to the absence of court proceedings are nevertheless provided, for example when a minor child asks to be auditioned by the judge or when husband or wife is under guardianship or curatorship, a divorce by mutual consent is possible however in such case it will have to be validated by a judge.

A divorce by mutual consent with the intervention of a family affairs judge (JAF) is also possible if this is the option chosen by the spouses.

2) CONTENTIOUS divorces

Contentious divorce proceedings are initiated by a petition filed by one of the spouses. The agreement of the other partner is not necessary.

- The "ACCEPTED divorce"

The spouses agree on the principle of divorce but not quite on its effects → both of the spouses want to divorce but fail to agree on all the consequences to be given to the divorce.

The spouses will be obliged to go through court because a divorce agreement cannot be reached without the consent of both spouses.

The acceptance of the divorce can intervene at any moment of the procedure. In practice, consent on the principle of divorce is given at the time of the conciliation hearing, after the non-conciliation order has been made or in the course of the proceeding. Most of the time, the spouses sign a declaration of acceptance at the conciliation hearing.

Once the acceptance is given by the spouses, they can no longer refuse the principle of a divorce.

The judge will verify the integrity of the consents of the spouses. He will pronounce the divorce and will settle the consequences of the divorce simultaneously.

- The "divorce FOR DEFINITIVE ALTERATION OF THE MARITAL BOND"

Divorce for definitive alteration of the marital bond may be pronounced in two instances:

- *A de facto* separation of two years

Divorce for permanent alteration of the marital bond may be pronounced if at the date of the divorce petition, the spouses have been separated for two years.

- Two "cross" divorce petitions

In the case where each of the spouses files a petition for divorce, the judge may pronounce the divorce for final alteration of the marital bond without the need of the two years separation period. This will be the case, for example, if one of the spouses files for a divorce for misconduct and the other responds with a counterclaim.

- The "divorce FOR MISCONDUCT"

The husband/wife who initiates divorce proceedings for misconduct must prove that the other party has violated a marital obligation in a serious or repeated manner. That misconduct must be attributable to her/him and making the maintenance of cohabitation intolerable. This will occur for instance in the event of a breach of the obligation of loyalty, respect or assistance.

The party against whom misconduct proceedings are initiated has two options: the defense on the merits or response with a counterclaim.

In the case of a defense on the merits → The defendant will try to show that he/she has not violated his marital obligations or even if he/she did, he/she can prove that such violation did not make the maintenance of common life intolerable.

The defendant may also make a counterclaim and argue the misconduct of the other party → The judge may then decide to pronounce the divorce on the basis of wrongs on both sides, if he considers that both petitions should be accepted. If the judge accepts only one petition, the divorce will be pronounced to the exclusive wrongs of one of the spouses. Finally, if none of the petitions is accepted, the marriage can in theory be maintained (rare in practice).

Law No. 2019-222 of 23 March 2019 of 2018-2022 on “programming and reform of the justice” brings about a number of modifications to the current divorce law: (i) acceptance of the principle of the termination of marriage by the spouses can be made under their private signature countersigned by their lawyers, (ii) the condition for a divorce for definitive alteration of the marital bond is reduced to one year instead of two currently, (iii) the procedure of contentious divorces is modified: the preliminary phase of conciliation is abolished and the content of the introductory petition for divorce is amended. All of these measures will come into force by 1st September 2020 at the latest.