

Divorce Proceeding Guidelines for Foreigners

1. Divorce by Agreement v. Divorce by Trial

- The Civil Act of the Republic of Korea classifies divorces into divorce by agreement and divorce by trial.
- Husband and wife may dissolve their marriage by agreement if a mutual agreement is reached on divorce and custody of their minor children, if there is any.
- If spouses fail to reach a mutual agreement on divorce, they have to file a petition for divorce to court, or apply to court for mediation between them.

2. Filing a Petition for Divorce

- A petition for divorce has to be filed to a family court for any coming under the followings:
 - (i) if spouses have failed to mutually agree on divorce and property division;
 - (ii) if there exists any dispute on guardianship, child custody, child support, and visitation right with regard to minor children between a couple; or,
 - (iii) if a spouse is seeking compensation from the other spouse, allegedly liable for the breakdown of a marital relationship, for the reason thereof.
- A petition for compensation and property division may also be filed, together with a petition for divorce in a divorce proceeding. The family court will not adjudicate, unless either spouse brings an action, asking the court to examine and determine any such claims noted above.
- A claim for compensation means an action by a spouse to a divorce proceeding of seeking pecuniary indemnification against the other spouse allegedly liable for the breakdown of a marital relationship for mental (psychological) injury sustained on a presumably non-labile

spouse, and asking the court to rule in favor of a spouse by granting such damages thereto.

- A claim for property division means an action by a spouse of asking the court to equitably and justly distribute marital property, acquired and maintained during their marriage through mutual efforts, as the spouses are getting a divorce.
- In addition thereto, if there are any minor children between spouses, the family court adjudicating a divorce proceeding also determines on the provisions for minor children, such as the appointment of a spouse with guardianship of minor children, and custody thereof, apportionment of child support between spouses and visitation right.

3. Cause for Divorce Proceedings

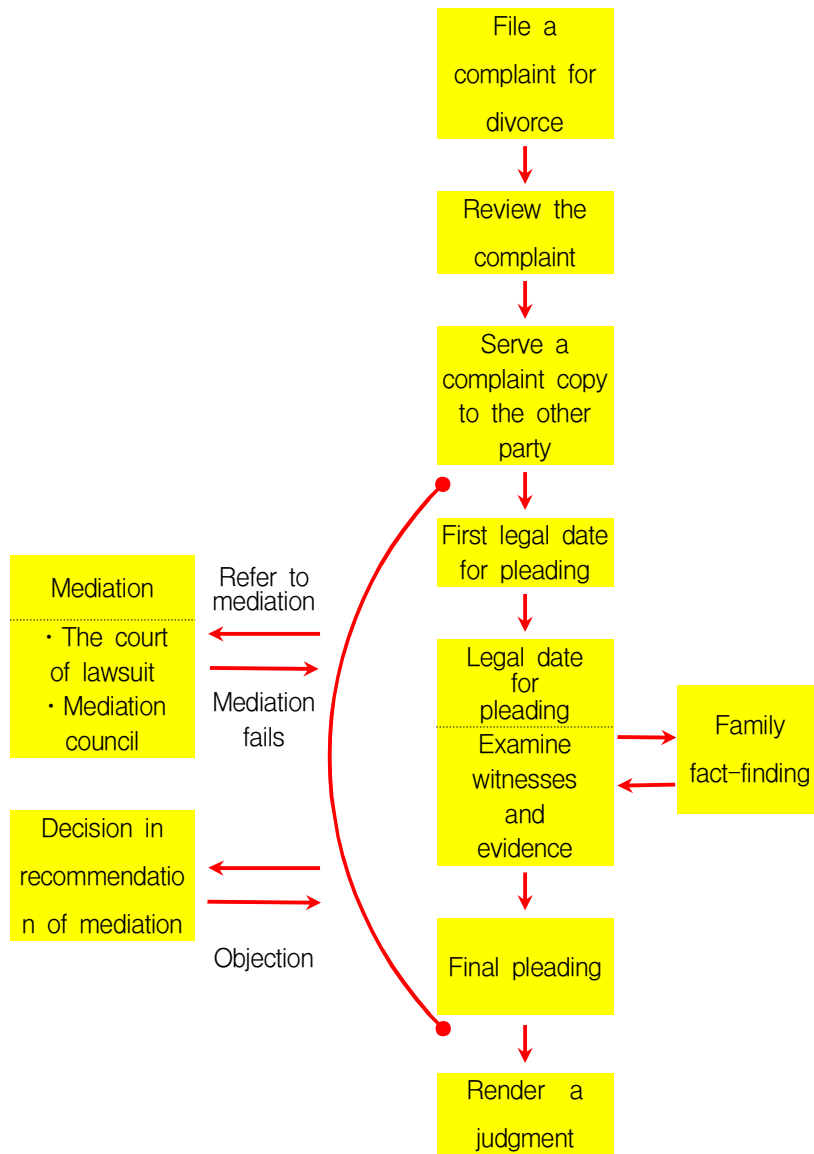
- A petition for divorce may be filed to a family court pursuant to the Article 840 of the Civil Act of the Republic of Korea, provided that one or more provisions as prescribed in the followings are applicable.

Article 840 (Causes for Divorce Proceedings)

Either husband or wife may apply to a family court for divorce in each case of the following paragraphs:

1. If the other spouse has committed an act of unchastity;
2. If one spouse has been maliciously deserted by the other spouse;
3. If one spouse has been extremely maltreated by the other spouse or his or her lineal ascendants;
4. If one spouse's lineal ascendants have been extremely maltreated by the other spouse;
5. If the death or life of the other spouse has been unknown for more than three years; or
6. If there exists any other serious causes, making difficult to continue the marriage.

4. Overview of Divorce Proceedings or Mediation Process



5. Divorce Proceedings

A. Service of a Complaint Copy

- Once a petitioner files a divorce complaint to a family court, the family court shall serve a respondent of the process through formal delivery of a complaint copy. In case a respondent's domicile is unknown for some reasons, service shall take effect through service by public notification pursuant to certain requirements as prescribed.

B. Temporary Order

- After filing a divorce action, or applying for mediation, a motion for temporary order may be filed by a party to a divorce proceeding if there exists any urgent need before a final decision or judgment is entered by a court.
- The adjudicating family court may issue ex officio a temporary order, upon filing of a motion therefor by a party, or even in the absence thereof, if deemed necessary.
- A temporary order may be issued by the court for any coming under the followings:
 - If a temporary restraining order is necessary to prevent the other spouse from approaching;
 - If a spouse applies to court for an alimony pendente lite or child support concerning minor children between spouses; or,
 - If a spouse files a motion for visitation right.
- A temporary order is appealable within 7 days from service of notice thereof. A temporary order shall take effect only after it becomes final and conclusive.
- The family court may impose a penalty of not more than KRW 10 million against any violator of a temporary order declared as final and conclusive.

C. Pleading

- Upon service of process on a respondent via a formal delivery of a complaint copy, the family court shall set the legal date for pleading and notify both the petitioner and the respondent thereof. Both parties shall, absence of any extraordinary reasons justifying non-appearance, appear in person before court on the scheduled legal date for pleading. If any person summoned on the legal date for pleading has failed to appear before court without any justifiable reasons, the family court may impose a penalty of not more than KRW 500,000 or alternatively, take the person into custody.
- On the legal date for pleading, both parties shall make legal arguments, by providing relevant facts rising to the causes of a divorce action, and applicable laws thereto, and introduce to court evidence supporting such averment. In parallel therewith, investigation into evidence, including witness examination will be conducted.
- Note that family courts adjudicate ex officio in divorce proceedings, unlike other types of civil proceedings, and accordingly, may adopt ex officio facts not alleged by parties as a basis of a judgment, conduct a fact-finding, perform investigation into evidence, and examine principal parties to a divorce proceeding and their legal representatives as well at any time.

D. Family Fact-Finding

- The family court may order a family fact-finding officer to conduct a fact-finding prior to the legal date for pleading, or during pleading. Alternatively, a family fact-finding may be conducted during mediation process.
- A family fact-finding officer shall investigate into related parties to a divorce proceeding in such areas as academic backgrounds, careers, living standards, financial status, personality, health, family environment, as well as into material facts, for example, causes for the breakdown of marital relationship, utilizing his professional expertise in psychology, sociology, economics, pedagogy, etc.
- Specifically, a family fact-finding consists of the followings:
 - Fact-finding: causes for the breakdown of marital relationship, formation process of marital property, fostering environment of minor children between spouses, psychological test, etc.

- Adjustment measures: psychological counseling, drug addiction treatment, gambling addiction treatment, etc. directly by a family fact-finding officer, or indirectly in liaison with outside institutions.

E. Mediation

- Both principal parties to a divorce proceeding shall appear in person before the court on the legal date for mediation. Attendance to court by a party may be accompanied by his or her legal representative.
- If both parties amicably agree on a settlement on the legal date for mediation pursuant to recommendation by a judge or a mediation commissioner, mediation shall be deemed as complete. Upon successful completion thereof, the family court shall issue a protocol of mediation with terms of agreement by both parties and thereafter, a copy thereof will be delivered officially to both parties, respectively.
- Compared therewith, upon failure of mediation process, the family court may render a decision in lieu of mediation ("compulsory mediation"). If either party does not raise any objection thereto within 14 days from service of process on both parties, such a decision shall become final and conclusive.
- A protocol of mediation, and the court's decision in lieu of mediation, individually, shall take the same effect as a final judgment. Consequently, if mediation reaches completion, both parties shall not raise any objection to the content of mediation.

F. Decision in Recommendation of Reconciliation

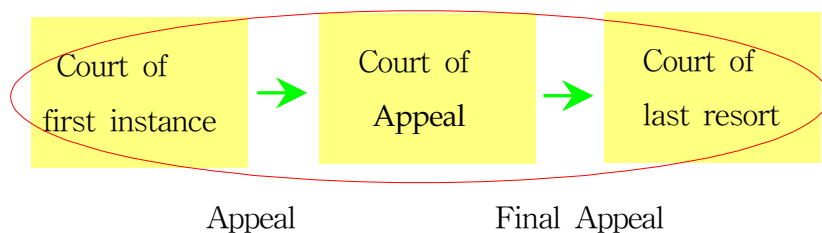
- During the pendency of a divorce action, the family court adjudicating a case at hand may issue ex officio a decision in recommendation of reconciliation, settling the case in equitable terms.
- If either party does not raise any objection to the family court's recommended decision within 2 weeks from service thereof, the court's decision shall become final and conclusive, thus closing a divorce trial.

- Both parties shall not raise any objection to the family court's recommended decision of reconciliation, if determined as final and conclusive.

G. Judgment

- At closing of hearings, a final judgment will be rendered by a court.

H. Appeal Procedure



- A party to a divorce proceeding may appeal within 2 weeks from service of a judgment document issued by a court of first instance, if that party is presumably dissatisfied therewith. The party shall file a petition of appeal with the trial court which rendered a judgment.
- After a judgment is rendered at an appellate trial, a party, dissatisfied therewith, may bring a final appeal to the Supreme Court within 2 weeks from service of an appellate judgment. On final appeal, the party shall file a petition of final appeal to the appellate court.
- A judgment of the court of first instance shall become final and conclusive for any coming under the followings:
 - (i) if a judgment was rendered by a trial court and thereafter the period allowed for appeal has elapsed with no appeal filed thereto;

- (ii) if an appeal was filed but dismissed, and thereafter, the period for final appeal has elapsed with no final appeal filed to an appellate court; or
 - (iii) if a final appeal, upon dismissal of an appeal, is filed but dismissed.
- If the other party is unaware of a judgment of divorce until after such a judgment becomes final and conclusive, for example, where the other party was ignorant of a divorce proceeding since the other party was serviced by public notification and consequently, a judgment by default was rendered against him. In such case, the other party may appeal from a judgment, by vindicating that he was not able to appeal within the prescribed period for appeal for reason(s) not attributable to the other party. It is called a supplementary appeal.
- If there exists any technical errors in a judgment document within a scope not materially changing the content thereof, for example any typos in a person's residential registration number or a place of family register, a party whose information is incorrectly represented may file a motion with the adjudicating court for correction thereof.

H. Post-Judgment Procedure

- If a case is closed by a judgment or through mediation, any changes thereby to family relationships have to be precisely represented to official records of family relationships register. Specifically, for this purpose, if a case is closed with a judgment, a certified copy of a judgment document (or that of a court's decision in recommendation of reconciliation), a certificate of official delivery thereof and a copy of a final judgment are to be filed to a place of family register or an administration office with jurisdiction over a filing person's domicile within 1 month from a date of final judgment. Similarly, if a case is closed through mediation, a certified copy of a mediation protocol is to be filed thereto within 1 month from a date of mediation, for the purpose

of updating any changes to the official records of family relationships register.

- A copy of a final judgment certificate and a copy of service of judgment are issuable by the court where a case was adjudicated.

6. Acquisition of Nationality and Qualification of Domestic Stay

- Acquisition of nationality and qualification for domestic stay are not matters under the jurisdiction of courts, but matters primarily dealt with by the Ministry of Justice.
- Information on acquisition of nationality and qualification for domestic stay are readily available on the internet homepage for Korea Immigration Service(www.immigration.go.kr) under the umbrella of the Ministry of Justice.

7. Interpretation Service and Litigation Aid for Foreigners

A. Court Interpretation Service

- A family court proactively provides support, such as appointment of a court interpreter and litigation aid for interpretation costs for those foreigners who have low Korean language capabilities. If such foreigners are unable to bring a person on a court date, assisting them with interpretation service, they are required to submit to court beforehand an application for an appointment of a court interpreter.

B. Litigation Aid

- Litigation aid means a government act of providing financial assistance to those who have insufficient financial means to pay for the costs of litigation. If a litigant is found eligible for litigation aid, the government, on behalf of that litigant, will pay for a portion of litigation costs in certain items thereof.

○ Stamp fee, service fee, interpretation cost, appraisal fee, and attorney fee are particular items of litigation costs subject to litigation aid.

C. Court-appointed Attorney in Litigation Aid for Foreigners

○ The Seoul Family Court is currently adopting a court-appointed attorney service for foreigners in litigation aid, in liaison with Seoul Bar Association. If a foreigner inquires of this service to a court, such a foreigner will be connected to 'Association of Attorneys in Litigation Aid for Foreigners', assisting such a foreigner with any problems that may come up in the selection process of a court-appointed attorney therefor, provided that such a foreigner is determined as a qualified litigant for litigation aid, upon application therefor.

○ With the adoption of a court-appointed attorney service in litigation aid for foreigners, eligible foreign litigants are being provided with, essentially, one-stop legal service from counseling through litigation aid.