

INFORMATION ON THE NEW DIVORCES WITHOUT JUDGES IN FRANCE

For any questions :

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In 2015, more than half of the divorces handed down by the family judge in France were divorces by mutual consent. For the majority of them, there were spouses with no dependent children.

Since the law of December 18, 2016, known as the Modernization of Justice Act of the XXI century, these divorces have no longer to be submitted to the courts. The aim of this reform is to reduce the number of court judgements and to simplify and speed up the procedure.

There is now a procedure for "divorce by private signature signed by attorneys, deposited at the rank of the minutes of a notary", adjoining the three divorce cases: divorce for misconduct, divorce for permanent alteration of the conjugal relationship, and divorce for acceptance of the principle of marriage breakdown.

Which are the concerned cases of divorce?

The principle of a divorce without a judge does not concern all divorce cases, but only divorces by mutual consent, open to the spouses who agree on the principle of the breakdown of the marriage AND its effects (Article 229- 1 of the Civil Code).

None of the spouses must be placed under a judicial protection measure (warrant for future protection, guardianship, curatorship, safeguard of justice, judicial authorization)

What are the stages of a divorce without judges in France?

1 - Preparation of the divorce agreement by private signature signed by a lawyer.

The spouses must each be assisted in drafting the agreement by their own lawyer (article 229-1, paragraph 1, of the Civil Code). The use of two lawyers thus ensures the balance of the contract between the parties.

The Convention includes a number of mandatory mentions:

- The surnames, forenames, residence, occupation, date and place of birth of the spouses and their children, date and place of marriage,
- The name, professional address and liberal practice structure of the lawyers and the bar they are registered with
- The reference to the agreement of the spouses on the principle of the rupture and on these effects.
- The terms and conditions for the full settlement of the effects of the divorce, including whether a compensatory allowance
- The liquidation status of the matrimonial regime or the statement that there is no reason to liquidate.
- A statement that the minor has been informed by his parents of his right to be heard by the judge under the conditions laid down in Article 388-1 and that he does not wish to make use of this option and that the information given to the children were not given in the absence of their discernment.

- the name of the notary or legal person holding the notarial office responsible for receiving the deed in the form of minutes, the value of the assets or rights granted as compensatory allowance, those subject to land registration, and, where applicable, the procedures for recovery and the rules for reviewing maintenance or the compensatory allowance in the form of a life annuity.

2- Draft convention is sent by registered letter with acknowledgment of receipt by the lawyer to his client. As from the day of receipt of the project, each spouse has a period of reflection of fifteen days. On expiry of this period, the Convention is signed

3- One of the lawyers must forward the agreement within seven days to the Notary mentioned in the deed.

4 - The notary deposits within fifteen days the agreement to the rank of the minutes giving it a certain date and an enforceability to the convention. The dissolution of the marriage shall take effect on that date. In the case of third parties, a divorce is enforceable from the date of marking of the extract of the marriage certificate and the extracts of the birth certificate of each spouse.

This divorce procedure is preceded by a key stage: the liquidation of the matrimonial regime, which makes it possible to determine the consistency of the patrimony of the spouses and its valuation and, where appropriate, to establish reward accounts, claims between spouse, or participation claim, in order to quantify the amount of the share attributable to each of the spouses. In principle, the notary is obliged to intervene in the presence of immovable property and when the compensatory allowance takes the form of abandonment of immovable property.

Is it possible to divorce without a judge in the presence of minor children?

Spouses who are parents of minor children may divorce under the new divorce regime by mutual non-judicial consent unless the minor child, informed by his parents of his right to be heard by the judge, requests to be heard by the judge.

Watch the video:



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PRINCIPAL RESIDENCE, EXPATRIATION AND MORE VALUE ... THE CONSTITUTIONAL COUNCIL IS SEIZED

When a person has left France, he / she cannot benefit from the exemption from tax on the capital gain. At best, it can benefit from the special exemption of non-residents for their first transfer of property in France, limited to 150,000 euros of taxable net capital gains. This unequal treatment has been the subject of a priority question of constitutionality (CE QPC 9 e Ch. 28-7-2017 No. 411546).