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## **Divorce and division of property \***

### I. Divorce

Marriage, in accordance with an Article 104 of the Family Code of Ukraine, can be halted because of two grounds: deaths or announcement one of the married couple dead or dissolution.

Dissolution of marriage can take place in organs of Registration of Acts of Civil Status (further referred to as organs of RATSS) or in judicial order.

1. In organs of RATSS marriage is torn in such cases:

- the married couple, that has no children (either no children at all, or they are senior than 18 years) hands in a common statement which during a month can recall. If the statement is not recalled, resolution about dissolution of marriage is pronounced.
- on the statement of one of the married couple, if second from the married couple is acknowledged missing, incapable or is condemned for the commission of crime to imprisonment on a term no less as 3 years.

Marriage is broken from the moment of pronouncement of resolution by an organ of RATSS, however then it is needed to get Certificate about dissolution of marriage.

2. In a court the marriage is dissolved when:

- the married couple, that has children hands in a common statement, to which is added the written contract about parent, who will live with child, how the child will be educated by the second parent and what providing he/she will give (actually, there is the question about the grant of alimonies). After a month, if the married couple do not recall the statement, court pronounces decision about dissolution of marriage.
- An action is put only by one of the married couple or guardian of incapable member of the married couple

It is important to remember, that such a right is limited in time. In particular, according to the Article 110 of the Family Code it is impossible to file such action during pregnancy of wife and during one year after birth of child (even, if a child was born dead or died), except for the cases of unlawful conduct with the signs of crime in relation to the second from the married couple or child, if paternity is acknowledged by other person or in decision of court husband is excluded from a record about birth of child as a father of child.

A court takes measures in relation to reconciliation, and when it is impossible pronounces the decision about dissolution of marriage. From the moment of going into effect of this decision marriage is broken, however for registration of a next marriage it is also needed to get Certificate about dissolution of marriage, that is given out on the statement of former wife or husband in organs of RATSS.

The legal consequences of stopping of marriage are:

- Stopping of property and nonproperty relations of the married couple, except for a right to maintenance and saving of the last name received in marriage
- Property, that is obtained after dissolution of marriage is not common, but private property of each of the ex-married couple

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\* Information is given according to the Ukrainian legislation valid on the 01. 05. 2006 . In each individual case of foreign citizenship international treaties need to be taken into consideration also.

- Is forfeited right on the inheritance by law and state help in the case of death of former husband or wife
  - Is obtained right to celebration of the next marriage
- If after dissolution of marriage the former married couple continues to live as one family and does not halt the marriage relations, on the statement of the interested person a court acknowledges a divorce fictitious, legal consequences of dissolution do not come.

## II. Separation of property

In accordance with the current Family law of Ukraine (Chapters 7,8 of the Family Code) the division of property of the married couple can take place both in the period of stay in marriage (at any time), and at its dissolution (no later than 3 years from the moment of dissolution of marriage), on the consent of sides or in a judicial order.

At the division of property, that belongs to the married couple on the right of common joint ownership, by a general rule, parts are even, if other is not definite by an agreement between them or marriage agreement. However a court can give up the bases of equality for two reasons. At first, at the circumstances, that have the substantial value, for example, one of the married couple did not care of the material providing of family, hid, annihilated or damaged property, expended it on harm to interests of family. Secondly, part of that, with whom remain children is increased, on condition of insufficiency of size of alimonies.

Private ownership of wife, husband is not subject to the division, that is the property acquired to marriage, given as present or inherited or acquired for the personal funds in marriage, things of the individual use, rewards for the personal merits, compensations of harm, insurance sums.

By the same rule the property of woman and man is divided, when they actually live as one family, but without the registered marriage, if they did not agree in the written contract differently.

In addition, at will of the married couple, a court can set for them the mode of separate residence at which property that is acquired in this period will be not common property of the married couple, but private property of each of them.

## III. Dissolution of marriages with "a foreign element"

Regulation of dissolution of marriages with a "foreign element" takes place at a level of national as well as international level, in particular by the norms of the Family, International private, Civil law and process and international agreements.

If two citizens of Ukraine, the citizen of Ukraine and foreigner or two foreigners dissolve marriage in Ukraine, it takes place by law of Ukraine by a foregoing rule.

For recognition in Ukraine the fact of dissolution of marriage in a foreign country are necessary such terms:

- If it is two foreigners or two citizens of Ukraine, that constantly live in a foreign country, their marriage dissolved in a foreign country by law of that state is dissolved in Ukraine also
- In the case of marriage of citizen of Ukraine with a foreigner, if one of the married couple lives not in Ukraine, dissolution can take place by law of the foreign state and will be actual in Ukraine
- If citizen of Ukraine and second from the married couple live outside Ukraine, the Ukrainian citizen can appeal for dissolution of marriage to the Ukrainian court.

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