

7 FAM 1460 DIVORCE OVERSEAS

*(CT:CON-119 12-01-2005)
(Office of Origin: CA/OCS/PRI)*

7 FAM 1461 SUMMARY

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- a. In the United States, marriage and divorce generally are considered matters reserved to the states rather than to the federal government. There is **no** treaty in force between the United States and any country on enforcement of judgments, including recognition of foreign divorces.

Note: The purpose of this subchapter is to give you some familiarity with general concepts and terms related to divorce. You should not attempt to interpret foreign or U.S. laws on this subject, including U.S. state law. Please address your questions about the law to CA/OCS/PRI at ASKPRI@state.gov. We will consult with the Office of the Legal Adviser and state authorities as appropriate.

- b. Questions about divorces arise in a variety of contexts in American Citizens Services work. These include, but are not limited to:
 - (1) Cases of persons seeking to obtain a divorce in a foreign country (see 7 FAM 990 Retaining a Foreign Attorney);
 - (2) Cases of persons seeking to document the citizenship of their children (see 7 FAM 1100 (Acquisition of Citizenship), 7 FAM 1300 (Passports) and 7 FAM 1440 (Reports of Birth));
 - (3) Cases of persons fleeing from abusive relationships or forced marriage (see 7 FAM 180 (refuge) and 7 FAM 1740 (Forced Marriage of Minors));
 - (4) Two Parent Signature Questions in Passport Cases (7 FAM 1350);
 - (5) Parental Child Abduction and Child Custody Cases (7 FAM 1710); and
 - (6) Your determinations as to notification of surviving spouse or next-of-kin in consular protection work.
- c. Various procedures may be used to end a marriage that breaks down, including annulment, separation and dissolution. Other cultures and legal systems have entirely different approaches. E.g., in many Arab

countries, a man may divorce his wife without the marriage being “irretrievably broken, and there’s no fault divorce.

- (1) **Annulment** is a court-ordered dissolution of an invalid marriage. It nullifies a marriage from its inception and is granted in situations where no valid marriage exists because of some legal defect.
 - (2) **Separation** may be formalized with a legal agreement, or a judicial "Decree of Legal Separation," or both. A legal separation may be preferred to a divorce for religious, economic or other reasons. Oral or written understandings concerning property disposition, arrangements for children, maintenance, or other agreements made while separated may become part of a divorce proceeding.
 - (3) **Divorce:** One or both partners may seek dissolution of the marriage relationship. This proceeding (not always before a court) legally terminates a marriage, and makes provisions for the parenting of minor children, family support, and division of property and liabilities.
- d. A divorce decree issued in a foreign country generally is recognized in a state in the United States on the basis of comity (**Hilton v. Guyot**, 159 U.S. 113, 163-64 (1895)), provided both parties to the divorce received adequate notice, i.e., service of process and, generally, provided one of the parties was a domiciliary in the foreign nation at the time of the divorce. Under the principle of comity, a divorce obtained in another country under the circumstances described above receives "full faith and credit" in all other states and countries that recognize divorce.
- e. Although recognition may be given to an ex parte divorce decree, states usually consider the jurisdictional basis upon which the foreign decree is founded and may withhold recognition if not satisfied regarding domicile in the foreign country. Many state courts have refused to recognize foreign divorce where both parties participate in the divorce proceedings but neither obtains domicile there.

7 FAM 1462 AUTHORITIES

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- a. Officers of the Foreign Service (FS) of the United States, Ambassadors and Chiefs of Mission have no authority regarding divorce, annulment or legal separation. The consular role is limited to authentication of documents (see 7 FAM 870).
- b. 22 CFR. 52.2 Authentication of Marriage and Divorce Documents provides:

22 CFR 52.2 Authentication of marriage and divorce documents

“(a) Whenever a consular officer is requested to authenticate the signature of local authorities on a document of marriage when he was not a witness to the marriage, he shall include in the body of his certificate of authentication the qualifying statement, ‘ ‘ For the contents of the annexed document, the Consulate (General) assumes no responsibility.”

“(b) A consular officer shall include the same statement in certificates of authentication accompanying **decrees of divorce.**”

[31 FR 13546, Oct. 20, 1966. Redesignated at 51 FR 26247, July 22, 1986]

- c. **Treaties:** The United States is **not** a party to the Hague Convention on the Recognition of Divorces and Legal Separations of June 1, 1970 (978 U.N.T.S. 399). The Convention relates to such recognition but not to any ancillary matters such as findings of fault, orders for maintenance or custody of children.

7 FAM 1463 VALIDITY OF FOREIGN DIVORCE IN A U.S. STATE

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Questions regarding the validity of foreign divorces in particular states in the United States should be referred to the office of the Attorney General of the state in question. It may be necessary for the U.S. national to retain the services of a private attorney if the office of the state Attorney General does not provide such assistance to private citizens. The U.S. national should provide counsel with copies of foreign marriage certificates, divorce decrees and copies of foreign laws concerning divorce, which may be available from the foreign attorney who handled the divorce.

7 FAM 1464 FOREIGN DIVORCE PROCEDURES

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While consular officers are not competent to provide advice or opinions about foreign divorce law, it is appropriate to provide U.S. citizens with general information about foreign divorce procedures and to direct them to other sources of information. For example, the CA Internet page includes links to material prepared by posts about divorce in foreign countries. The host government may also have information on this subject to which post’s home page may link. A Divorce Overseas Information Sheet is also available on the CA Internet page.

Web Links to Divorce Information ...

CA Internet Page

- Divorce feature

- Country Specific Divorce Information
- Divorce Laws of the Fifty States, District of Columbia and Puerto Rico

7 FAM 1465 POLYGAMY, CONCUBINAGE

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Questions concerning polygamy, concubinage, and other relationships not recognized or existing in the United States and American Citizens Services (ACS) work, including citizenship and passport work, should be directed to CA/OCS/PRI (ASKPRI@state.gov). Note that these issues do not have the same meaning in ACS work as they do in visa work (see 9 FAM 40.101 Notes).

7 FAM 1466 THROUGH 1469 UNASSIGNED