

Separation and Divorce Info Sheet

My husband is violent

I want to leave him.

What procedure do I have to follow?

You can initiate settlement proceedings (unilateral request for separation) before the competent district court and apply to separate. You can initiate the proceedings yourself or through a lawyer. If possible, take the following documents with you for the court hearing or the initial meeting with your lawyer:

- Documents relating to your financial situation (latest tax return, salary statements, receipts for regular expenditure)
- Notes on the history of the marriage (important data and incidents such as e.g. the use of violence by your husband.)

Wouldn't it be better for me to discuss the matter with my husband first?

There will be sufficient time to seek amicable solutions prior to the settlement proceedings. If you are legally represented your lawyer will get in touch with the husband or his lawyer and put forward proposals. Do not let yourself be pressurised by your husband, refer him instead to your lawyer for all disputed matters.

Past experience shows that it is better for you to be represented by a lawyer.

An application for settlement proceedings can be withdrawn at any time.

How much will settlement proceedings cost and who pays the lawyer?

If your financial circumstances are tight you can submit an application for legal aid. If the application is approved the court and lawyers costs will initially be met by the state. If your financial circumstances should subsequently improve the court has 10 years during which it can request that you repay the court and legal costs.

If you are in a position to meet the lawyer's costs yourself you can contact an advice centre or lawyer to find out about the costs of settlement proceedings.

What arrangements can I resolve under the settlement proceedings?

The judge in the settlement proceedings will rule on the following points, amongst others:

- allocation of the matrimonial home
- awarding custody of the children
- visitation rights of the other parent
- maintenance contributions
- division of the matrimonial property

And what happens if very quick separation is needed?

You can apply for provisional measures to be granted in the settlement proceedings. To do this you must provide proof of the violent actions and the urgency of the application. You can initiate the application before the competent district court yourself or through a lawyer. If possible, take the following documents to the court hearing or the initial meeting with your lawyer:

- evidence (doctor's certificate, report from advice centre etc.)
- details on the reporting of an offence if you have already made one (including earlier ones)
- notes on the history of the marriage (important data and incidents, including violent actions by your husband earlier in the marriage)

Depending upon your applications the judge presiding over the settlement can issue the following temporary rulings without hearing evidence by your husband, i.e. prior to the settlement proceedings:

- award you the home and ban your husband from having access to it,
- award custody of the children to you,
- agree a provisional arrangement on visitation rights or postpone the visitation rights until the court hearing.

A provisional ruling can not be made on the amount of the maintenance (alimony).

The provisional measures only remain in force up to the settlement proceedings. Your husband will then be able to put his case and the court will reach a new decision.

Who gets the house?

The person who is in greater need of it – this is normally the wife because in most cases she is awarded custody of the children. Make an application for the following if you wish to remain in the marital home:

- Moving out date (from a few days up to a two months). If you have grounds for believing that your husband will not wish to leave the home voluntarily ask for the power to evict him through the Statthalteramt.
- Return of all full sets of keys so that your husband cannot enter the house without your consent. Change the locks in the house if you are not certain whether you have been given all the keys and still feel threatened.

If your husband does not leave the home within the agreed period and you have no authorisation to evict him through the Statthalteramt, you must go to the district court with the ruling and demand that your husband be evicted from the home. The eviction order will enable you to go to the Statthalteramt and demand that the eviction order be executed.

Who will the children live with?

The parent who has previously been primarily responsible for the personal care of the children and who can also guarantee that this care will continue. The judge will personally ascertain the best place for the children to be cared for (welfare of the children). Brothers and sisters will normally remain together. Older children, from approx. 12 years, can be asked for their preference at the proceedings.

How often will my husband be allowed to see the children?

The parent who has not been granted custody is entitled to have personal contact with the children. You can reach an agreement with your husband and have this arrangement approved by the judge. If you are unable to reach agreement the judge will normally rule as follows for children at kindergarten: two Saturdays or Sundays per month. For older children: two weekends a month as well as two weeks holiday a year. Make sure that set times are agreed for the hand over and that arrangements are in place for public holidays such as Easter, Whitsun and Christmas.

If your husband also threatens the children, has hit them or abused them, you can demand accompanied visitation rights. Cancellation of the visitation rights in their entirety will only be granted if the children are at serious risk.

What are we supposed to live on?

It can take weeks or months before a legally enforceable decision has been reached on the level of maintenance. To be on the safe side register with the social welfare services. You are entitled to financial support from the state. If you have a joint account or a joint credit card with your husband then

- if possible, draw out sufficient funds to meet your requirements for three months if the account or credit card is in his name and you do not have sufficient savings
- make immediate arrangements to block your husband's right of access if the account or credit card is in his name.

At the settlement proceedings the requirements of both households will be ascertained and deducted from the corresponding income. In most cases the wife, together with the children, will not have sufficient income to meet the expenses. As a general rule, the husband will

have some money left over. The husband's surplus will be allocated to the children and the wife as a contribution towards their maintenance.

If your income is insufficient to secure your needs, even together with the maintenance contribution, then you must go to the social services. Depending upon your situation you may be entitled to unemployment benefit.

Child maintenance contributions (alimony) can be made in advance by the state in the amount of the maintenance contributions agreed under the settlement ruling (maximum of Fr. 650 per child). This does not apply to the wife's maintenance, you will have to go to the social services for this. Your local district debt collection office will collect the money from the party liable to maintenance on your behalf.

Will the separation affect my residents permit?

If you have a residents permit B (staying with the husband) under certain circumstances your permit may be withdrawn after the separation. Contact an advice centre or specialist lawyer or go direct to the Immigration Department to find out details.

What happens at the settlement proceedings?

Contact an advice centre, lawyer or the court to find out about what happens at settlement proceedings.

If you have gone to the court without a solicitor:

- do not sign any settlement if you are uncertain, or
- sign it but make it subject to a 10 day cancellation proviso. Give the settlement agreement to a lawyer to examine it and cancel it if necessary.

Children cannot be taken to settlement proceedings. Set aside half a day and arrange for the childcare in such a way that if the proceedings take longer you are not placed under any stress.

Ask the court in good time to provide an interpreter for the proceedings if German is not your mother tongue.

What can I do if I disagree with a ruling?

If you do not agree with the settlement ruling you must request the reasons for the ruling or submit an appeal within 10 days (see legal appeal at the end of the ruling).

Once these 10 days have elapsed the ruling becomes legally binding and you can only request an amendment if there is a significant change in the situation.

If you return to live with your husband the ruling is automatically rendered null and void.

Wouldn't it be better for me to get an immediate divorce?

A divorce can be obtained at any time if both parties are in agreement. A divorce against the wishes of the spouse can only be obtained following expiry of the stipulated separation period of two years – 4 years up to June 04.

In the event of an irretrievable breakdown in the marriage a unilateral petition for divorce can be filed. There are considerable obstacles to this. Contact an advice centre, a lawyer or the court for information.

Important addresses

Initiation of settlement proceedings/provisional measures:

- District of Zurich: Zurich District Court, Department 5, Settlement Proceedings Judge, Wengistrasse 30, PO Box, 8026 Zurich, Tel. 044 248 20 82
- Other districts: see under «District Court» in the telephone directory
 - Internet address: www.bezirksgericht-zh.ch
 - There is also various reference material on this subject, contact your book store for information

Medical certificates in emergencies:

- Permanence Zurich Central Railway Station, Bahnhofplatz 15, Tel. 044 215 44 44, daily 7–23 hrs.
 - Hospital emergency services

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