

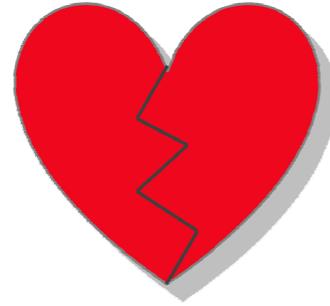
# Til Divorce Do Us Part

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*If 50% of marriages end in divorce, it is likely that at least one if not many happened on your family tree. What records may be available? Where does one look? How does one know to look? What tools can assist in locating divorce records?*

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## Definitions

Divorce is “the legal separation of man and wife, effected, for cause, by the judgment of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties.”<sup>1</sup> In simpler words, divorce is the ending of a marriage with or without the right to remarry.

“An annulment of marriage is maintained on the theory that for some cause existing at the time of the marriage no valid or legal marriage ever existed...It is therefore distinguishable from an action for divorce, which is based on the theory of a valid marriage.”<sup>2</sup> The cause for an annulment may include one party being underage or one party being married to a third party.

A divorce means the marriage was legally valid. An annulment means the marriage was illegal and it is as if the marriage never occurred.

## For Cause

Historically divorces were granted on the basis that one party to the marriage was “at fault.” In some states the only grounds for divorce was adultery. Other states added desertion. Some of the more liberal states included abuse, criminal behavior, indignities, and neglect. With limited grounds available, obtaining a divorce may have required stretching the truth or outright lies.

Historically females and under age individuals could not sue for divorce on their own account. They had to file through a “next friend.” A next friend is “the legal designation of the person by whom an infant or other person disabled from suing in his own name brings and prosecutes an action...”<sup>3</sup> The next friend was usually a relative.

<sup>1</sup> Black’s Law Dictionary, Third Edition, p. 602.

<sup>2</sup> Black’s Law Dictionary, Third Edition, p. 115.

<sup>3</sup> Black’s Law Dictionary, Third Edition, p. 1240.

## **Judgement of a Court**

In the United States, marriages and divorces are governed by state laws. These laws vary by location. To understand your ancestor's divorce records you should research the laws applicable at that time.

Some early divorces were granted by the state legislature. Most divorces were and are granted at the county level. The name of the court may vary over time and between states. Divorce records may be found in the records of chancery courts, civil courts, district courts, family courts, probate courts or others. The state archives, state genealogical society, or state historical society should have online finding aids to identify which courts for what time frame.

The person filing for divorce filed in their state of residence. Residency laws also vary by time and place. The residency requirement could be as little as filing an intent to become a resident or as long as two years or more. Having meet this requirement is usually spelled out in the divorce petition and/or divorce decree.

## **Divorce is messy.**

It may include abandonment and neglect, abuse, addiction, adultery, illegal activity, insanity, second families, and illegitimacy. We should proceed with caution and allow time to process unwanted information. Just as DNA may reveal family secrets so can divorce records.

## **Types of Divorce Records**

The first document created is the divorce petition. It should contain personal information on the couple, their employment, their property, any children involved, and the grounds for divorce.

There may be a court docket book that lists all cases presented to that court. The docket book may include the names of the parties, their attorneys, a list of court actions, and court costs.

If a court case file still exists, it should contain a copy of the petition and final decree. It will also include summons, affidavits, and motions.

The divorce decree is created by the court at the time a divorce is granted. Several items are specified in the divorce decree: the names of the two parties, that the plaintiff met the residency requirements, the date of the marriage, possibly the place of the marriage, the children involved, who was awarded custody, the division of property, and the grounds for the divorce. The grounds for divorce may include detail ones would prefer not to know. This decree can be quite lengthy and may go by different names depending upon the state.

The state may issue a divorce certificate. These will vary by state but should include the date and place of divorce, date of marriage, grounds for divorce, and the two parties.

### **Clues to a Possible Divorce**

- 1) Family stories
- 2) Personal papers
- 3) Census records anomalies
- 4) Marriage records
- 5) Children's birthdates and surnames
- 6) Lack of death records
- 7) Multiple marriage dates

### **Gretna Greens for Divorces<sup>4</sup>**

Just as there are places where it is easy to get married, there are places where it is easy to get divorced. Most of us probably would name Nevada as such a place. It is just one of many. Indian and Oklahoma Territories was very lenient on residency. Indiana during the 1850s and 1860s had liberal divorce laws. Utah Territory only required an affidavit of intent to become a resident. Dakota Territory and South Dakota were divorce friendly. Alabama was a divorce destination during the 1950s and 1960s.

### **Sometimes There Was No Divorce Sometimes No Records Are Found**

Our ancestors may not have gone the legal route. They may have chosen not to show up in court and the judge dismissed the case. The records may not have survived. States may limit our access. It is worth the hunt even if unsuccessful. Writing up where you looked and what you found now will prevent duplication of the same research later.

### **Divorce Indexes**

All of the major genealogical websites have divorce records. Don't ignore indexes at the state and local level. The Knox County Public Library in Knoxville, Tennessee has an online index. The Missouri State Archives hosts "Missouri Judicial Records Historical Database" that includes detailed case summaries for early Missouri divorces. The Oklahoma Historical Society has an index to Oklahoma County divorces.

### **City Directories**

They are a helpful tool in narrowing down the date of a divorce. Take into account that the information is usually six months to a year old at the time of publication.

<sup>4</sup> ExtremeGenes Podcast 162 with The Legal Genealogist.

## Newspapers

When searching online newspapers, remember to search alternate spellings, use wildcards, and verify the dates of interest are actual available online.

Chronicling America from the Library of Congress offers free access to historic newspapers. MyHeritage.com has a digital newspaper collection. The two main subscription sites for newspapers are NewspaperArchives.com and Newspapers.com. Public libraries may offer free access to them. Libraries may also have digital collections of local and regional newspapers. The state historical society may have newspapers on microfilm. If you have Kansas ancestors, see the Kansas State Historical Society newspaper webpage for information on free access.

Newspaper articles on divorces come in many forms. Your ancestor's divorce could have been noted in the legal notices, the court news, the personal ads, or the gossip columns. The county seat is the location to start looking for these articles. Major metropolitan papers may list divorces for multiple counties.

## For Additional Learning:

Freilich, Kay Haviland and William B. Freilich. *Genealogy and the Law: A Guide to Legal Sources for the Family Historian*. Arlington: National Genealogical Society, 2014.

Morton, Sunny Jane and Harold A. Henderson, CG. *How to Find Your Family History in U.S. Church Records: A Genealogist's Guide with Specific Resources for Major Christian Denominations before 1900*. Baltimore: Genealogical Publishing Company, 2019.

Russell, Judy G. multiple blog posts. *The Legal Genealogist*.  
Legalgenealogists.com/blog : 2020.

Rose, Christine. *Courthouse Research for Family Historians: Your Guide to Genealogical Treasures*. San Jose: CR Publications, 2004.

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