

# Divorce in Japan



## **Can Foreign Citizens be Divorced in Japan?**

Yes. Foreign citizens must show evidence that they are able to be divorced in their country of nationality, and that the procedures used in Japan are compatible with those of their home country. If you are station in Japan, you may be able to file for divorce in the state of your legal residence. Getting divorced in the United States will generally be more beneficial than getting a Japanese divorce. On the other hand, you may want to file for divorce in Japan if you do not meet the residency requirements for your state.

There are four types of divorce in Japan:

### **Divorce by Agreement (Kyogi Rikon)**

Japanese law allows for divorce through a simple registration procedure at the ward office. Known in Japanese as "mutual consent divorce" (kyogi rikon), this procedure can be faster and less expensive than going through the Family Court. Since January 1, 1990 Japanese law has allowed "mutual consent divorce" in cases where *at least one spouse is a Japanese national*. It requires both parties to be present, and to be in complete agreement on the terms of the divorce. An application for divorce by mutual agreement should be filed at the city hall where the Japanese citizen's family register is maintained. Once properly filed with the family register, the divorce is final. Be warned, however, that the United States has no procedure for extra-judicial divorce and the legality of this procedure in various U.S. states is uncertain.

### **Divorce by Mediation in a Family Court (Chotei Rikon)**

If neither spouse is Japanese, or if mutual agreement cannot be reached, divorce can be sought in the Family Court. The couple goes to the Family Court to register. Following this, one or more conciliation meeting will be held before a mediator and a judge. The aim of these consultations is to effect reconciliation, or to arrange mutually agreeable terms for the divorce. At least one of the parties must be a legal resident of Japan. The court will require the appearance by both parties for at least one joint hearing. The court advises non-Japanese speakers to bring with them a person who can read and write Japanese to assist them in completing the registration forms. Parties may wish to bring their own translator to the hearings.

### **Divorce by Judgment of a District Court (Saiban Rikon)**

If the family court cannot establish divorce, then either spouse can apply to the District Court in Yokohama for a decision. Application for arbitration in Family Court is a prerequisite. Once the case is decided, the court will issue a certified copy and certificate of settlement, to be attached to the Divorce Registration. This procedure is very costly and time consuming. Americans are better served by seeking a divorce in the US courts rather than using the Japanese District Courts.

### **Is a Divorce Granted by the Family Court Valid in the U.S.?**

A divorce legally granted in one country is generally recognized in the United States as long as the parties were present for the proceeding, at least one party was resident in the country of forum, and recognizing the divorce will not violate a strong public policy of the United States. In order to have your divorce decree enforced in the US, obtain a certified copy of the foreign divorce decree from the court where the divorce decree was issued. Then have the document authenticated for use in the US by requesting the American embassy or consulate place the seal of the embassy or consulate above the seal of the foreign court issuing the divorce decree. Finally, obtain a certified English translation of the divorce decree.

### **How is the Custody of Children Determined?**

The general practice is to award custody to the mother unless there is an overriding reason to award custody to the father. Nationality of the child is not considered crucial in the determination of which parent will assume custody. A foreign child custody agreement cannot be automatically enforced in Japan, although the court can order enforcement. In the case of parental kidnapping from the U.S. to Japan, the custodial parent can apply through the court in Japan to require the return of the child to the United States. Alimony is not usually awarded in Japan, but a lump sum payment in settlement of marital obligations is common.

### **What Documents Are Required to Apply For Divorce?**

- The application form, available free from the Family Court.
- A copy of the marriage certificate.
- Abstract of United States state law pertaining to divorce (only if neither spouse is Japanese). The Martindale-Hubble Law Digest, available at the Tokyo American Center Library, provides an abstract of each United States state divorce law. A copy of the page of that volume pertaining to the U.S. citizen's particular state, with a translation, meets this requirement.
- A copy of certificate of alien registration for non-Japanese parties.



- If the couple has a minor child, the birth certificate of the child must be presented.
- The court may also request copies of the birth certificates or passports of the parties to the divorce.
- Japanese citizens must normally present a copy of family register and certificate of residence (juminhyo).

All English language documents must be translated into Japanese.

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***Divorce in Japan** is distributed by the Camp Zama Legal Assistance Office, located in Building 101, Room CE209. Our office hours are 0830 to 1630 Monday, Tuesday, Thursday and Friday. On Wednesday, our hours are 0830 to 1500. You may call for an appointment at DSN 262-4698/commercial 046-407-4698.*