



What the Law Put Asunder: Divorce in America

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Researching divorced couples comes with a unique set of challenges. The parties, their families, or both may not acknowledge the dissolved marriage. Each state sets its own laws regarding divorce; whether to allow it at all, for what reasons, and how to prove their case to a lawmaker or the courts. To complicate matters, couples could leave their home state to get their divorce elsewhere, expanding the potential location of the records exponentially. An understanding of the laws in effect in the places and times your ancestors lived is key to locating divorce records.

Evidence of Marital Status & Divorce

Marriage records. Marriage licenses record the legal names of each party. Therefore, a woman's first marriage will list her maiden name, and a subsequent marriage will probably list her by her prior married name. Some marriage licenses list the number of the marriage for the groom and the bride, and some list how the previous marriage ended (death of spouse or divorce). If a woman's maiden name was restored during her divorce, the subsequent marriage record will list that name.

Census Records. Federal and state census records captured information about marital status. Most times, the informant is unknown, so the status might be inaccurate. Divorced women, especially those with children, might continue to say they are married or start presenting themselves as a widow. The 1910 census specifically asked for the number of the current marriage; an M2 means 2nd marriage. Individuals listed as "married" but living apart from their spouse may have actually separated or divorced.

Land records. The seller might be "John Doe" or "John Doe and Jane, his wife." Either way, look for a dower release. If there's no release, it suggests the wife is deceased, or the couple divorced. If the court awarded real estate to either party, look for quit-claim deeds. If you find a quit-claim deed from one spouse to another, the release of interest in real property might be the result of a divorce.

Newspapers. Check vital records sections, social columns, legal notices, and even the classifieds for the marital couple. Pay particular attention to notices about upcoming court cases, declarations that one spouse has deserted the other, and obituaries.

Other. Many records asked the individual to declare their marital status; military draft cards, benefits applications, and pension applications, to name a few. An individual recorded as divorced strongly indicates a case exists somewhere.

Types of Divorce

Absolute Divorce: *divorce a vinculo matrimonii*. A complete legal dissolution of the marriage. Often, remarriage is then possible, and women can petition the court to restore her maiden name.

Divorce from bed and board: *divorce a mensa et thoro*. The equivalent of the modern-day separation; the couple no longer cohabitates, but the legal fact of the marriage is in place. Neither party may remarry. Women might be granted a decree of *feme sole*, restoring her legal rights as if she was not married; including controlling money she earned, entering into contracts, and completing land transactions.

Getting Divorced

All U.S. states that made provision for divorce required a reason. The most commonly allowed grounds for divorce are: adultery, desertion, cruelty (including physical abuse), felony conviction, and alcoholism. The first state to allow “no-fault” divorce was California, when Governor Ronald Reagan signed the Family Law Act in 1969, which went into effect on January 1, 1970.

Each state also required the petitioner to be a resident of the state prior to filing for divorce; however, the minimum residency requirement varied wildly. In 1961, Massachusetts had a five-year residency requirement, while Nevada required only six weeks. Your couple might have moved temporarily to get their divorce, then returned “home,” stayed where they were, or both. Consider their financial resources and occupations, then, check city directories and newspapers. Even mortgage agreements.

Remarriage

After an absolute divorce, either party may remarry, depending on the specific laws of the time and place. Exceptions may include: barring of an adulterous spouse from remarriage or an imposed waiting period before a new marriage can occur.

Strategy

1. What evidence do you have that a divorce is likely?
2. Create a timeline.
3. Where did your couple live between their marriage and possible divorce?
4. Check the state statutes for the time and place.
 - a. What court could grant a divorce?
 - b. Could they have appealed to the state legislature for the divorce?
 - c. What were the requirements to get a divorce? Grounds and residency.
5. If your couple lived in a place where they could not get a divorce, what were the laws in the state “next door,” or closest divorce mecca?

Bibliography & Resources

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