



THE EFFECTS OF THE DISSOLUTION OF MARRIAGE WITH REGARD TO NON-PATRIMONIAL RELATIONS BETWEEN SPOUSES

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Abstract: *In terms of non-patrimonial relations, divorce produces the following effects between the spouses: a) termination of the status of spouse, which means that they may remarry, under the conditions of the law, each to another person or may even remarry each other; b) termination of the obligation of moral support; likewise, upon termination of the status of spouse, the obligation of fidelity, the conjugal obligation and the obligation of cohabitation between the former spouses no longer arise; c) each spouse may choose to retain the name borne during the marriage or to revert to the name borne previously, the court taking note of this manifestation of will by the divorce judgment [Art. 383 para. (1) Civil Code, as amended by Law No. 57/2026]; if the spouses do not choose the name they will bear after divorce, each of the former spouses will retain the name borne during the marriage [Art. 383 para. (2) Civil Code, as amended by Law No. 57/2026]; d) the spouse against whom the divorce was pronounced loses the rights attributed to him or her by law or by agreements previously concluded with third parties [Art. 384 para. (2) Civil Code].*

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1. Introduction

The dissolution of marriage represents the measure of definitive separation of the spouses, adopted under the conditions of the law. The legal means by which the dissolution of marriage is carried out is divorce.¹

In accordance with the provisions of Art. 373 Civil Code, marriage may be dissolved by divorce in the following cases:²

¹ D. Lupașcu, C.M. Crăciunescu, *Family Law*, 4th Edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2021, p. 286.

² Law No. 287/2009 on the Civil Code, republished in the Official Gazette No. 505 of 15 July 2011, as subsequently amended and supplemented.



- a) by agreement of the spouses, at the request of both spouses or of one spouse accepted by the other spouse;
- b) when, due to well-founded reasons, the relations between the spouses are seriously impaired and the continuation of the marriage is no longer possible;
- c) at the request of one of the spouses, following a de facto separation that has lasted at least 2 years;
- d) at the request of the spouse whose state of health makes the continuation of the marriage impossible.

According to Art. 382 para. (1) Civil Code, the marriage is dissolved on the day when the judgment by which the divorce was pronounced became final.

If the divorce action is continued by the heirs of the claimant spouse, the marriage is deemed dissolved on the date the divorce application was filed [Art. 926 para. (4) Code of Civil Procedure].

In the situation provided for in Art. 375 Civil Code concerning divorce by agreement of the spouses through administrative proceedings or by notarial procedure, the marriage is dissolved on the date of issuance of the divorce certificate [Art. 382 para. (3) Civil Code].

On the date of dissolution of the marriage, the effects of the marriage between the spouses cease, with the exception of the matrimonial regime, which ceases on the date the divorce application is filed or on the date the de facto separation begins.³

2. Effects of divorce with regard to non-patrimonial relations between former spouses

2.1. Termination of the legal status of married persons

As a result of divorce, the former spouses acquire a new civil status: from married persons they become divorced persons, with all the legal consequences arising from this civil status. Thus, they may remarry, each to another person or may even remarry each other, without any period of time being required to elapse between the date of dissolution of the marriage and the date of conclusion of a new marriage.⁴

2.2. Termination of reciprocal rights and duties

Upon termination of the status of spouses, the obligation of moral support, whose legal and moral basis was constituted by the marriage, also ceases, as do the duties of fidelity, of living together, the conjugal obligation, as well as all the other personal rights and duties of the spouses provided for by law.⁵

2.3. Capacity to exercise rights

According to Art. 272 para. (2) Civil Code, for well-founded reasons, a minor who has reached the age of 16 may marry on the basis of a medical opinion, with the consent of his or her parents or, as the case may be, guardian, and with the authorization of the guardianship court within whose territorial jurisdiction the minor has his or her domicile.

The Civil Code provides, in Art. 39 para. (1), that the minor acquires full capacity to exercise rights through marriage.

The minor who acquired full capacity to exercise rights by entering into marriage before reaching the age of 18 does not lose this capacity if the marriage is dissolved by divorce before that

³ B. Florea, V.T. Florea, *Family Law and Civil Status Records*, Hamangiu Publishing House, Bucharest, 2019, p. 122.

⁴ D. Lupulescu, A.-M. Lupulescu, *Marriage and Its Effects*, Universul Juridic Publishing House, Bucharest, 2019, pp. 265-266.

⁵ Idem, p. 266.



minor has reached the age of 18, because the Civil Code contains no legal provision whose interpretation would lead to the contrary solution, and the termination of full civil capacity to exercise rights is exclusively a matter of law.⁶

2.4. Surname after the dissolution of marriage

The dissolution of marriage by divorce can have an effect on the spouses' surnames only in those cases in which the conclusion of the marriage resulted in a change to the surname of one or both spouses.⁷

As part of the formalities necessary for the conclusion of marriage, according to Art. 281 para. (1) Civil Code, the future spouses shall state in the declaration of marriage the surname they will bear during the marriage.⁸

Art. 282 Civil Code provides that the future spouses may agree to retain their surnames from before the marriage, to take the surname of either of them, or their combined surnames. Likewise, one spouse may retain his or her surname from before the marriage, while the other may bear their combined surnames.

Therefore, with regard to the marital surname, the future spouses must choose one of the alternatives exhaustively provided for by Art. 282 Civil Code: either different surnames, by each spouse retaining the surname borne before the conclusion of this marriage; or a common surname, which may be that of one of the spouses or their combined surnames; or an intermediate option, namely that one spouse retains the surname from before the marriage while the other bears their combined surnames. The choice shall be made taking into account the current surname of each of the future spouses, irrespective of the manner or time in which it was acquired or established, modified or changed according to the distinctions in Arts. 84-85.⁹

By Law No. 57/2026 amending Law No. 287/2009 on the Civil Code, the legal regime of the surname borne after divorce was substantially amended.¹⁰

According to Art. 383 para. (1) Civil Code, as amended by Law No. 57/2026, upon dissolution of the marriage by divorce, each spouse may choose to retain the name borne during the marriage or to revert to the name borne previously. The court takes note of this manifestation of will by the divorce judgment.

Therefore, the option belongs individually to each spouse, so that they may have different choices regarding the name they will bear after divorce.

One of the former spouses may retain the name acquired during the marriage, while the other may revert to the name borne before the marriage. Likewise, both former spouses may choose to retain the name borne during the marriage.

According to Art. 383 para. (2) Civil Code, as amended by Law No. 57/2026, if the spouses do not choose the name they will bear after divorce, each of the former spouses will retain the name borne during the marriage.

⁶ See A. Gherghe, *The Effects of Marriage with Regard to Personal Relations between Spouses*, in *The New Civil Code. Studies and Commentaries, Vol. I, Book I and Book II (Arts. 1-534)*, by M. Uliescu (coord.), M. Duțu, M. Uliescu, B. Pătrașcu, S. Neculaescu, I. Dojană, T. Țiclea, F. Pavel, R. Dimitriu, L. Uță, I. Boți, Gh. Buta, S. Angheni, I. Urs, S. Cristea, D. Dobrev, D. Lupașcu, C.-M. Crăciunescu, A. Gherghe, C. Jora, M.G. Berindei, Universul Juridic Publishing House, Bucharest, 2012, p. 714.

⁷ E. Chelaru, *Civil Law. Persons*, 3rd Edition, C.H. Beck Publishing House, Bucharest, 2012, p. 95.

⁸ A. Gherghe, *op. cit.*, p. 711.

⁹ E. Florian, *Family Law*, 4th Edition, C.H. Beck Publishing House, Bucharest, 2011, p. 37.

¹⁰ Published in the Official Gazette No. 364 of 30 April 2026.



The provisions of Art. 383 Civil Code concerning the surname after divorce apply accordingly also in the case of divorce by agreement of the spouses through administrative proceedings or by notarial procedure, according to Art. 376 para. (5), first sentence, Civil Code.¹¹

In the divorce judgment, the court shall state the surname that each of the former spouses is to bear. In the case of divorce through administrative proceedings or by notarial procedure, the civil status officer or, as the case may be, the notary public shall record in the divorce certificate the surname that each of the former spouses will bear after divorce.

2.5. Rights of the divorced spouse

According to Art. 384 para. (1) Civil Code, the divorce is deemed to have been pronounced against the spouse through whose exclusive fault the marriage was dissolved. Paragraph (2) of the same article provides that the spouse against whom the divorce was pronounced loses the rights attributed to him or her by law or by agreements previously concluded with third parties.

Among the rights attributed by law that the spouse exclusively at fault for the dissolution of the marriage will lose are the maintenance obligation between former spouses (Art. 389 Civil Code) and the compensatory benefit (Art. 390 Civil Code). Among the rights attributed by agreements previously concluded with third parties is also the allocation of the benefit of the lease agreement (Art. 324 Civil Code), so that the spouse exclusively at fault may lose the benefit of the lease agreement for the common dwelling.¹²

These rights, according to Art. 384 para. (3) Civil Code, are not lost in the case of shared fault or divorce by agreement of the spouses.

¹¹ See Art. 376 para. (5), first sentence, Civil Code, read in conjunction with Art. 383 Civil Code. Art. 376 Civil Code was amended by Law No. 57/2026 amending Law No. 287/2009 on the Civil Code.

¹² See P. Neculae, D. Popa, R. Cîrlig, *Dissolution of Marriage by Divorce*, Universul Juridic Publishing House, Bucharest, 2014, p. 50.



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