

# Unhappy with the Terms of Your Divorce Decree? You Have Options

**Q: The court has issued a “decree of divorce” (a decision to terminate my marriage), and I am unhappy with the terms of the decree. Is there anything I can do?**

**A:** Yes. If a judge (as opposed to a magistrate) issued the decree, you have the right to file an appeal and/or a motion for relief from judgment. If a magistrate issued the decree, you must first file objections to the magistrate’s decision. You cannot appeal a magistrate’s decision without first filing objections.

**Q: A magistrate issued the decree. When must I file objections to the magistrate’s decision?**

**A:** You must file written objections to a magistrate’s decision within 14 days of the file date of the magistrate’s decision. If you file objections, your former spouse may also file objections within 10 days after you file your objections.

**Q: How do I file my objections?**

**A:** Your objections must be in writing and specific, and you must provide a detailed account of the errors you believe exist in the magistrate’s decision. You must submit your objections to the court along with a trial transcript.

**Q: What happens after I file written objections to the magistrate’s decision?**

**A:** The court has the option to adopt, reject, or modify the magistrate’s decision with or without an evidentiary hearing.

**Q: What happens if I want to appeal a divorce decree that a judge has issued?**

**A:** You must file your appeal within 30 days of the file date of the decree. Also, you must follow the particular appellate court’s rules for “perfecting” your appeal. Each appellate court has its own rules for “perfecting” an appeal, and they must be strictly followed or you run the risk of having your appeal dismissed. Typically, you must file a notice of appeal with the decree attached, along with a docketing statement, a “praecipe” (a written order asking the clerk to transmit the trial record), and a notice that the trial transcript has been ordered. Also, you must order the trial transcript. At the time you file these documents, you must pay a filing fee.

**Q: What happens after I file the notice of appeal, the docketing statement, a praecipe, and notice that the trial transcript has been ordered, and I have ordered the transcript?**

**A:** The court will issue a notice to the parties that the record of appeal has been filed. The notice should contain deadlines for the parties to submit their appellate briefs, but the briefs are otherwise due 20 days after the notice is mailed. In the brief, you will give a short rendition of the facts, and

your arguments about why the trial court's decision should be reversed. Your former spouse also will have an opportunity to submit a rendition of the facts and arguments as to why the trial court's decision should be affirmed. After you and your spouse have submitted your briefs, you may have an opportunity to present your arguments orally to a panel of three appellate judges.

**Q: Aside from an appeal, are there any circumstances under which a court's decision may be changed?**

**A:** Yes. The court's decision may be changed in response to your "motion for relief from judgment" even after the appeals process. You may file a motion for relief from judgment if there has been: 1) a mutual mistake shared by both parties about a relevant fact in the case, an inadvertent failure to pay careful attention to the divorce proceeding where your rights were affected, a surprise that you could not have protected yourself against with ordinary care, or neglect that is excusable under the circumstances; 2) newly discovered evidence that could not have been discovered in time to move for a new trial; 3) fraud, misrepresentation, or other misconduct by the other party; 4) another reason that justifies a change in the decision; or 5) another reason that justifies a change in the decision.

**Q: When must I file a motion for relief from judgment?**

**A:** Your motion must be filed within a reasonable time, and for reasons 1), 2), and 3) above, not more than one year after the filing date of the decision. For the fourth and fifth reasons, there is no pre-determined amount of time.

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*This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by Allison K. Tracey, Esq., who is with the Columbus law firm of Collins & Slagle Co., LPA.*

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