



The Marital Settlement Agreement

What you'll find in this chapter:

- About your Marital Settlement Agreement
- Sample Marital Settlement Agreement
- Other factors to consider
- Provisions you may add to your Agreement
- The Financial Affidavit

This is an easier step in the divorce process because the hard negotiations are behind you. The Marital Settlement Agreement simply reduces to writing what you and your spouse have agreed upon.

It must be remembered that for the agreement to be approved by the court, the court must agree the interests of the minor children are properly protected in terms of custody, visitation and support. The court must also believe the agreement is basically fair and neither party used fraud, coercion or threat in reaching agreement.

No two agreements are identical, of course, nor does the agreement have to be complex.

A sample Marital Settlement Agreement is as follows:

Sample Marital Settlement Agreement

WHEREAS, it is the desire and intentions of the parties to settle by agreement all of their marital affairs with respect to property, financial matters, [spousal support or maintenance (use if applicable)] [and all issues relating to their children, including custody, visitation, and child support (use if applicable)].

NOW, THEREFORE, in consideration of the premises and the mutual promises and undertakings herein contained, and for other good and valuable consideration, the parties agree to the following:

I. SEPARATION:

The parties agree to permanently live separate and apart from the other party, free from any control, restraint, or interference, direct or indirect, by the other party, and in all respects to live as if he or she were sole and unmarried.

II. DIVISION OF PROPERTY:

1. Husband transfers to Wife as her sole and separate property the following:

1. 1990 Mustang LX
2. All furniture, furnishings, household goods located at: 1300 Somewhere St, Anytown, SomeState 00001.
3. \$3,000 of the total value of \$7,000 of the parties' bank account located at:
1st National Bank, 123 Gold Ave, Anytown, SomeState 00001
Account No. 1234

2. Wife transfers to Husband as his sole and separate property the following:

1. Husband's IRA which is valued at \$10,000.
2. Husband's pension which is valued at \$25,000.
3. \$4,000 of the total value of \$7,000 of the parties' bank account located at:
1st National Bank, 123 Gold Ave, Anytown, SomeState 00001
Account No. 1234

Sample Marital Settlement Agreement

III. DIVISION OF DEBTS:

1. Husband shall pay the following debts and will not at any time hold Wife responsible for them, and shall indemnify Wife from any liability on same:

1. Citibank VISA account No. 67356677
2. Ford Motor Credit account No. 90562

2. Wife shall pay the following debts and will not at any time hold Husband responsible for them, and shall indemnify Husband from any liability on same:

1. Citibank MasterCard account No. 33627812

IV. ALIMONY - [Choose one of the following]:

1. Both parties hereby agree to waive any rights or claims that either may now have or in the future to receive alimony, maintenance, or spousal support from each other. Both parties understand the full import of this provision.

2. Monthly payments - The husband shall pay to wife for his/her support and maintenance the sum of \$ 600 per month/week. This sum shall be payable on the first day of each and every month, commencing on July 1, 1992 (year). Said sum will continue until [choose any or all of the following]: (a) the date that either party dies; (b) the date that the receiving spouse remarries; or (c) any other specific date that both of you agree on. Both parties intend that the amount and duration of the payments may not (may or may not) be modified by a court in the future.

3. Lump sum payment - The parties hereby agree that in full payment of any claims or rights to alimony, spousal support, or maintenance the _____ shall pay to _____ the sum of \$ _____, which shall be payable on _____, _____ (year).

Sample Marital Settlement Agreement

V. CHILD CUSTODY AND VISITATION - [Choose one of the following]:

1. The parties agree that it is in the best interest of the child(ren) that the _____ have sole physical and legal custody of the child(ren). We further agree that the custodial parent will make the major decisions regarding the care and upbringing of said child(ren). However, the other parent has the right to be notified of any major decisions. The parties also agree to share in an equitable fashion the child(ren)'s birthday, holidays, and all vacations. Furthermore, the parties agree to allow the other parent to have a frequent and liberal visitation with the child(ren).

[Optional] - If the parties cannot agree on future visitation, then the _____ will have the right to be with the child(ren) as follows: (Draft a schedule i.e., vacation periods which the child(ren) will spend with the non-custodial parent.)

2. The Husband and Wife shall share joint legal custody for the minor child(ren). Both parents shall retain full parental rights and responsibilities. Both parents shall confer with one another so that major decisions affecting the best interests and welfare of the child(ren) may be determined jointly, where reasonably possible. We further agree that _____ wife _____ shall have sole physical custody of the child(ren).

Each party shall have full access to the child(ren)'s medical, dental, or school records. The parties shall consult with one another with regards to all medical and educational matters including religious education and training.

The parties also agree to share in an equitable fashion the child(ren)'s birthday, holidays and all vacations. Furthermore, the parties agree to allow the other parent to have a frequent and liberal visitation with the child(ren). The non-custodial parent will have the right to be with the child(ren) at least, but not limited to, as follows: (Note: make a detailed schedule).

VI. CHILD SUPPORT:

Subject to the power of the court to modify these terms, _____ husband _____ shall pay to _____ wife _____ as and for child support, the sum of \$800 _____ per month/week. This sum shall be payable on the first day of each and every _____ month _____ commencing on _____ July 1 _____, 1992 (year). Said sum shall continue until the child(ren)

Sample Marital Settlement Agreement

shall have married, died, become self-supporting, or reach the age of eighteen. [Furthermore, if the parent obligated to pay said support receives an increase in salary or income in the future, the amount of child support shall increase proportionately.] Said sum shall be reduced by \$ 800 (or shall be reduced proportionately) for each child to reach the age of eighteen or otherwise emancipated.

The parties agree that the husband will carry and maintain life insurance naming the child(ren) as irrevocable beneficiary(ies). Said life insurance is in the amount of \$ 40,000.

Furthermore, it is agreed that husband will carry and maintain adequate health, dental, and hospitalization insurance for the child(ren)'s benefit. The husband shall each year transmit to the wife evidence of payment showing that such dues, premiums and assessments have been paid.

VII. NECESSARY DOCUMENTS

The parties agree to execute and deliver to the other party any documents that may be reasonably required to accomplish the intention of this instrument and shall do all other necessary things to this end.

VIII. INCOME TAX:

For the year _____ the parties hereto shall file separate income tax returns. Each party hereto shall receive the refund or pay additional taxes based on his or her separate income.

[Or] The parties agree to file a joint income tax return for the year _____. In the event that there is a credit of any tax payment the husband shall pay the wife (1/2, 1/3) of any tax payments.

[Use if child(ren) are involved.] The parties agree that the husband may claim the federal dependency tax exemption for the child(ren).

Sample Marital Settlement Agreement

IX. SUBSEQUENT DISSOLUTION OF MARRIAGE:

It is agreed that this Agreement may be offered into evidence by either party in any dissolution of marriage proceeding, and if acceptable to the Court, this Agreement shall be incorporated by reference in any Final Judgment that may be rendered. However, notwithstanding incorporation in the Final Judgment, this Agreement shall not be merged in it but shall survive the Final Judgment and be binding on the parties for all times.

X. REPRESENTATION:

The parties represent to each other:

- (a) Each had the right to independent counsel. Each party fully understands their legal rights and each is signing this Agreement freely and voluntarily, intending to be bound by it.
- (b) Each has made a full disclosure to the other of his or her current financial condition.
- (c) Each understands and agrees that this Agreement is intended to be the full and entire contract of the parties.
- (d) Each agrees that this Agreement and each provision of it is expressly made binding upon the heirs, assigns, executors, administrators, successors in interest and representatives of each party.

XI. CHANGE OF NAME:

The parties agree that the Wife may have her name changed or restored to:

XII. WAIVER OF BREACH:

No waiver of any breach by any party of the terms of this Agreement shall be deemed a waiver of any subsequent breach.

XIII. ENFORCEMENT OF AGREEMENT:

Both parties agree that the Court granting the divorce, at the request of either party, insert in the Final Judgment a reservation of jurisdiction for the purpose of compelling either party to perform this Agreement, or any part thereof. The prevailing party shall be entitled to attorney's fees in connection with such proceedings.

Sample Marital Settlement Agreement

Signed in the presence of:

Wally Witness

Richard Public
Husband's Signature

Jan Witness
Witnesses for Husband

State of SomeState)

County of SomeCounty)

On May 15, 1992 before me, Nick Notary, personally appeared Richard Public and Jane Public personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Nick Notary
Signature of Notary

Affiant Known Produced ID
Type of ID _____
(Seal)

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM THEY MUST FILL IN THE BLANKS BELOW (fill in **all** blanks):

I (name of nonlawyer) Joe Friend, nonlawyer located at (street) 20 Main Street (city) AnyCity (state) AnyState, (phone) 666-5555 helped (name) Richard Public who is the [one only] petitioner or respondent, fill out this form.

Additional terms

You'll note there are several additional marital settlement provisions that may be included in the Agreement:

- how you and your spouse will handle the filing of tax returns for the current year (singly, jointly)
- whether support will include camp or college
- whether the wife wishes to—and can—resume her maiden name
- what the children's surname shall be
- which spouse may claim the federal dependency tax exemption for the minor children
- that the agreement shall survive the divorce and be enforceable in any court of jurisdiction
- that both spouses agree to the terms of the agreement
- that the financial statements are accurate
- that both spouses acknowledge rights to independent counsel
- that both spouses will sign all documents and undertake all acts contemplated under the agreement
- that the agreement shall be binding upon personal representatives



If you have considerable property or lack confidence that you can adequately prepare your own agreement, then you may want to have a lawyer handle this part of the divorce.

The Financial Affidavit



Some states require both spouses to file a Financial Affidavit as part of the agreement. Its purpose is to allow the court to determine the reasonableness of the agreement and whether child support is fair and equitable given the financial circumstances of the parties.



Some states mandate use of their specific Financial Affidavit forms which are available from the clerk of the divorce court. Many other states allow you to submit the information using any format—provided the information is reasonably detailed and understandable. It is your responsibility in either instance to make sure your Financial Affidavit is as accurate as you can reasonably make it.

A sample of the Financial Affidavit found in this guide is as follows:

Sample Financial Affidavit

FINANCIAL AFFIDAVIT

State of SomeState)
County of SomeCounty)

On May 15, 1992 before me, Nick Notary, personally appeared Richard Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument and was sworn and says that the following statement of affiant's income, assets and liabilities is true:

Occupation Accountant
Employed By ABC Corp.
Business Address 1234 Evergreen Blvd, Anytown, SomeState 00002
Pay Period Weekly
Rate of Pay 650/week
Social Security # 123-45-6789

ITEM 1: INCOME (Averaged on Weekly basis):

Average GROSS Wage	\$ <u>650</u>
Less Deductions	
Federal Income Tax	\$ <u>150</u>

Sample Financial Affidavit

ITEM 4: AVERAGE MONTHLY EXPENSES

Household:

Mortgage or rent payments \$ 325/month
Food and grocery items \$ _____
Utilities \$ _____

Automobile:

Gasoline and oil \$ 60/month
Repairs \$ _____
Insurance \$ 55/month

Children's Expenses:

Clothing \$ 100/month
Medical, dental, prescriptions \$ 50/month
School supplies \$ 150/school yr
Other expenses:
_____ \$ _____

TOTAL AVERAGE MONTHLY EXPENSES \$ 740/month

Richard Public
Affiant's Signature

Affiant Known Produced ID

Type of ID _____

WITNESS my hand and official seal.

Signature Nick Notary
Signature of Notary

(Seal)



Preparing the paperwork for court

- The documents you will need
- The nature of the hearing
- The Judgement of Divorce

With your Marital Settlement Agreement completed, you and your spouse can next prepare the divorce papers that must be filed in court.

Each state sets its own procedures for processing divorce cases. Counties within a state may also adopt slightly different procedures than those followed in other counties. The process described in this book follows the more common procedures found in an overwhelming number of states.

Accordingly, while this guide gives you the information needed to prepare your divorce papers in compliance with the rules in most states, there may be specific requirements you must follow in your state. Most of the specific requirements for your state can be found in the Appendix. ***It is advisable to check with the clerk of your local divorce court for the requirements of that court.***



General requirements

Legal documents must be prepared following certain rather uniform procedures and standards. These instructions apply to all documents in your divorce whether filed in court or not.

- Use 8-1/2" x 11" white typing paper. Some states still use 8-1/2" x 14" legal bond paper, and this document size should be used in these states. Some courts also require a "blue backer."



File original documents with the court. Make additional copies for your files and for your spouse.

Check with the clerk of your court for specific requirements. All documents should be neatly typed double-spaced on one side only. Be sure to number each page. Photocopies of the forms in the back of this guide may be submitted to the court, but should be printed on one side only.

- Make certain that all documents are properly completed, signed and notarized, where required. Do not leave any blanks.
- Keep all documents in one file, and bring it with you to court.

Specific state requirements

In the Appendix you will find specific document preparation instructions for your state. Each state has a slightly different format and verbiage that it uses on its court papers and to caption documents. Unless you comply with local rules, the court clerk will not accept your documents for filing. ***Be sure to check with the clerk of the court regarding caption requirements in your area before filing any documents.***



The documents you will need

Besides your Marital Settlement Agreement and Financial Statements, the various documents needed to actually process the divorce are the following:

note Each additional required form should be available from the clerk of the divorce court or other local sources.

- Divorce Complaint or Petition
- Appearance, Consent and Waiver
- Child Custody Jurisdiction Form
- Final Judgment of Divorce/Decree of Dissolution of Marriage

- Certificate of Corroborating Witness
- Certificate of Divorce or Marriage Dissolution

note

Other forms may be required under local rules. Several states, for instance, require supplemental financial information concerning child support. California courts routinely require couples to sign marriage counseling waivers. Still other states have special forms for the assignment of wages to pay child support.

In addition, some states still require a summons or citation to formally serve the divorce papers upon the respondent spouse. The Divorce Complaint or Petition would be served together with the citation after the original complaint has been filed with the court.

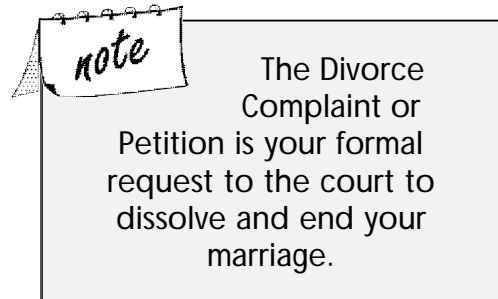
note If you and your spouse are proceeding cooperatively with an uncontested divorce, it should not be necessary to actually serve your spouse, and therefore there should be no need for the citation or summons.

In an uncontested divorce, the respondent spouse (or both spouses) may sign and file an *Appearance, Consent and Waiver*, which is explained more fully in this chapter, rather than employing a summons or citation.

The Divorce Complaint or Petition

The principal divorce document is the Verified Divorce Complaint or Petition. The Appendix will show you how to properly caption the Complaint/Petition. The contents of your Complaint will, at the least, include:

- the full names and social security numbers of both spouses
- your address and the length of time you and your spouse resided in the county and state where the divorce is filed
- the date and place of your marriage
- the date you and your spouse separated
- the age, occupation and employment of both spouses
- the names and birth dates of any children
- the grounds for divorce



Sample Divorce Complaint or Petition

In the Circuit Court for SomeCounty County, State of SomeState

In re: The Marriage of:)
Jane Public)
Petitioner)
)
and) Case No: [Given by Court
Richard Public) Clerk]
Respondent)
and in the interest of:)
Carl Public)

Verified PETITION FOR DISSOLUTION

1. This is a petition of dissolution from the bonds of matrimony between Jane Public, Petitioner, and Richard Public, Respondent.
2. The Petitioner is a resident of SomeState and has been for more than 6 months immediately prior to filing this Petition and has resided in the County of SomeCounty for at least 1 year.
3. The Respondent has agreed to file an Answer and Affidavit in Support of Final Judgment. No service of process is necessary at this time.
4. Neither party is currently an active member of any branch of the Armed Services.
5. The parties were married to each other on July 15, 1980 in the state of SomeState and have been separated since April 1, 1992.

Sample Divorce Complaint or Petition

6. Choose one of the following:

a. No children were born to or adopted by the parties of the marriage and none are expected.

b. There was/were 1 child(ren) born as issue to this marriage, to wit: (name and date of birth)

1. Carl Public, 4/22/84

2. _____

3. _____

7. _____

The Petitioner seeks a Final Judgment on the grounds of:

Irreconcilable differences

8. The parties have made provisions for the division of their property and payment of their joint obligations, they have signed a Marital Settlement Agreement and they are satisfied with those provisions. Their signed Financial Statements are attached and incorporated by reference. Each party certifies that the Marital Settlement Agreement and Financial Statements were signed without duress, force or collusion. (The Marital Settlement Agreement is attached and marked as Exhibit A.)

9. The Respondent hereby waives any rights to findings of fact and conclusions of law, a record of testimony, motion for a new trial, notice of entry of Final Judgment or Decree, and the right to appeal, but does not waive any rights to the future modification of any judgment or decree in this cause.

10. The marriage is irretrievably broken and any continuance of these proceedings will not result in a reconciliation.

Wherefore, the Petitioner respectfully asks and prays that the court:

1. Take jurisdiction of the parties and subject matter.

2. That a Final Judgment be granted by the court dissolving the marriage between the parties.

3. That all of the terms and conditions of the parties' Marital Settlement Agreement, which is attached, be approved and be incorporated, and made part of a Final Judgment.

Sample Divorce Complaint or Petition

and that the court enforce the Marital Settlement Agreement. Regardless, the Marital Settlement Agreement shall survive.

4. That the court award the parties any other further relief as may be just and equitable.

Dated this 15th day of May, 1992.

Jane Public
Wife's Signature

VERIFICATION

Address: 1300 Somewhere St
Anytown, SomeState 00001

Phone: (123)456-7890

State of SomeState)

County of SomeCounty)

I, Jane Public, being duly sworn, depose and say that: I am the
Petitioner/~~Respondent~~ in the within action for divorce; I have read the foregoing ~~Complaint~~ Petition
and know the contents thereof; the contents of the ~~Complaint~~ Petition are true to my knowledge,
except as to those matters therein stated to be alleged upon information and belief, and as to those
matters, I believe them to be true.

Jane Public
Wife's Signature

On May 20, 1992, before me, Nick Notary, personally
appeared Jane Public, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Nick Notary
Signature of Notary

Affiant Known Produced ID
Type of ID _____

Sample Divorce Complaint or Petition

Richard Public

Husband's Signature

Address: 200 Elsewhere AveSomewhere, SomeState 00002Phone: (987)654-3210

VERIFICATION

State of SomeState)County of SomeCounty)

I, Richard Public, being duly sworn, depose and say that: I am the ~~Petitioner~~/Respondent in the within action for divorce; I have read the foregoing ~~Complaint~~/Petition and know the contents thereof; the contents of the ~~Complaint~~/Petition are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Richard Public

Husband's signature

On May 20, 1992 before me, Nick Notary, personally appeared Richard Public personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Nick Notary
Signature of NotaryAffiant Known Produced IDType of ID _____
(Seal)**IF A NONLAWYER HELPED YOU FILL OUT THIS FORM THEY MUST FILL IN THE BLANKS BELOW** (fill in **all** blanks):

I (*name of nonlawyer*) Joe Friend, nonlawyer located at (*street*) 20 Main Street
(*city*) AnyCity (*state*) AnyState, (*phone*) 666-5555 helped (*name*)
Jane Public who is the [**one only**] petitioner **or** respondent, fill out this form.)

Answer and Affidavit in Support of Final Judgment or Decree

As indicated earlier, this form can be used by both you and your spouse to avoid formal service by summons. Ask the clerk of court if a summons will be required even though your spouse files a written waiver in the Answer and

Affidavit. The summons may be available from the clerk's office. If not, you may usually obtain a summons form at your local stationery store. Some states allow joint divorce petitions, and no Answer and Affidavit need be filed if both spouses file together.

note

In some states formal service by summons is still required, even though your spouse has filed an Answer and Affidavit to your Petition or Complaint.

With the Answer and Affidavit, the signing spouse formally submits himself/herself to the jurisdiction of the court and thus acknowledges the validity of the divorce or any other order issued by the court.

note

In an uncontested divorce, this document will make it easier to process. Once the respondent spouse signs this document, he or she need not participate further in the divorce.

Sample Answer and Affidavit in Support of Final Judgment

In the Circuit Court for SomeCounty County, State of SomeState

In re: The Marriage of:)
Jane Public)
Petitioner)
and) Case No: [Given by Court
Richard Public) Clerk]
Respondent)
and in the interest of:)
Carl Public)

ANSWER AND AFFIDAVIT IN SUPPORT OF

FINAL Judgment

The undersigned, Respondent, files this answer and states under oath the following:

1. I have received a copy of the Petition and acknowledge all the allegations contained therein.
2. I further state that I am not on active duty in the armed services of the United States or of any foreign country.
3. I waive the 20 days required for setting the above-captioned matter for trial and waive notice of the final hearing, requesting a copy of the Final Judgment be mailed to me.
4. I have been a resident of and domiciled in the State of SomeState for the preceding 12 years and the County of SomeCounty for the preceding 8 years.

Sample Answer and Affidavit in Support of Final Judgment

5. The parties have made provisions for the division of their property and payment of their joint obligations. They are satisfied with those provisions. I have freely and voluntarily entered into a Marital Settlement Agreement. The Marital Settlement Agreement entered into by the parties attached marked as Exhibit A to the Petition is a true copy.

6. I further waive my rights to notice of trial, findings of fact and conclusions of law, a record of testimony, motion for a new trial, notice of entry of final judgment or decree, and right to appeal; however, I do not waive any rights to the future modification of any judgment or decree in this cause.

AFFIDAVIT IN SUPPORT OF FINAL Judgment

The undersigned files this Affidavit in Support of the Final Judgment containing the following:

1. The Court has jurisdiction of the parties and subject matter.
2. The Court finds the marriage to be irretrievably broken and grants a Final Dissolution.
3. The Marital Settlement Agreement filed in this proceeding as Exhibit A be approved and incorporated in the Final Judgment by reference, and that the parties be ordered to comply with said agreement.

Sample Answer and Affidavit in Support of Final Judgment

Further your Affiant Sayeth Naught.

Dated this 20th day of May, 1992.

Richard Public

Signature of Respondent/Defendant

Address: 200 Elsewhere Ave

SomeWhere, SomeState 00002

Phone: (987)654-3210

State of SomeState)

County of SomeCounty)

On May 20, 1992 before me, Nick Notary, personally appeared Richard Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Nick Notary
Signature of Notary

Affiant [x] Known [] Produced ID

Type of ID

(Seal)

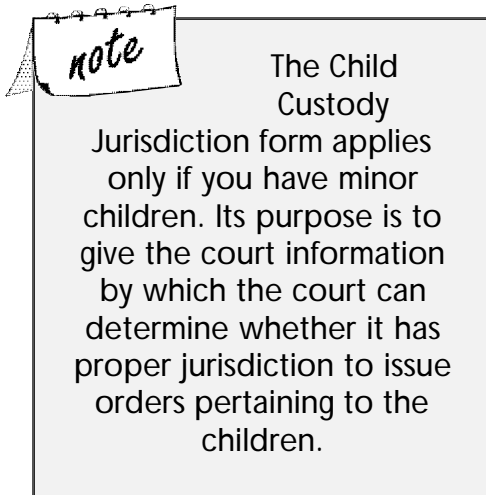
IF A NONLAWYER HELPED YOU FILL OUT THIS FORM THEY MUST FILL IN THE BLANKS BELOW (fill in all blanks):

I (name of nonlawyer) Joe Friend, nonlawyer located at (street) 20 Main Street (city) AnyCity (state) AnyState, (phone) 666-5555 helped (name) Richard Public who is the [x one only] petitioner or [x] respondent, fill out this form.

Child Custody Jurisdiction form

The Uniform Child Custody Jurisdiction Act, followed in all states, requires use of this declaration if you have minor children. Both spouses must make a formal declaration under oath stating:

- the number of minor children subject to custody orders



- their sex, social security numbers, dates and places of birth
- that the child(ren) are not involved in prior divorce proceedings or subject to other custody orders
- that neither spouse knows of any pending custody action or claim for custody by any third party

Sample Declaration Under the Uniform Child Custody Jurisdiction Act

In the Circuit Court for SomeCounty County, State of SomeState

In re: The Marriage of:)
Jane Public)
Petitioner)
and) Case No: [Given by Court Clerk]
Richard Public)
Respondent)
and in the interest of)
Carl Public)

DECLARATION UNDER THE UNIFORM CHILD CUSTODY JURISDICTION ACT

We, the undersigned, Jane Public and Richard Public, are both parties to this proceeding to determine the custody of a minor child, and under oath state:

1. There is/are one minor child(ren) subject to this proceeding. For each child, the name, sex, Social Security number, date and place of birth, and time and place of residence and name and relationship of person child lived with for the past 5 years, is as follows: (Attach additional sheet if necessary.)

Child's Name: Carl Public Sex: Male Date of Birth: 4/22/84
Place of Birth: Anytown, SomeState Social Security Number: _____
Present Residence: 1300 Somewhere St, Anytown, SomeState 00001
Person Child Lives With: Jane Public Relationship: Mother
Dates of Residence: From: 4/84 To: Present
Previous Residence: _____
Person Child Lived With: _____ Relationship: _____
Dates of Residence: From: _____ To: _____

Sample Declaration Under the Uniform Child Custody Jurisdiction Act

Child's Name: _____ Sex : _____ Date of Birth: _____
Place of Birth: _____ Social Security Number: _____
Present Residence: _____
Person Child Lives With: _____ Relationship: _____
Dates of Residence: From: _____ To: Present
Previous Residence: _____
Person Child Lived With: _____ Relationship: _____
Dates of Residence: From: _____ To: _____

2. Neither party has participated as a party, witness or any other capacity in any other court decision, order, or custody proceeding in this state or any other state, concerning the custody of a child subject to this proceeding.

3. Neither party has any information concerning any other court decision, order, or custody proceeding in this state or any other state, concerning the custody of a child subject to this proceeding.

4. Neither party knows of any other person who is not already a party to this proceeding who has physical custody of, or who claims to have custody or visitation rights with, any child subject to this proceeding.

Sample Declaration Under the Uniform Child Custody Jurisdiction Act

Richard Public

Husband's Signature _____

Address: 200 Elsewhere Ave

Somewhere, SomeState 00002

Phone: (987) 654-3210

State of SomeState)

County of SomeCounty)

On May 20, 1992, before me, Nick Notary, personally appeared Richard Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Nick Notary*
Signature of Notary

Affiant ✓ Known Produced ID
Type of ID _____ (Seal)

This product does not constitute the rendering of legal advice or services. This product is intended for informational use only and is not a substitute for legal advice. State laws vary, so consult an attorney on all legal matters. This product was not prepared by a person licensed to practice law in this state.

Notice of Hearing

When the date of your court hearing is set, some states require that both parties receive official notification of the time, date and place of the hearing. This can be accomplished by mailing your spouse a Notice of Hearing. A Notice of Hearing with your original signature should be submitted to the Court. A copy can be sent to your spouse, and you should retain a copy for your records.

Sample Notice of Hearing

In the Circuit Court for SomeCounty County, State of SomeState

In re: The Marriage of:)
Jane Public)
Petitioner)
)
and)
Richard Public)
Respondent)
and in the interest of:)
Carl Public)
)

Case No: [Given by Court Clerk]

NOTICE OF HEARING

TO: Richard Public
200 Elsewhere Ave
Somewhere, SomeState 00002

You are hereby notified that a hearing has been scheduled in this cause as indicated below. In the absence or disqualification of the Judge, this cause will be brought on for hearing before another Judge who is available and qualified to act thereon.

Date: June 25, 1992 Time: 9 a.m.

Judge: The Honorable Henry Honor

Place: Room 222, SomeCounty County Courthouse

Address: 1500 Justice Ave

Somewhere, SomeState 00002

Matter: Jane Public's Petition for Dissolution of Marriage

I hereby certify that on June 1, 1992 a true and correct copy of this Notice of Hearing was furnished by mail to the parties indicated above.

Plaintiff Jane Public

Final divorce judgment or decree

Once the court decides you qualify for divorce, the judge will sign the document most often called *Decree of Divorce*, *Judgment of Divorce*, or *Decree of Dissolution of Marriage*. Each state has a specific title for the final divorce papers, and it is this document that formalizes the divorce.



Prepare this document carefully. It must coincide with what you and your spouse have agreed to in your Marital Settlement Agreement as well as what you requested from the court in your Petition/Complaint.

You will need this document at your court hearing, as it is then that the judge usually signs it. Of course, if the judge changes terms (such as custody or child support) he or she may alter your documents with these changes or ask you to prepare new documents reflecting these changes.

Sample Judgment of Divorce

2. The separation agreement between the parties, filed in this proceeding as Exhibit A, was executed voluntarily after full disclosure, and is in the best interests of the parties, and is approved and incorporated in this judgment by reference and the parties are ordered to comply with it.

3. That the husband shall pay \$150 per week beginning July 1, 1992 (year), to wife as alimony and shall terminate: January 1, 1993.

4. That the husband shall pay \$200 per week beginning July 1, 1992 (year), to wife as child support per child, said support shall terminate for each child when the child reaches 18 years of age, becomes self-supporting, marries or dies, whichever comes first.

5. Jane Public's former name is restored and shall be known as Jane Single hereafter.

Harry Honor
Judge

Certificate of Corroborating Witness

Some states require a Certificate of Corroborating Witness. In some instances this must be filed with the Divorce Petition, and in others it may be presented to the judge when he or she awards the divorce. You should check with the clerk on this. The role of the corroborating witness is to affirm under oath that you, in fact, resided within the state sufficiently long enough to qualify for a divorce in that state.

Sample Certificate of Corroborating Witness

In the Circuit Court for SomeCounty County, State of SomeState

In re: The Marriage of:)
Jane Public)
Petitioner)
and) Case No:
Richard Public)
Respondent) [Given by Court Clerk]
and in the interest of:)
Carl Public)

CERTIFICATE OF CORROBORATING WITNESS

UNDER PENALTY OF PERJURY I CERTIFY that I am a resident of the State of
SomeState; I have known Jane Public for more than
7 years preceding the date of the filing of the above cause on May 20, 1992
and I know of my own personal knowledge that such person has resided in the State of
SomeState for at least that period of time.

Sample Certificate of Corroborating Witness

Wilma Witness

123 Place St

Witness' Signature

Wilma Witness

Anytown, SomeState 00001

Witness' Name Typed

Witness' Residence Address

State of SomeState)

County of SomeCounty)

On May 20, 1992, before me, Nick Notary, personally appeared Wilma Witness, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Nick Notary
Signature of Notary

Affiant Known Produced ID

Type of ID _____
(Seal)

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM THEY MUST FILL IN THE BLANKS BELOW (fill in **all** blanks):

I (*name of nonlawyer*) Joe Friend, nonlawyer located at (*street*) 20 Main Street (*city*) AnyCity (*state*) AnyState, (*phone*) 666-5555 helped (*name*) Wilma Witness who is the [**one** only] petitioner or respondent, fill out this form.

Certificate of Divorce or Marriage Dissolution

Most states require this document when a final divorce is granted. The specific form used in your state will normally be available from the clerk of the divorce court, and because it is state specific, it is not included in this guide.



Your day in court

- ▣▶ Preparing for your court appearance
- ▣▶ Witnesses and hearings
- ▣▶ Documents you will need
- ▣▶ Tips for a smooth day in court
- ▣▶ How to handle difficulties in court

Appearing in court to obtain your divorce may be the most stressful part of the entire divorce process. This is natural. You are unfamiliar with court proceedings, and the courtroom atmosphere can be imposing.

In actuality there is little to fear. If you are unrepresented, the judge will take this into account and assist you through the procedure.

Procedures do, of course, vary from state to state and often from county to county. Most states follow simplified divorce procedures to relieve the caseload and because there are so many no-fault “do-it-yourself” divorces today. Some states have even eliminated court appearances in uncontested cases; others delegate the hearing to a court clerk or special hearing officer. In any case, your uncontested divorce should take no more than a few minutes and will require you only to answer a few questions honestly.

Here are some steps you can take to prepare for your day in court:

1) ***Schedule the hearing date.*** Some courts automatically set the hearing date, but in most others you must formally request a hearing. The court clerk can advise you on the exact procedure to follow in your state.

2) ***Check on any witnesses.*** Witnesses may be required to testify concerning your residency in the state, or that the defendant has been served the divorce papers. You should check witness requirements with the court clerk.



It is also wise to have the court clerk review the file to make certain all necessary papers are on file for the judge.

3) ***Attend several other uncontested divorce hearings before the day of your hearing.*** Write down the questions that are asked and the documents the court asks to see. Once you observe the process you will know what you can expect and can better prepare. You will also be more confident and less anxious.

4) ***Bring all documents to court.*** Unless it is already filed with the court, this will include:

- Marital Settlement Agreement
- Verified Petition or Complaint
- Answer and Affidavit in Support of Final Judgment
- Financial Affidavits
- Notice of Hearing

-
- Child Custody Jurisdiction Form
 - Final Judgment or Final Decree
 - Certificate of Corroborating Witness



Again, it is a good idea to review with the clerk any special documents the court is likely to want. Also bring copies of all documents previously filed with the court.

- 5) **Arrive early on the hearing date.** This will give you the opportunity to observe several additional hearings. Also, you will need to check in with the clerk in advance of the hearing.
- 6) **Be respectful.** Make certain your courtroom behavior is deferential and courteous. Dress appropriately. Avoid arguments or hostility with your spouse. Address the judge as “Your Honor.” Carefully listen to the judge’s questions and then answer firmly but in a respectful manner. Most of these questions will simply attempt to corroborate the truthfulness of the statements made in the various documents.
- 7) **Know how to handle difficulties.** Things can go wrong in any court hearing. If you don’t understand the judge, politely ask the judge to restate the question. If matters go very wrong or you find yourself in a situation you cannot handle, then simply ask the court for a continuance so you can better prepare the case for presentation. Possibly the judge will see you in chambers if a



Questioning may become more vigorous if you have children. The court is most concerned that your children’s welfare is protected. Understandably, courts are less concerned about your property once you and your spouse have reached agreement on its division.

continued courtroom hearing is embarrassing or perplexing you. In any case, try to find out precisely what the problem is so you can correct it. Did you overlook a procedural step? Are you missing an essential document? Must one or more of your documents be re-drafted? And if so, in what manner? The point is to leave the courtroom with confidence that you can correct the problem and gain your divorce at the continued hearing.

Very often judges will want changes made in the agreement or final divorce decree. If these changes are minor, the court may accept handwritten modifications made in the courtroom. More substantive changes will require re-draft and presentation again to the judge. This should be re-scheduled as quickly as possible.

