

DISSOLUTION OF MARRIAGE INSTRUCTIONS
FOR HUSBAND AND WIFE FILING TOGETHER
WHEN THERE ARE NO MINOR CHILDREN OF THE MARRIAGE

Use Packet No. 1 instead of this packet if the wife is pregnant or if there are any children born or adopted during this marriage who are currently under age 19. If a child was conceived or born to the wife while you were married, the husband is the legal father of the child and owes a duty of support, unless the affidavits required by AS 18.50.160(d) are executed, or until the husband's paternity is disestablished by a court or child support enforcement agency.

Note: Court personnel are not allowed to give legal advice. Administrative Rule 2(d) and AS 08.08.230.

Please do not ask a court clerk for advice about how to handle your case. Court personnel are required to remain neutral in court cases. They are prohibited from advising you about how to present your case.

If you do not understand this instruction pamphlet or if you need more information about your rights, the laws or the procedures, you should contact a lawyer for help.

Many of the agreements you will make in your petition for dissolution will have tax consequences (including agreements about property division and spousal maintenance). It is very important that you get an accountant's or attorney's advice about these tax consequences before making your agreement.

Dissolution of Marriage

A decree of dissolution of marriage has the same force and effect as a decree of divorce. However, the procedures for getting a dissolution are somewhat different than those for a divorce. Dissolution procedures are described in Alaska Statutes 25.24.200 - .260 and Civil Rule 90.1. The court system provides forms for dissolution petitions, but not for divorces.

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Requirements

The requirements for using dissolution procedure (if there are no children born or adopted during the marriage who are currently under age 19 and if the wife is not pregnant) are:

1. Either the husband or wife (or both) must be domiciled in Alaska. That means the person claims residency in Alaska. The person must be physically present in Alaska and intend to remain indefinitely. No minimum number of days of residency is required. In addition, military personnel who do not claim to be Alaska residents may file for dissolution if they have been continuously stationed at a military base or installation in Alaska for at least 30 days. AS 25.24.900.
2. The husband and wife must agree that "incompatibility of temperament has caused the irremediable breakdown of the marriage." This means there is no chance of saving the marriage because the husband and wife cannot get along.
3. The husband and wife must agree on all of the following:
 - a. distribution of all real and personal marital property (both jointly owned and separately owned and community property under AS 34.75), including retirement benefits,
 - b. payment of spousal maintenance (alimony), if any,
 - c. payment of all existing debts owed by either or both of them and payment of any debts which may be incurred jointly in the future, and
 - d. the tax consequences of all the above agreements.
4. The property and spousal maintenance agreements must be fair and just and must take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of the dissolution is fairly allocated.

If you cannot meet one or more of these requirements, contact a lawyer to find out what your options are.

Procedure to Follow

To get a decree dissolving your marriage, you must do the following:

1. Fill out the following two forms attached to these instructions:
 - a. Form DR-100, Petition for Dissolution of Marriage. See the instructions beginning on page 5.
 - b. Form VS-401, Certificate of Divorce, Dissolution of Marriage or Annulment. Complete all of VS-401 except lines 18-19 and 22-28 which will be completed by the court when the decree is entered.

2. File these forms at the clerk's office and pay the \$100 filing fee. If you cannot afford this fee, ask the clerk for form TF-920, Request for Exemption from Payment of Fees.

Note: Once the petition is signed by the first party signing it, you have only 60 days to file it with the court. If you delay filing beyond that date, the court will not accept it. Civil Rule 90.1.

3. Ask the clerk's office for instructions on setting a hearing date. The hearing must be at least 30 days after the date the petition is filed. It will be set for a time acceptable to both parties.
4. Amendment or Withdrawal of Petition.

After the petition is filed, any of the terms of the petition may be amended if both husband and wife agree and complete form DR-115, Amendment of Agreement and file it with the court.

If either spouse wants to withdraw from the agreement, that spouse must file form DR-120, Withdrawal of Agreement, with the court before the decree is signed. If the agreement is withdrawn, the case will be dismissed.

If you decide to use either of these forms, be sure to fill in the case number which the court clerk assigned to your petition.

5. Hearing.

At least one party must attend the hearing. It is preferred that both parties attend. If a party chooses not to attend, that party must fill out and sign form DR-110, Appearance and Waiver of Notice of Hearing (included in this packet), acknowledge it before a court clerk or notary public and file it with the court.

If any of the following are true, both parties must attend the hearing unless excused by the court:

- a. one party is represented by counsel and the other is not, or
- b. there is evidence that a party committed a crime involving domestic violence during the marriage, or
- c. if any of the following has been issued or filed during the marriage by or regarding either spouse as defendant, participant, or respondent:
 - (1) a criminal charge of a crime involving domestic violence,
 - (2) a domestic violence protective order under AS 18.66.100 - 18.66.180,

- (3) injunctive relief against domestic violence under former AS 25.35.010 or 25.35.020, or
 - (4) a domestic violence protective order issued in another jurisdiction and filed with the court in this state under AS 18.66.140, or
- d. there is a minor child of the marriage, or
- e. there is a patently inequitable division of the marital estate.

In order to be excused by the court in one of these situations, the party must show that it would be a significant hardship for the party to attend the hearing. The party must explain the hardship on the form mentioned above, DR-110, Appearance and Waiver of Notice of Hearing, and file the form with the court.

The court will then decide whether the hardship is significant enough to allow the party not to appear. If the court allows the party not to appear in person, the court may still require the party to be available by telephone to answer questions during the hearing. The absent party must pay the costs of the telephone call.

Each party may have a lawyer at the hearing, but you are not required to have one.

At the hearing, the court will ask you questions to determine whether you fully understand the nature and consequences of the proceeding; whether the terms of all your written agreements are fair and just; and whether all the requirements listed on page 2 have been met.

The judge may amend the agreements between the spouses, but only if both husband and wife agree in writing (or in person at the hearing) with the amendment.

At some court locations, hearings are held before a Superior Court Master instead of a judge. A master cannot grant a decree. A master can only recommend to a judge whether or not a decree should be granted.

6. The Decree.

Although in some cases the decree may be granted at the hearing (if the hearing is before a judge rather than a master), usually the decree is not entered until a few days later. Do not assume a decree has been granted until you receive your copy.

- 7. You must carry out any agreements made in your petition or otherwise required by the decree. This might include, for example, transferring title to property or notifying the administrator of a retirement plan about the effect of the decree on a spouse's retirement benefits. You will probably need to contact a lawyer to prepare the necessary deeds and other legal documents to make these transfers. The court does not do this for you.

How To Fill Out The Petition

When you fill out the Petition form and any other forms you file with the court, please type or print neatly in black ink. Do not leave any spaces blank. Write "none" or "N/A" (not applicable) where appropriate. If more space is needed, attach additional pages and have each additional page signed by both petitioners.

At the top of the petition form, fill in the city where the superior court is located. Then fill in your names on the lines in the box. Leave the "Case No." line blank.

Section I. INFORMATION ABOUT PETITIONERS (pages 1-2)

Fill in all lines. If your mailing address changes after you file the petition but before the decree is entered, you must send the court written notice of your new mailing address. Be sure to include your case number in any letters to the court.

Section II. FINANCIAL INFORMATION (pages 3-5)

Parts A. - C. Gross Income, Deductions and Net Income.

You must include all sources of income whether they are listed on the form or not. Each party must attach a copy of his or her most recent federal tax return and most recent pay stubs to verify income and deductions.

Part D. Monthly Expenses. List average expenses per month.

Part E. Assets.

Describe all assets of both parties acquired during the marriage plus any premarital property which should be divided in order to be fair to both parties. This includes both separately owned and jointly owned property. It also includes any "community property" if the parties have signed a community property agreement under Alaska law. List the value of each asset. Check the boxes showing whether the asset was acquired during the marriage and who presently owns the asset (H = husband, W = wife, and JT = jointly owned). Then check the box showing to whom you want the asset awarded. If the asset is to be divided between you, then show what fraction or percentage each person is to get instead of checking the boxes.

You must agree to a division of the property which is fair and just to both husband and wife. Ordinarily, the fairest division of the property is an equal division. However, there may be some circumstances, such as a marriage of very short duration, which would justify something other than an equal division of all items acquired during the marriage.

Assets include all kinds of property and rights in property. "Real property" means buildings and land. "Personal property" includes such things as pets, jewelry, automobiles, boats, airplanes, snow machines, furniture, household goods, bank accounts, etc. Other examples of assets are businesses, contract rights, stocks, bonds, and employment benefits such as the value of retirement plans, deferred compensation, accumulated employee leave time, 401(k) plans, and (for Alaska State employees) the Supplemental Benefits System annuity.

Assets must be clearly identified. Motor vehicles and other property requiring a certificate of title or registration must be identified by license or registration number and serial number or vehicle identification number.

Your property division agreement must fairly allocate the economic effect of the dissolution. It must take into consideration the following factors listed in Alaska Statute 25.24.160(a)(4):

1. the length of the marriage and station in life of the parties during the marriage;
2. the age and health of the parties;
3. the earning capacity of the parties, including their educational backgrounds, training, employment skills, work experiences, length of absence from the job market, and custodial responsibilities for children during the marriage;
4. the financial condition of the parties, including the availability and cost of health insurance;
5. the conduct of the parties, including whether there has been unreasonable depletion of marital assets;
6. the desirability of awarding the family home, or the right to live in it for a reasonable period of time, to the party who has primary physical custody of children;
7. the circumstances and necessities of each party;
8. the time and manner of acquisition of the property in question; and
9. the income-producing capacity of the property and the value of the property at the time of division.

Note: The court may not award to one spouse real or personal property acquired by the other spouse before the date of the marriage, unless the spouses expressly agree otherwise or the court determines that the property should be made available (by sale or other conveyance) to ensure that the best interests of the children are provided for. AS 25.24.230(g).

Part E.3 Retirement Benefits (page 5)

One special type of personal property which you must agree about is retirement benefits. If, during your marriage, either spouse has accrued the right to some day receive retirement benefits as a result of employment or military service, you will need to decide how to divide the value of those benefits between you. You ordinarily need to do this even if the employee spouse has not yet "vested" in the retirement program.

You will probably need the help of an attorney and/or the administrator of the retirement plan. You should obtain and review any available written summary of the retirement plan and a statement of the value of the employee's expected benefits.

Generally, you can divide these benefits in either of two ways:

1. You can let the current owner of the benefits (the covered employee) keep the benefits and give the other spouse cash or other assets worth half the current value of the part of the benefits accrued during the marriage. This, of course, requires you to figure out what the current value of the benefits is. You may need the help of an actuary to do this.
2. Alternatively, you can give the non-employee spouse the right to receive part of the retirement benefits when those benefits are eventually paid out. Under this option, it is not necessary to figure out the current value of the benefits. Both spouses will have to wait to receive any payments until the employee spouse is eligible to receive the benefits.

If you choose this option, in most cases your agreement must meet the requirements of a "qualified domestic relations order" (QDRO) as that term is defined in the statutes which apply to the retirement plan.* Also, your agreement, along with the dissolution decree, must be filed with and accepted by the administrator of the retirement plan before it will be effective. It is important to contact the administrator of the retirement plan before filing your written agreement with the court and request copies of the plan, procedures for QDRO's, and any forms the plan administrator may have prepared.

* Note: The requirements for dividing military retirement pay are different. A QDRO is not required. Instead, your agreement must show, for example, that the spouses were married to each other for 10 or more years during which time the military member performed at least 10 years of creditable service. The agreement must specifically provide for payment of an amount from the military member's "disposable retired pay" to the former spouse. The amount must be stated either in dollars or as a percentage of the member's disposable retired pay. For more information about what is required and about the application form you must fill out and submit after you obtain your dissolution decree (DD Form 2293), contact the Legal Assistance Office at any military installation in Alaska. If you were married more than 10 years, you may be entitled to additional benefits. Inquire at the Legal Assistance Office.

You will have to write your retirement benefits agreement on a separate piece of paper and attach it to your petition. It will have to include the basic requirements of a QDRO, which are:

- a. It must name the retirement plan or program.
- b. It must give the right to receive part or all of the benefits payable with respect to the employee covered by the plan to an "alternate payee" (meaning, in this case, the other spouse).
- c. It must state the name and last known mailing address of both the employee and the "alternate payee."
- d. It must state the amount or percentage of the employee's benefit, or of any survivor's benefit, to be paid to the "alternate payee"; or it must set out the manner in which that amount or percentage is to be determined.
- e. It must set out the number of payments or period of time to which the agreement/order applies.
- f. It must not do any of the following:
 - (1) require any type or form of benefit or any option not otherwise provided by the plan, or
 - (2) require an increase of benefits in excess of the amount provided by the plan, determined on the basis of actuarial value, or
 - (3) require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under a previous QDRO.

Depending on the type of retirement plan, there may be several other requirements or items which should be covered by the agreement and order. Because retirement plans vary, contact the administrator of your plan to make sure all the required information is included in your agreement.

In order to write an agreement which will be enforceable, you will most likely need to consult with an attorney who is familiar with the laws about QDRO's. You may also be able to get assistance from the administrator of the retirement plan. Remember that your agreement is not effective until it and the decree are filed with that administrator and you have received notice that it is accepted. If it is not accepted, you will have to go back to court to get an order correcting any defects.

Some of the statutes about QDRO's are: AS 25.24.230(h) and 29 U.S.C. § 1056(d)(3).

Part F. Debts (page 5)

Describe all debts of both parties. List to whom each debt is owed and the amount owed. Check the box showing whether the debt was incurred during the marriage and the box showing who owes the debt (husband, wife or jointly owed). Then check the box showing who you agree will be responsible for paying the debt.

Debts include all kinds of financial obligations, such as loans, charge account balances, the mortgage on your house, etc.

Each spouse is responsible for his or her separate debts unless you agree otherwise.

The two of you may agree which spouse will pay each joint debt (debt in both parties' names). However, although this agreement will be binding against the two of you, it will not be binding against the people to whom the debts are owed because they are not parties in this case. For joint debts, both of you will remain legally obligated to your creditors until the existing debt is paid, regardless of your agreement as to who will pay the debt.

To protect yourselves against future debts the other party may incur on credit cards and other open accounts, you may want to close your current joint charge accounts and reopen them in your separate names.

Section III. SPOUSAL MAINTENANCE (ALIMONY) (Page 6)

Petitioners may agree to the payment of spousal maintenance (alimony). Spousal maintenance payments must be included as income on the tax return of the spouse receiving the payments. An accountant's or attorney's advice may be helpful in regard to other tax consequences of spousal maintenance.

Spousal maintenance payments may be for a limited or indefinite period of time. The agreement on spousal maintenance must fairly allocate the economic effect of the dissolution. It must take into consideration the following factors listed in Alaska Statute 25.24.160(a)(2):

1. the length of the marriage and station in life of the parties during the marriage;
2. the age and health of the parties;
3. the earning capacity of the parties, including their educational backgrounds, training, employment skills, work experiences, length of absence from the job market, and custodial responsibilities for children during the marriage;
4. the financial condition of the parties, including the availability and cost of health insurance;
5. the conduct of the parties, including whether there has been unreasonable depletion of marital assets;
6. the division of property; and
7. other factors the court determines to be relevant in each individual case.

Section IV. RESTORATION OR CHANGE OF NAME (page 6)

Either spouse may request that a former name be restored or that a new name be authorized.

If you want a former name restored, you merely need to check the "Restoration" box and fill in the blanks on page 6 of the petition. (You may also want to follow steps #2, #9 and #10 below.)

If you want to change your name to a new one you have never had before, there will be additional costs and your dissolution hearing will be delayed. You must do the following:

1. Check the "Change" box on page 6 and fill in the blanks which follow.
2. If you want your birth certificate changed, ask the court for form VS-405, Application or Report of Name Change. Fill out the form (please type the information if possible) and return it to the court when you file your petition for dissolution.
3. When you file your dissolution petition, tell the clerk your petition includes a request for name change and that you need to have a hearing date set and an order for publication.
4. The court will then send you an Order For Hearing, Publication and Posting (CIV-701) and a Notice of Filing of Petition For Name Change (CIV-702).

The order will tell you the time and place of the hearing on your name change. It will also tell you the newspaper in which you must publish notice of your request (a newspaper of general circulation in the judicial district) and whether you must post the notice in various places as well as publish it.

The notice contains the information you must publish. You must take this notice to the newspaper designated by the court and arrange for the newspaper to publish it once each week for four consecutive weeks before the hearing. You must pay the newspaper for this.

If the order requires posting in addition to publication, then you must post copies of the notice in the places and for the periods of time ordered by the court.

5. After publication is completed, the newspaper will give you an "Affidavit of Publication" which will contain a copy of the published notice and the dates it was published. You must file this affidavit with the court before the hearing.

If you are also required to post the notice, you must file proof that you did so. Get form CIV-703, Affidavit of Posting, from the court, fill it out and file it with the court before the hearing.

6. The hearing will probably be short and fairly informal. It will usually be combined with your dissolution hearing. You will have to tell the judge why you want to change your name and assure the judge that the name change is not being sought for an illegal reason. If the judge is satisfied that there is no reasonable objection to your request, the judge will sign a judgment allowing you to take the new name 30 days after the date the judgment is distributed.

7. Within 10 days after the judgment is distributed, you must take a copy of the judgment to the newspaper designated by the judge and have it published once. The judge may also require posting of a copy of the judgment.
8. Within 20 days after the judgment is distributed, you must file proof of publication (and any required posting) with the court. The clerk will then issue a Certificate of Change of Name (form CIV-705) which states that a judgment has been entered authorizing you to assume your new legal name and that all publication requirements have been met. You will be given a copy. You may request one free certified copy of this certificate. If you need additional certified copies, there will be a charge for them.
9. If you have an Alaska driver's license or you own a vehicle registered in Alaska, you must send written notice of your name change to the Division of Motor Vehicles, Box 20020, Juneau, Alaska 99802-0020, within 30 days. AS 28.05.071. To get a new driver's license, you will need to go to a DMV office and present a copy of the court order changing your name.
10. Notify the Social Security Administration of your name change (to avoid tax problems and help assure proper employment credit). Toll free telephone number: 1-800-772-1213.

Section V. OTHER AGREEMENTS (Pages 6-7)

Use this space to write any other agreements between you. For example, you might agree that one spouse will maintain a life insurance policy which names the other spouse as beneficiary.

All your agreements with each other about the dissolution must be written in the petition. When you sign the last page of the petition, you will be stating under oath that the petition contains all your agreements.

AGREEMENTS NOT INCLUDED IN THE PETITION ARE NOT ENFORCEABLE.

If you agree to something but do not write it down in your petition, it will not be included in the court's decree of dissolution; and you will, therefore, not be able to enforce that agreement.

Section VI. SIGNATURES AND VERIFICATIONS (page 7)

Both petitioners must sign each page of the petition. The signatures on the last page must be signed under oath before a notary public, a court clerk or any other person authorized to administer oaths. Please keep in mind that, in signing the petition under oath, you are swearing that every statement you have made in your petition is the truth.