

**STATE OF ALABAMA**

**DIVORCE PACKAGE**

**UNCONTESTED - ADULT CHILDREN**

**WITH OR WITHOUT PROPERTY**

**Control Number - AL-004-D**

This packet contains the following:

1. Information about Divorce
2. Form List
3. Form Explanations
4. Instructions and Steps
5. Checklist
6. Access to Law Summary

**You and your spouse must agree to all terms of the divorce to use this packet.**

**All forms to be filed with the Court must be printed on Bond paper.**

## INFORMATION ABOUT DIVORCE

1. **WHO CAN USE THESE FORMS:** This packet is for the sole purpose of obtaining an *uncontested* divorce. This packet is only of use to you if you and your spouse are willing to agree to all the terms and conditions of your divorce. You must work and communicate with your spouse and keep him or her advised as to each step in the process. If you cannot agree, you will become involved in a *contested* divorce, which is beyond the scope of this packet. To use this divorce package to file for divorce, all of the following must be true:

- (a) Your marriage is irretrievably broken and there is no likelihood it can be preserved;
- (b) There are no minor children of said marriage, and the wife is not now pregnant. All children of the marriage are over the age of nineteen (19) and emancipated;
- (c) You and your spouse agree on all the terms of the divorce; and
- (d) You satisfy the ***residency requirement*** – see Section 3, below.

2. **THE BASICS:** In a typical divorce, you must satisfy two basic requirements before you can file for divorce. Those requirements include the ***residency requirements*** and appropriate ***grounds for divorce***. These requirements are discussed in detail in their respective sections, below.

In addition, you must agree with your spouse to dissolve the marriage, and agree to all the terms of the dissolution of marriage in filling out the forms, including property division. You will complete and file the forms (see detailed instructions, below) in the Circuit Court for the county in which you choose to file the divorce papers: either the county of your spouse's residence, or the county where the separation occurred. If defendant is a Non-resident of Alabama, then the action must be filed in the Circuit Court for the county in which you reside. The **Code of Alabama, Section 30-2-4**, states:

*Complaints for divorce may be filed in the circuit court of the county in which the defendant resides, or in the circuit court of the county in which the parties resided when the separation occurred, or if the defendant is a nonresident, then in the circuit court of the county in which the other party to the marriage resides.*

3. **RESIDENCY REQUIREMENTS:** When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for six months next before the filing of the complaint, which must be alleged in the complaint and proved. If both parties currently reside in the state, there is no time period required. **Code of Alabama, Section 30-2-5**

4.  **GROUNDS FOR DIVORCE:** The ground for divorce you must use with this no-fault packet is **“Irretrievable Breakdown,”** a no-fault ground found in the **Code of Alabama, Section 30-2-1:**

*... [A divorce may be granted] Upon application of either party, when the court finds there has been an irretrievable breakdown of the marriage and that further attempts at reconciliation are impractical or futile and not in the best interests of the parties or family.*

5.  **LEGAL SEPARATION:** A "legal separation" is different than a "divorce." A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation **does not** terminate the marital status of the parties. Alabama courts may grant a decree of legal separation if sought by the parties under **Code of Alabama, Section 30-2-40, et seq.** **This divorce package DOES NOT include forms for a "legal separation."** **This package includes forms specifically for "divorce."**

6.  **WAITING PERIODS:** Alabama law requires that thirty (30) days elapse from the filing of the *Complaint* and summons or *Answer, Waiver, and Agreement for Taking of Testimony* before a final judgment of divorce be entered. Alabama further requires that neither party to the divorce may remarry, except to each other, until sixty (60) days after the judgment of divorce is entered. If an appeal of the judgment of divorce is taken, the parties may not remarry, except to each other, while the appeal is pending. **Code of Alabama, Section 30-2-8.1**

7.  **ALIMONY/SUPPORT:** Because this is an agreed divorce you will decide issues of alimony, also known as "spousal support". The forms in this no-fault divorce package assume that no alimony will be paid and is waived-- but you may add provisions for alimony if you desire. In a contested case, the courts may award alimony. You should consult a local attorney regarding the possibilities concerning alimony if you have questions or foresee conflict regarding this issue.

In a brief summary (below) of the high points, the **Code of Alabama, Section 30-2-51,** states as follows regarding alimony/spousal support:

*The court may order that one spouse support the other during the pendency of the divorce action and/or after the divorce has become final. Support awarded pending the final decree of divorce is not to extend beyond the period of time necessary for the prosecution of the divorce action.*

*If, upon divorce, neither party has a separate estate, or, an extant separate estate is insufficient for the maintenance of a spouse, the judge may award spousal*

*support out of the other spouse's portion of the marital estate, taking into consideration the value of that portion and the condition of the spouse's family.*

*If the parties do have separate estates, the court may not consider the separate property of the parties, unless the court determines that the property in question or income derived from that property was regularly used for the common benefit of the parties during the marriage.*

*If the divorce is awarded based upon the misconduct of the other spouse, the court may consider that misconduct in making an award of support, but may not consider the separate property of the spouse in determining the amount.*

*Upon petition to the court, an award of alimony shall terminate upon the submission of proof to the court that the party receiving alimony has remarried or is openly living/cohabitating with a member of the opposite sex.*

8. **DISTRIBUTION OF PROPERTY:** In a divorce, the property (land, house, buildings, and items of personal property) owned (and debts owed) by the couple is divided between the parties. In an uncontested divorce, this division is accomplished by means of a **Separation Agreement**. You and your spouse must agree to the property and debt division and memorialize your agreement in the **Separation Agreement**, which will be incorporated by reference into the *Decree of Divorce* that ultimately ends your marriage. You may agree to divide the property any way you like, as long as a basic fairness is maintained. If you cannot agree on any item of this division, the dissolution of marriage transforms into a **contested divorce**. A contested divorce is beyond the scope of this packet.
9. **NAME CHANGE:** Typically, a spouse may petition the court requesting that upon divorce the court restore the party to the use of a former or maiden name. The court will typically grant such request. On a related note, **Code of Alabama, Section 30-2-11**, states that a wife may be enjoined from using the last name or initials of her former husband.

## **FORM LIST**

The following forms are included in this package, or needed are:

### **Forms for initial filing:**

1. Civil cover sheet – Available from clerk
2. Complaint for Divorce **(AL-802D)**
3. Separation Agreement **(AL-804D)**
4. Affidavit of Testimony in Support of Decree (Plaintiff) **(AL-806D)**

### **Forms for subsequent filing:**

5. Answer, Waiver, and Agreement for Taking of Testimony **(AL-807D)**
6. Acknowledgment of Non-Representation **(AL-808D)**
7. Final Decree and Judgment of Divorce **(AL-C-57)**
8. Notice of Entry of Divorce **(AL-810D)**
9. Child Support Information Sheet **(AL-CS-47)**

A Child Support Information Sheet Form 9 (Official Form AL-CS-47) is also included. This form concerns children but has an option to select no children to show that no children are involved in the case. Complete this form and file with your Complaint. This form is also available from the Clerk.

## **FORM EXPLANATIONS**

All forms included in this package, or which may be needed are identified and described below.

### **FOR INITIAL FILING:**

1. Civil Cover Sheet: This form requests required information for the Court's use. This form is available from the Clerk at the time of filing.
2. Complaint for Divorce: (AL-802D) This document states the legal grounds and other required details for your divorce.
3. Separation Agreement: (AL-804D) This form is a binding contract in which you and your spouse agree to the division of all your property and debts.
4. Affidavit in Testimony Support of Decree (Plaintiff): (AL-806D) In this form, you aver that you meet the requirements to be divorced in Alabama and agree to the divorce in accordance with the *Separation Agreement*.

### **FOR SUBSEQUENT FILING:**

5. Answer, Waiver, and Agreement for Taking of Testimony: (AL-807D) In this form, your spouse submits to the jurisdiction of the court and avers that he or she agrees to be divorced according to the agreed terms. Both spouses must sign this form before a witness and a Notary Public for filing (see, Instructions and Steps, above).
6. Acknowledgment of Non-Representation: (AL-808D) If you have an attorney and your spouse does not, you should include this document with the Answer, Waiver, and Agreement for Taking of Testimony for your spouse's signature. The purpose of your spouse signing this document is to avoid a later argument by your spouse that he or she did not get a fair settlement because an attorney did not represent him or her. If you do not have an attorney yourself, you can ignore this document.
7. Final Decree and Judgment of Divorce: (AL-C-57) The final statement of the legalities and terms of your divorce, which incorporates your *Separation Agreement*. Once this form is signed by the Judge and filed with the court, your divorce is complete. You must however mail a certified copy of the signed, filed copy of the *Final Decree* to your spouse with the "*Notice of Entry of Divorce*."
8. Notice of Entry of Judgment of Divorce: (AL-810D) Notice that your *Final Decree and Judgment of Divorce* has been entered (filed) with the Clerk. Send with copy of the *Final Decree* to spouse. Ask the clerk if you need to file the *Notice of Entry*.

10. Child Support Information Sheet (AL-CS-47): This form is states that you do not have children and is filed with the complaint. Check the box for no minor children.

## INSTRUCTIONS AND STEPS

**Note:** Any form containing a space for the signature of a Notary Public must be signed by you (and if necessary by your spouse) in front of a Notary Public, who must notarize the document. Prepare an original and several copies of each of your completed documents. Your spouse should have a copy of everything you file, stamped “filed” by the clerk. You should keep copies, and the court must have originals.

**STEP 1:** In consultation and agreement with your spouse, prepare the following forms:

Form 2- *Complaint for Divorce*

Form 3- *Separation Agreement*

Form 4- *Affidavit of Testimony in Support of Decree*

Form 8- *Final Decree and Judgment of Divorce*

You and your spouse must sign the *Separation Agreement* and *Judgment*.

**STEP 2:** FILE the completed forms 2-4 with the court clerk. Also complete *Information form 9* and file with the clerk. Pay filing fees. Keep several stamped “filed” copies of these forms. The clerk is a valuable resource to you, and can often answer your questions about filing documents, timing, and the mechanics of the divorce process. *Form 1- Civil Cover Sheet*, should be available from the clerk and needs to be completed at the time you file your complaint.

**STEP 3:** Mail or deliver the following forms to your spouse:

Stamped “filed” copies of Forms 2-4.

Form 5- *Answer, Waiver, and Agreement for Taking of Testimony*

Form 6- *Acknowledgment of Non-Representation* [use only if you have a lawyer and your spouse does not- otherwise, **do not use this form.**]

Form 7- *Final Decree and Judgment of Divorce with agreement attached*.

Instruct your spouse, by phone, letter or otherwise, to complete Form 5, and (if used) Form 6, and **return** Form 5, and (if used) Form 6, to you. Your spouse should keep the other documents.

**STEP 4:** Once your spouse has returned Form 5 (and Form 6, if used), FILE these two forms.

**STEP 5:** Consult the clerk as to whether or not you need to appear for a final hearing, or whether the Judge will simply review and sign the *Judgment* papers. If you must

appear for a hearing, determine the date of the hearing with the clerk or court administrator, and notify your spouse thereof. Ask the clerk what will happen after the Judge signs the *Final Decree of Divorce*, for example, if the *Judgment* will be mailed to you for you to file, automatically filed, if you must pick it up, how long before the judge will sign it, etc.

If you are not required to attend an actual hearing in your county, deliver the original and three copies of the *Judgment with the Separation Agreement attached* to the Clerk. If you are required to attend, take the *Judgment with the Separation Agreement Attached* and copies to the hearing and present to the Judge after the hearing.

**STEP 6:** Once you receive the signed *Final Judgment of Divorce with Agreement Attached*, you must FILE it with the Court Clerk, and mail a stamped “filed” copy to your spouse along with Form 8, the *Notice of Entry of Judgment of Divorce*. Ask the Clerk if you need to file the *Notice of Entry*.

Summons Note: At the time you file the complaint, you can inform the clerk that the Defendant will sign an Answer, Waiver, and Agreement for Taking of Testimony and to hold issuance of a summons.

### **PROCESS CHECKLIST**

- ☐ Forms 1-4 agreed to and completed by you and your spouse.
- ☐ All documents signed and notarized where needed.
- ☐ Check with clerk for amount of filing fee and any updated or county-specific forms that the clerk may have.
- ☐ Initial Documents (Forms 1-5) filed and filing fee paid.
- ☐ Stamped “filed” copies of Forms 2-5, plus Form 5 (and if needed, Form 6) served on your spouse. Include a copy of Form 7 with the forms served on your spouse.
- ☐ Form 5, the *Answer, Waiver, and Agreement for Taking of Testimony*, signed by you and your spouse. If used, Form 6 signed and returned to you.
- ☐ Form 5, the *Answer, Waiver, and Agreement for Taking of Testimony* filed with the clerk.
- ☐ *Final Decree and Judgment of Divorce* signed by Judge at hearing or otherwise.
- ☐ Signed *Final Decree of Divorce* filed with the clerk of court, with copies to you and your spouse.
- ☐ Mail or deliver *Notice of Entry of Judgment of Divorce* with the *Final Judgment of Divorce* to your spouse.

### **NOTE ABOUT COMPLETING THE FORMS**

The forms in this packet contain “form fields” created using Microsoft Word. “Form fields” facilitate completion of the forms using your computer. They do not limit your ability to print the form “in blank” and complete with a typewriter or by hand.

If you do not see the gray shaded form fields, go to the View menu, click on Toolbars, and then select Forms. This will open the forms toolbar. Look for the button on the forms toolbar that resembles a shaded letter “a”. Click in this button and the form fields will be visible.

To complete the forms click on the gray shaded areas and type the information. For the separation agreement complete the gray shaded areas and also make any other changes or additions to resolve all issues.

Some forms are locked which means that the content of the forms cannot be changed unless the form is unlocked. You can only fill in the information in the fields. If you need to make any changes in the body of the form, it is necessary for you “unlock” or “unprotect” the form. **IF YOU INTEND TO MAKE CHANGES TO THE CONTENT, DO SO BEFORE YOU BEGIN TO FILL IN THE FIELDS. IF YOU UNLOCK THE DOCUMENT AFTER YOU HAVE BEGUN TO COMPLETE THE FIELDS, WHEN YOU RELOCK, ALL INFORMATION YOU ENTERED WILL BE LOST.** To unlock click on “Tools” in the Menu bar and then selecting “unprotect document”. You may then be prompted to enter a password. If so, the password is “uslf”. That is uslf **in lower case letters without the quotation marks**. After you make the changes relock the document before you begin to complete the fields. After any required changes relock the form, then click on the first form field and enter the required information. You will be able to navigate through the document from form field to form field using your tab key. Tab to a form field and insert your data. If you experience problems, please let us know.

## **LAW SUMMARY**

You may access the law summary for your State by using the link below:

<http://secure.uslegalforms.com/lawsummary/AL/AL-004-D.htm>

## **DISCLAIMER**

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