

STATE OF ALABAMA

DIVORCE PACKAGE

UNCONTESTED - MINOR CHILDREN

WITH OR WITHOUT PROPERTY

Control Number - AL-006-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 minor children of said marriage;
- (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. **GROUND 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 is 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.
10. **CHILD CUSTODY:** Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper, having regard to the moral character and prudence of the parents and the age and sex of the children.

It is the policy of the State of Alabama to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage.

The court shall in every case consider joint custody but may award any form of custody that is determined to be in the best interest of the child. In determining whether joint

custody is in the best interest of the child, the court shall consider the same factors considered in awarding sole legal and physical custody and all of the following factors:

- (a) The agreement or lack of agreement of the parents on joint custody.
- (b) The past and present ability of the parents to cooperate with each other and make decisions jointly.
- (c) The ability of the parents to encourage the sharing of love, affection, and contact between the child and the other parent.
- (d) Any history of or potential for child abuse, spouse abuse, or kidnapping.
- (e) The geographic proximity of the parents to each other as this relates to the practical considerations of joint physical custody.

The court may order a form of joint custody without the consent of both parents, when it is in the best interest of the child.

If both parents request joint custody, the presumption is that joint custody is in the best interest of the child. Joint custody shall be granted in the final order of the court unless the court makes specific findings as to why joint custody is not granted.

In order to implement joint custody, the court shall require the parents to submit, as part of their agreement, provisions covering matters relevant to the care and custody of the child, including, but not limited to, all of the following:

- (a) The care and education of the child.
- (b) The medical and dental care of the child.
- (c) Holidays and vacations.
- (d) Child support.
- (e) Other necessary factors that affect the physical or emotional health and well-being of the child.

You must designate the parent possessing primary authority and responsibility regarding involvement of the minor child in academic, religious, civic, cultural, athletic, and other activities and in medical and dental care if the parents are unable to agree on these decisions. The exercise of this primary authority is not intended to negate the responsibility of the parties to notify and communicate with each other as provided in this article.

If the parties are unable to reach an agreement, the court shall set the plan.

11. **CHILD SUPPORT:** In making a determination of child support, the court shall apply the Child Support Guidelines established by the Alabama Rules of Judicial Administration. Any original decree, judgment, or order issued by a court for the payment of support shall include as a separate section a withholding order directing any employer of the obligor to withhold and pay over to the clerk of the court or the Department of Human Resources an amount ordered to be paid for support. The

withholding order shall not under any circumstances be waived by mutual agreement of the parties to the case.

The withholding order shall recite the amount of the obligor's continuing support obligation and shall require the withholding of the support obligation from the income due or becoming due to the obligor at each pay period and payment to the clerk of the court out of which the order is issued or the department or its designee, whichever is appropriate within seven business days of the date the obligor is paid the paycheck from which the support is withheld.

FORM LIST

The following forms are included in this package are:

1. Complaint for Divorce **(AL-508D)**
2. Information Sheet **(AL-CS-47)**
3. Separation Agreement **(AL-511D)**
4. Affidavit of Testimony in Support of Decree (Plaintiff) **(AL-805D)**
5. Answer, Waiver, and Agreement for Taking of Testimony **(AL-807D)**
6. Acknowledgment of Non-Representation **(AL-808D)**
7. Final Judgment - Divorce Decree **(AL-809D)**
8. Vital Statistics Form (Certificate of Divorce) **(AL-C-COD)**
9. Child Support Obligation Income Statement/Affidavit **(AL-CS-41)**
10. Child Support Guidelines **(AL-522D)**
11. Child Support Guidelines Worksheet **(AL-CS-42)**
12. Child Support Guidelines Notice of Compliance **(AL-CS-43)**
13. Order/Notice to Withhold Income for Child Support **(AL-CS-04)**
14. Notice to Defendant - Child Support Withholding Order **(AL-CS-33)**
15. Answer to Order of Withholding **(AL-CS-35)**

FORM EXPLANATIONS

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

- 1. Complaint for Divorce (AL-508D)** – This document states the legal grounds and other required details for your divorce.
- 2. Information Sheet (AL-CS-47)** – This form requests required personal information regarding all parties to the divorce action for the Court’s records.
- 3. Separation Agreement (AL-511D)** – 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-805D)** – 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*.
- 5. Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)** – In this form, your spouse submits to the jurisdiction of the court and waives that he or she agrees to be divorced according to the agreed terms. You and your spouse must sign this form before a witness and a Notary Public for filing.
- 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 you and 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 Judgment of Divorce (AL-809D)** - The Final Decree and Judgment of Divorce 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.
- 8. Vital Statistics Form (Certificate of Divorce) (AL-C-COD)** – This official form documents a divorce that occurred in Alabama. It becomes part of the vital records with the state Center for Health Statistics.
- 9. Child Support Obligation Income Statement/Affidavit (AL-CS-41)** - This form is used by the Plaintiff and Defendant to provide the Court with their current financial information.
- 10. Child Support Guidelines (AL-522D)** - The Guidelines provide the presumptively correct amount of child support to be paid based upon the income of the parties.
- 11. Child Support Guidelines Worksheet (AL-CS-42)** - The Worksheet is used to calculate the correct amount of child support to be paid based upon income of the parties.

- 12. Child Support Guidelines Notice of Compliance (AL-CS-43)** - This form is used to certify to the Court that based upon the information supplied in each party's *Child Support Obligation Income Statement/Affidavit*, the Child Support Guidelines were applied by the parties in calculating the amount of child support to be paid.
- 13. Order/Notice to Withhold Income for Child Support (AL-CS-04)** - This form is the order from the court following a hearing which details how much child support, where payments are to be made and other relevant details related to the order such as health insurance payments.
- 14. Notice to Defendant – Withholding of Support (AL-CS-33)** – This is the notice to the defendant notifying her/him that wages, salary or benefits may be withheld by her/his employer to enforce the particular child support obligation as ordered in the divorce. This form must be completed and filed when the Withholding Order of Child Support is served.
- 15. Answer to Order of Withholding (AL-CS-35)** – This form would be provided to the employer of the person obligated to pay child support. Employer verifies the amount of earnings and acknowledges employer's ability to withhold the amount in the order. This form must be completed and filed when the Withholding Order of Child Support is served.

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: The filing party should complete the following:

- *Information Sheet (AL-CS-47).*
- *Complaint for Divorce (AL-508D)*
- *Affidavit of Testimony in Support of Decree (AL-805D)*

Once completed, these documents should then be filed with the Clerk of Court in the county of filing. A filing fee must be paid at this time. At the time you file the *Complaint for Divorce (AL-508D)*, inform the clerk that the Defendant will sign an *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* and to hold issuance of a *Summons*.

STEP 2: Next, mail or hand deliver to your spouse copies of the previously filed documents along with the *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* and, if you are represented by an attorney and your spouse is not, an *Acknowledgment of Non-Representation (AL-808D)*. The *Acknowledgment of Non-Representation (AL-808D)* is only to be used if you have a lawyer and your spouse does not - otherwise, **you should not use this form.**

Instruct your spouse to complete and return the *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* to you for filing. Once returned to you, file the *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* with the Clerk of Court in the county of filing.

STEP 3: Each party should complete a *Child Support Obligation Income Statement/Affidavit (AL-CS-41)*. After each party has completed his or her *Child Support Obligation Income Statement/Affidavit ((AL-CS-41))*, the parties should jointly complete the *Child Support Guidelines Worksheet (AL-CS-42)* using the provided *Child Support Guidelines (AL-522D)*. Once completed, each party should then sign the *Child Support Guidelines Notice of Compliance (AL-CS-43)*.

Once completed, file the *Child Support Obligation Income Statement/Affidavit (AL-CS-41)*, *Child Support Guidelines Worksheet (AL-CS-42)* and *Child Support Guidelines Notice of Compliance (AL-CS-43)* with the Clerk of Court in the county of filing.

STEP 4: In consultation and agreement with your spouse, next complete the *Separation Agreement (AL-511D)*, making certain to agree to all of the terms contained therein. The terms of the *Separation Agreement (AL-511D)* will be incorporated into the *Final Decree and Judgment of Divorce (AL-809D)*. Special attention should be paid to all provisions relating to the care and custody of minor children of the marriage, as these provisions will govern the parties if approved by the Court.

STEP 5: The *Final Judgment of Divorce (AL-809D)* should next be completed. 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 *Final Judgment of Divorce (AL-809D)*. If you must appear for a hearing, determine the date of the hearing with the clerk or court administrator, and notify your spouse thereof.

If you are not required to attend an actual hearing in your county, deliver the original and three copies of the *Final Judgment of Divorce (AL-809D)* with the *Separation Agreement (AL-511D)* attached to the Clerk. If you are required to attend, take the *Final Judgment of Divorce (AL-809D)* with the *Separation Agreement (AL-511D)* 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 (AL-809D)* with the *Separation Agreement (AL-511D)*, you must FILE it with the Court Clerk, and mail a stamped “filed” copy to your spouse.

CHECKLIST

☐ The filing party completes the following:

- *Information Sheet (AL-CS-47).*
- *Complaint for Divorce (AL-508D)*
- *Affidavit of Testimony in Support of Decree (AL-805D)*

Once completed documents then filed with Clerk of Court in county of filing. Filing fee paid. At time of filing, Clerk informed that Defendant will sign *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* and issuance of *Summons* is unnecessary.

☐ Next, spouse mailed or copies hand delivered copies of previously filed documents along with *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* and, if you are represented by an attorney and your spouse is not, an *Acknowledgment of Non-Representation (AL-808D)*.

Spouse instructed to complete and return *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* to you. Once returned, *Answer, Waiver, and Agreement for Taking of Testimony (AL-807D)* filed with Clerk of Court in county of filing.

☐ Each party then completes *Child Support Obligation Income Statement/Affidavit (AL-CS-42)*. After completion, parties jointly complete *Child Support Guidelines Worksheet (AL-CS-42)* using provided *Child Support Guidelines (AL-522D)*. Once completed, each party then signs *Child Support Guidelines Notice of Compliance (AL-CS-43)*.

Once completed, *Child Support Obligation Income Statement/Affidavit (AL-CS-41)*, *Child Support Guidelines Worksheet (AL-CS-42)* and *Child Support Guidelines Notice of Compliance (AL-CS-43)* are then filed with the Clerk of Court in the county of filing.

☐ In cooperation with your spouse, *Separation Agreement (AL-511D)* then completed.

- ☐ *Final Judgment of Divorce (AL-809D* next completed.
- ☐ If you must appear for hearing, date of hearing obtained from Clerk and spouse notified. *Final Judgment of Divorce (AL-809D* with *Separation Agreement (AL-511D)* attached brought to hearing and presented to Judge at conclusion of hearing.

If you are not required to attend hearing, deliver original and three copies of the *Final Judgment of Divorce (AL-809D* with the *Separation Agreement (AL-511D)* attached to the Clerk.

- ☐ *Final Judgment of Divorce (AL-809D* and *Order/Notice to Withhold Income for Child Support (AL-CS-04)* signed by Judge at hearing or otherwise.
- ☐ Signed *Final Judgment of Divorce (AL-809D)* filed with Clerk, with copies to you and your spouse.
- ☐ Mail or deliver *Final Judgment of Divorce (AL-809D)* 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-006-D.htm>

DISCLAIMER

These materials were developed by U.S. Legal Forms, Inc. based upon statutes and forms for the subject state. All Information and Forms are subject to this Disclaimer: All forms in this package are provided without any warranty, express or implied, as to their legal effect and completeness. Please use at your own risk. If you have a serious legal problem we suggest that you consult an attorney. U.S. Legal Forms, Inc. does not provide legal advice. The products offered by U.S. Legal Forms (USLF) are not a substitute for the advice of an attorney.

THESE MATERIALS ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OF INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL U. S. LEGAL FORMS, INC. OR ITS AGENTS OR OFFICERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE MATERIALS, EVEN IF U.S. LEGAL FORMS, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THESE FORMS WERE PREPARED FOR STATEWIDE USE. HOWEVER, SOME COUNTIES OR JUDGES MAY REQUIRE CERTAIN MODIFICATIONS TO THE FORMS FOR USE IN YOUR PARTICULAR COUNTY AND MAY REQUIRE SPECIAL FORMS NOT INCLUDED. CHANGES REQUIRED BY PARTICULAR JUDGES ARE NOT UNCOMMON EVEN IF THE FORMS HAD BEEN PREPARED BY YOUR ATTORNEY. REGARDLESS, YOU SHOULD BE ABLE TO USE THESE FORMS AND INSTRUCTIONS, WITH ANY REQUIRED MODIFICATIONS, TO MAKE IT THROUGH THE PROCESS. IF YOU NEED TO MAKE CHANGES, OR IF SPECIAL FORMS ARE REQUIRED IN YOUR COUNTY, YOU CAN MAKE THE CHANGES AND REFILE, OR OBTAIN THE SPECIAL FORMS EITHER FROM THE CLERK OR A CLOSED DIVORCE FILE WHICH YOU CAN USE AS AN EXAMPLE.