

Divorce Information and Worksheet

Instructions: This worksheet is designed to be used by persons contemplating a divorce. It may also be used by your attorney. Completing this form before your initial interview with your attorney may save you valuable time and money.

Part 1 - Definitions – Terms and Explanations

Definitions - Terms and Explanations	
1. Complaint	The pleading used to commence a divorce action that is filed with the court clerk, usually in the county of residence of the parties.
2. Petition	Same as complaint. Some States use the term Petition instead of complaint.
3. Plaintiff Or Petitioner	The person who files the complaint. May be called Petitioner if a Petition is used instead of a complaint. If a Joint Complaint is allowed, the parties may be called Co-Plaintiffs or Co-Complainants.
4. Defendant Or respondent	The person who the complaint is filed against. This person is usually required to answer the complaint within a certain number of days, or file a waiver to the complaint. After the complaint is filed, the defendant is usually served with a copy of the complaint and a summons directing the defendant to answer the complaint.
5. Co-Plaintiffs	When both parties sign the complaint in a divorce action it is called a Joint Complaint or Joint Petition. Some states allow Joint complaints and some do not.
6. Summons	This is a document signed by the Court Clerk and served on the defendant. It informs the defendant that a complaint has been filed and directs the defendant to file an answer within the required time.
7. Cover Sheet	Some states require a cover sheet to be filed with the complaint, petition or joint complaint which provides basic information about the parties and the action. These are used by the court for easy reference and also sometimes for statistic reporting. Some clerks will supply you with the required cover sheet and others will direct you to where a copy can be obtained.
8. Information Sheet	Same as Cover Sheet. Some states use the term Information sheet instead of cover sheet.
9. Waiver of Process	In cases where the defendant does not desire to file an answer, or where the defendant agrees to the divorce, the defendant will file a waiver of process. In states that allow a waiver of process, the waiver takes the place of the summons and no summons is issued to you by the clerk when the complaint is filed.
10. Entry of Appearance	Often the defendant will include an entry of appearance with the waiver of process and the forms are sometimes combined into a single form. The entry basically provides that the defendant enters his or her appearance in the case and may consent to an entry of divorce.
11. Court Clerk	Courts have clerks who handle the court papers, hearings and other matters. A complaint is filed with the Court clerk usually in the county of residence of the parties. The clerk is the clerk of the court who handles domestic matters in your county, such as the chancery clerk, Family Court Clerk, etc. There may be more than one clerk in your county for different types of courts.
12. Waiting Period	Some states have a waiting period from the time of filing the complaint before the matter may be heard or a final judgment entered. If so, you cannot set the case for trial or present a judgment of divorce until the waiting period has expired.

Definitions - Terms and Explanations

13. Final Judgment	The form which concludes the divorce is called a final judgment, i.e. Final Judgment of Divorce or Dissolution of Marriage. It is presented to the Court after all requirements to obtain the divorce have been met. In a no-fault case, the final judgment may attach and incorporate the terms of a settlement agreement or recite the provisions of a filed settlement agreement. Same as Decree.
14. Dissolution	Some states use the term dissolution of marriage instead of divorce. In those States, the complaint and judgment will provide "Complaint for Dissolution of Marriage" or "Final Judgment of Dissolution of Marriage."
15. Declaration	Same as Complaint or Petition. Some States use the term declaration instead of Complaint or Petition.
16. Military Affidavit	Under a Federal Soldiers and Sailors' Civil Relief Act, a divorce action may not be allowed to proceed if the defendant is in the active military service. This affidavit states that the defendant is not in the active military service and is required to be filed in most States in order to show the Court that the action can proceed because the defendant is not in the military.
17. UCJA	Uniform Child Custody Jurisdiction Act - An act adopted by most states determining which state's courts have jurisdiction over custody matters.
18. Joint Custody	Some States allow joint custody in certain cases where both parents are entitled to care for and obtain information about the children. Support may still be paid and joint custody may be equal or divided. Some courts do not favor joint custody while others routinely accept it. Joint custody does not necessarily mean equal time parenting. Depending on your state's definition, it may simply mean both parents have meaningful involvement.
19. Physical Custody	In States that use this term, it means the parent that will have physical custody of the children. The other parent has visitation rights. The term Joint Physical Custody is also used.
20. Legal Custody	In some States, legal custody means that although one parent may have physical custody, both parents have joint legal custody and are equally entitled to make decisions regarding the health, care and general welfare of the children, as well as have equal access to all information concerning the children. Parties may have Joint Legal custody.
21. Custodial Parent	Same as parent with physical custody.
22. Non-Custodial Parent	Parent that does not have physical custody.
23. Child Support	Amount of money usually paid to the custodial parent for the maintenance and support of the children.
24. Child Support Factors	In determining the amount of child support to be paid, the Courts and statutes have looked to child support factors to determine the amount of support, such as the income of the parties, age of children, etc.
25. Child Support Guidelines	All states now have child support guidelines to assist the Court and parties in calculating the amount of child support that should be paid. If the guidelines are followed, the chance of having the support amount the parties agree to approved is increased. If the child support guidelines are not followed, reasons must be provided as to why there should be a deviation from the guidelines in the case. The deviation may be more or less than the guidelines.
26. Visitation	Right of the non-custodial parent to visit with the children, i.e. every other weekend.
27. Settlement Agreement	Agreement between husband and wife settling all property, child support, custody, and other issues.

Definitions - Terms and Explanations

28. Residency Requirement	The length of time one or both parties reside in the State before a divorce action may be filed.
29. No-Fault	Uncontested agreed divorce.
30. Contested	Divorce where one party does not consent to the divorce.
31. Jurisdiction	The basis for the Court to hear a case.
32. Venue	The proper county in which to file the divorce.
33. Cooling Off Period	Required time interval between the date of filing and entry of divorce.
34. Financial Statement	Statement of parties' assets, liabilities, and net worth. Some states also include income and expenses.
35. Filing Fee	A fee that is paid at the time of filing of the complaint.
36. Child Support Worksheet	Worksheet used to evaluate child support to comply with child support guidelines.
37. Uncontested	Agreed divorce or divorce where defendant does not appear.
38. Separate Property	Property not considered marital property.
39. Marital Property	Property acquired during the marriage.
40. Equitable Distribution	Division of marital property between husband and wife.
41. Joint Property	Property owned by husband and wife equally.
42. Answer	Pleading filed to respond to a divorce complaint.
43. Discovery	Fact-finding process that takes place after the divorce complaint has been filed, in order to allow the parties in the case to prepare for settlement or trial.
44. Interrogatories	Written discovery questions from one party to another.
45. Deposition	Oral questions from one party to another.
46. Request for Admissions	Written questions in the form of asking a party to admit truth.
47. Fault Grounds	Basis for divorce, such as adultery.
48. No-Fault Grounds	Basis for divorce where there is no need to prove actual fault.
49. Irreconcilable Differences	A typical no-fault ground for divorce.
50. Irretrievably Broken	Same as irreconcilable differences.
51. Deadlines	Time within which action must be taken, such as filing an answer.
52. Hearing	Presenting testimony before the judge.
53. Pleading	Documents such as the complaint, answer, etc.
54. Joint Complaint	Complaint filed by both husband and wife.
55. Alimony/spousal support/maintenance	Monetary award for the support of dependant spouse.

Part 2. - Your Personal Information

Personal Information			
Your Name:	U.S. Citizen	Yes	No
Address:	Date of Birth:		

		Social Security Number:	
City:	State:	Zip:	
Where do you presently live, if different than address above?			
How long have you lived at your present address?			
How long did you live at former address, if applicable?			
Birth State and County			
Have you ever lived in a community property state?		Yes	No
If yes, what state?			
Do you have a known future residence address? Yes/No			
If yes, list address:			
Education level			
Describe your physical condition and any health problems you may have.			
Describe any emotional problems you may have.			
Employment			
Where are you employed?			
Position			
Address	City	State	Zip
Phone		Fax	
How long employed at present employer?			
Previous employer:		Position:	
Address	City	State	Zip
Education			
Educational Level		Degrees	

Part 3. - Spouse Personal Information

Personal Information - Spouse				
Spouse Name:		U.S. Citizen	Yes	No
Address:		Date of Birth:		
		Social Security Number:		
City:	State	Zip		
Where does spouse presently live, if different than address above?				
How long has spouse lived at present address?				
How long did spouse live at former address, if applicable?				
Birth State and County				
Has spouse lived in a community property state?		Yes	No	
If yes, what state?				

Does spouse have a known future residence address? Yes/No
If yes, list address

Education level of spouse.

Describe spouse's physical condition and any health problems he/she may have.

Describe any emotional problems spouse may have.

Spouse Employment

Where is spouse employed?

Position

Address

City

State

Zip

Phone

Fax

How long employed at present employer?

Previous employer:

Position:

Address

City

State

Zip

Education

Educational Level

Degrees

Part 4. - Marriage

Marriage

Place of Marriage

Have you ever been separated from your spouse before?

Yes

No

If yes, please provide dates and details of separation.

Are you now separated from your spouse?

Yes

No

If yes, provide details of separation.

What was date of separation?

Part 5. - Children

Children

Name

Date of Birth

In what city and state were the children born?

Has there ever been any prior litigation regarding the custody of the children? Yes/No. If yes, please explain:

Where do the children reside now?

Husband •

Wife •

How long?

Are there any special issues or circumstances to be considered regarding the children? (Medical problems, etc.)

Yes

No

If yes, please explain:

Do the parents agree to terms of custody/visitation?

Yes

No

Do the parents agree to custody/visitation?

If Yes, please select:

- Sole custody to Wife with reasonable visitation to Husband
- Sole custody to Husband with reasonable visitation to Wife
- Joint custody to Husband and Wife
- Other-(describe)-

Yes

No

What is address where children presently reside?

Is wife pregnant?

Yes

No

If yes, what is due date?

Do the children have any special medical needs?

Yes

No

If yes, please explain:

Children's Doctor

Address

City

State

Zip

Do the children require any special educational needs?

Yes

No

If yes, provide details.

Please provide day care address and how often the children are kept in day care, if applicable.

Please provide the name and address of any third party who routinely keeps or cares for the children.

Dentist Name:

Address

City

State

Zip

Has there ever been any claim, allegation, investigation or litigation regarding child neglect or abuse?

Yes

No

If yes, please explain:

Income of Husband (Monthly)	Monthly	Yearly
<input type="checkbox"/> Commissions		
<input type="checkbox"/> Other		
Total Income		
Deductions from Income		
Gross Pay		
Less Social Security		
Less Federal Withholdings		
Less State Withholdings		
Other Deductions		
Net Pay		

Income of Wife	Monthly	Yearly
<input type="checkbox"/> Salary		
<input type="checkbox"/> Dividends		
<input type="checkbox"/> Rental Income		
<input type="checkbox"/> Notes Receivable		
<input type="checkbox"/> Business		
<input type="checkbox"/> Bonuses		
<input type="checkbox"/> Commissions		
<input type="checkbox"/> Other		
<input type="checkbox"/>		
Total Income		
Deductions from Income		
Gross Pay		
Less Social Security		
Less Federal Withholdings		
Less State Withholdings		
Other Deductions		
Net Pay		

Part 8. - Monthly Expenses

Monthly Expenses (Average)	Who Pays	Total
<input type="checkbox"/> House Payment to		
<input type="checkbox"/> Rental Payment to		
<input type="checkbox"/> Car Loan to		
<input type="checkbox"/> Car Loan to		
<input type="checkbox"/> Electricity		
<input type="checkbox"/> Gas (Home)		

Part 9. - Joint Assets

JOINT ASSETS: DESCRIPTION OF JOINT ASSETS (To avoid confusion at a later date, describe each item as clearly as possible. These are considered marital assets and owned by both Husband and wife.)	Current Fair Market Value
<input type="checkbox"/> Cash (on hand)	\$
<input type="checkbox"/> Cash (in banks/credit unions)	
<input type="checkbox"/>	
<input type="checkbox"/> Stocks/Bonds	
<input type="checkbox"/>	
<input type="checkbox"/> Notes (money owed to you in writing)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Money owed to you (not evidenced by a note)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Real estate: (Home)	
<input type="checkbox"/> (Other)	
<input type="checkbox"/> Business Interests	
<input type="checkbox"/>	
<input type="checkbox"/> Automobiles	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Boats	
<input type="checkbox"/> Other vehicles	
<input type="checkbox"/>	
<input type="checkbox"/> Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Furniture & furnishings in home	
<input type="checkbox"/>	
<input type="checkbox"/> Furniture & furnishings elsewhere	
<input type="checkbox"/>	
<input type="checkbox"/> Collectibles	
<input type="checkbox"/>	
<input type="checkbox"/> Jewelry	
<input type="checkbox"/>	
<input type="checkbox"/> Life insurance (cash surrender value)	
<input type="checkbox"/>	
<input type="checkbox"/> Sporting and entertainment (T.V., stereo, etc.) equipment	
<input type="checkbox"/>	
<input type="checkbox"/> CD's	
<input type="checkbox"/>	

JOINT ASSETS: DESCRIPTION OF JOINT ASSETS (To avoid confusion at a later date, describe each item as clearly as possible. These are considered marital assets and owned by both Husband and wife.)	Current Fair Market Value
<input type="checkbox"/> Other assets	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
Total Assets of Husband and Wife (Marital Assets)	\$

Part 10. - Retirement Accounts

Retirement Accounts	Account Number	Current Fair Market Value
Husband Accounts:		
Wife Accounts:		

Part 11. - Separate Assets of Husband

ASSETS: DESCRIPTION OF SEPARATE ASSETS OF HUSBAND (To avoid confusion at a later date, describe each item as clearly as possible.)	Current Fair Market Value
<input type="checkbox"/> Cash (on hand)	\$
<input type="checkbox"/> Cash (in banks/credit unions)	
<input type="checkbox"/>	
<input type="checkbox"/> Stocks/Bonds	
<input type="checkbox"/>	
<input type="checkbox"/> Notes (money owed to you in writing)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Money owed to you (not evidenced by a note)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Real estate: (Home)	
<input type="checkbox"/> Date Acquired	<input type="checkbox"/> Purchase Price:

ASSETS: DESCRIPTION OF SEPARATE ASSETS OF WIFE (To avoid confusion at a later date, describe each item as clearly as possible.)	Current Fair Market Value
<input type="checkbox"/> Cash (in banks/credit unions)	
<input type="checkbox"/>	
<input type="checkbox"/> Stocks/Bonds	
<input type="checkbox"/>	
<input type="checkbox"/> Notes (money owed to you in writing)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Money owed to you (not evidenced by a note)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Real estate: (Home)	
<input type="checkbox"/> (Other)	
<input type="checkbox"/>	
<input type="checkbox"/> Business interests	
<input type="checkbox"/>	
<input type="checkbox"/> Automobiles	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Boats	
<input type="checkbox"/> Other vehicles	
<input type="checkbox"/>	
<input type="checkbox"/> Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Furniture & furnishings in home	
<input type="checkbox"/>	
<input type="checkbox"/> Furniture & furnishings elsewhere	
<input type="checkbox"/>	
<input type="checkbox"/> Collectibles	
<input type="checkbox"/>	
<input type="checkbox"/> Jewelry	
<input type="checkbox"/>	
<input type="checkbox"/> Life insurance (cash surrender value)	
<input type="checkbox"/>	
<input type="checkbox"/> Sporting and entertainment (T.V., stereo, etc.) equipment	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Other assets	
<input type="checkbox"/>	

ASSETS: DESCRIPTION OF SEPARATE ASSETS OF WIFE (To avoid confusion at a later date, describe each item as clearly as possible.)	Current Fair Market Value
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
Total Assets to Wife	\$

Part 13. - Liabilities of Both Husband and Wife

LIABILITIES AND DEBTS: DESCRIPTION OF DEBT(S) OF BOTH HUSBAND AND WIFE. INDICATE WHETHER DEBT IS HUSBAND'S, WIFE'S OR BOTH (To avoid confusion at a later date, describe each item as clearly as possible.)	Debt of H, W, B	Monthly Payment	Current Amount Owed
<input type="checkbox"/> Mortgages on real estate: (Home)			
<input type="checkbox"/> (Other)			
<input type="checkbox"/>			
<input type="checkbox"/> Charge/credit card accounts			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/> Auto loan			
<input type="checkbox"/> Auto loan			
<input type="checkbox"/> Bank/credit union loans			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/> Money you owe (not evidenced by a note)			
<input type="checkbox"/>			
<input type="checkbox"/> Judgments			
<input type="checkbox"/>			
<input type="checkbox"/> Other			
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			
Total Debts and Liabilities of Husband and Wife		\$	\$

Part 14 - Inheritance

Property Acquired by Inheritance

Describe property inherited by husband (please provide dates)

Describe property inherited by wife (please provide dates)

Part 15 - Documents that may be needed, especially if the divorce is contested.

Documents (May be needed)

Federal, State, and Local Tax Returns	
Payroll and W2 Forms	
Deeds	
Business Tax Returns	
Mortgages	
Leases	
Bank Account Records	
Stock Certificates	
CD's	
Auto Titles	
Insurance Petitions	
Appraisals	
Birth Certificates	
INS Documents	
Social Security Card	

Documents (May be needed)	
Marriage License	
Prior Divorce Documents	
Any and all documents relating to income, expenses and assets.	
Premarital Agreement, if any, as well as any other written agreements between Husband and Wife	

Part 16 - Settlement Worksheet

Property Settlement Agreement Worksheet		
Who will receive title to the marital home?	H	W
Who will pay monthly payment on marital home?	H	W
Who will pay the utilities for the marital home?	H	W
What marital assets will husband receive?		
What marital assets will wife receive?		
What marital debts will wife pay?		
What marital debts will husband pay?		
What separate property of husband will wife receive?		
What separate property of wife will husband receive?		
What separate debts will be paid by husband?		
What separate debts will be paid by wife?		
Custody of children:		

Property Settlement Agreement Worksheet

Custody to wife with visitation to husband Joint Physical and Legal Custody

Custody to husband with visitation to wife Joint Legal Custody

Custody to wife with visitation to Husband

Visitation times for non-custodial parent:

<input type="checkbox"/> Parents will share in the decisions regarding the health of the Children?	Equally	Only _____
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<input type="checkbox"/> Parents will share in the decisions relating to education of the Children?		
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<input type="checkbox"/> Parents will share in the decisions relating to the religion of the children?	Equally	Only _____
--	---------	------------

<input type="checkbox"/> Will non-custodial parent be notified before decisions regarding health and education?	Yes	No
---	-----	----

<input type="checkbox"/> Will non-custodial parent be entitled to access to medical, dental and educational records of the children?	Yes	No
--	-----	----

<input type="checkbox"/> Will Grandparents have specified visitation rights?	Yes	No
--	-----	----

If yes, please provide names and details of visitation desired?

Will the last name of the Children remain the same? Yes/No. If no, please explain:

Child Support:

<input type="checkbox"/> Child support will be paid by	H	W
--	---	---

Amount of child support

When paid	One Month	Every two weeks
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Health Insurance

Who will pay health insurance for child?	H	W
--	---	---

Alimony

Will Alimony be paid?	Yes	No
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If yes, who will pay?	H	W
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How often will alimony be paid?

When will alimony stop, if certain period of time?

Property Settlement Agreement Worksheet

Other Settlement Provisions:

Part 17. Typical No Fault Procedures

No Fault Procedures

1. A Complaint, Petition or Joint Complaint is filed in the County of your residence. Some states allow a joint complaint while others do not. In states that do not allow a joint complaint, one party will file a complaint or petition for divorce or dissolution of marriage.
2. At the time of filing the complaint a filing fee is paid. Some courts require a cover sheet providing basic information about the case. Ask your clerk for this form if the clerk states one is required.
3. If you are using a Complaint instead of a joint complaint, the defendant will be served with a summons to answer the complaint or will execute a waiver of summons and entry of appearance. Some states require that a summons be issued, while others will allow a defendant to file a waiver. Ask your clerk.
4. If a summons is required, the Defendant may file an answer admitting that a divorce should be granted based upon an agreement of the parties. An answer is not required in all states.
5. After the complaint and the waiver or answer are filed, you need to determine how to present a judgment of divorce to the court. Some states have a waiting period, such as no judgment may be presented until 60 days after the complaint is filed.
6. After the waiting period has expired, ask the clerk or court administrator for the proper procedure to present the judgment to the judge. Some states require an actual hearing, some will allow the divorce to be presented on affidavit and others require no evidence beyond the contents of the complaint.
7. Present the Separation Agreement and Judgment to the Judge.

Part 18 - Witness Testimony

Summary: Some states require actual testimony, even in a no fault divorce. The sample below is only a sample of questions that a witness may be asked in an uncontested divorce.

Witness Testimony - Sample Questions and Answers

1. Please state your name.

Answer:

2. Where do you live (address)?

Answer:

3. How long have you lived there?

Answer:

4. Do you know _____ and _____?

5. How long have you known them?

Answer:

6. Do you know where they live?

Witness Testimony - Sample Questions and Answers

Answer:

7. What county and State do they live in?

Answer:

8. How long have they lived there?

Answer:

9. Have you been in their house before?

Answer:

10. How many times?

Answer:

11. To your knowledge, are Husband and Wife now separated?

Answer:

12. Do you know when they separated?

Answer: Yes/No When?

13. Do you understand that _____ and _____ are asking the court for a divorce on the grounds of _____?

Answer:

14. Can you tell the court what you know about the parties and the ground they seek to use to obtain a divorce?

Answer:

15. Do you believe the parties are entitled to a divorce on the ground of _____?

Answer:

Part 19. Sample Presentation of Divorce Complaint to Judge - Ex parte, in open Court where no witnesses are required, or before Presenting Witnesses

Sample Presentation of Divorce - No fault No Children

1. Court Clerk, Administrator or Judge Calls Case and asks if parties are ready.

2. Your Honor, My name is _____ and I am the [Plaintiff, Petitioner, Joint Complainant] in this case. I am ready to proceed.

3. Judge advises you to proceed.

4. I am requesting a divorce from ____ on the grounds of _____. Or _____ and I are requesting a divorce on the grounds of _____.

5. I have filed a Complaint/petition on _____ with the court clerk. Or. _____ and I have filed a joint complaint for divorce with the clerk on _____.

6. If Complaint or Petition state, After filing the Complaint, _____ was served with summons or entered a waiver of process and entered an appearance.

7. _____ and I have lived in _____ County _____ for ____ years/months prior to filing for divorce.

8. There were no children born to the marriage, none adopted and _____, wife, is not pregnant.

Sample Presentation of Divorce - No fault No Children

9. _____ and I have agreed on all terms of the divorce, including property settlement, payment of debts, and other terms required by _____ law.

10. We have executed and filed a Property Settlement Agreement containing all terms of our agreement to settle the divorce.

11. The agreement basically provides that: (summarize main parts of agreement)

Child Custody and Visitation

Child Support

Alimony

Property Division

Debt Division

12. I am presenting to the Court today a Final Judgment of Divorce which incorporates the terms of our agreement and asking the court to enter same if it is in acceptable form and content.

Part 20 - Complete if Child Custody will be contested (add questions and answers you determine or think are relevant).

Summary: When custody of the children is contested, the courts look to various factors to determine who best can care for the health, education and welfare of the children. Although factors vary to some degree from state to state (and particular judge), the primary factors are more or less uniform as a practical matter. Below are statements/factors to consider:

1. Age of the Children.
2. Sex of the Children.
3. Education level of the children.
4. Recommendations from others to the court.
5. History of child violence
6. Mental and Physical condition of the parents.
7. Mental and Physical condition of the children.
8. Preference of child of later years. i. e. 12 above, 14 above.
9. Stability of home environment offered by each parent.
10. Ability each parent displays to cooperate with the other parent regarding the children.
11. Possibility of children being removed from the home and residence and effect, if any, on the children.
12. Material needs of the Children.
13. Emotional connection between children and each parent.

inappropriate or unjust outcome. In most states, should the court determine that the application of the guidelines would be unjust or inappropriate, the court is required to state in writing the amount due under the guidelines and the specific reasons for deviating from the guidelines. The courts will often also require that the party receiving child support acknowledge the amount which would have been due under the guidelines. In addition, most states require that health insurance be maintained for the child if reasonably available from a party's employer or other means, or require the party to obtain such insurance as soon as it becomes reasonably available.

Some of the factors the court may consider in deviating from child support guidelines include:

1. The financial means, circumstances and standard of living of both parents;
2. The financial means and circumstances of the child;
3. The standard of living the child would have enjoyed had the marriage continued;
4. The age, health, emotional and physical condition of each parent;
5. The age, health, emotional and physical condition of the child;
6. The material and educational needs of the child;
7. Custody arrangements for the child, including day care costs.

The above listed factors are just some of the issues that may be considered by the court and are in no way exclusive. The court may consider any factor it deems relevant and the child's best interests will always be the court's main consideration.

In most states, an award of child support terminates upon the child reaching the age of majority, although many states include provisions which permit the award to continue should the child remain in school.

Part 22. - Visitation

Summary: When minor children are involved in a divorce action, both parents must be mindful of the effects of divorce upon children and should therefore resolve to arrange a visitation schedule which encourages the child to develop meaningful relationships with both parties. The parents should also understand that visitation is not an issue to be used as a weapon against the other spouse, but rather a tool to be used to assist the child in his or her healthy development as a person. It is in the child's best interests to have a frequent, meaningful, and continuing relationship with both parents. For children to make an adequate adjustment to the divorce, the children must be allowed to continue their relationship with both parents without experiencing post-divorce conflict between their parents. If necessary, both parents should consider mediation or counseling as a way to resolve any thorny issues which prevent the parties from amicably resolving their differences.

The following are several guiding principles which each parent should consider in constructing a visitation schedule for the child:

1. Visitation should be pleasant for the children and for the parent. Visitation should help the children maintain a good relationship with the non-custodial parent.
2. Visitation should provide meaningful personal contact for both the visiting parent and the children.
3. Visitation should not be used to check on the other parent and the children should not be questioned for information about the other parent.
4. Both parents should strive to agree on matters pertaining to the children, including discipline, so that one parent is not undermining the other parent's efforts.

When drafting visitation arrangements between parents, there are many issues that will arise that the parents should attempt to resolve in the initial agreement regarding visitation. Steps taken now to resolve future conflicts will benefit both parents and children alike. Examples of such issues and suggested ways of resolving them include:

1. **Conflicts Between Regular Weekend, Holiday, and Extended Summer Visitation.**

When there is a conflict between a holiday weekend/summer visitation and the regular weekend visitation, the parents should agree on the method of resolving the conflict ahead of time to prevent any conflict that might arise. A suggested method of resolving the conflict is that the holiday/summer visitation would take precedence and the regular visitation schedule would resume the following weekend. This type of agreement would prevent any problems from arising if the non-custodial parent misses a regular weekend because of holiday/summer visitation.

2. **Appropriate Conduct By Parents.**

Oftentimes in divorces, particularly when the divorce is not amicable, children are subjected to conduct by the parents which is not conducive to developing harmonious relationships with each parent. Parents should at all times avoid speaking negatively about each other and should firmly discourage such conduct by relatives or friends. Each parent also should encourage the children to support the other parent. These basic rules of conduct and discipline should be the baseline standard for both parents, and consistently enforced by both, so that the children do not receive mixed signals.

3. **Parental Communication.**

Parents should agree at all times to keep each other advised of their home and work addresses and telephone numbers. So far as possible, all communication concerning the children should be conducted between the parents in person, or telephonically at their residences (and not at their places of employment). Every effort should be made to ensure that the parties cooperate with each other and keep each other informed and abreast of any event relating to the child.

4. **Grade Reports and Medical Information.**

Over the course of time, there will be many occasions in which reports, exams and other information regarding the child are produced. The parents should come to an agreement by which the grade reports, notices from school, medical reports, etc. are shared with the non-custodial parent as they are received and permit the non-custodial parent to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the custodial parent. Each parent should agree to immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent should agree to notify the non-custodial parent of all school or other events (like Church or Scouts) involving parental participation. If the children are taking medications, the custodial parent should provide the non-custodial parent with a sufficient amount of the child's medicine and appropriate instructions regarding such medication during visitation.

5. **Visitation Clothing.**

In an effort to resolve any issues relating to the clothing of the child during visitation, the custodial parent should agree to send an appropriate supply of the children's clothing with the child during visits, which shall be returned clean (when reasonably possible), with the children, by the non-custodial parent. The non-custodial parent should agree to notify the custodial parent, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

6. **Visitation or Support Disputes.**

Because it is in the child's best interest to have frequent, meaningful and continuing contact with his or her parents, both parents should agree and understand that neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. The children have a right to both support and visitation, neither of which is dependent upon the other. In other words, failure to pay support should not mean no visitation and no visitation should not mean no support. If there is a violation of either a visitation or a support order, the parents must agree that their exclusive remedy is to apply to the court for appropriate sanctions, and not punish the child for the acts of either parent.

7. **Adjustments to This Visitation Schedule.**

Although a rather specific schedule should be drawn up regarding child visitation, the parties should agree to fairly modify visitation when family necessities, illnesses or commitments reasonably so require. The requesting party should give as much notice as circumstances permit in order to prevent any unnecessary problems from arising.

8. **Pickup and Drop-off.**

One of the biggest sources of conflict arising out of visitation is the pick-up and drop-off of children. Unless other arrangements are made, the parties should agree that the non-custodial parent should pick up the children at the times specified and return them at the times specified. The custodial parent should have the children ready for visitation at the time they are to be picked up and should agree to be present at the home to receive the children at the time they are

returned, unless provisions are made for grandparents, current spouses or other appropriate adults known to the children to be present. Each parent should agree to be responsible and as punctual as possible regarding this issue to minimize conflict.

9. **Extracurricular Activities.** Children are often involved in sports, lessons, and other extracurricular activities which are generally to their benefit and enjoyment. Each parent must recognize that a reasonable amount of extracurricular activities are generally assumed to be in the children's best interests and should therefore attempt to be as flexible as possible in order to accommodate the children's extracurricular activity schedules. Extracurricular activities should not supersede summer visitation with non-custodial parents, however, nor should they be used as a method by which to deny access to the non-custodial parent. In recognition of the scheduling difficulties that can be caused by children's extracurricular activities, the custodial parents should act in good faith in attempting to schedule such extracurricular activities as not to unreasonably infringe upon the non-custodial parent's access to the children. Likewise, the non-custodial parent should act in good faith in attempting to assist in transportation needs and in accommodating the children's extracurricular schedules as much as reasonably possible. Good faith communication by the parents is essential with regard to the difficult issue of the scheduling of children's extracurricular activities.

10. **Notice of Canceled Visitation.** It is inevitable that there will be occasions when visitation must be cancelled or shortened due to an unforeseen event or occurrence. In order to minimize the inconvenience to the other parent, whenever possible, the affected parent should agree to give a minimum of three (3) days notice of his or her intent not to exercise all or part of the scheduled visitation. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefore, should be given. The custodial parent should give the same type of notice when good cause exists, making the cancellation or modification of scheduled visitation necessary.

11. **Missed Visitation.** In the event the non-custodial parent misses visitation as the result of illness of the child or parent, an emergency, or other such reasonable excuse, the parties should resolve to make a good faith effort to make up a portion of that visitation within a reasonable period of time, understanding the importance of the non-custodial parent's continuing and frequent contact with the children. The parties should consider an agreement similar to the method of resolving conflicts between regular and holiday visitation as a way to prevent any disagreements from arising.

12. **Caretaker Provision.** As a method of holding down child care costs and of permitting additional time with the child, each parent should agree to grant to the other the right of first refusal for childcare or baby sitting needs of the other parent for durations of four hours or more. Whenever either parent has a need for child care or baby sitting for a duration of four hours or more, that parent should always make a good faith attempt to first inquire of the other parent, with as much advance notice as reasonably possible, as to whether the other parent desires to provide child care or baby sitting. The other parent would be under no obligation to provide the childcare or baby-sitting, and if the other parent elects to provide such childcare or baby-sitting, it should be done at no cost.

13. **Telephone and Mail Privileges.** Each parent should agree to allow liberal and reasonable telephone and mail privileges with the children in order to foster as much communication between child and parents as possible.

14. **Medical Reports and Bills.** Every visitation agreement should contain provisions regarding the sharing of copies of all medical information, and documentation, including bills, preferably within seven (7) days of their receipt, and each parent should agree to immediately notify the other parent in the event of a medical emergency.

15. **Abatement of Support During Extended Visitation.** The parents should consider including provisions which would provide that if the non-custodial parent's support obligation is current, his or her support obligation would be reduced by 50 percent during any visitation of seven (7) consecutive days or more. The agreement could also provide that if support is not current, the reduction would not apply.

16. **Modification.** Any visitation agreement should include a provision regarding the permanent revision or modification of the visitation agreement. It is recommended that the parties agree

that no permanent modification or revision to the agreement may occur without Court approval. Inclusion of this provision will aid in the future resolution of any conflicts regarding changes to the visitation schedule.

17. **Removal of child.** Each parent should agree that neither parent may take the child(ren) from the custody of the other parent or any child care provider or other person entrusted by the other parent with the care of the child(ren) without the agreement of the other party during the other party's time of parental responsibility or visitation.

Sample visitation schedule- Included here is a sample visitation schedule which may be used as a guide in constructing your own agreement. Provisions regarding number of visits, hours of each visit, holidays, etc. should be modified as needed. Additional provisions should be included as agreed to between the parties.

Birth to 1 Year of Age

- i) Non-custodial parent shall have four (4) visits with the child per week, with such contact lasting four (4) hours in length.
- ii) If the child is taken from the home of the custodial parent, the child shall be returned at least one (1) hour before evening bedtime.
- iii) Holiday Access

Holiday access takes precedence over the regularly scheduled visitation plan.

The non-custodial parent shall be entitled to the following:

On each child's birthday from 5:00 p.m. until 8:00 p.m.;
Memorial Day Monday from 2:00 p.m. until 6:00 p.m.;
Labor Day Monday from 2:00 p.m. until 6:00 p.m.;
Thanksgiving Day from 2:00 p.m. until 6:00 p.m.;
Christmas Day from 2:00 p.m. until 6:00 p.m.;
Independence Day from 2:00 p.m. until 6:00 p.m.;
Mother's Day with Mother from 2:00 p.m. until 4:00 p.m. and Father's Day with Father from 2:00 p.m. until 4:00 p.m.

1 Year of Age to 5 Years of Age

- i) The non-custodial parent shall have access on alternate weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
- ii) Additionally, the non-custodial parent shall be permitted one (1) week night each and every week with the child from 5:30 p.m. until 7:30 p.m.
- iii) Holiday Access

Holiday access takes precedence over the regularly scheduled access/visitation plan.

The non-custodial parent shall be entitled to the following:

In years ending in an odd number:

The night before each child's birthday from 5:00 p.m. until 8:00 p.m.;
Memorial Day Monday from 9:00 a.m. until 6:00 p.m.;
Independence Day from 9:00 a.m. until 6:00 p.m.;
Thanksgiving Day from 9:00 a.m. until 6:00 p.m.;

Christmas Eve from 6:00 p.m. until Christmas Day at 10:00 a.m.;

In years ending in an even number:

Each child's birthday from 5:30 p.m. until 7:30 p.m.;
Easter from 8:00 a.m. until 16:00 p.m.;
Labor Day Monday from 9:00 a.m. until 6:00 p.m.;
Halloween evening from 5:30 p.m. until 8:00 p.m.;
Christmas Day from 10:00 a.m. until 7:00 p.m.

iv) Summer Visitation

The non-custodial parent shall have one (1) week of vacation with the children each June, July and August of each year. The non-custodial parent shall notify the custodial parent in writing no later than May 1 of each year as to the specific weeks of such summer visitation.

5 Years of Age and Beyond

- i) Non-custodial parent shall have access with the child on alternate weekends from Friday at 6:00 p.m. until Sunday at 6:00 p.m. and on the Wednesday preceding the weekend access from 5:30 p.m. to 7:30 p.m.
- ii) In addition, the non-custodial parent shall have access with the child during the week immediately following the weekend visitation on Tuesday and Thursday evening from 5:30 p.m. until 7:30 p.m.

iii) Holiday Access:

Holiday access takes precedence over the regularly scheduled access/visitation plan.

The non-custodial parent shall be entitled to the following:

In years ending in an odd number:

The night before each child's birthday from 5:00 p.m. to 8:00 p.m.;
Spring Break from Friday at 6:00 p.m. to the Sunday prior to the start of school at 6:00 p.m.;
Memorial Day weekend from 6:00 p.m. on Friday until 6:00 p.m. on Monday;
Independence Day from 6:00 p.m. on July 3 until 6:00 p.m. on July 5;
Thanksgiving holiday from 6:00 p.m. on Wednesday until 6:00 p.m. on Sunday;
From 6:00 p.m. on December 26 until 6:00 p.m. on January 1st.

In years ending in an even number:

Each child's birthday from 5:30 p.m. until 7:30 p.m.;
Easter weekend from 6:00 p.m. on Good Friday until 6:00 p.m. on Easter Sunday;
Labor Day weekend from 6:00 p.m. on Friday until 6:00 p.m. on Monday;
Halloween evening from 5:30 p.m. until 9:00 p.m.;
Christmas holiday from 6:00 p.m. on December 20 until 6:00 p.m. on December 26.

iv) Mother's Day/Father's Day

The mother shall have access every Mother's Day weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.; the father shall have access every Father's Day weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

v) Summer Visitation:

The non-custodial parent shall have five (5) weeks of summer visitation with the child to be taken in no more than two (2) week intervals and with such weekly or two (2) week visits to be nonconsecutive. The non-custodial parent shall notify the custodial parent in writing no later than May 1 of each year as to the specific weeks of such summer visitation.

END