

STATE OF SOUTH DAKOTA

DIVORCE PACKAGE

UNCONTESTED -- ADULT CHILDREN

Control Number -- SD-004-D

This package contains the following:

- Forms
- Form Explanations
- Information about Divorce
- Instructions
- Checklist
- 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 clerk must be printed on bond paper.

FORMS

The following forms are included in this package:

1. Complaint for Divorce (**SD-801D**)
2. Summons (**SD-803D**)
3. Answer and Waiver of Service (**SD-804D**)
4. Affidavit of Plaintiff and Defendant in Support of Decree (**SD-805D**)
5. Decree of Divorce (**SD-807D**)
6. Notice of Entry of Decree (**SD-809D**)
7. Separation and Property Settlement Agreement (**SD-810D**)
8. Non-military Affidavit (**SD-812D**)

FORM EXPLANATIONS

Since the forms are not numbered in this package you will need to refer to the form title to locate the form. All forms included in this package are identified below.

1. Complaint for Divorce (SD-801D): The document through which you request that the court dissolve your marriage.
2. Summons (SD-803D): The summons notifies your spouse of the Complaint being filed. However, your spouse should already know this if you are communicating properly.
3. Answer and Waiver of Service (SD-804D): This document must be signed by your spouse and filed with the court by you in order to avoid the complexity of formal service of process. In signing the form, your spouse indicates that he or she is aware that the Complaint has been filed and waives formal service.
4. Affidavit of Plaintiff and Defendant in Support of Decree (SD-805D): This Affidavit indicates that the parties have agreed to be divorced and settled all terms thereof in the *Separation and Property Settlement Agreement* which is fair and equitable, and the Court is requested to enter a *Decree of Divorce* based on that document.
5. Decree of Divorce (SD-807D): This is the document the Judge signs in order to finalize your divorce. It incorporates the agreements made by you and your spouse.
6. Notice of Entry of Decree (SD-809D): This document must be filed when you have filed the signed *Decree of Divorce* and mailed a copy of the signed *Decree of Divorce* to your spouse.
7. Separation and Property Settlement Agreement (SD-810D): This document is you and your spouse's agreement regarding the division of property, assets and debts.
8. Non-military Affidavit (SD-812D): This document is your sworn testimony that your spouse is not a member of the armed forces.

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, and this packet cannot help you.

2. THE BASICS

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 (the county of either your or your spouse's residence). You will go before the judge with your spouse and the judge may question you as to certain matters, and likely approve your divorce if all is in order.

3. RESIDENCY REQUIREMENTS

There is no length of residency requirement, aside from the Plaintiff being "a good faith resident" of the state. The Plaintiff must maintain his or her residency until the Divorce Decree is entered.

4. GROUNDS FOR DIVORCE

There are several grounds for divorce in South Dakota, such as adultery, extreme cruelty, etc. This packet is not concerned with those more adversarial causes. The grounds to obtain a no-fault divorce are "irreconcilable differences."

5. 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. You and your spouse must agree to this division and memorialize your agreement in the *Separation and Property Settlement Agreement*. You may agree to divide the property any way you like, as long as you both agree. If you cannot agree on any item of this division, the dissolution of marriage transforms into a **contested divorce**. A contested divorce is outside the scope of this packet.

6. LEGAL SEPARATION

If the court finds that there are irreconcilable differences, which have caused the irremediable breakdown of the marriage, it shall order the dissolution of the marriage or a legal separation. The court may not render a judgment decreeing the legal separation or divorce of the parties on the grounds of irreconcilable differences without the consent of both parties unless one party has not made a general appearance. **25-4-17.2**

7. MEDIATION

After a motion for divorce is filed a judge may determine that there is a chance of reconciliation and may order mandatory mediation for the spouses. Also one of the spouses may tell the court they think things can be worked out and may ask the court to have a hearing to see if the marriage is truly irretrievable. If the court concludes that there is a chance for the marriage to be repaired and there are minor children, the court may delay the proceedings for 30 days for an attempt at reconciliation.

8. ALIMONY

The fault of a spouse in causing a divorce may not be a complete bar to obtaining spousal support, but the cause of separation will be a factor that the court will consider in determining whether or not to award spousal support. Spousal support, when awarded, may be periodic and/or in a lump sum, the amount of which depends upon such factors as the respective ages, assets and earning potential of the parties and the duration and history during the marriage. Spouse support is not awarded to punish a guilty spouse but rather is to lessen the financial impact of divorce on the other spouse. **25-4-41**

9. NAME CHANGE

Whenever a decree of divorce is granted, the trial court may, in its discretion or upon the application of either party by the terms of the decree, restore to the woman her maiden name or the name she legally bore prior to her marriage to the husband in the divorce suit. **25-4-47**

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.

STEP 1: The filing party should complete the *Complaint for Divorce* and the *Non-Military Affidavit*. These documents must be filed with the Court. Have the clerk stamp 3 copies for you to keep (the originals are filed). A copy of all filings must be given to (“served upon”) your spouse (the Defendant).

STEP 2: The *Complaint* and *Summons* must next be served upon the Defendant, and he or she should complete and return the *Answer and Waiver of Service of Process*. Make sure your spouse is aware this procedure is coming, so that he or she will willingly sign the *Answer and Waiver of Service of Process*. File the *Waiver* with the Court.

STEP 3: The Plaintiff (you) and Defendant (your spouse) should next each complete the *Affidavit in Support of Decree* and also complete the *Separation and Property Settlement Agreement*, and file these documents with the Clerk of Court.

STEP 4: After filing the above, contact the clerk for a date and time to present the *Decree of Divorce* to the Court. Ask the clerk what procedures the Judge uses in your county for this and follow this procedure. No Divorce may be final until sixty days have elapsed between the day the Defendant signs the *Answer and Waiver of Service of Process*, and the date the *Decree* is signed by the Judge and filed with the Clerk.

STEP 5: After the *Decree* has been signed and filed, the *Notice of Entry of Decree* should be completed and filed. A copy of said *Notice* should then be mailed to the Defendant.

CHECKLIST

- ☐ Check with clerk for amount of filing fee and any updated or county-specific forms that the clerk may have.
- ☐ All documents filled out and agreed to by you and your spouse.
- ☐ All documents signed and notarized where needed.
- ☐ Documents (other than the *Decree of Divorce* and *Notice of Entry of Decree*) filed and filing fee paid.
- ☐ Hearing date obtained for final divorce hearing.
- ☐ Copies of all previously filed documents and copies of *Decree of Divorce* and brought to final hearing.
- ☐ *Decree of Divorce* signed by the Judge.
- ☐ Signed *Decree of Divorce* filed with the clerk of court, with copies to you and your spouse. File and deliver *Notice of Entry of Decree* with the *Decree of Divorce*.

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.

The forms are locked which means that the content of the forms cannot be changed. 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 and re-protecting the document, 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/SD/SD-004-D.htm>

DISCLAIMER

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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.