DISSOLUTION OF MARRIAGE INSTRUCTIONS FOR SPOUSES FILING TOGETHER WHEN THERE ARE NO MINOR CHILDREN OF THE MARRIAGE

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

Court staff generally can inform you about court procedures, court rules, court records, and forms. Court staff must remain neutral and impartial. They are not allowed to give legal advice. Court staff cannot:

- advise you how statutes and rules apply to your case,
- tell you whether the documents you prepare properly present your case,
- tell you what the best procedures are to accomplish a particular objective, or
- interpret laws for you.

If you need help with your case, you should talk to a lawyer.

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

Dissolution of Marriage

A decree of dissolution of marriage has the same force and effect as a decree of divorce. However, the procedures for getting a dissolution are somewhat different than those for a divorce. Dissolution procedures are described in Alaska Statutes 25.24.200 - .260 and Civil Rule 90.1. Divorce procedures are described in Alaska Statutes 25.24.010 - .180 and Civil Rule 90.1.

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Requirements

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

1. Either spouse (Party A or Party B) or both spouses must be domiciled in Alaska. That means the person claims residency in Alaska. The person must be physically present in Alaska and intend to remain indefinitely. No minimum number of days of residency is required. In addition, military personnel who do not claim to be Alaska residents may file for dissolution if they have been continuously stationed at a military base or installation in Alaska for at least 30 days. AS 25.24.900.

2. Both spouses must agree that "incompatibility of temperament has caused the irremediable breakdown of the marriage." This means there is no chance of saving the marriage because the spouses cannot get along. In other words, the marriage has broken down and the spouses no longer want to be married.

3. The spouses must both agree on all of the following:

    a. distribution of all real property and personal marital property (both jointly owned and separately owned, and community property under AS 34.77), including retirement benefits,
    b. payment of spousal maintenance (alimony), if any,
    c. payment of all existing debts owed by either or both spouses, and payment of any debts that may be incurred jointly in the future, and
    d. the tax consequences of all the above agreements.

4. The property and spousal maintenance agreements must be fair and just and must take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of the dissolution is fairly allocated.

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

Procedure to Follow

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

1. Fill out the following three forms attached to these instructions (and available online):

   a. Form DR-100, Petition for Dissolution of Marriage (No Children). See these instructions beginning on page 5.

   b. Form DR-314, Information Sheet.

   c. Form VS-401, Certificate of Divorce, Dissolution of Marriage or Annulment. Complete the "Parties' Information" block, lines 11-30. If you make a mistake, get a new form from the court. This form will be sent to the Health Analytics and Vital Records office after the dissolution is granted, and they will not accept forms with cross-outs, whiteouts, or other corrections on them. Health Analytics and Vital Records also will not accept photocopies of the VS-401 form.

2. File these three forms at the clerk's office and pay the filing fee according to Administrative Rule 9(b). If you cannot afford the fee, ask the clerk for form TF-920, Request for Exemption from Payment of Fees.

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

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

4. Amendment or Withdrawal of Petition.

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

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

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

5. Hearing.

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

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

   a. one party is represented by counsel and the other is not, or
   b. there is evidence that a party committed a crime involving domestic violence during the marriage, or

c. if any of the following has been issued or filed during the marriage by or regarding either spouse as defendant, participant, or respondent:
   (1) a criminal charge of a crime involving domestic violence,
   (2) a domestic violence protective order under AS 18.66.100 - 18.66.180,
   (3) injunctive relief against domestic violence under former AS 25.35.010 or 25.35.020, or
   (4) a domestic violence protective order issued in another jurisdiction and filed with the court in this state under AS 18.66.140, or

d. there is a minor child of the marriage, or

e. there is a patently inequitable division of the marital estate.

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

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

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

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

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

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

6. The Decree.

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

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

How To Fill Out The Petition

When you fill out the Petition form and any other forms you file with the court, please type or print neatly in black ink. Do not leave any spaces blank. If more space is needed, attach additional pages and have each additional page signed by both petitioners.

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

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

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

Section II. FINANCIAL INFORMATION (pages 3-4)

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

You must include all sources of income whether they are listed on the form or not. **Each party must attach a copy of his or her most recent federal tax return (including W2) and at least two of his or her most recent pay stubs to verify income and deductions.**

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

Section III. PROPERTY & DEBT INFORMATION, & AGREEMENT OF PETITIONERS (pages 4-7)

Part A. Assets.

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

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

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

Assets must be clearly identified. Motor vehicles and other property requiring a certificate of title or registration must be identified by make, model, and license number, and/or by identification number (VIN, HIN, SN). Bank, credit union, or other financial institution accounts may be identified by the last 3 digits of the account number and the name of the financial institution. Do not provide the full account number.

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

1. the length of the marriage and station in life of the parties during the marriage;

2. the age and health of the parties;

3. the earning capacity of the parties, including their educational backgrounds, training, employment skills, work experiences, length of absence from the job market, and custodial responsibilities for children during the marriage;

4. the financial condition of the parties, including the availability and cost of health insurance;

5. the conduct of the parties, including whether there has been unreasonable depletion of marital assets;

6. the desirability of awarding the family home, or the right to live in it for a reasonable period of time, to the party who has primary physical custody of children;

7. the circumstances and necessities of each party;

8. the time and manner of acquisition of the property in question; and

9. the income-producing capacity of the property and the value of the property at the time of division.

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

Part A.5 Retirement Benefits (page 6)

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

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

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

1. You can let the current owner of the benefits (the covered employee) keep the benefits and give the other spouse cash or other assets worth half the current value of the part of the benefits accrued during the marriage. This, of course, requires you to figure out what the current value of the benefits is. You may need the help of an actuary to do this.

2. Or, you can give the non-employee spouse the right to receive part of the retirement benefits when those benefits are eventually paid out. Under this option, it is not necessary to figure out the current value of the benefits. Both spouses will have to wait to receive any payments until the employee spouse is eligible to receive the benefits.

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

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* Note: The requirements for dividing military retirement pay are different. A QDRO is not required. The Uniform Services Former Spouses' Protection Act (10 U.S.C. 1408) describes the procedure that must be followed in order for the former spouse to receive payment directly from the government. For example, the spouse's agreement must show that the spouses were married to each other for 10 or more years during which time the military member performed at least 10 years of creditable service. The agreement must specifically provide for payment of an amount from the military member's "disposable retired pay" to the former spouse. The amount must be stated either in dollars or as a percentage of the member's disposable retired pay. For more information about what is required and about the application form you must fill out and submit after you obtain your dissolution decree (DD Form 2293), contact the Legal Assistance Office at any military installation in Alaska. If you do not meet the "10/10" requirement, any retirement payments that you agree should be made to the former spouse would have to be made by the military member instead of coming directly to the former spouse from the government.

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

a. It must name the retirement plan or program.

b. It must give the right to receive part or all of the benefits payable with respect to the employee covered by the plan to an "alternate payee" (meaning, in this case, the other spouse).

c. It must state the name and last known mailing address of both the employee and the "alternate payee."

d. It must state the amount or percentage of the employee's benefit, or of any survivor's benefit, to be paid to the "alternate payee"; or it must set out the manner in which that amount or percentage is to be determined.

e. It must set out the number of payments or period of time to which the agreement/order applies.

f. It must <u>not</u> do any of the following:

(1) require any type or form of benefit or any option not otherwise provided by the plan, or

(2) require an increase of benefits in excess of the amount provided by the plan, determined on the basis of actuarial value, or

(3) require the payment to an alternate payee of benefits that are required to be paid to another alternate payee under a previous QDRO.

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

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

If you are submitting a proposed QDRO, or any similar order requiring the social security numbers of the beneficiary and alternate payee, you must also submit a copy of the original proposed order with the social security numbers of the beneficiary and alternate payee completely marked out. The original proposed order is confidential and will not be part of the public record. Only the duplicate with the social security numbers blacked out will become part of the public case file.

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

Part B. Debts (pages 6-7)

Describe all debts of both parties. Debts include all kinds of financial obligations, such as loans, credit card, bank card, or debit card balances, the mortgage on your house, etc.

List to whom each debt is owed and the amount owed. When identifying credit card, bank card or debit card account balances, you may list the last 4 digits of the account and the name of the issuing institution. Do not provide full account numbers. Check the box showing whether the debt was incurred during the marriage and the box showing who owes the debt (Party A, Party B, or jointly owed). Then check the box showing who you agree will be responsible for paying the debt.

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

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

In addition, if both your names are on a mortgage or other debt, you may not be able to get new loans or credit. You may want to consider refinancing these debts to put them only in the name of the party responsible for paying them.

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

Section IV. SPOUSAL MAINTENANCE (ALIMONY) (Page 7)

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

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

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

Section V. CHANGE OR RESTORE NAME (Page 7)

Either spouse may ask to restore (return to) a **prior** name, that is, a name that you had before the marriage. Either spouse may ask that a **new** name be authorized, however, there may be additional legal requirements and the court will have to approve this request.

Prior Name

If you want a prior name restored (to go back to a name you had before), check the appropriate box for yourself (Party A or Party B) and fill in the blanks for your current and former names. You may also want to follow steps #2, #9, #10, #11, and #12 below.

You must also fill out Notice of Request to Restore Name in Dissolution or Divorce Case (form DR-957) if you are one or more of the following:

- currently charged with a crime,
- currently incarcerated (for example, in jail, in prison, or at a halfway house),
- on supervised felony probation or on parole for a criminal conviction, or
- required to register as a sex offender or child kidnapper under AS 12.63.010.

The court may order you to do additional notice of your name restoration if you fall into one of these categories. Read the court's order carefully. You must complete any additional notice by the date of your dissolution hearing or your dissolution could be delayed. You can use Affidavit of Additional Service (form CIV-702) to provide proof to the court that you completed this requirement. You may file this before the hearing or bring it to the hearing.

New Name

If you are requesting a name that was **not** a name you had before the marriage, there may be additional costs and your dissolution hearing will be delayed. Additionally, the judge may find that a new name change is not authorized in certain situations as part of a dissolution case. For these reasons, it may be easier to do the name change in a separate case by filing Petition for Change of Name (form CIV-700). If you do decide to do it as part of your dissolution hearing, take the following steps:

1. Check the box requesting a new name and fill out Request to Change to New Name in Dissolution Case (form DR-955).

2. Ask the court for form VS-405, Application for Legal Name Change. Fill out the form (please type the information if possible) and return it to the court, together with form DR-955, when you file your dissolution petition.

3. Tell the clerk your petition includes a request for name change and that you need an order for posting.

4. If the court finds that the name change is legally allowed as part of the dissolution case, the court will send you an Order for Hearing, Posting, and Additional Service (form CIV-701). This order will tell you the time and place of the hearing on your name change. It will also tell you whether you must provide additional service. If the order requires additional service, follow the instructions on the order.

5. Unless waived by written court order, the clerk will automatically post the proposed name change and the date of the hearing to the Alaska Court System's Legal Notice Website for four consecutive weeks. After posting is completed, the clerk will file the Clerk's Certificate of Service of Posting (form TF-815) to the website.

   If you are also required to serve additional notice, you must file proof that you did so. Use Affidavit of Additional Service (form CIV-702). File it with the court before the hearing or bring it to the hearing.

6. The hearing is usually short and fairly informal. It will usually be combined with your dissolution hearing. You must tell the judge why you want to change your name and assure the judge that you are not seeking to change your name in order to avoid debts or defraud anyone. If the judge finds there is no reasonable objection to the change and that it is consistent with the public interest, the judge will sign a judgment allowing you to take the new name. However, you cannot begin using the new name yet, because the judgment will not be effective until the following steps are completed.

7. The court will automatically post notice on the Alaska Court System's legal notice website for one week unless waived by the court in a written order. Following the posting, the clerk will file the Clerk's Certificate of Service of Posting (form TF-815) to the website.

8. If the judgment requires additional service, follow the judgment's instructions. After additional service is complete, fill out an Affidavit of Additional Service (form CIV-702) and file it with the court. The clerk will then issue a Certificate of Name Change (form CIV-705). You can begin using your new name on the date stated in the certificate. This date will be at least 30 days after the judgment was distributed. The clerk will give you two copies of the certificate. One will be a free certified copy. If you need additional certified copies, there will be a charge for them. Current fees are listed in Administrative Rule 9.

9. If you have an Alaska driver's license, or you own a vehicle registered in Alaska, you must send written notice of your name change to the Division of Motor Vehicles **within 30 days**. AS 28.05.071. To get a new driver's license, you will need to go to a DMV office and present a copy of the Certificate of Name Change (form CIV-705).

10. Notify the Social Security Administration of your name change to avoid tax problems and help assure proper employment credit. Toll-free telephone number: 1-800-772-1213.

11. Individuals required to register on the Sex Offender and Child Kidnapper Registry per AS 12.63.010 must notify the Department of Public Safety about any name change (including restoring a prior name) **within one business day** after receiving the Certificate of Name Change (form CIV-705). Use Notification of Petition/Proof of Legal Name Change (form 12-299-74). This form is available from law enforcement or online at https://sor.dps.alaska.gov/Home/Documents.

12. If you want a new birth certificate, contact the Vital Records office of the state in which you were born and pay the required fee.

Section VI. OTHER AGREEMENTS (Page 8)

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

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

AGREEMENTS NOT INCLUDED IN THE PETITION ARE NOT ENFORCEABLE.

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

Section VII. SIGNATURES AND VERIFICATIONS (page 8)

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