

**THE COMPLETE GUIDE
TO FILING YOUR OWN DIVORCE**

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CHAPTER ONE: MARRIAGE AND DIVORCE

What is Marriage?

In legal terms, a marriage is often referred to as a contract. And it certainly is a legal contract, binding together a man and a woman. The legal reality of marriage is that it is a creation of financial obligations and property rights, which cannot be broken with a legal proceeding.

Marriage gives a husband and wife certain rights in property and it creates certain obligations with respect to support of any children the couple has together (or go on to adopt).

Of course, most people do not realize the legal aspects of marriage, and come face-to-face with a rude awakening when time comes for a divorce .

Divorce

A divorce is the most common way of terminating or breaking the marriage contract. Some states call divorce, the “dissolution of marriage.”

In a divorce, a court declares the marriage contract broken, divides the couple’s property and debts, decides who is to receive alimony, and finds out the custody, support and visiting obligations with respect to any children the couple may have .

In the past, a divorce could only be granted under very specific circumstances, such as adultery or mental cruelty. Nowadays, however, many states allow a divorce simply because one or both of the parties want one. This is referred to as a no-fault divorce. Typically, the complaint or petition only needs to mention that the marriage is “irretrievably broken” or “irreparably broken.”

Annulment

It is important that you are aware of this alternative to divorce. Whereas a divorce can be viewed as breaking a valid marriage, an annulment is a determination that there never was a valid marriage. This procedure is more difficult and more complicated to prove, so it is not used very often.

Annulments are only possible in a few circumstances, usually where one of the parties was too young to get married, or was mentally incompetent at the time of the wedding, or was induced to marry under fraud or duress, or was already married to someone else (known as bigamy), or if the couple are too closely related by blood (known as incest).

If you want an annulment, you should seek an attorney or your priest or minister (in case of a church procedure).

Legal Separation

A legal separation is used to divide the property and provide for alimony, child custody and support in cases where the husband and wife live separately, but remain married.

This procedure was once used to break the financial rights and obligations of a couple whose religion did not permit divorce. It is also sometimes used to prepare for an eventual divorce, by allowing the parties to live apart for whatever period may be required by your state to get a no-fault divorce. Some states refer to this procedure as “divorce from bed and board.” Legal separation is not available in all states.

CHAPTER TWO: LEGALITIES

Divorce Law

The basic divorce law in most states is simple and straightforward. The following criteria need to be shown in order to get a divorce :

- 1) Your marriage is broken. You merely need to state this fact.
- 2) You need to show how your property is to be divided between you and your spouse.
- 3) You need to state which one of you is to have custody of your children and how they should be supported.
- 4) Who is to receive alimony? How much, and for how long ?

As for the divorce procedure itself, it too is simple and requires three basic steps :

- 1) You need to file a petition with the court clerk.
- 2) You need to notify your spouse.
- 3) You need to go to the hearing and present the information required.

You will need to refer to State Law Information at the back of this kit, which will give you the basic law details in your particular state .

You should also call and visit the clerk of the court where you will be filing for divorce. The clerk will be able to tell you if there are any required forms you will need, the amount of the filing fees, the location of the nearest law library, and the clerk will also give you some guidance about the general court procedure. The clerk will not give you legal advice.

It is important that you visit a law library and research about the divorce law in your state, in order to make sure that you are doing everything correctly .

The main source of information will be a set of volumes that contain the laws by your state legislature. These will be referred to as **Statutes** or **Code** of your state.

Each year, the state legislatures meet and change the law. Therefore, make sure you get the most recent version. It is best to ask the law librarian who will be happy to assist you get the right information.

You should also look for divorce law in Practice Manuals, Court Rules, Digests, Case Reporters, and Legal Encyclopedias. All of these the law librarian can locate for you. All you have to do is ask.

CHAPTER THREE: ATTORNEYS

Do You Need a Lawyer?

Whether or not you need a lawyer or not will depend upon many factors, such as how comfortable you feel handling the matter yourself, how complicated your situation is, how much opposition you get from you spouse, or spouse's lawyer. It is also a good idea to get a lawyer if you have to deal with a hostile judge. The general rule of thumb is that you should get a lawyer whenever you stop feeling comfortable about representing yourself.

Of course, the first point you will want to consider is the cost of an attorney. To give you an idea, you can expect a lawyer to charge anywhere from \$150 to \$1000 for an uncontested divorce, and from \$800 and up for a contested divorce. Lawyers usually charge an hourly rate for contested divorces, ranging from about \$75 to \$300 per hour. Of course, these fees will probably vary from state to state. And many new lawyers are less expensive and perfectly capable of handling a divorce.

Of course, there are advantages to having a lawyer. These are :

- 1) Judges and other lawyers will take you seriously. Most judges want both parties to have attorneys.
- 2) A lawyer can be a “buffer” between you and your ex-spouse, so you don’t have to worry about emotions getting in the way of the case .
- 3) Lawyers like to deal with other lawyers. But if you conduct yourself in a calm and professional manner, you will have no problems dealing with other attorneys .
- 4) Your lawyer can worry about all the little details, especially when it comes to filling out the forms.
- 5) If your case becomes complicated, it is always an advantage to have the assistance of a professional.

As well, there are advantages to representing yourself:

- 1) You save the cost of a lawyer.
- 2) In court an unrepresented person can have a certain amount of leeway with the procedure rules.
- 3) The procedure may be faster, since lawyers are notorious for taking their time with divorce cases. If you do everything yourself, you can push the whole case faster through the court system.

Selecting a Lawyer

The best ways to find a good attorney is to following these rules :

- 1) Ask a friend to recommend a lawyer .
- 2) Use the Attorney Referral Service. Look in the Yellow Pages under “Attorney Referral Services” or “Attorneys.” This service is operated by the bar association and matches you with an attorney handling divorce cases .
- 3) Look for attorney ads in the Yellow Pages, and look for those that advertise “family law” or “domestic relations.”
- 4) Ask another lawyer. If you have used a lawyer before, ask that lawyer to recommend a divorce lawyer.

Once you find a three to five lawyers, make an appointment with each one and at the meeting ask the following questions :

- 1) How much will it cost?
- 2) How will the fee be paid?
- 3) How long has the attorney been in practice?
- 4) How long has the attorney been in practice in your state?
- 5) What percentage of the attorney’s cases involve divorce cases or family law matters? (The attorney's answer should be at least 20%).
- 6) How long will the whole procedure take?

After the interview, ask yourself the following questions :

- 1) Do I feel comfortable talking to the lawyer?
- 2) Was the lawyer friendly to me?
- 3) Did the lawyer seem confident in him- or herself?
- 4) Was the lawyer straightforward?
- 5) Could the lawyer explain everything to you clearly?

If you get satisfactory answers to all these questions, you probably have found a lawyer you can work with. Always find a lawyer you feel comfortable with .

Working With a Lawyer

You will work best with a lawyer if you keep an open, honest and friendly attitude. You keep the following points in mind:

- 1) Ask questions. If you want to know something, or don't understand something, ask. If the answer is not clear, ask the lawyer to explain everything in simple English.
- 2) Give your lawyer complete information. Anything you tell your lawyer is confidential. An attorney can lose his license if he or she reveals information without your permission. So hold nothing back. Remember, your lawyer is working for you, and is on your side.
- 3) Accept reality. Listen to what your lawyer tells you, and accept it. It's not going to do any good to argue because the law or the system is not working like you want it to.
- 4) Be patient. Be patient with the system, as well as your attorney .

- 5) Talk to the secretary. Your lawyer's secretary can be a valuable source of information. So be friendly and get to know the secretary. Often a secretary can answer a lot of your questions, and you won't get a bill .
- 6) Let your attorney deal with your spouse. It's your lawyer's job to communicate with your spouse, or with your spouse's lawyer. Let your lawyer do his or her job. You can lose or damage your case if you decide to jump in with an emotional outburst.
- 7) Be on time. This applies to appointments with your lawyer and to court hearings .
- 8) Keep your case moving. Talk to your lawyer on a weekly basis. Ask: What is the next step? When will this step be done? When should you call next? If you don't hear from your lawyer, call – just to ask how things are progressing.

CHAPTER FOUR: TYPES OF DIVORCE PROCEDURES

No-Fault or Traditional Divorce

All states have what is commonly called a “no-fault divorce.” No-fault divorce laws generally allow you to get a divorce just because you and your spouse no longer want to be married. This is most commonly phrased as “irreconcilable differences” or “irretrievable breakdown of the marriage.” Some states use: “incompatibility, irrevocable breakdown” or “irremediable breakdown.”

Some states require you to live apart for a certain length of time before you can file for divorce. Check in the back of this kit to find out your state’s requirements for divorce .

Certain grounds for divorce are proven at the final hearing in the following manner:

No-Fault: You would testify that your marriage is irretrievably broken (or use whatever language common in your state), and briefly tell the judge why you don't want to be married any longer. Your spouse may also need to say the same thing in some states, and in some types of consent procedures. If there is a separation period required, you may also need to bring a friend to testify that you and your spouse have been living apart for the required period.

Adultery: You will need testimony from someone who has good first-hand knowledge of your spouse's affair. This can be you, a friend, a neighbor, or even a private investigator you hired to investigate your spouse. Whichever "witness" you use, that person will have to have seen your spouse with the other person, strongly indicating adultery, such as engaging in a sexual act, coming and going from a hotel room, etc. It will not do to have a person testify that they "heard" your spouse was seen with the other person, or is having an affair. Of course, you can also use any admission your spouse might make to you or another person.

Cruelty, Desertion, Alcoholism, Drug Abuse, or Impotence: These can generally be proven by your testimony alone. It will also be helpful for you to have another person testify in order to verify what you say. Also helpful would be testimony of a doctor or other professional who has treated your spouse for alcoholism, drug abuse, or impotence. Court orders for treatment of alcoholism and drug abuse are also good proofs .

Insanity: You will need the testimony of a mental health professional (psychiatrist or psychologist) who has examined your spouse; or someone with official records documenting the insanity; or a certified copy of a court order committing your spouse to a mental institution. It will not be enough for you and your friends to go to court and “He’s crazy.” Some states have specific laws as to what circumstances that need to exist, what procedures must be followed, and what needs to be proven if insanity grounds are used .

Imprisonment: You will need a certified copy of the court’s judgment of conviction and sentencing order. Some states allow divorce for felony convictions, or for prison sentences of more than a certain length of time. Just be sure the papers you have state whatever information is required by the divorce laws in your state .

Consent Divorce

Technically speaking, there are two divorce procedures. But for our purposes, we can break these down into three. These are :

- Consent Divorce
- Uncontested Divorce
- Contested Divorce

A consent divorce is where you and your spouse both agree to the divorce and can work out the matters of property division, alimony, child custody and support. This is also known as a “simplified divorce,” but is not available in all states. In a consent divorce, you merely have to fill our certain forms with the court and get the judge to approve your

agreement. If special consent procedures are not available in your state, you can get the same result with an uncontested divorce procedure.

Uncontested Divorce

The uncontested procedure is mainly used in the following situations:

- By those who are in agreement (or can reach an agreement)
- If your spouse fails to respond to the petition or complaint
- If you can't locate your spouse.

If you need an agreement, you will file a copy of the agreement with the clerk. Your spouse may also need to file an “answer” or “response,” which is a written response to the petition or complaint. In this case, your spouse’s answer would say that he or she agrees with your petition or complaint. If your spouse doesn’t respond to your petition or complaint, or can’t be found, you can continue to the final hearing and get a divorce by default. In most states you will still need to testify and present your proof. Very few states will grant a divorce without any testimony or proof.

Contested Divorce

The contested divorce will be necessary if you and your spouse are arguing over some matter and can’t resolve it. This may be the result of disagreement over custody of the children, the payment of child support or alimony, the division of your property, or any combination of these things.

CHAPTER FIVE: YOUR SITUATION

Your Spouse

Unless you and your spouse have already agreed to divorce, it is generally not a good idea to let your spouse know that you are thinking about getting a divorce. This is a defense tactic. If your spouse thinks you are planning a divorce, he or she may do things to prevent you from getting a fair result. This may include: withdrawing money from bank accounts, hiding information about income, and hiding assets. So don't let on that you are collecting information in order to file with the court .

Gathering Information

It is extremely important that you collect all of the financial information you can get. Make copies of as many of these papers and documents as possible, and keep them in a safe and private place (where your spouse won't find them). Make copies of new papers as they come in, especially as you get closer to filing court papers, and as you get closer to a court hearing.

The information you should gather is:

- Your most recent income tax return and W-2 tax forms for you and your spouse.
- Any other income documents (stock dividends, interest, etc.).
- Your spouse's most recent pay stub, along with copies of all pay stubs from the beginning of the year.
- Deeds to real estate, and titles to cars, boats, or other vehicles.
- You and your spouse's wills.
- Life insurance policies, stocks, bonds, or other investment papers.
- Pension or retirement fund papers and statements.
- Health insurance cards and papers.
- Bank accounts or credit union statements.
- Your spouse's social security number and driver's license number.
- Names, addresses and phone numbers of your spouse's employer, close friends, and family members.

- Credit card statements, mortgage documents, and other credit and debt papers.
- Copies of bills and receipts for regular expenses, such as electric, gas, car insurance, etc.
- Copies of bills, receipts, insurance forms, or medical records, for any unusual medical expenses (including recurring or continuous medical conditions) for yourself, your spouse, or your children.
- Any other papers showing what you and your spouse earn, own, or owe.

Property and Debts

The two basic legal terms for property division are: Community Property and Equitable Property

All of the property you and your spouse acquired during your marriage is owned by both of you together (or jointly). This is called Marital Property. Most states divide property into Marital and Nonmarital (sometimes called Separate or Sole) property .

Nonmarital property is considered to be owned by each party separately. This is usually property that each party owned before getting married. It may also include gifts and inheritances during the marriage, and any property acquired during the marriage by exchanging nonmarital property.

Each party will keep his or her nonmarital property, then the court will apply various factors to divide the marital property. Find out from the law library what property is nonmarital in your state, and what factors are used to divide the marital property .

You should include the following types of property in your list :

- Cash. List the names of the institutions, and the account number for each account (both checking and savings). Also include any CDs (Certificates of Deposit).
- Real Estate. List each piece of property you and your spouse own together. Look at the deed of your property to get the exact information. Next, record the market value of the property .
- Vehicles. Include cars, trucks, motor homes, recreational vehicles (RVs), motorcycles, boats, trailers, airplanes. Record the make, model, year and serial number. Get the current value of each type of vehicle (your library is a good resource. Ask your librarian to help you get the value of the vehicles).
- Appliances, electronic equipment and yard machinery. Include televisions, VCRs, refrigerators, lawn mowers, and power tools. Don't worry about the value of these items.
- Furniture. List all furniture as specifically and precisely as possible, including such things as the color, line name or style, the name of the manufacturer. Again, don't worry about the value.

- Jewelry and other valuable. Don't list costume jewelry, or personal effects such as your wrist watch or rings. But do record silverware, furs, original art, gold, coin collections, etc. Be as detailed as possible.
- Stocks and bonds. List all paper investments. Write down the number of shares and the name of the company or other organization that issued them. Also, write down any notation such as "common" or "preferred" stock or shares.
- Other items. List anything of significant value. For example, list portable spas, above-ground swimming pools, golf clubs, guns, pool tables, camping or fishing gear, farm animals, or machinery .

You do not need to record your clothing and other personal effects. Pots and pans, dishes and cooking utensils do not need to be listed, unless they are especially valuable.

Once you have made your list, go through it and try to determine who should keep what. The ideal situation is for both you and your spouse to go through the list together, and divide things fairly. But if this is impossible, you will need to offer a reasonable settlement to the judge. Consider each item and mark it to see which item should go to you or your spouse. When dividing the property keep in mind the following points :

- Your nonmarital property will go to you.
- Your spouse's nonmarital property will go to your spouse.
- You should get the items that only you use.

- Your spouse should get the items only used by your spouse .
- The remaining items should be divided to equalize each party's share, taking into consideration who would really want each item .
- The division of pensions and military benefits are a complicated affair, and you will have to consult a lawyer to determine the value of the benefits and how they should be divided.

Debts

The general rule is that whoever gets the property also gets the debt owed on that property. This seems to be a fair arrangement in most cases. You should list each debt owed by you and/or your spouse. If your state provides for marital and nonmarital property, then that includes marital and nonmarital debt. This is any debt incurred before you were married, and is therefore your debt alone. This means that you will be responsible for your nonmarital debts and your spouse will be responsible for his or her nonmarital debts.

When you list the debt, make sure to record the name and address of the creditor, the account, loan or mortgage number. Also, make notes to help identify the debt (such as "Christmas gift" or "Vacation"). Record the balances still owed on the debt. Write down the date when the loan was made, and also record if the account is in your name or your spouse's name, or is it a joint account in both your names. Finally make a note as to who will be responsible for the debt after the divorce .

Alimony

Traditionally, only the wife could get alimony from her husband. But today most state laws provide that alimony may be granted to either husband or the wife. Realistically, there are very few cases in which a wife will be ordered to pay alimony to her husband .

There are two types of alimony:

- Rehabilitative. This is for a limited time period, and is to enable one of the spouses to get the education or training necessary to find a job. This is usually awarded where one of the partners has not been working during the marriage.
- Permanent. This continues for a long period of time, possibly until the death of the party receiving the alimony. This is typically awarded where one of the parties is unable to work because of physical or mental illness.

As an alternative to alimony, you might want to try to negotiate to receive (or give up) a greater percentage of the property instead. This may be less of a hassle in the long term, but it may also change the tax consequences of your divorce .

For your information, alimony is taxable income to the person receiving it, and is a tax deduction for the person paying it. Alimony can be changed at the request of either party if circumstances change, but a property division generally may not be changed later.

If you are going to be paying alimony, the alimony would be tax deductible, but you would be running the risk that your spouse could get the alimony amount or duration increased if circumstances change. Therefore, if you can persuade your spouse to take a greater share of the property instead of an alimony award, you would prevent your spouse from getting any more later on. But you would sacrifice the alimony tax deduction.

If you are going to be receiving alimony, you would be able to ask the court for an increase in the amount or duration of the alimony, if circumstances changed. But you would have to pay taxes on the alimony you receive. If you accepted more of the property instead of alimony, you would avoid paying some taxes by sacrificing your ability to seek an increase later if you need one.

Child Support

As with property, the judge will probably go along with any agreement you and your spouse reach, as long as he is satisfied that the child will be adequately taken care of. Generally, there are two factors used to determine the proper amount of support to be paid:

- The needs of the child
- The financial ability of each parent to meet those needs

Child Custody and Visitation

As with everything else in divorce, things are ideal with both parties can agree on the question of custody of the children. Generally, the judge will accept any agreement you reach, provided it doesn't appear that your agreement will cause harm to your children. As matters now stand, most judges are of the opinion that a child is better off with its mother. It's a reality you will have to deal with. If you and your spouse cannot agree on how these matters will be handled, you will be leaving this important decision to the judge. This judge cannot possibly know your child as well you and your spouse. So it makes good sense to work things out. Don't leave such an important decision to a stranger.

It is hard to predict the outcome of a custody battle, because there are so many factors and circumstances that are particular to each and every case. The only exception is where one parent is clearly unfit and the other spouse can prove it. Drug abuse and child abuse are probably the most common charges against a spouse, but unless there has been an arrest and conviction it is difficult to prove to a judge. Generally, do not charge your spouse with being unfit unless you can prove it. Judges are not impressed with unfounded allegations. These can do more harm than good to your case .

Tax Considerations

For the best advice on this complicated issue, it is best to get advice from a tax professional or a lawyer, because tax laws of the United States are continually changing . But a few general remarks can be made to give you an idea of the tax situation .

Property: You and your spouse may be exchanging title to property as a result of your divorce. Generally, there will not be any tax to pay as a result of such a transfer. However, whoever gets a piece of property will be responsible to pay any tax that may become due upon sale. The IRS has many regulations as to how property is to be treated in divorce situations. You need to be careful if you are transferring any tax shelters or other complicated financial arrangements.

Alimony: This can cause the most tax problems of any aspect of divorce. The IRS is always making new rulings on whether an agreement is really “alimony”, or “property

divisions.” The basic rule is that alimony is treated as income to the person receiving it, and as a deduction for the person paying it. In order to manipulate the tax consequences many couples try to show something as part of the property settlement instead of as alimony, or the reverse. As the IRS becomes aware of these tax games, it issues rulings on how it will view a certain arrangement. If you are simply talking about the regular, periodic payment of cash, the IRS will probably not question that it is alimony. But if you try to call it property settlement you may run into problems. The important thing is to consult a tax professional if you considering any unusual or creative property settlement or alimony arrangements.

Child Support and Custody

There are simple tax rules regarding child support:

- Whoever has custody gets to claim the children on his or her tax return (unless both parents file a special IRS form agreeing to a different arrangement each year).
- The parent receiving child support does not need to report it as income.
- The parent paying child support cannot deduct it.

If you are sharing physical custody, the parent with whom the child lives for the most time during the year is entitled to claim the child as a dependent. The IRS form to reverse this must be filed each year. Therefore, if you and your spouse have agreed that

you will get to claim the children (even though you don't have custody), you should get your spouse to sign an open-ended form that you can file each year, so that you don't have to worry about it each year. A phone call to the IRS can help you get answers to questions on this point.

**CHAPTER SIX:
FILING FOR DIVORCE**

Legal Forms

The forms that you will need are in the back of this kit, namely :

- A Marital Settlement Agreement Form
- A Financial Statement Form'
- Petition or Complaint Form
- Child Custody Jurisdiction Form
- Final Judgment or Decree Form

You should, of course, make sure that the format provided in these forms meets the requirements of your particular state. See the General Outline of Procedures for help in filling out these forms.

Traditionally, courts use legal-size paper (8 ½" x 14"). Find out from the court clerk what size paper you should using to create your forms. At the same time, ask to get the proper case style for your court.

It may not be absolutely necessary that you use a typewriter to fill in the forms, although typing is preferred by judges and gives a more professional appearance than handwriting. Of course, if you have a computer, you can simply copy these forms and make changes as you need.

Complaint or Petition

This is the basic paper that you will file to begin the divorce procedure. The most names for this paper are: Complaint for Divorce, Petition for Dissolution of Marriage, and Petition for Divorce. Find out what it is called in your state so you can use the correct name to describe this document.

If you and your spouse are in agreement on all matters, check with your court clerk to see if you can use a simplified procedure to file a joint complaint or petition. If this is not possible, you can still simplify matters by having your spouse file an ANSWER (see Chapter Nine).

Also, ask the court clerk if there are official forms that you have to use. If so, get copies from the clerk. You can also ask to seek divorce files of other people in order to get examples of how these forms are properly filled out by lawyers. These files are usually open to the public.

Once you have completed the Complaint, take it to a notary public. Fill in the date, and sign your name on the lines designated “Signature” in front of the notary. You may type in your name, address and telephone number on the lines below the signature line, before you go to the notary, but be sure NOT to sign on either line until you are actually in front of the notary. The notary will complete his part of the form, notary it, and it is now ready for filing.

Supporting Documents

Some states require certain papers to be filed with the complaint. These typically consist of a financial statement and an affidavit to comply with the Uniform Child Custody

Jurisdiction Act. As always, check with the court clerk to find out what types of supporting documents you would need to file.

If a financial statement is required, but there is no official mandatory form, you may use the one provided at the back of this kit (A Financial Statement). If you are paid weekly, you will need to convert your income to a monthly figure. The same conversion will be required for any of your expenses that are not paid monthly. To convert weekly amounts to monthly amounts, just take the weekly figure and multiply it by 4.3 (there are roughly 4.3 weeks to a month). To convert from every two weeks, simply divide by 2 and then multiply by 4.3.

Once the Financial Statement is completed, take it to a notary public and sign the document in front of the notary.

Marital Settlement Agreement

This Agreement includes provisions for agreements on property division, child support and custody, alimony and attorney's fees. Whether you and your spouse agreed on everything from the start or whether you've gone through extensive negotiations to reach an agreement, you need to put your agreement in writing. This is done through a Settlement Agreement. Even if you don't agree on everything, you should put what you do agree on into a written agreement.

Negotiating

Although each case requires a different set of rules for negotiating, there are certain guidelines that can be used:

- 1) Always ask for more than you want. This gives you room for compromise. By giving up a few things, you will end up with close to what you really want. With property division, you should review your list of property and decide which items you really want, which items you would like to have, and which items you don't care much about. When you begin to negotiate, clearly state: Everything you really want, everything you would like to have, some of the things you don't care about, and some of the things you think your spouse really cares about or would like to have. Once you find out what is on your spouse's list, you can begin bargaining. Generally, try to give your spouse things that he or she really wants and that you don't care about. In return, your spouse should items that you care about and would like to have.
- 2) Generally, child custody tends to be a matter that cannot be negotiated. It is more often used as a threat, or as a weapon, by one of the parties in order to get something, such as more property, or lower child support. If the real issue is one of these other matters, don't be concerned by a threat of a custody fight. In these cases, the other party probably doesn't really want custody and won't fight for it. If the real issue is custody, you won't be able to negotiate for it and will end up letting the judge decide.
- 3) If you will be receiving child support you should first work out what you think the judge will order based upon the child support guidelines used in your state. Then you should ask for more, and negotiate down to what guidelines call for. If your spouse won't settle for something very close to the guidelines, give up trying to work it out and let the judge decide. Most states won't allow parents to

- compromise about their child's welfare, and the judge will insist on following the guidelines.
- 4) Let your spouse start the bidding. It is often the case that the first person to mention a dollar figure loses. Whether it's a child support figure or the value of a piece of property, try to get your spouse to first name the amount he or she thinks it should be. If your spouse starts with a figure that is close to what you had in mind, it will be much easier to get to your figure. If your spouse begins with a figure far from yours, you know how far in the other direction to begin your bid.
 - 5) Give your spouse time to think and worry. Your spouse is probably just as afraid as you about the possibility of losing to the judge's decision, and would want to settle. Don't be afraid to think it over. Maybe he or she will call back and make a better offer. If not, you can always reconsider and make a different offer in a few days. But don't be too willing to do this, or your spouse may think that you will give in even more.
 - 6) Know your bottom line. Before you begin negotiating you should try to set a point that you will not go beyond. If you have decided that there are four items of property that you absolutely must have, and your spouse is only willing to let you have three, it's time to end the bargaining and take the offer .
 - 7) Keep in mind that the judge will roughly divide your property equally, and the judge will likely follow the child support guidelines .

Filing With the Clerk

Once all the paperwork is prepared, make at least four copies of each document and form. This will give you one copy to file with the clerk, one for your spouse, one for yourself, and one extra copy just in case the clerk asks for two copies, or if you decide to hire an attorney and need a copy to give to him or her. Filing is a really simple process.

You will need to take the following steps:

- 1) Call the court clerk's office. You will find the number under the county government section of your phone directory. Ask the clerk the following questions:
 - How much is the filing fee for a divorce case?
 - Does the court have any special forms that need to be filed with the petition? If there are special forms, you will need to go and pick them up from the clerk's office.
 - How many copies of the petition and other forms do you need to file with the clerk?
 - Where is the clerk's office located?
 - What are the office business hours?

- 2) Take your petition and any other papers to be filed to the clerk's office. The clerk handles many different types of cases, so be sure to look for signs telling you which office or window to go to. You should be looking for signs that say such things as "Family Court", "Family Division", or "Filing."

- 3) Once you've found the right place, simply hand the papers to the clerk and say, "I would like to file this, please." The clerk will examine the papers. If everything is in order, the clerk will ask for a filing fee, or direct you where to pay it. If something is incorrect, the clerk will tell you so. Ask the clerk where you made the error and how you should correct it. Although clerks are not allowed to give legal advice, the types of problems they spot are usually very minor things that they can tell you how to correct.

Collecting Information About Your Spouse

In many states the judge will require that you and your spouse provide some kind of financial information. If your spouse tells you that he or she will not cooperate at all and will not provide a Financial Statement, you may have to try to get the information yourself. You can go to the hearing and tell the judge that your spouse won't cooperate. The judge may just issue an order requiring your spouse to provide information (or be held in contempt of court), and continue the hearing to another date. It may help to speed things up if you are able to get the information yourself and have it available at the hearing. This will require you to get subpoenas issued.

In some states, before you send a subpoena to your spouse's employer (or bank, or accountant), you need to let your spouse know what you are about to do. The thought that you are about to get these other people involved in your divorce may be enough to get your spouse to cooperate. If your spouse agrees to give you the information, wait a few days. Offer to send your spouse another blank copy if he or she needs one .

If your spouse sends the completed statement as promised, do not send the subpoena. If your spouse falls silent and does not send anything, go ahead with the subpoena.

The procedure and forms for subpoenas vary for each state. Look at a divorce file at your court clerk's office, or check at your local law library to see what forms and procedures are used in your state and county. You can send out subpoenas to as many people or organizations as you need.

To determine where to send subpoenas, look at the Financial Statement and see what type of information is asked for. If you were able to do a good job making copies of important papers while preparing to file for divorce, you should have the information you need to figure out where you need to send subpoenas.

Your spouse's income information can be obtained from his or her employer. Stock and bond information can be obtained from his or her stock broker. Bank account balances can be gotten from the bank. Auto loan balances can be gotten from the auto dealer. And so on. You can have subpoenas issued to any or all of these places. But don't overdo it. Concentrate on income information (especially if you are asking for child support, or expect to pay child support), and on information about the major property items. Be sure that your subpoena accurately and precisely describes what information is being requested. It may not be necessary to send subpoenas if you have recent copies of the papers relating to these items. You can always show the judge the copies of your spouse's pay stubs. W-2 tax statements, or other papers at the hearing.

However, you should be aware that many states do not allow you to have such a subpoena served until your spouse has had specific number of days to file a written objection. Be sure to check your state's laws before sending such a subpoena .

The normal practice is to mail a copy of a notice form (called a Notice of Production from Non-Party in some states), along with a copy of the subpoena to your spouse. Make sure that you actually mail it on the date you indicated on the Notice of Production from Non-Party.

If your spouse does not file a Financial Statement (or provide you with adequate income information), or send you a written objection to the subpoena within the time permitted in your state, you will proceed with getting the subpoena issued by the clerk. If your spouse does not send you a written objection, you will either need to get your spouse to agree to give you the information, or you will have to file a Motion to Issue Subpoena, and get a hearing date from the judge's secretary. The judge will then decide if you can send out the subpoena.

Next, have the sheriff personally serve the subpoena to the person or place named in the subpoena. The sheriff will need at least one extra copy of the subpoena, and a check for the service fee. The parties subpoenaed (employer, banks, etc.) should send you the requested information. If the employer calls and tells you that you must pay for copies, ask how much they will cost and send a check or money order. If the employer does not provide the requested information, you can try sending a letter stating: "...unless you provide information requested in the subpoena in 7 days, a motion for contempt will be filed with the circuit court." This may scare the employer into sending you the information .

CHAPTER SEVEN:
PROTECTION ISSUES

When preparing to file for a divorce, people often have three major concerns: How to protect themselves and their children from their spouse; how to be sure their spouse won't be able to take the marital property and hide it; and how they are going to support themselves and their children during the divorce proceedings. There are no guaranteed ways to fully protect yourself against these problems, but you can put as many obstacles in his or her way as possible, and prepare him or her to suffer legal consequences for acting improperly. Check with the court clerk or with the law library to see if you need special forms for each of these situations.

Protecting Yourself

All states have laws that protect people from family or domestic violence. These laws are usually fairly simple. Many states require the court clerk to help people with the forms and procedures for protection from domestic violence.

You can also file a motion for a restraining order from domestic violence. This will be part of your divorce case. You can easily get the format for this motion from your court clerk or from the law library. Simply ask for forms used in your state's law on protection against domestic violence.

Filing such a motion will result in the judge signing an order prohibiting your spouse from physically abusing or harassing you. If your spouse violates the order, he or she can then be arrested and charged with contempt of court. It is usually easier to get police officers to arrest an abusive or harassing spouse if you have a court order.

It is also possible to file a motion asking the judge to order your spouse to move out of your home. This usually requires you to show that your spouse is physically abusing

you, harassing you, or intimidating you from proceeding with the divorce case. This is even more likely to be granted if you have temporary custody of your children, and you can show that your spouse's actions are causing the children added mental stress .

These legal solutions will work with most spouses. However, they may not be enough to control a very violent spouse. In such a case, it is best for you and your children somewhere else to live. You can ask a friend or a relative to help you, and you should go to a place where your spouse cannot find you. If you need to resort to this sort of a protection method, it is always a good idea to see an attorney who can then advise you on how to best protect yourself and take the necessary legal action .

Protecting Your Children

If you are worried that your spouse may try to kidnap your children, you should make sure that the day care center, baby-sitter, relative, or which ever institution you leave your children with (such as a school), are well aware that you are in the process of divorce and that the children are only to be released to you personally – and not to your spouse, any other relative, or friend. To prevent your spouse taking your children out of the United States, you can apply for a passport for each child. Once a passport is issued, the government will not issue another. So get their passports and lock them up in a safe deposit box. (However, this will not prevent them from being taken to Mexico or Canada where passports are not required, but will prevent them from being taken overseas). You can also file a motion for the court to deny passport privileges to your children. A copy of the judge's court order is sent to the U.S. State Department, which will not issue a passport for your children.

Protecting Your Property

If you are concerned that your spouse will try to remove money from bank accounts and try to hide important papers showing what property you own, you should take action to protect your property before your spouse can take it away from you. However, you need to be careful in this regard, because you can create a lot of problems for yourself in front of a judge, if it appears that you are trying to get the assets for yourself. The best thing to do is to take only one-half of the assets you believe are in danger.

With a bank account, for example, it is easy to get paperwork that will show what was there and what was taken. With other types of assets it may not be so easy to prove. In such cases, take a witness along with you, take photographs of the assets, and make a written inventory of the items left or taken.

Be sure to make a complete list of the property you do not take, and be sure to include these items in your Financial Statement. You may need to convince the judge that you only took these items temporarily in order to preserve them until a final judgment is entered.

Also, do not spend any cash that you take from a bank account, or sell or give away any items of property you take. Such cash should be put in a separate bank account, without your spouse's name on that account, and it should be kept separate from any other cash you have.

Any papers, such as deeds, car titles, stock or bond certificates, should be placed in a safe deposit box without your spouse's name on it.

The idea is not to take these things for yourself, but to get them in a safe place so your spouse can't hide them and deny that they ever existed. However, do not take this route unless it is absolutely necessary to protect the property .

You can also file a motion asking the judge to issue an order requiring your spouse to produce certain property, or restraining your spouse from hiding or disposing of, or destroying property. In a few states there is an automatic restraining order imposed in all cases as soon as the complaint is filed. So you should check with the court clerk .

Temporary Alimony, Child Support, and Custody

If your spouse has left you with the children and the mortgage and the monthly bills, and is not helping you financially, you may want to consider asking the court to order the payment of support for you and the children during the divorce procedure .

Try to find a sample motion for temporary alimony, child support and custody, and a sample order, by checking other files at the clerk's office, or at your local law library. Again the librarian will be able to assist you. Such a motion may also be called a "Motion for temporary relief" or a "Motion for relief pendente lite", or some similar name. ("Pendente lite is Latin for "pending litigation").

The motion needs to be presented to the judge. Call the judge's secretary and explain that you would like to submit a "Motion for temporary relief" in a divorce case to the judge, and then ask the secretary on how you should do this. The secretary may tell you to come in with the paperwork, or to mail it to the judge, or to give it to the court clerk's office. Just follow the secretary's instructions.

CHAPTER EIGHT: NOTIFICATIONS

In most cases, you are required to notify your spouse that you have filed for divorce. This gives your spouse a chance to respond to your complaint or petition. If you are using a procedure for a joint petition allowed in your state, you do not need to worry about the information in this chapter. (Your spouse will have to sign the petition, so it will be obvious that he or she knows about the divorce). Also, if you and your spouse are in agreement about everything, but don't qualify for a joint petition procedure, you don't need to worry about this chapter.

Notice of Filing the Complaint

The usual way to notify your spouse that you filed for a divorce is called "personal service," which means that the sheriff (or someone else designated by the judge) personally delivers the papers to your spouse. Be sure to check with the court clerk about the proper form for the summons, because this varies from state to state. Again, look in a divorce file at the clerk's office, or check at your local law library to find the proper summons form.

Copy the format of the summons form, and prepare it, and then take it to the clerk for signature. Then call the county sheriff's office in the county where your spouse lives, and ask how much it will cost to have the sheriff served with divorce papers, and how many copies of the complaint and summons needs to be provided to the sheriff's office. Deliver or mail the required copies of your complaint (together with any other papers you filed) and summons and a check or money order for the service fee to the sheriff's office .

A sheriff's deputy will personally deliver the papers to your spouse. Of course, you must give the sheriff accurate information about where your spouse might be found (such as home, work, or a relative's place). You can do this by enclosing a letter addressed to the sheriff in which you give all the addresses and any other information that may help the sheriff find your spouse (such as the hours your spouse works). Make sure you give the sheriff information that help in having your spouse served – don't say where your spouse *might* be found.

The deputy will fill out a form to verify that the papers were delivered (including the date and time that they were delivered), and will file a copy of that form with the court clerk. The deputy should also send you a copy to let you know your spouse has been served, but you may need to check your court file in the clerk's office .

Once you know the date your spouse was served you can count the number of days to find out when a response is due. Wait an additional five days to allow for mailing and clerk's filing delay, then go to the clerk's office and see if an answer is in your court file .

Other Notices

Once your spouse has been served with the complaint, you may simply mail him or her copies of any papers you file later. All you need to do is sign a statement (called a "Certificate of Service") that you mailed copies to your spouse. Consult a divorce file to get the exact format used in your state, or ask the clerk, or a law librarian .

Once you get a hearing date set with the judge, you will need to notify your spouse of when the hearing will be. This is done by preparing a "Notice of Hearing." Again, check

a divorce file, ask the clerk, or a law librarian to get the proper format currently being used in your state.

You will need at least three copies of the notice of hearing, so you can send one to your spouse, file one with the court clerk, and keep one for yourself.

When You Can't Find Your Spouse

If your spouse has run off, and you have no idea where he or she might be, you will have to use a method of giving notice known as "Service by Publication." This is a complicated legal procedure, and the requirements, forms and process for service by publication vary from state to state. You will need to research your state's requirements at your local law library. You will be able to find the information you need in your state's statutes or code, or in the court rules.

The court will only permit publication when you can't locate your spouse. This also includes the situation where the sheriff has tried several times to personally serve your spouse, but it appears that your spouse is hiding to avoid being served.

First, you will have to show that you cannot locate your spouse by letting the court know what you've done to find him or her. In making this search, you should try the following:

- 1) Check the phone book and directory assistance in the area where you live .
- 2) Check directory assistance in the area where you last knew your spouse to be.
- 3) Ask friends and relatives who might know where your spouse might be .

- 4) Check with the post office where he or she last lived to see if there is a forwarding address. (You can ask by mail if it is too far away) .
- 5) Check records of the property tax collector or property assessor to see if your spouse owns property.
- 6) Write to your state's motor vehicle licensing and drivers' licensing offices to see if your spouse has a car registration or driver's license .
- 7) Check with any other sources you know that may lead you to a current address (such as landlords, previous employers).

If you do come up with a current address, go back to personal service by the sheriff. If not, continue with the searching process. Even if you find your spouse in another state, still have him or her personally served. To do this call the sheriff in the county and state where your spouse lives and arrange for personal service by the sheriff .

Once you have made your search, you need to notify the court. This is done by filing a "Motion of service by publication." Ask the court clerk for the proper form, or check at your law library. All this form does is to tell the court what you have done to try and locate your spouse, and asks for permission to publish your notice.

You will also prepare a "Motion of action." This is the notice that will be published in the newspaper. Again ask the clerk, or consult your law librarian for the proper wording. The notice of action is signed by the court clerk. The clerk will sign on the notice of action and return two copies to you. If the clerk finds any errors in your papers, he will notify you what needs to be corrected. You should provide the clerk with a self-addressed stamped envelope when you deliver or send him these papers.

Your next step is to have a newspaper publish your notice of action. Check the Yellow Pages listings under “Newspapers,” and call several of the smaller ones in your county (making sure it is the same county as the court). Ask if the newspaper is approved for legal announcements. If they are, ask how much they will charge to publish a notice of action in a divorce case. Look for the cheapest paper. Most areas have a paper that specializes in the publishing of legal announcements (at a much cheaper rate than the regular daily newspapers). If you look around the courthouse you may be able to find a copy of such a paper; or simply ask the court clerk if one exists in your county.

The notice of action will be published the number of times required in your state. Get a copy of the newspaper the first time the notice appears and check to make sure it is printed correctly. If you find an error, notify the newspaper immediately. This newspaper will send you a form certifying that the notice of action has been published the required number of times. File this form with the court clerk .

As indicated in the notice of action, your spouse has until a certain date to respond. If your spouse responds to the notice published in the newspaper, just continue with the divorce procedure. If your spouse does not respond by the date indicated in the notice of action, proceed with the “Motion to Enter Default.” Again, check a divorce file, or ask your law librarian for the proper format.

How Your Spouse Responds

If your spouse files an answer, the first thing you should do is to read the answer carefully. This will tell you what your spouse agrees to, and what he or she disputes. This way you can be prepared as to what you will need to negotiate on, or prove at the hearing.

An answer may also contain new claims that you will need to respond to. This is frequently called a “Counterclaim,” or a “Cross-claim.” If there are new claims in your spouse’s answer, you will need to prepare an “Answer to Counterclaim” (ask for the correct format from the clerk or the law librarian), which will deny whatever new claims were made in your spouse’s answer.

Once your spouse has filed an answer, and you have responded to any new claims of your spouse, you can have the case set for a final hearing. Just be sure that you have met waiting period requirement for your state. Many states do not allow a final hearing to be conducted or a judgment to be entered until a certain amount of time after the complaint is filed or until your spouse is served.

If your spouse does not file an answer or join you in Marital Settlement Agreement within the time allowed in your state after the sheriff delivers the complaint, your spouse is in “default.”

You will need to notify the court clerk that your spouse has not filed an answer, and ask the clerk to formally enter the default in your court file. To do this, you will need to complete a “Motion to Enter Default,” and deliver it to the clerk. Again, ask the clerk or your law librarian for guidance on how to format this motion correctly. The clerk will sign the form and return a copy to you. Once the default has been entered by the clerk, you are ready to set a hearing date.

CHAPTER NINE:
HOW TO ANSWER A COMPLAINT FOR DIVORCE

If your spouse is willing to proceed to a final hearing, but does not want to sign a “Marital Settlement Agreement,” you can have your spouse file a simple answer. A few states have forms available at the court clerk’s office for this purpose .

If you are the one being served with divorce papers (or have received an answer from your spouse containing new claims), you will need to file an answer This is called a “Response” in some states. You will be told in the papers you receive (usually in the summons) how many days you have in which to file your answer. The time period is 20 days in most states, but may be longer in some. Do not let this time period pass. Following are some of the ways to answer a complaint for divorce:

- 1) Answer. This is where you either admit or deny what is in your spouse’s complaint, and make new claims, such as for alimony, child custody and support, nonmarital property, etc.

- 2) Marital Settlement Agreement. If you and your spouse can agree, and can prepare sign, and file a settlement agreement within the time period for an answer, you could do this instead of filing an answer. You can always file both an answer and a settlement agreement, which may be safer than taking a chance of allowing the response time to expire.
- 3) Motion to Dismiss. This is where you find there is situation, or some defect in the complaint, that prevents your spouse from proceeding with the divorce. This will take the place of an answer if it is filed within the response time. This will require a hearing, at which time the judge will either grant your motion to dismiss or deny the motion and tell you how many days you have to file an answer. There are two common reasons for a motion to dismiss. First, that the complaint does not contain the information required by the law of your state. If this is the case, your spouse is free to file a new complaint that does meet the legal requirements. Second, that neither you nor your spouse meet the residency requirements of your state .
- 4) Motion for a More Definitive Statement (also known as a Motion for Bill of Particulars). Most states do not want a complaint for divorce to include the particulars of the parties' problems. This is why you will always see the grounds of divorce stated simply as "the parties have irreconcilable differences," or "adultery" (if traditional, fault-based grounds are used). If you want more details of the facts your spouse intends to use as justification for the divorce, you will need to file this type of motion. It simply asks your spouse to provide you with more detailed information to support something in the complaint that is not clear. You will need to specify what matters in the complaint need details. This will require a hearing, at

which time the judge will either deny your motion, or tell you when you need to file an answer, or grant the motion and tell your spouse when to file the paper with detailed information, and tell you when you must file an answer. Your spouse will then file a Bill of Particulars, or other paper containing the detailed information.

You may then either file an answer, or file any of the other three responses above .

Generally, any of these four motions will only result in a delay of the divorce.

Therefore, you may want to just file an answer and proceed with settlement or final hearing.

CHAPTER TEN: CONTESTED DIVORCE

Procedures

It can be very risky to handle a contested case by yourself. You really should get a lawyer if you find yourself in a contested divorce situation.

There are several differences between a contested and an uncontested case .

- 1) In an uncontested case, a judge will usually agree with whatever you and your spouse have worked out. In a contested case, you need to prove that you are entitled to what you are asking for. This means that you will need a longer time for the hearing, you will need to present papers as evidence, and you may need to have witnesses testify for you.
- 2) You may have to do some extra work to get the evidence you need, such as by sending subpoenas, or even hiring a private investigator .

- 3) You may have to pay extra attention to make sure that your spouse is properly notified of any court hearings, and that he or she is sent copies of any papers you file with the court clerk.
- 4) When it becomes apparent that you have a contested divorce, it is probably time to consider hiring a lawyer, especially if the issue of child custody is involved. You can expect a contested divorce when your spouse fights you every inch of the way, or immediately hires an attorney.
- 5) Of course, you do not need to hire an attorney just because your spouse has one. Sometimes it may be easier to work with an attorney than with your spouse. The attorney will not be as emotionally involved and may see your settlement proposal as reasonable. Therefore, talk things over with your spouse's attorney first, and see things can be worked out. You can always hire your own attorney if you find yourself getting nowhere. Just be very cautious about signing any papers until you are certain you fully understand them. You should have a lawyer review any papers your spouse's attorney prepares before you sign them.

Property and Debt

The judge will look at your property and debts and try to divide them fairly. This does not mean that they will be divided equally in half. What you want to do is to offer the judge a reasonable solution that looks fair. You may need to prove what items should be designated as your separate or nonmarital property. This will involve proving that you had the property before you were married, or that you acquired the property by gift or inheritance.

You should now prepare a Property Inventory and a Debt Inventory. Make a list of the property, and against each one state what category it fits into (probably most property will fit into more than one):

- . Nonmarital property you or your spouse are entitled to keep.
- . Property you really want.
- . Property you would like to have.
- . Property you don't really care about.
- . Property your spouse really wants.
- . Property your spouse would like to have.
- . Property your spouse does not really care about.

Once you've completed your list, you will probably know which things you can get with little difficulty (what you really want but your spouse doesn't care about), property that you will have to fight over (what you both really want), and property that can be divided equally (what you both really don't care about).

At the hearing, the judge may try to get you to work out your disagreements, but he will not put up with arguing for too long. In the end, he will arbitrarily divide up the property that both of you can't agree on, or he order you to sell the property and divide the money you get equally.

If there are items that are really important to you, you will have to prove why you should get them. It will help if you can convince the judge of one or more of the following :

- 1) The item is nonmarital property, or was acquired by you either before marriage, or by gift or inheritance.
- 2) You paid for the item out of your own earnings or funds.
- 3) You are the one who primarily uses that item.
- 4) You use the item in your employment, business, or hobby.
- 5) You are willing to give up something else that you really want in exchange for this item. (Of course, you will try to give up something from your “don’t care” list or your “would like to have” list).
- 6) The item is needed by your children (assuming you will have custody).

The best thing for you to do is to make a list of how you think the property should be divided. Make it a reasonably fair and equal list (don’t let anger or emotion get in the way). Even if the judge changes some of it to make it seem fair to your spouse, you will most likely get more of what you want than if you don’t offer any suggestions .

Special problems can arise if a claim of nonmarital property becomes an issue. This may be in terms of your spouse trying to get your nonmarital property, or in terms of you trying to get property you feel your spouse is wrongly claiming to be nonmarital. It is also a good idea to have any papers that prove the property you claim to be nonmarital property actually is such property. These papers should show the following :

- 1) You bought the property before you were married (such as dated receipts).

- 2) You received the property as a gift or inheritance (such as a letter from the person making the gift, or with a will or probate court order). Gifts from your spouse cannot be considered nonmarital property.
- 3) You got the property by exchanging it for property you had before you got married, or for property you received as a gift or through an inheritance (such as a statement from the person you made the exchange with, or some kind of receipt showing what was exchanged).

You may want to dispute your spouse's claim that certain property is nonmarital. Various states use some of the following concepts in allowing you to claim an interest in what would otherwise be your spouse's nonmarital property:

- The value of the property increased during your marriage.
- You made financial contributions to purchase, repair, maintenance, or improvement of the property.
- You made other non-financial contributions to the repair, maintenance, or improvement of the property (such as making repairs, or building an addition onto a home).
- You and your spouse treated the property as if it was marital property.

If you want to get at assets your spouse is claiming as nonmarital, you will need to collect the following types of evidence:

- 1) Papers showing that you helped pay for the asset (such as a check that you wrote, or bank statements showing that your money went into the same account that was used to make payments on the asset). For example, if your spouse had purchased a house before marriage, and after marriage you made some of the mortgage payments with your own checking account. Since you contributed to the purchase of the house, you can claim some of the value of the house as a marital asset .
- 2) Papers showing that you paid for the repairs of the asset. If you paid for repairs on the home, or a car your spouse had before you were married, you may be able to claim part of the value.
- 3) Papers showing that the asset was improved, or increased in value during your marriage. If such is the case, you can claim part of the increased value.

During the hearing, the judge will announce who gets which item. Make a list as the judge tells you. Afterwards, complete the Final Judgment form (ask the court clerk or the law librarian for a copy) according to what the judge says. Once you have completed the final judgment, make a copy and send it to your spouse. Send the original to the judge – not the court clerk – along with a completed Certificate of Service (ask the clerk of a copy of this form), stapled to it showing the date you sent a copy to your spouse. If your spouse doesn't object to how you've prepared the final judgment, the judge will sign the judgment and return a copy to you. You should send the judge the original and two copies of the final judgment, along with two stamped envelopes (one addressed to yourself and the other addressed to your spouse).

Alimony

A dispute over alimony may require a lawyer, especially if there is a request for permanent alimony because of disability. Such a claim may require the testimony of expert witnesses (such as doctors, accountants, and actuaries), which requires the special knowledge of an attorney.

A charge of adultery may also require a lawyer and possibly a private investigator as well. You should determine what information (including testimony of witnesses and papers) you will need to present to the judge to either support or refute the reasons alimony was requested.

For temporary (or “rehabilitative”) alimony, the most common reason is that the person needs help until he or she can get training to enter the work force. The questions that will need to be answered are:

- What has the person been trained for in the past?
- What type of training is needed to become employable in that field ?
- How long will this training take?
- What amount of income can be expected upon employment ?
- How much money is required for the training?

Questions that may be asked in either a temporary or a permanent alimony situation include: (Make sure you are prepared to present evidence regarding these questions)

- An examination of the situation of the parties during their marriage that led to the person not working.
- What contribution to the marriage that person made.
- What improper conduct on the part of the other party makes an award of alimony appropriate.

Child Support

In many states, the question of child support is a matter of calculating how much. This is usually done in two ways :

- 1) By a percentage of the payer's gross or net income. The percentage increases with the number of children.
- 2) By a two-step process. First, the child's needs are determined by adding the incomes of you and your spouse, and then consulting a table. Second, the payer's child support amount is determined by multiplying the needs of a child by the payer's share of the two parties' total income .

Getting a fair child support amount depends upon the accuracy of the income information presented to the judge. If you feel fairly that the information that your spouse presented is accurate, or that you have obtained accurate information about his or her income, there is not much to haggle over. The judge will simply take the income information provided, use the formula to calculate the amount to be paid, and order that amount to be paid.

In most cases, there will not be much room to argue about the amount of child support, so there really isn't a need to get a lawyer. If you claim your spouse has not provided accurate income information, it will be up to you to prove this to the judge by showing the income information you have obtained from your spouse's employer or other source of income.

The only areas open for argument are whatever special needs are claimed by the party asking for child support. Most states will allow some deviation from the formula for children medical, educational, or other unusual needs. Once again, it will necessary for that party to provide proof of the cost of these special needs by producing testimony of professionals, billing statements, receipts, or other papers to show the amount of these needs.

Child Custody and Visitation

Generally, if you are the wife, the odds are in your favor of getting custody. Don't get smug about the odds. Start out by reviewing the guidelines the judge will use to decide the custody question. (You can get a copy of these guidelines from the court clerk, or from your law library). Then for each item of the guidelines write down an explanation of how that item applies to you. This will help you establish a firm argument when you have your hearing before the judge.

Many custody battles center around the moral fitness of one or both of the parents. If you become involved in this type of custody fight, you should consult a lawyer. Charges

of moral unfitness (such as illegal drug abuse, child abuse, immoral sexual conduct) can require long court hearings, involving the testimony of many witnesses, as well as the possibility of hiring a private investigator. For such a hearing you will need to have a lawyer who is an expert in this type of disputes, and knows how to question witnesses, and is very familiar with the rules of evidence .

If the only question is whether you or your spouse have been the main caretaker of the child, you can always have friends, neighbors and relatives come into the hearing (if they are willing to help you) to testify on your behalf. It may not be necessary for you to have an attorney. But, if you need to subpoena unwilling witnesses to testify, you should get an attorney.

CHAPTER ELEVEN: THE COURT HEARING

Preparation

You will need to set a hearing date for the final hearing, or for any preliminary matters that require a hearing (such as a motion for temporary relief). The court clerk may be able to give you a date, but you will probably have to get a date from the judge's secretary. If you don't know which judge call the court clerk, give the clerk your case

number, and ask for the name and phone number of judge assigned to your case. You can either call or go see that judge's secretary and tell the secretary that you would like to set a final hearing date for a divorce.

The secretary may ask you how long the hearing will take. If you using a simplified or "summary" procedure available in your state, say so, and the secretary will probably know how much time to allow for the hearing. If you cannot use a simplified procedure, but you and your spouse have agreed to everything (that is, an uncontested divorce), tell the secretary that it is an uncontested divorce and ask for 10 minutes. If you have a contested divorce, it could take anywhere from 30 minutes to several days, depending upon issues such as, what points you disagree about and how many witnesses will testify. One rule of thumb is that the more time you need for a hearing, the longer it will take to get the hearing. Also, it is better to over-estimate the time required, rather than not schedule enough time and have to continue the hearing for several weeks. Judges never go over the time scheduled. Keep that in mind. Then, the secretary will give you a date and time for the hearing, but you will also need to know where the hearing will take place. Ask the secretary for the location. You will need the street address of the courthouse, as well as the room number, floor, or other location within the building.

Once you get a hearing date set with the judge, you will need to notify your spouse of when the hearing will be. This is done by preparing a "Notice of hearing." Look at a divorce file at the clerk's office, or check your local law library for the notice of hearing forms used in your county or state. You will need four copies of the notice of hearing. Mail one to your spouse, file the original with the court-clerk, and keep two copies for yourself.

Witnesses

The witnesses you choose to testify will depend upon what you are trying to prove at the hearing.

For child custody and visitation issues, witnesses may include relatives, friends, neighbors, police officers, child abuse investigators, social workers, doctors, psychologists, your child's school counselors and teachers.

For financial issues (property division, alimony, and child support), witnesses may include employers, bank officials, appraisers, friends, neighbors, and relatives who can verify the financial situation of you and your spouse. You will need to decide who you think would be a witness to help your position, and who your spouse might use to hurt your position.

First, make a list of each fact you want to prove at the hearing. (This will depend upon the issues in dispute). Beside each fact, write down the name of the witness or witnesses you believe will be able to testify to that fact.

Next, make a list of each potential witness, along with that person's address and telephone number, and a brief statement as to what fact that witness will prove, and what you expect that witness to say in court.

Your next step is to talk to each potential witness to be sure of what they would say at the hearing. Never assume what a witness will say at a hearing. Many cases have been lost by a witness giving surprise testimony at a hearing. For each witness you interview, you want to ask the specific questions you might ask at the hearing, and allow

the witness to describe what he or she has heard, seen, or knows. This will allow you to get new information and may possibly lead you to other witnesses.

There is a danger of a witness telling you one thing before the hearing, and the changing his or her testimony at the hearing. The best way to reduce this danger is to take the deposition of the witness. This is where you have the sheriff serve a notice on the witness to appear at a specific place and time to answer questions before the court reporter. Unfortunately, this can be very expensive. You will have to pay for the court reporter to show up and record the testimony, and pay for the reporter to type up a record or a “transcript” of the deposition. You can expect to pay about \$45 for the court reporter, plus at least \$100 per hour of testimony transcribed. The advantage of having a transcript is that you can use it to contradict the witness if he or she says something different at the hearing. Most lawyers only take depositions of the witnesses for the opposing party. They extensively question their own witnesses and tell them they will be expected to give the same testimony at the hearing.

One alternative is to ask the witness to give you a written, signed statement of what they saw, heard, and know. It may help you to have someone with you when you interview the witness, so that person can testify to the original statements, if the witness changes his or her story at the hearing. The important thing is that you must be sure of what your witnesses will say, before you put them on the witness stand .

Sometimes, especially in custody and alimony cases, it is necessary to have an expert witness testify. An expert witness testifies because of his or her special education, training or experience (such as a doctor or psychologist). An expert witness will testify to something that requires special training to be able to evaluate, and where a professional

opinion is needed. At the hearing, it is first necessary to have the judge first determine that the witness is qualified as an expert. This is usually done by asking the witness to tell his or her profession, and to describe his or her training and job experience. Once this is done, you will say to the judge: "I would like this witness qualified as an expert."

The best way to notify witnesses of your hearing date is by having the sheriff serve them with a subpoena. It's a good idea to call your witnesses and let them know of the hearing date, and that they will be receiving a subpoena. It is not a requirement that you serve a subpoena on a witness who is willing to come voluntarily and help you. But if, for example, they have car trouble, or are ill on the hearing date, the judge will probably not continue the hearing so they can testify at a later date, unless they were served with a subpoena. For doctors, psychologists, school teachers, police officers, it is absolutely necessary that you serve them with a subpoena. This should be done five days before the hearing, but no earlier than about two weeks before. If you just need the person to testify, use a subpoena form commonly used in your state and county. Try asking the court clerk for a form (the subpoena must be issued or signed by the clerk, so they may have a form for you to use). You can also look at a divorce file, or check at your law library to get the proper format.

In order to force someone to appear at the hearing and testify, you will need to have the person served by the sheriff with a subpoena. Even if your witness is a friend who wants to appear to testify for you, it is a good idea to have him or her served with a subpoena. The subpoena will enable your friend to get off work to come to the hearing. It will also enable you to have the hearing continued to a later date if your friend has car trouble, or becomes ill, or if he or she just cannot make it to the hearing.

If you want your witness to bring documents or other items to be introduced as evidence in the court, you will need to prepare a *subpoena deces tecum*. This will include a directive for the person receiving the subpoena to bring certain items to the hearing.

When you question a witness at the hearing, you want to show three basic things :

- . Who the witness is.
- . What the witness knows
- . How the witness knows it

If you are using an expert witness, you will need to ask the witness about his or her education, training and employment history. Afterwards you will ask the judge to qualify the person as an expert in whatever area you need his or her testimony. For each witness you should:

- . Make a list of then questions you will ask
- . What the answer will prove
- . The expected answer to each question

Keep in mind that most judges try to finish hearings as quickly as possible, so you do not want your witnesses to get off track and ramble on. Keep them focused on what they need to say to prove your case.

Courtroom Manners

There are certain rules of procedure that are used in a court. These are really the rules of good conduct or good manners, and are designed to keep things orderly. Many of the rules are written down, although some are unwritten customs that have developed over the years. Follow the suggestions below, so the judge will respect you for your maturity and professional manner, and possibly even make him forget for a moment that you are not a lawyer. It will also increase the likelihood that you will get the things you request.

- 1) Show respect for the judge. This means you should not do anything to make the judge angry at you, such as arguing with him. Be polite, and call the judge “Your Honor” when you speak to him. Although many lawyers address judges as “Judge” this is not proper.
- 2) Wear appropriate clothes that show respect. This means wearing a coat and tie for men, and a dress or suit for women. Do not show up in court wearing a T-shirt, blue jeans, shorts, or any other type of “revealing” clothing.
- 3) Always listen to the judge. If he interrupts, stop talking and listen to what he has to say.
- 4) Only one person should talk at a time. Each person is allotted his or her own time to talk in court. The judge can only listen to one person at a time – so don’t interrupt your spouse when it’s his or her turn to talk. And as difficult as it may seem, stop talking if your spouse interrupts you. The judge will tell your spouse to keep quiet and let you have your say.
- 5) Always talk to the judge, and not to your spouse. Many people get in front of a judge and begin arguing with each other. They will turn away from the judge and

- face each other, and argue, as if they were in a room all alone. This has several negative results. The judge can't understand what either one is saying since both parties talk at once; both look like fools for losing control; and the judge gets angry with both. So whenever you speak in a courtroom, look only at the judge. Try to pretend that your spouse isn't there. You have to convince the judge to let you have certain things. You don't have to worry about convincing your spouse .
- 6) Talk only when it's your turn. The usual procedure is for you to present your case first. When you have finished saying all you came to say, your spouse will have a chance to all that he or she came to say. Give your spouse a chance to talk. When he or she is finished you will get another chance to respond to what has been said .
 - 7) Stick to the subject. Many people can't resist the temptation to get off track and start telling the judge all the problems with their marriage over the past years. This just wastes time, and aggravates the judge. So always stick to the point, and answer the judge's questions simply and briefly .
 - 8) Keep calm. Judges like things to go smoothly in their courtrooms. They don't like shouting, name calling, crying or other displays of emotion. The courtroom is not a place for these outbursts. Generally, judges don't like family law cases because they are too emotionally charged. So make the judge happy, and keep calm and focused on the issues.
 - 9) Show respect for your spouse. Even if you don't respect your spouse, act as if you do. All you have to do is refer to your spouse as "Mr." Or "Ms."

Presentation

Below, you will find the basic rules of evidence which are often used in courtrooms .

- 1) Relevancy. The documents you present to the judge and questions that you ask your witnesses should be related to the facts of that you need to prove. You need to determine what information you need to give to the judge for the issue at hand, and stick to that information.
- 2) Hearsay. A witness cannot testify to what someone else told him. This can also apply to documents that contain statements made by someone who is not in court to testify.
- 3) Documents. All documents must be introduced at the hearing by someone's testimony. You need someone (it can even be you) who can identify the paper, and say who prepared it, and how they know who prepared the paper.
- 4) Examining Witnesses. This refers to asking questions of your witnesses (known as "direct examination"). One problem most non-lawyers have with this is that they tend to start testifying instead of asking questions. This is not the time for you to explain anything. You need to ask simple questions and wait for the witness to answer. You should be particularly careful in cross-examining your spouse's witnesses. If you aren't sure what their answer will be, don't ask the question. Don't feel that you have to ask questions of each witness. Often it is best to let the witness go without further damaging your case.
- 5) Preparing for the hearing. In order to prepare for the hearing, you need to decide what you are going to say, what documents and witnesses (if any) you will present, and the order in which you will present them. You should make a list of each fact

- you intend to prove and next to each fact write down how you will prove it. Make sure you have your notes ready to keep you on track at the hearing. Have your documents arranged in the order you will present them. If you have witnesses you will want to have your written questions arranged in order you will have them testify.
- 6) Presenting your case. The judge will know that you don't have a lawyer, and he may help you through the hearing by asking you what he needs to know, or even by telling you what you need to do to present your case. When you first meet the judge, smile and say, "Good morning, your Honor," or "Good afternoon, your Honor." Then just follow his lead. If he starts guiding you, or asking questions, just let him control the hearing. Otherwise, be ready to give a brief opening statement, telling the judge that this is a final hearing on a complaint for divorce. Then state whether you and your spouse have reached any agreements, and what issues need to be decided by the judge (there are basically four issues: property division, alimony, child support and child custody).
 - 7) The judge may stop you before you have a chance to complete your opening statement, and just ask you to present your proof. This is all done to save time. If this happens, just present your proof (which may be financial statements filed by you or your spouse). The judge will probably swear you in, then tell you to proceed.

The Judgment or Decree

Make sure you find out exactly what needs to be included in the final judgment or decree according to the requirements of your state. You can get the format from the court clerk or your local law library. You should complete as much of the final judgment form as possible before the hearing. The judgment form is designed so you can complete it at the hearing according to what the judge decides on each issue. You can complete ahead of time any items that you and your spouse have agreed upon. You should give your spouse a copy of the final judgment before the hearing so that he or she can tell the judge that he or she is aware of what it says, and agrees with it.

If you and your spouse have agreed to everything, you can prepare the final judgment before the hearing, and give it to the judge to sign at the end of the hearing. If the judge tells you to change something major in the final judgment, or if you had a contested hearing, it may not be possible to prepare it at the hearing. You will need to make a note of exactly what the judge requires, or what he ordered, then go home and prepare the final judgment the way the judge instructed. You will then need to take the revised form back to the judge for his signature.

If you need to prepare the final judgment after the hearing, you will also complete a Certificate of Service (ask the clerk for this form), attach it to the final judgment and deliver it to the judge's secretary. Also, give the secretary two extra copies, along with a stamped envelope addressed to yourself and to your spouse. Ask the secretary whether you should sign and date the certificate of service. Sometimes the secretary will handle mailing the judgment after the judge signs it, in which case the secretary will sign the certificate of service.

With the judge's signature on the final judgment, you are now legally divorced, and free to go on with your life.

CHAPTER 12:
CHILD CUSTODY:
SOME CONSIDERATIONS

One of the hardest things to deal with in any divorce case involving children is the issue of custody. All too often the children are ignored, or are used as weapons by both parties to get at each other. But the point to remember is that parenting does not stop with the divorce. Both the mother and the father need to share and divide responsibilities during or after separation or divorce.

Custody always involves the following issues :

- . Taking care of the children
- . Making necessary decisions on the children's behalf
- . Making sure the children spend time with both parents

- Meeting the children's medical, psychological, educational, spiritual, physical, and social needs.

When parents first turn their attention to custody, they are often both angry, hurt and emotionally overwhelmed with both the divorce process and their own feelings. Often a parent's first feeling is to use the children to get the upper hand by demanding full custody of the children. All too often the other parent responds in a similar fashion. This is the surest road to child custody litigation – a long, expensive, and emotionally draining process.

Whenever parents take the custody issue to court, they are selling themselves short, because they are putting a crucial and important matter into the hands of a stranger – the judge or a court-appointed evaluator – who has to make a wise decision (keeping the children's best interests in mind) within a few minutes or hours.

Each state has guidelines for its judges to follow when making custody decisions. Still judges have considerable discretion in interpreting these guidelines and imposing their own views as to what is best for the children.

Most experts agree that using the court to resolve custody issues is to make a big mistake. It is far better for parents to negotiate their own parenting agreements, with the help of outside experts such as mediators, counselors and lawyers.

Court intervention is only appropriate if the children's safety or well being is at risk and the parents cannot agree on a way to reduce that risk.

In addition to parenting issues, divorce often requires the parents to deal with financial issues such as dividing property, paying marital debts and providing for support.

However, if you keep your children's best interests in mind, you may find that tackling financial issues is easier.

For example, if you choose to have one parent take on the majority of the daily parenting responsibilities, you may decide that that parent will live in the family home. But if your children will be spending roughly equal amounts of time with each of you, you may choose to sell the family home, and use the money to rent or buy a home for each parent that can accommodate the children.

In order to resolve the custody issue so your children are the winners, you will need to come to an understanding about two crucial issues :

- A clear description of how both parents will take care of the children on a daily basis.
- A clear description of the process for making decisions, resolving conflicts and changing the agreement over time.

Once both parents reach a clear understand of what is required of each, next it is time to list exactly what it is that both of you need:

- 1) Write down what will work and what will not work, such as frequency of visits, frequent conversations about parenting styles, or concerns about child safety.
- 2) Write down what problems have to solved, such as lateness at the exchange of children, regular arguments over key parenting issues, or one parent's concerns that a certain activity is completely unsafe for the child.

- 3) Write down what you see as the solution to all these “problems,” such as a clear statement as to how exchanges will happen, a better way to solve conflicts, and a list of activities that both parents will or will not allow the children to participate in .

As you write things down, pay attention to what your children and the other parent say about what is or is not working well. It is important, however, to make sure that you clearly define your needs. In this way, you will be able to understand the needs of the other parent, as well as the needs of your children. This will give you understanding and will help you build an agreement that lasts .

If you have a clear understanding of your role as a parent in a divorce situation, you will find that the entire process becomes smoother – and less traumatic for the kids .

An agreement will give you peace of mind, knowing that your children are cared for in the best possible way, given your divorce situation. As well, you can realize many other “gains” such as:

- 1) You will limit the financial and emotional costs of a court fight.
- 2) You will reduce the tension between you and the other parent.
- 3) You will help both of you to worry less about the children when they are with the other parent.
- 4) You will always keep your children out of any arguments that the two of you may have.
- 5) You will show your children that both of you can agree on some things .

Keep one thing in mind – custody is not about you winning over your spouse – but it is about the welfare and well being of your children. If you keep this perspective in the forefront as you argue and solve differences with the other parent, you will always make sure that your children win.

CHAPTER 13: AFTER THE DIVORCE

Once your divorce decree or judgment has been officially entered, you are legally a single person again. A few states have a short waiting period before you can remarry. Check with the court clerk about any waiting period in your county .

Although you and your spouse are now single, there are some very important steps that you and your ex-spouse must take again to complete the divorce process. In effect, you have to do all the things that you agreed to do in your Marital Settlement Agreement and you have to begin meeting those obligations that are on going .

Below is a checklist for you to use to make sure that you actually complete the total separation of you and your ex-spouse's affairs and to transfer any property that has not yet been properly transferred.

- 1) From the court clerk, you should order 5-6 certified copies of your final judgment or decree for each of you. You and your ex-spouse may need these documents for any transfers of property, bank accounts, loan releases, etc .
- 2) Be certain that you have filed a Certificate of Divorce or Dissolution of Marriage with the clerk of the court, or your state's Department of Vital Statistics. This is required in most states. Check with the court clerk in your county.
- 3) If there is any personal or household property that has not yet been exchanged, you should do so at this time. Arrange for delivery or pick-up of any items that you and your ex-spouse have agreed are to be the property of the other, such as, furnishings, jewelry, tools, appliances, stereos, etc.
- 4) If you have not yet closed all your joint bank accounts, you should do so at this time. Verify the balance in any joint account and then divide the amount in the account according to the terms of the Marital Settlement Agreement.
- 5) If you have any joint credit accounts that still remain open, these should also now be closed. The payment of the remaining outstanding bills should be arranged according to the terms of your Agreement. You should determine the exact balance as of the date of your final decree. If there are utility or other bills that you must split, determine the amount to be paid by each ex-spouse. Change any addresses as necessary to be sure that future bills are delivered to the proper person. For joint

credit card accounts, you should destroy the cards or give them back to the credit card companies. You should advise all of your joint creditors of your divorce, and that from now on you will only be liable for your own debts. You and your ex-spouse should each give each other any necessary account records regarding your joint debts.

- 6) If you and your ex-spouse have any outstanding joint loans, you should notify the lending institution of your divorce. You may need to supply them with a certified copy of your divorce Judgment/Decree or of your Marital Settlement Agreement if it contains a hold-harmless and indemnification agreement from your ex-spouse. If possible, the ex-spouse whose duty to pay is being taken over by the other ex-spouse should try to obtain a Release from the lending institution relieving him or her of liability for the debt. Be sure to notify the lender of any address or billing changes.
- 7) If you have cars or other property for which the ownership is determined by a title, you should make any appropriate transfers of title. Be sure to also change the registration and license plates to the appropriate ex-spouse at this time.
- 8) If you have real estate that will need to be transferred between the two of you, you will need to complete any necessary deeds to get the job done. You may need to contact a real estate professional or attorney for assistance in preparing the required paperwork. If there is a mortgage on the property, you should contact the lender regarding any changes required in the mortgage documents. Again, you may need to supply them with a certified copy of your judgment/decree. If possible, the ex-spouse whose duty to pay is being taken over by the other ex-spouse should try

- to obtain a Release from the lending institution relieving him or her of liability for the debt. Be sure to notify the lender of any address or billing changes. Any documents relating to real estate will need to be recorded in the appropriate office (usually the county recorder) in the county where the real estate is located .
- 9) If any of your jointly owned property is to be sold and the proceeds divided, you and your ex-spouse will now need to make the proper arrangements. If the property is real estate, you will need to contact a broker or list the property yourself. Keep a record of any expenses that are required to complete the sale (for example, appraisal fees, surveys, advertising charges, brokerage fees, etc.). These expenses will be deducted from the gross proceeds of the sale to determine the profits to be divided.
 - 10) Each of your insurance policies should be reviewed. Any beneficiary changes should be directed to the insurance company or agent who handles your policy. The policies that should be reviewed include: Life Insurance Policies, Health or Hospitalization Policies, Children's Insurance Policies. If you or your ex-spouse are required to maintain life or health insurance as part of your agreement or decree, you should furnish the other ex-spouse with proof of the policy. If you are converting from group to individual coverage under a group health insurance plan, you must do so quickly. There may be a time limit for doing this (usually 30 days) .
 - 11) Be sure that both you and your ex-spouse understand how your income tax situation is to be handled. If you have agreed to file a final joint return, arrange to do so. Keep in mind, that in order to file a joint return you need to still have been legally married on the last day of the year for which you file. If you have agreed on

who will actually pay the tax, or who will receive any tax refund, you should go over these terms with your ex-spouse. If you will file separate returns, you should supply each other with any tax information that will be necessary for completing the returns. Each of you should keep copies of all the tax returns that you filed while you were married. You should discuss and clarify the tax status of any required property settlement, alimony, or child support payments.

- 12) If you and your ex-spouse have a will, it will need to be revised to conform with your new legal status as a single person. Individual states deal with the effect of divorce on a will in different ways. Some states consider any provisions for an ex-spouse in a will as automatically revoked by the divorce. Other states do not. Some states have provisions that declare the entire will of either ex-spouses to be revoked upon divorce. To be absolutely safe, a new will should be prepared which takes into account you and your ex-spouse's new legal relationship. If you have children, preparing a will which contains adequate provisions for their future is especially important. If you don't presently have a will, you should consider preparing one.

Various legal problems relating to your divorce can confront you and your ex-spouse well after your divorce has become final. These legal problems fall into two categories: Enforcement of provisions in your divorce decree or judgment, and modification of provisions in your divorce decree or judgment.

The need for legal action is more likely to occur to a divorced couple that has minor children. Divorced couples without children typically go their separate ways and

begin to lead fully independent lives with little or no interaction with an ex-spouse. The situation is different if children are involved. There will be continued contact with an ex-spouse who is also a parent of a child because of continuing obligations of child support and the ongoing responsibilities of custody.

Enforcement of Child Support

The most common legal difficulty after a divorce is the need to collect overdue child support payments. The delinquency of child support payments is a huge problem. In the last few years, both federal and state governments have taken major steps in an effort to correct this problem. All states have passed the Uniform Reciprocal Enforcement of Support Act, which coordinates state efforts at enforcement.

As a result, there is a wide range of methods available to states to collect child support. The use of these techniques has been simplified and in most cases can be arranged without the aid of a lawyer. Court clerks and child support enforcement agency personnel can provide assistance in obtaining and filing the proper forms. Many of the necessary forms for the enforcement of child support obligations are now simplified and pre-printed for easy use without a lawyer.

States can also use “Wage or Payroll Deductions”, or “Wage Withholding Orders.” This type of court order will require that an employer must withhold part of the wages of the delinquent parent, and the employer then must give the withheld portion to either the custodial parent, a court clerk, or the local support agency. Every state now has laws in effect which grant similar powers to the local enforcement agencies or courts. Some states call this method a “Wage or Income Assignment,” in which a portion of the future wages

or income of the parent ordered to pay is actually legally transferred to the parent entitled to receive the support. “Wages” are broadly defined to include income from pensions, retirement funds, annuities, social security, unemployment compensation, and other benefits.

Another method of collection of unpaid support payments is the “Tax Refund Intercept.” This legal method allows the support payments to be taken directly out of an ex-spouse’s federal or state income tax refund – before the refund is ever sent out. The ability to collect overdue payments from an ex-spouse in any state is a particularly attractive method of collection. Also, if all other means of collection of overdue child support payments have failed, the IRS may also use all of its tax-collecting powers to collect the payments, including seizing property and money from the delinquent parent .

Other method available to you are:

- Attachments. This amounts to a claim or a lien which is legally “attached” to a specific piece of property. If the property is sold, the claim for overdue support is paid off first. You can only use this method to impound funds in a bank account.
- Garnishment of wages. This is similar to a wage withholding order and is available for any money-based legal judgment.
- Security of bond. This method requires a parent to post bond to guarantee the future payments.
- No discharge in bankruptcy. A defaulting parent cannot be relieved of a child support obligation by filing for bankruptcy.

- . No retroactive judicial reduction of child support obligations. A defaulting parent cannot convince a court that the past-due payments were too high and have them reduced.
- . Civil contempt of court. This method can result in imprisonment of an ex-spouse for failure to obey a court order which requires child support payments.
- . Criminal prosecution. Many states make it a crime to fail to provide child support, punishable by fines and/or imprisonment.

If you need immediate assistance regarding collection of child support, check your phone book for the nearest office of the federal Child Support Enforcement Administration or your state's own child support enforcement agency. They will be able to help you with enforcement and collection of your overdue payments.

Enforcement of Alimony

In the past, when alimony awards of long duration were more common, alimony payments were more likely to be overdue or totally delinquent. The trend to providing alimony on a short-term basis and the training and education of an ex-spouse have to some extent lessened the problem of collecting alimony payments over long periods of time.

Many of the same methods available in child support enforcement situations are also available for the collection of overdue alimony payments (see the list above). If the alimony and child support payments are lumped together into a single payment, all of the

enforcement techniques mentioned above are available to you. However, wage withholding, income assignments, attachments, liens, garnishment of wages, and contempt of court orders are all generally available to aid in the collection of delinquent alimony payments.

Enforcement of Custody and Visitation

Visitation and custody can often create legal difficulties between ex-spouses. One parent may deny visitation on the grounds of overdue child support payments. Another parent may intentionally withhold support payment because of interference with visitation rights. A parent with custody may wish to move across the country with the child, effectively denying the other parent the right to reasonable visitation .

Each state may view the denial of visitation somewhat differently. In most states, however, you can seek various types of court relief from failure to abide by the court - ordered custody and visitation terms of your divorce judgment/decreed. This relief may take the form of:

- A contempt of court order against the offending ex-spouse .
- An actual change in the custody or visitation terms of your divorce .
- A court order suspending support payments until visitation is allowed.
- A court order requiring visitation.
- Fines and imprisonment for failure to comply with a court order .

As well, child snatching is a separate problem that has come under increasing scrutiny of the courts and legislatures. If you have to face this situation, you can bring in the FBI, your local district attorney, or the state attorney general. As well, it is highly recommended that you get a lawyer.

CHAPTER THIRTEEN:

THE FUTURE

Once your divorce is final, you are of course free to get married again, because you are legally single once more.

But if you find yourself thinking about marriage, you should be careful the second time around. Now that you know and appreciate how difficult it can be to get out of a marriage, you have no excuse for rushing into another one.

Therefore, if you decide to get married again, you would be wise to consider a premarital agreement (or a prenuptial agreement). This is an agreement made before marriage, in which both parties disclose all of their property and debts, and agree how things will be handled in the event they separate. In brief, a premarital agreement can avoid a long and costly divorce.

GLOSSARY

- Action:** A lawsuit or proceeding in a court of law.
- Affidavit:** A written statements of fact which is made under oath and which is signed before a notary public or court official.
- Agreement:** A verbal or written resolution of disputed issues.
- Alimony:** A payment of support for one spouse provided by the other spouse. It may be paid in periodic payments, in one lump-sum payment, or a combination of both. It may be paid temporarily or on a permanent basis
- Annulment:** A legal action which has the result of treating a marriage as if it had never occurred
- Answer:** A formal written response to the charges or allegations in a complaint. This answer is filed by a defendant in a lawsuit.
- Appeal:** A legal proceeding in which the losing party in a lawsuit requests that a higher court review the decision.
- Bill of Particulars:** A document in a lawsuit which adds information to the facts contained in a complaint or petition.
- Claim:** A charge by one person against another.
- Community Property:** All income and property which is acquired by either or both spouses during the marriage, except property acquired by individual gift or inheritance. Community property does not include property that was acquired prior to a marriage. In most community property states, both spouses are considered to own an equal share of all of the community property.

Complaint: The first document filed in a divorce or dissolution of marriage. The complaint sets out the facts of the case and the allegations against the other spouse, and requests that the court grant the divorce or dissolution.

Contested Divorce: A divorce where at least one issue has not been settled prior to the court hearing. A court must decide any issues that have not been agreed upon in a contested case.

Custodial Parent: The parent with whom a child normally lives.

Decree: The final court ruling in a case, as in a Final Decree of Divorce .

Default Order/Judgment: An order or judgment of a court based solely on the plaintiff's (or petitioner's) case. The defendant (or respondent) has not answered the allegations or made an appearance in the case .

Divorce: A legal judgment that severs the marriage of two people and restores the to the status of single persons.

Dissolution of Marriage: A legal judgment that severs the marriage of two people and restores the to the status of single persons.

Equitable Division: A method of property division in a divorce which is generally based on a variety of factors in an attempt to allocate a fair and just amount of property to each spouse.

Fault Based Divorce: A type of divorce, which may only be granted on a showing that one of the spouses was guilty of some form of marital misconduct.

Grounds: The legal basis for the divorce. The grounds may be no-fault or fault based .

Hearing: Any proceeding before a court where testimony is given or arguments heard.

Hold Harmless: A phrase used to describe an agreement by which one person agrees to assume full liability for an obligation and protect another from any loss or expense based on that obligation.

Joint Property: Property which is held or titled in the name of more than one person.

Joint Tenancy: A form of joint ownership of property by which each joint owner has an equal share in the property. Generally, a joint tenancy is used in connection with a right of survivorship.

Judgment: A ruling or order of a court.

Legal Separation: A legal lawsuit for support while the spouses are living separate and apart. A legal separation may deal with the same issues as in a divorce, but does not end the marriage.

Lump Sum Alimony: Spousal support that is made in a single payment or is a fixed amount, but paid in specific installments.

Maintenance: Support for a spouse provided by the other spouse. May be paid in periodic payments, in one lump-sum payments, or a combination of both. It may be paid temporarily or on a permanent basis.

Marital Property: The property which is subject to division by a court upon divorce or dissolution. Generally, all property which was acquired during a marriage by either or both spouses, except individual gifts and inheritances. Marital property does not generally include property that was acquired by either spouse prior to the marriage.

Marital Settlement Agreement: A written agreement entered into by divorcing spouses that spells out the rights and agreements regarding property, support, and children.

No Fault Divorce: A type of divorce which may be granted without the necessity of showing that either spouse was guilty of some form of marital misconduct.

Order: A court official's ruling on some matter. An order is in writing and signed by the judge.

Party: A person directly involved in a lawsuit; either a plaintiff/petitioner or a defendant/respondent.

Plaintiff: A person who initiates a lawsuit.

Prenuptial Agreement: A legal contract signed by two people before they get married. Such an agreement generally limits a spouse's rights to property, support, or inheritance upon divorce.

Separate Maintenance: A lawsuit for support in a situation where the spouses live separate and apart but are not presently pursuing a divorce or dissolution.

Separate Property: Property considered to be owned individually by one spouse and not subject to division upon divorce in most states. Separate property generally consists of property acquired by individual gift or inheritance either before or during a marriage.

Separation Agreement: The written version of a settlement which resolves certain issues.

Sole Custody: A form of child in which one parent is given both physical custody of the child and the right to make all of the major decisions regarding the child's

upbringing. Generally, the other parent is granted reasonable visitation rights.

Split Custody: A form of legal child custody in which the actual time of physical custody is split between the parents, with both of them retaining the rights to participate in decisions regarding the child.

Spousal Support: Support for a spouse provided by the other spouse. It may be paid in periodic payments, in one lump-sum payment, or a combination of both.

Subpoena: A document which is served upon (or delivered to) a person who is not directly involved in a lawsuit, requesting that person to appear in court to give testimony.

Summons: A document which is served upon (or delivered to) a person who is named as a defendant or respondent in a lawsuit. The summons notifies a person that the lawsuit has been filed against him or her and tells that person that they have a certain time limit in which to file an answer or response in reply.

Uncontested Divorce: A divorce proceeding in which there is no dispute as to any of the legal issues involved. The lack of dispute may be because the other spouse is missing, refuses to participate in the proceeding, or agrees with the other spouse on all issues.

Visitation: The right of a parent who does not have physical custody to visit a child or have a child visit him or her.

Verification: A written statement that is signed under oath.

Waiver: A written document that relinquishes a person's rights.

PART II

THE NECESSARY DOCUMENTS

In this part of the kit, you will find easy to follow instructions on how to do all the paperwork for your divorce. The two most important documents that you will prepare are the Marital Settlement Agreement and Financial Statements for both spouses.

In addition to your Marital Settlement Agreement and Financial Statements, there are four or five relatively short legal documents that you will need to prepare for submission to the court. These documents, in general, are:

- . Petition or Complaint
- . Appearance, Consent, and Waiver Form
- . Child Custody Jurisdiction form (if children are involved)
- . Proposed Final Judgment or Decree
- . Certificate of Divorce or Dissolution of Marriage

Some states or counties may require one or more other routine forms. For example, some California counties require couples to submit a short form that indicates that they desire or have declined marriage-counseling services. Other states may require forms, which outline child support calculations or other information relating to child support. The most common type of other form required will relate to the payment of child support payments.

If you and your spouse have agreed to have any child support payments paid through a court or government agency or official, there will be certain required forms which will need to be filled out. In addition, many states have procedures and forms available for use if there will be an automatic wage withholding order or assignment of wages when there are child support payments involved. Any of these types of forms should be available from the office of the clerk of the court where you will file your divorce papers.

Although the legal method that is outlined in this book does not require the use of a Summons or citation, some states may still require that a summons or citation be used as a

formality. A summons/citation is a document that is officially delivered to a person against whom a lawsuit has been filed. The initial court papers, which are filed in a lawsuit, are also delivered with the summons/citation. The summons/citation notifies the person that the suit has been filed and specifies a time limit in which the person must respond to the lawsuit. Since you and your spouse are cooperating in the filing of your divorce, your spouse will file an *Appearance, Consent, and Waiver form*, which takes the place of the summons/citation in the vast majority of states. When you file your actual divorce papers, you should, however, ask the clerk of the court if a summons/citation would be required if your spouse files the written waiver of service of process. *The Appearance, Consent, and Waiver* form will be explained later.

In order for the judge to properly handle your case, you must file all of the documents, which are required in your jurisdiction. Refer back to **Part I** to find out where to file for your divorce. You will need to stick to the specific forms and procedure for your state and county (or parish).

There are three steps that you should take initially to determine exactly what documents must be filed:

1. First, you should carefully read through the Appendix regarding your state's laws to see if any specific additional forms are mentioned. Some states have specific mandatory fill-in-the-blank type forms for use in filing for your divorce. Michigan and California are examples of states that use this method. Florida has provisions for the use of mandatory forms in certain situations. Other states are noted in the back of this kit. If your state has mandatory official forms, you must use them. They are generally available directly from the clerk of the court where you will file for your divorce. If there are mandatory forms, they will usually contain their own instructions and these should be followed carefully. The information that you have compiled in your questionnaires and in your Marital Settlement Agreement and Financial Statements should be all that you will need to easily prepare most forms of this nature. Some areas have optional or unofficial blank legal forms for use in divorce proceedings. These are normally available through legal forms distributors or through stationery or office supply stores. If the use of these forms is customary in your locale (check with the court clerk), you should use the locally available pre-printed forms. The instructions for filling in these types of forms will be the same as for the forms contained in this book. Simply follow the instructions for preparing and signing the divorce forms as explained later on.
2. You should ask the clerk of the court where you intend to file your divorce papers if any other forms are required, beyond the basic forms listed earlier. Some courts may have specific state or local forms in use, which may be required. You can easily do this by phone or you may do so in person. Most court clerks are very helpful and will be

glad to assist you. Remember to be courteous and respectful when you deal with the clerk. Court clerks, however, are not attorneys and are not allowed to provide any legal advice. They can and often will assist you in being certain that the forms that you file are the correct ones, but do not ask them for answers to specific legal questions. They are not authorized to offer legal assistance. You may also wish to inquire with the court clerk at this time about the general procedure that is followed in divorce cases. The clerk should be able to inform you regarding any time limits, waiting periods, filing requirements, the customary order in which the documents are filed, how much the filing fees are, and other technical information regarding your case. You should write down any information that you receive from the court clerk. If you run into a particular clerk that is less than helpful, be polite and try to determine if there is a problem. If you can't correct the problem, try later with a different clerk .

3. Finally, you should request and obtain from the court clerk a copy of another couple's divorce papers that were filed recently in an uncontested divorce in the county where you intend to file for your divorce. Legal documents filed with the court clerk are public records and are generally available to the public for a small copying fee. A few states, however, seal divorce records. In most jurisdictions, you have a right to obtain a copy of the court file for any other divorce, which has been filed. You will have to make your request and pick up the copies in person. The documents in these other court records can be very useful in your preparation of your own divorce papers. They will show you the exact format, which is in use in your particular county. Copies of any other required forms will also be included in any such records. They will provide you

with a basic outline of the set of documents, which are necessary in your particular county to obtain a divorce. To obtain such court records, ask the clerk of the court for "a copy of the court file of any uncontested divorce which was made final within the last six months". They should easily be able to fill this request. There will usually be a small per-page charge for copying the documents in the file. Lawyers often obtain court records for exactly this same purpose.

The clerk may require that you provide the specific names of the people involved in another case in order to find a proper court file. In that case, you should consult your local newspaper to determine the names of couples who were recently divorced. Most newspapers will list such names in a legal listing or notice section. Once you have located the names of several recently divorced couples, simply present the list of names to the court clerk and request a copy of that couple's file that obtained an uncontested divorce. You will then need to pay the necessary fee. If you are unable to obtain the names of recently divorce couples from a newspaper, you may be able to consult the daily or weekly docket sheets in the courthouse. On these calendar sheets the daily schedules for each judge or courtroom are shown. By locating a final hearing for divorce on such schedule, you should be able to determine the name and case number of appropriate records. By using the above methods, you should be able to determine the exact documents that are required for your divorce. A simple list of the necessary documents that are necessary in your county should be compiled. The preparation of these documents is explained next.

Preliminary Marital Settlement Agreement Clauses

You are now ready to begin choosing and preparing the first clauses in your agreement.

These clauses will lay the legal groundwork that identify you, your spouse, and any children, and they will satisfy the basic minimum legal requirements for a valid contract.

You will use these clauses to actually assemble and sign your settlement agreement. For now, simply read through the clauses, choose those that apply to your circumstances, and fill in the appropriate blanks.

Title And Introductory Clause:

This introductory clause specifies the effective date of the agreement and identifies the

spouses, their places of residence, and the date and place of their marriage. Fill in the appropriate information. This information is important and this clause is mandatory in all agreements.

Marital Settlement Agreement

1. Title and Introductory Clause:

This agreement is made on the *(date)*__ day of *(month)*__, 20__ between, *(name of wife)*, the Wife, of , *(address of wife)*, _____

City of _____, County of _____, State of _____

,

and (name of husband), the **Husband**, of (address of husband)
, City of _____, County of _____, State of _____
.

We were married on the _____ day of _____, 20____, in the City of _____
, County of _____, State of _____.

2. Children Identification Clause:

Chose the clause that applies to your particular circumstances. This clause identifies whether or not any children will be involved in the terms of the agreement. Fill in the names and birth dates of any children. One of these clauses is mandatory. If the wife is currently pregnant and there are already children, use both appropriate clauses.

OPTION A: There were no children born or adopted into our marriage, and none are expected.

OPTION B: The Wife is currently pregnant and the expected birth date is _____, 20____.

OPTION C: The following children were born [or adopted] into our marriage:
Child's name: _____

Child's Birth Date: _____

Child's Sex: _____

Child's name: _____

Child's Birth Date: _____

Child's Sex: _____

Child's name: _____

Child's Birth Date: _____

Child's Sex: _____

3. Preliminary Explanation Clause

Chose one of the following clauses that most closely fits the divorce grounds that you have chosen in your state and your particular circumstances. Refer to your state's listing at the back of this kit to determine the grounds that you will use for your divorce. You must have one explanation clause in your agreement. [Louisiana residents: please check the back of this kit for details of the language used as grounds in Louisiana.]

OPTION A: As a result of disputes and serious differences, we sincerely believe that our marriage is irretrievably broken and that there is no possible chance for reconciliation.

OPTION B: As a result of disputes and serious difficulties, we sincerely believe that there are irreconcilable differences between us and that there is no possible chance for reconciliation.

OPTION C: As a result of disputes and serious differences, we sincerely believe that there is a complete incompatibility of temperament between us and that there is no possible chance for reconciliation.

OPTION D: As a result of disputes and serious differences, we have separated and are now living apart and intend to continue to remain permanently apart.

4. General Agreement Clause

This clause outlines the basic desire to reach an agreement. This clause is **mandatory** in all agreements. Use the phrase relating to children, if any children are to be covered in the agreement. If there are no children, delete the phrase in shown in italics.

We both desire to settle by agreement all of our marital affairs, including the division of all of our property and bills, and spousal support or maintenance *[and all issues relating to our child(ren), including custody, visitation, and child support]*.

THEREFORE, in consideration of our mutual promises, and other good and valuable consideration, we agree as follows:

5. Separation Clause (optional)

This clause states that the spouses want to live apart as if they were single. This clause should be used in all situations in which the spouses have already separated or in which they desire to separate as soon as an agreement is reached. In the vast majority of cases, you will use this clause. This clause is always numbered #1. After you have selected all of the clauses, which you will use, instructions will follow for the proper numbering of the clauses. For now, don't worry about numbering, and simply choose the clauses that suit your situation. All of the clauses which you and your spouse have chosen in this section will be used when you prepare your Marital Settlement Agreement later on.

We both desire and agree to permanently live separate and apart from each other, as if we were single, according to the terms of this agreement. We each agree not to annoy, harass or interfere with the other in any manner .

Marital Settlement Agreement Clauses for Property

Once you have reached an agreement on the division of your property and bills, you are ready to select the appropriate clauses for your settlement agreement. The

following clauses cover the most common methods for dividing your property. Choose the clause that nearly describes your agreement with your spouse.

6A. Property Division Clause (Property Not Listed)

This clause should be used for cases where there is very little or even no property, and there are no significant bills to divide. It simply allows each spouse to keep the property currently in his or her possession. It also provides that bills have already been divided and taken care of by you and your spouse. If you have significant property (car, furniture, appliances, etc.) or bills owed, or if you have property that you have not yet divided, you should use a different clause. Also, if you or your spouse have a pension or retirement plan that will be divided, you must use a different clause so that such a plan may be listed and identified specifically. You may use this clause, however, if you have no property or bills, or all of your property and bills have actually been divided.

OPTION A: We both agree that our property and bills are minimal, and that we have already divided all of our property and bills to our mutual satisfaction. We each transfer and quitclaim to the other any interest that we may have in the property of the other. We both agree that all of the property that the other now possesses is the sole and separate property of the other. We also agree not to incur any further debts or obligations for which the other may be liable.

6B. PROPERTY DIVISION CLAUSE (LIST INCLUDED)

This clause should be used if you and your spouse have agreed to a division of property, and you are able to clearly list the property that each of you will keep. This clause provides that both of you have transferred the property mentioned and quitclaimed it to the other spouse. Quitclaim means that you given up all rights over the property. This clause should be used if you have a lot of property (home, car, appliances, major furniture, etc.), and if your method of division is in the form of a trade-off. If you choose this clause, you will also need to a further clause listed later that describes the division of your bills.

For each item of property, provide a complete description. For real estate, list the legal description as shown on the deed to the property. For other property, list the serial number, if available, or a clear description. If either of you has a pension plan or retirement plan, list that plan under the appropriate spouse and describe it fully.

OPTION B: We agree that the following property shall be the sole and separate property of the Wife, and the Husband transfers and quit-claims any interest that he may have in this property to the Wife: *[Here list Wife's property]*.

6C. Division of Property (By Sale)

This clause should be used if there is marital property that is to be sold and the proceeds of the sale divided between you and your spouse. It may be used for the disposition of anything from items to be sold at a yard sale to the sale of your home. An exact description of the property to be sold should be included. If the property is real estate, the description should be the legal description as shown on the deed to the property. This clause provides for an equal division of the proceeds of the sale after any expenses of the sale are deducted. In the case of the sale of a home, this would allow for any appraisal expenses and real estate broker fees to be deducted from the proceeds of the sale before dividing the profits. This clause may be used in conjunction with the previous clause.

OPTION C: We agree that the following property will be sold as soon as possible and any proceeds from the sale of this property, after the deduction of any expenses of the sale, will be divided equally between us: *[Here list a description of the property to be sold]*

7. Division Of Bills Clause (Bills Listed)

This clause is used to specifically divide your bills. It should be used if you have relatively significant bills (outstanding loans, unpaid credit card balances, etc.). This clause

says that you will each individually assume and pay the bills listed after your name and not hold the other liable for the debts (hold harmless and indemnify). It also provides that neither of you will incur any more debts that the other spouse would be liable for. For each bill, mention who owes the bill, and the amount to be paid. If you have used the first clause listed in this section for dividing your property and bills [**6A. Property Division Clause (Property Not Listed)**], do not use this clause.

We agree that the Wife shall pay and indemnify and hold the Husband harmless from the following debts: [*Here list debts that Wife will pay*].

We agree that the Husband shall pay and indemnify and hold the Wife harmless from the following debts: [*Here list debts that Husband will pay*].

We also agree not to incur any further debts or obligations for which the other may be liable.

Marital Settlement Agreement Clauses for Alimony

Select one or more of the following clauses to include in your Marital Settlement Agreement. These clauses deal with the following situations: (1) neither spouse is to receive alimony; (2) one spouse is to receive monthly alimony payments for a set period of time; or (3) one spouse is to receive a one-time lump-sum payment of alimony. Finally, there are two clauses that relate to life insurance coverage. Choose the clause or clauses that closely fits your particular situation.

8A. No Alimony to Either Spouse Clause

This clause should only be used if, after careful consideration, both you and your spouse agree that neither of you should be required to pay any alimony to the other. By using this clause, you will be giving up forever any rights that you may have to alimony. However, if this is what you have both decided is fair, then you should use this clause .

OPTION A: After careful consideration of our circumstances and all of the other terms of this agreement, we both agree to waive any rights or claims that we may have now or in the future to receive alimony, maintenance, or spousal support from the other. We both fully understand that we are forever giving up any rights that we may have to alimony, maintenance, or spousal support.

8B. Alimony Payable in Monthly Payments Clause

This clause should be used if you and your spouse have agreed that one of you should receive and one of you should pay alimony to the other in the form of monthly payments. You will need to decide the amount of each payment, the day of the month that each payment will be due, and the date on which the payments should begin.

Also, you will need to decide when the payments will end. You may want the payments to end on remarriage, on death, or on a particular date. Or you may decide that the alimony payments should end for some other reason. If you decide that the payments should end with the death of either spouse (and the payment period is long), you should consider using life insurance coverage in order to protect the support of the receiving spouse. See the clauses relating to insurance coverage later on in this section .

In addition, in this clause you will need to decide if you wish that your decisions may be modified by a court in the future. If you decide that your alimony provisions may not be modified by a court, then a court will only modify this clause if it can be shown that there was fraud, coercion, or threats made in reaching the agreement, or if the agreement

is obviously and grossly unfair to one spouse. In order to allow for a modification due to changed circumstances in the lives of either spouse, you should allow for a future court modification of this clause.

Finally, through the use of this clause you will need to choose a method by which the payments should be made. Some states have enacted legislation which allows or requires any support payments to be made through the court, or through certain state agencies, and then be passed on to the spouse who is to receive the payment. This indirect method of payment, although generally slower, has the benefit of allowing for immediate action to be taken if any payments are missed. There is a clear record of payment in the hands of the appropriate state authorities. In fact, some states automatically take direct action against any spouse who is late with a payment, which may include garnishing wages, requiring a bond or deposit, or actually seizing a delinquent spouse's property. However, in virtually all states that allow this indirect method of payment, there are provisions that allow the spouses to opt out of the state requirement. If you and your spouse agree that the payments may be made directly to the spouse who is to receive them, you must make this decision in the clause below. If you do make the decision to allow payments to be made directly to a spouse and not through a court or state agency, it is extremely important that you make this clause modifiable by a court at a later date. By making the clause subject to court modification, the spouse receiving the payments will retain the right to have the payments made through the court or state at a later date should, any problems in late or delinquent payments arise.

OPTION B: We both agree that, as alimony and maintenance, the husband or wife

shall pay to the husband or wife the sum of \$ _____ per month, payable on the _____ day of _____, 20____, and the payments shall continue **until the first of the following occurrences:** [*Choose two or more of the following phrases*] **(1) the date that either of us dies; (2) the date that the spouse receiving alimony remarries; or (3) the date _____, 20____.**

We both intend that the amount and the duration of the payments may or may not be modified by a court in the future. We also both agree that these payments should be made directly to the spouse to whom they are due.

[Choose if appropriate]: **However, in the event of divorce or dissolution of marriage, we agree that the payments should be made through the appropriate court or state agency for payment to the spouse by such court or state agency].**

8C. Alimony Payable in a Lump-Sum Payment Clause

This clause should be used if you and your spouse agree that the fairest method of dealing with the payment of alimony is for one spouse to pay the other a one-time lump - sum payment. The funds may then be used by the spouse who receives the payment to obtain education, job skills, or training to become self-supporting. This lump-sum payment

is separate from, and in addition to, any shift in funds or property under the terms of your property settlement. To be fair, this alimony lump-sum payment should be taken out of a spouse's share of separate and marital property, after all of their property has been equally or equitably divided.

This method of spousal support has the benefit of lessening the future ties between you and your spouse and, thus, lessening the opportunities for problems to develop. It also has the benefit of not leaving one spouse subject to over-due payments from the other spouse. This method, however, is not workable if the spouse who is to pay the lump-sum payment does not currently have the assets with which to pay.

OPTION C: We both agree that in full payment of any claims or rights to alimony, spousal support, or maintenance, the [husband or wife] shall pay to the [husband or wife] the sum of \$_____, which shall be paid on or before the _____ day of _____, 20____.

9A. Insurance Clause (Neither Spouse as Beneficiary)

If you or your spouse currently have insurance policies, but agree that neither of you will be retained as beneficiaries on the other's policy, use this clause. If you use the clause providing for one of you to be retained as beneficiary (given below), do not use this clause.

OPTION A: We both agree that neither of us shall remain as the beneficiary on any insurance policy carried by the other.

9B. Life Insurance Clause

This clause should be used if you and your spouse have agreed that one of you will remain as a beneficiary on a life insurance policy of the other. Retaining a position, as beneficiary on the other's life insurance is generally a good idea if there are continuing support payments to be paid. The spouse who pays the alimony will be the spouse who maintains the insurance. The spouse who receives the alimony will be the spouse who is designated as beneficiary. In the event of the supporting spouse's death, this allows the spouse who is due the support to collect the benefits of any insurance and apply it to the continuing maintenance or child support obligations. The use of this clause may be wise in any situation where there are support obligations. It is, however, highly recommended in the following circumstances: (1) if you have decided that alimony should be payable in monthly payments; and (2) the duration of the payments is for a long period; and (3) the payments are to end on either spouse's death. In a situation of this nature, it is best to have the spouse who is to receive the payments be the beneficiary of a life insurance policy on the life of the spouse who is to make the payments. In this way, the spouse receiving payments will not be left destitute on the death of a long-time ex-spouse .

The life of the [husband or wife] is currently insured by [name of insurance company] in the amount of \$ _____ and [he or she] agrees to keep this policy in full force

until death. We agree that the [husband or wife] shall be designated as irrevocable sole beneficiary of this policy. The spouse obligated to provide such insurance would provide the other spouse with annual proof of such coverage.

10. Marital Settlement Agreement Clauses for Child Custody and Visitation

There are many possible arrangements that may be made for custody and visitation. They can range from very brief to extremely complex and lengthy statements. Below are listed four separate child custody and visitation clauses. The first is a very simplified clause, the second a moderately detailed clause, and the third and fourth are very comprehensive clauses. According to your particular situation, you and your spouse should read through each of these clauses and choose the one that you feel most comfortable with. In each of the two more detailed clauses, you will be given various choices regarding specific provisions of your arrangements. You may wish to add other specific provisions to these clauses that you both agree are important. You may do so if you use simple, straightforward language that you both agree clearly states your agreements. The particular child custody and visitation clause that you choose will be used when you prepare your actual Marital Settlement Agreement later on in this section. Refer back to this part at that time. Also, delete those portions of the clause that you choose which are in *Italics* and which are not applicable to your situation .

10A. Sole Custody and Visitation Clause (Basic Agreement)

The following clause is a very simplified and straightforward agreement relating to your child's custody arrangements. It provides for sole custody to be given to one parent. It should only be used if both you and your spouse are cooperative and amicable in your relationship and it is likely that you will remain that way in the future. This approach allows a wide range of flexibility in setting up visitation and vacation arrangements. Such arrangements are not spelled out at all in this clause, but are left for you and your spouse to structure as they arise.

The very flexibility of this approach has some inherent dangers, however. Since there are no definite details or dates and times of visitation provided, there is a danger that arguments may erupt regarding interpretation of this clause. This clause should, therefore, only be used if you both: (1) feel that you have a clear understanding of each other's views and feelings regarding custody and visitation; and (2) have complete faith that you and your spouse will be able to agree on the details of visitation in the future. Even if you and your spouse are currently on friendly terms, it may be best to use a clause with a more detailed schedule of visitation terms. You can always both agree (after the divorce) to allow different visitation, but at least you will have a written set of basic terms. If you want to provide for joint custody, you will need to use one of the more detailed clauses later in this part.

**OPTION A: We both agree that it is in the best interests of our child[ren] that the _
[wife or husband]_ have sole physical and legal custody of our
child[ren]. We also agree that the other parent has the right to be with
our child[ren] on a frequent and liberal basis through reasonable**

visitation, at such times as we and the child[ren] can agree upon. We agree that we will share as equally as possible the right to be with our child[ren] on holidays, birthdays, and during the child[ren]'s school vacations. We agree that our child[ren]'s time with either of us should not interfere with their attendance at school. We also agree that the parent with custody should have the right to make the major decisions regarding the care and up bringing of the child[ren], but that the other parent has the right to be notified of any major decisions.

10B. Sole Custody and Visitation Clause (with Visitation Schedule)

This clause is more detailed than clause 10A. In particular, it allows for provisions to be made for specific times and dates for visitation with the non-custodial parent. This detailed schedule has the advantage of putting your agreements (as to how to deal with visitation) in writing. This will greatly lessen the opportunity for future disagreements over what was actually agreed upon during your discussions. This clause also provides for sole physical and legal custody to be given to one parent with reasonable visitation rights for the non-custodial parent. If you and your spouse have agreed that joint custody is preferable, you should use one of the more detailed clauses that follow later .

OPTION B: We both agree that it is in the best interests of our child[ren] that the [wife or husband] have sole physical and legal custody of our child[ren]. We also agree that the other parent has the right to be with

our child[ren] on a frequent and liberal basis through reasonable visitation, at such times as we and the child[ren] can agree upon. If in the future we are unable to agree upon visitation, the [wife or husband] will have the right to be with our child[ren] as follows :

(A). On the following holidays during even-numbered years: _____

(B). On the following holidays during odd-numbered years: _____

(C). On the following dates and times each [or every other] weekend:

(D). On the following dates and times during each [or every other]

week: _____

(E). For the following vacation periods each

year: _____

We agree that our child[ren]'s time with either of us should not interfere with attendance at school. We also agree that the parent with custody should have the right to make the major decisions regarding the care and up bringing of our child[ren], but that the other parent should have the right to be notified of any major decisions.

10C. Custody and Visitation Clause (Joint Legal and Sole Physical Custody)

The following clause provides a very detailed and comprehensive agreement for joint custody. It should be used in all situations in which both you and your spouse have decided that joint decision-making (but sole custody with one parent) is the best route for you. In some states, a detailed agreement of this type is required from both parents being awarded joint or shared custody. This clause provides for both parents to share in the major decisions, and lists the general categories as to what these decisions may be. This clause provides that the home of one parent shall be the primary residence of the child[ren], but that the other parent will be allowed frequent and liberal visitation and contact with the child. Specific visitation provisions are also included, and various other rights and responsibilities are spelled out in detail.

OPTION C: We both agree that it is in the best interests of our child[ren] that we both have joint legal custody of our child[ren]. We also agree that it is in the best interests of our child[ren] that the [wife or husband] have sole physical custody of our child[ren]. We acknowledge that our child[ren] presently live[s] with the [wife or husband] and that the actual physical residence of our child[ren] may be changed at any time as we may mutually agree.

All decisions pertaining to the education, discipline, health, extracurricular and summer activities, religious training, medical and dental care, and welfare of our child[ren] will be decided by both of us after reasonable and adequate discussion. We also agree that the

parent with physical custody shall have control over the minor day-to-day decisions affecting the child, including any medical or dental emergencies. We agree that if, after reasonable attempts, we are unable to reach an agreement on any of the decisions affecting our child[ren], we will jointly seek professional mediation to resolve our differences.

We also agree that each of us has the right to know of any circumstances or decisions that affect our child[ren] and that each of us has the right to any medical, dental, or school records of our child[ren]. Neither of us will do anything to hamper or interfere with the natural and continuing relationship between our child[ren] and the other parent.

We both realize that the well-being of our child[ren] is of paramount importance and, therefore, we agree that our child [ren] should have as much contact as possible with the parent that does not have physical custody and that our child[ren] may visit that parent as often as may be agreed upon. Although visitation may be scheduled more often, the parent that does not have physical custody will have the right to be with our child[ren] at least as follows :

(A). On the following holidays during even-numbered years:

(B). On the following holidays during odd-numbered years:

(C). On the following dates and times each [or every other] weekend:

(D). On the following dates and times during each [or every other] week: ____

(E). For the following vacation periods each year:

We additionally agree to use our very best efforts to insure that our child[ren] receive the most care, love, and affection possible from both parents throughout their entire childhood.

10D. Custody and Visitation Clause (Joint Legal and Physical Custody)

This clause is the most detailed and comprehensive provided. This does not necessarily mean that this is the most appropriate clause in all situations. The following clause provides for both parents to share the physical and legal custody of their child. This clause still designates one parent's home as the primary residence of the child and provides for visitation with the other parent. Most of the other terms of this clause are identical to the preceding clause. For practical purposes, the day-to-day lives of parents and children under this clause would be very similar to their lives under the terms of the preceding clause. Legally, however, there are slight differences between these clauses. Under this clause, both parents actually have the right to retain the actual physical custody of the child. For this reason, there is an agreement included in this clause regarding taking the child out of the state in which you both live. In addition, there is a provision relating to the name by which the child is to be known. Where there is a genuine and honest joint effort and agreement to cooperate in raising a child, this clause may provide the most even and equal division of the rights to the upbringing and custody of the child.

OPTION D: We both agree that it is in the best interests of our child[ren] that we both have joint legal and physical custody of our child[ren]. We also agree that it is in the best interests of our child[ren] that the home of the [wife or husband] be the primary residence of the child[ren]. We acknowledge that your child[ren] presently live[s] with the [wife or husband] and that the actual physical residence of our child[ren] may be changed at any time as we may mutually agree.

All decisions pertaining to the place of residence, discipline, education, health, extracurricular and summer activities, vacations, religious training, medical and dental care, and welfare of our child[ren] will be decided by both of us after reasonable and adequate discussion. We also agree that the parent with physical custody shall have control over the minor day-to-day decisions affecting the child, including any medical or dental emergencies. We agree that if, after reasonable attempts, we are unable to reach an agreement on any of the decisions affecting our child[ren], we will jointly seek professional mediation to resolve our differences.

We also agree that each of us has the right to know of any circumstances or decisions that affect our child[ren] and that each of us has the right to any medical, dental, or school records of our

child[ren]. Neither of us will do anything to hamper or interfere with the natural and continuing relationship between our child[ren] and the other parent.

We both agree that our child[ren] will be known by the last name of _____

We both agree that frequent and continuing contact with both parents is vital to our child[ren], and therefore we both agree that neither of us will permanently remove our child[ren] from this state without the express written permission of the other parent.

We both realize that the well-being of our child[ren] is of paramount importance and, therefore, we agree that our child[ren] should have as much contact as possible with the parent that does not have physical custody and that our child[ren] may visit that parent as often as may be agreed upon. Although contact may be scheduled more often, the parent that does not live in the primary physical residence of the child[ren] will have the right to be with our child[ren] at least as follows:

(A). On the following holidays during even-numbered years:

(B). On the following holidays during odd-numbered years:

(C). On the following dates and times each [or every other] weekend:

(D). On the following dates and times during each [or every other] week: ____

(E). For the following vacation periods each year:

We additionally agree to use our very best efforts to insure that our child[ren] receive the most care, love, and affection possible from both parents throughout their entire childhood.

11. Marital Settlement Agreement Clauses for Child Support

Once you have determined the specific amount that the monthly child support payments should be, it is a relatively simple matter to include that provision in a clause for your Marital Settlement Agreement. A standard clause for this purpose is set out below. However, in addition to selecting the amount of the payment, several other child support issues must be addressed.

First, a decision must be reached on how the payment is to be made. In response to the enormous rate of default on child support payments, in recent years and in response to federal legislation, all states have adopted various methods to attempt to insure that the payments will continue to be paid and paid on time. These methods range from automatic wage assignments and withholding of wages to having the support payments made through the clerk of the court or some other government agency. The various child support enforcement techniques are explained in the first part of this kit .

The most common arrangement is for the paying parent to be required to make the payments directly to the clerk of the court. Once the payment is received, the clerk then pays the parent who is due the payment. There are several benefits to having the payments made in this indirect way. By having the payment made through an official government body instead of directly to the other parent, there is an official documented record of the amount and date the payment is made. Also, many states have programs to collect past due payments that will automatically go into effect when a payment is missed. This takes much of the burden of enforcement off the parent who is to be paid the support.

Basic Monthly Child Support Clause

The basic child support clause provided in this book offers two alternatives for this situation. The first is for the payments, in the event of a divorce, to be made to an official state agency or court official for disbursement to the other parent. The other alternative is for the payments to be made directly to the other parent. Most courts will allow a couple to waive any requirement that the payments be made through the state, if the agreement to make the child support payments directly to the parent is in the form of a Marital Settlement Agreement. To allow the payments to be made directly to the parent, there have to valid reasons as to why the parents want to avoid the indirect method. Some good reasons are that the parent who is going to make the payments is very reliable and responsible, or has established a clear record of making the payments on time, while the parents were separated. But if there is any doubt as to whether the payments may be made late or not at all after a divorce, you should the alternative that requires the payments to be made through an official state agency or court official. The clause that provides for direct

payment to the other spouse also allows the payments to be switched to collection by the court or state, if problems arise in the future. Remember that there is a definite tendency for child support payments to be paid late or not at all in the majority of cases .

We both agree that the will pay to the [wife or husband] will pay to the [wife or husband] , for child support, the amount of \$ _____ per child per month, for a total monthly payment of \$ _____. The payments will begin on the _____ day of _____, 20 ____ and will continue for each child until that child has reached the age of majority, died, become self-supporting, or married. We both agree that this obligation is subject to modification by a court at any time.

We both further agree that should the parent obligated to pay the support receive a salary or income increase in the future, the amount of child support due per child per month shall be increased proportionately. The parent obligated to pay support agrees to notify the other parent immediately of any salary or income increase.

[Choose one: Either:] We agree that the required child support payments should be made directly to the parent to whom they are due. However, in the event of a divorce or dissolution of marriage, we agree that the required child support payments are to be paid directly to the court or state official or agency so designated by the laws of this state to receive and disburse such payments. We both further agree that, in the event of a divorce or dissolution of marriage, we will cooperate in

obtaining any necessary income withholding orders or income assignments if required to guarantee this obligation.

[Or:] We agree that the required child support payments should be made directly to the parent to whom they are due and should not be required to be paid through any court or state agency or official. The parent receiving the payments, however, does not waive the right to request, at any time and in his or her sole discretion, that such payments be made directly through a court or state agency or official in the future. We both further agree tat, in the event of a divorce or dissolution of marriage, we will cooperate in obtaining any necessary income withholding orders or income assignments if required to guarantee this obligation.

12. Life and Health Insurance Clauses

Two provisions regarding insurance as additional child support are provided here. These require that, as additional child support, the parent who is to pay the support must: (1) maintain a life insurance policy naming the children as beneficiaries; and (2) maintain health insurance coverage for the children.

These provisions are highly recommended and are required in some states. Federal law requires that states require a parent responsible for child support to include any children under a health and dental insurance plan if such a plan is available to the parent through their place of employment or otherwise at a relatively low cost. The life insurance

provision provides some measure of security and insurance protection for the children in the event of death of the paying parent. The health insurance protection provides the child with protection in case of illness or injury .

OPTION A: As additional child support, we both agree that as long as support payments are due the [wife or husband] will carry and maintain life insurance in the amount of \$_____, naming our child[ren] as sole irrevocable beneficiary[ies). The parent obligated to provide such insurance would provide the other parent with annual proof of such coverage.

OPTION B: As additional child support, we both agree that as long as support payments are due the [wife or husband] will carry and maintain adequate health, dental, and hospitalization insurance for the child[ren)'s benefit, pay any required deductible amount, and pay for any necessary medical or dental expenses of the child[ren] that are not covered by such insurance. The parent obligated to provide such insurance would provide the other parent with annual proof of such coverage.

12B. Additional Child Support Clause

Finally, a general clause is provided for those parents who wish to provide a written agreement on any other provisions regarding the support of their children. This clause may be used, for example, to indicate that the non-custodial parent will contribute additional amounts for the college education of the child. Generally, a parent's legal support obligation ends when the child reaches the age of majority (usually 18 years old). However, parents may legally agree to provide support beyond this minimum cut-off date.

You and your spouse may also desire to use this clause to provide additional sums for other needs of your children, such as summer camp fees, special educational costs, or religious training. For any such additional support provisions, use clear explanatory language to define the obligations that you have agreed upon .

As additional child support, we both agree that the [wife or husband] will provide [here include the terms of the agreed upon provision. For example: one-half of the amount necessary for the child's college education]: _____

The various child support clauses that you have chosen will be used when you compile and prepare your Marital Settlement Agreement, explained later on .

13. Marital Settlement Agreement Taxation Clause

The following clause may be used to define your various decisions regarding the tax consequences of your divorce. If you are living apart under the terms of your marital settlement agreement or under the terms of a separation decree but your divorce is not final by the end of the year, you may choose to file: (1) a joint tax return with your spouse; (2) a separate return; or (3) you may be considered unmarried and file a "head of household" return. You may choose to file a joint income tax return with your spouse for the current tax year only if your divorce has not been made final before the end of the year. If your divorce is final by the end of the year, you must file either an individual return or a "head of household" return. In addition, if your divorce is finalized prior to the end of the current tax year, you may not claim your spouse as an exemption, even if you have provided all of the support for your spouse for the year .

We both agree that we will cooperate in the filing of any necessary tax returns. We also agree that any tax refunds for the current year will be the property of the and that any taxes due for the current tax year will be paid by the [wife or husband].

[Use if necessary]: We both agree to file a joint income tax return for the current year .

[Use if you have children]: **We also agree that the [wife or husband] may claim the federal dependency tax exemption for our child[ren].**

14. Marital Settlement Agreement Name Change Clause

Most states have specific laws that allow a person to request that his or her former name be restored upon divorce. Although many of these laws are now written to make no reference to the sex of the person requesting this type of change, it is generally the wife who desires to use either her maiden name or her former name (if her former name was a previous married name). The restoration of this name may be accomplished by a simple request in the divorce papers and a provision in the divorce decree or judgment. You may use this clause also to state the last name that the children of your marriage will be known by, if you did not use a clause that contained a provision for children's names .

It is useful to have your spouse's agreement to such a name change request, and such an agreement is contained in the following clause .

We both agree that, in the event of divorce or dissolution of marriage, the Wife desires to and shall have the right to be known by the name of [Desired name] .

We both also agree that, in the event of divorce or dissolution of marriage, our child[ren] will be known by the last name of [desired last name] .

15. Additional Mandatory Marital Settlement Agreement Clause

There are various other marital settlement agreement issues which **must** be included in order for your agreement to have the necessary legal force. This will always be the last numbered clause in your marital settlement agreement. These standard legal phrases are important and should not be altered. They cover the following points:

- . That you both want the terms of your marital settlement agreement to be the basis for your court order in the event of a divorce;
- . That you both have prepared complete and honest Financial Statements and they are attached to your agreement;
- . That you both know that you have the right to see your own lawyers and that you both understand your legal rights;
- . That you both will sign any necessary documents;
- . That you both intend that your agreement is the full statement of your rights and responsibilities; and
- . That your agreements will be binding on any future representatives of yours.

We both desire that, in the event of our divorce or dissolution of marriage, this marital settlement agreement be approved and merged and incorporated into any subsequent decree or judgment for divorce or dissolution of marriage and that, by the terms of the judgment or decree, we both be ordered to comply with the terms of this agreement, but that this agreement survive.

We have prepared this agreement cooperatively and each of us has fully and honestly disclosed to the other the extent of our assets, income, and financial situation. We have each completed Financial Statements which are attached and incorporated by reference.

We each understand that we have the right to representation by separate lawyers.

We each fully understand our rights and we each consider the terms of this agreement to be fair and reasonable. Both of us agree to execute and deliver any documents, make any endorsements, and do any and all acts that may be necessary or convenient to carry out all of the terms of this agreement .

We agree that this document is intended to be the full and entire settlement and agreement between us regarding our marital rights and obligations and that this agreement should be interpreted and governed by the laws of the State of _____.

We also agree that every provision of this agreement is expressly made binding upon the heirs, assigns, executors, administrators, successors in interest, and representatives of each of us.

16. Marital Settlement Agreement Signature and Notary Clause

The following signature, witness, and Notary clause is **mandatory** and must be used with all Marital Settlement Agreements. This will always be the last clause used in the preparation of your agreement. This clause should not be numbered.

Signed and dated this day of _____ , 20____.

[wife's signature]

[husband's signature]

[witness's signature]

[witness's signature]

[witness's signature]

[witness's signature]

State of _____

SS.

County of _____

On [date] _____, 20____, _____ [wife's and husband's names] _____

_____ personally came before me and, being duly sworn, did state that they are the persons described in the above document and that they signed the above document in my presence as a free and voluntary act for the purposes stated.

[Notary's signature]

Notary Public, for the County of _____

State of _____

My Commission expires _____

Preparing Your Marital Settlement Agreement

After you and your spouse have reached all of the necessary decisions, have chosen the appropriate clauses in the preceding chapters, and have filled in all of the required information in the blanks, you are ready to assemble your marital settlement agreement. After it is assembled, you will be given instructions on signing and having your agreement notarized.

Once you have reached this step in your divorce process, you may relax somewhat with the knowledge that the most difficult decisions in your divorce are behind you. You and your spouse have essentially worked out all of the matters relating to your marriage that require agreement. The divorce procedure now becomes the rather routine matter of preparing and processing the necessary paperwork.

Before you begin to actually assemble your Agreement, you should both carefully review each clause that you and your spouse have chosen, and be certain that it embodies your complete agreement. If you are both satisfied that your choices are complete, you are

ready to complete and finalize the Agreement. The actual preparation of your Marital Settlement Agreement will be done in four easy steps. These steps are :

1. Make a photocopy of each page of this kit, which contains a clause that you and your spouse have chosen to include in your Agreement. Don't forget the mandatory preliminary clauses. For your convenience these clauses are numbered consecutively .
2. Beginning with the "Separation" clause (Clause number 5 above), number each clause consecutively that you choose. This means that the "Separation" clause will be numbered #1; one of the property division clauses will be numbered #2; and so on. Do not number the final signature/witness/notary clause.
3. Using a typewriter or word processor (or hiring a typist), carefully and consecutively type (or have typed) each provision of the Marital Settlement Agreement double - spaced on one side of clean white 8 1/2" X 11" paper. With your filled-in and numbered photocopies of the clauses before you, this should be a relatively simple task. Each page of the agreement should be numbered on the bottom as follows: Page 1 of X pages, Page 2 of X pages, etc. Do not type any portions of a clause which are shown in italics or in square or round brackets in this kit, unless it is language directly relating to your agreement. In addition, the only blank lines that should appear on your original should be the spaces for the signatures on the final page. Both you and your spouse should then carefully proofread your entire Marital Settlement Agreement when it is completed. If any corrections are necessary , type the entire page over. When you are satisfied that the Agreement is complete, make 2 photocopies of the unsigned original, so that you will have 3 original unsigned photocopies. Attach a complete unsigned original copy of each of your Financial Statements that you will prepare next. Staple the upper left-hand corner of all of the pages of each original copy together.

(References to "originals" in this kit refer to any unsigned documents, even if they are

photocopies. "Copies" refer to photocopies of signed documents). You should now have 3 identical unsigned "original" documents. Each document will consist of a complete Marital Settlement Agreement, a Financial Statement completed by you, and a Financial Statement completed by your spouse.

4. Take all 3 original copies of your Agreement document along with two witnesses to the office of a local notary public. The witnesses that you and your spouse use may be the same. They may be family members or friends, as long as they are over 18 years old. There may be acceptable people to use as witnesses at the office of the notary. Call in advance and check. In front of the notary, both you and your spouse should sign all 3 copies of your own individual Financial Statement where indicated. Your witnesses should then also sign both copies of the Marital Settlement Agreement where indicated. Finally, the notary will need to sign all 3 copies of the Agreement and each copy of the Financial Statement. The notary will also need to fill in the appropriate information, and affix a notary seal if required. There may be a small notary fee. The notary will be signing his or her signature in 4 places on each of the 3 full documents for a total of 12 notary signatures (twice on the Marital Settlement Agreement and once each on each Financial Statement) X 3. You and your spouse will be signing in 2 places each on each of the 3 original documents, for a total of 6 signatures each (once on the Marital Settlement Agreement and once on the Financial Statement) X 3.

You should each retain one of the complete signed original copies of your agreement.

The third original signed copy will be filed with your divorce papers. You will also need to make at least 3 photocopies of the already-signed original for use later when you file for your divorce. Place the original and the photocopies in a safe place .

In order to save time and trouble, you may wish to prepare all of the necessary divorce papers as shown in the next few chapters and sign all of those documents at the same time that you sign your Marital Settlement Agreement.

The final signed and notarized Marital Settlement Agreement (with its attached Financial Statements) will be a valid legal contract between you and your spouse, which is enforceable in a court of law if either of you break your promises in the agreement. Under the terms of your agreement, you may proceed to fulfill the promises that you made to each other. You may begin to live separately. You may divide your property and sell any that you have agreed to sell. Any necessary papers for transferring property may be signed (for example: car titles, quitclaim deeds, etc.). The custody and visitation provisions of your agreement should go into effect and you may begin to make and receive any alimony or child support payments. Essentially, under the terms of your marital settlement agreement, you may begin to live your life as a single person again. However, you are not yet free to remarry and you can not yet legally have sexual relations with other people. You are not yet divorced.

Financial Statement

The following Financial Statement will be your record of the disclosures that you and your spouse have made to each other regarding your joint and individual economic situations. It details both your monthly income and expenses and your overall net worth (assets and liabilities). The information, which you include, on this form should be current and should be based upon your economic situation immediately after your settlement agreement takes effect. The monthly income that you list should be based on your current job and sources of income, but should not include any income derived from child support payments or alimony from your current spouse. The expenses that you include on this statement should be based on your estimated or actual expenses while you are living separate from your spouse. If you have physical custody of any children, any expenses

related to their care should also be included. The assets and liabilities listed should be your separate and marital property and bills as you and your spouse have agreed to in your marital settlement agreement. Fill in only those items that apply to your circumstances.

The Financial Statement of each of you will become a permanent part of your marital settlement agreement and will also become a part of your final divorce papers. Both you and your spouse will need to prepare an individual copy of this statement. This Financial Statement is mandatory for you to fill out and is required, in some form, in most states. Some states have similar mandatory Financial Statement forms and you should use such forms. This form assures that both you and your spouse are fully aware of each others economic circumstances and that you have made your decisions and agreements based on full knowledge of all of the facts relating to your property and income .

The method for preparation is as follows:

1. Make 2 photocopies of the entire blank Financial Statement.
2. Each spouse should then take a copy of the Financial Statement and fill in all of the items that apply to their personal situation. Use information that will apply on the day that you sign your marital settlement agreement. In other words, describe your employment, ownership of property, and debts, as of the day that you and your spouse sign your agreement.
3. Each filled-in Financial Statement should then be neatly typed, double-spaced on one side of white 8 1/2" x 11 paper. Make two photocopies of each of the completed, but unsigned, original Financial Statements. (References to "originals" in this kit refer to any unsigned documents, even if they are photocopies. "Copies" refer to photocopies of signed documents).
4. You and your spouse will then sign all three original copies of your own individual Financial Statement in front of a notary and have the final Financial statements notarized at the same time that you sign your final Marital Settlement Agreement as explained already.

FINANCIAL STATEMENT OF [Full name]_____

EMPLOYMENT :

Occupation:_____

Employed

by:_____

Address of

Employer:_____

Pay

period:_____

Next pay

day:_____

Rate of pay:

\$_____

AVERAGE MONTHLY INCOME

Gross monthly salary or wages

\$_____

minus Social Security

\$_____

minus income tax

\$_____

Other deductions from paycheck on monthly basis

\$ _____

Insurance

\$ _____

Credit Union

\$ _____

Union dues

\$ _____

Other

\$ _____

Net monthly salary, wages

\$ _____

Monthly income from other sources

\$ _____

Commissions, bonuses, etc.

\$ _____

Unemployment, welfare, etc.

\$ _____

Dividends, interest, etc.

\$ _____

Business income

\$ _____

Rents, royalties

\$ _____

Other monthly income

\$ _____

TOTAL AVERAGE MONTHLY INCOME

\$ _____

AVERAGE MONTHLY EXPENSES

Mortgage or rental payment

\$ _____

Property taxes

\$ _____

Homeowner's insurance

\$ _____

Electricity

\$ _____

Water, garbage, sewer

\$ _____

Cable television

\$ _____

Telephone

\$ _____

Fuel oil and natural gas
\$ _____

Cleaning and laundry
\$ _____

Repairs and maintenance
\$ _____

Pest control
\$ _____

Housewares
\$ _____

Food and grocery items
\$ _____

Meals outside home
\$ _____

Clothing
\$ _____

Medical, dental, prescriptions
\$ _____

Education
\$ _____

Day care/baby sitter
\$ _____

Entertainment

\$ _____

Gifts or donations

\$ _____

Vacation expenses

\$ _____

Public transportation

\$ _____

Automobile:

Gasoline and oil

\$ _____

Repairs

\$ _____

License

\$ _____

Insurance

\$ _____

Payments

\$ _____

Insurance:

Health _____

Disability

\$ _____

Life

\$ _____

Other

\$ _____

Any other expenses (list):

\$ _____

\$ _____

\$ _____

Fixed debts on a monthly basis :

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Any other debts:

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

Creditor _____ Monthly payment

\$ _____

TOTAL AVERAGE MONTHLY EXPENSES:

\$ _____

ASSETS:

Cash:

\$ _____

Stocks:

\$ _____

Bonds:

\$ _____

Real estate:

\$ _____

Automobiles:

\$ _____

Contents of home or apartment:

\$ _____

Jewelry:

\$ _____

Other (list):

\$ _____

\$ _____

\$ _____

TOTAL ASSETS

\$ _____

LIABILITIES:

Creditor _____ Balance due:

\$ _____

Creditor _____ Balance due:

\$ _____

Creditor _____ Balance due:

\$ _____

Creditor _____ Balance due:
\$ _____

Creditor _____ Balance due:
\$ _____

TOTAL LIABILITIES
\$ _____

SUMMARY OF ASSETS AND LIABILITIES:

Total Monthly Income
\$ _____

Total Monthly Expenses
\$ _____

Total Assets:
\$ _____

Total Liabilities
\$ _____

Dated this _____ day of _____, 20____.

[signature of spouse signing this form]

State of _____)

) SS.

County of _____)

On this day, before me, the undersigned authority, in and for and residing in the above county and state, personally appeared _____ [full name of spouse]

who is personally known to me to be the same person whose name is subscribed to the foregoing document, and, being duly sworn, verified that the information contained in the foregoing document is true and correct on personal knowledge and acknowledged that said document was signed as a free and voluntary act .

Subscribed and sworn to before me this _____ day of _____, 20____ .

[signature of Notary Public]

Notary Public, for the County

of _____

State

of _____

—

My commission

expires _____

The Petition or Complaint

The main document that you will file with the court may be titled a petition or a complaint (A few states may refer to this document as an action, application, bill of complaint, or declaration: check the Appendix). The names of the two spouses on this and the other court documents will be either the petitioner and respondent (for petitions) or the plaintiff and defendant (for complaints). The listing for your state at the back of this kit will give you the proper titles to use. (A few states allow the filing of a Joint Petition for Divorce or Dissolution of Marriage. In these cases, the spouses are both referred to as co-petitioners).

The petition/complaint will contain your formal request to the court that your marriage be terminated. It will also include your request that the terms of your marital settlement agreement be used as the terms of your divorce. It will contain all of the basic information that a court will need to decide your case. The information that you have compiled in the various questionnaires throughout this book should be used when completing this form. Your questionnaire answers should contain all of the necessary facts

for your petition/complaint. For preparing your petition/complaint, you will need the following information:

You and your spouse's full names _____

The length of time you have resided in the county and state where you have decided to file for divorce _____

You and your spouse's Social Security

#s _____

The date and place of your marriage _____

The date of your separation _____

The age, occupation, and place of employment of you and your spouse _____

The names and birth dates of any children born or adopted during your marriage

The grounds for your divorce that you have chosen from those listed for your state

You will now need to decide which of you will be the petitioner/plaintiff in your case and which of you will be the respondent/defendant. The spouse who will be the respondent/defendant will have no duties other than signing documents. The spouse who is the petitioner/plaintiff will sign documents, file the papers with the court, and attend the court hearing, if one is necessary. Legally, it will make no difference which of you serves as petitioner/plaintiff and which of you serves as respondent/defendant. Your particular state procedures relating to which county (or parish) to file your divorce papers in may have bearing on which spouse is chosen as petitioner/plaintiff. You may decide to allow either spouse to be petitioner/plaintiff if it will result in the court proceedings being held in the most convenient county (or parish) for you and your spouse .

The following is a sample of a typical petition/complaint form. For preparing your own, you should use either the title/caption information that is required in your state (see the back of this kit), or follow the format as shown on the divorce record files that you have obtained from the clerk of the court. Once you have determined the exact information for the caption, you will use the same caption for each court document.

This document or a close variation of it, as prepared below, should be generally acceptable in every jurisdiction in the United States. However, you should consult your local court clerk in advance to determine any local rules, which may result in slight differences in this form. At most, you may be required to add a sentence or two of further information to this form or change the wording slightly. You should always substitute the official legal terminology which is in use in your state wherever appropriate (see the back of this kit). You may, for example, need to substitute *dissolution of marriage* for *divorce*, or *maintenance* for *alimony*, etc. Of course, if mandatory official forms are in use in your state or county, you must use those (ask the court clerk).

Fill in the appropriate information on this form and then re-type (or have re-typed) the document onto clean white typing paper, making sure to double-space every line. Do not make any alternations in the wording of this form, unless it is to comply with the wording in an actual sample that you got from the court, or to information contained in the state listing at the back of this kit.

PETITION OR COMPLAINT

In the _____ Court for _____ County, State of

[Use court title as shown in the state listing at the back]

In re: The Marriage of:

)

)

[Name of spouse],

)

Petitioner [or Plaintiff]

)

Case#: [get from

and

)

court

clerk

[Name of other spouse],

)

when

you

file]

Respondent [or Defendant]

)

)

[Use only if there are children]:

)

And in the interest of:

)

)

[Name of minor children,

)

if any]

)

PETITION FOR DIVORCE

[Or title as shown in Appendix]

This action is brought by _____ Petitioner [or Plaintiff],
age _____, who resides at _____, City of
_____,
whose Social Security # is _____, and who is employed as
a _____
at _____, located at _____, City of

State of _____.

The Respondent [or Defendant] in this action is _____,
age _____,
who resides at _____, City of
_____,
whose Social Security # is _____, and who is employed as

at _____, located at _____, City of

State of _____.

The undersigned Petitioner [or Plaintiff] _____, states, under oath, the
following:

1. RESIDENCY. Petitioner [or Plaintiff] has been a resident of and domiciled in the State of _____ for the preceding _____ and the County [or Parish] of _____ for the preceding _____ [length of time for residency. If no time limit is required, state actual time of residency].
2. SERVICE OF PROCESS. The Respondent [or Defendant] has agreed to file a Waiver of Service of Process in this cause and, therefore, no service of process is necessary at this time.
3. JURISDICTION. The court has proper jurisdiction to hear this cause. The Respondent [or Defendant] has agreed to file an Appearance in this cause. Neither party has ever been involved in any other domestic relations proceeding involving the other party in this or any other jurisdiction. Neither party is currently an active member of any branch of the Armed Forces of the United States.
4. MARRIAGE. The Petitioner [or Plaintiff] and Respondent [or Defendant] were married on the _____ day _____ of _____, 20____, in the State of _____ and lived together as husband and wife until on or about the _____ day _____ of _____, 20____, at which time they separated and ceased to live together and they have lived separate and apart without cohabitation ever since.
5. CHILDREN. [Use one of the following: No children were born or adopted to the marriage and the Petitioner, or Plaintiff, or Respondent, or Defendant] is not now pregnant.

[Or]: There were children born [or adopted] to the marriage and their names and dates of birth are as follows:

Child's Name	Child's Date of Birth
_____	_____
_____	_____

and the Petitioner [or Plaintiff] (or Respondent [or Defendant]) is not now pregnant.

5. GROUND. [In a complete sentence, state the grounds which apply to your situation and which you have chosen]

6. AGREEMENT. This proceeding is uncontested. The Petitioner [or Plaintiff] and Respondent [or Defendant] have both signed a Marital Settlement Agreement, dated the _____ day of _____ 20____, which is attached and incorporated by reference. By the terms of this Marital Settlement Agreement they have settled all of the issues relating to their marriage, including the division of all of their property, the disposition of all of their bills and obligations, the need for any alimony, maintenance or spousal support, [(use if there are children involved:) and the custody, visitation, care, and support of their children], A Financial Statement has been prepared by each of the parties listing their respective income, expenses, assets, and liabilities and the individual Financial Statements are attached and incorporated by reference. The Marital Settlement Agreement and Financial Statements were signed under no duress or force and without collusion.

7. CONSENT. The Respondent [or Defendant] has agreed to file a Consent to the incorporation and merger of said Marital Settlement Agreement into a Final Judgment [or Decree] of Divorce [or Dissolution of Marriage] in this cause.

8. WAIVER. The Petitioner [or Plaintiff] hereby waives any rights to findings of fact and conclusions of law, a record of testimony, motion for a new trial, notice of entry of

final judgment or decree, and the right to appeal, but does not waive any rights to the future modification of any judgment or decree in this cause.

The Petitioner [or Plaintiff] respectfully requests and prays :

1. That a Divorce [or Dissolution of Marriage (check in Appendix)] be granted by the court dissolving and terminating forever the marriage between the parties .
2. That all of the terms and conditions of the party's Marital Settlement Agreement, which is attached, be approved and be incorporated, merged into, and made part of a Final Judgment [or Decree] of Divorce [or Dissolution of Marriage], and that the parties be ordered to comply with all terms and conditions of the Marital Settlement Agreement, but that the Marital Settlement Agreement survive.
3. That the court award the parties any other further relief as may be just and equitable .

Dated this _____ day of _____, 20____.

[signature of Petitioner or Plaintiff]

State of _____

SS.

County of _____

[signature of Petitioner or Plaintiff]

On _____, 20__, _____ [name of Petitioner or Plaintiff] _____

personally came before me and, being duly sworn, did state that he/she is the person described in the above document and that he/she signed the above document in my

presence and verified that the information contained in the foregoing document is true and correct on personal knowledge and acknowledged that the document was signed as a free and voluntary act for the purposes stated.

[signature of Notary Public]

Notary Public, for the County of _____

State of _____

My Commission expires _____

Appearance, Consent, and Waiver

This form will need to be filed in all cases, except those in which a state allows a petition for divorce or dissolution of marriage to be filed jointly. It serves several functions. First, through its use the requirement for a formal serving of the divorce papers on one of you is made unnecessary. The delivery of the divorce papers is formally known as service of process. Filing this form effectively waives the right to have papers served formally by a sheriff or some other process server. Since you have both cooperated in the preparation and signing of all of the documents to be filed with the court, there is no need for this formal step in the process.

By this document, the spouse who is not designated as the petitioner/plaintiff officially makes a legal appearance and consents to the jurisdiction and venue of the court. This means that he or she agrees that the court in which your divorce is filed has the proper authority to grant your divorce. This other spouse (officially the respondent/defendant) also offers his or her consent to the adoption of the Marital Settlement Agreement into the final divorce order. The other spouse also waives his or her right to findings of fact, conclusions of law, a record of testimony, motion for a new trial, notice of entry of final judgment or decree, and right to appeal. These rights were also waived by you in the petition/complaint in an effort to eliminate any unnecessary and extraneous legal proceedings and technicalities. The purpose of the entire document is to streamline and speed up the legal process when you have both agreed to the results desired. It is a formality that is required in states that require that only one spouse file the petition or complaint for divorce. This form is basically an agreement by the other spouse to join in the effort to obtain a divorce. Filing this form generally eliminates much paperwork and often-considerable expense from the process of obtaining a divorce. Once the spouse who will act as respondent/defendant has signed this form, no further action by that spouse should be necessary for the remainder of the divorce process.

The title to this document will normally always be Appearance, Consent, and Waiver. The rest of the caption portion of this document should be identical to that used in your petition/ complaint. Fill in this form now and prepare the final version for signing as described at the end of this chapter .

In the _____ Court for _____ County, State
of _____

[Use court title as used in your region]

In re: The Marriage of:)

)

[Name of spouse],)

Petitioner [or Plaintiff])
and) Case #: [obtain from
court
[Name of other spouse],) upon filing]
Respondent [or Defendant])
)
And in the interest of:)
[Name of minor children,)
if any])

APPEARANCE, CONSENT, AND WAIVER

The undersigned Respondent [or Defendant] states on oath, that:

1. RESIDENCY. I have been a resident of and domiciled in the State of _____ for the preceding _____ and the County [or Parish] of _____ for the preceding _____. [Length of time for residency for your state. If no time limit is required, state actual time of residency] .
2. ADMISSION. I have received a copy of the Petition [or Complaint] which was filed in this cause and I have read and understand it and admit all of the allegations contained in it.
3. APPEARANCE AND WAIVER. I waive all objections to venue and the issuance. service. and return of process in this cause and voluntarily enter my Financial Statements were signed under no duress or force and without collusion.
4. AGREEMENT. I have freely and voluntarily entered into a Marital Settlement Agreement, dated the _____ day of _____, 20____, and a Financial Statement which are attached to and incorporated into the original Petition [or Complaint]. The Marital Settlement Agreement and Financial Statements were signed under no duress or force and without collusion .
5. CONSENT. I consent to said Marital Settlement Agreement and Financial Statements being approved and incorporated, merged into, and made part of a Final Judgment [or Decree] of Divorce [or Dissolution of Marriage], and that the parties be ordered to comply with all terms and conditions of the Marital Settlement Agreement, but that the Marital Settlement Agreement survive.
6. ADDITIONAL CONSENT. I agree that this proceeding is uncontested. I further consent that this cause be heard on any day convenient to the court without further

notice to me and that the court enter an Order granting the relief prayed for in the
Petition [or Complaint].

7. ADDITIONAL WAIVER. I further waive my rights to notice of trial, findings of fact
and conclusions of law, a record of testimony, motion for a new trial, notice of entry of
final judgment or decree, and right to appeal, but do not waive any rights to the future
modification of any judgment or decree in this cause .

Signature of Respondent [or Defendant]

State of _____

SS.

County of _____

On _____ [date] _____, 20__ , _____ [Respondent/Defendant's name] _____ personally
came

before me and, being duly sworn, did state that he/she is the person described in the above
document and that he/she signed the above document in my presence and verified that the
information contained in the foregoing document is true and correct on personal
knowledge and acknowledged that the document was signed as a free and voluntary act
for the purposes stated and that a copy of the Petition [or Complaint] has been received .

[signature of Notary Public]

Notary Public, for the County of _____

State of _____

My Commission expires _____

Child Custody Jurisdiction Form

This particular form should only be used if there are minor children who were born or adopted during the marriage. If there are no children involved in your divorce, skip this section. If there are children, fill in the appropriate information on this form where indicated. The purpose of this form is to provide the court with information relevant to the jurisdiction of the court to issue orders concerning the children. If you have minor children, the information on this form is mandatory under the Uniform Child Custody Jurisdiction Act in all states. You and your spouse will be making an official declaration under oath to the court regarding the following matters:

- 1 The number of children that you have that are subject to a custody order in your upcoming divorce;
 - 2 The names, sex, social security numbers, dates and places of birth, and dates and places each child has lived for the past 5 years ;
 - 3 That the child has not been involved in any previous custody lawsuits ;
 - 4 That neither of you have any knowledge of other current custody lawsuits;
- and

5 That neither of you is aware of any other person with or claiming a right to custody of any of your children.

This form and the law on which it is based is an attempt to be certain that only one court will exercise jurisdiction over the issue of child custody for a particular child. If you or your spouse have been involved in prior custody proceedings involving any of your children or if you are aware of any current proceedings or persons claiming custody, you should consult a competent lawyer. You may still be able to file your own divorce, but a lawyer's assistance will generally be essential.

In the _____ Court for _____ County, State
of _____

[Use court title as used for your state]

In re: The Marriage of:)
)
[Name of spouse],)
Petitioner [or Plaintiff])
and) Case #:
) [Obtain from
) court
) clerk
[Name of other spouse],) upon
) filing]

Respondent [or Defendant])

)

[Use only if there are children:])

And in the interest of:)

)

[Name of minor children,)

if any])

DECLARATION UNDER THE UNIFORM
CHILD CUSTODY JURISDICTION ACT

We, the undersigned, _____ and _____, are both parties

to this

proceeding to determine the custody of a minor child, and upon oath state:

1. There _____[is/are] _____[number of children] minor child[ren] subject to this proceeding. For each child, the name, sex, Social Security number, date and place of birth, and time and place of residence and name and relationship of person child lived with for the past 5 years, is as follows :

1i~®

A. Child's Name: _____ Sex of

Child: _____

Place of Birth: _____ Date of

Birth: _____

Child's Social Security

Number: _____

Previous

residence: _____

Person child lived with:

_____ Relationship: _____

Dates of Residence: From:

_____ To: _____

B. Child's Name: _____ Sex of

Child: _____

Place of Birth: _____ Date of

Birth: _____

Child's Social Security

Number: _____

Previous

residence: _____

Person child lived with:

_____ Relationship: _____

Dates of Residence: From:

_____ To: _____

[repeat as necessary]

2. Neither of us have participated as a party or a witness or in any other capacity in any other litigation or custody proceeding in this state or elsewhere, concerning the custody of a child subject to this proceeding.
3. Neither of us have any information concerning any other litigation or custody proceeding in this state or elsewhere, concerning the custody of a child subject to this proceeding.
4. Neither of us knows of any other person who is not a party to this proceeding who has physical custody or claims to have custody or visitation rights of any child subject to this proceeding.

Dated this _____ day of _____, 20____.

[signature of Petitioner or Plaintiff]

State of _____

SS.

County of _____

On [date] _____, 20__, [Respondent/Defendant's name] _____

personally came before me and, being duly sworn, did state that he/she is the person described in the above document and that he/she signed the above document in my presence and verified that the information contained in the foregoing document is true and correct on personal knowledge and acknowledged that the document was signed as a free and voluntary act for the purposes stated.

[signature]

Notary Public, for the County of _____

State of _____

My Commission expires _____

Final Judgment or Decree

This particular document is actually the ultimate goal you are seeking in your divorce. It is the legal court order that declares that your marriage is officially over. It will also include the formal court order regarding all of the other terms of your divorce. This final court order may be called a Judgment of Divorce, Judgment of Dissolution of Marriage, Decree of Divorce, Decree of Dissolution of Marriage, or some other similar title. Check the back of this, and with the clerk of the court to determine the title in your jurisdiction.

As you prepare this document, be very careful and take your time. It must be prepared to reflect exactly what you and your spouse have agreed upon in your Marital Settlement Agreement. It should also parallel exactly what you have requested in the last section of your petition/complaint. You should substitute the official legal terminology which is in use in your state wherever appropriate as shown in the Appendix. You may, for example, need to substitute dissolution of marriage for divorce; or maintenance for alimony, etc. Most judges will allow some deviation from strict technical application of legal terminology if it is clear what is intended by the particular language used. However, some judges are very strict in this regard. To be safe, you should try and comply as closely as possible to the particular legal language used in your locale.

Judges in some localities may require that the actual judgment or decree contain all of the terms of the court's order. In other words, these judges want to have all of the various terms and conditions which are in your Marital Settlement Agreement actually typed into the judgment/decree form. There should be no problem with this, other than a little more work typing this form. If your particular area has this requirement, simply delete those portions of the judgment/decree form that state that your property, custody, child support, alimony, and name change will be according to or as set forth in the Marital Settlement Agreement. Then actually type into the judgment/decree the relevant portions of your Marital Settlement Agreement which apply.

Although this document will not be signed by the judge until the end of your divorce hearing, it should be prepared in advance. In an uncontested divorce proceeding which is based on a written and signed marital settlement agreement (as yours will be), a prepared final judgment/decree is common. In the vast majority of cases, the judge will sign this document at the close of your court hearing. Although it is unlikely, there is a slight possibility that the judge may make some changes in the final version of the decision. Any such changes must be noted carefully at the time of your hearing. Your judgment/decree must then be re-typed and re-submitted to the court clerk for the judge's signature.

In the _____ Court for _____ County, State of

[Use court title for your state]

In re: The Marriage of:

)

)

[Name of spouse],

)

Petitioner [or Plaintiff]

)

Case#: [Obtain from

and

)

court

clerk

[Name of other spouse],

)

when

filing)

Respondent [or Defendant]

)

[Use only if there are children]:

)

And in the interest of:)

[Name of minor children,)

if any])

FINAL JUDGEMENT OF DIVORCE [Or title used in your state]

On the _____ day of _____, 20____, a final hearing was held in this cause.

The Petitioner [or Plaintiff] was present, in person.

The Respondent [or Defendant] waived issuance, service, and return of process and appeared generally by an Appearance, Consent and Waiver duly filed and did not otherwise appear.

The Court, having examined the verified pleadings and heard the evidence and being fully advised finds:

1. That all necessary residency requirements and prerequisites of law have been legally satisfied;
2. That this Court has personal jurisdiction of the parties and of the subject matter;
3. That all of the material allegations contained in the Petition [or Complaint] are true; and
4. That the parties have voluntarily waived findings of fact, conclusions of law, a record of testimony, motion for a new trial, notice of entry of final Judgment, and right to appeal, but have not waived their rights to future modification of this Judgment .

THE COURT ORDERS, ADJUDGES, AND DECREES:

1. That the marriage of the Petitioner [or Plaintiff] and the Respondent [or Defendant] is hereby dissolved and that they are hereby divorced;
2. That all of the terms and provisions of the Marital Settlement Agreement between the parties and dated the _____ day of _____, 20____, which is attached and incorporated by reference, are hereby approved and incorporated, merged into, and made part of this court order, and the parties are ordered to comply with all terms and conditions of said Marital Settlement Agreement, but that it shall survive this order;
3. That the party's property and obligations shall be distributed and apportioned according to the terms and conditions of said Marital Settlement Agreement ;
4. That alimony and maintenance shall be as set forth in said Marital Settlement Agreement;
5. [Include if appropriate]: That the custody, visitation, care, and support of the parties children shall be as set forth in said Marital Settlement Agreement ;

6. [Include if appropriate]: That the Petitioner's [or Plaintiff's] (or Respondent's [or Defendant's]) name be restored to as set forth in said Marital Settlement Agreement .

Signed and Entered this _____ day of _____, 20____.

Presiding Judge

Approved as to form and content:

Signature of Petitioner [or Plaintiff]

Signature of Respondent [or Defendant]

Certificate of Divorce or Dissolution of Marriage

Most states require that a certificate be filed upon the granting of the final divorce. This certificate is similar to a birth certificate and will generally be filed with the state's Bureau of Vital Statistics or some similar agency. It is prepared on a official form and is, generally, very simple to fill out. The official forms for this purpose should be available from the clerk of the court where you file for your divorce. You must use the official forms for your state. This form should be filled out and taken with you to the court hearing in your case.

STATE SPECIFIC DIVORCE LAW

ALABAMA

The requirements for a no-fault divorce in Alabama are as follows: the spouse who files for the divorce must have been a resident of the state for at least 6 months before filing for divorce. One can file the divorce in: 1) the county in which the defendant resides; 2) the county in which both spouses resided at the time of separation; or 3) If defendant is a non-resident of Alabama, the plaintiff may file in the county where he/she resides. [Code of Alabama; Title 30, Chapters 2-4 and 2-5).

The legal grounds for divorce in Alabama are as follows: No-Fault: 1) Irretrievable breakdown of the marriage; 2) complete incompatibility of temperament such that the parties can no longer live together; 3) voluntary separation for over 1 year. [Code of Alabama; Title 30, Chapter 2-1].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR ALABAMA ONLY

1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT FOR COUNTY, ALABAMA

2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters- JUDGEMENT FOR DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

ALASKA

The spouse filing the divorce must be a resident. No residency time limit is specified. [Alaska Statutes; Title 25, Chapters 22-10.030 and 24.080).

The legal grounds necessary for a dissolution of marriage in Alaska: No-Fault: Incompatibility of temperament which has caused the irremediable breakdown of the marriage. [Alaska Statutes; Title 25, Chapter 24.200).

USE THESE WORDS IN CERTAIN DOCUMENTS FOR ALASKA ONLY

1 - Use the following words, all capital letters: SUPERIOR COURT FOR THE STATE OF ALASKA; JUDICIAL DISTRICT

2 - Use the following words, all capital letters: PETITION FOR THE DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use the following words, all capital letters: DECREE OF DISSOLUTION OF MARRIAGE

6 - Use the word "County" here.

7 - Please view the last page of this document.

ARIZONA

One of the spouses must have resided in the state at least 90 days before filing for dissolution of marriage. The divorce should be filed in the county in which the petitioner resides at the time of filing. [Arizona Revised Statutes Annotated; Title 12, Chapter 401; and Title 25, Chapter 312].

The legal grounds for dissolution of marriage are: No-Fault: 1) Irretrievable breakdown of the marriage. [Arizona Revised Statutes Annotated; Title 25, Chapter 312].

USE THE FOLLOWING WORDS IN CERTAIN DOCUMENTS FOR ARIZONA ONLY

- 1 – Use these words, all capital letters: IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF , ARIZONA
- 2 - Use these exact words, all in capital letters: PETITION FOR THE DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized .
- 4 - Use the word "Respondent". Be sure the "R" is capitalized .
- 5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE
- 6 – Use the word "County" here.
- 7 - Please view the last page of this document .

ARKANSAS

The spouse who files the divorce must reside in the state for 60 days and for 3 months before a divorce will be finalized. The divorce must be filed in the county of the plaintiff. If the plaintiff is a nonresident of Arkansas, the divorce may be filed for in the county where the defendant resides. The venue requirements may be waived in Arkansas. [Arkansas Code of 1987 Annotated; Title 9, Chapters 12-301 and 12-303].

Legal grounds for a no-fault divorce are: Voluntarily living separate and apart without cohabitation for 3 years. [Arkansas Code of 1987 Annotated; Title 9, Chapter 12-301].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR ARKANSAS ONLY

- 1 - Use these exact words, all in capital letters: IN THE CHANCERY COURT OF ARKANSAS
- 2 – Use the words, all capital letters: COMPLAINT FOR DIVORCE
- 3 – Use the word "Plaintiff". Be sure the "P" is capitalized .
- 4 - Use the word "Defendant". Be sure the "D" is capitalized .
- 5 - Use the words, all capital letters: DECREE OF DIVORCE
- 6 – Use the word "County" here.
- 7 - Please view the last page of this document .

CALIFORNIA

The spouse who files for dissolution of marriage must have been a resident of the state for 6 months and a resident of the county where the dissolution of marriage is filed for 3 months. [Annotated California Code; Section 4514).

The legal grounds for dissolution of marriage for no-fault divorce are: Irreconcilable differences which have caused the irremediable breakdown of the marriage. [Annotated California Code; Section 4506].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR CALIFORNIA ONLY

- 1 – Use the words, all in capital letters: SUPERIOR COURT OF CALIFORNIA, COUNTY OF
- 2 – Use the words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 – Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 – Use the word "Respondent". Be sure the "R" is capitalized.
- 5 – Use these words, all in capital letters: FINAL JUDGEMENT OF DISSOLUTION OF MARRIAGE
- 6 – Use the word "County" here.
- 7 - Please view the last page of this document.

COLORADO

One spouse must have been a resident of Colorado for 90 days prior to filing for dissolution of marriage. The dissolution of marriage may be filed for in: 1) the county where the respondent resides; or 2) the county in which the petitioner resides if the respondent has been served in the same county or is a nonresident of Colorado. [Colorado Revised Statutes; Article 10, Section 14-10-106; and Colorado Rules of Civil Procedure, Rule 98].

The one and only no-fault ground for dissolution of marriage is: Irretrievable breakdown of the marriage, [Colorado Revised Statutes; Article 10, Section 14-10-106].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR COLORADO ONLY

- 1 – Use the words, all in capital letters: IN THE DISTRICT COURT IN AND FOR THE COUNTY OF AND STATE OF COLORADO
- 2 – Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 – Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 – Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE
- 6 – Use the word "County" here.
- 7 - Please view the last page of this document.

CONNECTICUT

Either spouse may file a dissolution of marriage if they are a resident. But the dissolution of marriage will only finalize after one spouse has been a resident for one year; unless one of the spouses was a resident of Connecticut at the time of the marriage and returned with the intention of permanent residence; or if the grounds for the dissolution of marriage arose in Connecticut. If the matter involves support, the dissolution of marriage is to be filed in the county in which the plaintiff resides. In all other cases, the dissolution of marriage may be filed in any county which is most convenient to both spouses.

[Connecticut Statutes Annotated; Title 31, Chapter 348; Title 46b, Chapter 44; and Title 51, Chapter 349].

The following are legal no-fault grounds for dissolution of marriage: 1) Irretrievable breakdown of the marriage; 2) incompatibility and voluntary separation for 18 months with no reasonable prospect for reconciliation. [Connecticut General Statutes Annotated; Title 46b, Chapter 40].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR CONNECTICUT ONLY

1 – Use the words, all in capital letters: SUPERIOR COURT

2 - Use the words, all in capital letters: COMPLAINT FOR DISSOLUTION OF MARRIAGE

3 – Use the word "Plaintiff". Be sure the "P" is capitalized.

4 – Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use the words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE

6 - Use the word "County" here.

7 - Please view the last page of this document.

DELAWARE

One spouse must be a resident for 6 months immediately prior to filing for divorce. The divorce may be filed for in a county where either spouse resides. [Delaware Code Annotated; Title 13, Chapters 1504 and 1507].

The grounds for no-fault divorce in Delaware: 1) Irretrievable breakdown of the marriage and reconciliation is improbable (a marriage is considered "irretrievably broken" when it is characterized by one of the following: a) voluntary separation; b) separation caused by the other spouse's misconduct or mental illness; or c) separation caused by incompatibility; and

2) living separate and apart for 6 months because of incompatibility. (Delaware Code Annotated; Title 13, Chapter 1505).

USE THESE WORDS IN CERTAIN DOCUMENTS FOR DELAWARE ONLY

1 – Use the words, all in capital letters: IN THE FAMILY COURT FOR THE STATE OF DELAWARE, IN AND FOR COUNTY

2 – Use the words, all in capital letters: PETITION OF DIVORCE

3 – Use the word "Petitioner". Be sure the "P" is capitalized.

4 – Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

DISTRICT OF COLUMBIA (WASHINGTON D.C.)

One of the spouses must have been a resident of Washington D.C. for 6 months immediately prior to filing for divorce. Military personnel are considered residents if they have been stationed in Washington D.C. for 6 months. [District of Columbia Code Annotated; Title 16, Chapter 9, Sections 902).

These are the grounds for no-fault divorce in the District of Columbia: 1) Mutual voluntary separation without cohabitation for 6 months; 2) living separate and apart without cohabitation for 1 year. [District of Columbia Code Annotated; Title 16, Chapter 9, Sections 904, 905, 906].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR THE DISTRICT OF COLUMBIA

1 - Use these exact words, all in capital letters: IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA - FAMILY DIVISION

2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters: FINAL DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

FLORIDA

One of the spouses must have been a resident for 6 months prior to filing for dissolution of marriage. The dissolution of marriage should be filed in either: 1) the county where the defendant resides; or 2) the county where the spouses last lived together prior to separating. [Florida Statutes Annotated: Chapter 61.021].

There is only one no-fault ground for dissolution of marriage in Florida: Irretrievable breakdown of the marriage. [Florida Statutes Annotated; Chapter 61.052].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR FLORIDA

1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF, FLORIDA

2 - Use these exact words, all in capital letters: PETITION OF DISSOLUTION OF MARRIAGE

- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words, all in capital letters: FINAL JUDGEMENT OF DISSOLUTION OF MARRIAGE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

GEORGIA

The spouse who files for divorce must have been a resident of Georgia for 6 months and file for divorce in the county of residence. However, a non-resident may file for divorce against a spouse who has been a resident of Georgia for 6 months. In such cases, the divorce must be filed for in the county in which the respondent resides. [Code of Georgia Annotated; Title 30, Section 107].

The only no-fault ground for divorce by the State of Georgia is: Irretrievable breakdown of the marriage. [Code of Georgia Annotated; Title 30, Section 102].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR GEORGIA

- 1 - Use these exact words, all in capital letters: IN THE SUPERIOR COURT OF COUNTY, GEORGIA
- 2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words, all in capital letters: FINAL JUDGEMENT AND DECREE OF DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

HAWAII

The spouse filing for divorce must have been present in Hawaii for 3 months. However, a final divorce will not be granted unless one spouse has been a resident for 6 months. The divorce should be filed in either: 1) the judicial district where the plaintiff resides; or 2) the judicial district where the spouses last lived together. [Hawaii Revised Statutes; Title 580, Chapter 1].

These are the grounds for no-fault divorce in Hawaii: 1) Irretrievable breakdown of the marriage; and 2) living separate and apart without cohabitation for 2 years and it would not be harsh or oppressive to the defendant spouse to grant the divorce. [Hawaii Revised Statutes; Title 580, Chapter 41].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR HAWAII

- 1 - Use these exact words, all in capital letters: FAMILY COURT
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

IDAHO

The spouse filing for divorce must have been a resident of Idaho for 6 full weeks immediately prior to filing for divorce. The divorce should be filed in: 1) the county where the defendant resides; or 2) if the defendant is not a resident of Idaho, the county where the plaintiff resides or designates in the complaint. [Idaho Code; Title 5, Chapter 404; and Title 32, Chapter 701].

The following are no-fault grounds of divorce in Idaho: 1) irreconcilable differences; and 2) living separate and apart without cohabitation for a period of 5 years. [Idaho Code; Title 32, Chapters 603, 610, and 626].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR IDAHO

- 1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

ILLINOIS

The spouse filing for dissolution of marriage must have been a resident of Illinois for 90 days immediately prior to filing for dissolution of marriage. The dissolution of marriage may be filed in a county where either spouse resides. [Illinois Annotated Statutes; Chapter 40, Paragraphs 104 and 401].

The following is the only no-fault ground of divorce in Illinois: Irreconcilable differences has caused the irretrievable breakdown of the marriage and reconciliation has failed or further attempts at reconciliation are impractical and the spouses have been living separate and apart without cohabitation for 2 years. (If both spouses consent, the time period becomes 6 months). [Illinois Annotated Statutes; Chapter 40, Paragraph 401].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR ILLINOIS

- 1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT OF THE JUDICIAL DISTRICT, COUNTY, ILLINOIS
- 2 - Use these exact words, all in capital letters: PETITION OF DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized .
- 4 - Use the word "Respondent". Be sure the "R" is capitalized .

5 - Use these exact words, all in capital letters: JUDGEMENT FOR DISSOLUTION OF MARRIAGE

6 - Use the word "County" here.

7 - Please view the last page of this document.

INDIANA

One of the spouses must have been a resident of the state for 6 months and the county in which the petition is filed for 3 months immediately prior to filing for dissolution of marriage. [Annotated Indiana Code; Title 31, Article 1, Chapter 11.5-5.6].

The only no-fault ground for dissolution of marriage in Indiana is: Irretrievable breakdown of the marriage. (Annotated Indiana Code; Code 31, Article 1, Chapter 11.5-5.,3].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR INDIANA

1 - Use these exact words, all in capital letters: COURT OF COUNTY, INDIANA (The first line will have the word SUPERIOR, CIRCUIT, or DOMESTIC RELATIONS in it. Each county uses a different one. Contact your County Clerks office for further information.

2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: FINAL DISSOLUTION OF MARRIAGE DECREE

6 - Use the word "County" here.

7 - Please view the last page of this document.

IOWA

There is no residency requirement for the spouse filing the dissolution of marriage papers as long as the defendant spouse is a resident of Iowa and was personally served with the dissolution of marriage papers. Otherwise, there is a one-year residency requirement.

Additionally, there is a 90-day waiting period prior to the dissolution of marriage becoming final. The dissolution of marriage may be filed in a county where either spouse resides. [Iowa Code Annotated; Sections 598.2 and 598.6].

The one and only no-fault ground for divorce in Iowa is: Breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. [Iowa Code Annotated; Sections 598.5 and 598.17].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR IOWA

1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT OF FOR THE COUNTY OF , IOWA

2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE

- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

KANSAS

Both spouses must be a resident of Kansas for 60 days immediately before filing for divorce. The divorce may be filed for in a county where either spouse resides. [Kansas Statutes Annotated; Chapter 60, Article 16, Subjects 607 and 1603].
The only no-fault divorce for Kansas is: Incompatibility. [Kansas Statutes Annotated; Chapter 60, Article 16, Subject 1601].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR KANSAS

- 1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT IN AND FOR THE COUNTY OF KANSAS
- 2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized .
- 4 - Use the word "Respondent". Be sure the "R" is capitalized .
- 5 - Use these exact words, all in capital letters: DECREE OF DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

KENTUCKY

The spouse filing for dissolution of marriage must have been a resident (or a member of the armed services stationed in Kentucky) for 180 days prior to filing. The dissolution of marriage may be filed in a county where either spouse usually resides. [Kentucky Revised Statutes; Title 35, Chapters 403.140 and 452.470].
The only no-fault ground for Kentucky is: Irretrievable breakdown of the marriage. A final dissolution of marriage will not be granted until the spouses have lived apart for 60 days. ("Living apart" is satisfied even if the spouses live in the same house but they may not have sexual relations). [Kentucky Revised Statutes; Title 35, Chapter 403.140].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR KENTUCKY

- 1 - Use these exact words, all in capital letters: CIRCUIT COURT , KENTUCKY (enter the name of the Circuit Court in your area.)
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized .
- 4 - Use the word "Respondent". Be sure the "R" is capitalized .
- 5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

LOUISIANA

Prior to filing for the dissolution of marriage, the spouse filing for dissolution of marriage must have been a resident of Louisiana for 12. The dissolution of marriage must be filed in the parish of the respondent/ defendant. [Louisiana Civil Code Annotated, Article 142; and Louisiana Code of Civil Procedure, Article 42].

The only grounds for divorce is a spouse's desire for a divorce. There are no requirements to show marital breakdown, fault, living separate and apart, or any other basis for a divorce. After the filing of the petition, the divorce will be granted after a period of 180 days has elapsed from the filing date and if the spouses have lived separate and apart since the filing of the divorce petition. Reconciliation is essentially the only defense to a divorce sought on these grounds. [Louisiana Civil Code Annotated, Title V, Article 102].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR LOUISIANA

- 1 - Use these exact words, all in capital letters: JUDICIAL DISTRICT COURT, PARISH OF I , LOUISIANA
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner/Plaintiff". Be sure the "P ... s are capitalized .
- 4 - Use the word "Respondent/Defendant". Be sure the "R & D" are capitalized .
- 5 - Use these exact words, all in capital letters: FINAL JUDGEMENT OF DIVORCE
- 6 - Use the word "Parish" here.
- 7 - Please view the last page of this document .

MAINE

Either spouse must be a resident of Maine, or the marriage or the grounds for divorce must have occurred in Maine. Otherwise, a person filing for divorce must be a resident of Maine for 6 months immediately prior to filing. The divorce may be filed for in the District Court in the county where either spouse resides. However, the defendant spouse has the right to have the proceeding moved to Superior Court. [Maine Revised Statutes Annotated; Title 4, Section 155; and Title 19, Section 691].

The only no-fault ground for divorce in Maine is: Irreconcilable marital differences. [Maine Revised Statutes Annotated; Title 19, Section 691 (1)].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MAINE

- 1 - Use these exact words, all in capital letters: STATE OF MAINE , COURT, COUNTY
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: JUDGEMENT OF DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document .

MARYLAND

Either spouse may file for divorce in Maryland, unless the grounds for divorce occurred outside Maryland. The divorce may be filed for in a county where either spouse resides. [Annotated Code of Maryland; Family Law, Title 7, Section 7-103; and Maryland Rules, Rule S-70].

The no-fault grounds for divorce in Maryland are: 1) the spouses have voluntarily lived separate and apart for one year without interruption or cohabitation and there is no reasonable expectation of reconciliation; or 2) the spouses have lived separate and apart without interruption for two years. [Annotated Code of Maryland; Family Law, Title 7, Section 7-103].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MARYLAND

1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT FOR MARYLAND

2 - Use these exact words, all in capital letters: BILL FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized .

4 - Use the word "Defendant". Be sure the "D" is capitalized .

5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

MASSACHUSETTS

If the grounds for divorce occurred in Massachusetts, one spouse must be a resident. If the grounds occurred outside the state, the spouse filing must have been a resident for one year. The divorce should be filed for in the county in which the spouses last lived together. If neither spouse currently lives in that county then the divorce may be filed for in a county where either spouse currently resides. [Massachusetts General Laws Annotated; Chapter 208, Sections 4,5,6].

The one and only no-fault ground for divorce in Massachusetts is: Irretrievable breakdown of the marriage. [Massachusetts General Laws Annotated; Chapter 208, Sections 1, 1A, 1 B]~

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MASSACHUSETTS

1 - Use these exact words, all in capital letters: COMMONWEALTH OF MASSACHUSETTS, THE TRIAL COURT, THE PROBATE AND FAMILY COURT DEPARTMENT, DIVISION (contact your County Clerks office for the name of the division in your county).

2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE

3 - If you do NOT have a separation agreement incorporated into your papers, Use the word "Petitioner". Be sure the "P" is capitalized. If you DO have a separation agreement

incorporated into your papers, Use the word "CoPetitioner". Be sure the "C" and "P" are capitalized.

4 - If you do NOT have a separation agreement incorporated into your papers, Use the word "Respondent". Be sure the "R" is capitalized. If you DO have a separation agreement incorporated into your papers, Use the word "CoPetitioner". Be sure the "C" and "P" are capitalized.

5 - Use these exact words, all in capital letters: JUDGEMENT OF DIVORC E

6 - Use the word "County" here.

7 - Please view the last page of this document .

Requirements for State of Michigan

Immediately prior to filing for divorce, both spouses must have been residents of Michigan for 180 days and residents of the county where the divorce is filed for 10 days. The residency requirement is one year if the cause of the divorce arose outside of Michigan.

[Michigan Compiled Laws Annotated; Section 552.9].

The no-fault ground for divorce in Michigan is: A breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. [Michigan Compiled Laws Annotated; Section 552.6].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MICHIGAN

1 - Use these exact words, all in capital letters: STATE OF MICHIGAN ,
JUDICIAL CIRCUIT, - COUNTY

2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORC E

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters: JUDGEMENT OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document .

MINNESOTA

One of the spouses must have been a resident of Minnesota for at least 180 days immediately before the petition for dissolution of marriage is filed. The dissolution of marriage may be filed for in a county where either spouse resides. [Minnesota Statutes Annotated; Chapters 518.07 and 518.09].

The no-fault ground for divorce in Minnesota is: Irrevocable breakdown of the marriage shown by 1) living separate and apart for 180 days; or 2) serious marital discord adversely affecting the attitude of one or both of the spouses toward the marriage. [Minnesota Statutes Annotated; Chapters 518.06 and 518.13].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MINNESOTA

1 - Use these exact words, all in capital letters: STATE OF MINNESOTA, DISTRICT
COURT,
COUNTY OF JUDICIAL DISTRICT

2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE

6 - Use the word "County" here.

7 - Please view the last page of this document.

MISSISSIPPI

The spouse filing for divorce must have been a resident for at least 6 months, and not have secured residency for the purpose of obtaining a divorce. If either spouse is a member of the armed services then both spouses are considered residents if stationed in Mississippi. If the grounds for divorce are irreconcilable differences, then papers should be filed in: 1) the county where either spouse resides, if both spouses are residents of Mississippi 2) the county where one spouse resides if the other spouse is a non-resident of Mississippi.

[Mississippi Code Annotated; Section 93, Chapter 5-5].

The only no-fault ground for Mississippi is: Irreconcilable differences. However no divorce on these grounds will be granted unless: 1) the divorce is not contested or the irreconcilable differences are not denied by the other spouse; and 2) adequate child custody, maintenance, and property distribution arrangements have been made by the spouses by a written agreement. In addition, an affidavit must be filed stating that there is no collusion between the spouses. [Mississippi Code Annotated; Section 93, Chapters 5-1, 5-2 and 5-7].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MISSISSIPPI

1 - Use these exact words, all in capital letters: CHANCERY COURT OF COUNTY, STATE OF MISSISSIPPI

2 - Use these exact words, all in capital letters: BILL OF COMPLAINT OF DIVORCE

3 - Use the word "Complainant". Be sure the "C" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

MISSOURI

Before filing for dissolution of marriage, one of the spouses must be a resident of Missouri for 90 days. The dissolution of marriage should be filed in the county where the Petitioner resides. In addition, there is a 30-day waiting period after filing before a dissolution of marriage will be granted. [Annotated Missouri Statutes; Title 30, Chapter 452, Sections 300.1 and 305].

The only no-fault ground for dissolution of marriage in Missouri is: Irretrievable breakdown of the marriage and no reasonable likelihood that the marriage can be preserved. [Annotated Missouri Statutes; Title 30, Chapter 452, Section 305].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MISSOURI

- 1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT OF COUNTY MISSOURI
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

MONTANA

Before filing for dissolution of marriage, one of the spouses must be a resident of Montana for 90 days. The papers should be filed for in the county where the petitioner has been a resident for the previous 90 days. [Montana Code Annotated; Section 25, Title 2-118; and Section 40, Title 1-104].

The only ground for a dissolution of marriage in Montana is: Irretrievable breakdown of the marriage and serious marital discord which adversely affects the attitude of both spouses towards the marriage and no reasonable prospect of reconciliation and living separate and apart for 180 days prior to filing. All three of these factors must be met to satisfy the grounds for dissolution of marriage.

[Montana Code Annotated; Section 40, Title 1-104].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR MONTANA

- 1 - Use these exact words, all in capital letters: DISTRICT COURT FOR THE STATE OF MONTANA AND FOR THE COUNTY OF
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

NEBRASKA

The requirements for filing for a dissolution of marriage in Nebraska are: 1) one of the spouses must have been a resident of Nebraska for at least one year; or 2) the marriage was performed in Nebraska and one of the spouses has lived in Nebraska for the entire marriage. The dissolution of marriage may be filed for in a county where either spouse resides. [Revised Statutes of Nebraska; Chapter 42, Section 348].

The only no-fault ground for dissolution of marriage in Nebraska is: Irretrievable breakdown of the marriage. [Revised Statutes of Nebraska; Chapter 42, Section 361]. A dissolution of marriage will only be granted only if reasonable efforts for a reconciliation have been made. If the court deems that there is some reasonable possibility of reconciliation, dissolution of marriage actions may be transferred to a conciliation court or the spouses may be referred to a qualified marriage counselor, family service agency, or other agency which provides conciliation services. Official conciliation counselors are available in counties of over 250,000 persons. [Revised Statutes of Nebraska; Chapter 42, Sections 360 and 808].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEBRASKA

1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT FOR COUNTY, NEBRASKA

2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

DECREE OF DISSOLUTION OF MARRIAGE

5 - Use these exact words, all in capital letters.

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6 - Use the word "County" here.

7 - Please view the last page of this document.

NEVADA

One of the spouses must have been a resident of Nevada for 6 weeks immediately prior to filing for divorce. The divorce may be filed in: 1) the county where either spouse resides; or 2) the county where the spouses last lived together. [Nevada Revised Statutes; Chapter 125, Section 020].

The only no-fault grounds for divorce in Nevada are: 1) incompatibility; or 2) living separate and apart without cohabitation for one year. [Nevada Revised Statutes; Chapter 125, Section 010, 0302].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEVADA

1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT FOR COUNTY, NEVADA

2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

NEW HAMPSHIRE

1) Both spouses must be residents of the state the divorce is filed for; or 2) the spouse filing for divorce must have been a resident of New Hampshire for one year immediately prior to filing for divorce; or 3) the cause of divorce must have arisen in New Hampshire and one of the spouses must be living in New Hampshire when the divorce is filed for. The

divorce may be filed for in a county where either spouse resides. [New Hampshire Revised Statutes Annotated; Chapters 458:5, 458:6, 458:9].

The only no-fault ground for divorce in New Hampshire is: Irreconcilable differences which have caused the irremediable breakdown of the marriage. [New Hampshire Revised Statutes Annotated; Chapter 458:7].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEW HAMPSHIRE

1 - Use these exact words, all in capital letters: THE STATE OF NEW HAMPSHIRE, SUPERIOR

COURT IN AND FOR COUNTY

2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

NEW JERSEY

1) At least one of the spouses must be a resident of New Jersey for at least one year prior to filing for divorce; or 2) when the cause for divorce is adultery and took place in New Jersey, one of the spouses must have been a resident (no time limit). The divorce may be filed for in any county in New Jersey. [New Jersey Statutes Annotated; title 2A, Chapters 34-8 and 34-10].

The one and only no-fault ground for divorce in New Jersey is: Living separate and apart for 18 months and no reasonable prospect of reconciliation. [New Jersey Statutes Annotated; Title 2A, Chapter 34-2].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEW JERSEY

1 - Use these exact words, all in capital letters: SUPERIOR COURT OF NEW JERSEY , CHANCERY DIVISION, FAMILY PART, COUNTY

2 - Use these exact words, using -all capital letters: COMPLAINT FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words, all in capital letters: JUDGEMENT OF DIVORCE

6 - Use the word "County" here.

7 - Please view the last page of this document.

NEW MEXICO

One of the spouses must have been a resident of New Mexico for at least six months immediately preceding the filing for dissolution of marriage and have a home in New

Mexico. The dissolution of marriage may be filed in any county where either spouse resides. [New Mexico Statutes Annotated; Article 4, Section 40-4-5].

The only ground for dissolution of marriage in New Mexico is: Incompatibility because of discord and conflicts of personalities such that the legitimate ends of the marriage relationship have been destroyed preventing any reasonable expectation of reconciliation. [New Mexico Statutes Annotated; Article 4, Sections 40-4-1 and 40-4-2].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEW MEXICO

1 - Use these exact words, all in capital letters: STATE OF NEW MEXICO, IN THE DISTRICT

COURT, COUNTY

2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words, all in capital letters: DECREE OF DISSOLUTION OF MARRIAGE

6 - Use the word "County" here.

7 - Please view the last page of this document.

NEW YORK

To obtain a no-fault divorce in the State of New York, any of the following must apply: If only one spouse resides in New York, any of the time of filing the divorce, the residency requirement is two years. However, that requirement is reduced to one year if 1) the spouses were married in New York and either spouse is still a resident; or 2) they once resided in New York and either spouse is still a resident; or 3) the grounds for divorce arose in New York. In addition, there is no residency time limit requirement if both of the spouses were residents of New York at the time of filing the divorce and the grounds for divorce arose in New York. The divorce may be filed for in a county where either spouse resides. [Consolidated Laws of New York Annotated; Domestic Relations Laws, Sections 230 and 231; and New York Civil Practice Laws and Rules, Rule 503].

The legal grounds for divorce in New York are: No-Fault: 1) living separate and apart for one year under the terms of a separation agreement which is in writing and signed and notarized. Proof of compliance with the terms of the settlement agreement must be submitted when the divorce is filed. In addition, a copy of the agreement or a brief memorandum of the agreement must be filed in the office of the clerk of the county; or 2) living separate and apart for one year under the terms of a judicial separation decree. [Consolidated Laws of New York Annotated; Domestic Relations Law, Section 170].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NEW YORK

1 - Use these exact words, all in capital letters: SUPREME COURT OF THE STATE OF NEW

YORK, COUNTY

- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: JUDGEMENT FOR DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

NORTH CAROLINA

One spouse must have been a resident of North Carolina for at least six months prior to filing for divorce. Divorce may be filed for in the county of residence of either spouse.

[General Statutes of North Carolina; Chapter 50, Section 50-8].

The only no-fault ground for divorce in North Carolina is: Living separate and apart without cohabitation for one year. [General Statutes of North Carolina; Chapter 50, Section 50-5.6].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NORTH CAROLINA

- 1 - Use these exact words, all in capital letters: IN THE GENERAL COURT OF JUSTICE,
DIVISION, NORTH CAROLINA, COUNTY
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DIVORCE
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

NORTH DAKOTA

The spouse filing for divorce must be a resident of North Dakota for at least six months prior to the entry of the final divorce. The divorce must be filed in the county where the defendant resides if the defendant is a resident of North Dakota. If the defendant is not a resident, the divorce may be filed for in any county that the plaintiff designates in the complaint. [North Dakota Century Code; Volume 3A, Chapters 14-0517 and 28-04-05].

Separation agreements are specifically authorized by statute. [North Dakota Century Code; Volume 3A, Chapter 1407-07).

The only no-fault ground for divorce in North Dakota is: Irreconcilable differences. [North Dakota Century Code; Volume 3A, Chapter 14-05-03).

USE THESE WORDS IN CERTAIN DOCUMENTS FOR NORTH DAKOTA

- 1 - Use these exact words, all in capital letters: STATE OF NORTH DAKOTA,
COUNTY OF
, IN THE DISTRICT COURT, - JUDICIAL DISTRICT
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words, all in capital letters: DECREE OF DIVORCE

- 6 - Use the word "County" here.
- 7 – Please view the last page of this document .

OHIO

The spouse filing for the dissolution must have been a resident of Ohio for at least 6 months and a resident of the county for at least 90 days immediately prior to filing. [Ohio Revised Code Annotated; Section 3105.03 and Ohio Rules of Civil Procedure, Rule 3] . The grounds for a no-fault divorce in Ohio are: 1) incompatibility; or 2) living separate and apart without cohabitation and without interruption 'for one year. [Ohio Revised Code Annotated; Section 3105.01].

Both spouses may jointly file a petition for dissolution of marriage. The petition must: 1) be signed by both spouses; 2) have attached to it a separation agreement which provides for a) division of property, b) alimony (including the authorization of the court to modify any alimony terms), and c) custody, visitation, and child support, if there are any minor children. Between 30 and 90 days after filing such a petition, both spouses must appear in court and state under oath that he or she: 1) voluntarily signed the agreement; 2) is satisfied with the agreement; and 3) seeks dissolution of the marriage. In addition, marital settlement agreements are also authorized by statute and may be used in a divorce proceeding. There may be local court rules which apply to divorce proceedings for Ohio. [Ohio Revised Code Annotated; Sections 3105.03, 3105.10, 3105.61 - 65].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR OHIO

- 1 - Use these exact words, all in capital letters: IN THE COURT OF COMMON PLEAS OF COUNTY, OHIO
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized .
- 4 - Use the word "Co- Petitioner". Be sure the "C" and "P" are always capitalized.
- 5 - Use these exact words: DECREE OF DISSOLUTION OF MARRIAGE. Be sure to use capital letters only when placed as the title of your final document .
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

OKLAHOMA

Either spouse must have been a resident of Oklahoma for six months immediately prior to filing for divorce. The divorce may be filed for in the county in which the plaintiff has been a resident for 30 days or in the county where the defendant resides. [Oklahoma Statutes Annotated; Title 43, Sections 102 and 103].

The only ground for a no-fault divorce in Oklahoma is: Incompatibility. [Oklahoma Statutes Annotated; Title 43, Section 101].

Separation agreements are specifically authorized by statute. [Oklahoma Statutes Annotated; Title 43, Section 205].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR OKLAHOMA

- 1 - Use these exact words, all in capital letters: STATE OF OKLAHOMA, IN THE DISTRICT COURT, COUNTY
- 2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

OREGON

Unless the marriage was performed in Oregon, one of the spouses must have been a resident of Oregon for six months immediately prior to filing. If the marriage was performed in Oregon and either spouse is a resident at the time of filing, there is no residency requirement. The dissolution of marriage may be filed in a county where either spouse resides. There is a 90-day waiting period before a hearing will be scheduled which begins after the respondent has been served with papers or has filed an Appearance. [Oregon Revised Statutes; Volume 2, Sections 14.070, 107.065, 107.075].

The only ground for no-fault divorce in Oregon is: Irreconcilable differences between the spouses which have caused the irretrievable breakdown of the marriage, Misconduct of the spouses will only be considered when child custody is an issue or if necessary to prove irreconcilable differences. [Oregon Revised Statutes; Volume 2, Section 107.025].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR OREGON

- 1 - Use these exact words, all in capital letters: IN THE CIRCUIT COURT FOR THE STATE OF OREGON FOR THE COUNTY OF
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words: DECREE OF DISSOLUTION OF MARRIAGE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

PENNSYLVANIA

Either spouse must have been a resident of Pennsylvania for at least six months before filing. The divorce may be filed for in a county where 1) the defendant resides; 2) the plaintiff resides, if the defendant does not live in Pennsylvania; 3) where the marriage home was, if the plaintiff continuously resided in the same county; 4) prior to six months after separation, and if the defendant agrees, where the plaintiff resides; 5) prior to six months after separation, and if neither spouse lives in the county of the marriage home, where

either spouse lives; and 6) after six months after separation, where either spouse lives. [Pennsylvania Consolidated Statutes Annotated, Title 23, Section 3104].

The grounds for no-fault divorce in Pennsylvania are: 1) irretrievable breakdown of the marriage with the spouses living separate and apart without cohabitation for two or more years; or 2) irretrievable breakdown of the marriage and the spouses have both filed affidavits that they consent to the divorce. In the case of no-fault ground #2, 90 days must elapse after the filing for divorce before the court will grant a divorce. [Pennsylvania Consolidated Statutes Annotated, Title 23, Section 3301].

The grounds for divorce are irretrievable breakdown of the marriage. If both spouses consent to the divorce, it will be handled in an expedited manner. There are official sample forms for filing a complaint for divorce on the grounds of irretrievable breakdown of the marriage. There are also official forms available for filing the required affidavit of consent. There are also other sample divorce proceeding forms available in Pennsylvania Rules of Civil Procedure, Actions of Divorce of Annulment Section, Rule 1920.01+. In addition, separation agreements are expressly authorized. [Pennsylvania Consolidated Statutes Annotated, Title 23, Section 3301; and Pennsylvania Rules of Civil Procedure, Rules 1920.01+]

USE THESE WORDS IN CERTAIN DOCUMENTS FOR PENNSYLVANIA

- 1 - Use these exact words, all in capital letters: COURT OF COMMON PLEAS, COUNTY, PENNSYLVANIA
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

RHODE ISLAND

Either spouse must have been a resident of Rhode Island for one year prior to filing for divorce. Divorce may be filed for in the county of residence of the plaintiff, unless the one-year residency requirements has been satisfied by the defendant's residence. In such case, the divorce must be filed for in the county of the defendant's residence. [General Laws of Rhode Island; Title 15, Chapter 15-5-12].

The no-fault grounds for divorce in Rhode Island are: 1) irreconcilable differences which have caused the irremediable breakdown of the marriage; or 2) living separate and apart without cohabitation for three years. [General Laws of Rhode Island, Title 15, Chapters 15-5-1, 15-5-3, 15-5-5].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR RHODE ISLAND

- 1 - Use these exact words, all in capital letters: STATE OF RHODE ISLAND, FAMILY COURT, DIVISION
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: FINAL JUDGEMENT OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document .
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

SOUTH CAROLINA

If both spouses are residents, the spouse filing must only have been a resident for three months. Otherwise, the spouse filing for divorce must have been a resident of South Carolina for at least one year, There is a required 90-day delay from the time of filing to the time of the final decree of divorce. The divorce may be filed for in 1) the county where the defendant resides, 2) the county where the plaintiff resides if the defendant does not live in South Carolina; or 3) the county where the spouses last lived together if both still live in South Carolina. [Code of Laws of South Carolina; Chapter 3, Sections 203-30, 20-3-60, 20-3-80].

The only ground for no-fault divorce in South Carolina is: Living separate and apart without cohabitation for one year. [Code of Laws of South Carolina; Chapter 3, Section 20-3-10).

USE THESE WORDS IN CERTAIN DOCUMENTS FOR SOUTH CAROLINA

- 1 - Use these exact words, all in capital letters: STATE OF SOUTH CAROLINA, THE COURT OF THE JUDICIAL CIRCUIT
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document .
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

SOUTH DAKOTA

The spouse who files for divorce must be a resident of South Dakota or a member of the Armed Forces stationed in South Dakota at the time of the filing. They must remain a resident until the divorce is final. There is no durational residency requirement. The divorce may be filed for in the county where either spouse resides, but the defendant has the right to have it transferred to his or her county of residence if desired. In addition, there is a 60-day waiting period after filing before a hearing will be held or the divorce will be granted. [South Dakota Codified Laws, Title 25, Chapters 25-4-30, 25-4-30.1, 25-4-34].

The only no-fault ground for divorce in South Dakota is: Irreconcilable differences which have caused the irretrievable breakdown of the marriage. [South Dakota Codified Laws, Title 25, Chapters 25-4-2, 254-17.2, 25-4-18].

If both spouses consent to the use of "irreconcilable differences" as grounds for divorce, the court may grant the divorce based entirely on affidavits of the spouses which establish the required residency and grounds for divorce. In such cases, a personal appearance in court by either of the spouses will not generally be required. [South Dakota Codified Laws; Title 25, Chapters 25-4-17.3]

USE THESE WORDS IN CERTAIN DOCUMENTS FOR SOUTH DAKOTA

1 - Use these exact words, all in capital letters: STATE OF SOUTH DAKOTA, COUNTY OF

IN THE CIRCUIT COURT, JUDICIAL DISTRICT

2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE

3 - Use the word "Plaintiff". Be sure the "P" is capitalized.

4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.

5 - Use the word "County" here.

7 - Please view the last page of this document.

TENNESSEE

The spouse filing for divorce must have been a resident of Tennessee when the grounds for divorce arose. If the grounds for divorce arose outside the state and the petitioner resided outside of Tennessee, either spouse must have been a resident for six months prior to filing. The divorce may be filed for in any of the following counties: 1) the county in which both spouses lived at the time of their separation; 2) the county in which the respondent lives, where he or she is a resident of Tennessee; or 3) the county in which the petitioner lives if the respondent is a non-resident of Tennessee. [Tennessee Code Annotated; Volume A, Title 36, Sections 36-4-104 and 36-4-105].

The no-fault grounds for divorce in Tennessee are: 1) irreconcilable differences; or 2) living separate and

7a art without cohabitation for 2 years when there are no minor children. [Tennessee Code Annotated; 0lume 6A, Title 36, Section 36-4-101].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR TENNESSEE

1 - Use these exact words, using all capital letters: IN THE COURT OF COUNTY, TENNESSEE

2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE

3 - Use the word "Petitioner". Be sure the "P" is capitalized.

4 - Use the word "Respondent". Be sure the "R" is capitalized.

5 - Use these exact words: FINAL DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.

6 - Use the word "County" here.

7 - Please view the last page of this document.

TEXAS

One of the spouses must have resided in Texas for six months prior to filing and in the county where the divorce is filed for 90 days prior to filing. In addition, there is a 60-day waiting period after filing before a divorce will be granted. [Texas Codes Annotated; Family Code, Chapters 3.21 and 3.60].

The no-fault grounds in Texas are: 1) the marriage has become insupportable because of discord or conflict of personalities that has destroyed the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation; or 2) living separate and apart without cohabitation for 3 years. (Texas Codes Annotated; Family Code, Chapters 3.01 and 3.06].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR TEXAS

- 1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT OF COUNTY, TEXAS, JUDICIAL DISTRICT
- 2 - Use these exact words, all in capital letters: PETITION FOR DIVORCE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

UTAH

Prior to filing, the spouse must have been a resident of Utah (or a member of the Armed Forces stationed in Utah) and a resident of the county where the divorce is filed for more than 3 months immediately prior to filing. In addition, there is a 90-day waiting period after filing before a divorce will be granted. (Utah Code Annotated; Sections 30-3-1 and 30-3-18].

The no-fault grounds for divorce in Utah are: 1) irreconcilable differences of the marriage; or 2) living separate and apart without cohabitation. for 3 years under a judicial decree of separation. [Utah Code Annotated; Section 30-3-1].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR UTAH

- 1 - Use these exact words, all in capital letters: IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT, IN AND FOR COUNTY~ STATE OF UTAH
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

VERMONT

Before the divorce is filed, one of the spouses must have been a resident of Vermont for at least 6 months. Additionally, either spouse must have been a resident for one year before

the divorce is made final. There is a 6-month waiting period after the defendant has been served with the divorce papers before a hearing will be held. The divorce may be filed for in any county where either or both of the spouses reside. [Vermont Statutes Annotated; Title 15, Sections 592 and 593; Vermont Rules for Family Proceedings, Rule 4]. The only no-fault ground for divorce in Vermont is: Living separate and apart without cohabitation for 6 consecutive months and the resumption of marital relations is not reasonably probable. [Vermont Statutes Annotated; Title 15, Section 555].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR VERMONT

- 1 - Use these exact words, all in capital letters: STATE OF VERMONT, FAMILY COURT, COUNTY
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

VIRGINIA

One of the spouses must have been a resident of Virginia for at least 6 months prior to filing for divorce. The divorce may be filed for in: 1) the county in which the spouses last lived together; or 2) the county where the defendant resides; or 3) if the defendant is a non-resident of Virginia, the county where the plaintiff resides. [Code of Virginia; Title 8, Section 8.01-261; and Title 20, Sections 20-96 and 20-97].

The no-fault grounds for divorce in Virginia are: 1) living separate and apart without cohabitation for one year; or 2) living separate and apart without cohabitation for 6 months if there are no minor children and the spouses have entered into a separation agreement. [Code of Virginia; Title 20, Section 20-91].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR VIRGINIA

- 1 - Use these exact words, all in capital letters: VIRGINIA: IN THE COURT OF (the first blank line will be filled in with either CIRCUIT or JUVENILE; the second line will be filled in with either DOMESTIC RELATIONS COURT or EXPERIMENTAL FAMILY COURT. Contact your county clerk's office to find out which to use.)
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

WASHINGTON

The spouse who files for dissolution of marriage must be a resident of Washington or a member of the Armed Forces stationed in Washington. The dissolution of marriage may be filed for in any county where either the petitioner or respondent resides. In addition, the court will not act on the petition until 90 days has elapsed from the filing and the service of summons on the respondent. [Revised Code of Washington Annotated; Title 26, Chapter 26.09. 010 and 26.09.030].

The only no-fault ground for divorce in Washington is: Irretrievable breakdown of the marriage. (Revised Code of Washington Annotated; Title 26, Chapter 26.09.030).

The spouses must file a Washington Department of Human Services Certificate with the petition. There are also certain local court rules which apply to dissolution of marriage. These are found in Washington Local Court Rules, Rule 94.04. [Revised Code of Washington Annotated; Title 26, Chapters 26.09.080.]

USE THESE WORDS IN CERTAIN DOCUMENTS FOR WASHINGTON

- 1 - Use these exact words, all in capital letters: IN THE COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF (the first blank line will be filled in with SUPERIOR COURT, or FAMILY COURT upon request).
- 2 - Use these exact words, all in capital letters: PETITION FOR DISSOLUTION OF MARRIAGE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words: DECREE OF DISSOLUTION OF MARRIAGE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

WEST VIRGINIA

One of the spouses must have been a resident of West Virginia for at least one year immediately prior to filing. However, if the marriage was performed in West Virginia and one spouse is a resident when filing, there is no durational time limit. The divorce should be filed for in: 1) county in which the spouses last lived together; or 2) the county where the defendant lives if a resident; or 3) the county where the plaintiff lives, if the defendant is a nonresident. [West Virginia Code; Sections 48-2-6, 48-2-7, 48-2-8].

The no-fault grounds for divorce in West Virginia are: 1) irreconcilable differences have arisen between the spouses; or 2) living separate and apart without cohabitation and without interruption for one year. [West Virginia Code; Section 48-2-4].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR WEST VIRGINIA

- 1 - Use these exact words, all in capital letters: CIRCUIT COURT OF COUNTY, WEST VIRGINIA
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.

- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

WISCONSIN

One of the spouses must have been a resident of Wisconsin for six months and the county where the divorce is filed for 30 days immediately prior to filing. No hearing on the divorce will be scheduled until 120 days after the defendant is served the summons or after the filing of a joint petition. [Wisconsin Statutes Annotated; Sections 767.05 and 767.083].

The ground for no-fault divorce in Wisconsin is: irretrievable breakdown of the marriage. The irretrievable breakdown of the marriage may be shown by: 1) a joint petition by both spouse's requesting a divorce on these grounds; or 2) living separate and apart for 12 months immediately prior to filing; or 3) if the court finds an irretrievable breakdown of the marriage with no possible chance at reconciliation. [Wisconsin Statutes Annotated; Section 767.07].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR WISCONSIN

- 1 - Use these exact words, all in capital letters: STATE OF WISCONSIN: CIRCUIT COURT, COUNTY
- 2 - Use these exact words, all in capital letters.- PETITION FOR DIVORCE
- 3 - Use the word "Petitioner". Be sure the "P" is capitalized.
- 4 - Use the word "Respondent". Be sure the "R" is capitalized.
- 5 - Use these exact words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.
- 6 - Use the word "County" here.
- 7 - Please view the last page of this document.

WYOMING

1) The spouse filing for divorce must have been a resident of Wyoming for 60 days immediately prior to filing; or 2) the marriage must have been performed in Wyoming and the spouse filing must have resided in Wyoming from the time of the marriage until the time of the filing The divorce may be filed for in the county where either spouse lives. There is a waiting period of 20 days after filing before a divorce will be granted. [Wyoming Statutes Annotated; Title 20, Chapters 20-2-104, 20-2-107 and 20-2-108]. The only ground for a no-fault divorce in Wyoming is irreconcilable differences. [Wyoming Statutes Annotated; Title 20, Chapter 20-2-104].

USE THESE WORDS IN CERTAIN DOCUMENTS FOR WYOMING

- 1 - Use these words, all in capital letters: IN THE DISTRICT COURT IN AND FO R _____ COUNTY, WYOMING
- 2 - Use these exact words, all in capital letters: COMPLAINT FOR DIVORCE
- 3 - Use the word "Plaintiff". Be sure the "P" is capitalized.
- 4 - Use the word "Defendant". Be sure the "D" is capitalized.

5 - Use these words: DECREE OF DIVORCE. Be sure to use capital letters only when placed as the title of your final document.

6 - Use the word "County" here.

7 - Please view the last page of this document.

7 - Please select one clause from the four choices below that best describes the grounds on which you seek your divorce. You must choose one.

a. As a result of irreconcilable differences and disputes, we both believe that our marriage should be terminated because there is absolutely no possibility that we can reconcile our differences. or

b. As a result of irreconcilable differences and disputes, we both believe that our marriage should be terminated because our personalities and temperaments are not compatible with one another and there is absolutely no possibility that we can reconcile our differences. o r

c. As a result of irreconcilable differences and disputes, we have both decided to separate and live apart and it is our intention to remain separate permanently .

