

INSTRUCTIONS & CHECKLIST

PACKET "C" -- DISSOLUTION WITHOUT CHILDREN

NOTE: If an Order of Protection has been issued by the Justice Court or Municipal Court, see Pro Se Packet K for instructions on how to transfer the Order of Protection to District Court.

NOTE: BEFORE YOU BEGIN: READ THESE INSTRUCTIONS AND FILL OUT A SENSITIVE DATA FORM

The Montana Supreme Court has enacted Court Rules for Privacy and Public Access to Court Records in Montana. These rules apply to all court records. There is certain information that you cannot put in a court record which should be maintained as confidential.

Fill out the **SENSITIVE DATA FORM** in this packet to keep the following sensitive information confidential in a court record:

- 1) Complete Social Security Numbers
- 2) Complete Financial Account Numbers
- 3) Full birth dates of any person involved in this case

Use these formats when required to put sensitive information in any court documents in this packet:

- For a social security number, use this format: **XXX-XX-1234**.
- For a date of birth, use this format: **age ____**.
- For financial account numbers, use this format: **ending in the last four digits of 1234**.

- File this form with your Petition. Keep a copy in a safe place.
- The Clerk will keep the Sensitive Information Form separately. The public will not have access to this document, unless the court orders it.

I. STARTING THE DIVORCE PROCESS ---- "DISSOLUTION":

There are LOTS of forms that will need to be completed. Take it step-by-step-- in order -- and it should make it easier for you. On the top half of the first page of every court document there is a "**heading**" which identifies the party completing the form and a "**caption**" which sets out the case description. Fill out the heading and caption on every form. Because you filed for dissolution, YOU ARE THE **PETITIONER**.

STEP 1. -- Filling Out The Forms

Note: You might want to use a pen with **blue ink** so you always know which are the originals and which are copies. Also, put N/A ("not applicable") in any spaces that don't apply to your situation.

- Form #36 Fill in every section. Sign page 13 in two places in front of a notary public.
*** Please note: The Clerk of Court's Office can notarize these documents. Notaries also can be found at banks, law offices, etc.
- Form #37 Complete and read. This is for the Clerk of District Court to sign. You will receive a copy.

- Form #38 Complete. Sign on page 6 in front of a notary public.
- Form #39 Complete and sign.
- Form #40 Complete. Sign on page 3. Your spouse will also sign page 3 to verify it was received.

STEP 2. -- Making Copies

- Make 3 copies of Form 36 (Petition)
- Make 4 copies of Form 37 (Summons)
- Make 2 copies of Documents #38, 39, and 40

STEP 3. -- Filing Your Case With Clerk of Court.

- Bring the originals and two copies of every form filled out in Step 1 (except #38) to the Clerk of District Court's Office for filing. The Clerk will assign a cause number and department number to identify your case with the Court. One copy will be for your own personal records.
- \$200.00 Fee -- cash/money order/personal check (subject to change). If you cannot afford the fee, fill out the form "Affidavit of Inability to Pay" form in this packet, Form 35. If the Judge decides you cannot afford to pay the filing fee, your fees may be waived in whole or in part.
- The Clerk will file stamp all your documents (copies and originals). The Clerk will keep the originals and give you the copies. One set is to be retained by you. One copy is for service upon your spouse. The original Summons will be retained by the Clerk of Court and they will issue a Duplicate Original to use for service.
- Form 38 & 39 - You MUST provide a copy of Form 38 to your spouse. Your dissolution file is a public file and you should not file Form 38 with the Clerk of Court. File Form 39 certifying that you have served your spouse with a copy of Form 38.

II. SERVING DIVORCE PAPERS ---- "DISSOLUTION":

STEP 4. -- Serving the Other Party.

NOTE: If there is a TOP or Order of Protection that prohibits you from contacting your spouse, service of these documents must only be accomplished following the directions in #1 or #2 below. You must not personally deliver these documents to your spouse.

There are four ways to serve the copies of documents you have now prepared on the other party.

- 1) You can give the documents to the Sheriff for delivery. You will be charged a fee. If you use this method, fill out Form 41 (Praecipe) which gives the Sheriff directions as to who and where to serve the papers. After service is made, the Sheriff will complete his record of service on page 2 and return it to you with the duplicate original Summons. Both documents then need to be filed with the Clerk of Court.

Documents to Include With the Praecipe Given to the Sheriff's Office:
Form # 36, 38, 39, 37 (Duplicate Original AND 1 copy of 37), & 40

OR

- 2) You can mail the documents (Form # 36, 38, 39, 37 & 40) to the other party. It is your responsibility to make sure the other party signs and returns the Acknowledgment of Service form. If signed and returned, file the Acknowledgment of Service form (Form 40).

OR

- 3) You can personally deliver the documents (Form #36, 38, 39, 37 & 40) to the other party, **UNLESS there is a TOP or Order of Protection in place**. It is your responsibility to make sure the other party signs and returns the Acknowledgment of Service form (Form 40). If signed and returned, file the Acknowledgment of Service form with the Clerk of Court.

OR

- 4) If you absolutely do not know where your spouse lives and cannot have the Summons served, there is the option of “Service by Publication.” **This is not intended as a substitute for other forms of service if you know where the other party is.** The Court will require you to swear under oath that you made a diligent search for the other party and what specific things you did to locate him/her for serving the Summons. You will be required to publish your summons in a local newspaper three times, once each week for 3 successive weeks. Specific information on how to serve by publication may be found at: <http://www.montanacourts.org/>, click on “Forms” and look through for “Service” under either the Dissolution or Parenting Plan packets.

******* IF 20 DAYS PASS SINCE YOUR SPOUSE WAS SERVED, AND YOUR SPOUSE HAS NOT FILED A RESPONSE TO YOUR PETITION ----- YOU MAY STILL OBTAIN A DIVORCE, BUT YOU WILL NEED TO PICK UP AND COMPLETE PACKET G, “DEFAULT.”**

III. REACHING AGREEMENT:

STEP 5. -- Final Agreements.

It is best if you are able to reach an agreement between yourselves on property.

- Form #42 Once you’ve reached agreement, complete this form and sign **before a notary public**.
- Make 2 copies of each form - one for yourself and one for your spouse.
- File original Form #42 with the Clerk of Court.
- Form #44 Complete and sign **before a notary public**. Mail copy to spouse.
- Form #45 Complete & sign **before a notary public**. Mail copy to spouse.
File #45 with the Clerk of Court. Do not file #44.

SKIP TO STEP 7.

IV. UNABLE TO REACH AGREEMENT:

STEP 6. -- Asking the Court to Decide.

- Form #43 If you can’t agree on property division, complete this form, sign, and file the original with the Clerk of Court. Mail a copy to your spouse. You should receive notice from the Court of the next step in your case.
- Form #44 Complete and sign **before a notary public**. Mail copy to your spouse.
- Form #45 Complete & sign **before a notary public**. File the original with the Court and mail copy to your spouse.

V. FINAL PAPERWORK:

STEP 7. -- Just a Little More Paperwork !!!

- Form #46 Complete - do not sign. The Judge will sign at the hearing.
- Form #47 Complete caption - do not sign. (You will sign later - see Step #14.)
- Form #48 Complete those sections you can. After the hearing you will be expected to **fully** complete the form.
- Form #49 Complete caption only.
- Form #50 If you are changing your name back to your former name as part of the divorce, complete this Order for Name Change. This will be a confidential document since it contains your birth date. This Order may then be used to change your name with various agencies such as the Dept. of Motor Vehicles, Social Security office, etc.

- Make 1 copy of Form 46, 47, 48, 49 and 50 for your records.
- Make 3 copies of Form #46. Keep one for your records.
- Deliver the originals of these forms and the two copies of Form #46 to the Clerk of Court -- **with Form #48 and 49.**
- If you have filed Form #42 (Settlement Agreement) you will be notified of the hearing date for the final decree of dissolution.
- If you have filed Form #49 (Request for Hearing) you will be notified of the hearing date to decide the issues.

VI. HEARING IN COURT:

You have chosen to represent yourself. Arrive at the courthouse early. While divorce can be very difficult and emotional, the Court expects the parties to be civil and remain focused on the legal issues.

STEP 8. -- Court Hearing - on Contested Issues.

Be prepared to present evidence to the Court and discuss your position. In order to understand what is involved in a hearing, you may wish to observe a contested family law hearing at least 30 days before your hearing. Contact the Clerk of Court for the schedule.

STEP 9. -- Court Hearing - Final Decree - Non-contested.

You have reached an agreement with your spouse and he/she has signed the Marital and Property Settlement Agreement wherein he/she consented to the entry of the final decree (Document #41a, page 5). Both parties can attend the hearing on the final decree, but it is NOT NECESSARY that your spouse attend. You should be prepared to be sworn in, sit in the witness stand, and answer any questions asked of you by the opposing party or the Judge.

VII. AFTER THE HEARING:

STEP 10. -- Final Paperwork.

- A filing fee of \$45 (subject to change) must be paid to the Clerk of Court before the Final Decree is filed. This fee is waived if the Judge approved your Affidavit of Inability to Pay at the beginning of your case.
- Copies of the Final Decree will be available at the Clerk of Court's office. The Clerk's office charges \$10 per copy. However, you have already supplied two extra copies of the Final Decree. The Clerk's office will conform these copies with the original without any cost. The Clerk should then certify the two copies. The cost for certification is \$2.00 each.
- Form #47 Complete, sign, and mail a copy to your spouse, together with one certified copy of the Final Decree (Form #43) signed by the Judge. File original Form #44 with the Clerk of Court. Filing Form #44 starts the 30-day period for appeal by either party.
- Form #50 If you are changing your name, you need a certified copy of Form # 9 after the judge signs it. You will take the certified copy of Form # 50 to the Department of Motor Vehicles and other agencies in order to change your name on your driver's license, social security card, bank accounts, etc. This is a confidential document and will be sealed in your court file