



SUMMARY DISSOLUTION

of

MARRIAGE

(WITHOUT CHILDREN)

Prepared by:
Office of Attorney General
Department of Justice
State of Montana

SUMMARY DISSOLUTION OF MARRIAGE

I. WHAT IS THIS BOOKLET ABOUT?

This booklet describes a way to end a marriage through a divorce proceeding called Summary Dissolution of Marriage. It is not intended to take the place of an attorney's advice, nor should it be relied upon as a guide for self-representation in summary dissolution proceedings.

Although you can appear in court without an attorney, it is in your best interests to consult with one in order to protect your legal interests in ending your marriage. An attorney can help you decide if this method is the right one for your situation and can give you advice concerning the division of your assets and liabilities. You may obtain legal services through lawyer referral services, group or prepaid legal services, or legal aid organizations. Attorneys' fees vary; some attorneys charge a set fee while others charge an hourly rate. Don't be afraid to ask the attorney in advance what fee will be charged. If you are not pleased with one attorney, you should feel free to consult with another one.

If you wish to use the summary dissolution proceeding you must, at the time you file the joint petition, sign a statement that says you have read and understand this booklet. You cannot qualify for summary dissolution of your marriage if you have excessive debts or property, or if you and your spouse have children together, unless you have agreed to a parenting plan and have obtained a child support and medical support order. Qualifications are explained in these instructions. It is important for you to read the entire booklet very carefully to ensure that you qualify for this type of dissolution. If you do not qualify, you may obtain a formal dissolution of marriage and probably should consult an attorney.

II. ARE YOU STILL INTERESTED IN TRYING TO SAVE YOUR MARRIAGE?

Montana law allows two persons to dissolve their marriage only when irreconcilable differences have caused irretrievable breakdown of the marriage and either the husband or the wife states that the marriage should be dissolved. If you aren't sure your marriage has completely broken down and would like to try to reconcile, there may be help available. Many communities offer marriage counseling services and a few counties have a conciliation court.

WHAT IS A CONCILIATION COURT?

The purpose of a conciliation court is to help preserve a marriage and to provide the means for reconciliation of a husband and wife and a peaceful settlement of any marital controversy. However, a conciliation court is not available in all counties. The clerk of the district court will tell you if there is one in your area.

If there is a conciliation court in your area and you want a reconciliation with your spouse or a peaceful settlement of a marital controversy, either of you can file a petition with the conciliation court. Ask the clerk of court if there is a form available. The judge of the conciliation court may hold a hearing on the dispute or refer you to a conciliation counselor. The counselor may be a pastor or director of the religious denomination to which either or both of you belong, or a psychiatrist, physician, attorney, social worker, or other person who is trained and experienced in personal counseling.

If there has been no reconciliation within 30 days after the date of the hearing in conciliation court and you and your spouse still wish to end your marriage, a petition for summary dissolution can be filed with the district court. *It is not necessary to go through the conciliation court procedure before filing for summary dissolution.*

III. WHAT IS A SUMMARY DISSOLUTION PROCEEDING?

A summary dissolution proceeding is a district court procedure to end a marriage more quickly and simply than through the regular dissolution procedure. Not everyone can use it. It is only for those people who meet the legal requirements listed below and who have no disagreements about how their belongings and their debts are going to be divided once they are no longer married to each other. It cannot be done in small claims court, justice court, or conciliation court.

A. WHO CAN USE THE SUMMARY DISSOLUTION PROCEEDING?

You can get a divorce through a summary dissolution proceeding only if ALL of the following conditions exist on the date you file the Joint Petition for Summary Dissolution. Check this list very carefully. If even one of the statements is not true for you, you cannot use the summary dissolution procedure to get a divorce.

- ___ 1. You and your spouse have lived in Montana (or either of you was a member of the armed services stationed and residing in Montana) for at least 90 days before the court formally ends the marriage (final judgment);
- ___ 2. The marriage relationship has reached the point that there is no reasonable prospect for reconciliation and both agree this is true;
- ___ 3. There are no children from your relationship born before or during the marriage or adopted during the marriage, and the wife is not pregnant

OR

If you and your spouse do have children together, the wife is not pregnant AND you have agreed upon a written parenting plan and have obtained a child support and medical support order from a court or child support enforcement agency. You will need to present a signed parenting plan and a copy of the child and medical support order to the court at the time you file your petition. IF YOU AND YOUR SPOUSE HAVE CHILDREN TOGETHER, YOU NEED TO OBTAIN THE "SUMMARY DISSOLUTION OF MARRIAGE

(WITH CHILDREN)" BOOKLET OF INSTRUCTIONS AND FORMS. DO NOT USE THE FORMS IN THIS BOOKLET.

4. Neither of you has any legal interest (ownership or lease) in any real property such as land or buildings. However, this does not apply to a lease on a residence which is occupied by either spouse as long as the lease does not have an option to purchase the residence and the lease terminates within one year from the date the petition is filed;
5. There are no unpaid, unsecured bills or obligations in excess of \$8,000 incurred by either or both of you during your marriage. An unsecured debt is one where the debtor's promise of payment is not backed by the creditor's right to receive particular property should the debtor fail to pay the debt. For example, if your neighbor loans you \$500 in exchange for only your written promise to pay the loan back by a certain time, that is an unsecured debt.
6. The total fair market value of any property or assets belonging to both of you, excluding secured obligations, is less than \$25,000. A secured debt is one where the debtor's promise of payment is backed by the creditor's right to receive particular property if the debtor fails to pay the debt. For example, when you borrow money from the bank to purchase a car, if you don't make the payment your car can be taken by the bank to pay the debt.
7. Both of you have signed an agreement agreeing to the division of property and who will be responsible for any bills or obligations. Signed documents, title certificates, bills of sale, or other evidence of transfer or agreement should be presented to the court at the time of your hearing to confirm the division and responsibilities.

In addition, you and your spouse:

8. Must give up your individual right to maintenance (financial support from the other) (see section B below);
9. Must permanently give up your individual right to appeal the terms of the dissolution and your right to move for a new trial once the marriage is formally dissolved by the court;
10. Do not want help from the conciliation court to settle any controversy, or assistance in reconciling (see Part II);
11. Have read and state that you both understand the contents of this summary dissolution booklet;
12. Indicate to the court that you both want the court to end the marriage.

B. SPOUSAL MAINTENANCE OR SUPPORT

Maintenance is financial support and assistance paid by one spouse to the other after dissolution of the marriage. Neither spouse may obtain maintenance from the other in a summary dissolution proceeding.

C. HOW IS THE PROCEEDING STARTED?

The summary dissolution proceeding is started by filing in district court a joint petition which has been signed under oath by both of you. The petition must include the required information, set out below in section D. A copy of the property settlement agreement must be attached to the petition. The agreement should be neatly typed or printed and signed by both of you. A form for the property settlement agreement is included in this booklet.

D. WHAT INFORMATION IS REQUIRED IN THE PETITION?

A sample petition form is included in this booklet. The verified petition must be signed by each of you, under oath before a notary public, and include the following information:

1. A statement that all of the required conditions listed in part A have been met (list the conditions);
2. The mailing address of each party;
3. Whether the wife wishes to have her maiden or former name restored and, if so, the name to be restored;
4. The age, occupation, and residence of each party and length of residence, date of marriage, and the place at which it was registered.

E. HOW SOON CAN THE MARRIAGE BE DISSOLVED?

The district court judge will hold a hearing sometime after 20 days from the date the joint petition is filed, at which time both of you must appear in court. Upon conclusion of the hearing the judge will consider all the facts and make his or her decision. If the judge agrees that you meet all the qualifications for summary dissolution, the judge will enter a final judgment dissolving the marriage.

F. WHAT DOES THE FINAL JUDGMENT MEAN?

A judgment is the written decision of the court. Until the final judgment is entered you are considered married. Once the judgment is entered each of you is returned to the status of a single person, at which time either is free to marry someone else. **The Final Judgment means that all marital rights and obligations have been decided, including property and maintenance.**

G. CAN THE JUDGMENT BE APPEALED OR A TRIAL REQUESTED?

The Final Judgment cannot be appealed or a new trial requested. However, in limited circumstances the Court may be asked to set aside the Final Judgment for reasons of fraud, duress, accident, mistake, or other recognized legal grounds.

An example of those grounds may be that the things you agreed to give your spouse were much more valuable than you thought; or your spouse used threats or other kinds of unfair pressure to get you to go along with the dissolution; or there are serious mistakes in the original agreement. Correcting mistakes and unfairness in a Summary Dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

A final judgment will be set aside upon proof that all the requirements of Mont. Code Ann. § 40-4-133 (see section III A above), were not met on the date the petition was filed.

H. WHAT ARE COURT COSTS FOR A SUMMARY DISSOLUTION PROCEEDING?

The usual court costs are \$185 for filing a petition for dissolution and a \$45 fee for the final judgment. Other usual charges include a stenographer fee and a document certification fee. The district judge can excuse you from paying court costs if your income is very low and you file an affidavit with the court showing your inability to pay the costs. You may obtain the affidavit form from the clerk of the district court.

IV. ARE THERE REASONS FOR STOPPING THE PROCEEDING?

There are three reasons you might want to stop the summary dissolution proceeding:

1. You have decided to return to your spouse and continue the marriage;
2. You may want to change over to the regular dissolution as a better way of getting your dissolution (i.e., you feel you will get a better settlement if you go to court);
3. The wife discovers she is pregnant.

If you wish to stop the proceeding, it must be done by filing a notice of revocation with the clerk of court BEFORE the final decree is signed by the Judge. A copy of the notice must be sent to your spouse by first-class mail, postage prepaid. A sample form is provided with this booklet.

RELEVANT MONTANA CODE ANNOTATED SECTIONS:

Part I: § 40-4-136.

Part II: §§ 40-3-111, 40-3-124 through 40-3-127.

Part III: A. §§ 40-4-130, 40-4-104; B. § 40-4-130(8); C. § 40-4-131; D. §§ 40-4-130, 40-4-131; E. § 40-4-133; F. §§ 40-4-134, 40-4-136; G. § 40-4-135, 40-4-136; H. §§ 25-1-201(1)(a), 25-1-202, 3-1-317.

Part IV: § 40-4-132.

INSTRUCTIONS FOR FILING AND COURT APPEARANCE

NOTE: BEFORE FILLING OUT THE FORMS, READ THE ENTIRE SUMMARY DISSOLUTION BOOKLET TO DETERMINE IF YOU QUALIFY FOR THE SUMMARY DISSOLUTION PROCEDURE.

1. Carefully read and fill out the Petition for Summary Dissolution of Marriage form found in this booklet. Each of you must sign it before a Notary Public. (The Notary Public must watch you sign the document.) After the petition is signed, take it to the clerk of district court in the county courthouse where you reside. The clerk will file the petition and charge you a filing fee. Call the clerk if you want to confirm the amount of the fee in advance. If you cannot afford to pay the filing fee, ask the clerk of the district court for an affidavit form to request the judge to waive the filing fee. *You must also complete and file a Montana State Case Registry and Vital Statistics Reporting Form prepared by the Department of Public Health and Human Services. The form is included in this booklet.*

Twenty (20) days or more after the date you file the petition, you can go to court and obtain your dissolution. When you file the petition ask the clerk what time and date are available for your appearance before the Judge. The clerk will assign your case a number. Write down the number and take it with you. Ask the clerk what you must do to make sure your case is scheduled for a particular day. Judges do not necessarily hold court every day.

2. On the date of your court appearance be sure to be on time. Both of you must attend. Take with you the Final Decree of Summary Dissolution found in this booklet. When you get to the courthouse, check with the clerk to make sure your case is ready to be heard and to find out where you should wait for your case to be called. Have your written asset and debt agreement with you, neatly typed or printed (see Exhibit A in this booklet), along with the documents that were signed to effectuate the agreement (such as car title, etc.). Make sure the cause number assigned when you filed the petition is written in the blank on the Final Decree. If the wife seeks to have her maiden name or other former name restored, make sure the name to be restored on the decree is identical to the name to be restored on the petition.

3. When the Judge calls your case, approach the Judge's bench and prepare to be sworn in by the court clerk who sits near the Judge. Each Judge has his/her own procedures in dissolution hearings. Some Judges may ask few or even no questions. Others may inquire as to the statements in your petition. If the Judge directs the hearing, answer the questions asked. If the Judge asks you to proceed, each of you can make a short statement. Be prepared to tell the Judge that your marriage is irretrievably broken, that you have lived in Montana for more than ninety (90) days, that there are no children and the wife is not now pregnant, and that you have divided your debts and property.

4. Once you are finished, the Judge will usually grant your dissolution and sign the Decree. In some courts the Judge will hand you the file and ask you to return it to the clerk

of court. IF THE JUDGE DOES GIVE YOU THE FILE, IT IS IMPORTANT THAT YOU RETURN IT IMMEDIATELY TO THE CLERK OF COURT so your dissolution can be recorded and the court file doesn't get misplaced. The clerk of court keeps the original signed Decree, but you can get certified copies from the clerk if you need them. The dissolution is final as of the time the Judge signs the Decree.

1 WIFE:
2 Name _____
3 Address: _____
4 Phone Number: _____

4 HUSBAND:
5 Name _____
6 Address: _____
7 Phone Number: _____

7 MONTANA, _____ JUDICIAL DISTRICT COURT
8 COUNTY

9 IN RE THE MARRIAGE OF _____, Wife, 10 and 11 _____, Husband, 12 Joint Petitioners.	Cause No. Judge JOINT PETITION FOR SUMMARY DISSOLUTION OF MARRIAGE (WITHOUT CHILDREN)
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14 The Petitioners jointly request this Court to issue a decree for summary dissolution
15 of marriage based upon the contents of this petition and subsequent hearing.

16 The parties certify to the Court as follows:

17 BASIC INFORMATION ABOUT THE PARTIES

- 18 I. We have read and understand the booklet issued by the Montana Attorney General
19 entitled SUMMARY DISSOLUTION OF MARRIAGE (WITHOUT CHILDREN).
- 20 II. We have both lived in Montana for at least ninety (90) days or have otherwise met
21 residency requirements. Wife has resided in Montana since _____,
22 husband has resided in Montana since _____.
- 23 III. We were married on _____, 19____, (Month, Day, Year) at
24 _____ (City, County, State). The marriage
25 is registered at _____ (City, County, State).
- 26 IV. The occupation of the wife is _____.
27 The occupation of the husband is _____.

1 V. We both want our marriage dissolved because irreconcilable differences have
2 caused the irretrievable breakdown of our marriage. We do not want help from the
3 conciliation court to settle any controversy or assistance in reconciling.

4 VI. We both agree to appear at a hearing before this Court.

5 VII. There are no children from our relationship born before or during the marriage or
6 adopted during the marriage and the wife is not now pregnant.

7 VIII. Our Social Security numbers are: wife _____
8 husband _____. *[Please note: if you wish to keep your*
9 *Social Security numbers confidential, leave this paragraph blank, write your*
10 *Social Security numbers on a separate sheet of paper, and prepare a written*
11 *request to the Clerk of the District Court to keep the numbers confidential.]*

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OUR ASSETS AND DEBTS

14 IX. Neither of us owns any land, nor do we have a residential lease that ends more than
15 one year from the date we sign below.

16 X. The total value of all our assets in the name of husband and wife, or in both our
17 names, minus any debts that are secured by those assets, do not total more than
18 \$25,000.

19 XI. All our unsecured obligations incurred after the date of our marriage, in the name of
20 husband or the name of wife, or in both our names, do not total more than \$8,000.

21 XII. We have divided our assets and debts as set forth in EXHIBIT A attached. The
22 division of our assets is fair and equitable to both of us.

23

MISCELLANEOUS PROVISIONS

24 XIII. If the wife seeks restoration of her former name, the name to be restored is set out
25 here in full:

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27 XIV. Upon entry of the judgment for summary dissolution of marriage, we both waive

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(USE THIS FORM ONLY IF YOU WISH TO STOP THE PROCEEDING BEFORE THE JUDGE HAS SIGNED THE FINAL DECREE)

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN RE THE MARRIAGE OF

Cause No. _____

Wife,

and

Husband.

NOTICE TO REVOKE PETITION FOR SUMMARY DISSOLUTION

I, _____, hereby request the Court to revoke the Petition for Summary Dissolution of Marriage because:

- 1. ___ I have decided to return to my spouse and continue the marriage.
- 2. ___ I want to change to the regular dissolution procedure.
- 3. ___ The wife is pregnant.

I certify that a copy of this Notice was mailed to my spouse at the following address, _____ first-class mail, postage-prepaid, on the ___ day of _____, _____.

DATED this ___ day of _____, _____.

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MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN RE THE MARRIAGE OF

Cause No. _____

Wife,

and

Husband.

FINAL DECREE OF SUMMARY DISSOLUTION OF MARRIAGE

The parties filed a joint petition for summary dissolution of their marriage. Both petitioners appeared in Court in open hearing and testified in support of the petition.

FROM THE EVIDENCE AND PLEADING, THE COURT FINDS:

1. That the parties have both signed the Petition for Summary Dissolution.
2. That there are irreconcilable differences causing the irretrievable breakdown of the marriage.
3. That the parties have read and understand the booklet entitled SUMMARY DISSOLUTION OF MARRIAGE and have met its requirements and qualify for dissolution of marriage under Mont. Code Ann. § 40-4-130.
4. That the parties have no children from the relationship born or adopted before or during the marriage and the wife is not now pregnant.

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5. That the parties have entered into a written agreement regarding the debts and property of their marriage and have executed all documents required to enact its provisions.
6. That all the requirements set out in the summary dissolution statutes have been met.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this cause.
2. The marriage of the parties is irretrievably broken.
3. The parties waive any right to maintenance and upon entry of this final decree irrevocably waive their respective rights to appeal or move for a trial on the terms of the dissolution of the marriage.

FROM THE FOREGOING FINDINGS AND CONCLUSIONS, THE COURT ENTERS THE FOLLOWING DECREE:

1. The marriage of the parties is dissolved.
2. The former name of the wife is restored as requested to _____
_____.
3. The assets and debts of the parties shall be distributed between them equitably in accordance with Exhibit A to the petition. Both parties shall promptly sign all documents reasonably necessary to accomplish this distribution of assets and debts.

ENTERED this _____ day of _____, _____.

DISTRICT COURT JUDGE

**MONTANA STATE CASE REGISTRY
AND VITAL STATISTICS REPORTING FORM
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

For Use in Summary Dissolution of Marriage Only

County _____ Judicial District No. _____ Cause No. _____

Date Decree Signed _____

County that Issued Marriage License _____

City, County, State of Marriage _____

Date of Marriage _____

1 **Mother/Wife:** (Payee/payer status = N/A) Maiden Name: _____

Name: _____ SSN: _____ Telephone: (____) _____
Last First Middle/Suffix

Mailing Address: _____
Street City State Zip

Residential Address (if different from above): _____

Date of Birth: _____ Place of Birth: _____ Race: _____
State / Foreign Country

Occupation: _____ Number of this marriage (1st, 2nd, etc.): _____

Date, City & State of previous marriage(s): _____

2 **Father/Husband:** (Payee/payer status = N/A)

Name: _____ SSN: _____ Telephone: (____) _____
Last First Middle/Suffix

Mailing Address: _____
Street City State Zip

Residential Address (if different from above): _____

Date of Birth: _____ Place of Birth: _____ Race: _____
State / Foreign Country

Occupation: _____ Number of this marriage (1st, 2nd, etc.): _____

Date, City & State of previous marriage(s): _____

3 **This form was completed by:** Name / Title: _____

Telephone: _____ Signature: _____ Date: _____