

# DEFENDANT'S CHECKLIST FOR DIVORCE WITH MINOR CHILDREN

These forms are related to specific South Dakota Codified Laws (SDCL) concerning divorce matters. You can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide legal advice or assist with form completion. For specific questions related to the forms, you can also contact the Legal Form Help Line at 1-855-784-0004 or email UJS staff at [ujssrlhelp@ajs.state.sd.us](mailto:ujssrlhelp@ajs.state.sd.us).

## **Before You Begin**

If you've received a Summons and Complaint from your spouse for a divorce proceeding, you will be designated as the Defendant on all divorce forms, while your spouse will be the Plaintiff. This form serves as a simple checklist outlining the steps for the Defendant in a divorce proceeding. Each form mentioned in this checklist will include detailed instructions.

If you are the spouse who initiated the case, please refer to the Plaintiff's Checklist for Divorce with Children.

Remember that all original copies of any form must be filed with the Clerk of Court, who will provide you with filed stamped copies. Before submitting anything to a Sheriff, process server, or opposing party, make sure to retain a copy for your own records.

## **Answering a Summons and Complaint**

If you've been served with a Summons and Complaint for Divorce, you have thirty days from the date of service to file an Answer. Failing to do so could lead to a Default Judgment against you. To complete and file your Answer, follow these steps:

- Read and follow the Temporary Restraining Order: The Summons includes a Temporary Restraining Order, which automatically takes effect when a divorce is initiated and you, as the Defendant, have been served. Both parties are required to obey it. Violating any of the terms outlined in the Order could result in penalties and delay the divorce process. Take the time to carefully read and understand it.
- Complete a Case Filing Statement (UJS-232) with both your demographic information and your spouse's demographic information. It is important to know that your social security number and date of birth are required when filing a divorce action with children.
- Complete the Financial Affidavit (UJS-023).
- Complete the Answer (UJS-318).
- Complete an Affidavit of Mailing (UJS-318).
- File the original copies of each of the forms listed above with the Clerk of Court in the county the case was initiated in, along with the required \$25 filing fee.
  - If you cannot afford the \$25 Answer fee, please complete the Motion to Waive Filing Fee (UJS-022) and submit with the above forms in lieu of the \$25.
- Mail a copy of the above forms to the Plaintiff.

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## South Dakota Parenting Course

According to South Dakota law, all parties involved in an action related to child custody or parenting time must complete a court-approved parenting course within sixty days of being served with the Summons and Complaint. Failure to comply may result in delays in finalizing the divorce proceedings.

1. **Course Requirement:** Both parents must complete a court-approved parenting course. The course aims to educate participants about the impact of divorce proceedings on children.
2. **Waiver or Delay:** Participation in the course can only be waived or delayed if:
  - a. Good cause is shown.
  - b. The individual has previously completed a court-approved course within the last five years.
3. **Course Information:** For more details about court-approved parenting classes, visit the South Dakota Unified Judicial website:  
[https://uj.s.sd.gov/Parenting\\_Education/Default.aspx](https://uj.s.sd.gov/Parenting_Education/Default.aspx)
4. **Requesting a Waiver:** If you believe you have good cause to waive the required parenting course, complete and file the Affidavit on Court-Approved Parenting Course (UJS-364) form and file the original with the Clerk of Court.

## Stipulated Divorce

If/When both parties come to an agreement regarding the terms and conditions of their divorce, it is referred to as a stipulated divorce. If such an agreement has been reached, both parties are required to complete and file the following forms:

- Stipulation and Settlement Agreement with Minor Children (UJS-325). This form must be initialed and signed by both parties in front of a notary or the Clerk of Court.
- Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce (UJS-319B). Both parties need to sign this affidavit in front of a notary or the Clerk of Court.
- File the originals of the completed forms with the Clerk of Court.

## Finalizing a Stipulated Divorce

If both parties have signed the Stipulation, filed it with the Clerk of Court, and the sixty-day waiting period has elapsed since the Defendant was served with the Summons and Complaint, you may proceed as follows:

- Complete form UJS/DSS-089 and file with the Clerk of Court.
- Complete the Judgment and Decree of Divorce Stipulation and Agreement with Children (UJS-326B): Fill out this form and either file the original with the Clerk of Court

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or bring it to your hearing if one is required. Carefully read the instructions and complete the form as directed. Please contact the Clerk of Court to determine whether a hearing is required or not.

- Judgment and Decree of Divorce Signing: If granted, the Judge will sign the Judgment and Decree of Divorce.

### **Notice of Entry of Judgment and Decree of Divorce**

Once the Judge has signed the Judgment and Decree of Divorce, the Court will provide you with signed certified copies. To finalize the process, follow these steps:

- Complete and File the Notice of Entry: You may obtain this form from the Clerk of Court. Depending on the county, either the Clerk will complete the form for you or provide you with the form for completion. Check with the Clerk of Court in your county.
- Complete the Affidavit of Mailing: You may obtain this form from the Clerk of Court. Again, depending on the county, either the Clerk of Court will complete it or provide you with the form for completion. Check with the Clerk of Court in your county.
- File the originals of both the Notice of Entry and the Affidavit of Mailing with the Clerk of Court.
- Mail a copy of the Notice of Entry, the Affidavit of Mailing, and the signed, certified copy of Judgment and Decree of Divorce (UJS326A) to the opposing party.

**\*Steps under "Finalizing a Stipulated Divorce" can be completed by either party \***

### **Dismissing the Divorce**

If the parties reconcile before the Judge grants the divorce, the divorce action may be dismissed by both parties signing a Stipulation and Order for Dismissal (UJS-328) and filing the original with the Clerk of Court.

### **Contested Divorce**

A contested divorce arises when a couple cannot find common ground regarding the decisions necessary to terminate their marriage. In such cases, they proceed to Court, where a Judge adjudicates the divorce-related matters. The forms contained in this packet do not cover contested divorces. This would be when the parties are encouraged need to seek legal representation.

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For more information on your case or to track events you may register as a user on eCourts, at: <https://ecourts.sd.gov/Account/Login.aspx?ReturnUrl=%2f>.