

INSTRUCTIONS AND FORM FOR STIPULATION AND SETTLEMENT AGREEMENT WITHOUT MINOR CHILDREN

These forms are related to specific South Dakota Codified Laws (SDCL) concerning divorce matters. These can be found on the South Dakota Legislature website at. 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@uds.state.sd.us.

IMPORTANT NOTICES:

The Stipulation and Settlement Agreement is an agreement made between the Plaintiff and the Defendant on the dissolution of marriage. The Stipulation and Settlement Agreement is required for the Court to grant a divorce without either party appearing in court. In some cases, a hearing may still be required.

To complete this form, you will need to:

- ☐ Read each page in detail.
- ☐ Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, name of the Plaintiff and Defendant on the lines provided, and case filing number.
- ☐ Pages 1 and 2 – Read and fill in the lines provided.
- ☐ Page 3 Number 3 Section C – List property that the Plaintiff will receive as a part of the divorce. Property would include vehicles, boats, motorcycles, ATV/Mobile homes, etc. Include make and model number for each.
- ☐ Page 3 Number 3 Section D – List property the Defendant will receive as part of the divorce. Property would include vehicles, boats, motorcycles, ATV/Mobile homes, etc. Include make and model number for each.
- ☐ Page 4 Number 3 Section E – List any property that either party has possession of but is to be given to the other party within thirty days of entry of the Judgment and Decree of Divorce.
- ☐ Page 5 Number 4 Sections A and B – List any debt each party will be responsible for. This will include debt such as credit cards, banks loans, personal loans, vehicle loans, outstanding bills, student loans, medical bills, etc.
- ☐ Page 6 Number 5 – Set the timeframe for the parties to remove the others name from any property or debt received as a part of this Agreement.

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SETTLEMENT AGREEMENT WITHOUT MINOR CHILDREN**

- ☐ Page 7 Number 6 – Provides for the parties to more closely equalize the property and debt distribution by requiring one party to make an equalization payment to the other party. If the parties believe the distribution of assets and debts is equal, you should mark the second box.
- ☐ Pages 7 and 8 Number 7 Sections A through C – Request the distribution of real property such as houses, land, and buildings.
- ☐ Page 9 Number 8 Sections A and B – List investment and retirement account information, if any, and the division of each.
- ☐ Page 10 Number 9 – Include life insurance information, if any, and the division of such.
- ☐ Pages 10 and 11 Number 10 – Mark if either party is currently a member of the military.
- ☐ Page 12 Number 11 – Select whether alimony is appropriate and if so, enter the amount and payment details.
- ☐ Page 12 Number 12 – Enter income tax return agreement.
- ☐ Page 12 Number 13 – Indicate if either the Plaintiff or Defendant would like to be restored to a maiden or former name and if so, provide that information.
- ☐ Page 13 number 14 – Provide any other agreement the Plaintiff and Defendant have agreed upon if not listed previously.
- ☐ Page 13 number 15 – Select if either party is awarded attorney fees.
- ☐ Each page must be initialed by each party.
- ☐ Each party will need to sign and date.

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

:SS

COUNTY OF _____

)

_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff</p> <p>v.</p> <p>_____, Defendant</p>	<p>Case No.: _____</p> <p>STIPULATION AND SETTLEMENT AGREEMENT (WITHOUT MINOR CHILDREN)</p>
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THIS STIPULATION AND SETTLEMENT AGREEMENT (WITHOUT MINOR CHILDREN), made and entered into this _____ day of _____, 20_____, by and between the Plaintiff, _____ and the Defendant, _____. Within this document we understand that we may be referred to individually as Plaintiff/Defendant, or together as party(ies).

WHEREAS, the parties were married in the City of _____, in the State of _____, on the _____ day of _____, 20_____, and ever since that time have been and are now married; and

WHEREAS, irreconcilable differences and disputes have arisen between the parties and have or will separate with the intent to live apart; and

WHEREAS, Defendant was served with a true and correct copy of the Summons and Complaint (without Minor Children) on the _____ day of _____, 20_____, and;

WHEREAS, At the time of the commencement of this divorce action Plaintiff resided in the City of _____, in the County of _____, in the State of _____, and presently

Plaintiff's Initials

Defendant's Initials

resides in the City of _____, in the County of _____, in the State of _____, and the Defendant at the time of the commencement of this divorce action resided in the City of _____, in the County of _____, in the State of _____, and presently resides in the City of _____, in the County of _____, in the State of _____.

Both parties agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue; and

WHEREAS, the parties agree that they currently have no minor children of the marriage or relationship and neither Plaintiff or Defendant is currently pregnant.

WHEREAS, the parties hereto now desire to enter into an Agreement settling all claims, property division, and all other matters between the parties regarding this divorce action,

NOW THEREFORE, it is hereby stipulated and agreed by and between the parties herein as follows:

1. **Release.** Except as stated in this agreement, each party is released from any future obligations or responsibilities for the other parties actions. Both parties are free from any debts, liabilities, or claims the other may incur after this agreement. This agreement is meant to settle all matters between the parties, unless stated otherwise.
2. **After-Acquired Property.** Any and all property, whether real or personal, acquired by either party from and after the date of this agreement shall be the sole and separate property of the person who acquired the property, and each of said parties respectfully grants to the other all such other and future acquisitions of property as the sole property of the one acquiring the same.
3. **Property Division:** The parties agree that the following marital property shall be divided as follows and such division is equitable:

A. Clothing, Personal Effects, Personal Property: Each of the parties shall receive their own clothing, personal effects, and all personal property in their possession, free and clear of any claim from the other, unless otherwise specified herein.

B. Photographs, Memorabilia: The parties agree to equally split the photographs and any special memorabilia acquired during the marriage/relationship within ninety days of signing of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Plaintiff shall exclusively receive, as their sole and separate property, the following items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

D. Defendant shall exclusively receive, as their sole and separate property, the following items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

E. Property in Possession of the Other: If Plaintiff has property to be given to Defendant, then Plaintiff shall, within thirty days of execution of this

Agreement, give to Defendant the following personal property items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

and Defendant shall, within thirty days of execution of this Agreement, give to Plaintiff the following personal property items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

F. Checking and Savings Accounts: It is acknowledged by the parties, that they have divided their bank accounts, including checking and/or savings accounts. Each party shall maintain exclusive ownership of the cash balance in their individual accounts, without any claims from the other party. Furthermore, any joint accounts that remain, shall be promptly closed and the funds shall be divided equally between the parties.

G. Tax Consequences: The parties agree that the above transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on their tax returns filed after this

Agreement is signed.

4. Debt Division: The parties agree the following marital debt of the parties shall be divided as follows: *(list all debts and outstanding balances incurred by one or both parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans, medical bills, etc.):*

A. Plaintiff shall be solely responsible for and take over the following debts:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

B. Defendant shall be solely responsible for and take over the following debts:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

C. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts they incur from the date of signing this Agreement. Each party agree not to incur any debt or liability that could potentially hold the other party, their property, or estate responsible in the future.

D. Unless stated otherwise, any unpaid debts from the marriage not covered in this document will be the responsibility of the person who incurred them. Each party agrees to protect the other from any liability for these debts.

E. Unless stated otherwise, each party promises to protect the other from any debts or liabilities they individually owe or will owe in the future. Each party will promptly apply to have the debts they are responsible for officially transferred or assumed by them, so the other party is released from responsibility. However, neither party can guarantee that creditors will agree to release them from liability. If a creditor denies the release, both parties will continue to apply for it periodically.

5. As set forth above, the party receiving the property or debt listed in this Agreement shall assume receipt commencing on the date of this Agreement. Further, the party receiving the asset or debt obligation, shall remove the other party's name from it within _____ days from entry of the Judgment and Decree of Divorce. The other party shall also cooperate in transferring titles to the party receiving the asset(s) once their name is removed.

6. In respect to equalizing the property distribution, the parties agree (**check one**):

☐ That **Plaintiff / Defendant (circle one)** shall pay to the other the amount of \$_____ to equalize the property/debt distribution within _____ days of entry of the Judgment and Decree of Divorce;

OR

☐ That the allocation of personal property and debt is equitable, and no amount is necessary to equalize the distribution.

7. **Real Property (house, land or buildings):**

☐ The parties have no real property (*check if applicable and then proceed to #10*).

☐ The parties have an interest in the following real property:

A. Physical Address: _____

B. Legal description (obtained from a document such as a Warranty Deed, Mortgage or Title Insurance):

C. Regarding the property, the parties agree (check one):

- ☐ That the **Plaintiff / Defendant (circle one)** will receive the house/land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$_____.
(Value - Debt(s) = Equity)
The party receiving the real estate shall pay \$_____ to the other to equalize this division within _____ days of entry of the Judgment and Decree of Divorce. If there is a mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within _____ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and shall sign a quit claim deed releasing all interest in the property to the other party.

OR

- ☐ The parties agree that the house/land and all the fixtures therein and/or the improvements thereon shall be listed for sale by _____, 20____ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor, and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market

value. While the sale is pending **Plaintiff / Defendant / Not Applicable (circle one)** shall have exclusive possession of the marital home if they do not commit waste thereto. Commencing _____, 20_____, the parties agree that **Plaintiff / Defendant / Not Applicable (circle one)** shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agreed that the net proceeds of the sale of the home shall be divided with Plaintiff receiving _____% and Defendant receiving _____%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Plaintiff receiving _____% and Defendant receiving _____%. The parties agree, if they are not able to file a joint return, **Plaintiff / Defendant (circle one)** shall claim the real estate taxes on their 20_____ income tax return and **Plaintiff / Defendant (circle one)** shall claim the mortgage interest on their 20_____ income tax return.

8. Investments and Retirement Funds and Pension Plans: Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirement and investment accounts and you are strongly advised to consult an attorney if you are dividing such property.

A. The parties agree (check the appropriate box):

- ☐ Each party specifically waives any and all claims, if any, to the other's 401K, IRA, stock options, retirement, pension, and profit-sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or will become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including both present and future benefits;

OR

☐ Effective the date this Agreement is signed by both parties, the Plaintiff shall receive the following investments and retirement accounts (list the current value of each): _____

_____ and;

Effective the date this Agreement is signed by both parties, the Defendant shall receive the following investments and retirement accounts (list the current value of each): _____

B. The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

9. **Life Insurance.** Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree **(check one)**:

☐ The parties do not have any life insurance policies to distribute;

OR

☐ The parties agree to the allocation of the life insurance policies as follows:

Plaintiff shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium associated with said policy:

Defendant shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium associated with said policy:

10. **Military Benefits (If one of the parties is a military member) (check one)**

☐ **Plaintiff / Defendant (circle one or both, if applicable)** confirms they are not currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

OR

☐ **Plaintiff / Defendant (circle one or both, if applicable)** was a member of the military (includes the National Guard and Reserves) during the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, and the Survivor Benefit Plan. There are numerous and complicated laws, and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Service to understand and protect all benefits you may be entitled to. When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Service and, if necessary, an Order requiring Survivors Benefit Protection (SBP).

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that they were in service (ex. 1992–2004) and the specific years of service during marriage (ex. 1994-2004):

In respect to military benefits of the service member, the parties agree as follows:

11. Alimony (Spousal Support). Please check the appropriate box and fill in the appropriate blanks. (*You are strongly encouraged to consult with an attorney before completing this section*):

☐ **Plaintiff / Defendant (check one)** shall receive alimony in the sum of \$_____ each month beginning the 1st of _____, 20____ for the following duration:

☐ A period of _____ months;

☐ Until remarriage of the person receiving alimony or death of either party.

OR

☐ No alimony of any kind shall be granted to either party. Both parties waive any right they may have to alimony and accepts this Agreement (without Minor Children) in full and final satisfaction of all marital claims.

12. Income Tax Returns. The parties agree to share historical accounting and tax information, documents and records with the other as may be necessary for each to prepare a complete and accurate income tax return for subsequent tax years. The parties agree:

☐ File a joint tax return if possible for the _____ tax year, if allowed by law, and share the expenses and tax liability or refund as follows: _____% to Plaintiff and _____% to Defendant;

OR

☐ File as single persons for the _____ tax year. Starting with the tax year that the Judgment and Decree of Divorce is signed, the parties

shall file as single persons on their IRS returns and every year thereafter.

- 13. Former Name.** If one party would like their maiden name or former name restored to them, complete this section: *(Leave section blank if not applicable)*

Plaintiff / Defendant (circle one), presently known as

_____, DOB _____, will be restored to their full former or maiden name of:

_____ in any Judgment and Decree of Divorce issued herein and will be known hereafter as: _____

- 14. Other Agreements Not Covered Previously.**

- 15. Attorney's Fees.** *(Check one if appropriate and fill in where necessary):*

☐ Each party shall be solely responsible for their own attorney fees, costs and expenses incurred in this proceeding.

OR

☐ **Plaintiff / Defendant (circle one)** will pay the sum of \$_____ towards the attorney fees, costs and expenses of their spouse within _____ days of entry of the Judgment and Decree of Divorce.

- 16. Address.** Until all provisions herein are satisfied, the parties agree that each will promptly notify the other of any change of address and/or telephone number.

- 17. Other Documents.** The parties shall, at any and all times upon request by the other party or their legal representative, make, execute, and deliver any and all such other and further documents as necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

18. Grounds. The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL § 25-4-17.3. The parties have executed a Statement of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the Court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.

19. Interference. The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

20. Enforcement. The parties agree this Agreement shall be binding upon them until otherwise mutually agreed or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or if one party determines modifications are necessary without consent of the other party, each shall be free to petition the Court to have this Agreement modified/enforced in accordance with the law.

21. Release of Inheritance Rights. Unless otherwise specified herein, each party releases all rights to shares in the estate of the other or shares in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed after the date of this Agreement.

22. Modification and Waiver. Any modification/waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement and approved by the Court. The failure of either party to insist upon strict performance of any of the provisions shall not be construed as waiver of any subsequent default of the same or similar nature.

23. Partial Invalidity. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

24. Titles. The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.

25. Conflict of Laws. This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

26. Waiver and Incorporation. The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce. It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

27. Written Memorandum. This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

28. Ratification.

A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.

B. The parties represent to the Court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The parties acknowledge that it is a legal document and binding upon them.

C. Each party promises and guarantees to the other: (a) they have fully disclosed the existence of and value of all assets and debts in which they have any interest whatsoever; and (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them individually, or in conjunction with a third party;

and (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct. Signed on the _____ day of _____,
(Date) (Month)
_____ at _____.
(Year) (City or other location, and State)

Plaintiff Signature

Plaintiff Printed Name

I declare under penalty of perjury under the law of South Dakota that the foregoing is true and correct. Signed on the _____ day of _____,
(Date) (Month)
_____ at _____.
(Year) (City or other location, and State)

Defendant Signature

Defendant Printed Name