

General Definitions

Affidavit:

An affidavit is a written document signed under oath and made without prior notice to the opposing party.
SDCL 19-3-2

Alimony (also known as spousal support):

SDCL 25-4-41. Allowance for support when divorce granted. Where a divorce is granted, the court may compel one party to make such suitable allowance to the other party for support during the life of that other party or for a shorter period, as the court may deem just, having regard to the circumstances of the parties represented; and the court may from time to time modify its orders in these respects.

- There are different types of alimony, including:
 - General – an allowance for support and maintenance; the sole object is the provision of food, clothing, habitation and other necessities for support of the spouse.
 - Rehabilitative – awarded to enable a former spouse to refresh or enhance his/her job skills he/she needs to make a living; purpose is to put the former spouse in a position to upgrade his/her economic marketability
 - Restitutional –awarded to reimburse one spouse’s contributions during marriage to the advanced training or education of the other spouse.

There are different factors considered when evaluating each type of alimony. You should consult an attorney when determining whether you qualify for alimony.

Grounds for divorce:

“Grounds for divorce” means the reasons you are seeking a divorce. The reasons that are legally acceptable are set forth in SDCL 25-4-2 as follows:

- 1) Adultery – the voluntary sexual intercourse of a married person with one of the opposite sex to whom he or she is not married. *See also* SDCL 25-4-3.
- 2) Extreme Cruelty – the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage. *See also* SDCL 25-4-4.
- 3) Willful Desertion – the voluntary separation of one of the married parties from the other with intent to desert. SDCL 25-4-5. *See also* SDCL 25-4-8 to 25-4-14, -17 for special conditions or circumstances applicable to willful desertion.
- 4) Willful Neglect – the neglect of a person to provide the common necessities of life for his or her spouse, when having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation. *See also* SDCL 25-4-15, -17.
- 5) Habitual Intemperance – that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. *See also* SDCL 25-4-16, -17.

- 6) Your spouse has been conviction of Felony.
- 7) Irreconcilable Differences – this is the “no fault” reason for divorce. Irreconcilable Differences is where the parties agree that there are substantial reasons for not continuing the marriage and the marriage should be dissolved. SDCL 25-4-17.7. Generally, both parties must agree to use irreconcilable differences as the reason for the divorce. SDCL 25-4-17.2

Minor children:

SDCL 25-5-18.1. Parental duty to support child. The parents of any child are under a legal duty to support their child in accordance with the provisions of § 25-7-6.1, until the child attains the age of eighteen, or until the child attains the age of nineteen if the child is a full-time student in a secondary school. If it is determined by the court that the child support obligation survives the death of the parent, the amount due may be modified, revoked, or commuted to a lump sum payment by the court, taking into consideration all factors deemed relevant, including the financial resources of the child and the other parent and the needs of the decedent's family.

SDCL 25-4-45: Child custody provisions – Modification – Preference of child. In an action for divorce, the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same. In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child's temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. As between parents adversely claiming the custody, neither parent may be given preference over the other in determining custody.

SDCL 25-5-7.1: Order for joint legal custody – Factors for court's consideration. In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those aspects between the parties based on the best interest of the child. If it appears to the court to be in the best interest of the child, the court may order, or the parties may agree, how any such responsibility shall be divided. Such areas of responsibility may include the child's primary physical residence, child care, education, extracurricular activities, medical and dental care, religious instruction, the child's use of motor vehicles, and any other responsibilities which the court finds unique to a particular family or in the best interests of the child. If the court awards joint legal custody, it may also order joint physical custody in such proportions as are in the best interests of the child, notwithstanding the objection of either parent. (effective July 1, 2012).

SDCL 25-8-64: Disestablishment of Paternity. If a father discovers that he is not the biological father of his child, he must get a genetic test to exclude himself as the father or establish that another man is the biological father by the standards set forth in SDCL 25-8-58 (which refers to the genetic testing). The Court may set aside the presumption of paternity or prior determination of paternity after considering 9 factors. *See also* SDCL 25-7-7.7 (once paternity is disestablished, the child support order is automatically terminated on the date the disestablishment order is entered).

Property:

SDCL 25-4-45.1: Fault is not considered in awarding property.

SDCL 25-4-44: When a divorce is granted, the courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of the Husband or the Wife. In making such division of the property, the court shall have regard for equity and the circumstances of the parties.

When determining whether property is marital or non-marital, there are specific factors utilized by the court. You should consult an attorney if you have questions about property.

Order Regarding Filing Fee and Service of Process Fee:

This document is a court order signed by a Judge ordering that either the filing fees or sheriff's service fees (or both) not be charged to the plaintiff. In order to get this Order, a Motion and Affidavit to Waive Fees must be filed first.