

# PLAINTIFF'S CHECKLIST FOR DIVORCE WITHOUT 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@uj.s.state.sd.us](mailto:ujssrlhelp@uj.s.state.sd.us).

## **Before You Begin**

If you are the spouse initiating the divorce, you will be designated as the Plaintiff on all forms. Your spouse will be referred to as the Defendant. This form serves as a simple checklist outlining the steps for the Plaintiff in a divorce proceeding. Each form mentioned in this checklist will include detailed instructions.

If you have already received a Summons and Complaint, consult the Checklist for Divorce without Minor Children (Defendant's Checklist).

Divorce actions can only be filed in the county in which you or your spouse reside.

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

## **Starting a Divorce**

- Complete a Case Filing Statement (UJS-232) with both your demographic information and your spouse's demographic information.
- Complete the Summons (without Minor Children) (UJS-309).
- Complete the Complaint (without Minor Children) (UJS-310) and sign in front of a notary or the Clerk of Court.
- Complete the Financial Affidavit (UJS-023) and sign in front of a notary or the Clerk of Court.
- File the original copies of each of the forms listed above with the Clerk of Court along with the required \$95 filing fee.
  - If you cannot afford the \$95 filing fee, please complete the Motion to Waive Filing Fee (UJS-022) and submit with the above forms in lieu of the \$95.
- Serve the Defendant with the Summons, the Complaint, and a blank Case Filing Statement (UJS-232).
  - For more detailed instructions on how to serve the Defendant, please refer to the Instruction for Service of Summons and Complaint without Minor Children (UJS-315).

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- File the proof of service with the Clerk of Court (ex. Sheriff Return, Certificate of Service, etc.)

### **PLEASE NOTE: CERTIFIED MAIL IS NOT CONSIDERED PROPER SERVICE**

#### **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 without Minor Children (UJS-324). All pages 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-319A). 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 the Judgment and Decree of Divorce Stipulation and Agreement without Children (UJS-326A): Fill out this form and either file the original with the Clerk of Court 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 of Court will complete the form for you or provide you with the form for completion. Check with the Clerk of Court in your county.

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- 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 the Judgment and Decree of Divorce (UJS326A) to the opposing party.

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

### **Default Divorce**

If it has been at least sixty days since the Defendant was served with the Summons and Complaint, and they have failed to file an Answer, you may request a Default Divorce by following these steps:

- Complete the Affidavit of Default (UJS-321A) along with the Application for Judgment and Decree of Divorce Default (UJS-321B).
- Complete the Affidavit of Military Status (UJS-306).
- Complete the Affidavit of Mailing (UJS-321D). Mark which forms are being mailed.
- File the originals of all documents with the Clerk of Court.
- Mail a copy of the above-listed forms to the opposing party.

### **Hearing on Application for Default Divorce**

If a hearing on the Application for Default Divorce is required, you will need to complete the following steps as well:

- Complete the Notice of Hearing (UJS-321C). The Clerk of Court or Court Administration will provide you with a hearing date and time.
- Complete an Affidavit of Mailing (UJS-321D). Mark which forms are being mailed.
- File the originals with the Clerk of Court.
- Mail a copy of the documents to the opposing party.
- Attend the hearing on the date and time that was provided to you for the Notice of Hearing. Bring the completed copy of the Judgment and Decree of Divorce without Children (Default) (UJS-322A) for the Judges review.

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## **Default Divorce Granted**

If the Court grants your Application for Default Judgment, a signed, certified copy of the Judgment and Decree of Divorce (Default) will be provided to you, and you will need to do the following:

- 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 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 (Default) to the opposing party.

## **Dismissing the Divorce**

If the parties reconcile before the Judge grants the divorce, the divorce action may be dismissed. You will choose one of the following options:

- Stipulation and Order for Dismissal (UJS-328): Use this form if both parties agree to dismiss the divorce action and file the original with the Clerk of Court.
- Motion and Order for Dismissal (UJS-329): If the Plaintiff wishes to dismiss the action and the Defendant has not yet filed an Answer, this form should be used, and the original filed 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 to seek legal representation.

**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>.**