

Petition for Marriage Dissolution

I. BACKGROUND:

A petition for dissolution of marriage is the legal document that is filed with a state court when either party desires to dissolve a marriage that was legally entered into.

Divorce is very specific to each individual state so it will be imperative that you check the local laws where you intend to file. Most states have slightly different paperwork that needs to be completed for dissolution of marriage with or without children. However, no matter where you file you will need to make sure the client meets the states residency requirements and any mandatory waiting periods before they can file. For example, in Arizona, children must reside in the state for at least 6 months before the filing of the petition and either spouse must reside in the state for at least 90 days prior to filing.

The Petition for Dissolution is normally accompanied by several other documents that must all be filed together to have a complete dissolution packet. You will need to check your local rules to see what documents must accompany the petition. Common documents include the following:

1. **Summons**: This is a legal paper that informs the other side that he or she is a party to a legal action and that they need to appear at court on a specific day and time to answer the complaint. This is the document that officially starts the lawsuit.
2. **Preliminary Injunction**: This is a court order issued automatically with the divorce petition that prohibits both parties from taking certain actions while the divorce is still pending. This documents purpose is to prevent either spouse from disposing of community assets before the court issues an order or the parties agree on the disposition of the asset. Since this is a court order if either party violates it they can face sanctions by the judge.
3. **Notice Regarding Health Insurance**: This is a document that explains what to do about health insurance for yourself and your minor child(ren).
4. **Notice Regarding Creditors**: This is a document that tells the parties that they are responsible for community debts to creditors.

5. **Notice for Parenting**: Many states require parties to attend a class designed to give them information about the impact of divorce, the changes in the family unit, and court involvement can have on minor children. This notice must accompany the Petition for Dissolution if you are requesting that the court make determinations regarding custody, parenting time or support.
6. **Affidavit of Minor Children**: This document accompanies any request to the court for custody of minor children.

II THE PETITION:

The Dissolution Petition itself is the document that tells the court what the legal issues are and what relief you are seeking. It must include all the information about what is being requested by the petitioner on all legal issues in the divorce because the court cannot grant any legal relief for anything that has not been properly requested in the petition.

We will now look at how to draft the petition.

The Caption:

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of:

JOHN DOE,

Petitioner,

and

JANE DOE,

Respondent.

Case No.: _____

**PETITION FOR DISSOLUTION OF
MARRIAGE**

(With Minor Children)

The caption normally starts with the name of the court in which you intend to file the petition. The name of the parties will be the individuals who want to get the divorce. The “petitioner” is the person who files the documents and the “respondent” is the other spouse. It does not matter who is the petitioner or respondent when it comes to determining the substantive matters. The case number will be left blank when you file the petition and this will be filled in and assigned by the court once you file.

The Body:

a. The Parties

In the body of the petition you will be making statements to the court under an oath of affirmation. You will tell the court information about the petitioner and respondent and information about the marriage. You will need to identify who the parties are and how long they have resided in the state. This is so the court can ensure that residency has been established. In the body of the Petition the parties are generally referred to as “husband” and “wife” or as “petitioner” and “respondent” instead of their names. It does not matter which of these titles you use so long as you are consistent throughout the document.

For example:

Petitioner, is JOHN DOE, hereinafter “HUSBAND,” whose mailing address is _____, Scottsdale, Arizona. HUSBAND’s date of birth is September ____, 1980. HUSBAND’s social security number is xxx-xx-_____. HUSBAND is employed as _____. HUSBAND has resided in Arizona for ____ years consecutively.

I.

Respondent is JANE DOE, hereinafter “WIFE,” whose address is _____, Scottsdale, Arizona. WIFE’s date of birth is _____.

_____. WIFE's social security number is xxx-xx-_____.
Wife is employed as _____. WIFE has resided in Arizona for
____years consecutively.

b. Fault vs No fault

After providing general information about the petitioner and respondent you will start addressing the substantive issues at stake. Depending on what state you file for divorce in will depend on if you need to allege grounds. Some states require there to be fault for a divorce and some states are "no fault" states.

Fault: The minority of states use a fault based divorce. In states that precede by fault the filing party must provide a ground for divorce that is recognized under the state statute in order for the divorce to be granted. Common grounds include: cruel and inhuman treatment, adultery, abandonment, and incarceration of a spouse.

No Fault: The majority of states have moved away from the fault system and parties can satisfy the legal requirement by simply providing the key language required by state statute. The most common reasons states use is that the marriage between the parties is "irretrievably broken" or they have "irreconcilable differences" and there is no reasonable prospect of reconciliation. These terms are fancy ways of saying that the parties no longer wish to remain married.

Most petition forms will have boxes to check to indicate the appropriate position.

For example:

In Arizona (a no fault state) you would see a box to check to indicate "Our marriage is broken beyond repair ("irretrievably broken") and there is no hope of reconciliation."

In New York (a fault state) you would see a box to check to indicate

“The grounds for divorce that are alleged are as follows” and then you could check the appropriate box and provide the details. If the ground were adultery it would read:

“Adultery : That on the ___ day of _____, _____, at _____ the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.”

c. Property and Debt

The court will next need information about your property and debt and how you think it should be divided. Most Petitions include separate sections to fill out on community assets, separate property and debts. For each section you will list the property with a description and designate the value of the property and who it will be awarded to.

Some states determine distribution of property by community property rules and some state use equitable distribution.

The majority of states use equitable distribution principles. In these states, any property acquired during the marriage belongs to the spouse who earned it. In the event of a divorce, property is divided between the spouses in an equitable and fair manner. There is no set rule in determining who receives what or how much and a court will consider a variety of factors to determine what is “fair.” The marital debt is also divided based upon equitable principles.

In states that use community property, community property is considered any property acquired by you or your spouse during your marriage regardless of whose name something is titled in or who uses the property. The marital community stays in place until the Respondent is served with the Petition for Dissolution. Both parties are entitled to equal shares of all community property. This is normally close to a 50/50

distribution of all marital assets. Community debts are also divided between the parties. Community debts are any debts that were acquired during the marriage regardless of who used the money. Property acquired by gift or inheritance normally falls outside of community property.

In this section of the Petition you must tell the court what percentage of the property should go to you and what percentage of the property should go to your spouse. You will list out any property acquired during marriage and how it should be divided. If the parties cannot agree on the distribution it is possible the court could order a forced sale and the money divided. You should describe the property as specifically and thoroughly as possible for identification purposes. To the best you can, use brand names, models and serial numbers. Common property to divide might include things like real property (ie your home), household furniture and furnishings, pensions, retirement accounts, 401K and vehicles.

For example:

My spouse and I did not acquire any property during the marriage, OR

My spouse and I acquired property during our marriage, and we should divide it as follows:

Real estate located at: _____ awarded to Petitioner or Respondent

Value _____, Legal Description: _____

Household furnishings: awarded to Petitioner or Respondent

Value _____, Description: _____

Pension/retirement fund/profit sharing/stock plan/401K: awarded to Petitioner or Respondent

Value _____, Description: _____

You will also need to specifically identify for the court how the debt should be divided. In an equitable distribution state it will be divided fairly based on who owns the debt and in a community property state both spouses will be roughly liable for 50% of any marital debt.

For example:

- My spouse and I did not incur any debts during the marriage, OR
- We should divide the responsibility for the debts incurred during the marriage as follows: DESCRIPTION OF DEBT _____, awarded to Petitioner or Respondent
- Amount Owed _____.

Each party may also have sole and separate property and/or debts which should be confirmed to them, namely bank accounts, student loans, and trust monies held in each of their own names normally acquired prior to marriage or by gift or inheritance. Normally there are boxes on the petition to check if the parties did or did not bring any of these items into the marriage. If you check the box saying you brought property/debt into the marriage you must tell the court specially what property/debt that is. You will need to list the property/debt you want awarded solely to you or your spouse and should provide as many specifics as you can to identify the property.

For Example:

- My spouse and I do not have any debts that were incurred prior to the marriage; or
- I have separate debt or debt that I incurred prior to the marriage that should be paid by me as described below; or

My spouse has separate debt or debt that he or she incurred prior to the marriage that should be paid by my spouse as described below.

DESCRIPTION OF DEBT _____ assigned to Petitioner

or Respondent

Amount Owed _____.

d. Child Custody, Child Support and Spousal Maintenance

- i. Spousal maintenance /support, also known as alimony, is a term used to describe money paid from one spouse to the other spouse as part of a divorce settlement. The purpose of this money is designed as a safety net for a spouse who cannot provide for his/her needs post-divorce. The idea behind spousal maintenance/support is to maintain a similar standard of living immediately following a divorce and recognizing that the accomplishments of one spouse during your marriage, including increases in earning potential and living standards, are shared and earned by BOTH parties to a marriage. There again will be boxes provide and you should check as many boxes as apply to your situation. Spousal maintenance is paid separately from child support and is not a substitute for, or a supplement to, child support. The duration and dollar value of support can vary greatly and is often based on multiple factors.
- ii. Custody: If the parties have children you will need the court to enter orders regarding legal decision making, visitation (parenting time) and child support.
 - a. Legal Decision Making: You will have to tell the court if the parties want sole legal decision making or joint legal decision making regarding major decisions in the child/rens life.

- b. Parenting time: In the petition you must tell the court which party wants custody of the minor child/ren. There are many different types of parenting time arrangements. Common options include the following:
 - 1. Reasonable parenting time for both spouses. Oftentimes this is divided up into some type of 50%-50% parenting plan;
 - 2. Supervised parenting time; or
 - 3. No parenting time.
- c. Child support is a court ordered payment normally made by the noncustodial spouse to the custodial spouse to help support their minor children. Most states have statutory guidelines used to determine the amount of child support. Many states offer an online calculator to help determine child support obligations. Orders will need to be entered by the court regarding child support obligations.

Most parties draft an independent document that is very specific in regards to child custody and support and incorporate this agreement by reference into the divorce decree.

e. Other Considerations:

Most states require that somewhere in the document you will indicate to the court if the parties have a history of domestic violence, if the wife is currently pregnant, if the father has established his paternity, who will be responsible for the health care for the minor children, who will claim income taxes for the minor children and if either party wishes to have their name restored. There will be appropriate boxes to check based on your response.

f. Request to Court:

The body of the petition is used to set forth the parties and the disputed issues at hand. Following this information the Petition will make certain requests to the court. This is oftentimes followed by the language “wherefore.” This is where you tell the court what specific relief you want to have granted. Remember, if you do not ask the court for a specific relief in this section it cannot be granted.

For example,

WHEREFORE, HUSBAND respectfully requests this Honorable Court:

1. Enter a Decree of Dissolution of the marriage of the parties and restore each to the status of a single person.
2. Order each party be confirmed certain sole and separate property and/or debts.
3. Order each party be confirmed all bank accounts held in each of their own names.
4. Order any such other relief as the court deems just and proper under the premises.

g. Signature

Once the document is complete it will need to be signed, dated and notarized affirming that all the information is true and correct to the best of your ability.

For example,

RESPECTFULLY SUBMITTED, this ___day of _____ 2016.

John Doe

STATE OF ARIZONA)
)
) ss.

County of Maricopa)

OATH OR AFFIRMATION AND VERIFICATION I swear or affirm that the information on this document is true and correct under penalty of perjury.

Notary Public

h. Filing the Document/Service

After you have completed the petition and other surrounding documents, you will need to file the paperwork with the Clerk of Court at the courthouse and pay the appropriate fee. The court will date stamp your petition and assign you a petition number. You must next serve the papers on the other party. "Service" means that you deliver the papers to the other party through a registered process server or a law enforcement officer or by having the other party sign a document to accept service. There are specific rules about how to serve the other party that must be followed.

Once this is complete your case has started.

A completed petition might look something as follows:

Person Filing: John Doe
Address (if not protected): 1234 Main Street
City, State, Zip Code: Phoenix, Arizona 12345
Telephone: 602-555-1234
Email Address: Getitdone@learning.com

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of:

JOHN DOE,

Petitioner,

and

JANE DOE,

Respondent.

Case No.: _____

**PETITION FOR DISSOLUTION OF
MARRIAGE**

(With Minor Children)

STATEMENTS THE COURT, UNDER OATH OR AFFIRMATION:

1. INFORMATION ABOUT ME, THE PETITIONER:

Petitioner is JOHN DOE, hereinafter "HUSBAND," whose mailing address is, 1234 Main Street, Phoenix Arizona. HUSBAND's date of birth is September 1, 1980. HUSBAND's social security number is xxx-xx-1234. HUSBAND is employed as a circus clown. HUSBAND has resided in Arizona for 10 years consecutively.

2. INFORMATION ABOUT, MY SPOUSE, THE RESPONDENT:

Respondent is JANE DOE, hereinafter "WIFE," whose address is 1234 Freedom Road, Scottsdale, Arizona. WIFE's date of birth is January 1, 1980. WIFE's social security number is xxx-xx-5678. Wife is employed as an aerospace engineer. WIFE has resided in Arizona for 10 years consecutively.

3. INFORMATION ABOUT MY MARRIAGE:

Date of Marriage: 1/1/2000

City and state, or country where we were married: Phoenix, Arizona

X Our marriage is broken beyond repair ("irretrievably broken") and there is no hope of reconciliation. We have tried to resolve our problems through Conciliation Services or going to Conciliation Services would not work.

X This court has jurisdiction to determine physical custody and authority for legal decision-making (legal custody) over our minor child(ren) common to the parties because the minor child(ren) has/have lived with Petitioner or Respondent in Arizona for at least the past 6 months.

4. 90 DAY REQUIREMENT:

I OR my spouse have lived in Arizona for at least 90 days before I filed this action.

5. DOMESTIC VIOLENCE: (If you intend to ask for joint legal decision-making authority (joint custody), there must have been no significant domestic violence in your marriage. Check the box to make a true statement:

Significant domestic violence has or has not occurred during this marriage.

6. CHILDREN OF THE PARTIES WHO ARE LESS THAN 18 YEARS

OLD: Listed below are children still under the age of 18 born to or adopted by my spouse and me during our marriage, or where indicated, born before. Husband is the father of children listed.

Child's Name: Little Man Doe
Birthdate: November 1, 2010
Born prior to marriage: No
Address: 1234 Main Street, Phoenix, Arizona
Length of Time at Address: 5 years

7. PROPERTY:

My spouse and I did not acquire any property during the marriage, OR

X My spouse and I acquired property during our marriage, and we should divide it as follows:

X Real estate located at: 1234 Main Street, Phoenix, Arizona awarded to Petitioner X
 or Respondent

Value \$200,000, Legal Description: Southwest quarter (SW ¼ of SW ¼) and West Half of Southeast quarter of Southwest quarter (W½ SE¼ SW¼) of Section Eleven (11), Township Four (4) North of Range Eight (8) West, containing sixty (60) acres of land, more or less, together with the residence, garage, barns and garden.

Household furnishings: awarded to Petitioner or Respondent

Value _____, Description: _____

Pension/retirement fund/profit sharing/stock plan/401K: awarded to Petitioner or Respondent

Value _____, Description: _____

8. SEPARATE PROPERTY:

X I do not have any property that I brought into the marriage or separate property.

My spouse, the Respondent, does not have any property that he or she brought into the marriage or separate property.

I have property that I brought into the marriage or I have separate property. I want this property awarded to me as described below.

My spouse, the Respondent, has property that he or she brought into the marriage or has separate property. I want this property awarded to my spouse as described below

9. DEBTS:

My spouse and I did not incur any debts during the marriage, OR

X We should divide the responsibility for the debts incurred during the marriage as follows:

DESCRIPTION OF DEBT: Wells Fargo Credit Card #123456789, awarded to

Petitioner or Respondent X

Amount Owed: \$5000

10. TAX RETURNS:

After the judge or commissioner signs the Decree of Dissolution of Marriage (Divorce), we will, subject to IRS Rules and Regulations, pay federal and state taxes as follows: For previous years (the years we were married, not including the year the Decree was signed), the parties will file joint federal and state income tax returns. In addition, for previous calendar years, both parties will pay, and hold the other harmless from, 1/2 of all additional income taxes if any and other costs and each will share equally in any refunds. For the calendar year (the year that the Decree is signed) and all future calendar years, each party will, subject to IRS Rules and Regulations, file separate federal and state income tax returns. Each party will give the other party all necessary documentation to do so.

11. SPOUSAL MAINTENANCE/SUPPORT (ALIMONY)

Neither party is entitled to spousal maintenance/support (alimony), OR

X Petitioner OR Respondent is entitled to spousal maintenance/support because: (Check one or more of the box(es) on the next page that apply. At least one reason must apply to get spousal maintenance / support.)

- X Person lacks sufficient property to provide for his/her reasonable needs;
- X Person is unable to support himself/herself through appropriate employment;
- Person is the custodian of a child(ren) whose age or condition is such that the person should not be required to seek employment outside the home;
- Person lacks earning ability in the labor market adequate to support himself/herself; and
- Person contributed to the educational opportunities of the other spouse or had a marriage of long duration and is now of an age that precludes the possibility of gaining employment adequate to support himself/herself.

12. WRITTEN AGREEMENT: (if true)

My spouse and I have a written agreement signed by both of us about the maintenance of a spouse, division of property/debt, where the children will live, authority for legal decision-making concerning the children (legal custody), parenting time, and child support, and

I have attached a copy of the written agreement.

REQUESTS TO THE COURT WHEREFORE, HUSBAND respectfully requests this Honorable Court:

A. DISSOLUTION (DIVORCE):

X Dissolve our marriage and return each party to the status of a single person;

RESTORE NAME:

X I took the name of my spouse at the time of marriage and I want to restore my last name to the name I used before this marriage or to my maiden name.
My complete married name is: John Doe
I want my name restored to: John Dwarf

B. PATERNITY and MINOR CHILD(REN)'S NAMES:

X Declare the husband to be the father of the following named minor child(ren):
Little Man Doe

C. PRIMARY RESIDENTIAL PARENT, PARENTING TIME, AND AUTHORITY FOR LEGAL DECISION MAKING (CUSTODY):

Declare which parent shall be "Primary Residential Parent" for each minor child as follows:

Declare Mother as primary residential parent for the following named children:
 X Declare Father as primary residential parent for the following named children:
subject to parenting time, as follows:

C.1. PARENTING TIME: Award parenting time as follows:

X Reasonable parenting time rights to the non-primary residential parent, OR
 Supervised parenting time between the children and Mother OR Father, OR
 No parenting time rights to the Mother OR Father.

C.2. AUTHORITY FOR LEGAL DECISION MAKING (CUSTODY): Award legal authority to make decisions concerning the child(ren) as follows:

AWARD SOLE AUTHORITY FOR LEGAL DECISION-MAKING to:
 Mother Father OR
 X AWARD JOINT LEGAL DECISION MAKING AUTHORITY to BOTH PARENTS. Mother and Father will agree to act as joint legal decision makers concerning the minor child(ren) and will submit a Parenting Plan and Joint Legal Decision Making Agreement signed by the both parties.

D. CHILD SUPPORT:

Order that child support will be paid by: Petitioner, OR X Respondent in a reasonable amount as determined by the court under the Arizona Child Support Guidelines.

E. MEDICAL, DENTAL, VISION CARE FOR MINOR CHILDREN:

Order that:
 X Mother is responsible for providing: medical dental vision care insurance.
 Father is responsible for providing: medical dental vision care insurance. Petitioner and Respondent will pay for all reasonable unreimbursed medical, dental, and

health-related expenses incurred for the child(ren) in proportion to their respective incomes.

F. TAX EXEMPTION: The parties will claim the children as income tax dependency exemptions on federal and state income tax returns as follows:

Parent entitled to claim Name of minor child in Tax Year _____

Mother

Father

Pattern shall repeat for subsequent years.

G. SPOUSAL MAINTENANCE (ALIMONY):

X Order spousal support to be paid by X Wife, or Husband in the amount of \$5000 per month beginning with the first day of the month after the Judicial Officer signs the Decree and continuing until the person receiving spousal maintenance remarries or either party is deceased, or for a period of months. These payments, and a fee for handling, will be paid through the Support Payment Clearinghouse.

H. COMMUNITY PROPERTY: Make a fair division of all community property.

I. COMMUNITY DEBTS:

Order each party to pay community debts as requested in the Petition, and to pay any other community debts unknown to the other party. Order each party to pay and hold the other party harmless from debts incurred by him/her since the parties' separation on _____ or the date the Respondent was served with the Petition for Dissolution.

J. SEPARATE PROPERTY and DEBT:

Award each party his/her separate property as listed in the Petition and make each party pay his/her own separate debt.

K. OTHER ORDERS I AM REQUESTING (Explain request here):

OATH OR AFFIRMATION AND VERIFICATION

I swear or affirm that the information on this document is true and correct under penalty of perjury.

RESPECTFULLY SUBMITTED, this ____ day of _____ 2016.

John Doe

STATE OF ARIZONA)

) ss.

County of Maricopa)

OATH OR AFFIRMATION AND VERIFICATION

Subscribed and sworn to or affirmed before me his _____, 2016 by:
Notary Public