



# **SUMMARY DISSOLUTION**

**of**

# **MARRIAGE**

**No Children**

**Prepared by:  
Office of Attorney General  
Department of Justice  
State of Montana**

## **F O R E W A R D**

The 1991 Legislature provided a simplified procedure for certain people to obtain a dissolution of their marriage. This publication, prepared pursuant to the Legislature's directive, is designed to enable those people to determine if they qualify for this procedure. It includes a brief overview of statutory requirements and forms that can be removed and used to obtain a dissolution.

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## **SUMMARY DISSOLUTION OF MARRIAGE**

### **I. WHAT IS THIS BOOKLET ABOUT?**

This booklet describes a way to end a marriage through a divorce proceeding called Summary Dissolution of Marriage. It is not intended to take the place of an attorney's advice, nor should it be relied upon as a guide for self-representation in summary dissolution proceedings.

Although you can appear in court without an attorney, it is in your best interests to consult with one in order to protect your legal interests in ending your marriage. An attorney can help you decide if this method is the right one for your situation and can give you advice concerning the division of your assets and liabilities. You may obtain legal services through lawyer referral services, group or prepaid legal services, or legal aid organizations. Attorneys' fees vary; some attorneys charge a set fee while others charge an hourly rate. Don't be afraid to ask the attorney in advance what fee will be charged. If you are not pleased with one attorney, you should feel free to consult with another one.

If you wish to use the summary dissolution proceeding you must, at the time you file the joint petition, sign a statement which says you have read and understood this booklet. It is important for you to read the entire booklet very carefully to ensure that you qualify for this type of dissolution. If you do not qualify because of children or excessive debts or property, you may obtain a formal dissolution of marriage and probably should consult an attorney.

### **II. ARE YOU STILL INTERESTED IN TRYING TO SAVE YOUR MARRIAGE?**

Montana law allows two persons to dissolve their marriage only when irreconcilable differences have caused irretrievable breakdown of the marriage and either the husband or the wife states that the marriage should be dissolved. If you aren't sure your marriage has completely broken down and would like to try to reconcile, there may be help available. Many communities offer marriage counseling services and a few counties have a conciliation court.

#### **WHAT IS A CONCILIATION COURT?**

The purpose of a conciliation court is to help preserve a marriage and to provide the means for reconciliation of a husband and wife and a peaceful settlement of any marital controversy. However, a conciliation court is not available in all counties. The clerk of the district court will tell you if there is one in your area.

If there is a conciliation court in your area and you want a reconciliation with your spouse or a peaceful settlement of a marital controversy, either of you can file a petition with the conciliation court. Ask the clerk of court if there is a form available. The judge of the conciliation court may hold a hearing on the dispute or refer you to a conciliation counselor. The counselor may be a pastor or director of the religious denomination to which either or both of you belong, or a psychiatrist, physician, attorney, social worker, or other person who is trained and experienced in personal counseling.

If there has been no reconciliation within 30 days after the date of the hearing in conciliation court and you and your spouse still wish to end your marriage, a petition for summary dissolution can be filed with the district court.

### **III. WHAT IS A SUMMARY DISSOLUTION PROCEEDING?**

A summary dissolution proceeding is a district court procedure to end a marriage more quickly and simply than through the regular dissolution procedure. Not everyone can use it. It is only for those people who meet the legal requirements listed below and who have no disagreements about how their belongings and their debts are going to be divided once they are no longer married to each other. It cannot be done in small claims court, justice court, or conciliation court. It is not necessary to go through the conciliation court procedure before filing for summary dissolution.

#### **A. WHO CAN USE THE SUMMARY DISSOLUTION PROCEEDING?**

You can get a divorce through a summary dissolution proceeding only if ALL of the following conditions exist on the date you file the Joint Petition for Summary Dissolution. Check this list very carefully. If even one of the statements is not true for you, you cannot use the summary dissolution procedure to get a divorce.

- 1. You or your spouse have lived in Montana (or either of you was a member of the armed services stationed and residing in Montana) for at least 90 days before the filing of the action;
- 2. Irreconcilable differences have caused the irretrievable breakdown of the marriage, and you both agree that the marriage should be dissolved;
- 3. The wife is not pregnant and:
  - a. there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; **or**
  - b. the parties have executed an agreed-upon parenting plan and the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.
- 4. Neither of you has any legal interest (ownership or lease) in any real property such as land or buildings. However, this does not apply to a lease on a residence which is occupied by either spouse as long as the lease does not have an option to purchase the residence and the lease terminates within one year from the date the petition is filed;
- 5. There are no unpaid, unsecured obligations in excess of \$8,000 incurred by either or both of the parties after the date of their marriage. A debt is unsecured when the debtor's promise to pay the debt is not secured by specific property if the debtor does not pay the debt. For example, a credit card is usually an unsecured debt because you do not have to give the credit card company the financed property if you do not pay your debt;

- 6. The total fair market value of your and your spouse's assets, excluding secured obligations, is less than \$25,000. A debt is secured when the debtor's promise to pay the debt is backed by specific property if the debtor does not pay the debt. For example, your car can be taken by the bank to pay the debt if you miss a payment. This means that your car loan would be a secured debt.
- 7. Both of you have signed an agreement agreeing to the division of property and who will be responsible for any bills or obligations. Signed documents, title certificates, bills of sale, or other evidence of transfer or agreement should be presented to the court at the time of your hearing to confirm the division and responsibilities.

In addition, you and your spouse:

- 8. Must give up your individual right to maintenance (financial support from the other) (see sec. B below);
- 9. Must permanently give up your individual right to appeal the terms of the dissolution and your right to move for a new trial once the marriage is formally dissolved by the court;
- 10. Do not want help from the conciliation court to settle any controversy, or assistance in reconciling (see Part II) (If your county does not have a Conciliation court, this requirement does not apply);
- 11. Have read and state that you understand the contents of this summary dissolution booklet;
- 12. Indicate to the court that you want the court to end the marriage.

#### **B. SPOUSAL MAINTENANCE OR SUPPORT**

Maintenance is financial support and assistance paid by one spouse to the other after dissolution of the marriage. Neither spouse may obtain maintenance from the other in a summary dissolution proceeding.

#### **C. HOW IS THE PROCEEDING STARTED?**

The summary dissolution proceeding is started by filing in district court a joint petition which has been signed under oath by both of you. The petition must include the required information, set out below in section D. A copy of the property settlement agreement must be attached to the petition. The agreement should be neatly typed or printed and signed by both of you.

#### **D. WHAT INFORMATION IS REQUIRED IN THE PETITION?**

A sample petition form is included in this booklet. The verified petition must be signed by each of you, under oath before a notary public, and include the following information:

1. A statement that all of the required conditions listed in part A have been met (list the conditions);
2. The mailing address of each party;
3. Whether or not the wife wishes to have her maiden or former name restored and, if so, the name to be restored;
4. The age, occupation, and residence of each party and length of residence, date of marriage, and the place at which it was registered.

#### **E. HOW SOON CAN THE MARRIAGE BE DISSOLVED?**

The district court judge will hold a hearing sometime after 20 days from the date the joint petition is filed, at which time both of you must appear. If the required conditions exist, the judge will enter a final judgment dissolving the marriage. The judgment restores each of you to the status of a single person, at which time either is free to marry someone else.

#### **F. WHAT DOES THE FINAL JUDGMENT MEAN?**

A judgment is the written decision of the court. Upon conclusion of the hearing the judge will consider all the facts and make his or her decision. Until the final judgment is entered you are considered married. Once the judgment is entered each is returned to the status of a single person. **The Final Judgment means that all marital rights and obligations have been decided, including property and maintenance.**

#### **G. CAN THE JUDGMENT BE APPEALED OR A TRIAL REQUESTED?**

**The Final Judgment cannot be appealed or a new trial requested. However, the Court may be asked to set aside the Final Judgment for reasons of fraud, duress, accident, mistake, or other recognized legal grounds.**

An example of those grounds may be that the things you agreed to give your spouse were much more valuable than you thought; or your spouse used threats or other kinds of unfair pressure to get you to go along with the dissolution; or there are serious mistakes in the original agreement. Correcting mistakes and unfairness in a Summary Dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

A final judgment will be set aside upon proof that all the requirements of Mont. Code Ann. § 40-4-130 (see section III A. above), were not met on the date the petition was filed.

## **H. WHAT ARE COURT COSTS FOR A SUMMARY DISSOLUTION PROCEEDING?**

The usual court costs are \$200 for filing a petition for dissolution and a \$45 fee for the final judgment. The fees must be paid in cash or by money order. Other usual charges include a stenographer fee and a document certification fee. The district judge can excuse you from paying court costs if your income is very low and you file an affidavit with the court showing your inability to pay the costs.

### **I. ARE THERE REASONS FOR STOPPING THE PROCEEDING?**

There are three reasons you might want to stop the summary dissolution proceeding:

1. You have decided to return to your spouse and continue the marriage;
2. You may want to change over to the regular dissolution as a better way of getting your dissolution (i.e., you feel you will get a better settlement if you go to court); or
3. The wife becomes pregnant.

If you wish to stop the proceeding, it must be done BEFORE the final decree is signed by the Judge by filing a notice of revocation with the clerk of court. A copy of the notice must be sent to your spouse by first-class mail, postage prepaid. A sample form is provided with this booklet.

### **RELEVANT MONTANA CODE ANNOTATED SECTIONS:**

**Part I:** § 40-4-136.

**Part II:** §§ 40-3-111, 40-3-125, 40-3-127.

**Part III:** A. §§ 40-4-130, 40-4-104; B. § 40-4-130(8); C. § 40-4-131;  
D. §§ 40-4-130, 40-4-131; E. § 40-4-133; F. §§ 40-4-134, 40-4-136;  
G. § 40-4-135; H. § 25-1-201.

**Part IV:** § 40-4-132.

## **INSTRUCTIONS FOR FILING AND COURT APPEARANCE**

**NOTE: BEFORE FILLING OUT THE FORMS, READ THE ENTIRE SUMMARY DISSOLUTION BOOKLET TO DETERMINE IF YOU QUALIFY FOR THE SUMMARY DISSOLUTION PROCEDURE.**

1. Carefully read and fill out the Petition for Summary Dissolution of Marriage form found in this booklet. Each of you must sign it before a Notary Public. (The Notary Public must watch you sign the document.) After the petition is signed, take it to the clerk of court in the county courthouse where you reside. The clerk will file the petition and charge you a filing fee. Call the clerk if you need to know the fee in advance. Twenty (20) days or more after the date you file the petition, you can go to court and obtain your dissolution. When you file the petition ask the clerk what time and date are available for your appearance before the Judge. The clerk will assign your case a number. Write down the number and take it with you. Ask the clerk what you must do to insure your case is scheduled for a particular day. Judges do not necessarily hold Court every day.

2. On the date of your court appearance be sure to be on time. Both of you must attend. Take with you the Final Decree of Summary Dissolution found in this booklet. When you get to the courthouse, check with the clerk to ensure your case is ready to be heard and to find out what courtroom you should wait in for your case to be called. Have your written property/debt agreement with you (neatly typed or printed), along with the documents that were signed to effect the agreement (such as car title, etc.). Make sure the cause number assigned earlier is written in the blank on the Final Decree. If the wife seeks to have her former name restored, make sure the name to be restored on the decree is identical to the name to be restored on the petition.

3. When the Judge calls your case, approach the Judge's bench and prepare to be sworn in by the court clerk who sits near the Judge. Each Judge has his/her own procedures in dissolution hearings. Some Judges may ask few or even no questions. Others may inquire as to the elements of your petition. If the Judge directs the hearing, answer the questions asked. If the Judge expects you to proceed, each of you can make a short statement. Be prepared to tell the Judge that your marriage is irretrievably broken, that you have lived in Montana for more than ninety (90) days, that there are no children and the wife is not now pregnant, and that you have divided your debts and property.

4. Once you are finished, the Judge will usually grant your dissolution and sign the Decree. In some courts the Judge will hand you the file and ask you to return it to the clerk of court. **IF THE JUDGE DOES GIVE YOU THE FILE, IT IS IMPERATIVE THAT YOU RETURN IT IMMEDIATELY TO THE CLERK OF COURT** so your dissolution can be recorded and the court file doesn't get misplaced. The clerk of court keeps the original signed Decree, but you can get certified copies from the clerk if you need them. The dissolution is final as of the time the Judge signs the Decree.



1 Wife's Name, Address, Phone

2 \_\_\_\_\_  
3 \_\_\_\_\_

4 Husband's Name, Address, Phone

5 \_\_\_\_\_  
6 \_\_\_\_\_

7  
8 MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

9 IN RE THE MARRIAGE OF

10 \_\_\_\_\_, Cause No. \_\_\_\_\_

11 Wife,

12 and

13 \_\_\_\_\_,

14 Husband.

15 **PETITION FOR SUMMARY DISSOLUTION OF MARRIAGE**

16  
17 The Petitioners jointly request this Court to issue a decree for summary  
18 dissolution of marriage based upon the contents of this petition and subsequent  
19 hearing.

20 The parties certify to the Court that:

21 1. We have read and understand the booklet issued by the Montana Attorney  
22 General entitled SUMMARY DISSOLUTION OF MARRIAGE.

23 2. We have lived in Montana for at least ninety (90) days or have otherwise  
24 met residency requirements; wife having resided in Montana since \_\_\_\_\_,  
25 and husband since \_\_\_\_\_.

26  
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1           3.     We were married on \_\_\_\_\_, \_\_\_\_\_, at  
2 \_\_\_\_\_.  
3           The marriage is registered  
4 at \_\_\_\_\_.

5           4.     The occupation of the wife is \_\_\_\_\_ and the  
6 occupation of the husband is \_\_\_\_\_.

7           5.     We both want our marriage dissolved because irreconcilable differences  
8 have caused the irretrievable breakdown of our marriage. We do not want help from the  
9 conciliation court to settle any controversy or assistance in reconciling.

10          6.     We both agree to appear at a hearing before this Court.

11          7.     There are no children from our relationship born before or during the  
12 marriage or adopted during the marriage and the wife is not now pregnant.

13          8.     Our property and debts are below the limits required by Mont. Code Ann.  
14 § 40-4-130, and neither of us has any interest in any real property.

15          9.     We are qualified to seek summary dissolution of our marriage and have  
16 entered into a written agreement distributing our debts and property and have executed  
17 all documents necessary to effect and complete the agreement. A copy of the  
18 agreement is attached as Exhibit A.

19          10.    If the wife seeks restoration of her former name, the name to be restored  
20 is set out here in full: \_\_\_\_\_.

21           Upon entry of the judgment for summary dissolution of marriage, we both waive  
22 any right to maintenance or to appeal the terms of the dissolution or to request a trial.

23           WHEREFORE, Petitioners request as follows:

24           That this Court enter a Decree of Dissolution dissolving the marriage between  
25 the parties;

26           That this Court award and divide the property and debts of the parties as  
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provided in EXHIBIT A.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
WIFE

\_\_\_\_\_  
HUSBAND

1 STATE OF MONTANA )  
2 County of \_\_\_\_\_ ) : ss.

3 \_\_\_\_\_, being first duly sworn, deposes and says that she has  
4 read the foregoing Petition for Summary Dissolution of Marriage, knows the contents  
5 thereof and that the same is true of her own knowledge, except as to matters stated on  
6 information and belief, and as to those matters she believes them to be true.

7 \_\_\_\_\_  
8 WIFE

9 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
10 \_\_\_\_\_.

11 (SEAL) Printed Name: \_\_\_\_\_  
12 Notary Public for the State of Montana.  
13 Residing at \_\_\_\_\_.  
My Commission expires \_\_\_\_\_.

14 STATE OF MONTANA )  
15 County of \_\_\_\_\_ ) : ss.

16 \_\_\_\_\_, being first duly sworn, deposes and says that he has  
17 read the foregoing Petition for Summary Dissolution of Marriage, knows the contents  
18 thereof and that the same is true of his own knowledge, except as to matters stated on  
19 information and belief, and as to those matters he believes them to be true.

20 \_\_\_\_\_  
21 HUSBAND

22 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
23 \_\_\_\_\_.

24 (SEAL) Printed Name: \_\_\_\_\_  
25 Notary Public for the State of Montana.  
26 Residing at \_\_\_\_\_.  
My Commission expires \_\_\_\_\_.

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MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

IN RE THE MARRIAGE OF

\_\_\_\_\_, Cause No. \_\_\_\_\_

Wife,

and

\_\_\_\_\_,

Husband.

**FINAL DECREE OF SUMMARY DISSOLUTION OF MARRIAGE**

The parties filed a joint petition of summary dissolution of their marriage. Both petitioners appeared in Court in open hearing and testified in support of the petition.

**FROM THE EVIDENCE AND PLEADING, THE COURT FINDS:**

1. That the parties have both signed the Petition for Summary Dissolution.
2. That there are irreconcilable differences causing the irretrievable breakdown of the marriage.
3. That the parties have read and understand the booklet entitled SUMMARY DISSOLUTION OF MARRIAGE and have met its requirements and qualify for dissolution of marriage under Mont. Code Ann. § 40-4-130.
4. That the parties have no children from the relationship born or adopted

1 before or during the marriage and the wife is not now pregnant.

2 5. That the parties have entered into a written agreement regarding the debts  
3 and property of their marriage and have executed all documents required to enact its  
4 provisions.

5 6. That all the requirements set out in the summary dissolution statutes have  
6 been met.

7 **CONCLUSIONS OF LAW**

8 1. The Court has jurisdiction over this cause.

9 2. The marriage of the parties is irretrievably broken.

10 3. The parties waive any right to maintenance and upon entry of this final  
11 decree irrevocably waive their respective rights to appeal or move for a trial on the  
12 terms of the dissolution of the marriage.

13 **FROM THE FOREGOING FINDINGS AND CONCLUSIONS, THE COURT  
14 ENTERS THE FOLLOWING DECREE:**

15 1. The marriage of the parties is dissolved.

16 2. The former name of the wife is restored as requested to  
17 \_\_\_\_\_.

18 3. The assets and debts of the parties shall be distributed between them  
19 equitably in accordance with Exhibit A to the petition. Both parties shall promptly  
20 sign all documents reasonably necessary to accomplish this distribution of assets and  
21 debts.

22 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

23 \_\_\_\_\_  
24 DISTRICT COURT JUDGE  
25  
26  
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1 **(USE THIS FORM ONLY IF YOU WISH TO STOP THE PROCEEDING**  
2 **BEFORE THE JUDGE HAS SIGNED THE FINAL DECREE)**

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8 MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

9 IN RE THE MARRIAGE OF

10 \_\_\_\_\_, Cause No. \_\_\_\_\_

11 Wife,

12 and

13 \_\_\_\_\_,

14 Husband.

15 **NOTICE TO REVOKE PETITION FOR SUMMARY DISSOLUTION**

16 I, \_\_\_\_\_, hereby request the Court to revoke the  
17 Petition for Summary Dissolution of Marriage because:

18 1. \_\_\_ I have decided to return to my spouse and continue the marriage.

19 2. \_\_\_ I want to change to the regular dissolution procedure.

20 3. \_\_\_ The wife is pregnant.

21 I certify that a copy of this Notice was mailed to my spouse at the following  
22 address, \_\_\_\_\_ first-class mail,  
23 postage-prepaid, on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

24 DATED THIS \_\_\_ day of \_\_\_\_\_, 20\_\_.

25 \_\_\_\_\_  
26  
27

**SUMMARY DISSOLUTION EXHIBIT A**

**DIVISION OF ASSETS AND DEBTS**

The following is a description of our assets and debts and how our assets and debts should be divided between us:

<b>ASSETS:</b>		<b>CHECK ONE:</b>	
Describe the Asset (car, bank account, etc.)	Approximate Value	Wife gets these:	Husband get these:

Be specific in description of assets. The value should be determined taking current fair market value minus debt owed on item.





