

## INSTRUCTIONS FOR FILING AN UNCONTESTED COMPLAINT FOR LEGAL SEPARATION WITHOUT CHILDREN

Use these instructions to ask the court to issue a legal separation decree when both spouses agree on all issues, including to stay legally married, and how to divide property and debt of the marriage. Both spouses must sign the form and all required attachments to use the uncontested complaint.

If the spouses do not agree on everything or cannot fill out and sign the paperwork together, either spouse may instead file form [DR-862](#), *Complaint for Legal Separation without Children*. The other spouse can file an answer to this complaint that agrees with some, all, or none of it.

**Step 1** Fill out the following **required** forms:

- a. *Uncontested Complaint for Legal Separation without Minor Children* ([DR-852](#)). More information on how to fill out this form starts on page 3 of these instructions.
- b. *Information Sheet* ([DR-314](#)).

Forms that may be required depending on your situation:

- a. *Case Description Form* ([CIV-125S](#)). Required if you are **not** filing through the court's TrueFiling electronic filing system.
- b. *Request for Exemption from Payment of Fees* ([TF-920](#)). Required if you want the court to waive the filing fee because you cannot afford it.

All publicly available court forms are posted on the court's website at [ak-courts.info/forms](#). They are also available in paper copy from the court clerk upon request, or you can call the Family Law Self-Help Center to ask for forms to be mailed to you: (907) 264-0851 in Anchorage, (866) 279-0851 outside of Anchorage.

### IMPORTANT Notice on Using TrueFiling

1. See if TrueFiling is available for your case type and court location at [ak-courts.info/tfcourts](#).
2. If available, you **must** use TrueFiling unless you are exempt. You are exempt if one of these applies:
  - You are in a jail or correctional facility.
  - You have a disability under the Americans with Disabilities Act (ADA).
  - You do not have safe access to a computer, internet, or email.
  - You cannot access the help you need to use TrueFiling.
  - You have a language barrier or are Limited English Proficient.

You do not need to prove you are exempt. If you are exempt **and** you choose not to use TrueFiling, you must tell the court you are exempt on your first filing with the court. The DR-852 complaint has check boxes and spaces for one or both of you to do this already on the form.

## **Step 2** File your forms in court.

### **For TrueFiling Users:**

If you filled out your forms electronically, save them as separate documents to your local device. If you filled out your forms on paper, scan or photograph them (make sure they are legible) and save them in a PDF or TIFF file format.

Create a TrueFiling account (if you don't already have one) and log in: <https://akfile.truefiling.com/login>. Upload your complaint form and all attachments as one "bundle." See [ak-courts.info/tfhowto](http://ak-courts.info/tfhowto) for detailed instructions on using TrueFiling.

You can pay the filing fee in TrueFiling with a debit or credit card. A window will pop up after you select your case type with instructions for paying the fee. If you cannot afford the fee, include form [TF-920, Request for Exemption from Payment of Fees](#), in your bundle. Nothing will happen in your case until you pay the fee or your exemption is granted.

### **For People Not Using TrueFiling:**

Make two copies of everything you plan to file in court, including any attachments. The copies are for each of you to keep for your records. File the **originals** of all the documents in the nearest court location to where at least one of you lives. For a list of court mailing and physical addresses, go to [ak-courts.info/dir](http://ak-courts.info/dir).

Pay the filing fee in the amount specified in [Administrative Rule 9\(b\)](#). Fees are also listed online at [ak-courts.info/courtfees](http://ak-courts.info/courtfees). If you file in person, you can pay the clerk with most forms of payment. If you mail your forms to the court, include a check or money order payable to "State of Alaska." If you cannot afford the fee, attach form [TF-920, Request for Exemption from Payment of Fees](#), when you file. Nothing will happen in your case until you pay the fee or your exemption is granted.

## **Step 3** Court Hearing.

The court will automatically set a hearing date. The clerk will send both parties a notice with the date, time, and location of the hearing. If you are unable to attend the hearing in person, you may ask to attend telephonically by filing form [TF-710, Request to Appear by Telephone](#).

Both spouses must attend the hearing. You may each have a lawyer at the hearing, but you are not required to have one.

At the hearing, the court will ask questions to make sure you fully understand the nature and consequences of the proceeding, and whether the terms of your legal separation agreement and your property and debt division are fair and just. You may change anything you agreed to in the complaint as long as you both agree on the record at the hearing.

At some court locations, hearings are held before a Superior Court Master instead of a judge. A master cannot grant a decree of legal separation. A master can only recommend to a judge whether or not a decree should be granted. After the hearing, the master will write a report and the Superior Court Judge will review it and sign the final decree if they agree with the recommendations in the report.

At some other court locations, your hearing may be scheduled as part of a program called the Early Resolution Program (ERP). This is a program that usually allows your case to happen more quickly and have all of your paperwork done before you leave the hearing. There may also be free lawyers or mediators available to help you resolve any disagreements (if any come up since you filed) or other concerns the judge may have with your agreement.

**Step 4** The Decree of Legal Separation.

Although in some cases the decree of legal separation may be granted and signed at the hearing, sometimes the decree is not entered until a few days later. **Do not assume a decree has been granted until you receive your written copy.**

**Step 5** Follow Decree.

You must carry out any agreements you made orally at the hearing, signed in any attachments to the decree, or the judge otherwise ordered or included in the decree. For example, you might have to transfer title to property or make a payment to the other spouse, or notify the administrator of a retirement plan about the effect of the legal separation on a spouse's retirement benefits. You may need to contact a lawyer to prepare the necessary deeds and other legal documents to make these transfers. The court does not do this for you.

**How to Fill Out the Complaint (Form [DR-852](#))**

When filling out court forms, do not leave any spaces blank. If a question does not apply or you don't know, write "N/A" or "unknown." If more space is needed, attach additional pages and number each page. Write only on one side of each page. If you are not filling out the form electronically, print neatly in black ink.

At the top of the complaint form, fill in each spouse's contact information. If your information changes after you file, but before the legal separation decree is entered, file form [TF-955](#), *Notice of Change of Contact Information*.

Fill in the court location where you are filing and write your full names in the spaces to the left underneath. It does not matter who is Spouse A and who is Spouse B, there is no legal difference in a legal separation case. Leave the "Case No." line blank.

**Section 1.** At least one spouse must be "domiciled" in Alaska for the court to have jurisdiction (authority) to decide the case. "Domiciled" means the person claims residency in Alaska. The person must be physically present in Alaska and intend to remain indefinitely. No minimum number of days of residency is required. In addition, military personnel who do not claim to be Alaska residents may file for legal separation in Alaska if they have been continuously stationed at a military base or installation in Alaska for at least 30 days. If neither of you is a resident of Alaska, you should talk to a lawyer for help, since jurisdiction can be legally complicated.

**Section 3.** In Alaska, you are only permitted to legally separate **once** per marriage. If you have legally separated before, you may not file this case. If you do not want to file for dissolution or divorce instead, you may want to speak to a lawyer about other options.

**Section 5.** The division of the property must be fair and just to both spouses. Ordinarily, the fairest division of the property is an equal division. However, there may be some circumstances, such as a very short marriage, that would justify something other than an equal division of all items acquired and debts incurred during the marriage.

Your property division agreement must fairly allocate the economic effect of the legal separation. It must take into consideration the following factors listed in Alaska Statute 25.24.160(a)(4):

1. the length of the marriage and station in life of the parties during the marriage;
2. the age and health of the parties;
3. the earning capacity of the parties, including their educational backgrounds, training, employment skills, work experiences, length of absence from the job market, and custodial responsibilities for children during the marriage;
4. the financial condition of the parties, including the availability and cost of health insurance;
5. the conduct of the parties, including whether there has been unreasonable depletion of marital assets;
6. the desirability of awarding the family home, or the right to live in it for a reasonable period of time, to the party who has primary physical custody of the children;
7. the circumstances and necessities of each party;
8. the time and manner of acquisition of the property in question; and
9. the income-producing capacity of the property, and the value of the property at the time of division.

#### Marital Property

Describe all property of both parties that you bought or received during the marriage, regardless of who is on the title or who bought it. Also include any property from before the marriage that should be divided in order to be fair to both parties.

"Real property" means buildings and land. "Personal property" includes physical things like pets, jewelry, automobiles, boats, airplanes, snow machines, furniture, and household goods. It also includes financial instruments like cash, bank accounts, stock, and bonds. Finally, you must include businesses, contract rights, and employment benefits, such as the value of retirement plans.

List the value of each piece of property. Check the boxes showing whether the property was acquired during the marriage and who currently possesses it (A = Spouse A, B = Spouse B, and JT = jointly owned). Then check the box showing who should get the property after the legal separation. If you want to divide the property between you, show what fraction or percentage of the value each spouse will get instead of checking the boxes.

#### Retirement Benefits

One special type of personal property that you must agree about is retirement benefits. During your marriage, if either spouse earned the right to someday receive retirement benefits as a result of employment or military service, you will need to decide how to divide the value of those benefits between you. You ordinarily need to do this even if the employee spouse has not yet "vested" in the retirement program.

You may decide instead to **not** divide the retirement benefits and keep the other spouse as the beneficiary or receiver of survivor benefits, so long as you stay legally married. Contact the plan administrator to make sure you understand the consequences of a legal separation on any survivor benefits, as many plans may not offer this option.

You will probably need help from a lawyer or the administrator of the retirement plan. You should obtain and review any available written summary of the retirement plan and a statement of the value of the employee's expected benefits.

Generally, you can divide these benefits in either of two ways:

1. You can let the current owner of the benefits (the covered employee) keep the benefits and give the other spouse cash or other assets worth half the current value of the part of the benefits earned during the marriage. You will have to figure out what the current value of the benefits is. You may need an actuary's help to do this.
2. You can give the non-employee spouse the right to receive part of the retirement benefits when those benefits are eventually paid out. Under this option, it is not necessary to figure out the current value of the benefits. Both spouses will have to wait to receive any payments until the employee spouse is eligible to receive the benefits.

If you choose this option, in most cases your agreement must meet the requirements of a "qualified domestic relations order" (QDRO) as that term is defined in the statutes that apply to the retirement plan. Also, your agreement, along with the legal separation decree, must be filed with and accepted by the administrator of the retirement plan before it will be effective. Contact the administrator of the retirement plan before filing your written agreement with the court and request copies of the plan, procedures for QDROs, and any forms the plan administrator may have prepared.

Write your retirement benefits agreement on a separate piece of paper and attach it to your complaint. Depending on the type of retirement plan, there may be several requirements or items that should be covered by the agreement and order. Contact the administrator of your plan to make sure all the required information is included in your agreement.

In order to write an agreement that will be enforceable, **you will most likely need to speak with a lawyer who is familiar with the laws about QDROs.** You may also be able to get assistance from the administrator of the retirement plan. Remember that your agreement is not effective until it and the legal separation decree are filed with that administrator and you have received notice that it is accepted. If it is not accepted, you will have to go back to court to get an order correcting any defects.

If you are submitting a proposed QDRO, or any similar order requiring the social security numbers of the beneficiary and alternate payee, you must also **submit a copy of the original proposed order with the social security numbers of the beneficiary and alternate payee completely marked out.** The original proposed order is confidential and will not be part of the public record. Only the duplicate with the social security numbers blacked out will become part of the public case file.

### Note on Military Retirement

The requirements for dividing military retirement pay are different. A QDRO is not required. The Uniform Services Former Spouses' Protection Act (10 U.S.C. § 1408) describes the procedure that must be followed in order for the former spouse to receive payment directly from the government. For example, the spouse's agreement must show that the spouses were married to each other for 10 or more years during which time the military member performed at least 10 years of creditable service. A legal separation decree "freezes" the years at the time of the decree and does not consider these to be "years of marriage" even though the parties are still legally married.

The agreement must specifically provide for payment of an amount from the military member's "disposable retired pay" to the separated spouse. The amount must be stated either in dollars or as a percentage of the member's disposable retired pay. For more information about what is required and about the application form you must fill out and submit after you get your legal separation decree (DD Form 2293), contact the Legal Assistance Office at any military installation in Alaska. If you do not meet the "10/10" requirement, any retirement payments that you agree should be made to the separated spouse would have to be made by the military member directly to the spouse instead of coming to the separated spouse from the government.

### Debts

Describe all debts and liabilities of both parties. Debts include all kinds of financial obligations, such as loans, credit card balances, bank card debits, the mortgage on your house, unpaid bills, liens or fines, etc.

List who the debt is owed to and the total amount needed to pay off the balance (do not list monthly or other periodic payment amounts). Check the box showing whether the debt was incurred during the marriage and the box showing who owes the debt (Spouse A, Spouse B, or jointly owed). Then check the box showing who will be responsible for paying the debt. Each spouse is responsible for their own separate debts in their name unless you agree otherwise.

The two of you may agree which spouse will pay each joint debt (debt in both parties' names). However, although this agreement will be binding against the two of you, it will not be binding against the people the debts are owed to (the creditors), because they are not parties in this court case. For joint debts, both of you will remain legally obligated to your creditors until the existing debt is paid, regardless of your agreement on who will pay the debt.

In addition, if both your names are on a mortgage or other debt, you may not be able to get new loans or credit. If possible, you may want to refinance these debts to put them only in the name of the party responsible for paying them.

To protect yourselves against future debts or purchases the other spouse may incur on credit cards and other open accounts, you may want to close your current joint charge and bank accounts and reopen them in your separate names.

**Section 6.** Use this space to write any other agreements between you. For example:

- you might agree that one spouse will pay spousal support (alimony) to the other (if you do this, make sure to include the specific amount and how long it will last),
- you might agree that one spouse will maintain a life insurance policy that names the other spouse as beneficiary,
- you might agree to continue filing taxes jointly or otherwise maintain property or insurance jointly to take advantage of your continued status as a legally married couple, or
- you might agree on the details of how property will be exchanged or how you will try to refinance any joint debts.

If you want the court to enforce your agreements, you should write them down and include them on the complaint. The court can enforce oral agreements that happen at the hearing on the record, however, written agreements are usually clearer, more detailed, and easier to enforce.