**How to File for Dissolution of Marriage with Children**

**Information Not Legal Advice**

How to file for Dissolution of Marriage with Children is information only. The information is not legal advice. The law is different in each state. Some information may not be correct outside Montana. The information is not guaranteed to be up to date. The information can’t replace advice from an attorney.

**Worried about Privacy?**

Everything filed with the court may be viewed by the public unless a law, rule, or court order protects it. You can ask the court to protect or seal some information. Normally you will not need to do that because a court rule says you may only include parts of personal information. Only the last four digits of a Social Security Number should appear in documents filed with the court. You may only include the birth year of any individual. Only the last four digits of a financial account may be included. You can find this in Rule 5.2 of the Montana Rules of Civil Procedure.

**NEED HELP?** There are resources available.

**The Court Help Program.** The Court Help Program assists people representing themselves in court. There are Court Help centers located throughout the state to assist you on a walk-in basis and remote appointments available if your local Courthouse does not have a Court Help center. Court Help staff are not lawyers and cannot provide legal advice. Staff are informed about the court process and can answer questions as well as review your forms for completeness. Find Court Help services near you: <https://courts.mt.gov/SelfHelp/> or call 406-444-9300.

**Montana Legal Services Association.** Montana Legal Services Association provides free civil legal assistance to low-income Montanans. If you qualify, Montana Legal Services Association may be able to connect you with a variety of services. Visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org), or call MLSA at 1-800-666-6899.

**State Bar of Montana.** If you are interested in hiring an attorney to advise or represent you, the State Bar Lawyer Referral Service has a list of attorneys all over Montana. The Lawyer Referral Service is available at [www.montanabar.org](http://www.montanabar.org) or by calling 406-449-6577.

What is the Process?

**NOTE:** The steps for filing for a dissolution may be slightly different in your judicial district. Check with the Clerk of District Court at your county courthouse for local requirements.

**STEP ONE: Fill out the forms.**

You probably won’t need to use every form. Step Two has the list of forms you need to start your case. Look at each form. If you are not sure which ones you need, contact a Court Help center or Montana Legal Services Association. Make sure you fill out each form completely. Be sure to read “Introduction to Family Law in Montana” before you begin filling out the forms. It will help you figure out which choices to make.

**STEP TWO: File your completed forms.**

Your completed forms are also called “documents” or “court documents.” Court documents for a Dissolution with Children are filed with the Clerk of District Court in the county where you, your spouse, or your children live. After filling out the forms, make 3 sets of copies (4 sets of forms total) of the forms that start your case.

Here is a list of the forms you complete and file with the Clerk of District Court to start your case.

1. (Optional) Statement of Inability to Pay Court Costs and Fees. Use this form if you can’t afford to pay the court fees.
2. Petition for Dissolution **MP 113**
3. Summons and Automatic Economic Restraining Order **MP 400**
4. Proposed Parenting Plan **MP 300**
5. (If required) Description of Existing Medical Coverage **MP 300 G**
6. Proposed Property Distribution **MP 500**
7. Request for Sheriff to Serve Documents **MP 401** if you are requesting the Sheriff to serve your spouse.The original of this document will be given back to you for Step Three. There are other ways to serve your spouse. All the ways are described in Step Three.

Take all the copies with you to the Clerk of District Court office. The original set of forms will be kept by the Clerk of Court. One copy is for you to keep in a safe place, and the other copies you will serve on your spouse and the Department of Public Health and Human Services in Step Three.

**STEP THREE: Serve your spouse and the Department of Health and Human Services (DPHHS).**

Serving court documents means officially giving the documents to someone. The documents you file to start your case have to be “personally served” on your spouse. Personally served means a Sheriff or process server needs to hand the documents to your spouse. You can also personally serve documents if the person will sign an Acknowledgment saying that they got the documents. After the first set of documents is personally served, most documents can be served by ordinary first-class mail.

1. **Serving the Department of Health and Human Services.**

If you or the other parent receives Title IV-D services or have a case with the Child Support Services Division, you must serve the Department of Health and Human Services (DPHHS) by mailing or delivering to the nearest Child Support Services Division (CSSD) office these documents:

1. Notice and Acknowledgement to CSSD **MP 404**

**AND** copies of the following documents that you filed with the Court in Step Two:

1. Petition for Dissolution **MP 113**
2. Proposed Parenting Plan **MP 300**
3. (If required) Description of Existing Medical Coverage **MP 300 G**

**Follow these steps:**

Complete the first 3 pages of **MP 404** with your own information.

On page 4, fill out the top portion with the Judicial District, County, names of the parties, and the case number. Also fill in the address for the Clerk of Court on the last page.

When mailing **MP 404** Notice and Acknowledgement to CSSD, include a stamped envelope addressed to the Clerk of Court in your county so CSSD can send in the Acknowledgment to the Clerk of Court. The Acknowledgment is proof you served CSSD.

1. **Serving your spouse.**

You must serve your spouse with:

1. Disclosure of Income and Expenses **MP 510**. You do not file this document with the Court; **MP 510** is only served on your spouse. Remember to keep a copy for yourself.

**AND** copies of the following documents that you filed with the Court:

1. Summons and Automatic Economic Restraining Order **MP 400**
2. Petition for Dissolution **MP 113**
3. Proposed Parenting Plan **MP 300**
4. (If required) Description of Existing Medical Coverage **MP 300 G**
5. Proposed Property Distribution **MP 500**

There are four ways to serve your spouse: (1) Service by Sheriff, (2) Service through Notice and Acknowledgement, (3) a private process server, or (4) Service by Publication. The way you serve your spouse depends on your situation and your relationship.

 **OPTION #1: Service by the Sheriff.**

Service by Sheriff may be most appropriate for you if:

* You are concerned about your safety,
* You are not communicating well with your spouse, or
* You would like your case to move forward quickly.

Service by Sheriff is accomplished by hand delivering or mailing to the Sheriff in the County where your spouse resides:

* 1. Copies of all the documents,

**AND**

* 1. Original and Copy of the Summons and Automatic Economic Restraining Order **MP 400.** The original was given back to you when you filed your documents with the Clerk of District Court.
	2. Request for Sheriff to Serve Documents **MP 401**

The Sheriff usually charges a fee to serve documents. If your Statement of Inability to Pay Court Fees and Costs was approved by the Court, the Sheriff will waive the service fee.

 **OPTION #2: Service through Notice and Acknowledgement of your spouse.**

Service through Notice and Acknowledgment of your spouse may be most appropriate for you if:

* You have regular communication with your spouse,
* You know your spouse will cooperate, and
* You are willing to allow your spouse extra time to respond to your Petition.

In order to serve your spouse by Notice and Acknowledgment, you can hand deliver or mail:

1. Copies of all the documents,

**AND**

1. Notice and Acknowledgment of Service **MP 403.1**
2. Acknowledgement of Service **MP 403.2**

Your spouse needs to return the signed Acknowledgement to you. The Acknowledgement is proof you served your spouse. You must file it with the Clerk of District Court after your spouse signs it. You must wait 21 days for your spouse to return the Acknowledgement before you can serve them another way.

**OPTION #3: Private Process Server.** Service by a private process server may be appropriate if:

* You are having trouble serving your spouse another way, or
* You have the ability to hire a process server over a Sheriff. For example, you do not have an approved Statement of Inability to Pay Court Fees and Costs or your spouse resides outside Montana.

A private process server may have specific requirements. Private process servers will charge a fee. At a minimum, your process server will need these documents to serve your spouse:

1. Copies of all the documents,

**AND**

1. Praecipe. It tells the process server how to serve your spouse. This form is available on the State Law Library website.

**OPTION #4: Service by Publication**. Service by publication is an option of last resort and should only be pursued if:

* All other methods to serve your spouse have failed
* You and everyone you know have no information about where your spouse is.

Service by Publication requires a long process of filing extra documents with the court. Service by Publication also involves the additional cost of publishing in a newspaper:

1. Request for Order Granting Service of Summons by Publication **MP 402.1**
2. Order for Service of Summons by Publication **MP 402.2**
3. Summons for Publication **MP 402.3**

You have to wait for the Court to approve your request and sign an Order allowing Service by Publication before you can serve by publication.

**STEP FOUR: Wait and work towards a resolution.**

After your spouse is served, they have 21 days to respond to the Petition. If your spouse disagrees with any part of your proposed property distribution or parenting plan, they may file a Response to your Petition. Along with a Response, your spouse may file their own proposed property distribution or proposed parenting plan. If your spouse disagrees, you can try to reach agreement thought negotiation. If your spouse doesn’t file a Response with the Court, you can ask for a default. A default means you get what you asked for in the Petition.

**MEDIATION:** One way to negotiate is a mediation. Some courts require mediation before holding a hearing. Mediation is a process where a neutral person (called a “mediator”) helps people come up with a shared solution. Mediation is confidential and agreements made in mediation will only be filed in Court when everyone agrees. Mediation can be a cost-effective way to reach an agreement and speed up the dissolution process.

If you come to an agreement, you can file a Notice of Agreement **MP 612** and the proposed agreement. The Court must approve your agreement.

**STEP FIVE: Request a final hearing.**

Once the time for your spouse to respond has expired, you can request a hearing to finalize your dissolution. To ask for a final hearing you file these forms with the Clerk of District Court:

1. Request for a Hearing and Default by Clerk **MP 701**

If your spouse did not respond to your Petition, you may request a default judgment on this form. Which means you are asking the Court to consider only what you have filed.

1. Order Granting Hearing on Dissolution with Children **MP 702**
2. Dissolution Decree **MP 703**
3. Vital Statistics Form
4. Notice and Entry of Decree **MP 704**
5. (Optional) New proposals or agreements. In order to make sure the Court considers new proposals or agreements between you and your spouse; you file all completed forms at this time.

**STEP SIX: Attend your final hearing or ask the Court to waive your hearing.**

Attending your hearing is very important. The Judge will ask questions about your marriage and your children. This is when the Judge will make decisions on your case.

After the Judge makes a decision, the Judge will sign the Decree of Dissolution **MP 703**. The Court will adopt the version of the Proposed Property Distribution **MP 500** and Proposed Parenting Plan **MP 300** that the Court considers fair and in the best interest of your children. The Court will indicate which property distribution and parenting plan are “Court Ordered” by signing the documents in the Final Dissolution Decree which you have already completed and filed.

If you would like to ask the Court to waive your hearing, you can file joint or individual Affidavits for Entry of Decree of Dissolution of Marriage Without Hearing. This form is available on the State Law Library’s website.

**STEP SEVEN: File your Notice and Entry of Decree.**

After your hearing, you will need to file your Notice and Entry of Decree **MP 704** with the Clerk of District Court. Your dissolution is not final until this step is complete.

Ask the Clerk of Court’s office for a copy of your final Dissolution Decree with Exhibits. If your spouse was not present for the hearing, make two copies and mail copies of the following documents to your spouse:

* 1. Notice of Entry of Decree **MP 704**
	2. Dissolution Decree **MP 703**
	3. Court Ordered Parenting Plan **MP 300**
	4. Court Ordered Property Distribution **MP 500**

Keep your copy of the Decree and Exhibits in a safe place. You can make extra copies of your Decree for day care providers, schools, and law enforcement.