Completing Form D 1-6: Complaint for Divorce [Without Minor Children] 7/29/2005

[REMOVE THESE INSTRUCTION PAGES BEFORE FILING]

Talk to an attorney, if possible.
WARNING: These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. We always recommend you talk to a lawyer about your problem before filing your paperwork. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial half-hour consultation for $35. Contact the Court Assistance Office for information about resources for low-income people.

You will be signing a sworn statement that you have read the complaint, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions

Use this form only if you do not have minor children of this marriage. There is another form available through the Court Assistance Office if you have minor children.

Fill in the forms by typing or by printing neatly and legibly in black ink. If you are working on a computer, you may delete the optional sections you don't need and renumber the remaining sections, or type in "none" if a section doesn't apply. The documents have a boldface "**or**" at the start of optional sections. If the section does not contain a boldface "**or**" it is necessary and you should type in the appropriate information (which might be the word "none"). Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, fill in your full legal name, mailing address and telephone number.
The Court Heading. Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ADA").
The Caption. Fill in Your Full Legal Name on the line above Plaintiff and Your Spouse's Full Legal Name on the line above Defendant.
The Case No. The case number will be assigned by court personnel when you file the Complaint. You should write in the case number on all other documents.
The **Court Heading, Caption** and **Case Number** will be the same on all other documents you prepare for this case.

1. Residence of the Parties.
You must have lived in Idaho for at least six weeks. Fill in the state where your spouse lives.

2. Marriage of Parties.
Fill in the city and state (or country if you were married outside the USA) and the month, day and year of your marriage.

3. Grounds for Divorce.
This paragraph states the reason for the divorce is irreconcilable differences. If you want to state other grounds for the divorce, you should talk to an attorney.

4. Minor Child/ren of the Parties.
This form is to be used *only* if you and your spouse do not have any minor children in common.

- Check the first box if Wife is NOT now pregnant **or**
- Check the second box if Wife IS now pregnant with Husband's child **and**
    - Fill in the expected date of birth for the child. *(A Modification will need to be filed after the birth of the child to establish custody and child support.)*

5. Wife's Child/ren of Another Relationship.

- Check the box to indicate "None" **or**
- Complete this paragraph if any child/ren born or conceived during the marriage was/were not fathered by the Husband

Paragraphs 6, 7, and 8
WARNING: The rules of separate property (owned by only one of you) and community property (owned by both of you) can be extremely complex and technical. The following general principles may not apply to your situation. For example, some separate property may have been improved with community funds (or vice versa). Also, interest or other income from separate property is considered to be community property. If you have a lot of property or have any questions about whether it is separate or community property, please talk to an attorney.

Separate property is property either of you owned before the marriage or received during the marriage by gift or inheritance or in exchange for other separate property.

Community property is property acquired by one or both of you during the marriage unless the property was given to either of you separately as a gift, inheritance or in exchange for other separate property.

Real property or real estate is land with or without buildings. If the property you list is real estate, include legal descriptions from the deeds to the property. It is important that your description be exactly the same as that in the deed. If the legal description is lengthy, you may want to photocopy the deed, cut out the legal description and paste it on a separate sheet of paper to use as an exhibit. Attach (staple) the exhibit to the Complaint and refer to the exhibit in the Complaint.

Personal property is all property that is not real estate. Personal property includes furniture, clothing, vehicles, cash, bank accounts, securities and debts owed to you. It also includes retirement accounts; but, if either of you have retirement accounts you definitely should talk to an attorney before proceeding.

6. <u>Separate Property</u>.

- If you do not want any order about ownership of separate property, check the first box.
- If you want the court to order that specific separate property belongs to the Husband and/or an order that Husband's separate property, now in the possession of the Wife, be returned to the Husband, check the second box and describe the property in the first section of **Exhibit A**.
- If you want the court to order that specific separate property belongs to the Wife and/or an order that Wife's separate property, now in the possession of Husband, be returned to the Wife, check the third box and describe the property in the first section of **Exhibit B**.

7. <u>Community Real Property</u>.

- If you have not acquired community real property during the marriage, check the first box.
- If you have acquired community real property during the marriage, check the second box **and**
  - Fill in the residential address of the property (house number and street name),
  - The name of the city and county, and
  - The legal description for the property (use the legal description in the deed).

<u>Disposition of Real Property.</u> A ***"lien"*** is a legal right or interest that a creditor has in another's property (for example the mortgage loan). The mortgage loan and any other lien against the property should be listed in the Debt Section of the Complaint. We recommend you discuss your mortgage loan or any other lien on your property with your lending institution or lien holder and talk to an attorney before proceeding. As long as both of your names are on the loan, you will both continue to be responsible for payment until the loan is paid in full. If the payment isn't paid by the one assigned to make it, the creditor may collect from either of you. Also, if the property is foreclosed, both of you could be held responsible for any deficiency in paying off the loan after foreclosure sale. **"Equity**" is the difference between the value of the property and all encumbrances (liens) upon the property.

- Check one of the first three boxes to indicate what will be done with the community real property and any equity, and fill in the blanks **or**
- Check the fourth box and write in your own words what will be done with the property and any equity in the property.

Note: If the amount of the equity payment is large and will be spread out into periodic payments, you should talk to an attorney about the right way to insure the payments are made.

8. <u>Community Personal Property.</u>

- If you have not acquired any community personal property, check the first box. **or**
- If you have already divided your community personal property and each of you has the property in your possession, check the second box **and/or**
- If you want the court to order that specific property be given to the Husband and the property is already in Husband's possession, check the third box and list the property in the second section on **Exhibit A** (Husband's Property) **and/or**
- If you want the court to order that specific property be given to the Wife and the property is already in Wife's possession, check the fourth box and list the property in the second section on **Exhibit B** (Wife's Property).

- If there is property that the Husband should have given to him which is still in the possession of the Wife, check the third box **and** list the property in the third section on **Exhibit A** (Husband's Property).
- If there is property that the Wife should have given to her which is still in the possession of the Husband, check the fourth box **and** list the property in the third section on **Exhibit B** (Wife's Property).

Note: The Decree of Divorce can be used to transfer titles or deeds; but only if the description of the property is first listed in the Complaint and is complete and accurate (example: for vehicles, include all identifying information on the title; for real property, include a legal description of the property from the deed and not just the residential address of the property).

Paragraphs 6, 7, and 8 Reminder:
If you have listed any property on **Exhibit A** or **Exhibit B**, the Exhibits must be attached (stapled) to every copy of the Complaint. Initial and date the Exhibits on the lines at the bottom. Make an extra copy of the Exhibits to attach (staple) to the Decree of Divorce.

9. Debts.
Generally, separate debts are debts incurred by either of you prior to marriage, or during marriage if incurred to improve or maintain separate property (see the description of community and separate property above). Community debts are all other debts incurred during marriage.
- If you do not know of any unpaid debts, check the first box **or**
- If there are debts the Husband should be ordered to pay, check the second box and list each creditor.
- If there are debts the Wife should be ordered to pay, check the third box and list each creditor.

Note: If both of you are going to pay a part of the same debt, also put in the amount each of you should be ordered to pay.

Note: A divorce is between you and your spouse. Your debts are between you and your creditors and, if a bill doesn't get paid, the creditor may be able to collect from either of you, especially if both of your names are on a loan contract. However, if the debt is listed in the divorce papers and either of you is assigned and ordered to pay a debt and does not make payment, the other party may have some remedy before the court; however, if the bill doesn't get paid, the creditor may be able to collect from either of you.

10. Debts Incurred Since Separation.
If you want the judge to order that each party will pay any debt incurred by them after the separation date, check the box and fill in the date you stopped living together.

11. Name Change.
Check the box if either party wants to stop using the last name of the spouse and go back to using their former last name (any name legally used). Fill in the current name of the person wanting the name change and fill in the former last name. (Accurate spelling is very important.)
Signature: Leave the spaces for the State and County blank. Go to an office where there's a

Notary. Have the notary fill in the spaces. Sign the Complaint in front of the Notary and have your signature notarized.

Make two more copies of the Complaint with Exhibits attached (stapled).

Continue referring to CAO Instruction 3, "Filing for Divorce," for complete instructions to file your Complaint.

_____
Full Name of Party Filing This Document

_____
Mailing Address (Street or Post Office Box)

_____
City, State and Zip Code

_____
Telephone Number

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

_____, Plaintiff, vs. _____, Defendant.	Case No.: _____ COMPLAINT FOR DIVORCE Fee Category: F.1. Filing Fee $_____

The Plaintiff states under oath:

1. Residence of the Parties. I am now and have been a resident of the State of Idaho for at least six (6) full weeks prior to the filing of this action. Defendant is currently a resident of the State of _____.

2. Marriage of the Parties. The parties were married at (city)_____, (state)_____ on (month, day, year)_____, and are still Husband and Wife.

3. Grounds for Divorce. Irreconcilable differences exist between the parties.

4. Minor Child/ren. The parties do not have any minor children.

[ ] Wife is not now pregnant. **or**

[ ] Wife is now pregnant with Husband's child expected to be born _____.

5. Wife's Child/ren, Born or Conceived During this Marriage.

[ ] None.

[ ] Wife is now pregnant with a child expected to be born _____; however, Husband is not the father of the Wife's child.

[ ] The following child/ren was/were born to Wife during the marriage; however,

Husband is not the father of the children: *(write full name(s) and date(s) of birth)* _____

_____

6. Separate Property. (Land and/or Personal Property)

[ ] None.

[ ] Prior to or during the marriage, the Husband acquired the separate property listed on the attached **Exhibit A**. That property should be confirmed as the Husband's separate property. Wife should be ordered to return to Husband any such property in Wife's possession.

[ ] Prior to or during the marriage, the Wife acquired the separate property listed on the attached **Exhibit B**. That property should be confirmed as the Wife's separate property. Husband should be ordered to return to Wife any such property in Husband's possession.

7. Community Real Property. (Land) During the marriage, the Wife and Husband acquired:

[ ] no community real property.

[ ] community real property located at (address) _____ in the City of _____, County of _____, State of Idaho. This real property is described in the deed as follows: _____

_____.

The real property described above should be:

[ ] ordered sold and the net proceeds divided _____% to the Wife and _____% to the Husband. **or**

[ ] awarded to the Wife, subject to any liens, and the Husband should be ordered to convey his interest in the property to the Wife when she pays him $_____ for his equity in the property. **or**

[ ] awarded to the Husband, subject to any liens, and the Wife should be ordered to convey her interest in the property to the Husband when he pays her $_____ for her equity in the property. **or**

[ ] _____

_____

_____

_____.

8. Community Personal Property. During the marriage, the Wife and Husband acquired:

[ ] no community personal property. **or**

[ ] community personal property they have already divided. The property should be awarded to the party who presently has possession.

[ ] community personal property listed on **Exhibit A** and/or **B**. It would be just and equitable for the court to award to the Husband, as his sole and separate property, the community property described in **Exhibit A**.

[ ] community personal property listed on **Exhibit A** and/or **B**. It would be just and equitable for the court to award to the Wife, as her sole and separate property, the community property described in **Exhibit B**.

The court should order each party to deliver to the other any of the community personal property currently in his/her possession that is awarded to the other party. The court should also order each party to execute and deliver any documents necessary to effectuate the property division.

9. Debts.

[ ] The Plaintiff has no knowledge of any unpaid debts. **or**

[ ] It would be fair and equitable for the court to order the Husband to pay the following debts as or before they become due and to order the Husband to hold the Wife harmless for any further liability concerning these debts: (list each creditor)

[ ] It would be fair and equitable for the court to order the Wife to pay the following debts as or before they become due and to order the Wife to hold the Husband harmless for any further liability concerning these debts: (list each creditor)

10. [ ] **Debts Incurred Since Separation.** The parties have been separated since (date) _____. It would be fair and equitable for the court to order that each party will assume any debt incurred by that party since the date of separation. The court should order each party to pay those debts as or before they become due and to hold the other party harmless from any obligation concerning those debts.

11. [ ] **Name Change.** _____ should be restored to the former last name of _____.

VERIFICATION: I swear I have read this Complaint and state that all facts included are true.

WHEREFORE, plaintiff prays for judgment as requested above.

DATE _____, 20___.

_____
Signature of Plaintiff

SUBSCRIBED AND SWORN to before me this _____day of _____, _____.

_____
Notary Public for Idaho
Residing at: _____
My Commission expires: _____

HUSBAND'S SEPARATE PROPERTY
(Describe each item, including a legal description for real property)

PERSONAL COMMUNITY PROPERTY IN HUSBAND'S POSSESSION TO BE AWARDED TO HUSBAND
(Describe each item)

PERSONAL COMMUNITY PROPERTY IN WIFE'S POSSESSION TO BE AWARDED TO HUSBAND
(Describe each item)

_____ _____
Initials Date

EXHIBIT A

WIFE'S SEPARATE PROPERTY
(Describe each item, including a legal description for real property)

PERSONAL COMMUNITY PROPERTY IN WIFE'S POSSESSION TO BE AWARDED TO WIFE
(Describe each item)

PERSONAL COMMUNITY PROPERTY IN HUSBAND'S POSSESSION TO BE AWARDED TO WIFE
(Describe each item)

_____ _____
Initials Date

EXHIBIT B