ANNULMENT COMPLAINT (without children, joint assets or debts)

IMPORTANT

THIS PACKET IS IN NO WAY INTENDED TO SUBSTITUTE FOR THE ADVICE OF A PRIVATE ATTORNEY

Private Counsel Is Always Recommended For Legal Matters

The law allows any person to represent themselves in a legal action. However, filing an action with the court and representing yourself in the courtroom can be a complicated legal procedure and this packet does not attempt to address all the legal issues involved in bringing your matter before the court. This packet is created to help you access the legal system without the assistance of an attorney.

When representing yourself, you are responsible for understanding the law that governs your case and for filing the proper legal documents. The laws and rules are set out in the Nevada Revised Statutes, The Rules of Civil Procedure, and the local rules governing the jurisdiction in which you are filing your documents.

When you sign these documents and present them for filing with the court, it is assumed by the court that you have carefully read the documents, that you understand all the terms in the documents, that you agree with all the provisions in the documents, and that you are aware of all the consequences those provisions may produce.

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NEVADA ANNULMENT STATUTES

NRS 125.290 Void Marriages. All marriages which are prohibited by law because of:

- 1. Consanguinity between the parties; or
- 2. Either of the parties having a former husband or wife then living, if solemnized within this state,

are void without any decree of divorce or annulment or other legal proceedings. A marriage void under this section shall not bar prosecution for the crime of bigamy pursuant to NRS 201.160.

NRS 125.300 **Voidable Marriages: Causes for annulment.** A marriage may be annulled for any of the causes provided in NRS 125.320 to 125.350, inclusive.

NRS 125.320 Cause for annulment: Lack of consent of parent or guardian.

- 1. When the consent of the father, mother, guardian or district court, as required by NRS 122.020 or 122.025, has not been obtained, the marriage is void from the time its nullity is declared by a court of competent jurisdiction.
- 2. IF the consent required by NRS 122.020 or 122.025 is not first obtained, the marriage contracted without the consent of the father, mother, guardian or district court may be annulled upon application by or on behalf of the person who fails to obtain such consent, unless such person after reaching the age of 18 years freely cohabits for any time with the other party to the marriage as husband and wife. Any such annulment proceedings must be brought within 1 year after such person reaches the age of 18 years.

NRS 125.330 Cause for annulment: Want of understanding.

- 1. When either of the parties to a marriage for want of understanding shall be incapable of assenting thereto, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.
- 2. The marriage of any insane person shall not be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife after such insane person was restored to a sound mind.

NRS 125.340 Cause for annulment: Fraud.

- 1. If the consent of either party was obtained by fraud and fraud has been proved, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.
- 2. No marriage may be annulled for fraud if the parties to the marriage voluntarily cohabit as husband and wife having received knowledge of such fraud.

NRS 125.350 Cause for annulment: Grounds for declaring contract void in equity. A marriage may be annulled for any cause which is ground for annulling or declaring void a contract in a court of equity.

NRS 125.360 **Annulment of marriage contracted within state: No requirement of residence.** Annulment of marriage contracted, performed or entered into within the State of Nevada may be obtained by complaint, under oath, to any district court of the State of Nevada for any cause provided by law for annulment of marriage.

NRS 125.370 Annulment of marriage not contracted within state: Jurisdiction of district court.

- 1. Annulment of marriages contracted, performed or entered into without the State of Nevada may, for any cause provided by law for annulment of marriage, be obtained by complaint, under oath, to the district court of any county if the plaintiff shall have resided 6 weeks in the state before suit be brought; otherwise, by complaint, under oath, to the district court of the county in which:
 - (a) The defendant shall reside or be found; or
 - (b) The plaintiff shall reside, if the latter be the county in which the parties last cohabited.
- 2. No court in this state shall have authority to annul any marriage contracted, performed or entered into without the State of Nevada unless one of the parties shall have resided in this state for the period of 6 weeks before filing of the complaint.

NRS 125.380 Cause for annulment may be pleaded in divorce complaint. A cause of action for annulment may be pleaded in the same complaint with a cause of action for divorce.

NRS 125.390 **Action in rem; status of parties determined.** Any action brought in this state for annulment of marriage shall be an action in rem, and in addition to annulling or declaring the contract of marriage void the courts shall regulate and determine the status of the parties.

NRS 125.400 **Service of process.** In any suits brought under this chapter for annulment of marriage, process shall be served in the same manner as in actions at law, and the courts shall have the same power upon a substituted or constructive service of process to annul a marriage and regulate and determine the status of the parties as they would have had if process had been personally served.

NRS 125.410 Issue of marriages are legitimate.

- 1. Nothing in this chapter shall be construed so as to make the issue of any marriage illegitimate if the person or persons shall not be of lawful age.
- 2. The issue of all marriages deemed null in law shall be legitimate.

NRS 125.420 **Presumption: Law of another state same as law of Nevada.** In any suit in this state for an annulment of marriage in anywise affected by the law of another state, it shall be presumed that the law of such other state is the same as the law of this state, unless and until the law of such other state shall be alleged and proved.

NRS 125.430 Reporting and transcription of evidence: Filing and costs.

- 1. When ordered by the court, the evidence in annulment of marriage actions shall be reported and transcribed and the transcript thereof filed with the pleadings in the case.
- 2. The cost of such transcript shall be immediately computed by the reported and paid by the party ordered by the court to do so tot the clerk of the court, who shall pay the same to the reported upon receiving from the latter the transcript of evidence.
- 3. In all cases heretofore or hereafter where a transcript of evidence has not been filed due to the death of the reporter, and a period of not less than 5 years has elapsed and no claim has been made during that period by any party, the amount of money on deposit with the clerk, and payable to such reporter if a transcript of the evidence had been filed, shall be, by the clerk, paid to the county treasurer, who shall deposit the same in the county general fund.

NRS 125.440 Judgment for arrearage in payment of support.

- 1. When either party to an action for annulment or declaration of nullity of a void marriage, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the district court may make an order directing the entry of judgment for the amount of such arrears, together with costs and a reasonable attorney's fee.
- 2. The application for such order shall be upon such notice to the defaulting party as the court may direct.
- 3. The judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments.
- 4. The relief herein provided for is in addition to any other remedy provided by law.

GENERAL INFORMATION ABOUT FILING A COMPLAINT/PETITION

The forms must be typewritten or <u>legibly</u> handwritten in black ink.

There will be a filing fee to file this document with the Court. The fee may change from time to time, and it is recommended that you contact the Court Clerk's office to check on the current fee prior to presenting the documents for filing.

IF you are indigent and cannot afford the filing fee, you may request the fee be waived by filing the packet entitled **Request for Waiver of Fees and Costs**. The Court will examine your financial status and determine whether a full or partial waiver can be granted, or if the request will be denied.

There are facilities for copying your documents at the Court Clerk's office at the charge of \$.025 **per page.** Therefore, it is recommended that you make any copies of the documents you may want, or need, prior to going to the Court Clerk's office. You will need **two** copies of each document to be filed unless told otherwise. If exhibits are attached to the original document, a copy of the exhibits must be attached to each copy.

Location of the Court Clerk's Office

The Court Clerk's Office for **Churchill County** is located at 73 N. Maine Street, Suite B, Fallon, NV, 89406, on the second floor. The phone number is (775) 423-6080.

If you are mailing the documents to the Court Clerk's office for filing, OR if you have submitted an Order of Decree for the Judge to sign, it is strongly suggested that you provide a self-addressed, stamped envelope when you file your documents. A copy of the file-stamped documents will then be mailed to you.

FILLING OUT THE DOCUMENTS

- 1. **For All Documents**: Fill in the spaces on lines 9 through 13, **exactly** as they appear in your other documents. This is the "heading" of the document and it is always the same. If you are the Plaintiff in the original document, you will remain the Plaintiff; if you are listed as the Defendant in the original document, you will remain the Defendant. The Case No. and Dept. No. are always the same.
- 2. NOTE: If Children Are Involved—UCCJA stands for the Uniform Child Custody Jurisdictional Act. It is a Federal law which dictates the criteria that must be present in order for a Court to have jurisdiction to enter an order regarding custody and visitation of a minor child. In order for a Court to enter a valid order regarding custody or visitation over a minor child, the child must be a resident of the State of Nevada and must have been physically present in the State for a period of six months prior to the filing of the Complaint or Petition.

3. <u>The Civil Cover Sheet</u>: Leave the Case and Dept. No. blank, as this will be assigned when the document is filed. Fill in your name, address and phone number under Plaintiff. Fill in the information, if known, for Defendant. Check the appropriate box for the action you are filing. Then sign and date the form.

4. The Complaint of Petition:

- a. <u>Divorce</u> Be sure you are familiar with the terms and definitions regarding community assets and debts. Pensions and bank accounts are assets. Vehicles and their VIN numbers should be listed as assets in the appropriate columns. Credit cards should be listed as debts and the last four numbers of the accounts should be included, if known.
- b. <u>Child Custody or Visitation</u> Be sure you are familiar with the terms and definitions regarding child custody and visitation. Also be sure you know how the child support must be calculated according to the Nevada Revised Statutes.
- 5. This document must be signed in the presence of a Notary Public.
- 6. The Affidavit of Resident Witness: The Affidavit of Resident Witness is only used for a Complaint or Petition for divorce. The Affidavit must be filled in by the person who is going to swear you have been a resident of the State of Nevada for at least six (6) weeks prior to filing any documents.
- 7. This document must be signed by the Resident Witness in the presence of a Notary Public. YOU CANNOT BE YOUR OWN RESIDENT WITNESS.
- 8. The Summons: Print your name as the Plaintiff and the other party's name as the Defendant. Fill in purpose in the middle of the form i.e. divorce, child custody, personal injury, etc. Print your name, address and telephone number in the space at the bottom of the Summons.
- 9. On the back (or second page) of the Summons, if there are other documents to be served along with the Complaint or Petition, list those documents on the lines under the heading. *Do not fill in any other lines/information at this time. Leave all other spaces blank.*
- 10. Once all of the above documents have been completed, make two copies. Take the original **and copies** to the Court Clerk to be filed, together with your filing fee. The copies will be returned to you. One copy is for your file, the second for the other party. If there are multiple parties, make enough copies for each.
- 11. The Court Clerk will "issue" the Summons, meaning complete the remaining portions of page 1. The Clerk will sign and stamp the documents, and return them.

- 12. <u>Serving the Documents</u>: If the other party is a resident of another State and has never lived in the State of Nevada, and the marriage (in case of divorce) did not take place in Nevada, you must get permission from the Court to personally serve the Defendant outside the State. This is done through the supplemental packet entitled **Motion to Allow Out of State Service.**
- 13. Service on the other party, either in person or by publications, **MUST BE MADE** within *one hundred twenty (120) days* after the Complaint is filed and the Summons issued or the action may be dismissed by the Court.
- 14. <u>By Personal Service</u>: Staple the **copy** of the Summons to a copy of the Complaint. If additional motions have been filed with the Complaint, a copy of those must also be included. This is the packet of documents that must be *personally* served on the other party.
- 15. Because you are a party to the action, you cannot serve the documents on the other party. Service may be made:
 - a. By the Civil Division of the Sheriff's Office in the county in which the other party lives or works.
 - b. By a responsible adult over the age of 18 years, such as a friend or relative.
 - c. By a private process service.
- 16. The Sheriff's Office and private process service will charge a fee for service of the documents. Deliver the packet of documents together with the **original** Summons to the individual you have chosen from the above list.
- 17. After service is made on all parties, the back of the **original** Summons must be completed and signed in the presence of a **Notary Public** by the individual who served the documents. If the Sheriff's Office completes service, it will complete the Summons and return it to the Court Clerk. If anyone else completes service, it is your responsibility to retrieve this document and file it with the Court Clerk. Without proof of service on the other party, the Court cannot grant your Complaint. **It is your responsibility to keep track of the service of the documents, regardless of the method chosen**, including filing the completed Summons with the Court Clerk.
- 18. <u>Service by Publication</u>: If you do not know where the other party is, you will need the supplemental packet entitled **Motion to Allow Publication of Summons** in order to serve the other party by publishing the Summons in the newspaper.
- 19. Once the other party is served with a copy of the Complaint or Petition, they have twenty (20) days after the date of service to respond.

- 20. If the Defendant does NOT file an answer within 20 days: You may fill out the appropriate **Default** packet and submit the documents to the Court for a final review and decision by the Judge. Without these documents, your action will not become final and will eventually be dismissed.
- 21. If the Defendants DOES file an answer within 20 days: You should receive a copy of the document by mail or personal service. If the Defendant does not have an attorney, however, they may not send you a copy of the Answer. Therefore it is important to check with the Court Clerk's office to see if an Answer has been filed prior to filing any **Default** documents.
- 22. <u>After Service is Complete</u>: Nothing automatically happens in a case. It is your responsibility to keep the case moving. It is important to take immediate action if the other party files and serves any kind of document. There are very important time frames in which documents and pleadings must be filed. If those time frames are not met, you may be put at a great disadvantage. *However*, if an attorney is representing the other party, the attorney may take the lead and steer the procedure.
- 23. If the other party challenges the allegations in the Complaint or Petition, the case may become one in which formal discovery is appropriate. *It is your responsibility to be aware of the rules that govern discovery and the time limits and procedures associated with discovery.*
- 24. Discovery is addressed in the Nevada Rules of Civil Procedure and the Third Judicial Court Rules, as well as pre-trial procedures. Your case may be seriously compromised if you do not know and follow the Rules. You are strongly advised to seek the ad ice and counsel of a private attorney regarding discovery procedures and time lines.
- 25. If the Defendant Files an Answer and Counterclaim Within 20 Days: All of the above apply, with an additional step. You must file a **Reply to Counterclaim** within 20 days of receipt of the counterclaim, if personally served, or within 23 days from the postmarked date if it was mailed to you. If you do not respond to the counterclaim, the other party may be granted what they ask in the counterclaim.

If you need guidance in filling out the forms or in the procedure of the case, seek the advice of a private attorney.

NOTE: YOU MAY NOT USE THESE FORMS IF YOU ARE PRESENTLY REPRESENTED BY AN ATTORNEY IN THIS MATTER.

If you are requesting that the Court waive the filing fee, the filing procedure is different than above.

Complete the Request for Waiver of Fees and Costs packet and follow those directions.