

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff, vs. _____, Defendant</p>	<p>DIV _____</p> <p>STIPULATION AND SETTLEMENT AGREEMENT (WITH CHILDREN)</p>
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Come now the parties above-named, and for the purpose of aiding the Court in the disposition of the divorce action pending before it, hereby stipulate and agree as follows:

PARTIES

The parties to this Agreement are _____, hereinafter referred to as "Wife" or "Mother" and _____, hereinafter referred to as "Husband" or "Father."

MARRIAGE

The parties were married in _____, State of _____, on the _____ day of _____, _____, and are now and have been ever since, (husband and wife) or (wife and husband). (Circle one)

DIVORCE ACTION

Defendant was served with a true and correct copy of the Summons and Complaint on the _____ day of _____, _____, as reflected by the Proof of Service filed with the Court.

Plaintiff's Initials

Defendant's Initials

RESIDENCY

Wife resided at _____, _____ County, South Dakota, at the time of the commencement of this divorce action and presently resides at _____ County, South Dakota. Husband resided at _____, _____ County, South Dakota, at the time of the commencement of this divorce action and presently resides at _____, _____ County, _____ . Wife has continued to live in South Dakota since the divorce action was started. Both parties agree that venue and jurisdiction in the _____ Judicial Court, _____ County, South Dakota is appropriate and consent to such jurisdiction and venue.

CHILDREN

There have been children born to or adopted by the parties during the course of their relationship/marriage.

PURPOSE

During the course of their marriage, the parties have accumulated certain real [land] and/or personal property and have incurred certain debts and obligations, all of which is listed in this agreement. The purpose of this Agreement is to set forth the terms and conditions upon which the parties agree to compromise and settle the controversies arising out of their marital relationship and to aid the Court in disposing of this matter. The parties hereby request the Court approve this Stipulation entered into between the parties and to grant the divorce to both parties on the grounds of irreconcilable differences pursuant to SDCL §25-4-17.3, based on the

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Affidavits of the parties as to jurisdiction and grounds for divorce without the necessity of a court hearing.

This Agreement is made and entered into freely and voluntarily by both parties. The parties represent to the court that each has been advised of the importance of consulting an attorney prior to the execution of this agreement and acknowledge that it is a legal document and binding upon them.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereby agree as follows:

(1) Waiver of Notice: The parties waive notice of trial, findings of fact and conclusions of law and agree that Husband/Wife (circle one) may forthwith submit this Stipulation and Settlement Agreement together with the parties' Affidavit to the Court for entry of a Decree of Divorce, without further notice to either party, provided that the terms of this Stipulation and Settlement Agreement are incorporated by reference into the Decree of Divorce entered by the Court.

(2) Children: We have the following children born to us or adopted during our relationship/marriage:

<u>Name</u>	<u>Date of Birth</u>	<u>Date of Adoption</u>	<u>Age</u>	<u>Sex</u>

A. Legal Custody: We shall share joint legal custody of our children.

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B. Physical Custody: The children shall be in the primary physical custody of Mother\Father (circle). The parties agree that the non-custodial parent shall have parenting time consistent with this agreement and\or the South Dakota Visitation Guidelines. Failure to allow parenting time consistent with this agreement may subject the party failing to following the agreement to punishment by the Court, including attorney fees of the other party and possible fine, and jail time.

At this time, Mother shall have the children during the school week as follows (including pick-up and return times and location): _____

At this time, Father shall have the children during the school week as follows (including pick-up and return times and location): _____

Mother shall have the children for the following parenting time during the Summer: _____

Father shall have the children for the following parenting time during the Summer: _____

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The parties shall alternate the following holidays: Easter/Spring Break, Memorial Day, Labor Day and Thanksgiving.

Mother shall have Easter/Spring Break and Thanksgiving in even-numbered years and Memorial Day and Labor Day in odd-numbered years, unless the parties agree otherwise, in writing.

Father shall have the Easter/Spring Break and Thanksgiving in odd-numbered years and Memorial Day and Labor Day in odd-numbered years, unless the parties agree otherwise, in writing.

Christmas vacation (winter break) shall be divided equally with Mother to get the first half in odd-numbered years and the second half in even-numbered years. Father shall receive the first half of Christmas in even-numbered years and the second half of Christmas in odd-numbered years. If the parties are celebrating Christmas in the same area, then the parent not having the first half of Christmas shall have the children from 10:00 a.m. to 8:00 p.m. on Christmas Day. **The parties may alter the holiday schedule, by mutual agreement which will be in writing and signed by both parties.**

Mother shall have the children on their birthday in even-numbered years and Father shall have the children on their birthday in odd-numbered years.

The children shall be with Mother every Mother's Day weekend and with Father every Father's Day weekend.

The transportation between the parents shall be handled equally. One parent shall

pick up the children at the beginning of the visit and the other parent shall pick up the children at the end of the visit, unless the parties agree otherwise.

If either party decides to move, they must provide at least 45 days advance written notice to the other parent, and such other information as required by law.

C. Child Support: Child Support **must** be addressed in the Stipulation Agreement or the court will not grant a divorce. Please attach to the Stipulation Agreement either a print out of child support calculations or a report from a Child Support Referee. For information and assistance with child support calculations, parties may visit the Child Support Obligation Worksheet page found on the Department of Social Services website at <http://dss.sd.gov/childsupport/services/obligationsdetermined.asp>.

For additional help, parties may hire an attorney or contact the State Bar's Access To Justice lawyer referral program or other Legal Aid programs throughout the state.

Attached are child support calculations prepared by:

- Parties
- Licensed Attorney: _____ (Print name of attorney)
- Child Support Referee Report

D. Parent Education Certificate: Each of the parties has attended a parent education course [if required] and attached hereto their certificates of completion. [Please check with your local clerk of court to determine if attendance is required in your circuit prior to the granting of the divorce.]

(3) Property Settlement:

A. Real Property (land and buildings): The parties have an interest in the following real property:

Address:

Legal description:

Wife/Husband (circle one) will receive the land and all improvement

thereon. The party not receiving the land shall sign a quit claim deed releasing all interest in the property.

OR

The land shall be sold with the net sale proceeds to be divided equally

between the parties. The parties agree to use _____ as a realtor and to mutually agree on the selling price. Husband/Wife (circle one) shall remain in the residence until sold. Until sold, the expenses relating to the marital residence shall be divided as follows:

B. Vehicles:

Husband shall receive the following vehicle(s):

free and clear of any claim by Wife.

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Wife shall receive the following vehicle(s):

free and clear of any claim by Husband.

Each shall transfer the title to the party receiving the vehicle.

C. Personal Property: The parties have divided their personal property by agreement and represent to the court that such division is equitable. Wife shall retain as her sole and separate property all of her personal clothing and effects and all personal property in her possession, free and clear of any claim by Husband. Husband shall retain as his sole and separate property all of his personal clothing and effects and all personal property in his possession, free and clear of any claim by Wife. Any property purchased by a party since their separation shall belong to the party purchasing same.

If either party has property to be given to the other, then Wife shall give to Husband the following personal property items: _____

and Husband shall give to Wife the following personal property items: _____

D. Checking and Savings Accounts: The parties represent that they have

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separated their bank accounts including checking and/or savings, and each shall keep the cash balance in any bank accounts in his/her name, free and clear of any claim by the other. The parties shall immediately close all joint accounts with the proceeds to be divided equally.

E. Investments and Retirement Funds and Pension Plans: Retirement and investments are considered property and must be divided in the divorce. There are additional legal documents necessary to accomplish a transfer of certain retirements and investments and you are strongly advised to consult an attorney if you are dividing this type of property.

Wife shall receive the following investments and retirement accounts:

Husband shall receive the following investments and retirement accounts:

F. Life Insurance:

Wife shall receive the following (term/whole life) life insurance policy(ies):

Husband shall receive the following (term/whole life) life insurance policy(ies):

G. Debts:

Wife shall be responsible for payment of the following debts and shall indemnify and hold Husband harmless therefrom:

and any undisclosed debt that she has incurred in her name or against property awarded to her.

Husband shall be responsible for payment of the following debts and shall indemnify and hold Wife harmless therefrom:

and any debt that he has incurred in his name or against property awarded to him.

We understand that with regard to any debt in the name of the other, that if our spouse does not pay the debt, the creditor can make a claim against us. However, we understand that we have a claim against our spouse for his/her refusal to pay the debts assumed herein.

Except as otherwise expressly provided herein, the parties further agree that each party shall pay his or her own bills incurred from and after the commencement of this divorce proceeding. Each of the parties agrees not to contract any debt, charge or liability whatsoever for which the other or his or her property or estate shall or may become liable or answerable in the future.

Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during the course of their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.

(4) Military Benefits (If one of the parties is a military member):

Husband/Wife (choose one) may be entitled, as a spouse of a servicemember, to insurance coverage due to his/her spouse's service in the military past or present. The military member shall take the necessary action to ensure his/her spouse all benefits to which he/she is entitled as the former spouse of a military member. Husband/Wife shall retain all rights of a former spouse including a military identification card and commissary privileges. This includes National Guard Service. You should seek legal advice to understand and protect your benefits and you are strongly encouraged to do so.

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If the Plaintiff or Defendant is a member of the military service, past or present, please list rank, branch of service, and number of years in service during the marriage.

(5) Alimony (Spousal Support): Please check the appropriate box and fill in where necessary:

Wife/Husband (circle one) shall receive alimony in the sum of \$_____ each month for a period of _____ months, or until remarriage of the recipient or death of either party. Alimony is tax-deductible to the spouse paying it and taxable income to the spouse receiving it.

OR

Each party waives any claim for alimony from the other and accepts this Stipulation and Settlement Agreement in full and final satisfaction of all marital claims.

(6) Former Name: (Optional if desired):

Wife/husband (circle one), DOB _____, will be restored to her/his former or maiden name of “_____” and be known hereafter as _____.

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(7) Attorney's Fees: (Check the appropriate box and fill in where necessary):

Each party shall pay his/her own attorney's fees incurred in this proceeding

OR

Husband/Wife (circle one) will pay the sum of \$_____ towards the

attorney's fees of his/her spouse.

(8) Interference: The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

(9) Except as herein provided, neither party shall have any other or further claim in or to the property, estate or earnings of the other.

(10) Modification and Performance of Agreements: This Stipulation shall not be modified unless in writing and approved by the Court.

DATED this _____ day of _____, _____.

Plaintiff's Signature

DATED this _____ day of _____, _____.

Defendant's Signature

STATE OF SOUTH DAKOTA)

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Defendant's Initials

