

# Divorce Proceeding Checklist

## Overview (click any of the steps below to get more information):

- [Ensure proper residence.](#)
- [Ensure proper filing.](#)
- [Verify statutory conditions are met.](#)
- [Hold hearing and decide issues.](#)
- [Take proofs.](#)
- [Enter judgment.](#)

“A complaint for divorce may be filed in the circuit court upon the allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. In the complaint the plaintiff shall make no other explanation of the grounds for divorce than by the use of the statutory language.” [MCL 552.6\(1\)](#); [MCR 3.206\(A\)\(2\)\(a\)](#).

Either spouse may file a complaint for divorce. Whoever files the complaint is referred to as the plaintiff; the other party is referred to as the defendant. The defendant may respond to the complaint without oath or affirmation. [MCL 552.11](#).

The defendant may file a response either admitting or denying the grounds for divorce. [MCL 552.6\(2\)](#). The court may consider the defendant’s admission but it is not binding on the court’s determination. *Id.*

## **Time Guidelines ([Administrative Order No. 2013-12](#)):**

- *Divorce Without Children*. 85% should be adjudicated within 182 days from the date of case filing and 98% within 364 days.
- *Divorce With Children*. 85% should be adjudicated within 301 days from the date of case filing and 95% within 364 days.

*On either spouse's motion, the court may enter a personal protection order (PPO) pursuant to [MCL 600.2950](#) at any time before the filing of a divorce, during the pendency of the divorce, or after entry of the divorce judgment; a PPO action during a divorce case does not have to be filed separately as a stand alone action. See [MCL 552.14](#).*

On the filing of the complaint for divorce, inquire and determine the following:

**Ensure proper residence:** plaintiff or defendant has resided in **Michigan** for **180 days** immediately preceding the filing of the complaint. [MCL 552.9\(1\)](#);<sup>1</sup> [MCR 3.206\(A\)\(2\)\(b\)](#). See also [MCL 600.1621](#). Parties cannot agree to waive this requirement.

**Exception** to filing complaint after 180-day state residence is IF the cause for divorce alleged occurred outside of Michigan or when defendant is not domiciled in the State at the start of the case or was not here when the cause of action for divorce arose. Do NOT grant divorce *unless* plaintiff or defendant resided in Michigan **1 year** immediately preceding the filing of the complaint.<sup>2</sup> [MCL 552.9e](#); [MCL 552.9f](#).

Ensure plaintiff or defendant has resided in the **county** in which the complaint is filed for **10 days** immediately preceding the filing of the complaint. [MCL 552.9\(1\)](#). See *Stamadianos v Stamadianos*, 425 Mich 1, 14 (1986) (“the ten-day county residency requirement of [MCL 552.9](#) is a jurisdictional and not a venue provision”). Parties cannot agree to waive this requirement.

**Exception** to filing the complaint without meeting the 10-day county residence requirement is IF *all* of the following apply *and* it is set out in the complaint:

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<sup>1</sup> “[MCL 552.9\(1\)](#) does not require a party’s ‘continuing physical presence’ in the state for the entirety of the state residency period. . . . [A]n established domicile is not destroyed by a temporary absence if the person has no intention of changing his or her domicile.” *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 332 (2018), quoting *Berger v Berger*, 277 Mich App 700, 703 (2008) (internal citations omitted).

<sup>2</sup> Absence from Michigan that does not exceed 90 days must not be construed as interfering with the 1-year state residence requirement. [MCL 552.9e](#).

- defendant was born in, or is a citizen of, a country other than the United States; AND
  - the parties to the divorce action have (a) minor child(ren); AND
  - there is information that would allow the court to reasonably conclude that the minor child(ren) are at risk of being taken out of the United States and retained in another country by defendant. [MCL 552.9\(2\)](#).
- Ensure proper filing** - the case initiating document must meet filing standards set out in [MCR 1.109\(D\)](#) and must include:
- The names of the parties before the marriage;
  - Each party's address for service;
  - Each party's e-mail address;
  - Each party's telephone number;
  - Whether there are any pending or resolve cases within the court's jurisdiction involving the family or family members of the person who is the subject of the complaint (if so, verify that a completed case inventory listing those cases was filed)<sup>3, 4</sup>;
  - Whether there are minor children of the parties or minor children born during the marriage;
  - Ages of all children born of the marriage;
  - Whether a party is pregnant;
  - The factual grounds for the action stated in the statutory language, without further particulars;
  - Whether there is property to be divided; and
  - When there are minor children, allegations regarding the child(ren)'s residence and other custody proceedings. [MCR 1.109\(D\)\(2\)](#); [MCR 1.109\(D\)\(2\)\(b\)](#); [MCR 3.206\(A\)\(2\)\(c\)](#); [MCR 3.206\(A\)\(4\)](#); [MCL 552.45](#); [MCL 722.1209](#).

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<sup>3</sup> "This does not apply to outgoing requests to other states and incoming registration actions filed under the Revised Uniform Reciprocal Enforcement of Support Act, [MCL 780.151 et seq.](#) and the Uniform Interstate Family Support Act, [MCL 552.2101 et seq.](#)" [MCR 3.206\(A\)\(3\)](#). See also [MCR 1.109\(D\)\(2\)\(b\)](#).

<sup>4</sup> For "guidance on which cases should be included on the case inventory", see the SCAO Memorandum, [Family Division Case Inventory Form](#).

- Ensure notice was provided to the Friend of the Court (FOC) or prosecuting attorney if the complaint for divorce listed any children under 17 years of age. [MCL 552.45](#).
- Verify that a Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) Affidavit was filed if a custody or parenting time determination will be made. [MCR 3.206\(B\)](#).
- Verify statutory conditions are met:**
  - Defendant is domiciled in Michigan when the divorce complaint is filed;
  - Defendant is domiciled in Michigan when the cause for divorce alleged in the complaint arose; or
  - Defendant was brought in by publication, personally served with process in Michigan, personally served with a copy of the order for appearance and publication in Michigan or elsewhere, or has voluntarily appeared in the action/proceeding. [MCL 552.9a](#). See [MCR 3.203](#) and [MCR 2.105](#) for more detailed information on service of notice.
- Determine whether case is frivolous.
- Determine whether to refer case for mediation/alternative dispute resolution (ADR). [MCR 3.216](#).
- Enter a scheduling order, including discovery deadlines.
- Determine whether there is a default. [MCR 3.210\(B\)](#)
- Hold hearing and decide issues.** Ensure *proofs or testimony* are NOT taken until:
  - Expiration of 60 days from the date the complaint was filed *unless*
    - the cause for divorce is desertion, OR
    - when the testimony is taken conditionally for the purpose of perpetuating such testimony. [MCL 552.9f](#).
  - Expiration of six months from the date the complaint was filed *if* there are dependent minor children under the age of 18 years. [MCL 552.9f](#).
- Ensure *testimony*:
  - Is NOT taken until expiration of 60 days from the date the complaint was filed *if*, on petition and proper showing,

there is unusual hardship or compelling necessity. [MCL 552.9f](#).

- IS taken conditionally at any time for the purpose of perpetuating such testimony. [MCL 552.9f](#).
- If defendant was not domiciled in Michigan when the suit was commenced *or* was not domiciled in Michigan at the time the cause for divorce arose, do NOT grant the divorce until plaintiff proves that the parties actually lived and cohabited together in Michigan, *or* that plaintiff in good faith resided in Michigan for one year immediately preceding the filing of the divorce complaint. [MCL 552.9f](#).
- The court MAY enter orders concerning the care, custody, and support of the parties' child(ren) during the pendency of the divorce proceedings. [MCL 552.15\(1\)](#); [MCL 552.16\(1\)](#). Refer to the Michigan Judicial Institute's [Issuing Child Support Order Checklist](#),<sup>5</sup> and the Michigan Judicial Institute's [Child Custody Dispute Between Parents Checklist](#).
  - Pending the entry of a temporary order, the court may enter an ex parte order if it is satisfied by specific facts set out in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.<sup>6</sup> [MCR 3.207\(B\)](#).
- Take proofs.**
  - Required testimony. [MCR 3.210\(A\)](#); [MCR 3.206\(A\)\(4\)\(a\)-\(b\)](#).
  - Jurisdiction. [MCR 3.201\(D\)\(3\)](#).
  - Pregnancy. [MCR 3.206\(A\)\(4\)\(c\)](#).
  - Breakdown of marriage. [MCR 3.206\(A\)\(4\)\(d\)](#).
  - Division of property. [MCR 3.206\(A\)\(4\)\(e\)](#).

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<sup>5</sup> See [MCL 552.15\(2\)](#) and [MCL 552.16\(2\)](#) (child support orders are governed and enforced by the Support and Parenting Time Enforcement Act (SPTTEA), [MCL 552.601 et seq.](#)); [MCL 552.605\(1\)](#) ("If a court orders the payment of child support under [the SPTTEA] or another act of the state, [[MCL 552.605](#)] applies to that order." [MCL 552.605\(1\)](#)).

<sup>6</sup> "Before making an ex parte decision on child custody, the trial court must consider 'facts established by admissible evidence—whether by affidavits, live testimony, documents, or otherwise.'" *Johnson v Johnson*, 329 Mich App 110, 129 (2019), quoting *Mann v Mann*, 190 Mich App 526, 533 (1991). "[E]x parte orders issued under [MCR 3.207](#) that affect child custody must comply with specific notice requirements," including notice regarding the ability to file an objection and that an ex parte order will automatically become a temporary order if no objection or motion to modify or rescind is filed. *Johnson*, 329 Mich App at 130.

- Enter judgment** dissolving the bonds of matrimony *if* evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. [MCL 552.6\(3\)](#).
  
- Ensure that each separate subject in the judgment/order is set out in a separate paragraph that is prefaced by an appropriate heading. [MCR 3.211\(A\)](#).
  
- Judgment **MUST** include insurance provisions:
  - Must determine all rights of husband/wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the other in which the husband/wife was named or designated as beneficiary, or to which the husband/wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. [MCL 552.101\(1\)-\(2\)](#); [MCR 3.211\(B\)\(1\)](#).
  
- Judgment **MUST** include a determination of the rights of the parties in pension, annuity, and retirement benefits. [MCL 552.101\(3\)](#); [MCL 552.101\(4\)](#); [MCL 552.18](#); [MCR 3.211\(B\)\(2\)](#).
  
- Judgment **MUST** include a determination of the property rights of the parties. [MCL 552.103](#); [MCL 552.19](#); [MCL 552.20](#); [MCL 552.21](#); [MCL 552.22](#); [MCL 552.401](#); [MCL 552.402](#); [MCR 3.211\(B\)\(3\)](#).
  - Determine marital assets (that which is acquired or earned during the marriage) and separate assets (that which is obtained or earned before the marriage, or separate property by inheritance, etc.).
  
  - Strive for an equitable division of increases in marital assets that may have occurred between the beginning and the end of the marriage. *Reeves v Reeves*, 226 Mich App 490, 493-494 (1997).
  
- Judgment **MAY** include a provision granting spousal support *or* if spousal support is NOT granted, a provision reserving<sup>7</sup> or denying spousal support. [MCL 552.13](#); [MCR 3.211\(B\)\(4\)](#).
  - In **GRANTING** spousal support:

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<sup>7</sup> “[A] judgment silent with regard to spousal support reserves it.” [MCR 3.211\(B\)\(4\)](#).

- May require either party to pay spousal support for the suitable maintenance of the adverse party. [MCL 552.13\(1\)](#).
- May require either party to pay such sums as must be deemed proper and necessary to conserve any real or personal property owned by the parties or either of them. [MCL 552.13\(1\)](#).
- May require either party to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency. [MCL 552.13\(1\)](#).<sup>8</sup>
- May award costs against either party and award execution for the same, or may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver. [MCL 552.13\(1\)](#).
- May award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as considered just and reasonable IF the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party. [MCL 552.23\(1\)](#).
  - Must consider ability of either party to pay and the character and situation of the parties, and all other circumstances of the case. [MCL 552.23\(1\)](#).
- Uniform Spousal Support Order (USSO)/Uniform Child Support Order (UCSO):** MUST prepare spousal support and/or child support provisions on a Uniform Support Order, which:

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<sup>8</sup>“A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.” [MCR 3.206\(D\)\(1\)](#). A party requesting attorney fees and expenses must allege sufficient facts showing that “the party is unable to bear the expense of the action . . . and that the other party is able to pay . . .” [MCR 3.206\(D\)\(2\)\(a\)](#). The standard for awarding attorney fees under [MCR 3.206\(D\)\(2\)\(a\)](#) is more complex than simply determining which party has fewer financial resources. *Colen v Colen*, 331 Mich App 295, 309 (2020). Alternatively, the requesting party must allege sufficient facts showing that “the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to pay, or engaged in discovery practices in violation of [the Michigan Court Rules].” [MCR 3.206\(D\)\(2\)\(b\)](#).

- MUST accompany any judgment/order affecting spousal support or child support; AND
- MUST be signed by the judge. [MCR 3.211\(D\)\(1\)](#).
- Indicate whether UCSO is with/without Friend of the Court (FOC) services.
- Include FOC language or FOC opt-out language.
- Ensure final judgment/order incorporates by reference a Uniform Support Order *or* states that no Uniform Support Order is required because support is reserved or spousal support is not ordered. [MCR 3.211\(D\)\(2\)](#).

**Award of alimony or allowance of support and education of children.** If alimony or an allowance for the support and education of the children is awarded to either party, the amount of the alimony or allowance constitutes a lien on the real and personal estate of the adverse party as provided in [MCL 552.625a](#). [MCL 552.27\(1\)](#). If the party defaults on the payment of the amount awarded, the court MAY:

- order the sale of the property against which the lien is adjudged in the same manner and on the same notice as in suits for the foreclosure of mortgage liens.
- award execution for the collection of the judgment.
- order the sequestration of the real and personal estate of either party and may appoint a receiver of the real estate or personal estate, or both, and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the judgment.
- award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just. [MCL 552.27\(a\)-\(d\)](#).

**Revision or alteration to alimony or allowance.** On petition of either party, the court MAY revise and alter the judgment of divorce. [MCL 552.28](#).

- Note:** Referees do not have the authority to hear motions pertaining to an increase or decrease in spousal support; accordingly, judges should not delegate this task to referees. [MCL 552.507\(2\)\(a\)](#).
- Ensure the parties did NOT waive their right to seek modification. The parties waive the right to seek modification under [MCL 552.28](#) if, in their judgment of

divorce, they “clearly express their intent to forgo” the right to modify the alimony or allowance provision and “clearly express their intent” to render the alimony or allowance provision “final, binding, and thus nonmodifiable.” *Staple v Staple*, 241 Mich App 562, 568 (2000).

**Termination of alimony.** Unless the judgment of divorce indicates otherwise, the court may terminate an award of alimony as of the date the recipient of alimony remarries,<sup>9</sup> [MCL 552.13\(2\)](#), or upon proper cause or change of circumstances.

**Conflict between judgment of divorce and Uniform Support Order.** If the terms of the judgment for divorce conflict with the Uniform Support Order, the Uniform Support Order governs. [MCR 3.211\(D\)\(1\)](#).

For other checklists concerning support, custody, parenting time, etc., see the Michigan Judicial Institute’s [Domestic Relations Quick Reference Materials](#).

For court forms related to domestic relations actions, see the One Court of Justice [website](#).

For additional domestic relations resources, see the Friend of the Court Bureau [website](#).

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<sup>9</sup> “The term ‘remarries’ lacks ambiguity and means only a legal marriage recognized under Michigan law.” *Lueck v Lueck*, 328 Mich App 399, 406 (2019) (“Although she went through a commitment ceremony that contained certain embellishments found in many traditional marriage ceremonies, absent a marriage license and solemnization as authorized by [MCL 551.7](#) to [MCL 551.18](#), plaintiff’s conduct did not constitute a [re]marriage that triggered the spousal support termination provision of the parties’ consent judgment of divorce.”).

