



LAWS OF ALASKA

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Source

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Chapter No.

260

AN ACT

Relating to the dissolution of marriage; and changing Rules 3, 7, 11, 76, and 84, Rules of Civil Procedure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.55 is amended by adding new sections to read:

ARTICLE 3A. DISSOLUTION OF MARRIAGE.

Sec. 09.55.231. DISSOLUTION OF MARRIAGE. (a) A husband and wife together may petition the superior court for the dissolution of their marriage under secs. 231 - 237 of this chapter if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irreparable breakdown of the marriage;

(2) if there are minor children of the marriage or the wife is pregnant, the spouses have agreed on which spouse or third party shall be awarded custody of each minor child of the marriage and the extent of visitation and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property and the payment of spousal support, if any, and the tax consequences resulting from these payments; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, and as to payment of obligations incurred jointly in the future.

(b) A husband or wife may separately petition for dissolution of their marriage under secs. 231 - 237 of this chapter if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the division of property, payment of debts, and custody, support and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

(c) Nothing in this section prohibits a spouse who has been personally served with a copy of a petition made under (a) of this section from executing an appearance, waiver of time to answer, and waiver of notice of hearing. The appearance and waivers shall include an acknowledgment signed before an officer authorized to administer an oath or affirmation that the spouse being served has read the petition; assents to the terms relating to custody of the children, child support, visitation, spousal support and resultant tax consequences, division of property, and allocation of debts; agrees that the conditions otherwise required by (a) of this section exist; understands fully the nature and consequences of the action; and is not signing the appearance and waivers under duress or coercion.

(d) The action created under this section is separate from the action created by sec. 70 of this chapter. The procedures prescribed by secs. 231 - 237 of this chapter do not apply to an action brought under sec. 70 of this chapter, nor do procedures prescribed under secs. 70 - 230 of this chapter apply to an action brought under this section, except as specifically provided.

Sec. 09.55.232. PETITION FOR DISSOLUTION. (a) The caption in a petition for dissolution of marriage under secs. 231 - 237 of this chapter shall be styled substantially "In the Matter of the Dissolution of the Marriage of _____ and _____."

(b) The petition shall be filed with the superior court and shall either

(1) recite that the conditions enumerated under sec. 231(a) of this chapter exist and shall be signed and verified by both of the petitioners or by one petitioner, if that petitioner personally serves the petition on his spouse in accordance with the Alaska Rules of Civil Procedure in anticipation that the spouse will comply with sec. 231(c) of this chapter;

(2) recite that the conditions enumerated under sec. 231(b) of this chapter exist and be signed and verified

by one of the petitioners.

(c) The petition shall state that the spouse or spouses executing the petition consent to the jurisdiction of the court.

(d) The petition shall request that the marriage be dissolved and that the prior name of a spouse be restored, if desired by that spouse.

(e) If the petition is brought by both spouses under sec. 231(a) of this chapter, the petition shall state in detail the terms of agreement as between the spouses with regard to the custody of children, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of debts, and, in addition, shall state

- (1) the respective occupations of the spouses;
- (2) the income, assets, and liabilities of the respective spouses at the time of filing the petition;
- (3) the date and place of the marriage;
- (4) the name, date of birth, and current custodial status of each minor child born of the marriage or adopted by the petitioners;
- (5) whether the wife is pregnant;
- (6) other facts and circumstances which the petitioners believe should be considered; and
- (7) any other relief sought by the spouses.

Sec. 09.55.233. HEARING. (a) After a petition for dissolution is filed under the provisions of sec. 232 of this chapter, a hearing shall be scheduled in accordance with the Alaska Rules of Civil Procedure.

(b) If the petition is brought by both spouses under sec. 231(a) of this chapter, both the husband and wife are required to attend the hearing personally and not through counsel unless the court, for good cause, provides otherwise, or unless a spouse has complied with sec. 231(c) of this chapter, in which case only the spouse filing the petition is required to attend. Either spouse may have counsel at the hearing.

(c) If the petition is brought by one spouse under sec. 231(b) of this chapter, that spouse shall submit proof of diligent inquiry as to the whereabouts of the absent spouse and provide notice by publication, posting, or other means as ordered by the court in accordance with the Alaska Rules of Civil Procedure.

(d) If the petition is brought by both spouses under sec. 231(a) of this chapter, the court shall examine the petitioners or petitioner present and consider whether

- (1) the spouses fully understand the nature and

consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, and visitation are fair, just, and equitable as between the spouses and in the best interests of the children of the marriage;

(3) the agreements between the spouses relating to the division of property, spousal support, and the allocation of obligations are fair, just, and equitable; and

(4) the conditions in sec. 231(a) of this chapter have been met.

(e) If the petition is brought by one spouse under sec. 231(b) of this chapter, the court shall examine the petitioner and consider whether he or she fully understands the nature and consequences of his or her action and whether the conditions in sec. 231(b) of this chapter have been met.

(f) The court may appoint a guardian ad litem to represent the best interests of the child. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 09.65.130.

(g) The court may amend the agreements between the spouses relating to child custody, child support, visitation, spousal support, division of the property, and allocation of obligations, but only if both petitioners concur in the amendment.

Sec. 09.55.234. JUDGMENT. (a) If the petition is brought by one or both spouses under sec. 231(a) of this chapter, the court may grant the spouses a final decree of dissolution and shall provide the other relief as provided in this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

(1) the spouses understand fully the nature and consequences of their action;

(2) the agreements between the spouses concerning child custody, child support, visitation, spousal support and tax consequences, if any, division of property, and allocation of obligations are not grossly unfair, unjust, or inequitable and are in the best interests of the children of the marriage, if any; and

(3) the conditions in sec. 231(a) of this chapter have been met.

(b) If the petition is brought by one spouse under sec. 231(b) of this chapter, the court may grant the spouses a final decree of dissolution and restore to the petitioner his or her prior name, when so requested, if the court, upon consideration of affidavits supplied by the spouse and the testimony of the spouse at the hearing, finds that

(1) the spouse present at the hearing understands fully the nature and consequences of his or her action; and

(2) the conditions in sec. 231(b) of this chapter have been met.

(c) The court shall dismiss or continue an action brought under secs. 231 - 237 of this chapter before findings are made if

(1) a representative of the minor children objects to a term of any of the agreements between the spouses;

(2) either of the spouses withdraws from any of the agreements required under sec. 231(a) of this chapter; or

(3) the petition alleges that the conditions in sec. 231(b) of this chapter exist, but the whereabouts of the absent spouse becomes known to the other spouse or the court before findings are made.

(d) The court shall deny the relief sought in an action brought under secs. 231 - 237 of this chapter if the court does not make the findings requisite under (a) and (b) of this section.

(e) If the petition is brought by both spouses under sec. 231(a) of this chapter, the court shall restore to either spouse his or her prior name, if so requested, and shall fully and specifically set out in the decree the agreements of the spouses relating to child custody, child support, visitation, spousal support, division of property, and the allocation of the obligations of the spouses; and the court shall order the performance of those agreements. The court shall also state, in the decree, whether child support payments are to be made through the child support enforcement agency. If the petition is brought by one spouse under sec. 231(b) of this chapter, the decree shall state that it does not bar future action on the issues not resolved in the decree.

(f) Notwithstanding any other provisions of secs. 231 - 237 of this chapter, the court may not award as between the spouses any real or personal property acquired by the spouses before the date of the marriage, unless the spouses expressly agree otherwise or the court determines that such property should be made available, by sale or other conveyance, to ensure that the children's best interests are provided for. If the court determines that the children's best interests require an award of premarital property but the spouses do not agree, the action shall be dismissed or continued.

Sec. 09.55.235. EFFECT AND MODIFICATION OF DECREE.

(a) A decree of dissolution issued under secs. 231 - 237 of this chapter shall have the same force and effect as a decree granted under secs. 70 - 230 of this chapter.

(b) A decree of dissolution granted under secs. 231 - 237 of this chapter may be modified or enlarged as prescribed by secs. 205 - 220 of this chapter.

Sec. 09.55.236. FORMS. (a) The Department of Law, in

cooperation with the administrator of the Alaska Court System, shall prepare forms and instructions for use by persons wishing to obtain a dissolution of their marriage under secs. 231 - 237 of this chapter and wishing to utilize the services of the child support enforcement agency. These forms shall conform to the requirements of the Alaska Rules of Civil Procedure, except that information appearing on the forms in legible handwriting shall be acceptable.

(b) Forms prepared under (a) of this section shall be made available to the public at each office of the division of social services of the Department of Health and Social Services, and every superior court, and wherever else considered necessary by the Department of Law.

Sec. 09.55.237. MISCELLANEOUS. No spouse may be precluded from filing an action for divorce under secs. 70 - 230 of this chapter upon dismissal or denial of a petition filed under secs. 231 - 237 of this chapter.

* Sec. 2. Section 1 of this Act has the effect of changing Alaska Rule of Civil Procedure Number 76 by allowing the courts to accept for filing pleadings which are handwritten in part. Section 1 of this Act also has the effect of changing Alaska Rule of Civil Procedure Number 3 by allowing courts to proceed upon the filing of a petition rather than a complaint, and Alaska Rule of Civil Procedure Number 7 by allowing the filing of an agreed petition. Section 1 of this Act also has the effect of amending Alaska Rule of Civil Procedure Number 11 by requiring the petition to be verified in all situations and Alaska Rule of Civil Procedure Number 84 by excluding the restoration of a prior name in a divorce or dissolution.