CHAPTER 14-05
DIVORCE

14-05-01. Marriage - How dissolved.

Marriage is dissolved only:

1. By the death of one of the parties; or
2. By a judgment of a court of competent jurisdiction decreeing a divorce of the parties.

14-05-02. Effect of divorce.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, but neither party to a divorce may marry except in accordance with the decree of the court granting the divorce. It is the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when. The court shall have jurisdiction to modify the decree of divorce at any time so as to permit one or both of the parties to marry, if the court deems it right.

14-05-02.1. Decree to include social security numbers.

Each decree of divorce must include the social security numbers of the parties to the divorce.

14-05-03. Causes for divorce.

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Abuse of alcohol or controlled substances.
6. Conviction of felony.
7. Irreconcilable differences.

14-05-03.1. Grounds for separation.

The court may grant a temporary or permanent decree of separation for any cause for which a divorce may be decreed.

14-05-04. Adultery defined.

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

14-05-05. Extreme cruelty defined.

Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other.

14-05-06. Desertion defined.

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert:

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party when there is no just cause for such refusal, is desertion.
2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger reasonably would be apprehended from the other is not desertion by the absent party, but it is desertion by the other party.
4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.
5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.
6. Consent to a separation is a revocable act, and if one of the parties afterwards in good faith seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.
7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal must be deemed and treated as desertion by such party from the time of the refusal.

14-05-07. Willful neglect defined.

Willful neglect is the failure of either spouse to provide for the common necessaries of life for the other party, when that spouse has the ability to do so and the party alleging neglect does not have the ability, or when a spouse fails to provide by reason of idleness, profligacy, or dissipation.

14-05-08. Abuse of alcohol or controlled substances defined.

Abuse of alcohol or controlled substances is that degree of use which disqualifies the person a great portion of the time from properly attending to business or which reasonably would inflict a course of great mental anguish upon the innocent party. For purposes of this chapter, "controlled substance" means a substance as defined in section 19-03.1-01.

14-05-08.1. Recognition of foreign decree of divorce and foreign annulment of marriage.

A decree of divorce or of annulment of marriage obtained in a court of another jurisdiction is of no force or effect in this state, if the parties to the marriage were domiciled in this state at the time such decree was rendered.

If a person obtains a decree of divorce or of annulment of marriage from a court of another jurisdiction and was domiciled in this state within less than twelve months prior to obtaining the decree and resumes residence in this state within six months after obtaining the decree, it is prima facie evidence that such person did not abandon the person's domicile in this state prior to obtaining the decree.

The provisions of this section do not apply to any divorce or annulment of marriage obtained in proceedings begun prior to the passage of this section.

14-05-09. Desertion, neglect, intemperance - Duration.

Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for a divorce.

14-05-09.1. Irreconcilable differences defined.

Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

14-05-10. Denial of divorce.

Divorces must be denied upon showing:

1. Condonation; or
2. Limitation and lapse of time.

14-05-11. Connivance defined.
Repealed by S.L. 2001, ch. 149, § 13.

14-05-12. Collusion defined.
Repealed by S.L. 2001, ch. 149, § 13.

14-05-13. Condonation defined - Requisites.
Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. The following requirements are necessary to condonation:
1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party; and
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which aggregately may constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoids such condonation.

14-05-14. Revocation of condonation.
Condonation is revoked and the original cause of divorce revived:
1. When the condonee commits acts constituting a like or other cause of divorce; or
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled.

14-05-15. Recrimination defined.
Repealed by S.L. 1963, ch. 127, § 2.

14-05-16. Limitation of time.
A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action. There are no limitations of time for commencing actions for divorce, except such as are contained in this section.

14-05-17. Residence requirements.
A separation or divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a separation or divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation or divorce.

14-05-18. Presumption of domicile.
In actions for divorce, the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation, each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions.

14-05-19. Affirmative proof required.
Repealed by S.L. 1971, ch. 150, § 1.

14-05-20. Legitimacy of children - Adultery by husband.
When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

14-05-21. Legitimacy of children - Adultery by wife.
When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected, but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case. In every such case, all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.

14-05-22. Parental rights and responsibilities - Costs.
1. In an action for divorce, the court, before or after judgment, may give direction for parenting rights and responsibilities of the children of the marriage and may vacate or modify the same at any time. Any award or change of primary parental responsibilities must be made in accordance with the provisions of chapter 14-09.
2. After making an award of primary residential responsibility, the court, upon request of the other parent, shall grant such rights of parenting time as will enable the child to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that such rights of parenting time are likely to endanger the child's physical or emotional health.

14-05-23. Temporary support, attorney's fees, and parental rights and responsibilities.
During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney's fees. The court in the order may make an order concerning parental rights and responsibilities concerning the children of the parties. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

14-05-24. Division of property and debts.
1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. If one party to the divorce is covered by the civil service retirement system or other government pension system in lieu of social security and is not entitled to receive full social security benefits and the other party is a social security recipient, in making an equitable distribution award, the court shall compute what the present value of the social security benefits would have been to the party with the government pension during the covered period and subtract that amount from the value of the government pension in order to determine the government pension's marital portion.
3. The court may redistribute property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

14-05-24.1. Spousal support.

1. Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section. The court may modify its spousal support orders.
2. Unless otherwise agreed to by the parties in writing, spousal support is terminated upon the remarriage of the spouse receiving support. Immediately upon remarriage, the spouse receiving support shall provide notice of the remarriage to the payor spouse at the last known address of the payor spouse.
3. Unless otherwise agreed to by the parties in writing, upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabiting with another individual in a relationship analogous to a marriage for one year or more, the court shall terminate spousal support.
4. Subsections 2 and 3 do not apply to rehabilitative spousal support.

14-05-24.2. Summary real estate disposition judgment.

1. If real estate is described in a judgment and decree of divorce, the court may direct either of the parties or their legal counsel to prepare and submit to the court, in a form prescribed by the court, a proposed summary real estate disposition judgment. Upon approval by the court and filing of the summary real estate disposition judgment with the clerk of court, the clerk of court shall provide to any party upon request certified copies of the summary real estate disposition judgment.
2. A summary real estate disposition judgment must contain the following information:
   a. The full caption and file number of the case and the title "Summary Real Estate Disposition Judgment";
   b. The dates of the parties' marriage and of the entry of the judgment and decree of divorce;
   c. The names of the parties' attorneys or if either or both appeared pro se;
   d. The name of the judge and referee, if any, who signed the order for judgment and decree;
   e. Whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial;
   f. If the judgment and decree resulted from a stipulation, whether the real property was described by a legal description;
   g. If the judgment and decree resulted from a default, whether the petition contained the legal description of the property and whether disposition was made in accordance with the request for relief;
   h. Whether the summons and petition were served personally upon the respondent in accordance with the North Dakota Rules of Civil Procedure;
   i. If the summons and petition were served on the respondent only by publication, the name of each legal newspaper and county in which the summons and petition were published and the dates of publications;
   j. Whether either party changed the party's name through the judgment and decree;
   k. The legal description of each parcel of real estate;
   l. The name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded;
   m. Liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and
   n. Triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.
3. a. On the court's own motion or on application by an interested person, the court shall issue an order authorizing the clerk of court to issue an amended summary real estate disposition judgment to correct an erroneous legal description of real estate contained in the judgment and decree of divorce.
   b. An application to correct a legal description under this subdivision must contain:
      (1) The erroneous legal description contained in the judgment and decree;
      (2) The correct legal description of the real estate;

(3) Written evidence satisfactory to the court to show the correct legal description, or a request for an evidentiary hearing to produce evidence of the correct legal description; and

(4) A proposed amended summary real estate disposition judgment.

c. The court shall consider an application under this subsection on an expedited basis. The court's order must be based on the evidence provided in the application, the evidence produced at an evidentiary hearing, or the evidence already in the record of the proceeding. If the court is satisfied that an erroneous legal description should be corrected under this subsection, the court may issue its order without a hearing or notice to any person. A filing fee is not required for an application under this subsection. The court's order must be treated as an amendment of the court's findings of fact regarding the legal description of the property in question, without the need to amend the original judgment and decree. The court shall issue the order if the court specifically finds that the court had jurisdiction over the respondent in the divorce proceeding and that the property was sufficiently identified in the original proceedings to prevent prejudice to the rights of either party to the divorce and that the amendment will not prejudice their rights. The court's order is effective retroactive to the date of entry of the original judgment and decree of divorce.

d. An amended summary real estate disposition judgment must be treated the same as the prior summary real estate disposition judgment for all purposes.

e. On request by any interested person, the clerk of court shall provide a certified copy of an amended summary real estate disposition judgment showing the correct legal description of the real property affected by the judgment and decree.

f. This subsection may not be used to add omitted property to a judgment and decree of divorce, unless the court determines that the omitted property is an integral or appurtenant part of real property already properly included in the judgment and decree.

4. An order or provision in a judgment and decree that provides that the judgment and decree must be recorded in the office of the county recorder means, if a summary real estate disposition judgment has been approved by the court, that the summary real estate disposition judgment, rather than the judgment and decree, must be recorded in the office of the county recorder.

5. The summary real estate disposition judgment operates as a conveyance and transfer of each interest in the real estate in the manner and to the extent described in the summary real estate disposition judgment. A summary real estate disposition judgment, or an amended summary real estate disposition judgment that supersedes an earlier judgment, is prima facie evidence of the facts stated in the summary real estate disposition judgment. A purchaser for value without notice of any defect in the divorce proceedings may rely on a summary real estate disposition judgment or a later amended summary real estate disposition judgment to establish the facts stated in the judgment.

6. If a conflict exists between the judgment and decree and the summary real estate disposition judgment, the summary real estate disposition judgment recorded in the office of the county recorder controls as to the interest acquired in real estate by any subsequent purchaser in good faith and for a valuable consideration, who is in possession of the interest or whose interest is recorded with the county recorder, before the recording of the judgment and decree in the office of the county recorder.

14-05-25. Security for alimony - Disposition of homestead.

The court may require either party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. When either the husband or the wife has a separate estate sufficient to give a proper support, the court in its discretion may withhold any allowance to that person out of the separate property of the other spouse. The court, in rendering the decree of divorce, may assign the homestead or such part

thereof as to the court may seem just, to the innocent party, either absolutely or for a limited period, according to the facts in the case and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of either party to a marriage and for the custody, education, and support of the children are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available.

Failure to comply with the provisions of a separation or divorce decree relating to distribution of the property of the parties constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

14-05-25.2. Enforcement of support order.

Any order or judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support.

14-05-26. Separate maintenance provided for when divorce denied.

Though a judgment of divorce is denied, the court in an action for divorce may provide for the maintenance of one spouse by the other and the maintenance of any or all children.

14-05-27. Separation - Spousal support - Division of property.

Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the property and debts of the parties.

14-05-28. Decree of separation - Effect.

The decree of separation confers upon the parties all the rights of property, business, and contracts as if unmarried and releases both parties from all obligations of maintenance, except as may be required by the decree.

14-05-29. Revocation of decree of separation - Divorce granted.

At any time after a decree for separation has been granted, the court may revoke the decree based upon any regulations or restrictions the court imposed in the decree. Application for revocation may be made by either party to the decree. The party making the application for revocation shall provide to the other party to the decree at least ten days' and not more than twenty days' notice of the application. Service must be made in the same manner as service of a summons in a civil action. If it appears to the court at the hearing of the application that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has not previously done so, the court shall provide for the equitable division of the property, shall make orders with respect to any minor children, and may provide for the payment of support to either party by the other.