

VIRGINIA BEACH

CIRCUIT COURT



Uncontested Divorce Procedures Manual

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Notice to party proceeding pro se (without an attorney)

If you are representing yourself you must research the requirements for the content of the complaint, divorce decree, and any other orders or pleadings that may be required, and draft and prepare them yourself. The court does not provide any form pleadings or orders, and court staff cannot give you advice on these issues.

This manual only sets forth the procedural steps for having an uncontested divorce. It does not set forth the legal requirements for a divorce under Virginia law, nor is it intended to. You must determine these requirements for yourself.

Each party involved in a divorce matter is strongly encouraged to consult with an attorney so that the legal effects of the proceedings may be fully explained. While it is your right to proceed without an attorney, if you do so, you may forever, unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage. The law clerks and the clerk's office and judicial staff are not permitted to give legal advice.

Should you need further assistance, the following resources are available: Wahab Law Library located in the Judicial Center Building (Phone No. 757-385-4419); Virginia Legal Aid, <http://www.valegalaid.org>; Virginia Judicial System Court Self Help at <https://selfhelp.vacourts.gov>; and Virginia Lawyer Referral (Phone No. 800-552-7977).

Uncontested Divorce Procedures

Requirements for an “Uncontested Divorce”.

- (1) All the issues have been agreed to by the parties; and
- (2) Child support, spousal support, custody, and/or visitation are not requested; or if they are requested, there is either a written and signed agreement (the following types of agreements are not sufficient: An oral agreement (including an oral agreement to separate), or a written agreement signed only by one party, or an unsigned agreement), or both parties have signed the Final Divorce Decree; and
- (3) The grounds are separation for the statutory period (no-fault), or a motion for a no-fault divorce will be made pursuant to Virginia Code § 20-121.02. There are two “no-fault” grounds recognized in Virginia: (1) separation for one year after intending that it be permanent; and (2) separation for six months after intending that it be permanent where the parties have no minor children and both have signed a written settlement agreement. For parties seeking a divorce based on only six (6) months of separation, a written settlement agreement signed by both parties is required before you file for divorce, even if the parties are not seeking support payments and have no property together. Therefore, if you are approaching a separation period of one year, you may find it easier to wait until you qualify based on a one-year ground, rather than attempting to file immediately for a divorce based on six-months of separation.
- (4) All the elements for the grounds of divorce must be in place before the case is filed. As a result, if any of the following apply to your filing, you will have to dismiss your divorce, pay another filing fee, and start over if you want to continue with no-fault grounds:
 - (a) Filing before one year or six months (as applicable) has passed since you intended to be permanently separated. For example, if you intended to be permanently separated on January 10 of one year and file for divorce on one-year grounds on January 3 of the next year, you have filed a week too early and will not be able to proceed.
 - (b) Filing on the grounds of six months separation, and the parties have minor children.
 - (c) Filing on the grounds of six months separation, without having a written separation agreement that was signed by both parties before you filed. The written agreement can address anything related to the marriage that the parties choose. Examples include property and support. There are no exceptions to the requirement of a written agreement signed by both parties if the grounds are six months separation – even if the parties feel they do not have anything to divide between themselves.

How uncontested divorces are heard.

There are two options:

- (1) Oral testimony in open court before a judge; or
- (2) a party may proceed to take evidence in support of a **divorce** by **affidavit** without leave of court only on the grounds set forth in subdivision A (9) of § 20-91, where venue is proper in Virginia Beach and the opposing party has either (i) been personally served with the complaint and has failed to file a responsive pleading or entered an appearance; (ii) signed an appropriate waiver; or (iii) signed the final decree.

Requirements for hearing before a Judge

To have the case heard before a judge on the regular Friday 9:30 Motions Docket, comply with the following:

1. File and serve the complaint.
2. Wait until the time to answer has passed or the defendant has answered or filed a waiver.
3. Set your case for hearing on the court's regular Friday Motion Docket, which starts at 9:30 a.m. Select the Friday that you want your divorce heard and submit a Notice of Motion for Final Divorce Hearing to the Clerk's Office. The Notice must state the date and location for the hearing, must state the 9:30 a.m. time, and must include a Certificate of Mailing to the opposing party/counsel. A *Friday Motion Hearing Notice* Form is posted on the Court's website in a PDF fillable format.
4. If required by law, the non-moving party must be served with notice of the hearing and a copy of the proposed divorce decree. Notice must be served 7 days prior to the hearing date; and a copy or the original of the proof of service must be filed at least 5 days prior to the hearing date. The original proof of service must be brought to the hearing if it is not filed earlier (Virginia Code § 20-99). The non-moving party must be served with notice of the date, time and location of the hearing unless (1) the party signed the Final Decree of Divorce; or, (2) the non-moving party signed a waiver of all future notices and/or notice of entry of the Final Decree of Divorce; (3) notice is not required pursuant to the provisions of § 20-99(5), or (4) the non-moving party was served by publication or its equivalent and has not filed any papers in the suit other than any waivers. Notice may not be mailed except as provided in Va. Code § 20-99. The notice must be served at least 7 days prior to the hearing date. Proof of such service or, if applicable, the mailing of notice with certificate of mailing, must be filed with the court 5 days prior to the hearing.

Bring the following to the hearing:

- (1) The original proposed Final Divorce Decree signed by both parties, if required. NOTE: The signature of a party who is legally entitled to notice is not required if the party is served with notice of the hearing and a copy of the proposed divorce decree;
- (2) Unless already filed, you also need to bring the following: (a) The original of any separation agreement (if applicable); (b) Confidential Addendum for Protected Identifying Information (available on the Court's website); (c) Proof of service of the complaint and/or waiver; (d) An original, completed VS-4 form (form available from the clerk's office); (e) If requesting restoration of a former name, a properly completed typed order. See Restoration of Former Name Incident to a Divorce.

The **moving party and a witness must appear on the hearing date** in person to give testimony in open court before the judge to prove the grounds for the divorce and any other relief that is sought, using the questions for moving party and witness set forth in this manual.

NOTE: There will be no pre-review or pre-approval required or provided for any divorce set for hearing on the regular Friday Motions Docket. The Final Decree will be reviewed after the hearing. If all requirements have not been met a Correction Form will be sent, listing the required corrections. The clerk's office will (i) if the moving party is represented by counsel place Correction Form in the attorney's box, or if no box, will mail such notices to the attorney, or (ii) if the moving party is acting pro se mail such notices provided such party has submitted the required self-addressed stamped

envelope. Any corrections must be made, and the necessary documents submitted to the Clerk's Office along with a self-addressed stamped envelope if acting pro se.

A court reporter is required if a party was served by an order of publication or the equivalent and has not appeared. The court will not provide the court reporter. The moving party must arrange to have a court reporter present at the hearing. A final decree will not be entered until the transcript is filed with the court.

Exceptions: The following cases are not appropriate for hearing before a judge on the regular 9:30 a.m. Friday Motions Docket: (i) cases proceeding by written **affidavit** in support of a divorce; (ii) cases in which the parties are living in the same residence for all or part of the separation period relied upon in support of the divorce and (iii) cases that require evidence going beyond the *Questions for Moving Party and Questions for Corroborating Witness* set forth in this manual. These cases must be set for hearing on the Contested Friday Divorce Docket or, with pre-approval of the court, on the Duty Judge Docket.

Requirements for an uncontested divorce by affidavit.

- (1) If the case satisfies the requirements of an uncontested divorce set forth above and notice is not required to be given to the opposing party, the party may proceed by affidavit as provided in § 20-106(A).
- (2) The affidavit shall conform to and not deviate from the questions required by this Court. *The required Affidavit of the Moving Party and Affidavit for Corroborating Witness* are posted on the Court's website in a PDF fillable format.
- (3) File all the documents required with the affidavits. The documents and affidavits will be reviewed by the law clerk. If all requirements have not been met, a Correction Form will be sent stating the reasons for the rejection and listing the required corrections and/or the requirement that the case must be set for hearing.
- (4) Effective for cases filed on and after March 1, 2013, divorces that proceed by affidavit must satisfy the venue requirements of § 8.01-261. If they do not, must set for hearing on the regular 9:30 Friday Motions Docket or submit an order transferring the case to the proper venue.

Restoration of former name incident to a divorce

Virginia Code § 20-121.4 provides that upon decreeing a divorce, a party who changed his or her name by reason of the marriage, may motion the court to restore such party's former name or maiden name by a separate order meeting the requirements of § 8.01-217.

You must submit a properly completed typed order along with a \$22 clerk's recording fee payable to the circuit court clerk with your Order.

A form *Order Restoring Former Name Incident to a Divorce* is located on the Court's website under Court Forms.

Affidavit of Moving Party and Corroborating Witness without Hearing before a Judge.

The required Affidavit of the Moving Party and Affidavit for Corroborating Witness is posted on the Court's website in a PDF fillable format.

Questions for Moving Party and Witness at Hearing before Judge:

Questions for Moving Party

1. State name and address.
2. I am married to (name of party/spouse).
3. My spouse and I were married on (date) in (location of marriage).
4. Do you affirm that both parties are over the age of 18?

5. Were you [and/or spouse] bona fide residents and domiciliaries of Virginia at the time of filing the divorce and more than six months immediately preceding filing?
6. Have either you or your spouse been incarcerated in a mental or penal institution at any time since the filing of this divorce?
7. Are you and your spouse mentally competent?
8. Have either you or your spouse been a member of the armed forces of the United States on active duty at any time since the filing of this divorce? If yes,
 - a. Was the military member stationed in or residing in Virginia for at least six months immediately preceding the filing of this divorce?
 - b. Has the military member filed an answer or a waiver of Servicemembers Civil Relief Act rights?
9. Have you and your spouse separated from one another? If yes, state date separated: _____.
10. When you and your spouse separated did one of you intend for the separation to be permanent? If No, when did one of you form that intent? (State date).
11. Since the date of the separation, have you and your spouse lived separate and apart, continuously, without cohabitation and without interruption?
12. Are there any children born or adopted of the marriage? If yes, state names and ages: _____.
13. Do you affirm that the wife is not known to be pregnant from the marriage?
14. Have you and your spouse entered into a written and signed property settlement agreement? If yes, do you want the court to affirm, ratify and incorporate the property settlement agreement into the final divorce decree?
15. Is there a request to have a former name restored? What is it?
16. Do you want the court to grant you a divorce based upon the grounds of having lived separate and apart without cohabitation and without interruption for a period in excess of one year or six months [list only the ground that applies]?

Questions for the Corroborating Witness.

1. State your name and address.
2. Do you know the parties in this divorce action?
3. How do you know the complainant/defendant?
4. How long have you known the complainant [or the defendant]?
5. Do you verify that you are over the age of 18 and not suffering from any condition that renders you legally incompetent?
6. Is either party incarcerated?
7. Do you verify that at least one of the parties to the divorce suit was a bona fide resident and domiciliary of Virginia at the time of filing the divorce and for more than six months immediately preceding the filing?
8. Were there any children born or adopted of the marriage?
9. Do you verify that the wife is not known to be pregnant from the marriage?
10. Do you verify that you have personal knowledge that the parties have not cohabitated since (*state date*), which is the date of separation alleged in the complaint or counterclaim, and that it has been the intention of the [list the one that applies: plaintiff or defendant] since that date to remain separate and apart permanently?