

# VIRGINIA BEACH

## CIRCUIT COURT



# Uncontested Divorce Procedures Manual

Adopted November 1, 2004. Last Revision Date: October 4, 2016

## **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 heard by the court. 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, 757-385-4419; Virginia State Bar Lawyer Referral, 1-800-552-7977 (30 min. consultation for \$35) and Virginia Legal Aid, <http://www.valegalaid.org>.

### **Uncontested Divorce Procedures**

#### **Procedure 1. Requirements to be uncontested and appropriate to be set on uncontested docket.**

- (a) All of the issues have been agreed to by the parties; and
- (b) 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; and
- (c) Child support, spousal support, custody, and/or visitation are not requested; or if they are requested; there is a written and signed agreement, or both parties have signed the Final Divorce Decree.
- (d) Exceptions. Cases that meet all the above requirements in which the parties were living in the same residence for all or part of the separation period relied upon are not appropriate for setting on the uncontested divorce docket or proceeding by affidavit. Instead, those cases must be set for hearing on the Friday Divorce Docket. Likewise, cases that require evidence going beyond the Questions for Party and Questions for Corroborating Witness set forth in this manual cannot be set on the uncontested divorce docket or proceed by affidavit. Depending upon the amount of time needed for these types of cases as determined by the court, they may need to be placed on the Friday Divorce docket or, with pre-approval of the court, on the Duty Judge Docket.

#### **Procedure 2. How uncontested divorces are heard**

- (a) To have the case heard before a judge, the parties must comply with the requirements set out in this manual. See Procedure 3-6 for further information and requirements. Except for the statutory filing and service fees of the complaint, there is no hearing fee for the court to hear the case.
- (b) In the discretion of the court pursuant to Code § 8.01-607, the case may be heard by a commissioner. The party must file a motion requesting that the case be heard by a commissioner, and schedule a properly noticed hearing before the court on the Friday Motions Docket to show good cause for the referral. If the court grants the motion, the court will enter a Decree of Reference naming the commissioner who will hear the case. The parties are responsible for contacting the commissioner to schedule the divorce hearing. The commissioner's fees shall be paid pursuant to § 8.01-609.1.
- (c) A party may proceed to have case heard in support of an uncontested divorce or by deposition or affidavit where notice is not required to be given to the opposing party. See Procedure Section 7 for further direction and requirements.

### **Procedure 3. Requirements to have uncontested divorce heard before a Judge.**

- (a) File and serve the complaint.
- (b) Wait until the time to answer has passed or the defendant has answered or filed a waiver.
- (c) Request a hearing by filing in the Clerk's Office a **Hearing Request form**. The moving party must send a copy of the Hearing Request to the other party or counsel.
- (d) The following documents must be submitted with the **Hearing Request**:
  - (1) The original proposed Final Divorce Decree signed by both parties, if required (see NOTE), along with two copies. 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) The original of any separation agreement (if applicable);
  - (3) Confidential Addendum for Protected Identifying Information (if not already filed);
  - (4) Proof of service of the bill of complaint and/or waiver (if not already filed);
  - (5) An original, completed **VS-4 form** (form available from the clerk's office).
  - (6) A self-addressed, stamped envelope if a pro se party (representing oneself without an attorney). If such envelope is not furnished, the scheduling, rejection, or correction notice shall not be mailed but placed in the case file (the moving party will have to contact the clerk's or judges' office for case status).
  - (7) If requesting restoration of former name, a properly completed typed order. See Procedure 8. Restoration of former name incident to a divorce.

### **Procedure 4. After Hearing Request before a Judge filed, case reviewed by a law clerk.**

- (a) If all requirements have been met, the judicial assistant will transmit a **Scheduling Notice** to the moving party's attorney by facsimile (and place fax confirmation sheet in the file), or mail such notice to a pro se party. The **Scheduling Notice** will inform the party that the hearing request is approved.
- (b) If all requirements have not been met or there are unusual evidentiary requirements, a **Rejection Notice** will be sent along with a **Correction Form**, stating the reasons for the rejection and listing the required corrections and/or the requirement that the case must be set for hearing on the duty judge docket. The clerk's office will
  - (i) if the moving party is represented by counsel place such rejection and correction notice 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.
- (c) Do not contact the law clerks by telephone. Communications with the law clerks must be in writing or by e-mail and are limited to the matters in the Correction Form.

### **Procedure 5. Scheduling a hearing before a Judge.**

- (a) The case can be scheduled for a hearing only if the law clerk has mailed the moving party a **Scheduling Notice**. Within 21 days from the date of the **Scheduling Notice**, the moving party must follow instructions in the Scheduling Notice to schedule a hearing.
- (b) Failure to contact the court within such 21-day period may result in having to resubmit another **Hearing Request** for further review before a trial date can be set.
- (c) Hearing dates are Friday at 10:00 a.m. effective August 1, 2014.

### **Procedure 6. Hearing before the Judge.**

- (a) For a continuance of the scheduled hearing, see **Request for Continuance of Hearing** form available on the Court's website.
- (b) The moving party and the witness must appear in person.

- (c) Counsel or the party, if proceeding pro se, must present the evidence to prove the grounds for the divorce and any other relief that is sought. See Questions for Party and Questions for the Corroborating Witness.
- (d) No changes or corrections will be permitted at the hearing, other than a motion for a no-fault divorce pursuant to Virginia Code § 20-121.02.
- (e) 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).
- (f) Generally, the final decree will be entered at the hearing. The Clerk's Office will mail certified copies of the final decree if the parties provide sufficient copies and a self-addressed, stamped envelope.
- (g) If the moving party fails to appear at the hearing, the case may be dismissed after a 30-day review period.
- (h) 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.

**Procedure 7. Requirements to have uncontested divorce heard by deposition or affidavit.**

- (a) Follow procedures set forth in Procedure 3(a) and (b); however, do not submit a Hearing Request Form if you are proceeding by affidavits.
- (b) If the case satisfies the requirements set forth in Procedure 1, and notice is not required to be given to the opposing party, the party may proceed by deposition or affidavit as provided in §20-106(A). The deposition or affidavit shall conform to and not deviate from the questions required by this Court. See Questions for Party and Questions for Corroborating Witness in this manual.
- (c) **Affidavits must be executed within sixty (60) days of entry of the final decree or they will not be accepted.**
- (d) File the documents required in 3(d) with such written deposition or affidavit. The documents will be reviewed by the law clerk. If all requirements have not been met, a Rejection Notice will be sent along with a Correction Form, stating the reasons for the rejection and listing the required corrections and/or the requirement that the case must be set for hearing.
- (e) Request for restoration of former name, if desired, must be submitted with the items listed in 7(c) and otherwise comply with Procedure 8.
- (f) 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 submit a Hearing Request or Order transferring to the correct venue.

**Procedure 8. Restoration of former name incident to a divorce**

- (a) 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.
- (b) This motion must be made at the hearing and you must submit with your hearing request a properly completed typed order along with a \$21 clerk's recording fee payable to the circuit court clerk.
- (c) A sample Order Restoring Former Name Incident to a Divorce is located on the Circuit Court web site at [www.vbgov.com/courts](http://www.vbgov.com/courts) under Court Forms.

**Procedure 9. Questions for an uncontested divorce and divorce by deposition/affidavit To the 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]?

**To 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?