# VIRGINIA DO-IT-YOURSELF DIVORCE INSTRUCTIONS

**In Virginia, you must file your divorce in a circuit court.** A divorce is a type of lawsuit where a spouse is asking the court to legally end a marriage. The spouse who files for divorce is called the "Plaintiff" and the other spouse is called the "Defendant." (Other terms used may be "Complainant" and "Respondent.")

***The easiest way to file a divorce*** *is if you and your spouse agree. In that case, your spouse can sign a document indicating their acceptance, and you may file all documents needed for your divorce at one time.*

BEFORE taking your documents to court, read these instructions carefully!

## What do I Need to File for Divorce?

**NOTE*: all documents to be filed with the court must be printed on only one side of the paper***

**1: Complaint**. The Complaint tells the court what you are asking for.

**2: Service**. Before you can proceed with the divorce, you must **serve** the Complaint on your spouse, which means giving him or her formal notice of the lawsuit. There are several ways to serve the Complaint, which are discussed in detail in the instructions.

- Your spouse may "waive" (or give up) being served by signing an acceptance and waiver form before a notary. This is the easiest and quickest way to proceed with a divorce.

**3: Affidavit**. Once your spouse has been properly served, you must submit evidence to the court to show that you are entitled to a divorce. If you qualified to use our online system to produce this document, you should be able to submit that evidence through an **affidavit**, without testifying in court.

—>**NOTE:** ***as of July 2021, only the Plaintiff Affidavit is required. You may throw away the Witness Affidavit.***

**4: Order to Restore Former Name**: Persons who took their spouse's name when they got married may ask the court to restore their former name as part of the divorce. If you chose the name-change option during the online interview, an Order Granting Name Change will be included with your divorce documents to file with the court.

**5: Final Decree.** The final divorce order is called a Decree. Depending on your circumstances, the decree may be simple, or, if it includes information about child custody, property division, spousal or child support, or other matters, it may be longer and more complicated.

**6: Attachments**: If you and your spouse have a document called a "Property Settlement Agreement," a "Separation Agreement," or a court order, in which matters such as property and debt division, custody, and support have been decided, this will be attached to and made a part of the Decree.

**7: Finalization:** ***Your divorce will only be complete when the judge has signed the Final Decree.***

**IMPORTANT:** Before filing your divorce paperwork, ALL issues relating to child custody, child support, spousal support, marital property, or debts MUST be resolved, either through agreement or by court order.

- If any of these issues are in dispute, consult an attorney prior to using these forms to file for divorce.

***NOTE: If your spouse has been violent or abusive****, and you do not want your spouse to know your current address, first consult an attorney so you may request the court to keep your address confidential. The materials in this packet contain your address and will not be confidential. Learn more about address confidentiality here:*

*https://www.oag.state.va.us/programs-initiatives/domestic-violence/address-confidentiality-program*

## General Instructions

**More information:** If you need more information about divorce and related issues:

- *https://www.valegalaid.org/issues/family-and-domestic-and-sexual-violence/divorce*
- *https://www.mrwba.org/page-18114 (available in English and Spanish)*

**If you need an attorney**: some situations where you should consult with an attorney before proceeding with your case are described below. It's a good idea to seek an attorney to review your documents before you file.

- Find your local legal aid office at the Virginia Legal Aid website (www.valegalaid.org), or call 866-LEGLAID (866-534-5243).
- You may ask a question online through the Free Legal Answers website (virginia.freelegalanswers.org)
- Request a low-cost consultation with an attorney through the Virginia Lawyer Referral Service (www.vsb.org/vlrs).
- If you have been a victim of domestic violence, the Statewide Family Violence & Sexual Assault Hotline may be able to help: 1.800.838.8238 (or text-chat: 804.793.9999)

**Proof-read carefully**: Check all spellings, dates, capitalizations, and punctuation for errors. You may need to write in some information in some of the documents.

- If any information is incorrect, or there are inconsistencies, the court may reject your filings, request additional evidence, hold a hearing in court, or refuse to grant your divorce.

**Court fees**: All courts charge a "filing fee" for every case filed. If you cannot afford to pay the filing fee, you may ask the court to *waive* (not charge) the fee. You must request this at the time you initially file your divorce. Estimate filing and service fees with Virginia's Circuit Court Civil Filing Fee Calculation webpage (at *selfhelp.vacourts.gov,* choose "Filing Fees".)

- During the online interview, if you chose to request that you be allowed to proceed without paying fees and costs, you answered questions that resulted in a **Motion** and **Order to Proceed without Payment of Fees/Costs** as part of this packet.
- The Motion must be signed in front of a notary. ***If you sign a statement you know is false, you can be found guilty of perjury and be sent to jail***.

**Affidavit**: An affidavit is a sworn written statement that is *the same as testifying under oath in court*. You must sign your Plaintiff's Affidavit under oath, which means you are affirming under penalty of perjury that everything in the affidavit is absolutely true. ***If the affidavit contains a statement you know is false, you can be found guilty of perjury and be sent to jail***.

- In order to sign your affidavit under oath, you must sign it in front of a notary. Notaries can be found at most banks, law offices, libraries, real estate offices, and local government offices. Some notaries may charge a small fee for their services.
  —> **NOTE**: *As of July, 2021, only the Plaintiff Affidavit is required to file for an uncontested divorce. You may throw the Witness Affidavit page away.*

**Hearings**: In some cases, a court may require a hearing to take evidence instead of accepting affidavits. This will likely be the case if you were unable to get personal service on your spouse.

- *If you were unable to get personal service on your spouse, you will need to file the* ***Notice of Presentation of Decree*** *and the* ***Praecipe*** *with your final documents. If the court notifies you a hearing must be held, consult with an attorney.*

**Property Settlement Agreements**: If you and your spouse have signed a Property Settlement Agreement (also called a Separation Agreement), this will become part of the court's decree granting the divorce, so you (or your spouse) can enforce its terms in court. *Always keep a copy of the Agreement for your own records!*

## Beginning Your Divorce: First Steps

**BEFORE YOU BEGIN: Determine how you will gain "service" on your spouse (see below, "Types of Service in Virginia").**

A defendant must be "served" to receive official notice that a divorce suit has been filed against them in court.

- *"Service" is the formal way of providing notice to the defendant and is usually done by a sheriff's deputy hand-delivering the notice of the lawsuit--in this case, the Complaint for Divorce--to the defendant.*
- However, if both parties agree about the divorce, your spouse may accept service directly from you and "waive" (do without) official service and notice from the court.
    - *Your spouse can waive service by signing the **Acceptance/Waiver of Service of Process and Notice** form included in this packet. Your spouse must sign this form under oath in front of a notary.*
    - *Your spouse must also sign the Final Decree to indicate they understand what it contains.*

***The process for filing a divorce is much easier if your spouse accepts and "waives" service.*** Before you file your divorce, learn if your spouse is willing to waive service and sign the acceptance/waiver form.

**IF YOU CANNOT AFFORD THE COURT FILING FEES**: **If you are requesting the court waive (**not require) filing fees, and chose this option during the online interview, this packet will include a **Motion to Proceed without Payment of Fees/Costs**, and a proposed **Order to Proceed without Payment of Fees/Costs**.

- *Sign the **Motion** in front of a notary. You are swearing under penalty of perjury to the truthfulness of the statements in the Motion. Be sure all the financial information you provide in the Motion is correct. Sign the **Order** where it says "I ask for this."*
- ***Include the Motion and Order when you file the Complaint.***
- Call the clerk about two weeks after you file to learn if your request is approved. *If your request is denied, you must pay the fee before you can finalize your divorce.*

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## TYPES OF SERVICE IN VIRGINIA

**Waiver of service:** Your spouse agrees to accept a copy of the documents in the divorce from you. If your spouse will agree to waive service, see "Option A: Filing Your Divorce if Your Spouse is Waiving Service," above, and proceed as described.

**Personal service:** The sheriff delivers the Summons and Complaint to the defendant in person.

**Substituted service:** The sheriff delivers the Summons and Complaint to an adult family member of the defendant who lives at the defendant's home.

**Posted service:** The sheriff cannot find anyone to deliver the Summons and Complaint to, and leaves

a copy of the papers on the front door of the defendant's home.

(Also: **Service by publication**. If the defendant's location is unknown, notice can be posted at the courthouse and published in the newspaper. This is more complicated and requires a court order; *seek the advice of an attorney*.)

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## **OPTION A:** FILING YOUR DIVORCE IF YOUR SPOUSE IS WAIVING SERVICE

***NOTE**: **if you are afraid or do not feel safe asking your spouse to waive service**, do not choose this option, but file your divorce in the traditional way with service from the sheriff's department. See **OPTION B**, below.*

**STEP 1. Preparing to file the divorce:** To begin your divorce when your spouse is waiving service, prepare these documents FIRST before your spouse accepts and waives service.

- **ALL these documents must be correct**, signed by your spouse, and, if indicated, notarized.
  - *Your spouse must initial the **Complaint** to indicate they've seen it.*
  - *You and your spouse must sign the proposed **Final Decree.***
  - *If you chose not to enter your Social Security numbers online, hand-write them into the **Private Addendum.***
  - *Include any attachments relating to property, custody, or support. If you and your spouse have signed a "**Property Settlement Agreement**" or a "**Separation Agreement**," the terms should match anything listed in the Final Decree, and **your spouse should initial and date** each page of the agreement to indicate they know and understand what it says. File the original with the Final Decree.*
  - When all documents are prepared, your spouse must sign in front of a notary the ***Acceptance/Waiver of Service of Process and Notice*** form.

- **Include a cover letter to the clerk.** (See "**Sample Divorce Cover Letter: Waiving Service**," included in this packet.) Choose those paragraphs and documents that apply to your situation; modify the letter accordingly. Date the letter the same day you bring the Divorce documents to the court.
  - *The letter must list the documents enclosed, and include your full name, physical address and telephone number, as well as your spouse's full name, physical address and telephone number.*

•**Copies: before you take the divorce documents to the court**, make two copies of each document: one for your records, and one for your spouse.

**STEP 2. Filing with the court:** Once you have all your documents (signed, initialed, and notarized as indicated), **hand-deliver** them to the clerk's office of the appropriate court. The name of the circuit court in which you may file is listed on the top of the first page of the Complaint. While you are at the clerk's office, you will need to fill out by hand a statistical form called the **Report of Divorce (VS-4) Form:** On Line 23, where the form asks about the legal grounds for divorce, you may write "Uncontested, one year separation" (or "six months separation" if you qualify for a divorce after six months)/.

- The addresses and hours for circuit courts can be found at www.courts.state.va.us/courts/circuit.html.

**STEP 3. Finalizing**: Your divorce will be final once the judge reviews your documents and signs the **Final**

**Decree**. The court will mail you a copy of the signed Final Decree (and **Order Granting Name Change,** if applicable).

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## **OPTION B:** FILING YOUR DIVORCE IF SERVICE ON YOUR SPOUSE IS NEEDED

**STEP 1: Filing the Complaint:** In order to begin your divorce if you need the court to serve your spouse, you must file the **Complaint for Divorce** with the appropriate circuit court. The name of the appropriate circuit court is listed on the top of the first page of the Complaint. The addresses for the circuit courts in Virginia can be found at www.courts.state.va.us/courts/circuit.html.

•Before you file your Complaint with the court, **sign and date the last page** of the Complaint where indicated.

- If you and your spouse signed a "**Property Settlement Agreement**," (also called a "Separation Agreement" that is meant to be part of your divorce, or a "Mediated Agreement"), include a copy with the complaint, so it can be served on your spouse.

- **Include a cover letter** (see "**Sample Divorce Cover Letter: Requesting Service,"** included in this packet) dated with the day you are bringing or mailing the Complaint to the court. Choose "Paragraph One" and list the documents enclosed. Include your full name, physical address and telephone number, as well as your spouse's full name, physical address and telephone number.
  - *If you mail your complaint to the court, include a check or money order for the filing fee and service fee, OR your signed and notarized* ***Motion and Order to Proceed without Payment of Fees/Costs***. Call the court to learn how much the fees are, or you may estimate filing and service fees using Virginia's Circuit Court Civil Filing Fee Calculation webpage (go to *www.courts.state.va.us*, choose "Circuit Court" and scroll down to "Fees," or go to *selfhelp.vacourts.gov* and choose "Filing Fees.")
- **Before you deliver the Complaint** and cover letter to the court, make an exact copy of each document for your records. Make an extra copy of the cover letter and the Complaint and mail these to your spouse at the same time you file them with the court.

**STEP 2. Once you have filed the Complaint, you must have it served on your spouse**: "Service" is a formal way of providing notice to the defendant in a lawsuit. Getting proper service on your spouse is extremely important because you will not be able to finalize your divorce without it. Usually, service is done by the local sheriff's department in the city or county where the defendant lives.

- ***There is a fee for the sheriff serve the Complaint*** *on the defendant unless the court has waived your fees.*
- The court will issue a **Summons**, explaining that ***your spouse has 21 days to respond to your Complaint***. The sheriff will serve the Summons along with a copy of the Complaint for Divorce on your spouse.
- The sheriff will report to the clerk when the defendant was served and with what type of service.

**STEP 3. Find out when and how the defendant was served:** After 3-4 weeks, check Virginia's Circuit Court On-Line Case Search system (go to selfhelp.vacourts.gov and choose "Find a Case") or call the clerk's office to find out if (and how) your spouse was served.

- **Note**: Alexandria and Fairfax Circuit Courts do not use the online case search system, so you will need to call these courts or check their websites for case number information.

**STEP 4. Once the Complaint and Summons have been served:** you must wait at least ***21 days from the time your spouse is served*** before proceeding with your divorce.

- *If your spouse responds to the Complaint within that time by filing something with the court, consult with an attorney as soon as possible.*
- *If your spouse does not respond to the Complaint within that 21 days, you can proceed with finalizing the divorce.*

**STEP 5. Finalizing your divorce, by type of service**: The final steps you will need to take to complete your divorce will depend on what kind of "service" was provided (see "Types of Service in Virginia," below).

- ***Read carefully to know whether you need to follow Last Steps 1 or Last Steps 2.***

## Finalizing: Choose the Last Steps to Finalize (by type of service)

***If your spouse was served by the sheriff, the last steps you will need to take to finalize your divorce will depend on how the Complaint was served on your spouse.***

**NOTE:** When you filed your Complaint, your case was given a number by the court. ***It is important that you hand-write the case number on the first page of all the documents filed*****,** so the court can place the documents in the correct file.

- *You can get the case number by calling the court clerk's office, or by searching for your case (in most jurisdictions) in Virginia's Circuit Court On-Line Case Search system (go to selfhelp.vacourts.gov and choose "Find a Case").*

**NOTE: 21-day waiting period after service**

- If your spouse is served by personal, posted, OR substituted service, you must wait 21 days **from the time your spouse is served** before proceeding with your divorce.
- After the 21 days, check with the clerk's office to see if your spouse filed a response.
- **If your spouse did not respond to the Complaint within that 21 days,** you can proceed with finalizing the divorce by following the "Last Steps" 1 or 2 below.

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**LAST STEPS 1: If PERSONAL Service**

- To finalize your divorce: first, you must sign the **Plaintiff's Affidavit** and the **Private Addendum** in front of a notary (if you chose not to enter your Social Security numbers online, hand-write them in now). Then, you must file the Plaintiff's Affidavit, the **Final Decree** and the Private Addendum with the court. If you elected to ask the court to restore your maiden name, file the **Order Granting Name Change** along with the Final Decree.
  - *When you file these documents, include a* ***signed and dated cover letter*** *(see "****Sample Divorce Cover Letter: Requesting Service****," and use Paragraph Two) that lists all of the enclosed documents and* ***keep exact copies of everything for your records.***
  - **On the same day you file these documents with the court**, mail your spouse a copy of the cover

letter and Final Decree. **In your cover letter to the court, state that you have done so**.

**NOTE**: if you did not complete a **Report of Divorce Form (called a VS-4 form)** at the time you filed your complaint, you must do so before your divorce can be finalized.

- **On Line 23**, where the form asks about the legal grounds for divorce, you may write "Uncontested, one year separation" (or "six months separation" if you qualify for a divorce after six months).

**FINALIZATION**: Your divorce will be final once the judge reviews and signs the Final Decree. The court will mail you a copy of the signed Final Decree (and Order Granting Name Change, if applicable).

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**LAST STEPS 2: If POSTED** or **SUBSTITUTED Service**

- Because your spouse was served with substituted or posted service, **you must provide some additional notice to your spouse** about the steps you are taking in the case, including the date that you will ask the judge to sign the Final Decree.
- **Call the clerk's office** and ask for the date and time of the next Motions Docket, civil docket call, or other regular day that you can come to court for an "*ore tenus*" hearing and present your Final Decree for the judge to sign.
- Once the clerk has provided a date, hand-write that date into the **Notice of Presentation of Decree** and the **Praecipe**. Fill in the other dates on the Notice and the Praecipe and sign where indicated. The Praecipe tells the clerk to put your case on the list of cases to be heard on that specific date and time. The Notice of Presentation of Decree tells your spouse that you will be asking the judge to sign your Final Decree at that date and time.
- File the *original* Praecipe and a *copy* of the Notice with the court, including a ***signed and dated cover letter*** *letter (see "**Sample Divorce Cover Letter: Requesting Service**," and use Paragraph Two) that lists all of the enclosed documents.* ***Keep exact copies of everything for your records***.
- The sheriff will serve the *Notice* and *Praecipe* on your spouse (you will need to pay another service fee) along with a copy of your cover letter to the court and a copy of the *Final Decree* that you will present to the judge at the hearing.
- Sign the **Plaintiff's Affidavit** and the **Private Addendum** in front of a notary (if you chose not to enter your Social Security numbers online, hand-write them in now). On the date set for presentation of your Decree, you must go to court and bring with you: 1) the **Plaintiff's Affidavit**; 2) the **Final Decree;** and 3) the **Private Addendum**. If you asked the court to restore your former name, bring the **Order Granting Name Change**.
- **On the day of the hearing**, you will need to testify in person about the things listed in the Plaintiff's Affidavit.

**NOTE**: if you did not complete a **Report of Divorce Form (called a VS-4 form)** at the time you filed your complaint, you must do so before your divorce can be finalized.

- **On Line 23**, where the form asks about the legal grounds for divorce, you may write "Uncontested, one year separation" (or "six months separation" if you qualify for a divorce after six months).

**FINALIZATION**: Your divorce will be final once the judge hears your testimony, reviews your documents and

signs the **Final Decree**.

This Do-It-Yourself Divorce Packet was created using an online tool from Virginia Poverty Law Center, available at VaLegalAid.org/Divorce.
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[SAMPLE DIVORCE COVER LETTER: WAIVING SERVICE]

***Before submitting to court**: Fill in the proper information where underlined and delete all red text. Delete the "Order Granting Name Change" if this is not part of your divorce. If you are not requesting the court waive your fees and costs, delete the last paragraph and include a check or money order for the fees. Otherwise, include the request to proceed without payment. Sign on the dashed line.*

DATE

The Honorable Clerk of Court
CITY OR COUNTY Circuit Court
ADDRESS
CITY, VA 00000

*Re: Complaint for Divorce*

Dear Honorable Clerk:

Enclosed is my complaint for divorce from my spouse, SPOUSE NAME, of ADDRESS, CITY, STATE, ZIPCODE, along with all required documents.

My spouse has accepted service from me, and has signed the proposed final decree. The signed and notarized Acceptance and Waiver of Service of Process and Notice is enclosed, as are all associated documents, including:

- My spouse's signed and notarized Acceptance/Waiver of Service of Process and Notice
- My Affidavit
- Proposed Final Decree *(signed by yourself and your spouse)*
- Any attachments such as court order or signed agreements *(if included. Spouse should initial and date agreement pages)*
- Private Addendum
- Order Granting Name Change *(if selected)*

[IF INCLUDED] Also enclosed is my Motion to Proceed without Payment of Fees/Costs, and a proposed Order to Proceed without Payment of Fees/Costs.

Thank you.

Sincerely,

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YOUR ADDRESS
CITY, STATE, ZIPCODE
PHONE NUMBER

[SAMPLE DIVORCE COVER LETTER: REQUESTING SERVICE]

*This letter may be used twice: first with your complaint, and second after service with the remaining divorce documents.* ***Before submitting to court****: Fill in the information where underlined. Delete all red text. If you are NOT requesting the court allow you to proceed without payment, delete the middle paragraph. Include a check or money order for the fees OR the request to proceed without payment. Sign on the dashed line.*

DATE

The Honorable Clerk of Court
CITY OR COUNTY Circuit Court
ADDRESS
CITY, VA 00000

*Re: Complaint for Divorce*

Dear Honorable Clerk:

[Choose PARAGRAPH ONE for initial filing; PARAGRAPH TWO for remaining documents]

[PARAGRAPH ONE: USE WHEN FILING COMPLAINT] Enclosed is my complaint for divorce from my spouse, SPOUSE NAME. I am requesting the court serve the complaint on my spouse at the following address: SPOUSE NAME, ADDRESS, CITY, STATE, ZIPCODE.

[INCLUDE WITH COMPLAINT, IF REQUESTING] Also enclosed is my Motion to Proceed without Payment of Fees/Costs, and a proposed Order to Proceed without Payment of Fees/Costs.

[PARAGRAPH TWO: USE WHEN FILING REMAINING DOCUMENTS] My complaint for divorce was served on my spouse and 21 days have passed. Enclosed are the remaining documents to be filed in my divorce, case number #_____.

- My Affidavit
- Proposed Final Decree *(signed by you)*
- Private Addendum
- Order Granting Name Change *(if selected)*
- Notice of Presentation of Decree *(if posted or substituted service)*
- Praecipe *(if posted or substituted service)*

Thank you.

Sincerely,

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YOUR ADDRESS
CITY, STATE, ZIPCODE
PHONE NUMBER