

CHESAPEAKE CIRCUIT COURT



UNCONTESTED DIVORCE PROCEDURES MANUAL

July 1, 2012

Last Revised: July 1, 2012

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Uncontested Divorce Procedures Manual

OUTLINE OF PROCEDURES

I. Description

An uncontested divorce is one in which the grounds for divorce is living separate and apart without any cohabitation and without interruption for the statutory period, pursuant to Virginia Code § 20-91(A)(9)(a) (no-fault) (*i.e.*, one year separation or 6-month separation if there are no minor children and the parties have entered into a written separation agreement), or a motion for a no-fault divorce has been or will be made pursuant to Virginia Code § 20-121.02. Please note that “irreconcilable differences” is not a legal ground for divorce in Virginia. Also, an uncontested divorce is one in which:

- (1) There are no contested issues in dispute concerning equitable distribution, spousal support, child support, child custody and visitation; or,
- (2) All of the issues have been settled and agreed to by the parties in a written stipulation agreement.

A divorce that does not fit the description of an uncontested divorce must proceed through the Court’s Contested Divorce Procedure.

II. How Uncontested Divorces Are Heard

- (1) *Upon Affidavit or Deposition Where No Notice Is Required – Virginia Code § 20-106:*

A party may proceed to take evidence in support of an uncontested divorce by affidavit or deposition where notice is not required to be given to the opposing party. Please refer to Section III of this manual for further information. Generally, no notice is required to be given to the opposing party where:

- (a) The opposing party has endorsed the Final Decree;
- (b) The opposing party has signed a waiver of service of process and notice;
- (c) The opposing party has received personal service of the Complaint and has not filed a responsive pleading or made an appearance in the case;
- (d) The opposing party has signed an acceptance of service and has not filed a responsive pleading or made an appearance in the case; or,
- (e) The opposing party was served by publication and has not filed a responsive pleading or made an appearance in the case.

(2) *By the Court Ore Tenus Where Notice to a Party Is Required:*

When notice of the hearing is required to be given to the opposing party, an uncontested divorce hearing must be scheduled to be heard *ore tenus* on the Wednesday civil motions docket at 9:00 AM. Please refer to Section IV of this manual for further information.

(3) *By a Commissioner in Chancery:*

To have an uncontested divorce heard by a commissioner in chancery, the parties must comply with Virginia Code § 8.01-607. The parties must submit a Decree of Reference to the Clerk's office.

(a) If the defendant has made an appearance in the case, the Decree of Reference must be endorsed by all counsel of record and any *pro se* party (not represented by counsel), or notice must be given as required by Supreme Court Rule 1:13, and good cause shown;

(b) If the defendant has executed a waiver, the plaintiff may submit the decree of reference without defendant's endorsement.

III. Requirements to Have an Uncontested Divorce Heard Upon Affidavits or Depositions

(1) File and serve the Complaint for Divorce. Please note that there is no form Complaint for Divorce provided by the Court or the Clerk of Court.

(2) Wait until the statutory period for the defendant to file an Answer has passed or the defendant has answered, filed a waiver, or endorsed the proposed final decree;

(3) If there are no contested issues remaining in the case, and notice is not required to be given to the opposing party, the moving party may proceed under Virginia Code § 20-106. (If notice must be given to the opposing party, proceed under Section IV of this manual);

(4) The moving party **must** file the following documents with the Clerk of Court:

(a) The original proposed the Final Decree of Divorce, with the required endorsements (signatures);

(b) The original (or copy) of the property settlement agreement (if applicable);

(c) Completed notarized affidavits (or depositions) of the moving party *and* corroborating witness;

(d) Confidential Addendum for Protected Identifying Information, including Social Security Numbers (if not already filed);

(e) The original VS-4 State Statistical Form (available in the Clerk's office);

(f) A self-addressed stamped envelope;

- (g) A separate name change order (if applicable), including the name change recording fee to the Clerk of Court. See Section VI of this manual for more information regarding name changes.
- (5) If the final decree is not in proper legal form or if there are missing or incomplete documents, you will receive a Notice of Non-Compliance from the Court along with a checklist highlighting the required corrections or additions. If you receive a Notice of Non-Compliance, forward the corrected or missing documents to the Clerk's office. If no self-addressed stamped envelope is provided, the Notice of Non-Compliance and highlighted checklist will be filed with the Clerk.

IV. Requirements to Have an Uncontested Divorce Heard Ore Tenus Before a Judge

- (1) File and serve the Complaint for Divorce. Please note that there is no form Complaint for Divorce provided by the Court or the Clerk of Court.
- (2) Wait until the statutory period for the defendant to file an Answer has passed or the defendant has answered.
- (3) If there are no contested issues remaining in the case, and notice is required to be given to the opposing party, counsel (or a party proceeding *pro se*) may schedule a hearing date for the uncontested divorce hearing through the Court's normal civil motion scheduling procedure, which can be found online at: <http://www.cityofchesapeake.net/civilmotions> or, by calling (757) 382-3074 if no internet access is available (*See Local Rule 7*). Uncontested divorces are heard on the Wednesday 9:00 AM docket.
- (4) The moving party is responsible for providing adequate notice of the hearing, if required by law, to the opposing party. Notice of Hearing that complies with Rule 4:15 of the Rules of the Supreme Court of Virginia must be filed with the Clerk of Court. Failure to provide adequate legal notice to the opposing party may result in your matter being removed from the docket on the hearing date.
- (5) The moving party **must** file the following documents with the Clerk of Court **at least 7 days but not more than 14 days prior to the hearing**; failure to file a required document may result in your matter being removed from the docket on the hearing date:
 - (a) A copy of the Notice of Hearing that was filed with the Court by the moving party or their counsel if represented.
 - (b) The original proposed Final Decree of Divorce, endorsed (signed) by the moving party or counsel if represented;
 - (c) The original (or copy) of the property settlement agreement (if applicable);
 - (d) Confidential Addendum for Protected Identifying Information, including Social Security Numbers (if not already filed);

- (e) The original VS-4 State Statistical Form (available in the Clerk's office);
- (f) A self-addressed stamped envelope;
- (g) A separate name change order (if applicable), including the name change recording fee to the Clerk of Court.

V. Form Final Decrees and Affidavits

In order to facilitate an expeditious conclusion of uncontested divorce cases, the Court has developed three form final decrees for matters where: (1) no support is ordered; (2) spousal support is ordered, but there are no minor children whom the parties have a mutual duty to support; and (3) child support is ordered and/or spousal support is ordered where there is also a minor child whom the parties have a mutual duty to support.

The Court has also developed form affidavits for use in cases proceeding under Virginia Code § 20-106 where no notice is required to be given to the opposing party. The use of form final decrees and/or affidavits is **not** mandatory. The form final decrees and affidavits have been provided to include typical requirements for the majority of uncontested divorce cases and may be used at the discretion of counsel or a party acting *pro se*; however, there are matters where the form final decrees may not sufficiently encompass the issues of that particular case. **The form final decrees and affidavits are available on the Chesapeake Circuit Court's Web site in PDF format. The Web site is located at: <http://www.cityofchesapeake.net/civilmotions> and the forms can be accessed by clicking the link for "Divorce Manuals and Forms" from the menu on the left side of the Web page.** Please note that the form final decrees and affidavits are not intended to be legal advice or a substitute for legal advice. Each divorce matter is unique and may have different legal and/or tax consequences; therefore, if you are acting *pro se*, you are strongly encouraged to consult with an attorney. There is no form Complaint for Divorce provided by the Court. Court staff is not permitted to give legal advice.

VI. 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 move 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 also submit the name change recording fee payable to the Clerk of Circuit Court.

VII. Uncontested Divorce Manual Updates

The latest version of the Court's uncontested divorce procedures and forms will be posted on the Chesapeake Courts' Web site when available, at:
<http://www.cityofchesapeake.net/civilmotions>

VIII. Notice to Pro Se Litigants – Legal Advice

Each party involved in a divorce matter is strongly encouraged to consult with an attorney for legal advice so that all potential legal effects of the divorce proceedings may be fully explained. Divorce is a complex area of the law, with many statutory legal requirements. While it is your right to proceed without an attorney (*pro se*), if you do so, you may unknowingly waive or negatively affect your future legal claims to issues including, but not limited to, child custody, visitation, child support, spousal support, and equitable distribution of property; also, there may be negative or otherwise unintended tax consequences arising out of the divorce. The term *pro se* means “for himself” or “for herself”; this means that parties appearing *pro se* literally represent themselves in all aspects of the case. Parties appearing *pro se* must file all required documents in compliance with the Code of Virginia and to proceed in accordance with the Court’s uncontested divorce procedures. The staff attorney, law clerks, judicial staff, and Clerk’s office staff are not permitted to give legal advice or assist with the drafting of pleadings. For legal advice, you must consult with an attorney.

LIST OF FORMS

- Final Decree of Divorce where no support is ordered
- Final Decree of Divorce where spousal support is ordered and there are no minor children
- Final Decree of Divorce where child support is ordered and/or spousal support is ordered where there is also a minor child whom the parties have a mutual duty to support
- Affidavit of Moving Party
- Affidavit of Corroborating Witness
- Ore Tenus Hearing Questions for the moving party and corroborating witness
- Acceptance/Waiver of Service of Process and Waiver of Future Service of Process and Notice (State Form)
- Confidential Addendum for Protected Identifying Information (State Form)

Forms are available at <http://www.cityofchesapeake.net/civilmotions> under the link “Divorce Manuals and Forms”