

**FAMILY COURT**

**STATE OF DELAWARE**

**DIVORCE PACKAGE**

**UNCONTESTED - ADULT CHILDREN**

**WITH OR WITHOUT PROPERTY**

**Control Number DE-004-D**

This packet contains the following:

1. Information about Divorce
2. Form List
3. Form Explanations
4. Instructions and Steps
5. Checklist
6. Access to Law Summary

**You and your spouse must agree to all terms of the divorce to use this packet.**  
**All forms to be filed with the clerk must be printed on bond paper.**

## INFORMATION ABOUT DIVORCE

1. **WHO MAY USE THESE FORMS:** This packet is designed for the sole purpose of obtaining an *uncontested* divorce. This packet is only of use to you if you and your spouse are willing to agree to all the terms and conditions of your divorce. You must communicate with your spouse and keep him/her advised as to each step in the process. If you cannot agree, you will become involved in a *contested* divorce, which is beyond the scope of this packet. You may only use this package if all of the following are true:
  - (a) There are no minor children of said marriage, and the wife is not now pregnant. All children of the marriage are over the age of twenty-one (21) and emancipated;
  - (b) The parties agree to all provisions of the divorce; and
  - (c) The parties complete the written *Separation and Property Settlement Agreement* indicating the division of property, debts, and spousal maintenance, if any.
2. **THE BASICS:** In a typical divorce, you must satisfy two basic requirements before you can file for divorce. Those requirements include the ***residency requirements*** and appropriate ***grounds for divorce***. These requirements are discussed in detail in their respective sections, below.

In addition, you must agree with your spouse to become divorced, and agree to all the terms of the dissolution of marriage in filling out the forms, including property division. You will complete and file the forms (see detailed instructions, below) in the **Family Court** for the county where either party resides. ***DCA 13-1504***
3. **RESIDENCY REQUIREMENTS:** Either you or your spouse must have resided in Delaware for at least 6 months, or been stationed in Delaware as a member of the military for at least 6 months. ***DCA 13-1504, 13-1507***
4. **GROUND FOR DIVORCE:** You and your spouse must be seeking a divorce because your marriage is irretrievably broken, and reconciliation is not probable. You must have separated for at least 6 months prior to filing the divorce because of incompatibility or by voluntary agreement. ***DCA 13-1505***
5. **WAITING PERIODS:** You must be separated from your spouse for 6 months prior to filing for divorce.

6. **ALIMONY:** Because this is an agreed divorce, you will decide issues of “alimony”-- the periodic payment of money from one spouse to the other on a temporary or permanent basis. The forms in this no-fault divorce package assume that no alimony will be paid and none will be sought-- but you may add provisions for alimony to the *Separation Agreement (DE-803D)* if you desire. In a contested case, the courts might award alimony. A contested divorce is beyond the scope of this divorce package. **You should consult a local attorney regarding the possibilities concerning alimony if you have questions or foresee conflict regarding this issue.** For more information, see, *DCA 13-1512*
  
7. **DISTRIBUTION OF PROPERTY:** In a divorce, the property such as land, house, buildings, and items of personal property owned by the couple is divided between the parties. Debts owed are also allocated to one party or the other, or both. This is accomplished by means of a **Separation Agreement (DE-803D)**. You and your spouse must agree to the property and debt division and memorialize your agreement in the **Separation Agreement (DE-803D)**, which will be incorporated by reference into the *Decree of Divorce* that ultimately ends your marriage. You may agree to divide the property any way you like, as long as a basic fairness is maintained, and you both agree. If you cannot agree on any item of this division, the dissolution of marriage transforms into a **contested divorce**. A contested divorce is outside the scope of this packet.
  
8. **NAME CHANGE:** Upon request, the wife may change her name to a former or maiden name, as long as the reason for the name change is not for fraudulent or misleading purposes. *DCA 13-1514*

## FORM LIST

**The following forms are included in this package:**

1. Information Statement **(DE-240)**
2. Petition for Divorce **(DE-442)**
3. Separation Agreement **(DE-803D)**
4. Stipulation to Incorporate Separation Agreement **(DE-443)**
5. Request for Notice **(DE-400)**
6. Non-Military Affidavit **(DE-405)**
7. Vital Statistics Sheet **(DE-441)** or Vital Statistics Same Sex Marriage **(DE-441SS)**  
**(choose one)**

**Note:** Each original petition for divorce or annulment shall contain, as an exhibit to the petition, a certified copy of the certificate of the marriage between the Petitioner and the Respondent.

Your spouse must obtain an *Affidavit of Appearance and Waiver of Rights* from the Clerk of Court. If your spouse is currently on active duty with a branch of the U.S. Armed Forces, he or she must also obtain from the Clerk a *Waiver of Rights Under the Soldiers' and Sailors' Relief Act* form.

Depending on your County, additional forms may be required that are County-specific. These forms will be available from the Clerk.

## **FORM EXPLANATIONS**

All forms included in this package are identified and described below. If there is a space for the signature of a Notary on the form, then the form must be signed before a Notary Public.

- 1. Petition for Divorce: (DE-442)** This document begins the divorce process, and includes the necessary legal details for asking the court to dissolve your marriage. Use the *Petition for Divorce/Annulment* **ONLY** when: You want a divorce or annulment; **AND** either you or your spouse has resided (lived) in Delaware for at least 6 months immediately preceding filing for divorce or annulment; **OR** either you or your spouse has been stationed in Delaware as a member of the military for at least 6 months immediately preceding filing for divorce or annulment. Although this packet appears to discuss only what you need to do if you want to file a Petition for Divorce, you should also use this packet if you want to file a Petition for Annulment.
- 2. Information Statement: (DE-240)** This document provides the Court with general information about the parties which allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.
- 3. Separation Agreement: (DE-803D)** This document is a contract in which you and your spouse agree to divide all of your marital property and debts. This agreement will be filed with your *Petition for Divorce (DE-442)* and incorporated into the *Decree of Divorce* that ends your marriage.
- 4. Stipulation to Incorporate Separation Agreement: (DE-443)** This is an agreement to incorporate your *Separation Agreement (DE-803D)* into the *Decree of Divorce*.
- 5. Request for Notice: (DE-400)** This form must be marked in Section B to indicate "Withhold Issuance of Summons." This avoids the formal requirements for service of process if your spouse agrees to go to the courthouse to pick up a copy of the Petition and pick up, complete and file the *Affidavit of Appearance and Waiver of Rights*.
- 6. Non-Military Affidavit: (DE-405)** Complete this form **ONLY IF** your spouse is **NOT** an active duty member of the military. Bring this form to the final hearing.
- 7. Vital Statistics Sheet (DE-441) OR Vital Statistics Same Sex Marriage (DE-441SS)** These forms are used by the State of Delaware to update its vital statistics records upon granting the divorce. Choose only one form.

## INSTRUCTIONS AND STEPS

Please look for the following symbol throughout the packet. It will help guide you.



**READ THIS SECTION CAREFULLY THIS DOCUMENT MUST BE FILED**

**STEP 1:** In cooperation with your spouse, complete the following forms:

Form 1- *Petition for Divorce (DE-442)*

Check the box indicating, "Incorporate our Separation Agreement"

Form 2- *Information Statement (DE-240)*

This form provides information for the court's use. File original and one copy.

Form 3- *Request for Notice (DE-400)*

Check the box in Section B, "Please Withhold Issuance of Summons"

Form 4- *Separation Agreement (DE-803D)*

File original and one copy.

Form 5- *Stipulation to Incorporate Separation Agreement (DE-443)*

Both you and your spouse **MUST** sign the Stipulation to Incorporate the Separation Agreement in the presence of a notary.

When you file this form, you **MUST ALSO** file your Separation Agreement.



You may file a Separation Agreement and the Stipulation to Incorporate the Separation Agreement **AT ANY TIME UNTIL** the day the Court decides your petition.

Make at least 5 copies of your completed documents.

Call ahead to the court clerk and determine the amount of the filing fee and accepted forms of payment. Go to the courthouse and **FILE** the forms. File any needed copies of the Forms. The clerk will stamp any unneeded copies "Filed," and return them to you. When filing your documents, make sure the **case number** for your case is on each one. The clerk will have just assigned this number, so you will have to take a moment to include it on your forms in the appropriate blank on the first page.

**Note:** If a form contains a space for the signature of a Notary Public, it must be signed by you (and if necessary by your spouse) in front of a Notary Public, who must notarize the document. Prepare an original and several copies of each of your completed documents. Your spouse should have a copy of everything you file, stamped “filed” by the clerk. You should keep copies and the court must have originals. If reference is made to attaching one document to a second document, then any subsequent reference to the second document assumes that the first document is attached thereto.

**STEP 2:** Obtain and complete the following forms:

*Certified copy of your Marriage Certificate*

You **MUST** file a certified copy of your marriage certificate. A certified copy will bear an embossed seal or watermark signifying that it is an official copy. You may **NOT** file a photocopy of an original copy. A certified copy of your marriage certificate is available from the Division of Public Health and Vital Statistics in the state or jurisdiction where you were married. You **CANNOT** obtain a copy of your marriage certificate at Family Court.

If, and only if, your spouse is on active duty in the military, obtain a form from the clerk called “**Waiver of Rights under the Soldiers and Sailors Relief Act.**” Your spouse must complete this form and file it when he or she goes to the clerk’s office to pick up a copy of the *Petition for Divorce (DE-442)* and sign the *Affidavit of Appearance and Waiver* (see below).

**STEP 3:** Notify your spouse to go to the clerk’s office and pick up a copy of the ***Petition for Divorce (DE-442)***.

At this time, your spouse must pick up, complete, and FILE a document called “**Affidavit of Appearance and Waiver of Rights,**” thereby agreeing to an uncontested divorce on the basis of the *Separation Agreement (DE-803D)*. The **Affidavit of Appearance and Waiver** is only available at the clerk’s office.

If, and only if, your spouse is in the military on active duty, your spouse must also at this time FILE the “**Waiver of Rights under the Soldiers and Sailors Relief Act.**”

**STEP 4:** Once your spouse has filed the **Affidavit of Appearance and Waiver**, contact the court to determine a date for your Hearing. Your spouse does not have to attend this hearing.

If, and only if, your spouse is NOT on active duty in the military, complete and bring to the Hearing Form 6- the ***Non-Military Affidavit (DE-405)***. If your spouse IS on active duty in the military, ignore Form 6.

Bring all of your documents to the Hearing.

**NOTE:** Properly completing all of the forms does not guarantee that the Court will give you (grant) what you want. It is up to you at the Court Hearing to prove why the Court should give you (grant) you what you want.

If your divorce is granted, your divorce will become final on the day the Judge signs the *Divorce Decree*. This may not necessarily be the same day as the divorce Hearing, which may be presided over by a “special master” who merely makes a recommendation to the Judge.

Once your *Divorce Decree* is signed by the Judge, it will be filed with the clerk. Obtain a certified copy of the *Decree* and instruct your spouse to obtain a copy.





## **TIPS AND REMINDERS**

Make sure that you read any FAQ's (Answers to Frequently Asked Questions) on Divorce. These will give you the information that you need to properly file a Petition for Divorce/Annulment and to better understand the process.

The laws governing divorce and annulment are found in Title 13 of the Delaware Code. It will be helpful for you to read these statutes, so that you are aware of the law that the Court will be applying when deciding your case. The Delaware Code is available in the Family Court Resource Centers, public libraries throughout Delaware and on the internet at [www.delcode.state.de.us](http://www.delcode.state.de.us) .

**BE AWARE** that this Packet does **NOT** address the issues of custody, visitation or child support. Check at the Family Court Resource Centers or on the Family Court web site for information and packets addressing these issues. These resources will provide you with detailed information regarding custody, visitation and child support, including **any additional forms** that you must file when requesting that the Court consider these matters.

### **REMEMBER:**

The PETITIONER is the person who files the Petition for Divorce (YOU).

The RESPONDENT is the person replying (responding) to the **Petition**.

Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. If at any point in the divorce process you are unsure about representing yourself, or have any questions as to what options you have or what you should do; you should talk to an attorney. Just because you talk to an attorney does not mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire him/her for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

If your spouse is a citizen of another country or has lived in another country in the past two years, you must list the address of the embassy for that country. **BE AWARE!!!** Possession of a United States green card does not make a person a citizen of the United States of America. If your spouse has a green card, you must list the embassy for the country where he/she is still a citizen.

- ¾ Before the Court will grant your divorce, you must demonstrate (indicate) that that your marriage is irretrievably broken **AND** that reconciliation with your spouse is not probable by checking **BOTH** the appropriate boxes on the petition. You must check **both boxes** before the Court will grant your divorce. You must **also** check at least one of the reasons why your marriage is irretrievably broken.
- ¾ Ancillary matters are actions that are dependent on the divorce action. In other words, the Court cannot consider these matters apart from a Petition for Divorce/Annulment. If you want the Court to grant you a property division, alimony, court costs, attorney fees or any other ancillary relief allowed in Title 13, section 1507 (f), you must ask the Court to do so as part of the divorce proceeding **BEFORE THE DIVORCE DECREE IS ENTERED**.
- ¾ Please note that you can only request to change **YOUR** name. You may not request to change your spouse's name. You may only change your name to your maiden name or other former name.
- ¾ The Petition for Divorce/Annulment must be notarized by a notary public or authorized court staff. **DO NOT** sign your petition until you are in the presence of a notary.

**REMEMBER:** Always bring your photo identification (such as your driver's license or state issued photo identification card) whenever you need to have a Court form notarized.



**The Separation Date that you list on the Petition for Divorce/Annulment is VERY IMPORTANT.** Court staff will use this date to determine when your petition can be decided by a Commissioner. Once you have finished filling out your petition, write down the Separation Date that you listed in your petition in the appropriate space on the next page. Calculate 6 months from that date and write it in the appropriate space next page. The second date is the **earliest** you can expect the Court to decide your petition unless you have filed on the grounds of misconduct or have filed for an annulment.

SEPARATION DATE ON MY PETITION:			6 MONTHS FROM SEPARATION DATE:		
MONTH	DAY	YEAR	MONTH	DAY	YEAR

***PLEASE READ AND REMEMBER THESE IMPORTANT TIPS***

**REMEMBER**

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- **KEEP A COPY OF EVERY DOCUMENT AND COURT PAPER.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof that the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

**THERE IS A LOT OF PAPERWORK IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

## COPIES OF DIVORCE OR ANNULMENT DECREES

To obtain a copy of your final decree of divorce or annulment, you may make the request in person or by mail.

### IN PERSON:

Please stop by the Records Department in the county in which your divorce or annulment was granted during regular business hours. You will need to provide the clerk with your name and date of birth. In addition, you will need to present valid photo identification. The cost of a certified copy of your divorce or annulment decree is \$4.00. The cost of a non-certified copy is \$1.00. A fee of \$25.00 may be assessed if your records must be retrieved from archives. Payment is accepted by cash, check, money order or credit card.

### BY MAIL:

Please send a written request to the Records Department in the county in which your divorce or annulment was granted. The request must include your name and date of birth and **must contain your notarized signature**. Payment must be enclosed. The cost of a certified copy of your divorce or annulment decree is \$4.00. The cost of a non-certified copy is \$1.00. A fee of \$25.00 may be assessed if your records must be retrieved from archives. Payment is accepted by check, or money order.

If you have any questions, please contact the Records Department in the appropriate county at the numbers listed below.

In New Castle County:      Records Department  
Family Court  
500 N. King St.  
Suite 110  
Wilmington, DE 19801  
302-255-0334

In Kent County:      Records Department  
Family Court  
400 Court Street  
Dover, DE 19901  
302-672-1045

In Sussex County:      Records Department  
Family Court  
22 The Circle  
Georgetown, DE 19947  
302-855-7463

### CHECKLIST

- ☐ Complete Forms 1-5.
- ☐ Obtain a certified copy of your Marriage License.
- ☐ Make copies of documents. File at courthouse, as per instructions.
- ☐ Complete and file *Division of Public Health/Vital Statistics Form* at courthouse.
- ☐ Filing fees paid.
- ☐ Obtain military waiver for spouse, if necessary.
- ☐ Instruct spouse to go to courthouse and pick up copy of *Petition (DE-442)* and file *Affidavit of Appearance and Waiver of Rights*.
- ☐ Spouse must file military waiver if spouse is active duty military.
- ☐ Obtain hearing date from court.
- ☐ Attend hearing, bring all documents. If spouse is NOT active duty military, complete and bring *Non-Military Affidavit (DE-405)* to hearing.
- ☐ Once *Decree* has been signed and filed, obtain certified copy. Instruct spouse to obtain certified copy.

### NOTE ABOUT COMPLETING THE FORMS

The forms in this packet may contain “form fields” created using Microsoft Word. “Form fields” facilitate completion of the forms using your computer. They do not limit your ability to print the form “in blank” and complete with a typewriter or by hand.

If you do not see the gray shaded form fields, go to the View menu, click on Toolbars, and then select Forms. This will open the forms toolbar. Look for the button on the forms toolbar that resembles a shaded letter “a”. Click in this button and the form fields will be visible. If they do not become visible, then they were not included in this form package.

To complete the forms click on the gray shaded areas and type. You may also change other words in the document if the document is not locked. The separation agreement is a good example of a document that is not locked and allows you to make modifications outside the gray shaded areas.

Some forms may be locked which means that the content of the forms cannot be changed while the form is locked. You can only fill in the information in the fields. If you need to make any changes in the body of the form, it is necessary for you “unlock” or “unprotect” the form. **IF YOU INTEND TO MAKE CHANGES TO THE CONTENT, DO SO BEFORE YOU BEGIN TO FILL IN THE FIELDS. IF YOU UNLOCK THE DOCUMENT AFTER YOU HAVE BEGUN TO COMPLETE THE FIELDS, WHEN YOU RELOCK, ALL INFORMATION YOU ENTERED WILL BE LOST.** To unlock click on “Tools” in the Menu bar and then selecting “unprotect document”. You may then be prompted to enter a password. If so, the password is “uslf”. That is uslf **in lower case letters without the quotation marks**. After you make the changes relock the document before you begin to complete the fields. After any required changes re-lock the document, then click on the first form field and enter the required information. You will be able to navigate through the document from form field to form field using your tab key. Tab to a form field and insert your data. If you experience problems, please let us know.

## LAW SUMMARY

You may access the law summary for your State by using the link below:

<http://secure.uslegalforms.com/lawsummary/DE/DE-004-D.htm>



## **DISCLAIMER**

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