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FAMILY COURT

STATE OF DELAWARE

DIVORCE PACKAGE

UNCONTESTED - NO CHILDREN

WITH OR WITHOUT PROPERTY

Control Number DE-008-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 must be printed on bond paper.

INFORMATION ABOUT DIVORCE

1. **WHO CAN USE THESE FORMS:** You may use this petition form for divorce only when all of the following facts are true;
 - (a) There were no children born to or adopted by you and your spouse.
 - (b) You and your spouse agree on all terms of the divorce.
 - (c) You and/or your spouse are a resident of the State of Delaware.

2. **THE BASICS:** To use this divorce package, there are basic two requirements that must be met. Those requirements are:
 - (a) You must satisfy the *residency* requirements.
 - (b) You must be seeking a divorce based upon the ground of irreconcilable differences.

3. **RESIDENCY REQUIREMENTS:** The State of Delaware requires that in an action for divorce, either the Petitioner or Respondent, at the time the action was commenced, must actually reside in the State, or be stationed in the State as a member of the armed services of the United States, continuously for 6 or more months immediately preceding the commencement of the action.

4. **GROUND FOR DIVORCE:** Under Delaware law, a divorce may be granted based upon the following grounds:
 - (a) The Court shall enter a decree of divorce whenever it finds that the marriage is irretrievably broken and that reconciliation is improbable.

 - (b) A marriage is irretrievably broken where it is characterized by:
 - (1) Voluntary separation; or
 - (2) Separation caused by respondent's misconduct; or
 - (3) Separation caused by respondent's mental illness; or
 - (4) Separation caused by incompatibility.

This package is designed for parties seeking a divorce based upon the no-fault grounds of irreconcilable marital differences.

5. **WAITING PERIOD:** A petition for divorce may be filed at any time following the separation of the parties, although no ruling shall be made to determine whether to grant a divorce until after the parties have been separated for 6 months.

6. **ALIMONY/SUPPORT:** Since this is an agreed divorce, you and your spouse will decide issues of alimony. The forms included with this package assume that no alimony will be paid and is waived, but you may add provisions for alimony if you desire. In a contested case, a spouse may be awarded alimony only if he or she:
 - (a) Is dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide that support after the entry of a decree of divorce or annulment;
 - (b) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs; and
 - (c) Is unable to support him or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that he or she not be required to seek employment.

The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of all relevant factors, including, but not limited to:

- (a) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;
- (b) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
- (c) The standard of living established during the marriage;
- (d) The duration of the marriage;
- (e) The age, physical and emotional condition of both parties;
- (f) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
- (g) The ability of the other party to meet his or her needs while paying alimony;
- (h) Tax consequences;
- (i) Whether either party has foregone or postponed economic, education or other employment opportunities during the course of the marriage; and
- (j) Any other factor which the Court expressly finds is just and appropriate to consider.

A person shall be eligible for alimony for a period not to exceed 50% of the term of the marriage with the exception that if a party is married for 20 years or longer, there shall be no time limit as to his or her eligibility.

Any person awarded alimony has a continuing affirmative obligation to make good faith efforts to seek appropriate vocational training, if necessary, and employment unless the Court specifically finds, after a hearing, that it would be inequitable to require a person awarded alimony to do.

Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony. "Cohabitation" means regularly residing with an adult of the same or opposite sex. Also, if the parties hold themselves out as a couple then regardless of whether the relationship confers a financial benefit on the party receiving alimony, cohabitation existed. Proof of sexual relations is admissible but not required to prove cohabitation. A party receiving alimony shall promptly notify the other party of his or her remarriage or cohabitation.

7. **DISTRIBUTION OF PROPERTY:** Since this is an agreed upon divorce, the parties will agree to property distributions. Delaware is an equitable distribution state. In a contested case, this means that the court will set apart to each spouse the spouse's property and shall divide the marital property in proportions the court considers just after considering all relevant factors, including:

- (a) The length of the marriage;
- (b) Any prior marriage of the party;
- (c) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties;
- (d) Whether the property award is in lieu of or in addition to alimony;
- (e) The opportunity of each for future acquisitions of capital assets and income;
- (f) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband, or wife;
- (g) The value of the property set apart to each party;
- (h) The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live;
- (i) Whether the property was acquired by gift;
- (j) The debts of the parties; and
- (k) Tax consequences.

8. **NAME CHANGE:** The Court, upon the request of a party by pleading or motion, may order that such party resume her maiden name or the name of a former husband.

For more information, see the Delaware Divorce Law Summary.

FORMS LIST

1. Petition for Divorce **(DE-442)**
2. Information Statement **(DE-240)**
3. Request for Notice **(DE-400)**
4. Stipulation to Incorporate the Separation Agreement **(DE-443)**
5. Separation Agreement **(DE-803D)**
6. Affidavit of Non-Military Service **(DE-405)**
7. Vital Statistics Sheet **(DE-441)** or
8. 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.

You must also obtain from the Clerk of Court a Division of Public Health/Vital Statistics form.

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.

The Certificate of Divorce or Annulment is a Division of Public Health/Office of Vital Statistics form and is not available on the Internet. It is available in the Resource Centers located in each courthouse.

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 symbols throughout the packet. They 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 .

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

- **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.

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 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.

The forms are locked which means that the content of the forms cannot be changed. 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 select “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 and re-protecting the document, 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-008-D.htm>

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