

**STATE OF NORTH CAROLINA**

**DIVORCE PACKAGE**

**ADULT CHILDREN**

**With or Without Property**

**Control Number NC-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 Court must be printed on Bond paper.**

## INFORMATION ABOUT DIVORCE

1.           **WHO CAN USE THESE FORMS:** You may use this divorce package only when all of the following facts are true;
  - (a)           You and your spouse have remained separated without cohabitation for a period of at least one year immediately prior to filing for divorce;
  - (b)           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 eighteen (18) and emancipated.
  - (c)           You and your spouse agree on all terms of the divorce.
  - (d)           You or your spouse has lived in North Carolina and in the county of filing for six months before filing the divorce.
  
2.           **THE BASICS:** In a typical divorce, there are basic two requirements that must be met before you can file for a divorce. Those requirements are below:
  - (a)           You must satisfy the **residency** requirements. You or your spouse must have resided in North Carolina for at least six months immediately preceding the filing of the Complaint.
  - (b)           You must satisfy **the no-fault procedures**, in that you and your spouse are seeking a divorce based upon the grounds of living separate and apart for a period of at least one year.
  
3.           **RESIDENCY REQUIREMENTS:** At least one of the parties to the action for divorce must have resided in the State of North Carolina for at least six months immediately prior to the institution of the action for divorce.
  
4.           **WHERE TO FILE:** An action for divorce may be filed in the county where either party resides.
  
5.           **GROUND FOR DIVORCE:** A divorce may be granted in North Carolina based upon the incurable insanity or mental illness of one of the spouses, or upon the parties living separate and apart for a period of at least one year without cohabitation. This package is designed for parties seeking a divorce based upon the grounds of living separate and apart for a period of at least one year.

6. **SIMPLIFIED DIVORCE PROCEDURE:** This package contemplates a divorce based upon the simplified divorce procedure permitted by the State of North Carolina. Under

this procedure, if the parties are seeking a divorce based upon the grounds of living separate and apart without cohabitation for a period of at least one year, and the parties have agreed to all terms of the divorce, leaving no issues to be decided by the court, the court may grant the divorce based upon evidence presented by affidavit, verified motion or other verified pleading.

7. **LEGAL SEPARATION:** The court may grant a judgement of separation from bed and board (legal separation) on the following grounds:
- a. Abandonment of spouse or family;
  - b. Maliciously turning the other spouse out of doors;
  - c. Cruel or barbarous treatment endangering the life of the other;
  - d. Personal indignities rendering condition of other spouse intolerable and life burdensome;
  - e. Excessive abuse of alcohol or drugs;
  - f. Adultery.

**This package does not contain forms for a legal separation.**

8. **WAITING PERIOD:** Utilizing the simplified divorce procedure contemplated by this package, thirty (30) days must elapse from the commencement of the action instituting the divorce proceeding before the court will grant a judgment of dissolution of marriage.
9. **ALIMONY/SUPPORT:** Since this is an agreed upon divorce, you and your spouse will decide issues of alimony. The forms assume that no alimony will be paid and is waived but you may add provisions for alimony if you desire. In a contested case, either party may be awarded alimony upon a finding that the party seeking alimony is dependant upon the other party for support and such an award would be equitable. Fault of the parties as it pertains to adultery during the marriage is considered when awarding alimony. Other factors the court will consider in determining the amount and duration of an award of alimony include:
- a. Marital misconduct;
  - b. Relative earnings and earning capacities of the parties;
  - c. The ages, physical, mental and emotional health of the parties;
  - d. The amount and sources of income of both spouses;
  - e. The duration of the marriage;
  - f. The contribution of one spouse to the education, training or increased earning power of the other spouse;
  - g. The extent that serving as a child's custodian will affect a party's earning power, etc.;
  - h. The standard of living established during the marriage;

- i. The relative education of the parties and the time necessary for a party to acquire sufficient education or training to meet his or her reasonable needs;
- j. The relative assets and liabilities of the parties;
- k. Any other relevant factor.

10. **DISTRIBUTION OF PROPERTY:** Since this is an agreed upon divorce, the parties will agreed to property distributions. North Carolina is an equitable distribution state. In a contested case, this means that the court will divide the marital property between the parties as it deems equitable and just, after setting aside to each spouse the separate property of each. Factors the court considers in dividing the property between the parties include:

- a. The income, property, and liabilities of the parties;
- b. Any obligation for support from a previous marriage;
- c. The duration of the marriage and the age, physical and mental health of the parties;
- d. The needs of the custodial parent;
- e. The expectation of pension, retirement or other deferred compensation rights that are not marital property;
- f. The contribution to the education or earning potential of the other spouse;
- g. Any other factor the court deems just and proper.

11. **NAME CHANGE:** A spouse may Complaint the court requesting that upon divorce the court restore the party to the use of a former or maiden name.

**For more information, see the North Carolina Divorce Law Summary.**

## FORMS LIST

The forms included in this package are:

1. Domestic Civil Cover Sheet (**NC-AOC-CV-750**)
2. Complaint for Absolute Divorce (**NC-801D**)
3. Notice of Assignment/Service (AOC-CVM-300) – *available from Clerk of Court*
4. Civil Summons (**NC-AOC-CV-100**)
5. Verification (**NC-814D**)
6. Acceptance of Service and Waiver of Responsive Pleading (**NC-803D**)
7. Separation and Property Settlement Agreement (**NC-804D**)
8. Motion for Summary Judgment (**NC-806D**)
9. Motion Cover Sheet (**NC-AOC-CV-752**)
10. Notice of Hearing (**NC-807D**)
11. Divorce by Summary Judgment (**NC-808D**)
12. Certificate of Absolute Divorce (DEHNR-2089) – *available from Clerk of Court*
13. Action Cover Sheet (**NC-AOC-CV-753**)

You must obtain the following forms from the Clerk of Court:

- Notice of Assignment/Service (**AOC-CVM-300**)
- Certificate of Absolute Divorce (**DEHNR-2089**)

## FORM EXPLANATIONS

All forms included in this package are identified below.

1. **Domestic Civil Cover Sheet (NC-AOC-CV-750)** – This form is used by the Court to identify the type of action being filed. This form can be completed and taken with you when you file the complaint. However, the clerk may require that the form be completed at the clerk’s office on special paper.
2. **Complaint for Absolute Divorce (NC-801D)** - The Complaint for Divorce is the document is the document is which you are asking the court to grant your divorce along with any other relief requested.
3. **Notice of Assignment/Service (AOC-CVM-300)** – This is a two part card the size of an index card that must be completed at the time the Complaint (*NC-801D*) is filed. It is **available from the Clerk** and can be obtained at the time of filing.
4. **Civil Summons (NC-AOC-CV-100)** – This document is used to inform the Defendant that a suit has been filed against him or her and orders the Defendant to appear before the court and file any pleadings necessary within 30 days after service of the Civil Summons. This form must be obtained from the Clerk of Court. If the Defendant is to sign the Acceptance of Service and Waiver form (*NC-803D*), the Civil Summons must still be completed. Simply provide your spouse with a copy of the Complaint (*NC-801D*) and the yellow copy of the Civil Summons, and on the Return of Service form on the back of the original Civil Summons, check the box labeled “Other manner of service”. In the space provided, then write “The Defendant accepted service on \_\_\_\_\_ date”.
5. **Verification (NC-814D)** – This document is required in all actions for divorce. The complaint must be verified in accordance with the provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The Verification form must be signed before a notary public.
6. **Acceptance of Service and Waiver of Responsive Pleading (NC-803D)** – This document is used by the Defendant to acknowledge receipt of the Complaint (*NC-801D*) and Civil Summons (*NC-AOC-CV-100*) and to enter an appearance. It is further used to request that the Court grant a Judgment of Absolute Divorce pursuant to the terms of Plaintiff’s Complaint (*NC-801D*) at any time and without further notice to Defendant. This form must be dated and signed AFTER the Complaint (*NC-801D*) and other documents are filed.
7. **Separation and Property Settlement Agreement (NC-804D)** – This document provides for the final distribution of any assets and debts of the parties, provides for support of any children of the marriage and any other agreements reached between the parties.
8. **Motion for Summary Judgment (NC-806D)** – This motion is used to request that the Court grant a summary Divorce by Summary Judgment based on the claims set forth in

the Complaint (*NC\_801D*) on the grounds that parties have agreed to all terms of the divorce and there are no issues that the Court must resolve.

9. **Motion Cover Sheet (NC-AOC-CV-752)** - This form is used to show that a Motion has been filed. This form is completed and signed at the time the Motion for Summary Judgment (*NC-806D*) is filed. Complete this form, and take it to the Court when the Judgment is entered. However, the Clerk may require that a form be completed there, or the Clerk may complete this form.
10. **Notice of Hearing (NC-807D)** – This document is used to provide the Defendant with notice of the date and time that the Motion of Summary Judgment of Absolute Divorce (*NC-806D*) will be heard.
11. **Divorce by Summary Judgment (NC-808D)** – This document grants the divorce and any other relief requested.
12. **Certificate of Absolute Divorce (DEHNR-2089)** – This form is used by the Court for administrative purposes and is **obtained from the clerk** at the time the Judgment is presented.
13. **Civil Action Cover Sheet (NC-AOC-CV-753)** – This form is used to show that the case is closed or other action taken. This form is completed and signed at the time the Summary Judgment Order is entered. Complete this form, and take it to the Court when the Judgment is entered. However, the Clerk may require that a form be completed there, or the Clerk may complete this form.



## INSTRUCTIONS AND STEPS

**Notes:** 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.

**STEP 1:** The filing party should complete *Domestic Civil Cover Sheet (NC-AOC-CV-750)*, *Complaint for Absolute Divorce (NC-811D)*, *Civil Summons (NC-AOC-CV-100)* and *Verification (NC -814D)*.

**STEP 2:** File the *Domestic Civil Cover Sheet (NC-AOC-CV-75)*, *Complaint for Absolute Divorce (NC-811D)*, *Civil Summons (NC-AOC-CV-100)* and *Verification (NC -814D)* with the Clerk of the Circuit Court in your county. Complete *Notice of Assignment/Service (AOC-CVM-300)* card available from the clerk.

**NOTE:** You will need three copies of the *Civil Summons (NC-AOC-CV-100)*. The original copy will be on white paper and the (2) two copies will be on yellow paper. Remember, each CIVIL SUMMONS has a front and a back, and you will only be writing in the sections, mentioned in the directions, on the front of the summons.

**STEP 3:** Complete *Acceptance of Service (NC-803D)*.

**STEP 4:** Attach the yellow copy of the *Summons (NC-AOC-CV-100)* to the *Complaint (NC-801D)* and give the Defendant that copy of the *Complaint (NC-801D)* with the *Summons* attached. Have the Defendant sign the *Acceptance of Service (NC-803D)*.

**STEP 5:** Complete the back of the *Civil Summons (NC-AOC-CV-100)* and mark “other manner of service” and write “Defendant accepted service on \_\_\_\_\_ (date).”

**STEP 6:** Take the *Civil Summons (NC-AOC-CV-100)* and signed *Acceptance of Service (NC-803D)* and file with the Court Clerk.

**STEP 7:** Both parties should then complete the *Separation and Property Settlement Agreement (NC-804D)*, making certain that both parties agree to all terms contained therein.

File the *Complaint for Absolute Divorce (NC-811D)*, *Separation and Property Settlement Agreement (NC-DO-11A)*, *Civil Cover Sheet (NC-AOC-CV-750)* and *Affidavit as to Status of Minor Child (NC-AOC-CV-609)* with the Clerk of the Circuit Court in your county. Complete the *Notice of Assignment/Service (NC-*

AOC-CVM-300) card available from the clerk.

- STEP 8:** Complete the *Motion for Summary Judgment (NC-806D)*, *Motion Cover Sheet (NC-AOC-CV-752)*, and *Notice of Hearing (NC-807D)*, leaving the date of the hearing blank.
- STEP 9:** File the *Motion for Summary Judgment (NC-806D)* and get a date from the clerk for a hearing. Write the date in the *Notice of Hearing (NC-807D)* and file the *Notice of Hearing (NC-807D)* at this time.
- STEP 10:** Mail a copy of the filed *Motion for Summary Judgment (NC-806D)* and *Notice of Hearing (NC-807D)* to the Defendant.
- STEP 11:** The *Divorce by Summary Judgment (NC-808D)* should next be completed. Your spouse should be provided a copy of the *Judgment* prior to the final hearing to ensure he or she is aware of its contents and agrees with its terms.
- STEP 12:** At the hearing, the *Separation and Property Settlement Agreement (NC-804D)* and *Divorce by Summary Judgment (NC-808D)* should be presented to the Court for inspection and approval. Once the Judge has reviewed the filings and determines that there is no genuine issue as to any material fact, the judgment sought shall be rendered forthwith.
- STEP 13:** Complete the *Certificate of Absolute Divorce (DEHNR-2089)* - This form is available from the Clerk. (The Clerk may complete this) and the Civil Action Cover Sheet (NC-AOC-CV-753) and the divorce is final.
- STEP 14:** Complete the *Civil Action Cover Sheet (NC-AOC-CV-753.)*

**Notes:**

**If a Certificate of Mailing is on any form, a copy of the form should be mailed to the person indicated.**

**When presenting pleadings to the Clerk, make sure you have at least 4 copies for the Clerk. The Clerk will return the copies to you that the Court does not need.**

**Remember that there is a thirty-day waiting period from the date of the institution of the action (filing of the Complaint for Absolute Divorce) before Divorce by Summary Judgment may be granted.**

## CHECKLIST

- Domestic Civil Cover Sheet (NC-AOC-CV-750), Complaint (NC-801D), and Civil Summons (NC-ACO-CV-100) and Verification (NC -814D) completed and filed with Clerk of Court. Complete Notice of Assignment/Service (AOC-CVM-300) Card.*
- Filing fee is paid.
- Make three copies of *Civil Summons (NC-AOC-CV-100)*.
- Defendant provided copy of *Complaint (NC-801D)* with **yellow** copy of *Civil Summons (NC-AOC-CV-100)* attached, along with *Acceptance of Service and Waiver of Responsive Pleading (NC-803D)* form.
- Defendant signs *Acceptance of Service and Waiver of Responsive Pleading (NC-803D)* form and returns form to you.
- Complete the back of the *Civil Summons (NC-AOC-CV-100)* and mark “other manner of service”. In the space provided, write “Defendant accepted service on \_\_\_\_\_ (date).”
- Separation and Property Settlement Agreement (NC-804D)* completed by the parties.
- Motion for Summary Judgment (NC-806D), Motion Cover Sheet (NC-AOC-CV-752) and Notice of Hearing (NC-807D)* completed, leaving blank the date of the hearing.
- Civil Summons (NC-AOC-CV-100)* and signed *Acceptance of Service (NC-803D)* filed with the Court. At this time, *Motion for Summary Judgment (NC-806D)* also filed and date of hearing obtained from Clerk. Date of hearing inserted in *Notice of Hearing (NC-807D)* form and *Notice of Hearing (NC-807D)* form filed at this time.
- Copy of *Motion for Summary Judgment* and *Notice of Hearing (NC-806D)* mailed to Defendant.
- Divorce by Summary Judgment (NC-808D)* completed and copy provided to Defendant prior to final hearing.

- Separation and Property Settlement Agreement (NC-804D) and Divorce by Summary Judgment (NC-808D)* presented to Court at final hearing for Court's approval.
- Certificate of Divorce (DEHNR-2089)* obtained from Clerk and completed.
- Civil Action Cover Sheet (NC-AOC-CV-753)* completed.

**Remember that there is a thirty-day waiting period from the date of the institution of the action (filing of the Complaint for Absolute Divorce) before a Divorce by Summary Judgment may be granted.**

### 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.

To complete the forms click on the gray shaded areas and type the information. For the separation agreement complete the gray shaded areas and also make any other changes or additions to resolve all issues.

Some forms are locked which means that the content of the forms cannot be changed unless the form is unlocked. 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 relock the form, 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/NC/NC-004-D.htm>

## DISCLAIMER

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