

STATE OF NEW YORK

DIVORCE PACKAGE

UNCONTESTED - NO CHILDREN

WITH OR WITHOUT PROPERTY

Control Number - NY-008-D

This package 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 YOU FILE WITH THE CLERK MUST BE PRINTED ON BOND PAPER.

INFORMATION ABOUT DIVORCE

1. WHO CAN USE THESE FORMS

This packet is 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 work and communicate with your spouse and keep him or 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.

2. THE BASICS

You must agree with your spouse to dissolve the marriage, 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 Supreme Court for the county in which you choose to file the divorce papers (the county of either your or your spouse's residence).

3. RESIDENCY REQUIREMENTS

To file for a divorce in New York you must satisfy one of the following residency requirements:

- 1) The marriage ceremony was performed in New York State and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in the state for a continuous period of one year immediately before the action began; OR
- 2) The couple lived as husband and wife in New York State and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in this state for a continuous period of one year immediately before the action began; OR
- 3) The grounds for divorce occurred in New York State and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in this state for a continuous period of one year immediately before the action began; OR
- 4) The grounds for divorce occurred in New York State and both spouses are New York residents at the time the action is commenced; OR
- 5) If you and your spouse were married outside of New York State and you never lived together as husband and wife in this state and the grounds for divorce did not occur in this state -- either you or your spouse must presently be a resident of New York State and have resided continuously in the state for at least two years prior to bringing this action for divorce.

4. GROUNDS FOR DIVORCE

In order to file for a divorce in New York State you must have a ground (*a legally acceptable reason*) for the granting of a divorce by the New York courts. The legally acceptable reasons or grounds for divorce, in New York are described in Domestic Relations Law §170 (see, New York Divorce Law Summary). They are: (1) cruel and inhuman treatment; (2) abandonment; (3) imprisonment; (4) adultery; (5) living separate and apart pursuant to a separation judgment or decree; and (6) living separate and apart pursuant to a separation agreement; and (7) irretrievable breakdown in relationship between husband and wife for a period at least six months (commonly know as “no-fault”).

Cruel and Inhuman Treatment: The treatment of the Plaintiff by the Defendant must rise to the level that the **physical** or **mental well being** of the Plaintiff is endangered and makes it **unsafe or improper** for the Plaintiff to continue living with the Defendant.

All acts must have happened within five (5) years of the date the summons is filed with the County Clerk.

In describing the specific acts of cruelty, you must be clear and to the point. You must supply the court with details like dates and places. If you do not remember the exact date, use the words "on or about [approximate date]".

After describing the acts of cruelty you should conclude with the following language: *"The conduct of the Defendant was cruel and inhuman and so endangered the physical or mental well being of the Plaintiff as to render it unsafe or improper for the Plaintiff to cohabit with the Defendant."*

Abandonment: An action for divorce may be maintained where the Defendant abandons the Plaintiff for a period of one year or longer prior to commencing the action and continuing to the present.

Abandonment may take the form of your spouse physically departing your marital home without any intention of returning for a period of one year or longer prior to commencing the action, and continuing to the present, without any good reason for doing so and without your consent.

Imprisonment: An action for divorce may be maintained by Plaintiff only where the Defendant is imprisoned for a period of at least three consecutive years. The imprisonment must have commenced after the date of the marriage. If your spouse was released more than five years ago and your spouse opposes the divorce, your case may be dismissed.

Adultery: An action for divorce may be maintained based on adultery, which is an act of sexual or deviate sexual intercourse voluntarily performed by the Defendant with a person other than his or her spouse during the course of the marriage.

The ground of adultery can be difficult and expensive to prove because the testimony of the Plaintiff is not enough and other evidentiary requirements must be satisfied (the Defendant's admission is not enough). A corroborating affidavit of a 3rd party witness or other proof should be attached to the papers you submit to the court. You should keep in mind that acts of adultery may qualify as acts of cruelty and entitle you to maintain a divorce action on the grounds of cruel and inhuman treatment. If you found out about the adultery more than five years ago and your spouse opposes the divorce, your case may be dismissed.

Living Separate and Apart Pursuant to a Separation Agreement: A **Separation Agreement** is an agreement between the spouses that sets forth the terms and conditions by which the parties will live apart. The agreement must be signed by the parties before a notary and filed with the County Clerk in the county where one of the parties resides.

If you and your spouse have ***lived apart for more than one year*** according to the terms and conditions of a properly executed separation agreement, you may begin an action for divorce. It may be advisable to consult an attorney regarding this ground for divorce.

Irretrievable Breakdown in Relationship (No-Fault): To get a divorce on this ground, your relationship with the Defendant must have been broken down irretrievably (so that it is impossible to repair or reconcile) for a period of at least six months.

This type of divorce is not automatic even though it is commonly called "no-fault divorce." The court will not grant you a divorce based on this ground unless:

- a) one of the parties has sworn under oath that the relationship has broken down irretrievably for a period of at least six months; AND
- b) you and your spouse have either resolved all the economic issues of distribution of property, spousal support, child support, and counsel and/or experts fees and expenses, and the custody and visitation with any minor children of the marriage OR these issues have been decided by the court and incorporated into the final judgment of divorce.

5. DISTRIBUTION OF PROPERTY

In a divorce, the property (land, house, buildings, and items of personal property) owned (and debts owed) by the couple is divided between the parties. This is accomplished by means of a **Separation Agreement**. You and your spouse must agree to the property and debt division and memorialize your agreement in the **Separation Agreement**, 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.

6. FILING FEES

You will have to pay the following filing fees during your action for divorce.

1. Index Number: \$210
2. Note of Issue: (New York City) \$125; (outside NYC) \$30
3. Request for Judicial Intervention: (outside NYC only) \$95
4. Certificate of Dissolution: Check with your local court clerk
5. Certified Copy of Judgment: Approx. \$4 to \$10.

FORM LIST

The following forms are included in this package:

1. Summons **(NY-UD-1A)**
2. Verified Complaint **(NY-UD-2)**
3. Affidavit of Defendant **(NY-UD-7)**
4. Affirmation (Affidavit) of Regularity **(NY-UD-5)**
5. Affidavit of Service **(NY-UD-3)**
6. Affidavit of Plaintiff **(NY-UD-6)**
7. Sworn Statement of Removal of Barriers to Remarriage **(NY-UD-4)** and Affidavit of Service of Sworn Statement of Removal of Barriers to Remarriage **(NY-UD-4A)**
8. Settlement Agreement **(NY-DO-2A)**
9. Note of Issue **(NY-UD-9)**
10. Findings of Fact/Conclusions of Law **(NY-UD-10)**
11. Judgment of Divorce **(NY-UD-11)**
12. Part 130 Certification **(NY-UD-12)**
13. Request for Judicial Intervention ("RJI") **(NY-UD-13)** – used if filing outside of New York City
14. Certificate of Dissolution of Marriage **(NY-DOH-2168)**
15. Self-Addressed and Stamped Postcard **(NY-801D)**
16. Notice of Entry **(NY-UD-14)**

SUPPLEMENTAL FORMS (you may or may not be required to use this form, see below):

17. Notice of Settlement **(NY-UD-20)**
18. Poor Person Order **(NY-804D)**
19. Affidavit in Support of Application to Proceed as a Poor Person **(NY-805D)**

You may also need to check with your local court clerk to obtain additional forms to meet the requirements of § 177 Dom. Rel that mandates notification to each party of health insurance benefits and the effect a divorce will have on those benefits.

FORM EXPLANATIONS

All forms included in this package are identified and described below.

1. Summons (NY-UD-1A): Notifies your spouse of the divorce action.
2. Verified Complaint (NY-UD-2): The document that begins the divorce process, and includes the necessary legal details.
3. Affidavit of Defendant (NY-UD-7): Confirms that the Defendant (your spouse) agrees to the divorce terms as set forth in your Verified Complaint, and agrees that he/she has been served with the appropriate papers.
4. Affirmation (Affidavit) of Regularity (NY-UD-5): This is an affidavit to be filled out by you confirming that the appropriate documents were served on your spouse. You are to file this document along with the “Affidavit of Defendant” once your spouse has returned the signed, notarized “Affidavit of Defendant” to you.
5. Affidavit of Service (NY-UD-3): This affidavit must be filled out by the person that serves the summons and verified complaint on your spouse (the Defendant). You need not file this form if Defendant executes the **Affidavit of Defendant (Form UD-7)**, which satisfies the proof of service requirement.
6. Affidavit of Plaintiff (NY-UD-6): Confirms the basis for divorce and information contained in your Verified Complaint.
7. Sworn Statement of Removal of Barriers to Remarriage (NY-UD-4) and Affidavit of Service of Removal of Barriers to Remarriage (NY-UD-4A): This form is used if the parties were married in a religious ceremony. The Plaintiff completes the form and signs it before a notary public. The attached affidavit is completed and signed by the server of process before a notary public, or it is signed by the Defendant.
8. Settlement Agreement (NY-DO-2A): This document memorialized you and your spouse’s agreements regarding division of property and debts, and child support, custody and visitation.
9. Note of Issue (NY-UD-9): Information sheet for use by Court.
10. Judgment of Divorce (NY-UD-11): The final statement of the terms of your divorce, which incorporates your Settlement Agreement. Once this is signed by the Judge and filed with the court, your divorce is complete. You must however mail a certified copy of the signed, filed judgment to your spouse with the “Notice of Entry.”

11. Findings of Fact/Conclusions of Law (NY-UD-10): This document describes the facts and circumstances under which your divorce is granted. The judge fills in portions of this document.
12. Part 130 Certification (NY-UD-12): Confirmation by you that your divorce filings are not frivolous.
13. Request for Judicial Intervention ("RJI") (NY-UD-13) - Outside of New York City: You must file this document as part of your divorce case only if filing outside the city of New York.
14. Notice of Entry (NY-UD-14): Notice that your Judgment of Divorce has been entered (filed) with the Clerk. Send with copy of Judgment to spouse.
15. Certificate of Dissolution of Marriage: (NY-800D) A certificate showing the relevant information related to the dissolution of your marriage. This form is required by the Department of Health. You need not complete the section entitled "Confidential."
16. Self-Addressed and Stamped Postcard: Needed for the clerk to notify you/send you information. You must provide this postcard (only a sample is included in this divorce package).

SUPPLEMENTAL FORMS (you may or may not need this):

17. Notice of Settlement (NY-UD-20): This form may be required if your spouse must approve the Judgment of Divorce before the Judge will sign it.
18. Poor Person Order (NY-804D): This form may be used in a divorce if the individual does not have the financial resources to pay filing fees and court costs.
19. Affidavit in Support of Application to Proceed as Poor Person (NY-805D): This form may be used in support of application to waive filing fees and court costs.

FOLLOW STEPS 1-7 TO START THE DIVORCE ACTION

STEP 1: Prepare an **original** and **two copies** of the **Summons and Verified Complaint (Form UD-1a and Form UD-2)**.

STEP 2: Purchase an **index number** at the County Clerk's Office and file the original of the Summons and Verified Complaint with the County Clerk. Unless you are granted a poor person's waiver, you will be required to pay \$210 for the index number. Check with the County Clerk regarding acceptable forms of payment. Many County Clerks also will require that you fill out an Index Number Application Form at the time of filing, so be sure to bring with you the names, addresses and telephone numbers of all of the attorneys or, if unrepresented, of the parties themselves.

STEP 3: Put the **index number** and the **date of the filing** on the two copies of the Summons and Verified Complaint if this is not done by a clerk upon filing the papers.

STEP 4: Have the Defendant served with one copy of the Summons and Verified Complaint by being **personally handed the papers**.

If your spouse lives in New York State:

- ← The server must be a **resident** of New York State, over **eighteen years of age**, and cannot be a party to the action (this means you may not serve your spouse with the Summons).

If your spouse is presently residing outside of New York State:

- ← You must still ensure that he or she is personally served with the summons. If you use a non-New York State resident to serve your spouse outside of New York State, the server must be a person authorized to make service pursuant to the laws of that jurisdiction **or** a duly qualified attorney in that jurisdiction, and you must submit a copy of the authorization that allows that person to serve the summons. You are encouraged to check with the local sheriff and, if necessary, with a country's Consulate or Embassy as to any local requirements for service.
- ← Service upon the Defendant of the Summons and Verified Complaint must be made **within 120 days of their filing with the County Clerk's Office**. If you do not know where the Defendant is located, you may wish to delay filing the Summons and Verified Complaint until he or she is located, so that the 120-day period does not begin running while you search for your spouse.

STEP 5: Where the Defendant **agrees** to the divorce, he or she will need to sign the **Affidavit of Defendant (Form UD-7)**. The Plaintiff may fill out the form and forward it to the Defendant for

signature or the Plaintiff may send the form to the Defendant with a copy of the instructions on how to fill it out. This may be accomplished by submitting the form to the Defendant together with the Summons and Verified Complaint. The Defendant must send the completed form back to the Plaintiff prior to having the case placed on the calendar so that the form can be filed with the other required forms.

STEP 6: Where the Defendant **will not agree** to complete and return the Affidavit of Defendant, the person that served the Defendant must prepare an "**Affidavit of Service**" (**Form UD-3**), which attests to the service of the Summons and Verified Complaint. This affidavit must be submitted along with the full set of divorce papers when you place your case on the court's calendar. Keep in mind that there is a **40-day** waiting period from when the summons is served to place the matter on the court's calendar. When the Defendant does not sign the Affidavit of Defendant, waiving the 40 days, you must wait the full 40 days before you can place the matter on the court's calendar.

STEP 7: If the parties were married in a religious ceremony, the Defendant must be served with a copy of the **Sworn Statement of Removal of Barriers to Remarriage (Form UD-4)**. The Plaintiff must fill out the original and make a copy of the form. The copy then must be served on the Defendant either by personal service along with the Summons and Verified Complaint, or by mail. If you serve the form by mail, it must be done prior to your placing your action on the court's calendar as described below, because you will need to file the original form with the other required forms. **Service by mail must be by someone other than the Plaintiff who is over the age of 18 and not a party to the action.** When you file this form, you must attach to the form the **Affidavit of Service (Form UD-4a)**. If the Defendant signs the Affidavit of Defendant (Form UD-7), then you will not have to serve and file this form.

If the Defendant appears and does not consent to this action:

- ← Then your matter **is no longer an uncontested matrimonial** and you will be unable to obtain an uncontested divorce. You may want to consult an attorney at that point.

STEPS FOR PLACING YOUR DIVORCE CASE ON THE COURT CALENDAR

After you have completed **Steps 1-7**, you are ready to place your case on the court's calendar. If the Defendant consents to the action by signing the Affidavit of Defendant (Form UD-7), you may place your case on the court's calendar immediately. Otherwise, you will have to wait until 40 days after the date of the service of the summons.

You must complete the following steps to place your case on the calendar:

STEP 8: You must complete **Forms 3-12** (include UD-7 only if signed by the Defendant). Form UD-3 (Affidavit of Service) and Form UD-4 (Sworn Statement of Removal of Barriers to Remarriage) need not be completed, or filed, if the Defendant has signed Form UD-7 (Affidavit of Defendant).

STEP 9: If you are filing your action **outside of the City of New York**, you also must complete **Form 13- Request for Judicial Intervention (NY-UD-13)**.

STEP 10: You also must complete the **Forms 14-16**.

STEP 11: You must file the completed forms, including a copy of the Summons and Verified Complaint, with the County Clerk's Office. Include three (3) copies of the Note of Issue (Form UD-9).

STEP 12: Unless you are granted a poor person's waiver, you must pay a filing fee for filing the Note of Issue (Form UD-9) and, if outside New York City, the Request for Judicial Intervention (Form UD-13). See page 4 for the schedule of filing fees.

All of the papers filed with the County Clerk's Office will be submitted to the judge. If the papers are approved, the judge will sign the Judgment of Divorce (Form UD-11).

If you are asking for maintenance, or distribution of property, the court may require a hearing unless you have either a written agreement or prior court order. If you are asking for exclusive occupancy of the marital home, you must assert that your spouse is not living in the marital home; otherwise a hearing may be ordered.

This packet contains additional forms that you may be required to file depending upon the special requirements in the county where you are bringing the action.

a. Income Deduction Order (Form NY-4-9)

In certain circumstances, the court may direct that the payment of maintenance (spousal support) or child support be made by automatically deducting moneys from the paying spouse's wages through us of an Income Deduction Order. This can occur only where the paying spouse is a salaried employee and, in the case of child support, where the support is not enforced through a local child support collection unit. If the court notifies you that an Income Deduction Order is required, follow the procedure for completing that order set forth in the Supplemental Appendix of Forms at page 35, and submit the order to the Supreme Court Clerk's Office.

b. Notice of Settlement (Form UD-20)

In some instances, the court will not sign the Judgment of Divorce until the Defendant is served with a copy of the unsigned Judgment and any other proposed orders and is permitted an opportunity to object to or comment on them. In that situation, the court will notify you that the Judgment and the proposed orders are to be served upon the Defendant with a **Notice of Settlement**.

c. Poor Person Order (Form 804D)

When financial resources are not available, the court can allow you to proceed as a Poor Person. This will waive your filing fees and court costs.

d. Affidavit in Support of Application to Proceed as a Poor Person (Form 805D)

This form is used in support of the application to waive filing fees and court costs. File this along with the Poor Person Order. This form is completed by the Plaintiff, and signed before a notary public.

AFTER THE PAPERS ARE APPROVED

After your papers have been reviewed and signed by a judge, you will be notified; the papers may need to be re-filed, and the judgment entered, in the County Clerk's Office. The manner in which this filing occurs depends upon the procedure of the county in which you brought the action. Consult the Supreme Court Clerk's Office for information regarding your obligations for the retrieval and/or entry of the signed judgment and supporting papers. **A divorce is not considered final until such time as the signed judgment is entered in the County Clerk's Office.** Should you receive notice that the papers have been filed on your behalf by the court, or if you file the papers, you may go to the County Clerk's Office to obtain a certified copy of the judgment. You must bring identification with you, because matrimonial files are confidential and information will be released only to a party or his or her attorney. The certified copy will cost **between \$4.00 and \$10.00**, but the fee will be waived if you obtained a poor person waiver.

A copy of the judgment of divorce must be served on the Defendant. To do this, you must mail to the Defendant a copy of the signed **and entered Judgment of Divorce (Form UD-11)**, together with the completed **Notice of Entry (Form UD-14)**.

CHECKLIST

- ☐ Complete Forms 1-2.
- ☐ Complete Supplemental Forms 18- *Poor Person Order (NY-804D)*-26 and Form 19- *Affidavit in Support (NY-805D)* if you want to apply for a waiver of filing fees and court costs.
- ☐ Purchase a court 'index number' unless you have been granted a poor person's waiver. Put the index number on the forms.
- ☐ Have Forms 1-3 served on your spouse, with instructions to return Form 3- *Affidavit of Defendant (NY-UD-7)*.
- ☐ File Form 3- *Affidavit of Defendant (NY-UD-7)* and Form 4- *Affirmation Affidavit of Regularity (NY-UD-5)* with court clerk.
- ☐ If the Defendant will not complete and sign the Form 3- *Affidavit of Defendant (NY-UD-7)*, the defendant must prepare and return Form 5- *Affidavit of Service (NY-UD-3)*.
- ☐ Complete and file Form 6- *Affidavit of Plaintiff (NY-UD-6)* and Form 7- *Sworn Statement of Removal of Barriers to Remarriage (NY-UD-4 and Affidavit of Service of Removal of Barriers to Remarriage (NY-UD-4A)*.
- ☐ You and your spouse complete and file Forms 8-11.
- ☐ Complete and file Forms 12-16. (Only complete Form 13- *Request for Judicial Intervention (NY-UD-13)* if applicable)
- ☐ Check with clerk regarding final procedures. Obtain hearing date for final divorce hearing (if necessary).
- ☐ Complete and file Form 17- *Notice of Settlement (NY-UD-20)* if applicable.
- ☐ Form 11- *Judgment of Divorce (NY-UD-11)* signed by the Judge.
- ☐ Signed Form 11- *Judgment of Divorce (NY-UD-11)* filed with the clerk of court, with copies to you and your spouse. File and deliver Form 14- *Notice of Entry (NY-UD-14)* with the Form 11- *Judgment of Divorce (NY-UD-11)*.

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/NY/NY-008-D.htm>

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THESE FORMS WERE PREPARED FOR STATEWIDE USE. HOWEVER, SOME COUNTIES OR JUDGES MAY REQUIRE CERTAIN MODIFICATIONS TO THE FORMS FOR USE IN YOUR PARTICULAR COUNTY AND MAY REQUIRE SPECIAL FORMS NOT INCLUDED. CHANGES REQUIRED BY PARTICULAR JUDGES ARE NOT UNCOMMON EVEN IF THE FORMS HAD BEEN PREPARED BY YOUR ATTORNEY. REGARDLESS, YOU SHOULD BE ABLE TO USE THESE FORMS AND INSTRUCTIONS, WITH ANY REQUIRED MODIFICATIONS, TO MAKE IT THROUGH THE PROCESS. IF YOU NEED TO MAKE CHANGES, OR IF SPECIAL FORMS ARE REQUIRED IN YOUR COUNTY, YOU CAN MAKE THE CHANGES AND REFILE, OR OBTAIN THE SPECIAL FORMS EITHER FROM THE CLERK OR A CLOSED DIVORCE FILE WHICH YOU CAN USE AS AN EXAMPLE.