

CIRCUIT COURT

STATE OF SOUTH CAROLINA

DIVORCE PACKAGE

MINOR CHILDREN

With or Without Property

Control Number SC-006-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 filed with the Court 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) You and your spouse have lived separate and apart without cohabitation for one year;
 - (b) There are minor children of said marriage, and/or the wife is now pregnant.
 - (c) You and your spouse agree on all terms of the divorce;
 - (d) You and/or your spouse have lived in South Carolina for one year (three (3) months if both parties are residents of South Carolina) 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.
 - (b) You must satisfy **the no-fault procedures**, in that you and you spouse must have lived separate and apart without cohabitation for at least one year.

3. **RESIDENCY REQUIREMENTS:** South Carolina law requires that one of the parties to the divorce action must have lived in South Carolina for at least one year [three (3) months if both parties are residents of South Carolina] before filing the divorce.

4. **GROUND FOR DIVORCE:** South Carolina law permits no-fault divorces based upon living separate and apart without cohabitation for at least one year. Additional grounds include;
 - (a) Adultery;
 - (b) Desertion;
 - (c) Physical cruelty; and,
 - (d) Addiction to drugs or alcohol.

This package is based upon the no-fault grounds of one year's continuous separation.

5. **LEGAL SEPARATION:** South Carolina law permits a judgment of separation according to the principles and actions for divorce. **This package does not contain forms for a legal separation.**

6. **WAITING PERIOD:** Generally, no reference shall be had before two months after the filing of the Complaint for Divorce in the office of the Clerk of Court, nor shall a final decree be granted before three months after such filing. However, in actions for divorce based upon the no-fault grounds of separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default, whichever occurs sooner.

7. **ALIMONY/SUPPORT:** Since this is an agreed upon divorce, you 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, the courts may award alimony to either spouse. Alimony may be periodic, lump sum, rehabilitative or reimbursement type. Adultery **is** considered by the court when making a determination as to whether alimony should be granted. Factors the court considers in determining the amount and term of alimony include:

- (a) The duration of the marriage and the age of the parties;
- (b) The physical and emotional condition of the parties;
- (c) The educational background of the parties along with the need of each for additional training or education;
- (d) The employment history and earning potential of each spouse;
- (e) The standard of living established during the marriage;
- (f) The current and reasonably anticipated expenses and needs of each spouse;
- (g) The current and reasonably anticipated earnings of each spouse;
- (h) The marital and non-marital properties of each spouse;
- (i) Custody of the children;
- (j) Marital misconduct; and,
- (k) Any other relevant factors.

8. **CHILD CUSTODY:** South Carolina courts will decide the issue of custody based upon the best interests of the child. In determining the best interest of the child, the court must consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference. Religious faith shall also be considered in determining custody. In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence. **3-20-7-1515, 3-20-7-1520**

9. **CHILD SUPPORT:** In a proceeding for dissolution of marriage or legal separation, the court may order either or both parties to pay a reasonable amount necessary for the support of a child of the marriage.

The South Carolina legislature has established child support guidelines which establish the presumptive correct amount of child support. Deviation from the guidelines require a specific finding by the court that application of the guidelines would be unjust or inappropriate and such findings must be included in the judgment. **3-20-7-852**

10. **DISTRIBUTION OF PROPERTY:** Since this is an agreed upon divorce, the parties will agreed to property distributions. South 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. Some of the factors the court considers in dividing the property between the parties include:

- (a) The duration of the marriage;
- (b) The age of the spouses;
- (c) Marital misconduct;
- (c) Economic misconduct;
- (d) The value of each party's marital property;
- (e) The contribution of each spouse to the marital estate;
- (f) The income of each spouse.

11. **NAME CHANGE:** The court, upon granting a final judgment of divorce, may allow a party to resume the use of their former name.

For more information, see the South Carolina Divorce Law Summary.

FORMS LIST

This packet contains the following:

- A. Family Court Coversheet (SC-SCCA-467)**
 - 1. Complaint for Divorce (SC-812D)**
 - 2. Summons (SC-SCCA-401)**
 - 3. Affidavit of Service (SC-SCCA-402)**
 - 4. Acceptance of Service and Waiver (SC-805D)**
 - 5. Financial Declaration (SC-SCCA-430)**
 - 6. Separation and Property Settlement Agreement (SC-DO-11A)**
 - 7. Request for Hearing (SC-SCCA-410)**
 - 8. Decree of Divorce (SC-813D)**
 - 9. Directions for Payment of Child Support or Alimony (SC-SCCA-446)**

You and your spouse must agree to all terms of the divorce to use this packet.

FORM EXPLANATIONS

All forms included in this package are identified below:

- A. Family Court Coversheet (SC-SCCA-467)** - This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint
1. **Complaint for Divorce (SC-812D)** - The Complaint for Divorce is the document in which you are asking the court to grant your divorce along with any other relief requested.
 2. **Summons (SC-SCCA-401)** – This document is used to inform the Respondent that a suit has been filed against him or her and orders the Respondent to appear before the court and file any pleadings necessary within 30 days after service of the summons. It further provides that if the Defendant does not file an answer to the Complaint, a judgment by default may be taken against the Defendant granting the relief requested in the Complaint.
 3. **Affidavit of Service (SC-SCCA-402)** - This document is used by the person who served the Complaint and Summons upon the Defendant to state that he or she either personally delivered the documents to the Defendant or left the documents with a person of suitable age and discretion at the Defendant's residence.
 4. **Acceptance of Service and Waiver (SC-805D)** – This document is used by the Respondent to acknowledge receipt of the Petition and Summons and to enter an appearance. It is further used to waive the Defendant's right to file an answer in the proceeding.
 5. **Financial Declaration (SC-SCCA-430)** – This document is used to identify the all of the assets and debts of the parties' as well as the parties' income and expenses.
 6. **Separation and Property Settlement Agreement (SC-DO-11A)** – 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.

7. **Request for Hearing (SC-SCCA-410)** – This document is used by the filing party to request that the Court set a date for the hearing of the divorce action.
8. **Decree of Divorce (SC-813D)** – This document grants the divorce and any other relief requested.
9. **Directions for Payment of Child Support or Alimony (SC-SCCA-446)** – This document is used to direct the payment of child support or alimony as part of a divorce with children.

INSTRUCTIONS AND STEPS

Steps to No-Fault Divorce

- STEP 1:** The filing party (Plaintiff) should complete the *Family Court Coversheet (SC-SCCA-467)*, *Complaint for Divorce (SC-812D)* and the *Summons (SC-SCCA-401)*, and file both documents with the Clerk of Court in the county of filing. A filing fee is paid.
- STEP 2:** The Plaintiff should next provide notice to the Defendant that an action for divorce has been filed against him or her by serving copies of the *Complaint for Divorce* and *Summons (SC-812D/SC-SCCA-401)* upon him or her. This is referred to as “Service of Process”. Contact the Clerk of Court in the county of filing for information regarding how the Defendant may be served and follow this procedure.
- At this time, the Plaintiff should also provide the Defendant with the *Acceptance of Service and Waiver (SC-805D)* form and have him or her complete and return it.
- STEP 3:** After service of the *Complaint for Divorce* and *Summons (SC-812D/SC-SCCA-401)* has been made, the party who performed the service must complete the *Affidavit of Service* form (*SC-SCCA-402*). This form must then be filed with the Clerk of Court in the county of filing. The completed *Acceptance of Service (SC-805D)* and *Waiver* form (*SC-805D*) should also be filed at this time.
- STEP 4:** Both parties should complete and exchange with one another the *Financial Declaration* form (*SC-SCCA-430*), making certain all information contained therein is both accurate and current.
- STEP 5:** Both parties should next complete the *Separation and Property Settlement Agreement (SC-DO-11A)*, making certain to agree to all of the terms of the division of property and debts contained therein. Provisions for child support and alimony, if any, should also be agreed on and reflected in the settlement agreement.
- Next, complete the *Directions for Payment of Child Support or Alimony (SC-SCCA-446)* so that it reflect the child support or alimony terms agreed to in your *Separation and Property Settlement Agreement*. The *Separation and Property Settlement Agreement (SC-DO-11A)* and the *Directions for Payment of Child Support or Alimony (SC-SCCA-446)* are then filed with the Clerk of the Circuit court in your County.

STEP 6: The Plaintiff should next complete and file the *Request for Hearing* form (SC-SCCA-410). This form requests that the Court set a hearing date for the action. Ask the Clerk what procedures are used in assigning a date for hearing and follow those procedures.

The Plaintiff should then complete the *Decree of Divorce (SC-813D)* in preparation for the hearing.

STEP 7: At the hearing before a Family Court Judge, you must have a witness who will back up your story. This witness must be familiar with your situation and be knowledgeable of the facts and circumstances surrounding your marriage.

STEP 8: Once the Judge has reviewed the filed documents and heard testimony from the witnesses, the Judge will sign the *Decree of Divorce (SC-813D)*. Your divorce is not final until a signed copy of the *Decree (SC-813D)* is filed with the Clerk of Court.

Notes: 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.

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

This is a package involving property and/or assets of the marriage. This package is a guide and you should complete all forms based upon your situation, making any necessary revisions.

CHECKLIST

- ☐ Complaint for Divorce (SC-812D), Family Cover Sheet (SC-SCCA-467), and Summons (SC-SCCA-401) completed and filed.
- ☐ Filing Fee Paid.
- ☐ Defendant served with Complaint for Divorce (SC-812D) and Summons (SC-SCCA-401). Defendant also provided Acceptance of Service form (SC-805D) at this time.
- ☐ Affidavit of Service (SC-SCCA-402) completed and filed. Completed Acceptance of Service (SC-805D) form also filed at this time.
- ☐ Copies of Financial Declaration form (SC-SCCA-430) completed by both parties and exchanged. Originals filed with Court.
- ☐ Separation and Property Settlement Agreement (SC-DO-11A) and Directions for Payment of Child Support or Alimony (SC-SCCA-446) completed by the parties and filed with the Court.
- ☐ Request for Hearing form (SC-SCCA-410) completed and filed with Court. Hearing date obtained.
- ☐ Decree of Divorce (SC-813D) completed and brought to hearing.
- ☐ Witness brought to hearing. Court hears testimony and reviews filings.
- ☐ Decree (SC-813D) signed by Judge. Divorce final when Decree (SC-813D) filed with Clerk of Court.

NOTE ABOUT COMPLETING THE FORMS

The forms in this packet contain “form fields” created using Microsoft Word and Adobe Acrobat. “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 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 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/SC/SC-004-D.htm>

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