

STATE OF WEST VIRGINIA

DIVORCE PACKAGE

ADULT CHILDREN

With or Without Property

Control Number WV-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 package for divorce only when all of the following facts are true;
 - (a) You and your spouse are seeking a divorce based upon irreconcilable differences;
 - (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 twenty-one (21) and emancipated;
 - (c) You and your spouse agree on all the terms of the divorce.

2. **THE BASICS:** In a typical divorce, there are two basic 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**.

3. **RESIDENCY REQUIREMENTS:** At least one of the parties to the action for divorce must have been an actual resident of the State of West Virginia for at least one year prior to the filing of the action for divorce, unless the marriage was contracted in the State of West Virginia and one of the parties was a resident of the State at the time of contracting, in which case there is no durational residency requirement.

4. **WHERE TO FILE:** If the defendant is a resident of the State of West Virginia, an action for divorce shall be filed in the county where the parties last cohabitated or in the county where the defendant resides, at the plaintiff's option. If the defendant is not a resident of the State of West Virginia, the action shall be brought in either the county where the plaintiff resides, or in the county where the parties last cohabitated.

5. **GROUND FOR DIVORCE:** A divorce may be granted in the State of West Virginia upon the following grounds:
 - a. Adultery;
 - b. Commission of a felony;
 - c. Willful abandonment or desertion of a party for six months;
 - d. Cruel or inhuman treatment;
 - e. Habitual drunkenness or drug addiction;
 - f. Living separate and apart in separate places of abode without cohabitation or interruption for one year;

- g. Permanent and incurable insanity;
- h. Abuse or neglect of a child of the parties or of one of the parties;
- i. Irreconcilable differences.

This package is designed to be used by parties seeking a divorce based upon the ground of irreconcilable differences. The court may order a divorce if the Petition alleges that irreconcilable differences exist between the parties and an answer is filed admitting that allegation. A divorce on this ground does not require corroboration of the irreconcilable differences or of the issues of jurisdiction or venue.

6. **LEGAL SEPARATION:** A judgement of legal separation is properly referred to as Judgement of Separate Maintenance. A judgement of separate maintenance may be awarded:

- (a) On any ground for which a decree of divorce may be awarded; or,
- (b) If the party from whom separate maintenance is sought, without good and sufficient cause:
 - i. Has failed to provide suitable support for the other spouse; or
 - ii. Has abandoned or deserted the other spouse.

This package does not contain forms for a legal separation.

7. **WAITING PERIOD:** A final hearing for divorce may not be held until at least twenty (20) days have elapsed from the date of service of the Petition upon the Respondent [thirty (30) days if the Respondent was served by publication].

8. **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, the courts may award temporary or permanent alimony to either spouse in either periodic or lump sum form. In addition to an award of temporary or permanent alimony, the court may make additional orders regarding medical insurance for a party, use and enjoyment of the family home, and use or ownership of vehicles owned by the parties. In determining whether to award alimony and in what amount, the court will consider the following factors:

- (a) The length of the marriage and the period of time that the parties actually lived together during the marriage;
- (b) The present employment income and other earnings income of each party;
- (c) The income-earning abilities of each party, and each party's financial needs;
- (d) The terms of the marital property distribution;

- (e) The age, physical, mental and emotional health of the parties;
- (f) The educational qualifications of each party;
- (g) Whether either party has foregone or postponed economic, education or employment opportunities during the course of the marriage;
- (h) The standard of living established during the marriage;
- (i) The likelihood of the party seeking alimony increasing his or her income-earning abilities within a reasonable time through additional education or training, and the costs of obtaining same;
- (j) Financial or other contributions by either party to the education, training or earning capacity of the other;
- (k) The costs of education for any children of the marriage;
- (l) The tax consequences to each party;
- (m) The extent to which it would be inappropriate for the custodian of minor children to seek outside employment;
- (n) The legal obligations of each party to support himself or herself in addition to any other person;
- (o) Costs associated with a minor or adult child's physical or mental disabilities;
- (p) Any other factor the court deems necessary or appropriate.

9. DISTRIBUTION OF PROPERTY: Since this is an agreed upon divorce, the parties will agree to all terms of the property distribution. West Virginia is an equitable distribution state. In a contested case, this means that the court will court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to fault of either party, after a consideration of the following:

- (a) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:
 - i. Employment income and other earnings; and
 - ii. Funds which are separate property.
- (b) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:
 - i. Homemaker services;
 - ii. Child care services;
 - iii. Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;
 - iv. Labor performed in the actual maintenance or improvement of tangible marital property; and

- v. Labor performed in the management or investment of assets which are marital property.
- (c) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:
 - i. Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and
 - ii. Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.
- (d) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: provided, that except for a consideration of the economic consequences of conduct, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

In cases where the parties have executed a separation agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

- (a) That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or
- (b) That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or,
- (c) That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is inequitable, and such agreement was inequitable at the time the same was executed.

10. NAME CHANGE: When decreeing a divorce, the court may restore a party to the use of a maiden or former name.

11. REQUIRED DISCLOSURES OF ASSETS: In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

The disclosure required by this part may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but are not limited to,

real property, savings accounts, stocks and bonds, mortgages and notes, life insurance, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or non vested and any other financial interest or source.

The supreme court of appeals shall prepare and make available a standard form for the disclosure of assets and liabilities required by this part.

For more information, see the West Virginia Divorce Law Summary.

FORMS LIST

The forms included in this package are:

1. Civil Case Information Statement (WV-SCA-FC-103)
2. Petition for Divorce (WV-SCA-FC-101)
3. Vital Statistics Form (WV-SCA-FC-104)
4. Summons (Sample) (WV-804D)
5. Acceptance of Service (WV-SCA-FC-105)
6. Answer (WV-SCA-FC-108)
7. Financial Disclosure Statement (WV-SCA-FC-106)
8. Separation and Property Settlement (WV-810D)
9. Notice of Hearing (WV-SCA-FC-107)
10. Instructions for Completing Forms–Petitioner (WV-SCA-FC-100)
11. Instructions for Completing Forms–Respondent (WV-SCA-FC-100A)

FORM EXPLANATIONS

All forms included in this package are identified below.

1. **Civil Case Information Statement (WV-SCA-FC-103)** – This form is used to provide the Court with information regarding the type of case before it and the parties involved.
2. **Petition for Divorce (WV-SCA-FC-101)** - The Petition 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. **Vital Statistics Form (WV-SCA-FC-104)** – This form is used by the State of West Virginia to update its vital statistics records upon granting the divorce.
4. **Summons (WV-804D)** – This document is used to provide the Respondent with notice that a Petition for Divorce has been filed against him or her. The Summons further informs the Respondent that failure to file an answer may result in a judgment being taken against him or her for the relief demanded in the Petition. A sample copy of a Summons has been provided to you in this package for use as a guide. You must obtain an official Summons issued by the Clerk of Court.
5. **Acceptance of Service (WV-SCA-FC-105)** – This document is used by the Respondent to acknowledge receipt of the Petition and Summons.
6. **Answer (WV-SCA-FC-108)** – This form is used by the Respondent to respond to the allegations contained in the Petition and to acknowledge that irreconcilable differences exist between the parties.
7. **Financial Disclosure Statement (WV-SCA-FC-106)** – This document is used to identify the assets and debts and income and expenses of the parties. Each party must complete this document and provide his or her spouse with a completed copy. The original must be filed with the Court.
8. **Separation and Property Settlement Agreement (WV-808D)** – 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, such as:

- (a) Whether spousal support shall be awarded;
- (b) Whether an award of spousal support, other than an award of rehabilitative spousal support or spousal support in gross, may be reduced or terminated because a de facto marriage exists between the spousal support payee and another person;
- (c) Whether a court shall have continuing jurisdiction over the amount of a spousal support award so as to increase or decrease the amount of spousal support to be paid;
- (d) Whether spousal support shall be awarded as a lump sum settlement in lieu of periodic payments;
- (e) Whether spousal support shall continue beyond the death of the payor party or the remarriage of the payee party; or,
- (f) Whether the spousal support award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies.

- 9. **Notice of Hearing** (WV-SCA-FC-107) – This form is used to provide the Respondent with notice as to the time and place of the Final Hearing. This notice must be sent to the Respondent at least ten (10) days prior to the date of the Final Hearing.
- 10. **Instructions for Completing Forms–Petitioner** (WV-SCA-FC-100) – These are the instructions for the petitioner to use when filling out the forms. The document also contains information regarding filing fees, hearings, and definitions of important legal terms.
- 11. **Instructions for Completing Forms–Respondent** (WV-SCA-FC-100A) – These are the instructions for the respondent to use when filling out the forms. The document also contains information regarding deadlines, filing of the answer, hearings, and definitions of important legal terms.

INSTRUCTIONS AND STEPS

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.

STEP 1: The filing party should completely fill out the Petition (WV-SCA-FC-101). This document tells the Court that you are seeking a divorce and informs the Court as to why you want one. The Verification form attached to the Petition tells the Court that everything stated in the Petition (WV-SCA-FC-101) is true. This must be signed under oath in front of a Notary Public.

STEP 2: The Civil Case information Sheet (WV-SCA-FC-103) must next be completed. This form is used by the Court to track cases on its docket. Three (3) copies of this form must be filed with the Clerk.

STEP 3: The Vital Statistics (WV-SCA-FC-104) form must also be completed. This form is used by the Clerk to update the State Office of Vital Statistics regarding your divorce.

STEP 4: The Petition (WV-SCA-FC-101), Civil Case Information Statement (WV-SCA-FC-103), and Vital Statistics Sheet (WV-SCA-FC-104) must be filed with the Clerk of Court in the county of filing. A filing fee must be paid at this time.

STEP 5: The Respondent must next be provided with notice of the divorce action by serving him or her with the Summons (WV-804D) and copies of the previously filed documents. The Summons (WV-804D) must be obtained from the Clerk of Court in the county of filing. A copy has been provided to assist you when completing this document. When giving a copy of the previously filed documents to your spouse, also provide your spouse with the Acceptance of Service (WV-SCA-FC-105) form included in this packet. Your spouse should complete and return this form to you. Once the Acceptance of Service (WV-SCA-FC-105) is returned to you, file the form with the Clerk of Court in the county of filing to inform the Court of the Respondent’s receipt of the Petition (WV-SCA-FC-101) and Summons (WV-804D).

STEP 5: Once the other spouse is served or accepts service, he/she has 20 days in which to file an Answer (WV-SCA-FC-108) to the Petition (WV-SCA-FC-101) - By completing the Answer (WV-SCA-FC-108), the other spouse is agreeing to the

ground of irreconcilable differences. TO OBTAIN A NO-FAULT DIVORCE, your spouse MUST FILE AN ANSWER (WV-SCA-FC-108) agreeing to the ground of irreconcilable differences. A copy of the Respondent's Answer must be served on the Petitioner.

STEP 6: Each party to the divorce must complete a copy of the Financial Disclosure Statement (WV-SCA-FC-106). This document informs the Court of both parties' financial status. Each party must complete this form and provide the other spouse with a completed copy. The original must be filed with the Court no less than five (5) days before the hearing.

STEP 7: Both parties should next complete the Separation and Property Settlement Agreement (WV-808D), making certain to agree to all of the terms contained therein. After completion, this document must be filed with the Clerk of Court.

STEP 8: A final hearing must now be scheduled. The final hearing may not be scheduled until at least twenty days have elapsed from the date of service of the Petition (WV-SCA-FC-101) upon the Respondent. Contact the Clerk for the procedure used to schedule the hearing and follow those procedures. The other spouse must be given 10 days notice of the hearing. The original Notice of Hearing (WV-SCA-FC-107) form must be filed with the Clerk and a copy must be mailed to your spouse.

STEP 9: Be prepared to answer any questions the Court may ask regarding your divorce at the final hearing. The Court may pose questions to either party regarding the financial information submitted to the Court and whether both parties understand and agree to all of the terms contained in the Separation and Property Settlement Agreement (WV-808D).

STEP 10: After your hearing, the Court will prepare all orders and findings of fact. A copy of these findings and orders will be sent to you and your spouse. Be certain to review them carefully. If you and your spouse agree with all of the terms in the recommended order, you must simply wait for the Judge in your case to sign the Final Order. A copy will be set to you by the Clerk's office. If you do not agree with the recommended order, you must file written objections with the Clerk within five (5) days after you receive the Order. If no objections are received, the court shall enter the order and findings no later than three (3) days following the conclusion of the objection period.

STEP 10: Your divorce is final when the Final Order is entered by the 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.

CHECKLIST

- ☐ *Petition* (WV-SCA-FC-101), *Civil Case Information Sheet* (WV-SCA-FC-103) and *Vital Statistics* (WV-SCA-FC-104) forms completed and filed with the Clerk of Court in the county of filing. Filing fee paid.
- ☐ Respondent served with *Summons* and copies of *Petition* (WV-SCA-FC-101), *Civil Case Information Sheet* (WV-SCA-FC-103) and *Vital Statistics* (WV-SCA-FC-104) forms. Respondent also provided with *Acceptance of Service* (WV-SCA-FC-105) form and *Answer* (WV-SCA-FC-108).
- ☐ *Acceptance of Service* (WV-SCA-FC-105) form is completed by Respondent and then returned to the Petitioner for filing.
- ☐ Respondent completes and files *Answer* (WV-SCA-FC-108) within allotted time period of twenty days from service of *Petition* (WV-SCA-FC-101). *Answer* (WV-SCA-FC-108) served on Petitioner.
- ☐ Both parties complete and exchange with each other copies of the *Financial Disclosure Statement* (WV-SCA-FC-106). Originals of the *Financial Disclosure Statements* (WV-SCA-FC-106) must be filed with the Court not less than five days before the hearing.
- ☐ *Separation and Property Settlement Agreement* (WV-808D) completed by the parties and filed with the Court.
- ☐ Final hearing scheduled. *Notice of Hearing* (WV-SCA-FC-107) form filed with Court and copy provided to Respondent giving him or her at least ten (10) days notice of final hearing.
- ☐ Final hearing held. Both parties answer any questions posed to them by the Court.
- ☐ Court prepares proposed final orders and findings of fact. Copies of proposed final orders and findings of fact provided to both parties. Parties have five (5) days to object in writing to proposed final orders and findings of fact. If no objections received, Court will enter Final Order within three (3) days of conclusion of objection period.
- ☐ Divorce is final when entered by the Court.

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 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/WV/WV-004-D.htm>

DISCLAIMER

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