

CHESAPEAKE CIRCUIT COURT



UNCONTESTED DIVORCE PROCEDURES MANUAL

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**Chesapeake Circuit Court
Uncontested Divorce Procedures
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Chesapeake Circuit Court

Uncontested Divorce Procedures

1. Description Guidelines

An uncontested divorce is one in which:

- a. The ground for divorce is living separate and apart without any cohabitation and without interruption for the statutory period, pursuant to Virginia Code § 20-91(A)(9)(a) (no-fault), or a motion for a no-fault divorce will be made pursuant to Virginia Code § 20-121.02 and there are no issues in dispute concerning equitable distribution, spousal support or child support, custody and visitation, or
- b. All of the issues have been settled and agreed to by the parties in a written stipulation agreement.
- c. A divorce that does not fit the description of an uncontested divorce must proceed through the Court's Contested Divorce Procedure.

2. Who Can Hear an Uncontested Divorce

Both parties may elect to have the case heard by a Commissioner in Chancery; or a party may request by motion, and upon good cause shown, that the matter be referred to a Commissioner in Chancery; otherwise the divorce will be heard by a Judge.

- a. To have the case heard by a judge, the parties must comply with the requirements set out in this manual.
- b. To have a divorce heard by a Commissioner in Chancery, parties must comply with Virginia Code § 8.01-607. To have the case heard by a commissioner, the parties must submit a **Decree of Reference (Form 5)** to the Clerk's Office.
 - i. If the defendant has made an appearance, the Decree of Reference shall be endorsed by all counsel of record and any pro se party or notice must be given as required by Supreme Court Rule 1:13, and good cause shown.
 - ii. If the defendant has executed a waiver the plaintiff may submit the decree of reference without defendant's endorsement.

3. Requirements to Have Uncontested Divorce Hearing before a Judge

- a. File and serve the Complaint.
- b. Wait until the time to answer has passed or the defendant has answered or filed a waiver.
- c. Request a hearing by filing in the Clerk's Office a **Hearing Request (Form 1)**. The moving party must send a copy of the Hearing Request to the other party or counsel.
- d. The following documents must be submitted with the **Hearing Request (Form 1)**:

- i. The original divorce decree signed by both parties, if required (see note). NOTE: The signature of a party who is legally entitled to notice is not required if the party is served with notice of the hearing and a copy of the proposed divorce decree.
 - ii. The original of any separation agreement; if applicable.
 - iii. Proof of service of the Complaint and/or waiver.
 - iv. An original, completed VS-4 form.
 - v. A self-addressed, stamped envelope.
 - vi. Addendum with the social security numbers of the parties, pursuant to Virginia Code § 20-121.03.
- e. When the Hearing Request is filed in the Clerk's Office, the file will be reviewed by the Staff Attorney or a Law Clerk.
- i. If all requirements have been met, the Staff Attorney or Law Clerk will mail a **Scheduling Notice (Form 2)** to the moving party. The **Scheduling Notice** will inform the party that the hearing request is approved. It will also inform the party of any additional requirements.
 - ii. If all requirements have not been met, the Staff Attorney or Law Clerk will mail a **Notice of Non-Compliance (Form 3)** to the moving party. A **Checlist (Form 4)** will be attached, highlighting the reasons for the rejection. The corrections must be made and the necessary documents shall be submitted to the Clerk's Office **along with a self-addressed stamped envelope**. If an attorney (or party appearing pro se) disagrees with a required change, they may place the issue for hearing on the Court's 9:00 AM Civil Motions docket in accordance with Rule 7 of the Chesapeake Circuit Court Local Rules.
 - iii. If a self-addressed, stamped envelope is not submitted with the hearing request, the **Scheduling Notice (Form 2)** or **Notice of Non-Compliance (Form 3)** will not be mailed to the attorney (or party acting pro se), but will be placed in the file and returned to the Clerk's Office. It will be the responsibility of the attorney (or party acting pro se) to retrieve the notice from the Clerk's office.
 - iv. Do not contact the Staff Attorney or Law Clerks by telephone. Communications with the Staff Attorney and Law Clerks must be in writing or by e-mail and are limited to the matters in the Checlist Form. **The Staff Attorney and Law Clerks are not permitted to give legal advice.**
- d. If a party wishes to proceed by deposition, approval from the duty judge must be received in advance.

4. Procedure for Scheduling a Hearing before a Judge

The case can be scheduled for a hearing only if the Staff Attorney or Law Clerk has mailed the moving party a **Scheduling Notice (Form 2)**. Within 21 days from the date of the **Scheduling Notice**, the moving party must call the Civil Motions Line at (757) 382-3074 to schedule a hearing. Failure to contact the court within such 21-day period may result in having to resubmit another **Hearing Request (Form 1)** for further review before a trial date can be set.

5. Hearing before the Judge

- a. A continuance of the scheduled hearing must be approved by a judge and will *not* be granted except for good cause shown.
- b. Hearings will be set on Wednesday's beginning at 11:00AM. The moving party must call the Civil Motions Line at (757) 382-3074 to schedule a hearing date. The moving party

and the witness must appear in person. Hearings may typically be set on any Wednesday *at least* 15 days from the date you are setting the hearing.

- c. Counsel or the party, if proceeding *pro se*, must present the evidence to prove the grounds for the divorce and any other relief that is sought. Form questions **Questions for Plaintiff and Questions for the Witness (Forms 7 & 8)** have been approved by the Court.
- d. No changes or corrections will be permitted at the hearing, other than a motion for a no-fault divorce pursuant to Virginia Code § 20-121.02.
- e. If required by law, the non-moving party must be served with notice of the hearing and a copy of the proposed divorce decree. Notice must be served 7 days prior to the hearing date; and a copy or the original of the proof of service must be filed at least 5 days prior to the hearing date. The original proof of service must be brought to the hearing if it is not filed earlier. Virginia Code § 20-99, *see also* Rule 4:15 of the Rules of the Supreme Court of Virginia.
- f. Generally, the final decree will be entered at the hearing. The Clerk's Office will provide certified copies following the hearing or will mail certified copies of the final decree if the parties provide a self-addressed stamped envelope.

6. Restoration of Former Name Incident to a Divorce

Virginia Code § 20-121.4 provides that upon decreeing a divorce, a party who changed his or her name by reason of the marriage, may move the court to restore such party's former name or maiden name by a separate order meeting the requirements of § 8.01-217.

The name change order must be sent contemporaneously with the final divorce decree before the hearing; this order may be obtained from the Clerk's Office of this Court. After entry of the order, you must submit the Clerk's recording fee payable to the Circuit Court Clerk.

7. Manual Updates

The latest version of these procedures and forms will be posted on the Chesapeake Courts' Website when available and also may be picked up at the Circuit Court Clerk's Office.

APPENDIX OF FORMS

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Plaintiff,

v. Civil No.: _____

Defendant.

Hearing Request

The undersigned party/counsel hereby requests that this matter be set for an uncontested divorce hearing before a judge. I certify that all issues are uncontested as required by the Court's procedures for these hearings. I am including or have previously filed the following documents:

- ___ Final Decree of Divorce
- ___ Original Separation Agreement, if applicable
- ___ Proof of Service of Complaint, and/or waiver
- ___ Original Completed VS-4 form
- ___ Identifying Information Addendum
- ___ Self-addressed stamped envelope
- ___ Other: _____

I am the ___ Plaintiff, ___ Defendant, ___ Counsel for Plaintiff or ___ Counsel for Defendant.

VS# # if an attorney _____ Name _____

Address _____

Daytime Phone Number

Certificate

I certify that I mailed a true copy of the foregoing to _____ on _____, 20____ by first class mail with postage affixed.

Sign and print name

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Plaintiff,

Civil No.: _____

v.

Defendant.

Scheduling Notice

Your request for an uncontested divorce hearing is approved. No later than 21 days from the date of this notice you must contact the Court at 382-3074 to schedule a hearing date. Uncontested divorces are heard on Wednesdays on the 11:00AM Docket.

You must bring a **WITNESS** to the hearing. And, in addition the following if checked:

____ Original notice of hearing and entry of the final decree with a copy of the proposed Final Decree attached (Rule 1:13) and a dated certificate of mailing at the bottom. NOTE: The notice must be mailed at least 10 days prior to the hearing, and the original notice with certificate must be filed with court at least 7 days prior to the hearing.

____ Original proof of service made by a person authorized by Virginia Code § 8.01-293 of the notice of the hearing and entry of the final decree. NOTE: The notice must be served at least 10 days prior to the hearing date; the original proof of service must be filed with the court at least 7 days prior to the hearing.

____ Other _____

Staff Attorney / Law Clerk

Date

____ Copy for file

____ Not mailed because no self-addressed stamped envelope included with hearing request.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

Vs

Civil No.: _____

_____,
Defendant.

NOTICE OF NON-COMPLAINE

Your request for an uncontested divorce hearing cannot be processed at this time because you did not submit the required documents and/or they are not in proper form. **The attached Checklist, Form 4, highlights the required changes. Additional changes required are itemized below.**

Your request for an uncontested divorce hearing will be processed as soon as you re-submit to the Clerk’s Office, the Final Decree with all required changes, and any missing documents as noted, **together with a self-addressed stamped envelope.** If you disagree with any required change, you may file and notice a motion for a ruling from the Court, identifying the issue you would like the Court to rule on, and schedule it for hearing on the regular Motions docket. Briefs, if any, in support of your position should be submitted at least 15 days before the date the motion will be heard.

Additional changes required:

Staff Attorney / Law Clerk

Date

_____ Copy for file

_____ Not mailed because no self-addressed stamped envelope included with hearing request.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Plaintiff,
v.

Civil No.: _____

Defendant.

DECREE OF REFERENCE

This cause came this day to be heard upon the Complaint, with process properly served upon the defendant. It is hereby

ADJUDGED, ORDERED, and DECREED that this cause is referred to:

_____, Commissioner in Chancery of this Court, who is directed to take testimony and report his findings to the Court pursuant to the General Chancery Order for such causes.

ENTER: _____

Judge

Endorsements:

Counsel for Plaintiff

Counsel for Defendant

___ (Check if applicable)
Submitted without defendant's endorsement.
The defendant has executed a waiver or failed
to enter an appearance after proper service.

VS-4 - Report of Divorce or Annulment

Note: An original of this form must be used. The form may be obtained from the Civil Division of the Circuit Court Clerk's Office, which is located on the third floor of the Circuit and General District Courts building, 307 Albemarle Drive, Suite 300A, Chesapeake, Virginia 23322.

**Chesapeake Circuit Court
UNCONTESTED DIVORCE HEARINGS
Questions for Plaintiff**

1. State your name.
2. State your address.
3. Are you married to _____?
4. Were you married on _____ in _____?
5. Are you and your spouse over 18?
6. Were you or your spouse residents and domiciliaries of Virginia for at least six months preceding the filing of this divorce?
 - a. (Military members) Were you or your spouse stationed in or did you reside in Virginia for at least six months preceding the filing of this divorce?
7. Have either you or your spouse been incarcerated in a mental or penal institution at any time since the filing of this divorce?
8. Are you and your spouse mentally competent?
9. Have either you or your spouse been a member of the armed forces of the United States on active duty at any time since the filing of this divorce?
10. Did you and your spouse separate on _____?
11. When you and your spouse separated did one of you intend for the separation to be permanent?
 - a. If not, when did one of you form that intent?
 - b. Which one of you formed the intent?
12. Since the date of the separation, have you and your spouse lived separate and apart, without cohabitation and without interruption?
13. Is there any reasonable chance of reconciliation?
14. Are there any children born or adopted of the marriage? What are their names and ages?
15. Have you and your spouse entered into a written and signed property settlement agreement? Is this it? Do you recognize the signatures of the parties?
16. Do you want the court to affirm, ratify and incorporate the property settlement agreement into the final divorce decree?
17. Is there a request to have a former name restored? What is it?
18. Do you want the court to grant you a divorce based upon the grounds of having lived separate and apart without cohabitation and without interruption for a period in excess of one year (six months)?
19. Does this agreement dispose of all issues pending before this Court?
20. Are you aware of any other actions pending in any other jurisdiction?
21. The stipulation agreement gives primary custody to the _____. Do you feel _____ is a fit and proper person to have physical custody of the child(ren)? The stipulation agreement also gives visitation rights to the _____. Do you feel _____ is a fit and proper person to have visitation with the child(ren)?

Chesapeake Circuit Court
UNCONTESTED DIVORCE HEARINGS
Questions for the Witness

Note: The testimony of the moving party must be corroborated by a witness who is able to answer the following questions.

1. State your name and address.
2. Do you know the parties in this case _____ and _____?
3. How do you know the plaintiff/defendant?
4. How long have you known the plaintiff/defendant?
5. To the best of your knowledge were the plaintiff and defendant married on _____(date) in _____(location)?
6. Is the plaintiff or defendant (or both) a resident and domiciliary of the Commonwealth of Virginia and have they been so for more than 6-months next preceding the filing of this divorce action?
7. Are the plaintiff and defendant over the age of 18?
8. Is the plaintiff or defendant (or both) now or at any time during the pendency of this divorce action members of the armed forces of the United States?
9. Were any children born or adopted of the marriage? If so, what are their names and ages?
10. Did there come a time when you learned that the plaintiff and defendant had separated? How did you learn of it? When was the separation? Was the separation meant to be permanent?
11. Have you visited one of the parties since the separation? During those visits did you see any signs that the parties were living together?
12. Do you feel that you know the parties well enough that if they had resumed cohabitation you would know of it?
13. Since the date of separation, to the best of your knowledge, have the plaintiff and defendant lived separate and apart continuously without cohabitation and without interruption?
14. Do you believe that there is any hope of reconciliation of the parties?
15. Is everything the plaintiff has testified to today correct to the best of your knowledge?

Use of an Attorney

Each party involved in a divorce matter is strongly encouraged to consult with an attorney so that the legal effects of the proceedings may be fully explained. While it is your right to proceed without an attorney (*pro se*), if you do so, you may forever, unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage. The term *pro se* means “for himself” or “for herself”; this means that parties appearing *pro se* literally represent themselves in all aspects of the case. Parties appearing *pro se* must file all required documents in compliance with the Code of Virginia. The staff attorney, law clerks, judicial staff, and clerk’s office staff are not permitted to give legal advice.