

DIVORCE PROCEDURE

These forms are not designed for complicated divorce issues. To deal with these matters, you would need additional forms that are not included in these forms and you will need to hire a lawyer. Examples of a complicated divorce matter include a request to divide property, receive alimony, payment of lawyers fees and expenses, or if your spouse is in the military. **BE WARNED THAT IF YOU FAIL TO RAISE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYERS FEES OR EXPENSES IN YOUR DIVORCE COMPLAINT THAT YOU WILL LOSE ALL RIGHT TO MAKE SUCH CLAIMS WHEN THE DIVORCE DECREE IS ENTERED.**

STEP ONE: The Notice to Defend, Complaint and Verification (Form 1).

A divorce case is started with the filing of a “Complaint.” There are two forms that must be attached to the Complaint: the “Notice to Defend and Claim Rights” must be attached on top, and the “Verification” must be attached on the bottom. The Complaint is filed in the office where legal pleadings are filed. You must pay the office where legal pleadings are filed a filing fee (unless you have been granted the right to proceed *In Forma Pauperis*, and this request would be filed with your Complaint). The caption at the top of the forms includes the county’s name, your name, your spouse’s name, and the docket number given to you by the office where legal pleadings are filed. This caption must be identical on all documents filed in your case, no matter who is filing a document.

How to Complete Step 1

1. Complete all three pages of Form 1 using the detailed “Instructions for Forms” as a guide.
2. After you have filled out Form 1, make two copies of Form 1. (If you are also requesting to proceed *In Forma Pauperis*, fill out Form 2, and make two (2) copies of Form 2).
3. File Form 1 (and if you are also requesting to proceed *In Forma Pauperis*, file Form 2). Take the original and your two copies to the office where legal pleadings are filed in the county in which you are planning to file for divorce (see the “Where Do I File?” in the Introduction section of this packet). The office where legal pleadings are filed will time-stamp the original and two copies. The original will stay in your file in the office where legal pleadings are filed but the two copies will be returned to you. One of the copies is for your records, and the other copy must be served on the other party in STEP TWO.

STEP TWO: Service of the Complaint.

After filing the Notice to Defend, Complaint and Verification (Form 1), these documents must be served on the other party within thirty (30) days of the date they were filed (the date time-stamped on the document). If the other party does not live in Pennsylvania, the time requirement is extended to ninety (90) days. If service is not completed within 30 days of the date of filing, the Complaint must be reinstated using Form 4, and re-served. Service of the Notice to Defend, Complaint and Verification (Form 1) must be made either by Personal Service, by Acceptance of Service, or by regular and Certified Mail return receipt requested, restricted delivery:

What if Service isn't made in time?: If you were unable to successfully serve the other party within 30 days (or within 90 days if the other party does not live in Pennsylvania), then you must complete and file the Praecipe to Reinstate the Complaint, Form 4. The date you file this Praecipe re-starts the clock for service, and you will have another 30 days to serve the other party (or 90 days if the other party does not live in Pennsylvania). For example, if you file the Praecipe to Reinstate the Complaint on January 1st, then you must serve the other party by January 31st.

How to Complete Step 2

1. Decide how you are going to serve the other party. Next, determine which form you will need, fill in the caption exactly as it appears on Form 1, and follow the following instructions:

Form 3a: Acceptance of Service – Give the other party Form 1. After being given Form 1, the other party signs the Affidavit of Acceptance of Service, Form 3a, stating that he/she has received a copy of Form 1.

-OR-

Form 3b: Service by Mail – Mail Form 1 to the other party by regular and certified mail, return receipt requested, restricted delivery (the post office can assist you in mailing a document by certified mail). You must complete the Affidavit of Service by Mail, Form 3b, stating that you have mailed your spouse the required forms by certified mail. You must also attach the green card receipt received from the post office (make a photocopy of this green card for your records, and file the original by attaching it to Form 3b). If the certified mail is returned unclaimed, another form must be used.

-OR-

Form 3c: Personal Service – An adult, other than you, may personally hand Form 1 to the other party (such as the Sheriff, private courier service, or any reliable third party). The person who hands the papers to your spouse must sign a completed Affidavit of Service by Personal Service, Form 3c.

2. After you have completed either Form 3a, 3b, or 3c (whichever method you chose to serve the other party), make one copy.
3. File either Form 3a, 3b, or 3c (whichever method you chose to serve the other party) with the office where legal pleadings are filed. Take the original and one copy to the office where legal pleadings are filed and have each document time-stamped. The original will stay in the file in the office where legal pleadings are filed and the copy will be returned to you for your records.
4. If you are having trouble completing service, you may file a Praecipe to Reinstatement of the Complaint, Form 4, as many times as you need. The clock starts from the day it is time-stamped in the office where legal pleadings are filed. If you continue to have problems completing service, it is recommended that you speak to an attorney. You may not proceed until proper service has been made.

**IF YOUR SPOUSE CONSENTS TO THE DIVORCE,
FOLLOW THE STEPS FOR A 3301(c) DIVORCE ON
PAGES 5-9.**

**IF YOUR SPOUSE DOES NOT CONSENT TO THE
DIVORCE, FOLLOW THE STEPS FOR A 3301(d)
DIVORCE ON PAGES 10-13.**

**YOU SHOULD REVIEW THE OPTIONAL FORMS
LOCATED ON PAGES 14-15 OF THIS DOCUMENT.**

HOW TO PROCEED WITH A 3301(c) CONSENT DIVORCE:

STEP THREE: Wait 90 Days from the Date the Notice to Defend, Complaint, and Verification (Form 1) were Served.

The Pennsylvania Rules of Civil Procedure require both parties to wait ninety (90) days from the service of the Complaint before filing the consent forms.

How to Complete Step 3

You must wait ninety (90) calendar days from the date Form 1 is **served** (see Step Two). The date Defendant signs is Day 1 of 90.

It is vital that you complete service of Form 1. Once you have served Form 1, you must wait ninety (90) days before you can file the 3301(c) Affidavit of Consents.

STEP FOUR: Affidavit of Consent (Form 5a and 5b) and EITHER Waiver of Notice (Form 6a and 6b) or Notice of Intention to Request Entry of Section 3301(c) Divorce Decree (Form 7).

Affidavit of Consent: After ninety (90) days have passed from the date the Complaint was served upon the other spouse and both parties agree to the divorce, both parties may file an Affidavit of Consent, Form 5a and 5b, declaring that they consent to the divorce. **The Affidavit of Consent must be filed within thirty (30) days after it is signed and dated.** If the parties do not file their Affidavit of Consent within thirty days of the date it was signed, the Affidavit of Consent must be re-signed and re-filed.

Notice of Intention OR Waiver of Notice: In addition to signing and filing an Affidavit of Consent, each party could sign and file a Waiver of Notice (Form 6a and 6b), OR, either party could mail the other party a Notice of Intention to Request Entry of Section 3301(c) Divorce Decree (Form 7). If both parties sign and file a Waiver of Notice, then either party may immediately file a Praecipe to Transmit Record and have the file go to a Judge. However, if one party mailed the other party a Notice of Intention to Request Entry of Section 3301(c) Divorce Decree and Counter-Affidavit (Form 7), then twenty (20) days must pass before you may file the Praecipe to Transmit Record.

How to Complete Step 4

A

OR

B

If filing Waivers -

If serving a Notice of Intention -

- | | |
|---|--|
| <ol style="list-style-type: none">1. You (Plaintiff) complete and sign Form 5a and Form 6a and make one copy of each.2. Provide your spouse (Defendant) Form 5b and Form 6b to sign. Make one copy of each.3. File Forms 5a and 5b and Forms 6a and 6b with the office where legal pleadings are filed within 30 days of the date they are signed. The office where legal pleadings are filed will time-stamp the original and copies. The originals will stay in your file in the office where legal pleadings are filed and the copies will be returned to you for your records. | <ol style="list-style-type: none">1. You (Plaintiff) complete and sign Form 5a, and make one copy.2. Provide your spouse (Defendant) Form 5b to sign. Make one copy.3. File Forms 5a and 5b with the office where legal pleadings are filed within 30 days of the date they were signed. The office where legal pleadings are filed will time-stamp the original and copies. The originals will stay in your file in the office where legal pleadings are filed but the copies will be returned to you for your records.4. Complete Form 7 and make two copies. One copy is for your records, one copy is to mail to your spouse (see below), and the other is to attach to the Praecipe to Transmit Record (Form 12) in STEP FIVE.5. Mail a copy of Form 7 to your spouse by first class mail and Complete Form 11. Mark the Box by "Notice of Intention to Request Entry of Section 3301(c) Divorce Decree, and Counter-Affidavit Under 3301(c)." Make one copy.6. File Form 11 with the office where legal pleadings are filed. They will time-stamp the original and copy. The original will stay in your file in the office where legal pleadings are filed, and the copy will be returned to you for your records.7. Wait 20 days from the date of service of Form 7. |
|---|--|

STEP FIVE: Praecepto to Transmit Record (Form 12), Divorce Decree (Form 13), and any other forms required by your county.

Upon the filing of both parties' Affidavits of Consent (Form 5a and 5b) and the other party receiving a Notice of Intention to Request Entry of Section 3301(c) Divorce Decree/Counter-Affidavit (Form 7), or both parties filing Waiver of Notice (Form 6a and 6b), the divorce may be concluded by either party filing with the court a Praecepto to Transmit Record (Form 12). Check your records for the exact dates necessary to complete the form.

Additional forms are also required by the Court, including a proposed Divorce Decree (Form 13). You must provide the court with self-addressed and stamped envelopes for you and your spouse, in order for the court to mail you a copy of the final divorce decree.

Lastly, check with the Court Administrator's Office, office where legal pleadings are filed, or other similar office in the county in which you filed your divorce proceeding to see if your county requires any other documents in order to proceed with your divorce.

How to Complete Step 5

A

OR

B

If filing Waivers -

If serving a Notice of Intention -

- | | |
|--|---|
| <ol style="list-style-type: none">1. Call the Court Administrator's Office in your county to determine if any other documents are required to complete a divorce.2. Complete Form 12 and make one copy:

<u>Line 1</u>: check 3301(c).
<u>Line 2</u>: print the date of service and the manner of service (Acceptance, Certified Mail, or Personal Service).
<u>Line 3(a)</u>: print the dates you and your spouse signed Forms 5a and 5b.
<u>Line 4</u>: print if any claims are pending, and if none, print "no claims pending."
<u>Line 5(b)</u>: print the dates you and your spouse signed Forms 6a, 6b.3. Complete Form 13, and any other forms required by your county. Make one copy of each.4. File Forms 12, 13, and any other forms required by your county in the office where legal pleadings are filed. That office will time-stamp both the original and your copy. The original stays in the file, and the copy will be returned to you for your records. | <ol style="list-style-type: none">1. Call the Court Administrator's Office in your county to determine if any other documents are required to complete a divorce.2. Complete Form 12 and make one copy:

<u>Line 1</u>: check 3301(c).
<u>Line 2</u>: print the date of service and the manner of service (Acceptance, Certified Mail, or Personal Service).
<u>Line 3(a)</u>: print the dates you and your spouse signed Forms 5a and 5b.
<u>Line 4</u>: print if any claims are pending, and if none, print "no claims pending."
<u>Line 5(a)</u>: print the date you served Form 7 (Notice of Intention and blank Counter-Affidavit), and attach a copy of Form 7 to Form 12.3. Complete Form 13, and any other forms required by your county. Make one copy of each.4. File Forms 12, 13, and any other forms required by your county in the office where legal pleadings are filed. That office will time-stamp both the original and your copy. The original stays in the file, and the copy will be returned to you for your records. |
|--|---|

STEP SIX: Divorce Decree (Form 13).

The Divorce Decree will be mailed to both parties after filing the above forms, presuming there are no mistakes. If corrections need to be made in the paperwork, a final divorce decree will not be entered until the court has the corrected paperwork. Some courts may contact you if corrections need to be made, and some courts will not, so it is **very important** that all procedures are followed and all forms are filled out correctly the first time!

How to Complete Step 6

At some point while your divorce proceeding is pending, provide the office where legal pleadings are filed two stamped envelopes, one with your current address and one with your spouse's current address, so that the office where legal pleadings are filed can mail copies of your Divorce Decree once it is granted.

HOW TO PROCEED WITH A 3301(d) NON-CONSENT DIVORCE:

STEP THREE: *Wait the applicable time period.

The Pennsylvania Rules of Civil Procedure require the parties to be separated for the applicable time of separation before proceeding with a non-consent no-fault divorce.

***APPLICABLE TIME OF SEPARATION:**

If the period of separation from your spouse began on or after December 5, 2016, you will need to be living separate and apart from your spouse for a period of **ONE YEAR**, before filing your complaint in divorce.

If the period of separation from your spouse began before December 5, 2016, you are required to be living separate and apart from your spouse for a period of **TWO YEARS**, before filing your complaint in divorce.

The previous requirement of the two year separation was amended by the Pennsylvania General Assembly in 2016, reducing the separation time requirement to one year after the effective date (December 5, 2016) of the new law.

IF THE PARTIES WERE SEPARATED FOR A TIME PERIOD BEFORE THE FILING OF THE COMPLAINT, THAT TIME IS INCLUDED IN THE APPLICABLE TIME OF SEPARATION REQUIREMENT. THEREFORE, IF YOU HAVE ALREADY BEEN SEPARATED FOR THE APPLICABLE TIME PERIOD AS DEFINED ABOVE WHEN YOU INITIALLY FILED, YOU MAY PROCEED WITH A 3301(d) DIVORCE IMMEDIATELY AFTER FILING AND SERVING THE NOTICE TO DEFEND, COMPLAINT, AND VERIFICATION (FORM 1).

STEP FOUR: Affidavit Under 3301(d) of the Divorce Code (Form 8), Notice of Intention to Request Entry of Section 3301(d) Divorce Decree and Counter-Affidavit (Form 9), Affidavit of Non-Military Service (Form 10).

General Information: Once the parties have been separated for the applicable time period, either party may sign and file an Affidavit Under Section 3301(d) of the Divorce Code (Form 8) stating that the parties have in fact been separated for the applicable time period. Once the parties have been separated for the applicable time period and you have filed an Affidavit stating that you have been separated for the applicable time period, then a divorce may be entered after notice is given to the other party. In addition to filing and serving the Affidavit Under Section 3301(d) of the Divorce Code (Form 8), you must also serve the other party with a Notice of Intention to Request Entry of Section 3301(d) Divorce Decree and Counter-Affidavit (Form 9) in order for them to have the opportunity to oppose the divorce or raise claims if they choose to do so. If the other party does not oppose the divorce and does not wish to raise additional claims, they do not need to take any action on the Counter-Affidavit. If this is the case, a Divorce Decree may be issued twenty (20) days after service of the Notice of Intention to Request Entry of Section 3301(d) Divorce Decree. Lastly, you cannot obtain a 3301(d) divorce against an unrepresented Defendant if he/she is in the military. Therefore, if your spouse is not represented by counsel, you must also sign and file an Affidavit of Non-Military Service (Form 10).

How to Complete Step 4

1. Complete and sign Form 8 and Form 9 and make two copies of each.
2. If your spouse is not represented by counsel and is not in the military, then also complete and sign Form 10. Make two copies.
3. File only Form 8, and if applicable, Form 10 (the original of Form 9 will be served without filing, and a copy will be filed in the future). The originals stay in the office where legal pleadings are filed, and the copies are returned to you for your records.

STEP FIVE: Service of the Affidavit Under 3301(d) of the Divorce Code, Notice of Intention to Request Entry of Section 3301(d) Divorce Decree with Counter-Affidavit, and Affidavit of Non-Military Service.

A 3301(d) divorce cannot be completed without proper service of all the required forms. Because the other party's consent is not required in order for a divorce to be entered against them, it is especially important that all service procedures are strictly followed.

How to Complete Step 5

1. Mail the original Form 9, a copy of Form 8, and, if applicable, a copy of Form 10 by first class mail to your spouse.
2. Complete Form 11, the Certificate of Service, and mark the appropriate boxes for the documents you have mailed to your spouse. Make one copy of Form 11.
3. File Form 11. The office where legal pleadings are filed will time-stamp the original and copy. The original stays in your file, and the copy is returned to you for your records.

STEP SIX: Wait 20 days.

General Information: The Pennsylvania Rules of Civil Procedure require that twenty (20) days elapse between serving the Notice of Intention to Request Entry of Section 3301(d) Divorce Decree and filing the Praeceptum to Transmit Record.

STEP SEVEN: Praeceptum to Transmit Record (Form 12), Divorce Decree (Form 13), and any other forms required by your county.

Upon the proper service of the above mentioned documents, the divorce may be concluded by either party filing with the court a Praeceptum to Transmit Record (Form 12). Attach a copy of the Notice of Intention to Request Entry of 3301(d) and a blank Counter-Affidavit (Form 9) to the Praeceptum to Transmit Record (Form 12). Check your records for the exact dates necessary to complete the form. Reminder: The date of execution is the date the form was signed. The date of the time-stamp is the date the form was filed.

Additional forms are also required by the Court, including a proposed Divorce Decree (Form 13). You must provide the court with self-addressed and stamped envelopes for you and your spouse in order for the court to mail you a copy of final divorce decree.

Other forms not mentioned or provided by these forms and instructions may also be required in order to proceed with your divorce. Check with the Court Administrator's Office, office where legal pleadings are filed or to other similar office in the county in which you filed your divorced proceeding to see if your county requires any other documents.

How to Complete Step 7

1. Call the Court Administrator's Office in your county to determine if your county requires any documents not herein mentioned or provided to complete a divorce.
2. Complete Form 12 and make one copy:
Line 1: check 3301(d).
Line 2: print the date of service and the manner of service (Acceptance, Certified Mail, or Personal Service).
Line 3(b): print the date you signed Form 8 and then the date you served Form 8 (the date on the Certificate of Service, Form 11).
Line 4: print if any claims are pending, and if none, print "no claims pending."
Line 5(a): print the date you served Form 9 (Notice of Intention and blank Counter-Affidavit), and attach a copy of Form 9 to Form 12.
3. Complete Form 13, and any other forms required by your county. Make one copy of each.
4. File Forms 12, 13, and any other forms required by your county in the office where legal pleadings are filed. The office where legal pleadings are filed will time-stamp both the originals and your copies. The originals stay in the file, and the copies will be returned to you for your records.

STEP EIGHT: Divorce Decree.

The Divorce Decree will be mailed to both parties after filing the above forms, presuming there are no mistakes. If corrections need to be made to the paperwork, a final divorce decree will not be entered until the court has the corrected paperwork. Some courts may contact you if corrections need to be made, and some courts will not, so it is **very important** that all procedures are followed and all forms are filled out correctly the first time!

How to Complete Step 8

At some point while your divorce is pending, provide the office where legal pleadings are filed two stamped envelopes, one with your current address and one with your spouse's current address, so that the office where legal pleadings are filed can mail copies of your Divorce Decree once it is granted.

OPTIONAL FORMS

HOW DO I REQUEST TO PROCEED *IN FORMA PAUPERIS* (AND NOT PAY FILING FEES) (FORM 2)?:

If you think you meet the income requirements to proceed *in forma pauperis* (IFP) and be excused from paying any costs related to your litigation, then you can request that the Court excuse you from paying filing fees. In order to ask for IFP status, you must file a "Petition to Proceed In Forma Pauperis and Affidavit" and a "Verification" with the Court, in which you give the judge detailed information about your financial situation. You should fill out, sign, and date the Petition to Proceed In Forma Pauperis and Affidavit and the Verification and submit them -- along with the blank order -- to the, Court Administrator's Office, office where legal pleadings are filed, or other similar office to determine how to have the order signed by a judge. Complete the caption exactly as it appears on all the pleadings in your case. Make sure that the financial information is complete and accurate, or your petition will be denied. You should keep a copy of your IFP request for yourself. If the Judge grants your request, show a copy of your IFP order to the office where legal pleadings are filed every time you file something in your case. You do have the right to appeal the judge's decision, but an appeal can be complicated and having an attorney may be necessary.

Note: If granted IFP status, that status only applies to YOU, not to the other party in the case. If your spouse also wishes to be excused from paying any court costs or filing fees, he/she must submit his/her own IFP request.

How to Request to Proceed In Forma Pauperis (IFP)

1. Complete Form 2. All information regarding your financial situation must be complete and accurate. On the "Order," complete only the caption (the Judge will complete the rest when granting or denying your request).
2. Make one copy of Form 2.
3. File Form 2 with the office where legal pleadings are filed. This can be one at any time during the divorce proceedings. Past fees paid will NOT be refunded; therefore, if you wish to avoid paying filing fees, it is recommended you make your IFP request at the same time you file your Complaint (Form 1).
4. If IFP status is granted, show a copy of your IFP Order every time you file a document in your case.

HOW TO FILE A NAME CHANGE (FORM 15):

Upon the filing of a Complaint, you may resume your birth surname by filing a Praecipe with the office where legal pleadings are filed (Form 15). This form can be filed either before or after the granting of a final Divorce Decree. There is a small additional fee associated with filing this form.

How to Complete a Name Change

1. Complete Form 15. Many counties require this form be notarized, so contact the Court Administrator, office where legal pleadings are filed, or other similar office to see if you need to notarize it.
2. Make one copy of Form 15.
3. File Form 15. Take the original and one copy to the office where legal pleadings are filed and have each document time-stamped. The original will stay in the file in the office where legal pleadings are filed, and the copy will be returned to you for your records.