

[Rule 1920.17. Discontinuance Withdrawal of Complaint

(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by praecipe that includes a certification that:

- (1) no ancillary claims or counterclaims have been asserted by either party; and**
- (2) grounds for divorce have not been established.**

(b) A party may withdraw a claim of equitable distribution only:

- (1) by written consent of both parties filed with the court, or**
- (2) after filing and serving on the other party a written notice that the party intends to withdraw the claim of equitable distribution 20 days after service of the notice.]**

Rule 1920.17. Withdrawing Complaint and Discontinuing Divorce Action. Withdrawing Ancillary Claims Raised in Pleadings. Notice. Death of a Party

(a) *Withdrawing Complaint and Discontinuing Divorce Action.* A plaintiff may withdraw a divorce complaint and discontinue the divorce action by:

- (1) a motion, except as provided in subdivision (a)(2), which has been served on the defendant; or**
- (2) a *praecipe*, which includes the plaintiff's certification that:**
 - (i) neither equitable division of marital property nor custody claims are pending;**
 - (ii) the defendant has filed neither a counterclaim nor a separate petition raising claims; and**
 - (iii) the parties have not established grounds for divorce.**

(b) *Withdrawing Ancillary Claims Raised in Pleadings.* Without discontinuing the divorce action, the party who raised an ancillary claim may withdraw the claim by a *praecipe* filed with the prothonotary, except:

(1) a party who raised an equitable division of marital property claim may withdraw the claim only:

(i) with the parties' written and filed agreement, including as required by Pa.R.C.P. No. 1920.42(a)(4), (b)(4), or (c)(4);

(ii) with the opposing party's written consent; or

(iii) after filing and serving on the opposing party a notice that the party intends to withdraw the equitable division claim 20 days after service of the notice.

Note: See subdivision (c) for the notice.

(2) a party who raised a custody claim in a divorce action may withdraw the claim only as provided in Pa.R.C.P. No. 1915.3-1(b).

(c) The notice required in subdivision (b)(1)(iii) [above] shall be substantially in the following form:

(Caption)

**NOTICE OF INTENTION TO WITHDRAW CLAIM FOR EQUITABLE
[DISTRIBUTION] DIVISION OF MARITAL PROPERTY**

TO: _____
(PLAINTIFF) (DEFENDANT)

(Plaintiff) (Defendant) intends to withdraw **[(his) (her)]his or her** pending claim for equitable **[distribution of property twenty]division of marital property 20** days after the service of this notice. Unless you have already filed **[with the court a written claim for equitable distribution]ancillary claims, which are permitted under the Divorce Code, including equitable division of marital property,** you should do so within **[twenty]20** days of the service of this notice, or you may lose the right to assert **[a claim for equitable distribution. If]those ancillary claims, if the court enters** a decree in divorce **[is entered and you have not filed a claim for equitable distribution, you will forever lose the right to equitable distribution of property].**

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone)

(d) ***Death of a Party.*** [In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code.]

(1) If a party dies after the parties have established grounds for divorce but before the court has entered the divorce decree:

(i) the surviving spouse or the decedent's personal representative may only withdraw the complaint or an ancillary claim with the parties' written consent;

(ii) the Divorce Code shall determine the disposition of an ancillary claim raised in a pleading, unless:

(A) the parties have an agreement that resolves the ancillary claim; or

(B) the parties have withdrawn the complaint or ancillary claim as provided in subdivision (d)(1)(i); and

Note: See 23 Pa.C.S. § 3323(g) for establishing grounds for divorce when a

party dies during the pendency of the divorce action.

(iii) if a [If no] personal representative has not been appointed within one year of the decedent's death, [then,]upon motion of the surviving party, the court may allow the withdrawal or dismissal of the complaint [and/or any] or a pending [economic claims] ancillary claim.

(2) If a party dies before the parties have established grounds for divorce, the divorce action abates, and the Probate, Estates, and Fiduciaries Code, 20 Pa.C.S. §§ 101 et seq., controls the decedent's property disposition.

Note: **See *In re Estate of Bullotta*, 838 A.2d 594, 596 (Pa. 2003) (“Generally, a divorce action abates with the death of one of the spouses.”).**

To the extent that *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014), holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded.

Comment - 2020

As the Divorce Code permits a party to raise a child custody claim in a divorce complaint, subdivision (b)(2) addresses withdrawing a custody count. Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to follow the custody practices and procedures, and Pa.R.C.P. No. 1915.3-1(b) provides specific limitations on withdrawing a custody action. As such, subdivision (b)(2) has been added to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading shall do so consistent with Pa.R.C.P. No. 1915.3-1(b).